

**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL
September 20, 2016**



AGENDA

MEETING CALLED TO ORDER - 5:00 PM

ROLL CALL

ADOPTION OF MINUTES OF June 21, 2016

PUBLIC COMMUNICATIONS – *Items not scheduled on the regular agenda*

STAFF AND BOARD COMMUNICATIONS/DISCLOSURES

REGULAR AGENDA – *Discussion, possible public hearing, and possible action as outlined below*

638 Park Avenue Avenue – Appeal of Staff's Approval of a Historic District
Design Review for the Historic Kimball Garage
Quasi-Judicial hearing and continuation to October 18, 2016

PL-16-03106 13
*Planner
Grahm*

ADJOURN

A majority of Board of Adjustment members may meet socially after the meeting. If so, the location will be announced by the Chair person. City business will not be conducted.

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the Park City Planning Department at (435) 615-5060 24 hours prior to the meeting.

PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF JUNE 21, 2016

BOARD MEMBERS IN ATTENDANCE: Ruth Gezelius – Chair; Hans Fuegi, David Robinson, Mary Wintzer

EX OFFICIO: Planning Director Bruce Erickson, Anya Grahm, Ashley Scarff, Polly Samuels McLean, Louis Rodriguez

ROLL CALL

Chair Gezelius called the meeting to order at 5:01 p.m. and noted that the Board did have a quorum.

ADOPTION OF MINUTES OF May 24, 2016.

MOTION: Board Member Hans Fuegi moved to APPROVE the minutes of May 24, 2016 as written. Board Member Wintzer seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

Director Erickson reported that they were still waiting to hear from the State Ombudsman regarding 569 Park Avenue. He anticipated that it would be several months before they heard back.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

1. 2389 Doc Holiday Drive – Applicant is requesting a variance to Land Management Code Section 15-2.11-3 (l) (2) to construct an addition to connect a single-family dwelling to a detached garage. If connected, the entire structure would no longer meet required side and rear yard setbacks of ten feet (10'). (Application PL-16-03106)

Planning Tech, Ashley Scarff, reviewed the request for a variance to reduce the minimum required rear and side yard setbacks of 10' each to 9.25 feet and 5.25 feet respectively. The property in question is Lot 16 of the Prospector Park Subdivision Phase I. The lot currently contains the applicant's single-family dwelling and detached garage, and both meet the minimum required setbacks for

main and detached accessory structures in the Single Family District. The LMC provides exceptions for structures in Prospector Park Subdivision Phase I. The applicant would like to construct an addition to connect the main single family structure with the detached garage. The minimum rear and side yard setbacks for the detached garage are 5' each. The existing garage is approximately 9.25 feet from the rear property line, and 5.25 feet from the side property line. Ms. Scarff stated that the minimum rear and side yard setbacks for a single family dwelling are 10' each. The existing single family dwelling meets the minimum side yard setbacks, but if the detached garage were to be combined with the main single family dwelling, the combined structure would no longer meet the minimum required 10' rear or side yard setbacks.

The Staff found that the application did not meet Criteria 1 through 4; but it did meet Criteria 5 as outlined in the Staff report.

Board Member Robinson asked how many properties in the area were similar to this with a detached garage or shelter. He believed the structure was built in 1978 and he wondered how many properties had the same configuration.

Planner Scarff had prepared a map to perform that type of analysis. She noted that Doc Holiday Drive is in a backward L configuration. She had looked at other properties with similar challenges, and four of five were detached garages. Ms. Scarff had done some research and found that a variance for this type of situation has never been granted on Doc Holiday Drive. The houses on Doc Holiday Drive that look like they may have been connected to the detached garage were actually constructed that way.

The applicant, Sandy Bergland, thought there were approximately 60 houses in Prospector Subdivision Phase I; and 40 of them had attached garages. The rest were detached. She was not sure if the numbers completely accurate, but they were close to what she recalled in her research. Ms. Bergland stated that she has lived in her home for five years. She pointed out that the back of the house and the garage. The back of the house faces north and it is a solid sheet of ice all winter. She has done everything possible to try to fix the ice problem but nothing helps. This variance request was her last effort to try to make the back of her house safer. Ms. Bergland stated that the hardship for the variance would be the unsafe and hazardous conditions.

Kerry Holmers, a friend of Ms. Bergland, stated that she spends a lot of time at the house and she constantly deals with this problem. She has fallen on more than one occasion and she has witnessed other people falling on the ice. She did not believe the picture presented showed how bad it actually gets, because the photo was taken after the area had been ice picked and somewhat maintained. Ms. Holmers commented on other issues related to the unsafe condition and why it was important for Ms. Bergland to obtain the variance.

Board Member Wintzer stated that she is familiar with Prospector. When she walked along there a property three or four doors down had a similar configuration with the fence, and there is no exit from the fence. She asked if Ms. Bergland had a gate that comes out to her garage. Ms. Bergland replied that she has a door on the side of her garage. The fence does have a gate but there is usually too much snow to be able to open it.

Board Member Wintzer stated that she has lived in her house in Old Town for 35 years, and they have to close off the north side every winter and barricade their animals from that area. She understood the problem, but it is a fact of living in Park City and snow country. Ms. Wintzer was concerned about setting a precedent along there and the potential for increasing living space. She noted that Ms. Bergland could use the front door to access her garage during the winter.

Ms. Bergland pointed out that of the north facing houses on Doc Holiday, only four houses are not connected to the garage. Ms. Wintzer agreed, but noted that it was a function of the design at the time the house was built. Ms. Bergland pointed out that the house at 2197 Doc Holiday created a breezeway that connects the house and garage. Ms. Wintzer questioned why that house did not require a variance.

Planner Scarff believed there was a way for the applicant to add a small addition on her home and still meet the minimum required setbacks, as long as the detached garage never became attached to the home. The breezeway did not require a variance because it did not create living area and its purpose is a connecting roof structure. Ms. Scarff stated that there were alternatives to physically connecting the house to the garage to mitigate the icy sidewalk issue.

Board Member Fuegi assumed Ms. Bergland was aware of winters in Park City when she purchased her home five years ago. Ms. Bergland replied that she was aware, but over time she thought she could live with the situation. However, after falling herself and having so many others fall on her property, she would like to make it safer to get to her car without using her front door and walking all the way around. Mr. Fuegi asked if heating that patch of ground could be an option if the variance was not approved. Ms. Bergland had not given it any thought, but she believed it would be very expensive. She has tried other alternatives but nothing seems to work.

Board Member Robinson noted from the plans that Ms. Bergland was building a mud room. Mr. Robinson asked the Staff if it would be acceptable if the mud room was built but not attached to the garage, and had a cover from the mud room to the man door in the garage. Planner Scarff believed it would be permissible as long as the structures are not physically touching or actually connected to each other. She had consulted with the Building Department and

was told that there is no minimum required distance between structures if they are on the same lot and have the same owner.

Chair Gezelius stated that the Board of Adjustment has very defined rules about what they can consider; and what they can consider is the application before them. This was not the forum to discuss other alternatives. Chair Gezelius asked the Board to focus their discussion on the application for a variance.

Chair Gezelius concurred with the Staff analysis of this request not meeting the first four criteria. This home was built in 1978, but some homes were built in 1888, and those owners are dealing with their existing conditions. The idea of asking for a variance to cover even more of this lot, which is out of context and character to the subdivision, is the wrong direction. Chair Gezelius felt that to grant such a huge variance when there is already a setback problem on the site did not make good planning sense. She did not agree with covering more of this lot. Chair Gezelius thought the Staff did an excellent job of analyzing the criteria. Unless they could find that all the criteria is met, the variance should not be granted. Chair Gezelius echoed Ms. Wintzer's comment about this climate being a hardship for everyone who lives there, and they all find ways to cope with it. If one site has more challenges than another, it is up to the property owner to cope with it the best they can. Chair Gezelius found the request to be excessive in terms of requesting a variance. It would be poor planning judgement for the neighborhood if the BOA allowed this because they would be setting a precedent they would not want to set in terms of site coverage. She stated that the setbacks were written as such and need to be enforced with very minor variations.

Board Member Fuegi agreed with Chair Gezelius, but he thought Board Member Wintzer had touched on the primary issue of setting the precedent for this area. Mr. Fuegi was sympathetic to Ms. Bergland's problem, but people in Park City learn to deal with winter conditions. He also thought the application was excessive.

Board Member Robinson agreed with all the comments. He believed the issue was the setbacks. Whether or not Ms. Bergland would be adding square footage to the home was another question. The Board of Adjustment is bound by specific rules, and based on those rules he would be hard pressed to grant a variance.

MOTION: Board Member Wintzer moved to DENY the request for a variance at 2389 Doc Holiday Drive based on the Findings of Fact and Conclusions of Law found in the Staff report. Board Member Robinson seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 2389 Doc Holiday Drive

1. The site is located at 2389 Doc Holiday Drive.
2. This property is Lot 16 of Prospector Park Subdivision Phase 1.
3. The property is located in the Single Family (SF) District and is subject to Land Management Code §15-2.11-3 Lot and Site Requirements, subsections B – I, which convey the following:
 - a. Rear Yard Exceptions: Detached Accessory Buildings not more than eighteen feet (18') in height must maintain a minimum Rear Yard Setback of five feet (5').
 - b. Side Yard Exceptions: Detached Accessory Buildings not more than eighteen feet (18') in height must maintain a minimum Side Yard Setback of five feet (5').
 - c. Side Yard: The minimum Side Yard is ten feet (10'). d. Rear Yard: The minimum Rear Yard is ten feet (10').
 - d. Rear Yard: The minimum Rear Yard is ten feet (10').
4. The lot currently contains one (1) single-family dwelling and one (1) detached garage, which both meet minimum rear and side yard setback requirements for main and detached accessory structures.
5. The applicant desires to construct an addition to connect the main single-family dwelling to the detached garage.
6. If the main structure is to be combined with the detached accessory building, the entire structure would no longer meet required rear and side yard setbacks of ten feet (10') each.
7. The applicant requests to reduce the required minimum rear and side yard setbacks of ten feet (10') each to 9.25 feet (9.25') and 5.25 feet (5.25'), respectively.
8. In order to grant the requested variance, the Board of Adjustment must find that all five (5) criteria located in LMC §15-10-8(C) are met. The Applicant bears the burden of proving that all of the conditions justifying a variance have been met.
9. The nature of the request comes from literal enforcement of the LMC, but stems from conditions that are general to the neighborhood, or any properties with similar configuration.

10. The applicant has the ability to build an addition onto the main single-family structure in a manner that decreases the distance between the main and accessory structures, thus, providing the connecting walkway with more cover from the elements in winter months.

11. The variance is not necessary for the property owner to update or remodel their home.

12. The variance would not substantially affect the General Plan, but would be contrary to public interest by setting a precedent for reduced rear and side yard setbacks, which are enforced in the name of the public interest.

13. The spirit and intent of the LMC would be observed with the addition, as long as the current use of the garage structure is maintained.

Conclusions of Law – 2389 Doc Holiday Drive

1. Literal enforcement of the Land Management Code for this property would not cause an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.

2. There are no special circumstances attached to the property that do not generally apply to other properties in the same district.

3. Granting the variance is not essential to the enjoyment of substantial property right possessed by other property owners in the same district.

4. The variance will not substantially affect the General Plan but will be contrary to the public interest.

5. The spirit of the Land Management Code will be observed.

Order

1. The variance to LMC §15-2.11-3(I) reducing the minimum rear yard setback of ten feet (10') to 9.25 feet (9.25') and the minimum side yard setback of ten feet (10') to 5.25 feet (5.25') to connect a single-family dwelling to a detached accessory building--is hereby denied.

2. 422 Ontario Avenue – Applicant is requesting a variance to Section 15-2.2-3 (E) (Front Yard Setbacks), Section 15-2.2-3(H) (Side Yard Setbacks), and Section 15-2.2-5 (A) Building Height of the Park City Land Management Code (LMC) for the purpose of constructing a basement garage addition and new above grade addition to a “Significant” historic house. (Application PL-16-03138)

Planner Anya Grahm provided a brief background on the site at 422 Ontario Avenue. This portion of Ontario is very steep and narrow and it is difficult for two cars to pass. An existing 14' boulder and concrete retaining wall was constructed by the neighbor in 2008. It was to improve the hillside along the road and hold it back. Planner Grahm reported that the previous owner, LS Sorensen, entered into an agreement with the neighbors for that wall, and it was built legally. The historic house is designated as Significant on the Historic Sites Inventory, and historically the Sorensen's accessed the property from the back where Echo Spur is now. However, when this applicant met with the developer of Echo Spur, Echo Spur was not interested in entering into any kind of vehicular access. Planner Grahm stated that there is no prescriptive right for that access because the access occurred over a property that was owned by the railroad and it could not be granted. She noted that currently the owners park along Ontario Avenue, which is public parking space in the public right-of-way. The LMC requires a 12' front yard setback, and the wall is setback approximately 12'. Planner Grahm explained that the wall is built right on the front property line, but front property line is 12' back from the paved Ontario Avenue because Ontario Avenue was not built within its platted right-of-way.

Bill Mammen, the project architect, discussed the quirks of the site and his approach to designing it. Mr. Mammen stated that they could build a garage 12' back from the front property line, but it would be buried because the grade at that point is 18' above the floor of the garage. He thought that would be visually be more harmful to the street than just having the garage at the retaining wall. Mr. Mammen noted that the plan is to use the existing retaining wall as the garage door. They would re-establish the historic grades after the garage is built.

Mr. Mammen commented on the height and noted that the steep slope requires 35' from the lowest floor entrance to the top plate. The City is counting the entrance to the garage door as that lowest point. Mr. Mammen stated that the plan is to build a separate structure that is only attached by a minimal connection to the historic house. The historic house stands alone, and any addition would stand alone as a new addition. Mr. Mammen stated that the plan is to come up from the garage with an elevator and stairway to make the house totally accessible and livable, which is rare in this part of Park City. Mr. Mammen remarked that some of the hardship is created once they build the structure. If they put the garage where it belongs it hurts everyone, and that is the biggest hardship.

Planner Grahm reviewed the criteria and the Staff findings as outlined in the Staff report.

Chair Gezeliuss asked Planner Grahm to clarify the size of the lot. Planner Grahm stated that the minimum lot size is 1875, which is a traditional 25' x 75' lot. The applicant had gone through the plat amendment process and they were working

through the redlines. The plat amendment had not yet been recorded. The proposed lot size would be 4,464 square feet.

Board Member Wintzer understood that the house was over three stories on one elevation. Mr. Mammen replied that the house would end with the garage and two stories. The two finished floor levels would be the existing floor of the house and one story above that.

Planner Grahn pulled up the east elevation that Ms. Wintzer was referring to. Ms. Winter asked if the applicant was proposing a height of 41' rather than 35'. Planner Grahn replied that she was correct. Mr. Mammen explained that the 41' was measured from the garage door entrance. Ms. Wintzer asked if measuring from the garage floor accounted for the space for the roof. Mr. Mammen replied that it was 41' from the garage floor to the top plate. He noted that stacking it reduces the overall height. He stated that the addition would only be 800 square feet. They were adding two bedrooms and two bathrooms. Ms. Wintzer stated that if they were adding 800 square feet, the total size would be 1600 square feet.

Barbara Easter, the owner, believed the proposed drawing showed a total of 2300 square feet including the original house. Chair Gezelius clarified that it was on a 4464 square foot lot. Mr. Mammen stated that the footprint is 1400 square feet. The total square footage of the house was 2300 square feet.

Chair Gezelius stated that the rules are written for flat lots, and then written for a certain slope. She pointed out that this was an unusual lot in terms of its setback, the slope, and its location. The idea of keeping the historic home instead of building a gigantic home on this parcel, made her much more receptive to the issue of a height exception based on the very steep slope. Chair Gezelius thought the request was reasonable for a smaller than a potential sized home. Saving the historic home and getting a functional home at the same time made her think differently because the size of the site justified extenuating circumstances. Having been a pedestrian on this street, she realized how dangerous it can be when cars back in and out, or try to pass each other, or trucks come and go. Chair Gezelius stated that her thinking changed as she kept reading the Staff report.

Board Member Wintzer referred to the west elevation on page 66 of the Staff report. She had concerns with the mass and scale appearing to be considerable with the small house. Mr. Mammen reviewed the plans to help Ms. Wintzer understand the mass and scale of the proposal. They really wanted to let old home shine, and the intent was to expose the actual T house that was built in 1905. The walls are very distinct. Chair Gezelius asked if that was the reason for changing the siding from the horizontal on the old house to the vertical in the back. Mr. Mammen pointed out that the 3-foot link will be all glass. He pointed to the original back porch on the original house, the T, the front porch and the

back porch. He noted that they were re-establishing the back porch and enclosing it with glass, and that would connect the old house to the new house.

Ms. Easter remarked that the plan is connected to the garage. If they could not put the garage in the hill, they would be forced to build a much larger structure on top of the hill, and it would overwhelm Shorty's house. It is a tiny house and putting an addition on to the side of it will allow the house to be used. It would also help to restore the historic house.

Mr. Mammen explained the dimensions of the garage and noted that it would be a two-car tandem garage.

Board Member Wintzer commented on the two public parking spaces that would be given up. She asked if the applicant would be using public property. Planner Grahn answered yes. She reviewed the site plan and indicated the area in front of the house that is within the public right-of-way that is currently available for public parking. Rather than be public parking it would now be the access into the tandem garage. Ms. Wintzer asked if the public parking spaces would remain if the variance was not granted. Planner Grahn replied that she was correct. If the variance was not granted they would be unable to construct the underground garage, and the two spaces would remain. Mr. Mammen pointed out that it was only one space; not two. Ms. Easter agreed that it was only one space, and it has always been used by whoever lives in the house. Chair Gezelius noted that that the parking space is challenged because the snow storage from the street is piled up on the site because there is no storage along this street.

Board Member Fuegi asked Mr. Mammen if he had any drawings showing the height at 35'. Mr. Mammen stated that there was no way to have a second floor and keep within 35'. Without the variance, they would be restricted to one level and would have to increase the 1400 square feet footprint. Mr. Mammen stated that they could lower the addition floor and add a second floor, but it would require changing the historic grade.

Board Member Fuegi understood historic grade, but there is also an existing Code. He thought it was a hard argument to swallow when on one hand Mr. Mammen needs a variance for the height, but they are going to build it up. It did not make sense until Mr. Mammen explained the historic grade.

Director Erickson asked if Planner Grahn had done an analysis of the alternatives before coming in with the Staff recommendation. Planner Grahn explained that the applicant had submitted a pre-Historic District Design Review application. They were only at the pre-app stage, because without a variance the design would change drastically and she did not want the applicant to submit the full HDDR. Planner Grahn stated that if the variance is granted, or even if not, they would likely need a steep slope conditional use permit that would go through and be approved by the Planning Commission. Something new to the Planning

Department is that last December the City Council required that the HPB start looking at material deconstruction applications. The HPB will be required to review the work that is being proposed on this house, as well as the demolition of the addition to the north that the Staff does not believe is historic or original to the building.

Planner Grahn outlined the options. If the variance is granted and the applicant was allowed to put in the basement garage addition, the height of the addition overall would have to be reduced. If the garage was not to be constructed, historic structures are exempt from parking and they could continue to park on the street. They would probably have the opportunity to keep the height but the basement floor would have to be raised.

Chair Gezelius wanted to know how high they could build if a house was built on the top of the lot. Planner Grahn replied that it would be 27' above the indicated line. She was only talking about height above grade and not the interior. Mr. Mammen stated that if the Board of Adjustment did not grant the variance for the garage, the only option for the garage would be to push it back 12', and it would obliterate the historic house. He thought the BOA needed to weigh which was more important.

Planner Grahn indicated on the site plan where the garage would line up if it was pushed back 12'. The amount of required excavation would probably not meet the design guidelines and a garage would not be accomplished.

Board Member Robinson understand that Mr. Mammen was proposing to connect the historic house with the new structure. He referred to the first level floor plan on page 63 and asked if it included the existing structure. Mr. Mammen reviewed the plans showing the existing historic structure, and the existing historic porch.

Chair Gezelius stated that was not unprecedented in this general area and that at least two historic homes were connected to additions behind or beside them. It is a way to save some element of the historic structures and provide enough living space for today's standards for a family. Chair Gezelius remarked that it is a challenged, steep site, and she rarely favors a height exception. However, she believes that saving the home and building correctly make it a good neighbor to have its own parking, and it becomes a much more functional home with the garage. She thought the applicant presented a garage that fits the direction of planning with a single car garage and tandem instead of two garage doors on the street. Chair Gezelius believed it fits with what has been done in this area planning-wise to save the historic structures that are left. She would be sad to see a big new house 27' high at the top of this hill. Height variation in the neighborhood is good and this comes in under other structures that were built. She considers that to be a neighborhood benefit.

Board Member Fuegi clarified that this historic house could not be torn down because it is on the HSI. Director Erickson stated that they have HPB review and material deconstruction. The Board is not happy about doing that to houses, and the Planning Department is very vigilant about protecting that house. Director Erickson remarked that the excavation required if the variance is not granted would put the Significant house at much more risk during construction, even if it was raised. He noted that part of the variance request is to do additional protection of the historic home.

Chair Gezeliuss asked if the Board was ready to make a motion. Board Member Wintzer stated that she was still struggling with the General Plan and the size and the mass and scale. She would not be making the motion.

Chair Gezeliuss stated that the motion should be to APPROVE the request at 422 Ontario for the variances as outlined on page 41 of the Staff report. The first variance is to the required 12' front yard setback; the second variance is to the required 5' side yard setback on the north property line for the construction of the garage; the third variance is for the maximum height to be increased to the 41' as outlined in the conditions, subject to the Findings of Fact, Conclusions of Law and Conditions of Approval and the Order as written.

MOTION: Board Member Robinson moved to APPROVE the variances requested for 422 Ontario, per the language stated by Chair Gezeliuss.

Board Member Fuegi asked for additional discussion on the motion.

Board Member Fuegi was uncomfortable with the height variance. He wanted to make sure they explored all the possibilities and alternatives. He liked the idea of the garage and the idea of maintaining the house. However, he thought they needed to further explore the possibilities of staying within the height restriction.

Mr. Mammen stated that if they only did an addition, the addition would be 18 feet taller than what is proposed. He felt like they were being penalized by the 35' height restriction because they want to build the garage right off the street. If they pushed the garage back, they are restricted by a 14% slope. If they did a 14% slope off the street and went 23 back from the back curb, it would be 3.8'. Mr. Mammen believed they were really only asking for 18" from a strict interpretation of the rule. The applicant was also cutting a story off of the house in order to get a garage. He thought it was a quid pro quo.

Ms. Easter stated that without the variance she would have to decide how to make this house livable for someone and just maintain the parking spot off the street that is public space. Ms. Easter noted that she could build an additional four-bedroom house above it that is 18" taller than this one, and not have to ask for a variance.

Board Member Wintzer could not reconcile the variance request with the five criteria.

Chair Gezelius suggested that the Board discuss each of the criteria.

Criteria 1. Literal enforcement of the LMC would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the LMC.

Chair Gezelius believed the Board members agreed with the applicant that the site is steeply sloped uphill.

Board Member Wintzer stated that in terms of an unreasonable hardship, this was a hardship that many homes in Old Town have faced or still face.

Chair Gezelius pointed to the photos of the surrounding structures and noted that the new homes were allowed to build underground garages and build higher. She stated that her issue since the 28' height was imposed on people who had not demolished their historic homes, is that the next door neighbor could build a new house at a taller height, but the historic house needs to remain lower. She thought it was grossly unfair and creates a hardship for people trying to maintain a historic home at a size that is livable for a family. From a planning standpoint, Ms. Gezelius thought the restrictions were punitive and penalize people who wish to follow the new rule. It made it difficult to accomplish the goal to maintain historic structures. She believed that granting the variance was a much better alternative than having the applicant build a much taller structure at the top. It would also save this historic home. Chair Gezelius commented on the hardship of trying to maintain a historic home on an extremely steep lot. She thought the excavation consideration to put a garage further back was not a good scenario for soils stability and the homes adjacent to it, as well as the back hillside. In her opinion, it did not make sense.

Board Member Wintzer stated that when the City did the Visioning people brought in pictures of houses they were upset about. This was occurring all over Old Town and she assumed the 27' rule was changed because they were seeing too much mass and height. She thought it was unfortunate and agreed that it is not always fair. However, when she reads the General Plan, the goal is to maintain the fabric of the community, and felt this variance request was a stretch to meet that goal.

Chair Gezelius pointed out that the purpose of the Board of Adjustment is to address the unusual and the hardships. The lots that were left are the hardest lots to build on. She remarked that if they could not have exceptions or the opportunity to maintain the historic structures they would be lost. Chair Gezelius gave Mr. Mammen a lot of credit for his design solution on a difficult site. She was amazed that he could envision a way to utilize the site and save the home.

Mr. Mammen remarked that this has been a work in progress for over a year and it was not approached lightly. He presented a picture of a structure that legally meets the LMC, even though it completely obliterates the street and the house is 27' above existing grade. Chair Gezelius thought it was questionable whether that home contributed to the Historic District. Mr. Mammen argued that this house and most of the other houses on the street have no place in the Historic District, and they should have never been built. He explained that Ms. Easter's house is 3 feet below the 27' height limit at its highest point. The ground keeps going up from there and the height is below 27' at the back of the house. Mr. Mammen agreed that too much bulk and mass was built in the Historic District years ago. He believed the Code was fine but too many things were allowed to slip by through misinterpretation of the Code.

Ms. Easter understood the concerns about massing, but her house would be nothing compared to the addition on McHenry and the new enormous glass house. Her house would be setback so far that it would be less visible from the street and very low in comparison to the hill. She intended to make Shorty's house stand out and that is what will be seen as the mass.

Board Member Wintzer referred to the criteria regarding public interest. She asked if the City makes the judgement call when it gives up public spaces, and whether there is a balance or always a price that the applicant or developer has to pay. Director Erickson stated that in the public interest portion, the BOA gets to decide whether the benefits to preserving this house and the reduction in overall height, warrants taking one publicly available parking space out of the system that may or may not be useful during the winter. The plan would eliminate one parking spot, but gain two parking spots, and protect the historic house. The Staff believes that is a quid pro quo; but the Board of Adjustment makes that decision.

Board Member Robinson understood from the Staff report that was one of 13 houses listed on the Historic Sites Inventory. However, this is the only historic house that has this very unique situation because most of the other houses are further down on Ontario where the road flattens out. Those homes do not have to deal with a severe slope and most of the access is to the rear of those properties. He believed this was a very unique situation for that reason. Mr. Robinson stated that another important issue is that the Historic Design Review still needed to take place, and he assumed the review team would look closely at the design elements of the house, along with the material deconstruction. Rather than the BOA getting involved in the design aspect, Mr. Robinson thought the idea of granting a variance to go from 35' to 41', but actually ending up with less mass than what could occur if they do not grant this variance, would act in favor of the applicant's request.

Board Member Wintzer asked the Staff if it was a definite fact that if the BOA grants this variance, they would end up with a house that is less than what could otherwise be built. Planner Grahn answered yes. Ms. Wintzer asked if that needed to be part of the motion to approve the variance. Chair Gezelius stated that it was outlined sufficiently in the Findings and did not need further clarification.

Assistant City Attorney McLean noted that Condition of Approval #1 states, "The variances are granted for the construction of an underground basement garage as indicated on the plans submitted with this application". Ms. McLean noted that the HDDR has not taken place and there might be some changes. She thought Condition #1 was clear that the variance was only for that underground basement garage. However, they could revise the language to indicate that the variance is granted only for that purpose.

Chair Gezelius suggested wording, stating that, "The variance for the height exception is granted on the understanding and condition that the finished height of the project could not exceed 18 feet at the top". Ms. McLean and the Board members were comfortable with that wording. Mr. Mammen suggested that they could go further and specify an elevation. Planner Grahn thought it should read "top wall plate" to match the LMC.

Chair Gezelius did not believe they needed to establish the actual elevation. She suggested language stating, "...from the lowest finished floor plane to the top of the highest wall top plate shall not exceed 41' per the applicant's request". She stated that if the applicant, the Planning Commission or the HPB wants something different, it would have to come back to the BOA.

Based on their comments, Planner Grahn drafted Condition #5 to read, "The variance for the interior height exception is granted and conditioned so that the lowest finished floor plane to the highest wall plate does not exceed 41 feet as per the variance requested, which will result in a structure that is lower in height and elevation than could be built on the site without the variance".

To address additional concerns regarding the height, Director Erickson suggested adding another sentence stating, "The height of the new structures shall not exceed 18' at the highest portion of the site to the top sill plate above existing grade." Planner Grahn suggested "to the roof height" instead of "the sill plate". Director Erickson suggested adding Condition #6, stating that while the height exception runs with the land, it is limited to the proposed drawings contained in the Staff report. If there is concern about vesting future height exception rights, it should be limited to this particular plan. If a future owner wants something different they would have to go through the variance process.

After further wordsmithing, Condition #5 was revised to read, "The variance for the interior height exception is granted and conditioned so that the lowest

finished floor plane to the highest wall plate does not exceed 41 feet as per the variance requested which will result in a structure that is lower in height above existing grade than what would otherwise be permitted. The height of the new structure shall not exceed 18 feet above existing grade from the tallest elevation of the site". Condition #6 would read, "The variance for height and setbacks is limited to the building plans submitted as part of this variance application."

Mr. Mammen asked if the applicant would have to come back to the Board of Adjustment if changes were made during the HDDR. Planner Grahm replied that it would only be in relation to the height and the variance granted. For example, if they needed 42' of interior height they would have to come back. If the setback changes for the garage, they would also come back to the BOA. Otherwise, the remainder of the house follows the normal LMC requirements.

Director Erickson suggested revising Condition #6 to read, "The variance for height and setbacks is limited to the building plans submitted as part of this variance application and subsequent to the Historic District Design Review (HDDR)".

MOTION: Board Member Robinson moved to Approve the requested variance as stated in his previous motion with the amendment to add Conditions Approval #5 and #6, subject to the Findings of Fact, Conclusions of Law and Conditions of Approval as amended. Board Member Fuegi seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 422 Ontario Avenue

1. The property is located at 422 Ontario Avenue in the Historic Residential (HR-1) District.
2. The HR-1 zone is characterized by historic and contemporary homes on one (1) to two (2) lot combinations.
3. The property consists of all of Lot 5, all of Lot 6, the south one-half (approx.) of Lot 7, and a portion of Lots 26, 27, and 28, Block 58 of the Park City Survey. On December 3, 2016, City Council approved a plat amendment at this location to create the Sorensen Plat Amendment; this plat amendment has not yet been recorded.
4. There is an existing 837.25 square foot historic house on the property. It is designated as Significant on the City's Historic Sites Inventory.
5. The existing historic house is setback from the front property line by 9 to 10 feet. It is setback from the edge of asphalt on Ontario Avenue by 21 to 22 feet, decreasing in setback from north to south.

6. There is an existing retaining wall along the front property line that varies in height from about 14 feet to about 15 feet from north to south as the grade on Ontario rises uphill. The retaining wall has a length of about 26 feet.

7. The City approved construction of the existing stone retaining wall in 2008.

8. The applicant is requesting a variance to LMC Section 15-2.2-3(E) to reduce the required twelve foot (12') front yard setback to 0 feet to allow for a two-car tandem garage to be constructed behind an existing retaining wall.

9. The applicant is requesting a variance to LMC Section 15-2.2-3(H) to reduce the required five foot (5') side yard setback to three feet (3') along the north property line to allow for construction of the proposed garage.

10. The applicant is requesting a variance to LMC Section 15-2.2-5(A) to the required maximum height of 35 feet measured from the lowest finished floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters; the applicant requests a variance to allow an interior height of 41 feet.

11. The applicant is requesting the variances in order to construct a new two-car tandem garage behind the existing retaining wall.

12. Literal enforcement of the LMC would make it impossible to make the garage accessible from the street given the required setbacks, interior building height requirements, and steep slope of the lot. The steepness of the lot and the distance of the front property line from paved Ontario Avenue are unique to this property.

13. There are special circumstances attached to this property that do not generally apply to other Properties in the same zone. This house is one of the few properties along Ontario Avenue that have preserved its original grade; only along the retaining wall has grade been altered to accommodate the right-of-way. This property is also unique in that paved Ontario Avenue is about 12 feet to the west of the front property line. Finally, this site was historically accessed by vehicles from the east or rear property line.

14. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. Granting the variance allows the property owner to construct an attached garage at the street level without severely impacting existing grade, while also alleviating parking congestion on Ontario Avenue by providing off-street parking.

15. The variance will not substantially affect the General Plan and will not be contrary to public interest. It is within the public interest to eliminate parking

congestion on Ontario Avenue. Parked cars are a safety hazard to other cars, pedestrians, and cyclists utilizing Ontario Avenue. A reduction to the front and side yard setbacks will allow the façade of the garage to maintain the appearance of a retaining wall and have limited impacts to existing grade. One of the goals of the General Plan is to ensure that the character of new construction is architecturally-compatible to the existing historic character of Park City and this variance will permit a design that largely masks the mass and bulk of the addition by burying it underground.

16. The spirit of the Land Management Code is observed and substantial justice is done. The variance will preserve the historic character of the street by maintaining the hillside and reducing the overall height of the addition. It will create an accessible attached garage and alleviate parking congestion along Ontario Avenue.

17. The enclosed garages will help ensure that at least one vehicle for each dwelling unit can be parked off the street. The other parking space for each dwelling unit would be on the remaining area of the parking pads, as uncovered spaces.

18. Granting of the variance allows to the applicant the same rights as other property owners in the district. Most properties have enclosed parking in garages that discourage public from parking within/or behind them. This is not the case with the subject property parking pads, which are often utilized by trail users, resident guests, and other users as mistaken “on-street” parking.

Conclusions of Law – 422 Ontario Avenue

1. Literal enforcement of the HR-1 District requirements for this property causes an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.
3. Granting the variance is essential to the enjoyment of substantial property right possessed by other property owners in the same district.
4. The proposal is consistent with the General Plan.
5. The spirit of the zoning ordinance is observed by this application.
6. It can be shown that all of the conditions justifying a variance, pursuant to LMC § 15-10-9, have been met.

Order

1. A variance to LMC Section 15-2.2-3 (E), to the required twelve foot (12') side yard setbacks to allow a zero foot (0') setback to the front property line, is hereby granted.

2. A variance to LMC Section 15-2.2-3 (H), to the required five foot (5') side yard setbacks to allow a three foot (3') setback to the north property lines, is hereby granted.

3. A variance to LMC Section 15-2.2-5 (A) to the required maximum height of thirty-five feet (35') to allow a maximum height of forty-one feet (41') measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters, is hereby granted.

4. The variances run with the land.

Conditions of Approval – 422 Ontario Avenue

1. The variances are granted for the construction of an underground basement garage, as indicated on the plans submitted with this application.

2. No portion of the garage shall be used for additional living space.

3. The garage interior shall be used for parking. Limited storage is permitted to the extent that it does not preclude parking of a vehicle. Trash and recycling bins may be stored in the garages.

4. The area underneath the garages shall not be enclosed for use as habitable living space.

5. Recordation of the plat amendment is required prior to issuance of a building permit for the new construction.

6. The variance for the interior height exception is granted and conditioned so that the lowest finished floor plane to the highest wall plate does not exceed 41 feet as per the variance requested which will result in a structure that is lower in height above existing grade than what would otherwise be permitted. The height of the new structure shall not exceed 18 feet above existing grade from the tallest elevation of the site.

7. The variance for height and setbacks is limited to the building plans submitted as part of this variance application and the subsequent Historic District Design Review (HDDR).

Chair Gezelius adjourned the meeting at 6:39 p.m.

Approved by _____
Ruth Gezelius, Chair

Board of Adjustment Meeting
June 21, 2016

Board of Adjustment



Board of Adjustment Staff Report

Subject: Historic Kimball Garage- 638 Park Ave
Author: Anya Grahn, Historic Preservation Planner
Project Number: PL-16-03225
Date: September 20, 2016
Type of Item: Quasi-judicial – Appeal of Historic District Design Review

Summary Recommendations

Staff recommends the Board of Adjustment conduct a public hearing and continue the item to October 18, 2016. The applicants have requested the continuation due to their availability to attend the meeting.