

**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
445 MARSAC AVENUE
CITY HALL COUNCIL CHAMBERS
June 25, 2019**



AGENDA

MEETING CALLED TO ORDER - 5:00 PM

ROLL CALL

ADOPTION OF MINUTES OF November 20, 2018

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*

1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue - Appeal of a Land Use Determination – The appellant is appealing the May 22, 2019 Planning Commission approval of the Master Planned Development application for the 58 unit Master Planned Development located at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue in the Recreation Commercial (RC) Zoning District. 52 units of the 58 units will be deed restricted Affordable Housing units.

PL-19-04241 13

Planner

Tyler

Public Hearing and Possible Action

ADJOURN

***Parking validations will be provided for Board of Adjustment meeting attendees that park in the China Bridge parking structure.**

PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF NOVEMBER 20, 2018

BOARD MEMBERS IN ATTENDANCE: Ruth Gezelius – Chair; Jennifer Franklin, David Robinson, Mary Wintzer, Stephanie Wilson (Alternate)

EX OFFICIO: Planning Director Bruce Erickson; Anya Grahn, Planner; Mark Harrington; Laura Newberry, Planner

NOTE: Due to equipment failure this meeting was not recorded. These Minutes were prepared from written notes and the Staff report.

ROLL CALL

Chair Gezelius called the meeting to order at 5:00 p.m. and noted that all Board Members were present except for Hans Fuegi, who was excused. Board Alternate Stephanie Wilson was present and the Board had a quorum to proceed.

ADOPTION OF MINUTES

April 17, 2018

Board Member Robinson referred to page 12, third paragraph, last line, and deleted an extra “he”. The sentence should correctly read “Mr. Robinson was unsure how much **he** should put mass and scale into the process to address this question”.

MOTION: Jennifer Franklin moved to APPROVE the Minutes of April 17, 2018 as corrected. Board Member Wintzer seconded the motion.

VOTE: The motion passed. Stephanie Wilson abstained from the vote since she was not present for the April 17th meeting.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

There were no comments or reports.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

213 Park Avenue – Applicant is requesting a variance to Section 15-2.2-3(A) Lot Size requiring a lot size of 1,875 square feet. The applicant is requesting to

reduce the minimum Lot Size requirements to 1858.33 and 1859.42 square feet for existing Lots 3 and 4, Block 2 of the Park City Survey. PL-18-03987

Planner Anya Grahn reviewed the request for a variance to reduce the minimum lot size requirements for existing Lots 3 and 4, Block 2 of the Park City Survey located at 213 Park Avenue.

Planner Grahn stated that these lots were platted in 1880, as part of the original Park City Survey that created hundreds of 25 foot by 75 foot lots platted throughout the residential neighborhoods surrounding Main Street. A 1968 survey confirmed the dimensions; however, when surveyed in 2001 and again in 2007, the surveys found that the lots were just short of 75 feet. Lot 3 measures 25 feet by 74.33 feet (1,858.33 sf.), and Lot 4 measures 25 feet by 74.42 feet (1,859.42 sf.). The property owner has requested a variance from the minimum required lot area of 1,875 in order to develop the two lots independently. Neither lot was previously the subject of a plat amendment. Both lots remain as originally platted.

Planner Grahn reported that the applicant was requesting a variance to Section 15-2.2-3(A) Lot Size requiring a lot size of 1,875 square feet. The proposed lots measure 1,858.33 and 1,859.42 square feet.

Planner Grahn remarked that at the time the lots were platted in 1880, there was no minimum lot size required. If the variance is granted, it would allow the two lots at 213 Park Avenue to be developed individually.

Planner Grahn noted that the site is part of the original Park City Survey, platted in 1880. Based on Sanborn Fire Insurance Map analysis, a single family home was constructed across Lots 3 and 4 prior to 1889 known as 27 Park Avenue. It is visible through the 1929 Sanborn Fire Insurance map; however, it was demolished by the midcentury. In 1968, the property was redeveloped. A new kit style home was constructed as a vacation home. The property was then sold to the Duffauts, the current owner and applicant, in 1971 and they have continued to use it as a vacation home and part-time residence.

Planner Grahn stated that in 2005, the Duffauts submitted a Determination of Significance (DOS) application to the Planning Department. On February 27, 2006, the Historic Preservation Board (HPB) found the building to be "insignificant" as it was built in 1968 as a kit style home and did not contribute to the Historic District. Building permits were granted in 2008 for a new roof and 2009 to replace the cedar siding in-kind.

The house is not listed on the City's Historic Sites Inventory (HSI) as it was found to be "non-contributing" in past reconnaissance level surveys for the National Register of Historic Places. Because it is not listed on the HSI, the house is eligible for demolition.

Planner Grahn reported that on October 1, 2018, the Planning Department received a complete variance application for the property at 213 Park Avenue. Since the two platted lots measure less than the required 1,875 square feet required by LMC 15-2.2-3(A), the applicant was requesting the variance in order to redevelop the two lots individually.

Planner Grahn stated that she had received public comment in the mail and the concerns primarily related to parking.

Planner Grahn reviewed the criteria that must be met in order to grant a variance.

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. Planner Grahn stated that this property was platted in 1880 as 25' x 75' lots; however, the measurements are slightly off, creating special circumstances. She cited similar examples that occurred on other properties.

Criteria 2 -There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone. Planner Grahn stated that there were special circumstances attached to the property and she explained those circumstances as outlined in the Staff report.

Criteria 3 - Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone. Planner Grahn stated that the owners could not build on the lot without the variance as the lot is substandard. She cited 217 and 221 Park Avenue as examples where the center lot line was adjusted to allow for both lots to meet size requirements.

Criteria 4 - The variance will not substantially affect the General Plan and will not be contrary to the public interest. Planner Grahn stated that the requested variance is minimal at 16.67 square feet less than the required 1,875 square feet. Granting of the variance allows the construction of a single family dwelling compatible with other sites containing the minimum standard. One of the goals identified on the current General Plan is to ensure that the character of new construction that is architecturally-compatible to the existing historic character of Park City and emphasizes preserving the integrity, mass, scale, compatibility and historic fabric of the nationally and locally designated historic resources and districts for future generations by setting maximum lot size requirements. The General Plan also encourages increasing density in an effort to provide attainable/affordable housing options.

Planner Grahn noted that granting this variance allows the applicant to develop the two lots individually. The 25-foot lot width will allow for additional density along Park Avenue, while maintaining the mass and scale that characterizes the Historic District. The property owner could combine the two lots, but the lot

combination would result in a larger lot with a larger frontage along Park Avenue. This would go against the rhythm along the west side of Park Avenue, created by the existing development of single family homes. The Staff finds that the character of this neighborhood would be better maintained by granting the variance and allowing a smaller structure on the lot. All new construction will otherwise comply with the LMC thereby reducing the degree of existing non-conformance.

Criteria 5 - The spirit of the Land Management Code is observed and substantial justice done. Planner Grahn stated that development of the two lots individually would be consistent with the purpose statements of the HR-1 Zoning District, which encourages the construction of new infill buildings that are compatible with Historic Structures and contribute to the character and scale of the Historic District. It also promotes single family development on Historic Lots and combinations of 25 ft. by 75 ft. lots.

Planner Grahn noted that the applicant would go through the Historic District Design Review (HDDR) process for any exterior improvements or the construction of new single family houses on the individual lots to ensure compliance with the Design Guidelines and Land Management Code. By granting the lot size variance and allowing the applicant to develop the lots individually, the owner will be able to better utilize their property. The HDDR process will ensure that such improvements meet the standards of the LMC and of the Historic District.

The Staff finds that the proposed lot meets the intent of the LMC to reduce the mass and scale of new additions and construction in the Historic Districts in order to maintain the historic character and integrity of the Old Town neighborhood. Granting the requested variance is consistent with the spirit and intent of the LMC.

Greg Cropper, representing the applicant, stated that minimizing the mass and scale is important to the neighborhood, the City, and the community in general. He believed the public comment regarding parking was a general issue and not related to just this property. He believed the applicant would actually help to resolve some of the parking issues by providing the required on-site parking on the two lots.

Stephanie Wilson asked if off-street parking was required. Planner Grahn replied that the Code requires two parking spaces per dwelling. The Staff was not aware of what was being proposed because it had not yet gone through the HDDR review.

Jennifer Franklin asked if the Board had the purview to consider Criteria 1 and 2. City Attorney Mark Harrington answered yes. Chair Gezelius stated that over the years they have discovered that old surveys are not always accurate.

Dave Robinson referred to Criteria 2 and asked if there was a special circumstance for this property that did not apply to other properties. He understood the examples of other properties with similar situations. Planner Grahn stated that similar situations have come up over times, but it is still considered unique.

Chair Gezelius opened the public hearing.

There were no comments.

Chair Gezelius closed the public hearing.

Chair Gezelius pointed out that without the variance the two lots would be unbuildable, but the owner could still build on one combined lot. She understood the trouble with 1980 surveys; however, it also provides variation in the streetscape to have different sized lots and homes. City Attorney Harrington agreed with Chair Gezelius about the two lots versus one combined lot. He pointed out that the Staff report should be corrected but the Findings in the Staff report were correct.

MOTION: Board Member Franklin moved to APPROVE the variance for 213 Park Avenue to reduce the minimum Lot Size requirements to 1858.33 and 1859.42 square feet for existing Lots 3 and 4, Block 2 of the Park City Survey, based on the Findings of Fact, Conclusions of Law, and Order as found in the Staff report. Board Member Robinson seconded the motion.

VOTE: The motion passed unanimously.

Findings of Fact – 213 Park Avenue

1. The property is located at 213 Park Avenue in the Historic Residential (HR-1) District. Its legal description is Lots 3 and 4 of the Park City Survey.
2. The west side of Park Avenue is characterized by single family homes on one and two-lot combinations as well as larger lot combinations to accommodate condominium developments.
3. The two lots are part of the original Park City Survey, platted in 1880.
4. Based on Sanborn Fire Insurance Map analysis, there was a single family home constructed across Lots 3 and 4 from approximately 1889 to the mid-20th Century.
5. By 1968, the original house was demolished and a new kit home was constructed as a vacation home on the property.
6. At the time the house was constructed in 1968, it did not meet the minimum required side yard setback as the house was built on the north property line; a minimum side yard setback of 5 feet was required in the Multiple Residential (RM) Zoning District in 1968.

7. The property was sold to the Duffauts in 1971, and they have continued to use it as a vacation home and part-time residence.
8. In 2005, the Duffauts submitted a Determination of Significance (DOS) application to the Planning Department. On February 27, 2006, the Historic Preservation Board found that the 1968 kit style home was “insignificant” and did not contribute to the Historic District.
9. The site is not listed on the Historic Sites Inventory, and it is eligible for demolition.
10. On October 1, 2018, the Planning Department received a complete variance application. Because the two lots measure less than 75 feet in depth, the total square footage of each lot measures less than the required 1,875 square feet required by Land Management Code (LMC) 15-2.2-3(A) in order to develop the lots individually.
11. A single family dwelling is an allowed use in the HR-1 Zoning District.
12. The minimum lot size for a single family dwelling is 1,875 square feet; the two lot together currently measure 3717.75 square feet.
13. The minimum lot width in the HR-1 Zoning District is 25 feet; the two lots each measure 25 feet in width, creating a 50-foot-wide lot if combined.
14. The existing footprint on the site is 660 square feet.
15. The required side yard setbacks for the parcel measuring 50 feet in width are 5 feet, totaling 10 feet. As existing, the house has a 0-foot side yard setback from the north property line and 13 feet from the south property line.
16. The Building (zone) height is 27 feet. The existing house is 16 feet.
17. The required parking for a single-family house is two spaces per dwelling unit; no parking has been provided on site.
18. The existing deck was likely constructed after 1968 and covers much of the front yard, extending across the shared lot lines between Lots 3 and 4.
19. As existing, Lot 3 measures 74.33 feet in depth, creating an approximate lot size of 1,858.33 SF. Lot 4 measures 74.42 feet in depth, creating an approximate lot size of 1,859.42 square feet. Both of these lots measure less than the required lot size of 1,875 in order to be developed separately.
20. The allowed footprint for Lot 3 based on a lot size of 1,858.33 square feet is 837.03 square feet and the allowed footprint for Lot 4 based on a lot size of 1,859.42 square feet is 837.47 square feet.
21. 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. The existing property consists of two legally platted lots that have existed since 1880. Based on surveys completed in 2001 and 2007, the applicant has found that these lots measure just less than 75 feet in depth which has reduced the square footage of the lot to less than the required 1,875 square feet required by the LMC. The hardship is being driven by circumstances peculiar to this property, not conditions that are general to the neighborhood.
22. There are special circumstances attached to the Property that do not apply to other neighboring properties. These lots were legally platted and have been in existence since 1880. Contemporary surveys have uncovered that the lots measure less than 75 feet in depth. The LMC was adopted after the lots were

platted and by today's requirements, the lots do not meet the required minimum lot sizes for development. Neighboring developed properties met the minimum Lot Size requirements or they were developed with lot combinations.

23. Granting the variance is essential to the enjoyment of a substantial property right possessed by other Property in the same zone. Without the variance, the individual lots would not be buildable as they do not meet the minimum Lot Size requirement of 1,875 square feet required for development. The lots were platted in 1880 as part of the original Park City Survey.

24. The variance will not substantially affect the General Plan and will not be contrary to public interest. Granting of the variance allows for the construction of a single family dwelling on each lot, compatible with other sites measuring 1,875 square feet. The General Plan emphasizes the need for new construction that is architecturally compatible to the existing historic character of Park City. The General Plan also encourages increasing density in an effort to provide attainable/affordable housing options. Granting the variance allows the applicant to individually develop the lots while maintaining the mass and scale that characterizes the Historic District. The character of the neighborhood would be better maintained by granting the variance and allowing smaller structures on each lot.

25. The spirit of the Land Management Code is observed and substantial justice is done as the individual development of the two lots would be consistent with the purpose statements of the HR-1 Zoning District. The zone encourages construction of new infill buildings that are compatible with Historic Structures and contribute to the character and scale of the Historic District. It also promotes single family development on Historic Lots, such as this one.

26. All findings in the Analysis section are incorporated herein.

Conclusions of Law – 213 Park 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(A) to the required minimum Lot Size from 1,875 square feet to 1,858.33 square feet for Lot 3 and 1,859.42 square feet for Lot 4.

The Board moved into Work Session for Annual Training.

WORK SESSION – Open and Public Meetings Training

City Attorney Mark Harrington provided legal training on the Open and Public Meetings Act. He presented a video to explain how the Board members should react if they are approached by members of the public outside of a Board of Adjustment Meeting. The Board member should try to avoid engaging in a conversations related to a specific item or matters addressed by the Board of Adjustment. They should encourage that person to attend the next BOA meeting and express their concerns so everyone has the benefit of hearing their comments.

Mr. Harrington pointed out that most people who serve the community do not violate the laws intentionally. The problem is that perspectives get distorted and the public wants those on Boards and Commissions to disregard the rules of law and protect the community by stopping the developer or a neighbor asking for a variance. Mr. Harrington remarked that Boards and Commissions must abide by the rules because it legitimizes doing the right thing and the process of the administration of government.

Mr. Harrington stated that the right administration of government requires open and public meetings, which includes public notice, open discussion, and public comment. He emphasized that democracy requires full participation and the BOA should base all decisions on what occurs in the Council Chambers during their meeting; not what they hear on the street.

Mr. Harrington noted that for the BOA a meeting consists of a quorum of three or more members. If two members or more attend the same social event or participate in an activity outside of a meeting, they should be self-aware and avoid talking about BOA business with each other or with members of the public. He encouraged the Board to avoid those types of situations whenever possible.

Mr. Harrington stated that if a Board Member is contacted by someone in the public, they should disclose that encounter at the next Board of Adjustment meeting by naming the individual and the substance of the communication.

Mr. Harrington stated that if the Board members meet for dinner or drinks after a meeting for any reason, they need to announce it before adjourning the meeting and state that no BOA business will be discussed.

Mr. Harrington understood that the BOA has very little contact with each other outside of the meetings, but if they ever email each other regarding the Staff report or BOA business, those communications are subject to GRAMA. A good rule is to never write something that would not be appropriate for the front page

of the Park Record. Mr. Harrington stated that the Board should never do a group email. If they do receive a group email from the Planning Department, they should respond to the Staff person individually rather than with a "reply all". The only exceptions are Administrative matters and calendaring.

Mr. Harrington stated that if any Board member wanted the opportunity for additional training, they could attend a Planning Commission meeting when the training is on the agenda. They could also pursue training on their own by going onto the Auditor's webpage. Mr. Harrington stated that the Board members are expressly prohibited from communicating with each other electronically during a meeting.

Board Member Wintzer was surprised that the Board members were allowed to have phones on the dais during a meeting. Mr. Harrington stated that there was no prohibition or rules against having phones out in the case of family emergencies. He pointed out that the BOA could adopt their own rules if they wanted to prohibit cellphones. Mr. Harrington noted that sometimes Board members pass notes, and while that is not prohibited, they should not be communicating "under the table" whether it be paper or electronic form.

Chair Gezelius was happy to report that the Board of Adjustment has never had that issue. It was her pleasure to work with everyone on this Board. Mr. Harrington stated that the BOA has always been his least problematic Board.

Chair Gezelius adjourned the meeting at 5:37 p.m.

Approved by _____
Ruth Gezelius, Chair
Board of Adjustment

Board of Adjustment Staff Report

Subject: Appeal of the Woodside Park Phase II Master Planned Development Application
Author: Hannah M. Tyler, AICP – Senior Planner
Project Number: PL-19-04241
Date: June 25, 2019
Type of Item: Quasi-Judicial Appeal of Planning Commission’s Approval of the Master Planned Development Application

Summary Recommendations

Staff recommends the Board of Adjustment review the Appeal of the Planning Commission’s Approval of the Master Planned Development application for the Woodside Park Phase II Affordable Housing Project application located at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue, conduct a public hearing and consider denying the Appeal based on the Findings of Fact and Conclusions of Law.

Disclosure: The Affordable Housing staff within the Park City Community Development Department is the applicant, represented by Method Studios, on behalf of the Park City Redevelopment Agency.

Executive Summary/Proposal

The appellant, Doug Lee who resides at 1356 Empire Avenue, is appealing a decision made by the Planning Commission to approve the application for the Woodside Park Phase II Master Planned Development. On May 22, 2019, the Planning Commission reviewed the proposed Master Planned Development Application and approved the proposal with a 5 to 1 vote ([Staff Report](#) and [Minutes](#), page 3).

Woodside Park Phase II is part of the Woodside Park housing development master plan. Phase I was approved on August 23, 2017. The Woodside Park Phase I and Phase II projects includes the Reconstruction of a “Significant” Structure, the Restoration of a “Significant” Structure, as well as the redevelopment of the fire station site on Park Avenue and the Senior Center site on Woodside Avenue. The entire project is located within the Lower Park Avenue Redevelopment Area (LPRDA). The property is zoned Resort Commercial (RC).

The Woodside Park Phase II Project Team (Method Studios, Housing, and Community Development) is proposing the Land Use applications for the Phase II of the Woodside Park Affordable Housing Project as a significant step towards implementing the City’s Affordable Housing critical priority goals. The MPD application was deemed complete on February 1, 2019. The proposed site location consists of 1330 Empire Avenue, 1302 Norfolk Avenue (“Significant” Single-Family Dwelling), 1361 Woodside Avenue, and 1323 Woodside Avenue. Staff has provided Figures 1, 2, and 3 for site and project context. The MPD application proposal is described as follows:

- Phase II of the Woodside Park Affordable Housing Project will be located between Woodside Avenue and Empire Avenue, with a small portion of the development abutting Norfolk Avenue. There will be a total of 58 units, 52 of which will be deed restricted Affordable Housing units. The scope will include the following:
 - Deed-restricted Affordable Housing Units (52 total):
 - Two (2) Triplex Dwellings abutting Woodside Avenue. The Triplex Dwellings take the form of “townhome style” units.
 - Two (2) Multi-Unit Dwellings centrally located on Lot 2 and accessed via Woodside Avenue. There will be a total of 46 “flats” comprised of studio, one (1), and two (2), bedroom units split between two (2) Multi-Unit Dwellings
 - Market Rate Units (six [6] total):
 - A Multi-Unit Dwelling abutting Empire Avenue which will contain five (5) townhomes style attached units – 1330 Empire Avenue
 - One (1) “Significant” Single-Family Dwelling – 1302 Norfolk Avenue
 - A Parking Garage located beneath the Woodside Avenue townhomes and Multi-Unit Dwellings (flats)
 - A Public Access Easement running east-west which will link to the Woodside Park Phase I Access Easement. The Public Access Easement will also contain Public Art as determined by the Park City Public Art Board.
 - Central gathering areas in the plaza space adjacent to the Public Access Easement.
 - A trail connecting Norfolk Avenue to the central gathering area in the plaza and Public Access Easement.

Figure 1: Site Location Map (north is up). Note: the Right-of-Ways are outlined because they are a part of the proposed Plat Amendment.

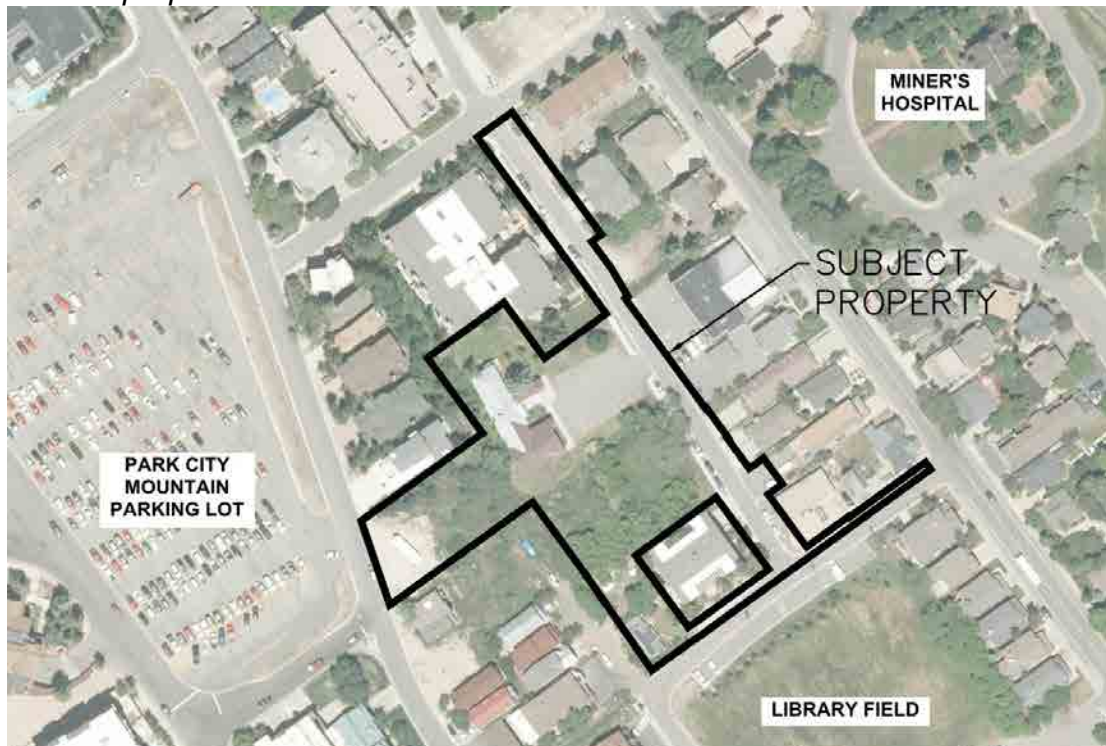


Figure 2: 45 degree bird's-eye view facing west on Woodside Avenue



Figure 3: Facing southwest on Woodside Avenue



Burden of Proof and Standard of Review

In accordance with LMC 15-1-18(G), the appeal authority shall review factual matters de novo, without deference to the Planning Commission's determination of factual matters. The appeal authority shall determine the correctness of the Planning Commission's interpretation and application of the plain meaning of the land use regulations, and interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.

In accordance with LMC 15-1-18 (C), Final Action by the Planning Commission on Conditional Use permits and Master Planned Developments (MPDs) involving City Development may be appealed to the Board of Adjustment at the City Council's request.

On June 6, 2019, City Council affirmatively referred the appeal of the Woodside Park Phase II Master Planned Development to the Board of Adjustment.

Furthermore, the City finds these appeals as a non-adversarial process and the following apply ([LMC 15-1-18 \(H\)](#)):

1. The procedural hearings and reviews established by the City's regulatory procedures does not adopt or utilize in any way the adversary criminal or civil justice system used in the courts.
2. The role of City staff, including legal staff, is to provide technical and legal advice and professional judgment to each decision making body, including City Council, as they are not advocates of any party or position in a dispute, notwithstanding the fact that their technical and legal advice and professional judgment may lead them to make recommendations concerning the matter.
3. In the absence of clear evidence in the record that a staff member has lost his or her impartiality as a technical adviser, the City's need for consistent, coherent and experienced advisers outweighs any claims of bias by the applicant.

The Board of Adjustment is acting in a quasi-judicial manner. Therefore, like with a judge, all contact by the parties with the Board of Adjustment related to the appeal should be at the hearing. No "ex-parte" or one on one contact should occur.

[LMC 15-6 Master Planned Developments](#) establishes the criteria for which MPD applications are reviewed.

Background

On June 3, 2019, the City received an application for an Appeal of the Planning Commission's Approval of the Master Planned Development application for the Woodside Park Phase II Affordable Housing Project application located at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue. On June 10, 2019, the Appellant provided supplemental information. This appeal was submitted within 10 days of the Final Action of the Planning Commission. The appellant's submittal is included as Exhibit 1.

The Planning Commission reviewed the proposed MPD in a Work Session on March 27, 2019 ([Staff Report](#), page 4 and [minutes](#), page 2) and requested additional information. The Planning Commission reviewed and approved the proposed MPD on May 22, 2019 ([agenda](#) and [minutes](#), page 3).

Purpose

The purpose of the Recreation Commercial RC District is to:

- A. allow for the Development of hotel and convention accommodations in close proximity to major recreation facilities,
- B. allow for resort-related transient housing with appropriate supporting commercial and service activities,
- C. encourage the clustering of Development to preserve Open Space, minimize Site disturbance and impacts of Development, and minimize the cost of construction and municipal services,

- D. limit new Development on visible hillsides and sensitive view Areas,
- E. provide opportunities for variation in architectural design and housing types,
- F. promote pedestrian connections within Developments and to adjacent Areas,
- G. minimize architectural impacts of the automobile,
- H. promote the Development of Buildings with designs that reflect traditional Park City architectural patterns, character, and Site designs,
- I. promote Park City's mountain and Historic character by designing projects that relate to the mining and Historic architectural heritage of the City, and
- J. promote the preservation and rehabilitation of Historic Buildings.

Analysis

The appellant is appealing a decision made by the Planning Commission to approve the application for the Woodside Park Phase II Master Planned Development. The Appellants Appeal Submittal is included as Exhibit 1.

Staff has put together a brief history of the Recreation Commercial (RC) Zoning District. The purpose of this analysis is to outline the consistency of the proposed project with the intent of the RC Zoning since its creation.

The project location and its immediate periphery have been encompassed in the RC Zoning District for over fifty years. See Exhibit 3 for a complete history of the RC Zoning District. While the purpose of the Recreation Commercial zone has expanded over the years to include development clustering, open space preservation, view-shed protections, pedestrian connections, and historic and traditional architecture, the initial purposes expressed in Park City's Recreation Commercial zone back in 1968 are still embedded in the LMC today: to "allow for the Development of hotel and convention accommodations in close proximity to major recreation facilities [and to] allow for resort-related transient housing with appropriate supporting commercial and service activities." LMC § 15-2.16-1(A) and (B). Additionally, lot, height, and setback restrictions have remained relatively consistent in the Recreation Commercial zone throughout the decades.

For the Analysis of the Appeal, staff has included the Appellant's Appeal points verbatim in Times New Roman (**bold**, *italics*, and regular) font. Staff's response to each Appeal point follows and is in *Arial Italics* font.

APPELLANT'S POINT #1: Open Space Requirements Not Met.

The Planning Commission has concluded that LMC § 15-6-5(D) governs the open space requirements for the Project. That subsection requires 60% open space for the Project. The Project includes approximately 44% open space.

The Planning Commission erroneously concluded that the Project qualified for an open space reduction under subsection (D). That exception is only available if the Project constitutes a "redevelopment of existing Development" and project enhancements are given.

The Project is not a "redevelopment of existing Development." Much of the project consists of vacant lots and open space, including the Empire property that has been vacant for nearly 20 years. The mere fact that the lots may have once had structures on them provides no legal basis for invoking this exception in the absence of any "existing" development, per the plain language of the ordinance.

Nevertheless, in Finding #19, the Planning Commission baldly stated that "the proposed MPD is considered a redevelopment of existing Development" without making any supporting findings to that effect. In response to Mr. Lee's objection on that basis, the Planning Commission added additional findings to attempt to justify that conclusion after-the-fact. These findings are legally insufficient as well. In Finding #32, the Planning Commission stated that "the project is a redevelopment because the Phase 1 and Phase 2 project is within the Lower Park Redevelopment Authority Area (LPRDA) and replaces several demolished structures. However, even assuming that this is sufficient to find that the Project therefore constitutes "redevelopment," it does not address at all whether such redevelopment is actually of "existing Development," as required by the plain language of the ordinance. And the fact that the Planning Commission acknowledges that the structures on the lots were demolished or moved 10-20 years ago is a clear admission that there is no "existing Development" on those lots. The Planning Commission's findings therefore establish that the requirements for an open space reduction are not met as a matter of law.

STAFF ANALYSIS RE: APPELANT POINT #1:

The proposed MPD is in the RC zone and is considered a redevelopment of existing Development; therefore, the Planning Commission reduced the required open space in exchange for project enhancements in accordance with LMC 15-6-5(D). The proposed MPD area is a total of 64,904 square feet. The applicant is proposing 44.76% Open Space which equates to 29,051 square feet. The Planning Commission could have reduced the Open Space to 30%.

This project is a redevelopment because the Phase 1 and Phase 2 project is within the Lower Park Redevelopment Authority Area (LPRDA), the new development modernizes the area consistent with LPRDA goals and City critical priorities, and replaces several demolished structures within the project boundary which included:

- *1323 Woodside Avenue – Significant Structure was demolished in 2009 after the being approved for Deconstruction through the Certificate of Appropriateness for Demolition (CAD) process; however, part of the approval for a Deconstruction was that it would need to be Reconstructed. This building was ultimately Relocated through the Historic District Design Review process (including Historic Preservation Board approval) as a part of the Woodside Park Phase I Affordable Housing MPD and is now being Reconstructed at 1353 Park Avenue.*
- *1330 (1350) Empire Avenue – There was a building located at what is now considered 1330 Empire Avenue. Prior to the Plat Amendment in 2014, this property was known as 1350 Empire Avenue. In 2003, the owner applied for a Determination of Significance to remove the Single Family Dwelling that was once located on the site from the Historic Sites Inventory (HSI). The Historic District Commission removed the structure from the HSI and the Structure was*

then demolished in 2005. There were no requirements for Reconstruction as it was removed from the HSI.

After the structure on the site at 1330 Empire Avenue was removed, the property owner completed a plat amendment to subdivide the property for future redevelopment. This plat amendment process for 1330 Empire Avenue was completed prior to the City's acquisition of the property. It is staff's opinion that the removal of the structure on the site was completed with the intent for redevelopment. The CAD process, Demolition Permit process, and plat amendment process were required prior to any redevelopment of the site so it is erroneous to say that because there are no structures currently on the site (1330 Empire Avenue) that this then constitutes a vacant lot not eligible to be a redevelopment site designation. Without the completion of the previous application processes, the current property owner would then be in the process of completing those processes and moving forward with the current project as proposed – there would be little to no difference in the MPD application. Staff has provided an existing conditions site plan identifying the location of the 1330 Empire Avenue and 1353 Woodside Avenue structure locations. In addition, staff has included an aerial photograph of the site identifying the structures in question prior to their removal from the site.

Figure 5: Existing Conditions Site Plan with green circles identifying the 1353 Woodside Avenue and 1330 Empire Avenue structure locations.

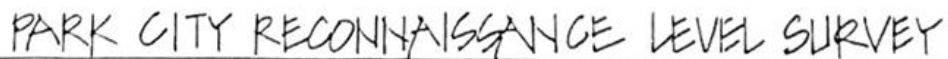


Figure 6: Aerial Photograph from the 2003 USDA Farm Service Agency Imagery. The green circles identify the 1353 Woodside Avenue and 1330 Empire Avenue structure locations. Staff has also included photographs of both structures



In addition, staff has located the 1995 Reconnaissance Level Survey. This survey outlined all structures within the survey boundary and assigned a potential designation to each. Staff has identified the Woodside Park Phase II project boundary in orange. The historic period evaluated in the 1995 Reconnaissance Level Survey was between 1868-1945 with specific intent to identify the historic buildings and structures in the overall community that are potentially eligible for nomination to the National Register of

Figure 7: 1995 Reconnaissance Level Survey Map. Project boundary outlined in orange.



KEY:  "A" & "B" SITES (POTENTIALLY ELIGIBLE)
 "C" SITES (CURRENTLY INELIGIBLE)
 "D" SITES (OUT OF HISTORIC PERIOD)

In addition to needing to be considered a redevelopment site, a project must provide project enhancements in order to be eligible for the Open Space reduction. Staff finds that this project provides ample project enhancements, including but not limited to:

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- *A Public Access Easement running east-west which will link Woodside Park Phase I (Park Avenue) to Empire Avenue (Park City Mountain base).*
- *Common hardscaped gathering/plaza spaces landscaping areas for use by the property owners within the Woodside Park Phase II.*
- *Public Art will be installed within the Public Access Easement as determined by the Park City Public Art Board.*
- *Excess Bicycle Parking stalls from what is required (36 total).*
- *A trail connecting Norfolk Avenue to the central gathering area in the plaza and Public Access Easement.*

In conclusion, staff does not find that the Planning Commission erred in their determination that the proposed project site is a redevelopment site as reflected in Finding of Fact #32 of Planning Commission's Final Action Letter, see Exhibit 2.

APPELLANT'S POINT #2: Setback Requirements Not Met.

The Planning Commission has concluded that LMC § 15-6-5(C) governs the setback requirements for the Project. That subsection requires a 25' setback around the entire perimeter of the Project. None of the setbacks for the Project will be 25'. Instead, they will range from as small as 5' to as large as 20'.

Section 15-6-5(C) only allows for a reduction of the 25' minimum setback requirements "if it is necessary to provide desired architectural interest and variation." (emphasis added). None of the findings made by the Planning Commission support the conclusion that this requirement has been met. The factors recited by the Planning Commission in its findings as to why a setback reduction is appropriate either (a) are not "necessary"; (b) are not relevant to the setbacks requirements; or

First, as noted in Finding #15, the applicant requested a setback reduction "so that the development is aligned with the neighboring properties along the streetscapes." This is not a legal basis for a reduction under the plain language of the ordinance. The mere fact that some neighboring properties may be setback only 20' from the street does not mean that a similar front setback is "necessary to provide desired architectural interest or variation" for the Project. The applicant could easily set its Project back an additional 5' and comply with setback requirements regardless of what the front setbacks are for neighboring properties. A setback reduction is not remotely "necessary" simply because adjacent properties have a smaller setback than what is currently required under the LMC. If that were the case, then current setback requirements would never apply.

Second, a desire to align the Project with neighboring properties on the front streetscapes could not possibly create a legal necessity to reduce side and rear setbacks. Consequently, that is no basis for the approved side and rear setbacks of just 5-10'. In fact, the applicant did not articulate a single basis for any side setback reduction or, with one exception, for any rear setback reductions. With respect solely to a requested 5' rear setback on Lot 1, the applicant pointed to an existing utility easement. But that clearly does not meet the plain language of the ordinance that allows reductions only "if necessary to provide architectural interest or variation." All side and rear setbacks therefore fails to comply with the minimum setback requirements of the ordinance.

Third, after Mr. Lee pointed out that the applicant's justifications for setback reductions did not meet the requirements of the LMC, the Planning Commission unilaterally added to its Finding #15 various justifications never claimed by the applicant. Specifically, it found that the setback reduction would "result in increased architectural variation because of the broken up massing of multiple buildings rather than one larger mass, the clustering of density towards the center of the site, decreased Setbacks resulting in increased Public plaza space and walkway, trail connection, and the variation between the architecture of each building." Even these after-the-fact justifications are insufficient to meet the requirements of the ordinance. The Planning Commission did not find that the setback reductions were "necessary" for architectural variation-only that it would result in increased architectural variation. That is not the standard. Additionally, there is no connection between the cited features and any setback reduction. For example, reduced setbacks are not necessary to provide "variation between the architecture of each building" or to "cluster density towards the center of the site." The mere fact that the Project may have features that constitute architectural variation does not support a conclusion that reduced setbacks along the front, side, and rear of the Project are necessary to create that architectural variation.

The Planning Commission's findings therefore do not support a setback reduction under the plain language of the ordinance. The Planning Commission has ignored the plain and compulsory language of the ordinance and instead allowed the City to reduce setbacks for the Project for reasons entirely different than those provided by the ordinance.

STAFF ANALYSIS RE: APPELANT POINT #2:

Per [LMC 15-6-5\(C\) MPD Requirements - Setbacks](#), the minimum Setback around the exterior boundary of an MPD shall be twenty five feet (25') for Parcels greater than one (1) acre in size. However, per [LMC 15-6-5\(C\)\(1\) MPD Requirements - Setbacks](#), the Planning Commission may decrease the required perimeter Setback from twenty-five feet (25') for MPD applications one (1) acre or larger to the zone required Setback if it is necessary to provide desired architectural interest and variation.

The Woodside Park Affordable Housing Phase II project is requesting a Setback reduction to the Zone required Setback so that the development is aligned with the neighboring properties along the streetscapes of Empire Avenue, Norfolk Avenue, and Woodside Avenue. The architectural intent of the proposed design is to step the development from Woodside Avenue to Empire Avenue consistent with the surrounding development and to be respectful of the existing topography. This architectural variation has been achieved by limiting the massing at Woodside Avenue to be compatible with the development within the Historic District located across the street (Woodside Park Phase I). The next massing has been clustered at the center of the development to reduce the mass and bulk on Norfolk Avenue, Woodside Avenue, and Empire Avenue. The remaining massing includes the townhomes adjacent to Empire Avenue – these have been designed to respect the presence at the streetscape of the surrounding Empire Avenue developments. Overall, staff finds that the clustering of the density of the development towards the center of the site has allowed for the necessary architectural variation to remain respectful of the existing topography and neighborhood

character. In addition, the project enhancements (such as the pedestrian plaza and walkway, vegetation, etc.) have contributed to the overall architectural interest of the development. This architectural interest is achieved by the break-up of the massing, the clustered development, the proposed materials, and the site features that will be incorporated into the development – such as the pedestrian pathway, trail connection, vegetation, public art, ect. This proposed setback reduction will not result in increased density. Staff has provided Figure 8 for streetscape context.

Figure 8: Excerpt from Sheet A901.7. Red dashed line identifies the as-measured 20 foot (20') Front Yard Setback line for the entire streetscape shown.



To further enable the architectural variation achieved by the proposed site plan and buildings, the applicant is requesting an additional Rear Yard setback reduction to five feet (5') from the required 10 feet (10') for a portion of Lot 2. The purpose of this staff-supported Setback Reduction is to accommodate a utility easement for Lot 1 (1330 Empire Avenue). Due to the steep grade of Lot 1, the design team has worked with Snyderville Basin Water Reclamation District (SBWRD) to create a utility easement that allows the private lateral sewer line for the Multi-Unit Dwelling (five [5] townhome style units) on Lot 1 to connect to the Norfolk Avenue sewer which eliminates the need to

pump up to Empire Avenue. Per SBWRD, private sewer laterals cannot extend beyond property lines so this sewer line could not drain to Woodside Avenue as it would have had to extend into Lot 2. Staff has provided Figure 9 which outlines the proposed Lot Configuration for context.

Figure 9: Excerpt from proposed Plat identifies the proposed lot configuration.



WOODSIDE PARK SUBDIVISION—PHASE II

The total of the utility easement on Lot 1 (ten feet [10']) and the proposed Rear Setback for Lot 2 (five feet [5']) exceeds the required RC Rear Zoning District Yard Setback of 10 feet (10') as combined, these setbacks equal fifteen feet (15') in total. Given the total separation from the adjacent lot that is located south of Lot 1 and not part of the Woodside Park Phase II project (known as 1314 Empire Avenue), staff finds that this Rear Yard Setback reduction will have no adverse effect on the neighboring property or RC Zoning District. This setback reduction will not result in increased density. Staff has provided Figure 10 which details the specific area of the Rear Yard Setback reduction for Lot 2.

Figure 10: Excerpt from Sheet A901.41. The shaded orange areas identify where a Rear Yard Setback reduction to five feet (5') is requested.

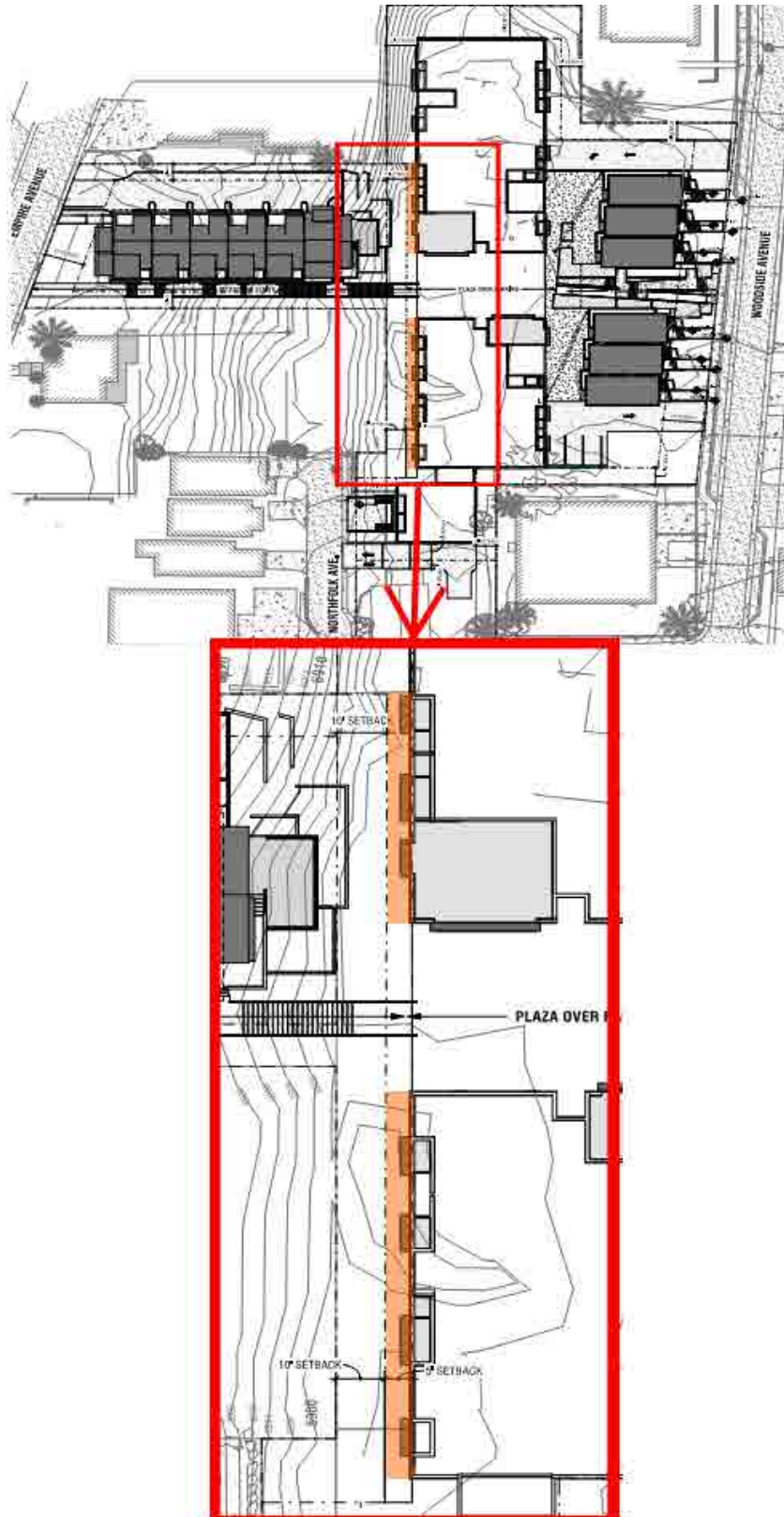


Table 1: The applicable Land Management Code (LMC) Setbacks and compliance in the RC District:

	Proposed:			LMC Requirement:
	Lot 1	Lot 2	Lot 3	
Front Yard Setbacks by Use – feet (ft.)	Multi-Unit Dwelling (Empire Avenue) 20 ft.	Multi-Unit Dwellings (Woodside Avenue) 20 ft.	Single-Family Dwelling 6 ft. 11 in.	Multi-Family Dwelling 20 ft.; <i>complies</i> Single-Family 10 ft. <i>complies, Historic Structure (existing condition)</i>
Rear Yard Setbacks – feet (ft.)	Multi-Unit Dwelling (Empire Avenue) 28 ft. 7 in.	Multi-Unit Dwellings (Woodside Avenue) 10 ft. and 5 ft.	Single-Family Dwelling 33 ft. – 34 ft. (south to north)	Multi-Family Dwelling 10 ft. (5ft. reduction); <i>complies, pending MPD approval.</i> Single-Family 10 ft.; <i>complies</i>
Side Yard Setbacks– feet (ft.)	Multi-Unit Dwelling (Empire Avenue) 15 ft. 4 in. (south) 23 ft. 7 in. (north)	Multi-Unit Dwellings (Woodside Avenue) 10 ft. (south and north)	Single-Family Dwelling 5 ft. 7 in. (south) 12 ft. (north)	Single-Family 5 ft., total 14 ft.; <i>complies</i> Multi-Family Dwelling 10 ft.; <i>complies</i>

Staff does not find that the Planning Commission erred in their determination to grant the setback exception to the Zone Required setbacks due to the necessary architectural variation.

APPELLANT’S POINT #3: Historic Design Review Requirements Not Met.

The Project does not comply with the City's historic design review guidelines and has not gone through the requisite historic design review process. In Finding #31, the Planning Commission claimed that no Historic District Design Review ("HDDR") was required for approval of the MPD because "no work is proposed on the 'Significant' Single-Family Dwelling structure located at 1302 Norfolk Avenue," despite the fact that a "new driveway will be installed triggering related removal of non-historic fence material and landscape materials on the site."

The Planning Commission's conclusion that HDDR is not triggered unless the historical structure itself is modified is flatly inconsistent with the historic design review guidelines themselves. Those guidelines state as follows:

"Your project requires design review and approval if:

- 1) it is listed in the Historic Sites Inventory OR located within Old Town- the HRL,

HR-1, HR-2A/B, HRM, HRC, or HCB Zones AND

2) you are planning to:

- Undertake major alterations on an existing structure;
- Undertake minor alterations, other than painting and routine maintenance, on an existing structure;
- Construct an addition onto an existing structure;
- Add or remove decorative elements or light fixtures;
- Remove or demolish part or all of an existing structure - principal or accessory;
- Build a new structure - principal or accessory; and/or
- Perform exterior site work such as landscaping or constructing a fence or retaining wall.

These bulleted items clearly demonstrate that HDDR is triggered not only by work on the historic building itself but on any work on the site, including "exterior site work such as landscaping" and "building a new structure." The Planning Commission's findings expressly state that exterior site work is part of the MPD application and will involve removal of landscaping and fencing and construction of a new driveway on the site. Additionally, although not mentioned in the findings, the MPD application provides for demolition of other existing structures on the site, including a garage and shed.

Had the MPD application gone through the requisite HDDR, the following violations would have been found:

- The MPD will not "maintain the existing front and side yard setbacks of historic sites." The proposed plat amendment will alter the current lot boundaries setbacks.
- The MPD will not "maintain the natural topography and original grading of the site when and where feasible." Although the guidelines state that the "historic character of the site should not be significantly altered by substantially changing the proportion of built and/or paved area to open space, or and vice versa," the proposed plans call for a driveway along the entire rear yard of the historic house and along the side yard as well.
- The MPD will not "respect and maintain historic existing landscape features that contribute to the historic character of the site and those existing landscape features that provide sustainability benefits." The MPD plans call for removal of several large trees from the historic home site.
- The MPD will not "minimize the visual impacts of on-site parking by incorporating landscape treatments for driveways, walkways, paths, building and accessory and structures in a comprehensive, complimentary and integrated design." Again, there will be large new driveways and parking on the site that will not be integrated in any way into the existing historic home site.
- The MPD will not "provide landscaped separations between parking areas, drives, service areas, and public use areas including walkways, plazas, and vehicular access points."
- The MPD also will not comply with the following: "When locating new off-street parking areas, the existing topography of the building site and significant integral site features should be minimally impacted. When locating driveways, the existing topography of the building site and significant site features should be minimally impacted."

Yet, if the Planning Commission were correct that HDDR is not triggered unless and until the historic structure itself is worked on, it would render all of the above guidelines moot and

beyond review by the City. A landowner could first make drastic and permanent changes to the property on which the historic home is located without any review by the City and, only after those changes are made, propose changes to the structure itself. Only then would HDDR be triggered, leaving all of the prior modifications outside the scope of the review despite their noncompliance with the HDDR guidelines. That interpretation is simply not consistent with the plain language of the guidelines.

Because HDDR is clearly triggered by the site work contemplated by the MPD under the plain language of the historic design review guidelines, the Planning Commission erred as a matter of law in approving the MPD without the requisite HDDR and without compliance with the HDDR guidelines.

STAFF ANALYSIS RE: APPELLANT POINT #3:

The applicant provided a site plan and documentation for the Historic Single-Family Dwelling located at 1302 Norfolk Avenue. At this time, no work is proposed on the “Significant” Single-Family Dwelling structure located at 1302 Norfolk Avenue. A new driveway will be installed triggering related removal of non-historic fence material and landscape materials on the site; however, all work complies with the Design Guidelines for Historic Districts and Historic Sites and would not trigger a full Historic District Design Review (HDDR) (emphasis added). Any future work to the “Significant” Single-Family Dwelling structure will require a full HDDR application.

Contrary to the appeal points outlined by the appellant related to work that would trigger a full HDDR (emphasis added), none of the following are proposed to occur. Staff has pasted the appellant’s points below in Times New Roman font and staff has responded in Arial font:

- Undertake major alterations on an existing structure;
 - *Not applicable as major alterations are not proposed on the existing structure.*
- Undertake minor alterations, other than painting and routine maintenance, on an existing structure;
 - *Not applicable as no alterations are proposed for the existing structure.*
- Construct an addition onto an existing structure;
 - *Not applicable as no addition is proposed.*
- Add or remove decorative elements or light fixtures;
 - *Not applicable as no decorative elements or light fixtures on the Structure are proposed to be removed.*
- Remove or demolish part or all of an existing structure - principal or accessory;
 - *Not applicable as demolition of the structure or accessory structure listed on the HSI is not proposed or located within the lot boundary for the Historic Site.*
- Build a new structure - principal or accessory; and/or
 - *Not applicable as the construction of a new structure within the site is not proposed or located within the lot boundary for the Historic Site.*
- Perform exterior site work such as landscaping or constructing a fence or retaining wall.

- *Design Review of the proposed site improvements within the 1302 Norfolk Avenue boundary has been assessed. The applicant is proposing a shared driveway which will allow for the proposed parking area to be sited in the rear of the Historic Structure. Shared Driveways and rear yard accommodations for parking are encouraged in the Historic District to reduce the impact of vehicles on Historic Sites – this is cited specifically in Design Guideline for Historic Sites C.1.1, C.1.3, C.2.1, and C.2.3. As is shown on the Sheet A901.7, the entire development will be vegetated consistent with the requirements of LMC 15-5-5(N). For the most part, the existing vegetation on the periphery of the Historic Structure will not be impacted by the proposed development.*

In addition, contrary to the appeal points outlined by the appellant related to Design Guideline “violations,” staff has provided an analysis of the appellant’s points. Had this project triggered a full HDDR, the following “violations” would not have been found. Staff has pasted the appellant’s points below in Times New Roman font and staff has responded in Arial font:

- The MPD will not "maintain the existing front and side yard setbacks of historic sites." The proposed plat amendment will alter the current lot boundaries setbacks.
 - *The proposed plat amendment will preserve not only the Front Yard Setback of 1302 Norfolk Avenue, but also the Rear Yard Setback and Southerly Side Yard Setback. The appellant is incorrect in stating that the current lot boundary setbacks will be altered as only one (1) Setback will be impacted. It is standard procedure for properties to be subdivided even with the presence of a Historic Structure on the Site. The proposed subdivision creates a new Side Yard Setback on the north side; however, the proposed north Side Yard Setback is compliant with the minimum Side Yard Setback for Single-Family Dwellings within the Recreation Commercial Zoning District as outlined in Table 1 of this staff report.*
- The MPD will not "maintain the natural topography and original grading of the site when and where feasible." Although the guidelines state that the "historic character of the site should not be significantly altered by substantially changing the proportion of built and/or paved area to open space, or and vice versa," the proposed plans call for a driveway along the entire rear yard of the historic house and along the side yard as well.
 - *The proposed site plan does include a shared driveway on the north side of the Historic Structure (after the subdivision). This will also include the installation of a new rear yard parking area for the Historic Structure. As is detailed in the previous set of bullet points, landscape improvements would not trigger a full HDDR (emphasis added). In addition, staff has found compliance with the following plain language and intent of the Design Guidelines specific to driveways and landscape improvements:*
 - *Shared Driveways and rear yard accommodations for parking are encouraged in the Historic District to reduce the impact of*

vehicles on Historic Sites – this is cited specifically in Design Guideline for Historic Sites:

- *C.1.1 Off-street parking areas should be located within the rear yard and beyond the rear wall plane of the primary structure;*
 - *C.1.3 When locating new off-street parking areas, the existing topography of the building site and significant site features should be minimally impacted;*
 - *C.2.1 When locating driveways, the existing topography of the building site and significant site features should be minimally impacted; and*
 - *C.2.3 Shared driveways should be used when feasible.*
- The MPD will not "respect and maintain historic existing landscape features that contribute to the historic character of the site and those existing landscape features that provide sustainability benefits." The MPD plans call for removal of several large trees from the historic home site.
 - *The MPD does call for the removal of several large trees that are located on the new adjacent property. This is consistent with the treatment of previous projects, specifically those with large trees located on newly created adjacent lots. The landscape plan for the project calls for the replacement of the vegetation that is to be removed. In addition, all landscaping on the south, east, and west of the Historic structure will be retained. Staff has not identified any Historic material that will be removed as a part of the landscape improvements nor has staff identified any landscape improvements on the Historic Site that do not comply with the Historic District Design Guidelines.*
- The MPD will not "minimize the visual impacts of on-site parking by incorporating landscape treatments for driveways, walkways, paths, building and accessory and structures in a comprehensive, complimentary and integrated design." Again, there will be large new driveways and parking on the site that will not be integrated in any way into the existing historic home site.
 - *As is stated previously, the proposed driveway is actually encouraged by the Historic District Design Guidelines as is outlined in specific Design Guideline C.1.1, C.1.3, C.2.1, and C.2.3. The appellant has erred in their interpretation that any driveway that is installed would have a negative impact on the designation or historic integrity of a site – if this was the case, then almost all Historic Sites would be rendered non-conforming based on previous approvals of new driveways on or adjacent to Historic Sites.*
- The MPD will not "provide landscaped separations between parking areas, drives, service areas, and public use areas including walkways, plazas, and vehicular access points."
 - *The appellant has erred in their interpretation that the application does not provide landscaped separations between parking areas, drives, service area, and public use areas including walkways, plazas, and*

vehicular access points – this simple point is detailed in the site plans for the proposed development.

- The MPD also will not comply with the following: "When locating new off-street parking areas, the existing topography of the building site and significant integral site features should be minimally impacted. When locating driveways, the existing topography of the building site and significant site features should be minimally impacted."
 - *The proposed shared driveway does not negatively impact the topography or relationship of the Historic Structure to the street. Again, the Historic District Design Guidelines encourage development like this in specific Design Guidelines C.1.1, C.1.3, C.2.1, and C.2.3.*

As can be noted in the appellant's submittal, their only basis for potential non-compliance with the Historic District Design Guidelines is the installation of a shared driveway, removal of vegetation on a newly created adjacent lot, the removal of a non-historic fence, and the incorrect claim that all Setbacks are being altered. There is no reference to an impact to the Historic Structure itself or specific Design Guidelines that are not complied with. As is detailed in the analysis herein, staff does not find that the Planning Commission erred in their interpretation and determination that the proposed project has not triggered a full Historic District Design Review application and that the proposed improvements would comply with the Historic District Design Guidelines.

APPELLANT'S POINT #4: Parking Requirements Not Met.

Because this Project is a Master Planned Affordable Housing Development, the parking requirements of LMC § 15-6-7 to this Project rather than § 15-3-5(E), as claimed in Finding #20. Section 15-6-7 applies on its face to all "Master Planned Affordable Housing Developments," such as this Project. In fact, this Project was self-titled as a "Park City Affordable Housing MPD Application."

The Planning Commission and Staff first argued that § 15-6-7 only applies if the applicant elects to proceed under that Section. There is no support for that position in the ordinance itself. Furthermore, that argument is directly contrary to LMC § 15-1-3, which expressly provides that whenever a conflict exists between the application of two ordinances, "the more restrictive provision shall apply to the extent allowed by law." This ordinance aligns with well-established rules of statutory construction, which likewise dictate that "when two statutory provisions conflict in their operation, the provision more specific in application governs over the more general provision." Taghipour v. Jerez, 2002 UT 74, ¶ 11, 52 P.3d 1252, 1255. Given that LMC § 15-6-7, governing master planned affordable housing developments such as this, is the more specific provision, that ordinance governs over the more general master planned development provisions in chapter 15-6.

The Planning Commission and Staff alternatively argued that § 15-6-7 only applied to MPDs with 100% affordable housing. But that is also inconsistent with the plain language of the ordinance. In interpreting ordinances, the plain language of the ordinance conclusively governs—not what the Planning Commission believes that the City intended the ordinance to say or meant it to say and irrespective of how the City has interpreted and applied the ordinance in the past.

The plain language of § 15-6-7 only requires 100% affordable housing if the applicant is seeking a density bonus under subsection (E), which was not the case here. There is no language at all in the ordinance stating that the entire section applies only if the MPD has 100% affordable housing. Contrary to the City's argument, subsection (A) does not state that Section 15-6-7 applies only to 100% affordable housing MPDs. In fact, the second paragraph of that subsection likewise ties that requirement only to the density bonus: "Master Planned Developments, which are one hundred percent (100%) Affordable Housing . . . would be considered for a Density incentive greater than that normally allowed . . ."

Because the plain language of § 15-6-7 does not limit application of that section to 100% affordable housing developments, the Planning Commission erred as a matter of law in refusing to apply that section to the Project. There is no dispute that the Project does not comply with § 15-6-7, including specifically the parking requirements of § 15-6-7(F), which mandates that "[o]ff-street parking will be required at a rate of one (1) space per Bedroom." The 71 off-street parking spaces for the development are clearly insufficient under any possible calculation.

STAFF ANALYSIS RE: APPELLANT POINT #4:

This proposed application was for a Master Planned Development under LMC § 15-6-5. No application for an Affordable Housing Master Planned Development under LMC § 15-6-7 was filed. Staff plainly reads the LMC to say that LMC § 15-6-7 only applies to 100% Affordable Housing Projects and, more importantly, does not contain mandatory language applicable to any project with an Affordable Housing unit in it. Said differently, LMC § 15-6-7 is a voluntary section under which an applicant may seek additional density bonuses than as provided for affordable housing in LMC § 15-6-5. Otherwise, contrary provisions in the main section would additionally conflict and not make any sense. For example the separate density bonus for MPDs with over 30% affordable housing in LMC § 15-6-5 (A)(1)(b) and the separate open space reduction in subsection LMC § 15-6-5 (D). Additionally, none of the standards including the actual density bonus LMC § 15-6-7 (E) separately qualify the 100% requirement, because the purpose section clarifies the whole section applies only to 100% Affordable Housing MPDs. For example, the next subsection regarding Rental Restriction reinforces and references the singular "this exception" meaning the one exception (100% Affordable). Staff finds that the appellant is citing the incorrect section of the Land Management Code; therefore, their claims of non-compliance with the Land Management Code LMC § 15-6-7 are invalid.

APPELLANT'S SUMMARY:

The Planning Commission erred as a matter of law in approved the Project despite its noncompliance with the setback, open space, parking, and HDDR requirements. The Planning Commission has ignored the plain language of the governing ordinances and rules and has applied inapplicable exceptions that are clearly not met based on the findings in the record. The approvals must therefore be overturned as a matter of law.

STAFF RESPONSE TO APPELLANT SUMMARY:

Staff does not find that the Planning Commission erred in its approval of the Master Planned Development application in accordance with LMC 15-6-5.

Department Review

This project has been reviewed by Planning, Legal, and Executive.

Notice

On June 11, 2019 notice was mailed to property owners within 100 feet. Legal notice was also published on the Utah Public Notice Website and Park Record on June 8, 2019 according to requirements of the LMC.

Public Input [Since Original Public Hearing(s)]

No additional public input has been received by the time of this report.

Alternatives

- The Board of Adjustment may deny the appeal and thereby affirm the Planning Commission's decision for the Woodside Park Phase II Master Planned Development application for the Woodside Park Phase II Affordable Housing Project application located at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue; or
- The Board of Adjustment may grant the appeal and reverse the Planning Commission's decision; or
- The Board of Adjustment may affirm in part and reverse in part the Planning Commission's decision; or
- The Board of Adjustment may remand the matter back to Planning Commission with directions for specific areas of review or clarification; or
- The Board of Adjustment may request specific additional information and may continue the discussion to a date uncertain.

Summary Recommendation

Staff recommends the Board of Adjustment review the Appeal of the Planning Commission's Approval of the Master Planned Development application for the Woodside Park Phase II Affordable Housing Project application located at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue, conduct a public hearing and consider denying the Appeal based on the Findings of Fact and Conclusions of Law.

PROPOSED ORDER DENYING APPEAL AND UPHOLDING THE PLANNING COMMISSION'S APPROVAL OF THE MASTER PLANNED DEVELOPMENT:

Findings of Fact:

1. On June 3, 2019, the City received an application for an Appeal of the Planning Commission's Approval of the Master Planned Development application for the Woodside Park Phase II Affordable Housing Project application located at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue. On June 10, 2019, the Appellant provided supplemental information. This appeal was submitted within 10 days of the Final Action of the Planning Commission.
2. On May 22, 2018, the Planning Commission reviewed the proposed Master Planned Development Application and approved the proposal with a 5 to 1 vote ([Staff Report](#) and [Minutes](#), page 3).

3. In accordance with LMC 15-1-18 (C), Final Action by the Planning Commission on Conditional Use permits and Master Planned Developments (MPDs) involving City Development may be appealed to the Board of Adjustment at the City Council's request. On June 6, 2019, City Council affirmatively referred the appeal of the Woodside Park Phase II Master Planned Development to the Board of Adjustment.
4. The appellant submitted an Appeal outlining four (4) appeal points, including:
 - 1) Open Space Requirement Not Met.
 - 2) Setback Requirements Not Met.
 - 3) Historic District Design Review Requirements Not Met.
 - 4) Parking Requirements Not Met.
5. The proposed site location consists of 1330 Empire Avenue, 1302 Norfolk Avenue ("Significant" Single-Family Dwelling), 1361 Woodside Avenue, and 1323 Woodside Avenue.
6. The proposed site is located in the Recreation Commercial (RC) Zoning District.
7. The site is known as the Woodside Park Affordable Housing Project Phase II.
8. Phase II of the Woodside Park Affordable Housing Project will be located between Woodside Avenue and Empire Avenue, with a small portion of the development abutting Norfolk Avenue. There will be a total of 58 units, 52 of which will be deed restricted Affordable Housing units. The scope will include the following:
 - 1) Deed-restricted Affordable Housing Units (52 total):
 - Two (2) Triplex Dwellings abutting Woodside Avenue. The Triplex Dwellings take the form of "townhome style" units.
 - Two (2) Multi-Unit Dwellings centrally located on Lot 2 and accessed via Woodside Avenue. There will be a total of 46 "flats" comprised of studio, one (1), and two (2), bedroom units split between two (2) Multi-Unit Dwellings
 - 2) Market Rate Units (six [6] total):
 - A Multi-Unit Dwelling abutting Empire Avenue which will contain five (5) townhomes style attached units – 1330 Empire Avenue
 - One (1) "Significant" Single-Family Dwelling – 1302 Norfolk Avenue
 - 3) A Parking Garage located beneath the Woodside Avenue townhomes and Multi-Unit Dwellings (flats)
 - 4) A Public Access Easement running east-west which will link to the Woodside Park Phase I Access Easement. The Public Access Easement will also contain Public Art as determined by the Park City Public Art Board.
 - 5) Central gathering areas in the plaza space adjacent to the Public Access Easement.
 - 6) A trail connecting Norfolk Avenue to the central gathering area in the plaza and Public Access Easement.
9. The Woodside Park Phase II Project Team (Method Studios, Housing, and Community Development) is proposing the Land Use applications for the Phase II of the Woodside Park Affordable Housing Project as a significant step towards implementing the City's Affordable Housing critical priority goals.
10. Throughout the process, the Affordable Housing Team has conducted public outreach efforts during the following events:

Public Open Houses:

- Tuesday, March 20th, 2018 – 4pm-6pm – Miner's Hospital

- Tuesday, March 27th, 2018 – 5pm-7pm – Park City Library
- Tuesday, September 11th, 2018 – 7pm – Park City Library (in cooperation with the Sustainability Department)
- Tuesday, September 18th, 2018 – 5pm-7pm – Park City Library
- Scheduled for, Monday, May 20th, 2019 – 6pm – 7pm – Park City Library

Digital Public Engagement:

- Neighborhood E-mail Blasts: the Affordable Housing staff collected emails from interested neighbors to the project and sent out informational emails letting them know of any public events were taking place along with contact information if they had further questions or comments.
 - Engage Park City: The project has been posted on the Engage Park City website. This site allows the general public to look at proposed plans and provide feedback.
11. The Planning Commission reviewed, held a public hearing, and continued the Master Planned Development application during a Work Session on March 27, 2019.
 12. At the March 27, 2019 Work Session, the Planning Commission reviewed the entire scope of the project and requested that the following items be addressed:
 - Identify Usable Open Space within the Open Space calculation – a diagram was recommended.
 - Clarify the Parking Calculation as the applicant indicated that changes would occur to the Market Rate units on Empire Avenue.
 - Provide additional information regarding the pedestrian access off of Norfolk Avenue.
 - Address crosswalk concerns on the western end of the Pedestrian Access Easement.
 - Address the Public Comment Letter submitted on March 21, 2019. The applicant has prepared a response as Exhibit F. The Planning Department has reviewed and verified the accuracy of the applicant's response; the Planning Department is in agreement with the applicant's response provided in Exhibit F as the document addresses all points of the Public Comment Letter submitted on March 21, 2019.
 13. On June 11, 2019 notice was mailed to property owners within 100 feet for the Appeal. Legal notice was also published on the Utah Public Notice Website and Park Record on June 8, 2019 according to requirements of the LMC.
 14. The proposal complies with Land Management Code (LMC) § 15-6-5(A) Density as the proposed Density of the MPD does not exceed the maximum Density in the zone. The proposed MPD consists of a .938 Floor Area Ratio (FAR) which is less than the base zone density of 1.0 FAR.
 15. Land Management Code (LMC) § 15-6-5(B) Building Footprint is not applicable as the site is not located in the HR-1 or HR-2 District. The proposed MPD is located in the Recreation Commercial (RC) Zoning District.
 16. The proposal complies with Land Management Code (LMC) § 15-6-5(C) Setbacks. Per [LMC 15-6-5\(C\) MPD Requirements - Setbacks](#), the minimum Setback around the exterior boundary of an MPD shall be twenty five feet (25') for Parcels greater than one (1) acre in size. However, per [LMC 15-6-5\(C\)\(1\) MPD Requirements - Setbacks](#), the Planning Commission may decrease the required perimeter Setback from twenty-five feet (25') for MPD applications one (1) acre or larger to the zone

required Setback if it is necessary to provide desired architectural interest and variation.

17. Woodside Park Affordable Housing Phase II is requesting a Setback reduction to the Zone required Setback so that the development is aligned with the neighboring properties along the streetscapes of Empire Avenue, Norfolk Avenue, and Woodside Avenue. This setback reduction will not result in increased density. The Setback reduction will result in increased architectural variation because of the broken up massing of multiple buildings rather than one larger mass, the clustering of density towards the center of the site, decreased Setbacks resulting in increased Public plaza space and walkway, trail connection, and the variation between the architecture of each building.
18. The minimum Setbacks for the proposed Multi-Unit Dwelling on Lot 1 shall be:
 - Front Yard: 20 feet (20')
 - Side Yard: 10 feet (10')
 - Rear Yard 10 feet (10')
19. The minimum Setbacks for the Multi-Unit Dwellings on Lot 2 shall be:
 - Front Yard: 20 feet (20')
 - Side Yard: 10 feet (10')
 - Rear Yard: 10 feet (10') and reduced to five feet (5') for the area highlighted in Figure 8 on page 8 in the staff report. The applicant is requesting an additional Rear Yard setback reduction to five feet (5') from the required 10 feet (10') for a portion of Lot 2. The purpose of the Setback Reduction is to accommodate a utility easement for Lot 1 (1330 Empire Avenue).
20. The minimum Setbacks for existing Historic Single-Family Dwelling on Lot 3 shall be:
 - Front Yard: 10 ft. for new construction; however the existing Historic Structure is a Legal Non-Complying Structure with a Front Yard Setback measuring six feet eleven inches (6'11")
 - Side Yard: Minimum five feet (5') and a minimum total of 14 feet (14')
 - Rear Yard: 10 feet
21. The proposal complies with Land Management Code (LMC) § 15-6-5(D) Open Space because the proposed MPD is considered a redevelopment of existing Development; therefore, the Planning Commission may reduce the required open space to 30% in exchange for project enhancements. The applicant is proposing 44.62% Open Space which equates to 28,962 square feet. Staff finds that in addition to being a redevelopment, this project provides ample project enhancements, including but not limited to:
 - 52 deed restricted Affordable Housing units.
 - A Public Access Easement running east-west which will link Woodside Park Phase I (Park Avenue) to Empire Avenue (Park City Mountain base).
 - Common hardscaped gathering/plaza spaces landscaping areas for use by the property owners within the Woodside Park Phase II.
 - Public Art will be installed within the Public Access Easement as determined by the Park City Public Art Board.
 - Excess Bicycle Parking stalls from what is required (36 total).

- A trail connecting Norfolk Avenue to the central gathering area in the plaza and Public Access Easement.
22. The proposal complies with LMC 15-3-5(E) as the total required Parking Spaces of the entire project is 63 Parking Spaces. The total number of Parking Spaces provided by the project is 71 Parking Spaces.
 23. Per LMC 15-3-9 Bicycle Parking Requirements, the Multi-Unit Dwelling must provide at least seven (7) bicycle Parking Spaces or ten percent (10%) of the required off-Street Parking Spaces, whichever is greater, for the temporary storage of bicycles. The applicant is proposing to provide 36 Bicycle Parking Spaces.
 24. The proposal complies with Land Management Code (LMC) § 15-6-5(F) Building Height because the proposed MPD complies with the Building Height requirements for the RC Zoning District. No Height exception is requested.
 25. The proposal complies with Land Management Code (LMC) § 15-6-5(G) Site Planning because; the units are sited in such a way that is compatible with other residential structures in the RC Zoning District, specifically respecting the rhythm and scale of the streetscape on Norfolk Avenue, Woodside Avenue and Empire Avenue; The applicant has stepped the series of five (5) townhomes with the topography which helps retain the site. Lot 2 and Lot 3 have a slight slope but the parking garage will accomplish a bulk of the retaining for the Multi-Unit Dwellings on this site; Roads, utility lines, and Buildings are designed to work with the Existing Grade. Cuts and fills are minimized; There is a pedestrian walkway and connecting trail that are valuable connector trails; The project scope includes an Access Easement running east-west which will link the City Park and Park Avenue bus stops (from Woodside Park Phase I) to Empire Avenue; Enclosed trash and recycling areas have been provided on site.
 26. The proposal complies with Land Management Code (LMC) § 15-6-5(H) Landscape and Street Scape as the applicant is proposing landscaping throughout the project that is consistent with the area, including, but not limited to, natural turf, native grasses, deciduous trees, shrubs, and other alpine perennials.
 27. Land Management Code (LMC) § 15-6-5(I) Sensitive Lands Compliance is not applicable as the site is not located within the Sensitive Lands Overlay District.
 28. The proposal complies with Land Management Code (LMC) § 15-6-5(J) Employee/Affordable as the proposed MPD exceeds to required Affordable Housing obligation for a project of this size. 52 of the 58 proposed units are designated as Affordable Housing and will be deed restricted as such. The Affordability has been established by [Resolution 03-2017](#), specifically in Section 17 (B) Rental Units and (C) For Sale Units. This project will comply with the above Sections of [Resolution 03-2017](#) and definitions of Affordable.
 29. The proposal complies with Land Management Code (LMC) § 15-6-5(K) Child Care as this project does not trigger the requirement for a Child Care Center as the scale of this project is less than the allowed Zone Density. In addition, the Park City Library has Child Care which is located within walking distance and there is significant open space within the vicinity and on the proposed project site (City Park, Library Park, etc.).
 30. Land Management Code (LMC) § 15-6-5(L) Mine Hazards is not applicable as there are no known Physical Mine Hazards on the property.

31. Land Management Code (LMC) § 15-6-5(M) Historic Mine Waste Mitigation is not applicable as there are no known Physical Mine Hazards on the property.
32. The proposal complies with Land Management Code (LMC) § 15-6-5(N) General Plan Review as the proposed MPD fulfills the following Goals 3, 5, 7, 8, 15 of the General Plan and the applicable Objectives and/or Implantation Strategies of each as further described in the Analysis section of this report.
33. The proposal complies with Land Management Code (LMC) § 15-6-5(O) Historic Sites as the applicant provided a site plan and documentation for Historic Single-Family Dwelling located at 1302 Norfolk Avenue. At this time, no work is proposed on the “Significant” Single-Family Dwelling structure located at 1302 Norfolk Avenue. A new driveway will be installed triggering related removal of non-historic fence material and landscape materials on the site; however, all work complies with the Design Guidelines for Historic Districts and Historic Sites and would not trigger a full Historic District Design Review (HDDR). Any future work to the “Significant” Single-Family Dwelling structure will require a HDDR application.
34. This project is a redevelopment because the Phase 1 and Phase 2 project is within the Lower Park Redevelopment Authority Area (LPRDA), the new development modernizes the area consistent with LPRDA goals and City critical priorities, and replaces several demolished structures which included:
 - 1323 Woodside Avenue – Significant Structure was demolished in 2009 after the being approved for Deconstruction through the Certificate of Appropriateness for Demolition (CAD) process; however, part of the approval for a Deconstruction was that it would need to be Reconstructed. This building was ultimately Relocated through the Historic District Design Review process (including Historic Preservation Board approval) as a part of the Woodside Park Phase I Affordable Housing MPD and is now being Reconstructed at 1353 Park Avenue.
 - 1330 (1350) Empire Avenue – There was a building located at what is now considered 1330 Empire Avenue. Prior to the Plat Amendment in 2014, this property was known as 1350 Empire Avenue. In 2003, the owner applied for a Determination of Significance to remove the Single Family Dwelling that was once located on the site from the Historic Sites Inventory (HSI). The Historic District Commission removed the structure from the HSI and the Structure was then demolished in 2005. There were no requirements for Reconstruction as it was removed from the HSI.
35. The analysis section of the staff report is hereby incorporated herein.

Conclusions of Law:

1. The MPD, as conditioned, complies with all the requirements of the Land Management Code;
2. The MPD, as conditioned, meets the minimum requirements of Section 15-6-5 herein. LMC § 15-6-7 is not applicable;
3. The MPD, as conditioned, provides the highest value of Open Space, as determined by the Planning Commission;
4. The MPD, as conditioned, strengthens and enhances the resort character of Park City;

5. The MPD, as conditioned, compliments the natural features on the Site and preserves significant features or vegetation to the extent possible;
6. The MPD, as conditioned, is Compatible in Use, scale, and mass with adjacent Properties, and promotes neighborhood Compatibility, and Historic Compatibility, where appropriate, and protects residential neighborhoods and Uses;
7. The MPD, as conditioned, provides amenities to the community so that there is no net loss of community amenities;
8. The MPD, as conditioned, is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time the Application was filed.
9. The MPD, as conditioned, meets the Sensitive Lands requirements of the Land Management Code. The project has been designed to place Development on the most developable land and least visually obtrusive portions of the Site;
10. The MPD, as conditioned, promotes the Use of non-vehicular forms of transportation through design and by providing trail connections; and
11. The MPD has been noticed and public hearing held in accordance with this Code.
12. The MPD, as conditioned, incorporates best planning practices for sustainable development, including water conservation measures and energy efficient design and construction, per the Residential and Commercial Energy and Green Building program and codes adopted by the Park City Building Department in effect at the time of the Application.
13. The MPD, as conditioned, addresses and mitigates Physical Mine Hazards according to accepted City regulations and policies.
14. The MPD, as conditioned, addresses and mitigates Historic Mine Waste and complies with the requirements of the Park City Soils Boundary Ordinance.
15. The MPD, as conditioned, addresses Historic Structures and Sites on the Property, according to accepted City regulations and policies, and any applicable Historic Preservation Plan.

Order:

1. The appeal of the Planning Commission's approval of the Master Planned Development at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue is denied. The decision of the Planning Commission for the Master Planned Development is upheld.

Exhibits

- Exhibit 1 – Appellant's Submitted Appeal and Exhibits
- Exhibit 2 – Planning Commission Final Action Letter
- Exhibit 3 – History of the Recreation Commercial (RC) Zoning District
- Exhibit 4 – [link to Proposed Woodside Park Phase II Plans](#)
- Exhibit 5 – [link to March 27, 2019 Planning Commission Work Session Staff Report](#)
- Exhibit 6 – [link to March 27, 2019 Planning Commission Meeting Minutes \(page 2\)](#)
- Exhibit 7 – [link to May 22, 2019 Planning Commission Staff Report](#)
- Exhibit 8 – [link to May 22, 2019 Planning Commission Meeting Minutes \(page 3\)](#)

Exhibit 1: Appellant's Submitted Appeal and Exhibits

June 3, 2019

VIA HAND DELIVERY

Park City Municipal Corporation
Planning Department
445 Marsac Ave
P.O. Box 1480
Park City UT 84060

Re: Appeal of Land Use Determination

This firm represents Douglas Lee in connection with his appeal of the approval of the Park City Planning Commission's final approval of the MPD application for the Woodside Phase II Affordable Housing Master Planned Development project ("Project"), which occurred on May 22, 2019.

Applicant's Contact Information: Douglas Lee, 1776 Park Ave., Suite 4, Box 151, Park City, UT 84060, (917) 848-3115.

Standing: Mr. Lee's home is located at 1356 Empire Avenue, which is within 300' of the boundary of the Project. Mr. Lee has also submitted written comment and testified regarding the Project on multiple occasions.

Grounds for Appeal:

The Planning Commission erroneously approved the Project because it does not comply with City ordinances and has not undergone a requisite historic design review. Mr. Lee attaches the comment letters previously submitted in connection with the Project review and incorporates all of the arguments set forth therein by reference. He also incorporates by reference the public comments made at the various hearings by and on his behalf. Additionally, Mr. Lee submits the following in support of his appeal:

1. Open Space Requirements Not Met.

The Planning Commission has concluded that LMC § 15-6-5(D) governs the open space requirements for the Project. That subsection requires 60% open space for the Project. The Project includes approximately 44% open space.

The Planning Commission erroneously concluded that the Project qualified for an open space reduction under subsection (D). That exception is only available if the Project constitutes a "redevelopment of existing Development" and project enhancements are given.

ATTORNEYS AT LAW

The Project is not a "redevelopment of existing Development." Much of the project consists of vacant lots and open space, including the Empire property that has been vacant for nearly 20 years. The mere fact that the lots may have once had structures on them provides no legal basis for invoking this exception in the absence of any "existing" development, per the plain language of the ordinance.

Nevertheless, in Finding #19, the Planning Commission baldly stated that "the proposed MPD is considered a redevelopment of existing Development" without making any supporting findings to that effect. In response to Mr. Lee's objection on that basis, the Planning Commission added additional findings to attempt to justify that conclusion after-the-fact. These findings are legally insufficient as well. In Finding #32, the Planning Commission stated that "the project is a redevelopment because the Phase 1 and Phase 2 project is within the Lower Park Redevelopment Authority Area (LPRDA) and replaces several demolished structures. However, even assuming that this is sufficient to find that the Project therefore constitutes "redevelopment," it does not address at all whether such redevelopment is actually of "existing Development," as required by the plain language of the ordinance. And the fact that the Planning Commission acknowledges that the structures on the lots were demolished or moved 10-20 years ago is a clear admission that there is no "existing Development" on those lots. The Planning Commission's findings therefore establish that the requirements for an open space reduction are not met as a matter of law.

2. Setback Requirements Not Met.

The Planning Commission has concluded that LMC § 15-6-5(C) governs the setback requirements for the Project. That subsection requires a 25' setback around the entire perimeter of the Project. None of the setbacks for the Project will be 25'. Instead, they will range from as small as 5' to as large as 20'.

Section 15-6-5(C) only allows for a reduction of the 25' minimum setback requirements "if it is necessary to provide desired architectural interest and variation." (emphasis added). None of the findings made by the Planning Commission support the conclusion that this requirement has been met. The factors recited by the Planning Commission in its findings as to why a setback reduction is appropriate either (a) are not "necessary"; (b) are not relevant to the setbacks requirements; or

First, as noted in Finding #15, the applicant requested a setback reduction "so that the development is aligned with the neighboring properties along the streetscapes." This is not a legal basis for a reduction under the plain language of the ordinance. The mere fact that some neighboring properties may be setback only 20' from the street does not mean that a similar front setback is "necessary to provide desired architectural interest or variation" for the Project. The applicant could easily set its Project back an additional 5' and comply with setback requirements regardless of what the front setbacks are for neighboring properties. A setback reduction is not remotely "necessary" simply because adjacent properties have a smaller setback than what is currently required under the LMC. If that were the case, then current setback requirements would never apply.

Second, a desire to align the Project with neighboring properties on the *front* streetscapes could not possibly create a legal necessity to reduce *side* and *rear* setbacks. Consequently, that is no basis for the approved side and rear setbacks of just 5-10'. In fact, the applicant did not articulate a single basis for any side setback reduction or, with one

exception, for any rear setback reductions. With respect solely to a requested 5' rear setback on Lot 1, the applicant pointed to an existing utility easement. But that clearly does not meet the plain language of the ordinance that allows reductions only "if necessary to provide architectural interest or variation." All side and rear setbacks therefore fails to comply with the minimum setback requirements of the ordinance.

Third, after Mr. Lee pointed out that the applicant's justifications for setback reductions did not meet the requirements of the LMC, the Planning Commission unilaterally added to its Finding #15 various justifications never claimed by the applicant. Specifically, it found that the setback reduction would "result in increased architectural variation because of the broken up massing of multiple buildings rather than one larger mass, the clustering of density towards the center of the site, decreased Setbacks resulting in increased Public plaza space and walkway, trail connection, and the variation between the architecture of each building." Even these after-the-fact justifications are insufficient to meet the requirements of the ordinance. The Planning Commission did not find that the setback reductions were "necessary" for architectural variation—only that it would result in increased architectural variation. That is not the standard. Additionally, there is no connection between the cited features and any setback reduction. For example, reduced setbacks are not necessary to provide "variation between the architecture of each building" or to "cluster density towards the center of the site." The mere fact that the Project may have features that constitute architectural variation does not support a conclusion that reduced setbacks along the front, side, and rear of the Project are necessary to create that architectural variation.

The Planning Commission's findings therefore do not support a setback reduction under the plain language of the ordinance. The Planning Commission has ignored the plain and compulsory language of the ordinance and instead allowed the City to reduce setbacks for the Project for reasons entirely different than those provided by the ordinance.

3. Historic Design Review Requirements Not Met.

The Project does not comply with the City's historic design review guidelines and has not gone through the requisite historic design review process. In Finding #31, the Planning Commission claimed that no Historic District Design Review ("HDDR") was required for approval of the MPD because "no work is proposed on the 'Significant' Single-Family Dwelling structure located at 1302 Norfolk Avenue," despite the fact that a "new driveway will be installed triggering related removal of non-historic fence material and landscape materials on the site."

The Planning Commission's conclusion that HDDR is not triggered unless the historical structure itself is modified is flatly inconsistent with the historic design review guidelines themselves. Those guidelines state as follows:

"Your project requires design review and approval if:

- 1) it is listed in the Historic Sites Inventory OR located within Old Town— the HRL, HR-1, HR-2A/B, HRM, HRC, or HCB Zones AND
- 2) you are planning to:
 - Undertake major alterations on an existing structure;

- Undertake minor alterations, other than painting and routine maintenance, on an existing structure;
- Construct an addition onto an existing structure;
- Add or remove decorative elements or light fixtures;
- Remove or demolish part or all of an existing structure - principal or accessory;
- Build a new structure - principal or accessory; and/or
- Perform exterior site work such as landscaping or constructing a fence or retaining wall.

These bulleted items clearly demonstrate that HDDR is triggered not only by work on the historic building itself but on any work on the site, including "exterior site work such as landscaping" and "building a new structure." The Planning Commission's findings expressly state that exterior site work is part of the MPD application and will involve removal of landscaping and fencing and construction of a new driveway on the site. Additionally, although not mentioned in the findings, the MPD application provides for demolition of other existing structures on the site, including a garage and shed.

Had the MPD application gone through the requisite HDDR, the following violations would have been found:

- The MPD will not "maintain the existing front and side yard setbacks of historic sites." The proposed plat amendment will alter the current lot boundaries setbacks.
- The MPD will not "maintain the natural topography and original grading of the site when and where feasible." Although the guidelines state that the "historic character of the site should not be significantly altered by substantially changing the proportion of built and/or paved area to open space, or and vice versa," the proposed plans call for a driveway along the entire rear yard of the historic house and along the side yard as well.
- The MPD will not "respect and maintain historic existing landscape features that contribute to the historic character of the site and those existing landscape features that provide sustainability benefits." The MPD plans call for removal of several large trees from the historic home site.
- The MPD will not "minimize the visual impacts of on-site parking by incorporating landscape treatments for driveways, walkways, paths, building and accessory and structures in a comprehensive, complimentary and integrated design." Again, there will be large new driveways and parking on the site that will not be integrated in any way into the existing historic home site.

- The MPD will not “provide landscaped separations between parking areas, drives, service areas, and public use areas including walkways, plazas, and vehicular access points.”
- The MPD also will not comply with the following: “When locating new off-street parking areas, the existing topography of the building site and significant integral site features should be minimally impacted. When locating driveways, the existing topography of the building site and significant site features should be minimally impacted.”

Yet, if the Planning Commission were correct that HDDR is not triggered unless and until the historic structure itself is worked on, it would render all of the above guidelines moot and beyond review by the City. A landowner could first make drastic and permanent changes to the property on which the historic home is located without any review by the City and, only after those changes are made, propose changes to the structure itself. Only then would HDDR be triggered, leaving all of the prior modifications outside the scope of the review despite their noncompliance with the HDDR guidelines. That interpretation is simply not consistent with the plain language of the guidelines.

Because HDDR is clearly triggered by the site work contemplated by the MPD under the plain language of the historic design review guidelines, the Planning Commission erred as a matter of law in approving the MPD without the requisite HDDR and without compliance with the HDDR guidelines.

4. Parking Requirements Not Met.

Because this Project is a Master Planned Affordable Housing Development, the parking requirements of LMC § 15-6-7 to this Project rather than § 15-3-5(E), as claimed in Finding #20. Section 15-6-7 applies on its face to all “Master Planned Affordable Housing Developments,” such as this Project. In fact, this Project was self-titled as a “Park City Affordable Housing MPD Application.”

The Planning Commission and Staff first argued that § 15-6-7 only applies if the applicant elects to proceed under that Section. There is no support for that position in the ordinance itself. Furthermore, that argument is directly contrary to LMC § 15-1-3, which expressly provides that whenever a conflict exists between the application of two ordinances, “the more restrictive provision shall apply to the extent allowed by law.” This ordinance aligns with well-established rules of statutory construction, which likewise dictate that “when two statutory provisions conflict in their operation, the provision more specific in application governs over the more general provision.” *Taghipour v. Jerez*, 2002 UT 74, ¶ 11, 52 P.3d 1252, 1255. Given that LMC § 15-6-7, governing master planned affordable housing developments such as this, is the more specific provision, that ordinance governs over the more general master planned development provisions in chapter 15-6.

The Planning Commission and Staff alternatively argued that § 15-6-7 only applied to MPDs with 100% affordable housing. But that is also inconsistent with the plain language of the ordinance. In interpreting ordinances, the plain language of the ordinance conclusively governs—not what the Planning Commission believes that the City intended the ordinance to

say or meant it to say and irrespective of how the City has interpreted and applied the ordinance in the past.

The plain language of § 15-6-7 only requires 100% affordable housing if the applicant is seeking a density bonus under subsection (E), which was not the case here. There is no language at all in the ordinance stating that the entire section applies only if the MPD has 100% affordable housing. Contrary to the City's argument, subsection (A) does not state that Section 15-6-7 applies only to 100% affordable housing MPDs. In fact, the second paragraph of that subsection likewise ties that requirement only to the density bonus: "Master Planned Developments, which are one hundred percent (100%) Affordable Housing . . . would be considered for a Density incentive greater than that normally allowed"

Because the plain language of § 15-6-7 does not limit application of that section to 100% affordable housing developments, the Planning Commission erred as a matter of law in refusing to apply that section to the Project. There is no dispute that the Project does not comply with § 15-6-7, including specifically the parking requirements of § 15-6-7(F), which mandates that "[o]ff-street parking will be required at a rate of one (1) space per Bedroom." The 71 off-street parking spaces for the development are clearly insufficient under any possible calculation.

Summary: The Planning Commission erred as a matter of law in approved the Project despite its noncompliance with the setback, open space, parking, and HDDR requirements. The Planning Commission has ignored the plain language of the governing ordinances and rules and has applied inapplicable exceptions that are clearly not met based on the findings in the record. The approvals must therefore be overturned as a matter of law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicole M. Deforge', with a stylized, flowing script.

Nicole M. Deforge

cc: client

Hannah Tyler

From: Mark Harrington
Sent: Thursday, June 06, 2019 3:21 PM
To: Margaret Plane; Hannah Tyler
Subject: Fwd: Woodside plat

From: Nicole Deforge <ndeforge@fabianvancott.com>
Date: June 6, 2019 at 3:08:31 PM MDT
To: Mark Harrington <mark@parkcity.org>
Subject: RE: Woodside plat

Mark, please see below statement in favor of the special appeal panel for tonight's City Council meeting. Thanks.

Mr. Lee requests that the City Council appoint an independent appeal panel to hear the Woodside MPD appeal because it is necessary to ensure fair due process for all affected parties and to preserve the appearance of fairness in the appeal. The Woodside project is a City-sponsored development and the Park City Board of Adjustment is a permanent, ongoing City board appointed by the City Council. The Board members must be reappointed by the CC in order to remain on the panel at the end of their terms. In contrast, a special appeal panel appointed only for the purpose of the hearing the Woodside appeal would be a one-time panel and therefore not concerned about reappointment by the CC. Use of a special panel would therefore not only help to ensure fair due process by avoiding that potential conflict of interest but certainly better preserve the appearance of fairness in the minds of the public.

NICOLE M. DEFORGE

Attorney

FabianVanCott

215 South State Street, Suite 1200
Salt Lake City, UT 84111-2323
(T) 801-531-8900 (D) 801-574-2620
ndeforge@fabianvancott.com
www.fabianvancott.com

May 15, 2019

VIA E-MAIL (hannah.tyler@parkcity.org; jglidden@parkcity.org)

Park City Planning Commission
P.O. Box 1480
Park City UT 84060

Re: Woodside Phase II MPD Application

Dear Commissioners:

We are writing on behalf of Douglas Lee, a long-time Park City citizen with a home located directly adjacent to the proposed Woodside Phase II MPD project at 1356 Empire Avenue. We are writing to follow-up on our previous letter dated March 25, 2019.

Mr. Lee wishes to reiterate that he has no objection whatsoever to an affordable housing project within Park City and, indeed, very much supports the concept of and need for affordable housing. He also has no objection to an affordable housing development located next to his home, provided that it complies in all respects with the clear and plain language of the City's development ordinances and historic preservation guidelines.

The mere fact that the City is the developer here, rather than a third party, is not a legal basis for excusing noncompliance or loosening standards. Surely, the City should set the example for other developers by unequivocally complying with all of the City's ordinances and historic preservation guidelines in connection with this project. The City should not attempt to rely on inapplicable exceptions and loopholes simply because it wants this project. The City cannot possibly expect to hold other developers to these important standards requiring open space and historic preservation if it does not respect those standards itself.

This project does not comply with the City's ordinances and historic preservation guidelines in the following material respects:

Affordable Housing MPD Requirements

First, many of the preliminary conclusions reached of the Planning Staff that his project complies with City ordinances turns on its belief that LMC § 15-6-7 governing Master Planned Affordable Housing Developments does not apply. The Planning Staff erroneously opines that the project need not comply with these mandatory provisions and instead suggests that the Applicant can pursue approval under the more general provisions for generic master planned developments. This assertion is directly contrary to LMC § 15-1-3, which expressly provides that whenever a conflict exists between the application of two ordinances, "the more restrictive provision shall apply to the extent allowed by law." This ordinance aligns with well-

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established rules of statutory construction, which likewise dictate that "when two statutory provisions conflict in their operation, the provision more specific in application governs over the more general provision." *Taghipour v. Jerez*, 2002 UT 74, ¶ 11, 52 P.3d 1252, 1255.

Given that LMC § 15-6-7, governing master planned affordable housing developments such as this, is the more specific provision, that ordinance governs over the more general master planned development provisions. The mere fact that the subject project does not include 100% affordable housing is not a legal basis for refusing to apply Section 15-6-7, as the City suggests, because that is not a condition to application of the ordinance. Rather, the condition of 100% affordable housing is only relevant if the applicant claims entitlement to a density bonus of 20 UEs per acre in subsection (E), which is not the case here. The City cannot limit application of the ordinance only to projects consisting of 100% affordable housing because that limitation is not supported by the plain language of the statute.

There is no dispute that this project does not comply with LMC § 15-6-7.

Parking

Second, the allocated off-street parking still does not comply with City ordinances. Mr. Lee appreciates the City's modifications to the plans to address the concerns he previously raised regarding the legally insufficient parking allocated for the Empire Townhomes, even under the less restrictive provisions of LMC § 15-3-6. However, for the reasons noted above, the parking requirements of LMC § 15-6-7(F) actually apply to this affordable housing development, not the lesser requirements of § 15-3-6. That ordinance mandates that "[o]ff-street parking will be required at a rate of one (1) space per Bedroom." The 71 off-street parking spaces for the development are clearly insufficient under any possible calculation.

Open Space

Third, the MPD does not comply with the open space requirements of LMC § 15-6-7 for the reasons stated above and in our earlier letters.

Even if LMC § 15-6-5 were to apply instead, the City still would not meet the open space requirements. There is absolutely no legal basis for concluding that the City need only provide 30% open space for the project rather than the 60% mandated by LMC § 15-6-5. The only basis upon which such an exception could be granted under the plain language of the ordinance is if the affected property constitutes a "redevelopment of existing Development" and project enhancements are given.

The City entirely ignores the first condition of the exception and instead claims that the exception is warranted solely based on project enhancements. But this is not a "redevelopment of existing Development. Much of the project consists of vacant lots and open space, including the Empire property that has been vacant for nearly 20 years. The mere fact that the lots may have once had structures on them provides no legal basis for invoking this exception in the absence of any "existing" development, per the plain language of the ordinance.

If the Commission allows the exception in this case, it would also have to allow a 30% open space exception for other developments even if there were only a single existing structure on a single lot within a much larger area that has no existing structures. The

Commission cannot allow this without opening the door to a very large exception that will effectively swallow the rule. A developer could purchase a small lot with an old house adjacent to a very large vacant tract of open space, propose an MPD consisting of both lots, and then claim that the entire development is a "redevelopment" of an "existing Development" that requires just 30% open space. There would be no legal basis for distinguishing that hypothetical from the current scenario under the staff's current interpretation. Although the Planning Staff claims that it would not allow that, based on the position it is now taking, the City would have no legal basis for denying such a project.

Setbacks

Fourth, the project still does not comply with mandatory setback requirement and cannot even arguably claim to qualify for any exception. There is no dispute that there is a minimum setback requirement of 25' around the entire perimeter of the project. The plans show setbacks of just 10-20'—less than half of what is required by law in many areas.

There is no dispute that the City's ordinances only allow a reduction of that setback requirement for MPDs "if it is necessary to provide desired architectural interest and variation." (emphasis added). Ignoring this compulsory language, the City claims that the exception is needed to align the project "with the neighboring properties along the streetscapes of Empire Avenue, Norfolk Avenue, and Woodside." There is nothing in the plans that supports that bald assertion and no measurements are provided for adjacent properties at all. Regardless, a desire to align the streetscapes simply does not satisfy the requirement of "necessary to provide architectural interest and variation," as required by the ordinance. And it would certainly not justify any reduction to side setbacks regardless. This is not even a close call. There is absolutely no legal basis for approving such an exception without ignoring the plain language of the ordinance.

Historic Home Site

Finally, although the City claims to be in compliance with historic preservation guidelines because it is not currently proposing any physical modifications to the historic home, the historic preservation guidelines pertain to far more than just the structure itself. The proposed plans violate numerous of these guidelines, including the following:

- The MPD will not "maintain the existing front and side yard setbacks of historic sites." The proposed plat amendment will significantly alter the current lot boundaries setbacks.
- The MPD will not "maintain the natural topography and original grading of the site when and where feasible." Although the guidelines state that the "historic character of the site should not be significantly altered by substantially changing the proportion of built and/or paved area to open space, or and vice versa," the proposed plans call for a driveway along the entire rear yard of the historic house and along the side yard as well.
- The MPD will not "respect and maintain historic existing landscape features that contribute to the historic character of the site and those existing landscape features that provide sustainability benefits." The MPD plans call for removal of several large trees from the historic home site.

- The MPD will not "maintain Historic fences fencing and handrails." The MPD plans call for removal of the existing fence.
- The MPD will not "minimize the visual impacts of on-site parking by incorporating landscape treatments for driveways, walkways, paths, building and accessory and structures in a comprehensive, complimentary and integrated design." Again, there will be large new driveways and parking on the site that will not be integrated in any way into the existing historic home site.
- The MPD will not "provide landscaped separations between parking areas, drives, service areas, and public use areas including walkways, plazas, and vehicular access points."
- The MPD also will not comply with the following: "When locating new off-street parking areas, the existing topography of the building site and significant integral site features should be minimally impacted. When locating driveways, the existing topography of the building site and significant site features should be minimally impacted."

The City must pay more than lip service to the importance of open space, historic preservation, and quality of life for existing neighborhoods. This City-sponsored project must leave no doubt as to its facial compliance with City ordinances and historic design guidelines. Otherwise, the City will lose credibility with its residents and other developers and will not be able enforce compliance when faced with other projects that it might not want as badly as it wants this project.

Sincerely,



Nicole M. Deforge

cc: client

March 25, 2019

VIA E-MAIL (hannah.tyler@parkcity.org; jglidden@parkcity.org)

Park City Planning Commission
P.O. Box 1480
Park City UT 84060

Re: Woodside Phase II MPD Application

Dear Commissioners:

We are writing on behalf of Douglas Lee, a Park City resident with a home located at 1356 Empire Avenue, which is adjacent to the proposed Woodside Phase II MPD project. We are writing in response to the Staff Report published on March 22, 2019.

Affordable Housing MPD Requirements

We respectfully disagree with the conclusion of the apparent conclusion of the Planning Staff that the project is governed by the MPD requirements of LMC § 15-6-5 rather than the Affordable Housing MPD requirements of LMC § 15-6-7. The Planning Staff appears to base its conclusion on the fact that the project does not include 100% affordable housing. However, LMC § 15-6-7 does not require 100% affordable housing for that section to govern. Rather, 100% affordable housing is only required to claim the density bonus of 20 UEs per acre in subsection (E).

There is nothing in the plain language of the ordinance that limits application of LMC § 15-6-7 on projects with 100% affordable housing. Nor is there any provision in the ordinances stating that an applicant must elect to proceed as an affordable housing MPD in order for this section to apply. The project clearly falls within the definition of an "affordable housing" development in LMC § 15-15-1, which provides as follows: "Dwelling Units for rent or for sale in a price range affordable to families in the low to moderate income range." The applicant even refers to the project as "Park City Affordable Housing – Woodside Phase II" in the title of its application and plans. We therefore believe that the plain language of LMC § 15-6-7 requires its application to the subject project.

Parking

For the reasons noted above, we maintain that the parking requirements of LMC § 15-6-7(F) apply to this development, not those in § 15-3-6.

Regardless, the applicant has not provided sufficient parking spaces even under § 15-3-6. For example, there is no dispute that the Empire Townhouses must have 1.5 parking
ATTORNEYS AT LAW

spaces for each of the six units. Each private garage for each unit provides only a single 1.5-width parking space, which the applicant claims totals nine parking spaces for the townhouse. That is simply not correct. There are only six parking spaces for these six units, which is facially noncompliant with the LMC requirements even under § 15-3-6.

Additionally, the applicant cannot attempt to shift parking requirements between lots or buildings. Each lot will be governed by a separate HOA that will address parking for its residents. And each of the parking garages for the lots will be physically and legally separate. Consequently, the Empire Townhouse owners could not park in the Woodside flats parking garage to get the additional parking to which they are entitled under the LMC. Nor could they park in their neighbors' private garages. The plans clearly show that each owner gets only a single 1.5-width parking space in his/her own private garage. That is not in compliance with the LMC.

Open Space

We maintain that the MPD does not comply with the open space requirements of LMC § 15-6-7 for the reasons stated above and in our earlier letter.

Even if LMC § 15-6-5 were to apply instead, the applicant still would not meet the open space requirements. The Staff Report acknowledges that the MPD does not contain a minimum of 60% open space, as required. However, the Planning Staff wrongly concludes that the entire project could qualify for a reduction to just 30% open space on the grounds that it constitutes a "redevelopment of existing Development." Yet, the project is currently divided into historic lots, most of which do not include any development at all. They are vacant lots. This includes the lot upon which the Empire Townhouses will be developed. Even after a proposed plat amendment, the Empire Townhouses will sit on a separate lot from the rest of the development. That lot will consist of only 20% open space.

The Planning Staff's conclusion that any redevelopment on even just a single lot within a much-larger MPD parcel justifies a 50% reduction in open space requirements for the entire development is not consistent with the governing ordinances and would be ripe for abuse. A developer could purchase a small lot with an old house adjacent to a very large vacant tract of open space, propose an MPD consisting of both lots, and then claim that the entire development requires just 30% open space. There would be no legal basis for distinguishing that hypothetical from the current scenario. Even a distinction on the basis of in-fill vs. new development, which the Planning Staff suggest, does not appear to have any support in the language of the ordinances themselves.

Setbacks

We also maintain our objection to lack of compliance with minimum setbacks. The Planning Staff agrees that LMC § 15-6-5(C) requires that the "minimum Setback around the exterior boundary of an MPD shall be twenty five feet (25') for the proposed MPD. It further agrees that the project does not currently meet setback requirement for the front, side, or rear setbacks.

The Planning Commission can only reduce those setback requirements "if it is necessary to provide desired architectural interest and variation." (emphasis added). According to the Staff Report, the applicant is requesting a reduction in the rear setbacks on

the grounds that a utility easement is required in that area. Even assuming that to be true, that is clearly not a basis for reducing setbacks under the ordinance because it is not necessary to provide architectural interest and variation. Consequently, no reduction can legally be made on that basis.

The Staff Report further notes that application is requesting a setback reduction so that "the development is aligned with the neighboring properties along the streetscapes of Empire Avenue, Norfolk Avenue, and Woodside." First, the plans submitted by the applicant do not reflect that claim. None of the plans measure setbacks for the neighboring properties and, at least for the home immediately north of the Empire Townhouses, the setback is clearly more than 20' from the street.

Second, even if that were true, it would not be a legal basis for reducing the setback requirements along the street and certainly not for the side and rear setbacks. Again, a reduction is only permitted if "necessary to provide desired architectural interest and variation." A desire to align streetscapes could not possibly qualify as a need to provide architectural interest and variation. Alignment and variation are the opposite of one another.

Further, such an interpretation of the exception would completely swallow the rule. Obviously, the existing structures will have setbacks that comply with the underlying zone requirements. If that fact alone justifies departure from the MPD setback requirements, then the setback requirements will always simply default to the existing zone requirements. But that result does not comply with the plain language of the ordinance, and the ordinance cannot be interpreted in such a way.

Additionally, even if a desire to align streetscape could possibly satisfy the legal standard for reducing setbacks due to architectural variation, it would only warrant a setback reduction along the streetscape, i.e., the front setback. It could not possibly justify a reduction of the side or rear setback requirements for the MPD. Again, subsection (C) requires a minimum 25' setback along the entire "exterior boundary." That includes certain side and rear setbacks. There is no basis here for reducing side and rear setbacks simply out of a desire to have lack of architectural variety on the streetscapes.

Historic Home Site

Finally, the MPD's treatment of the historic home located at 1302 Norfolk Avenue does not comply with Park City historic preservation guidelines. Although the applicant claims that "no work is proposed for this structure at this time," the MPD application and plat amendment as currently proposed will dramatically alter the historic home site in direct contravention of the historic preservation guidelines. For example:

- The MPD will not "maintain the existing front and side yard setbacks of historic sites." The proposed plat amendment will significantly alter the current lot boundaries setbacks.
- The MPD will not "maintain the natural topography and original grading of the site when and where feasible." Although the guidelines state that the "historic character of the site should not be significantly altered by substantially changing the proportion of built and/or paved area to open space, or and vice versa," the

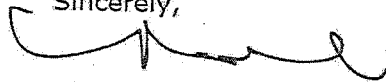
proposed plans call for a driveway along the entire rear yard of the historic house and along the side yard as well.

- The MPD will not "respect and maintain historic existing landscape features that contribute to the historic character of the site and those existing landscape features that provide sustainability benefits." The MPD plans call for removal of several large trees from the historic home site.
- The MPD will not "maintain Historic fences fencing and handrails." The MPD plans call for removal of the existing fence.
- The MPD will not "minimize the visual impacts of on-site parking by incorporating landscape treatments for driveways, walkways, paths, building and accessory and structures in a comprehensive, complimentary and integrated design." Again, there will be large new driveways and parking on the site that will not be integrated in any way into the existing historic home site.
- The MPD will not "provide landscaped separations between parking areas, drives, service areas, and public use areas including walkways, plazas, and vehicular access points."
- The MPD also will not comply with the following: "When locating new off-street parking areas, the existing topography of the building site and significant integral site features should be minimally impacted. When locating driveways, the existing topography of the building site and significant site features should be minimally impacted."

In short, although the applicant purports to be deferring issues relating to the historic home site to the future, the MPD plans as currently written will directly, substantially, and adversely impact the historic home site before any review can be done.

Thank you for your consideration of these serious concerns.

Sincerely,



Nicole M. Deforge

cc: client

March 21, 2019

VIA E-MAIL (hannah.tyler@parkcity.org; jglidden@parkcity.org)

Park City Planning Commission
P.O. Box 1480
Park City UT 84060

Re: Woodside Phase II MPD Application

Dear Commissioners:

We are writing on behalf of Douglas Lee, a Park City resident with a home located at 1356 Empire Avenue, which is adjacent to the proposed Woodside Phase II MPD project. Mr. Lee is gravely concerned with numerous aspects of the project, including its facial failure to comply with many mandatory provisions of the Park City Land Management Code ("LMC") governing MPDs, as set forth below:

Parking

The MPD does not comply with the LMC parking requirements. Because this is an affordable housing MPD, Section 15-6-7 applies. Subsection (F) of that section provides that "[o]ff-street parking will be required at a rate of one (1) space per Bedroom." There are 11 three-bedroom units, 10 two-bedroom units, and 37 one-bedroom/studio units in the project. That totals 90 bedrooms, which in turn requires 90 off-street parking spaces. Yet the project purportedly provides only 71 off-street parking spaces, which is clearly insufficient.

In reality, the project does not even provide for 71 spaces. Instead, applicant provides fewer parking spaces that are simply 50% wider than normal and then claims two such spaces as three. That clearly does not comport with the plain language or intent of Section 15-6-7. Additionally, the off-street parking for the project is split between two lots and is only accessible by the residents in those particular lots. For example, the Empire Townhomes on Lot 1 consist of 5 three-bedroom units and one two-bedroom unit. That totals 17 bedrooms, which requires 17 parking spaces pursuant to Section 15-6-7. But the plans call for just six parking spaces for the entire building. That does not comply with Section 15-6-7 either.

Frankly, the plans would not even satisfy the default parking requirements for a non-affordable housing MPD under Section 15-3-6, which the applicant appears to erroneously assume applies. Under that section, a multi-family dwelling between 1000-2000 sq. ft. requires 1.5 parking spaces. That does not mean that an applicant can instead provide one parking space that is merely 50% wider than normal. Such an interpretation would mean that the requirement of 1.5 parking spaces per unit would provide precisely the same number of parking spaces as the 1.0 parking spaces per unit requirement. That would lead to an absurd

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result and render the 1.5-parking space per unit requirement superfluous, in direct contravention of the rules of statutory construction. Again, taking the Empire Townhouses as an example, based on the square footage of each unit, Section 15-3-6 would require 1.5 parking spaces per unit. That should result in nine parking spaces for the building. Instead, the applicant is providing just six spaces that are 50% wider. That is surely not what Section 15-3-6 contemplates or requires.

Open Space

The MPD also does not comply with the open space requirements of Section 15-6-7. Subsection (G) requires that a "minimum of fifty percent (50%) of the Parcel shall be retained or developed as open space." By the applicant's own calculations, the MPD includes only 45.79% of open space. Even that percentage is overstated. Applicant improperly includes decks on the roof of the parking structure in its open space calculations, but Subsection (G) expressly states that "[o]pen space may not be utilized for streets, roads, or Parking Areas." The definition of "open space" in the LMC likewise specifically excludes "Buildings or Structures."

Although Subsection (G) provides that the Planning Commission may reduce the required open space to "not less than forty percent (40%)," it may do so only if it makes a finding that "additional on or Off-Site amenities, such as playgrounds, trails, recreation facilities, bus shelters, significant landscaping, or other amenities will be provided above any that are required." Here, there are no such additional amenities. To the contrary, the MPD would demolish a community senior center currently located on the property, without any concrete plans for relocation, and thereby significantly reduce community amenities in the process.

Even if the open space requirements of Section 15-6-5 were to apply instead of Section 15-6-7, which is not the case, the applicant does not meet those requirements either. Subsection (D) of that section provides that the MPD "shall contain a minimum of sixty percent (60%) open space." That requirement is clearly not met. Subsection (D) alternatively provides that "for Applications proposing the redevelopment of existing Developments," the Planning Commission may reduce the required open space to 30%, but that exception does not apply here. Lot 1 has no existing structure or improvement to redevelop and therefore must meet the 60% requirement, which it does not come close to meeting.

Setbacks

The MPD also fails to comply with the setback requirements in Section 15-6-5. Subsection (C) requires that the "minimum Setback around the exterior boundary of an MPD shall be twenty five feet (25') for Parcels one (1) acre or larger in size." According to the plans, the parcel of land that is the subject of the MPD application is 1.49 acres in size. The project must therefore have an exterior boundary of 25'. Instead, the project boundary varies from merely 10-20'.

Exceptions to this mandatory setback requirement can only be made if the Planning Commission makes a finding that "it is necessary to provide desired architectural interest and variation." Yet there is no claim by the applicant that this is the case and no factual basis upon which the Planning Commission could possibly make such a finding.

Density

Section 15-6-5(A) requires the applicant to provide a Site Suitability Analysis in order to determine the "type of Development, number of units and Density permitted on a given Site." We are unaware of any such analysis and none was provided by the City in response to a recent GRAMA request. In any event, density "shall not exceed the maximum Density in the zone, except as otherwise provided in this section."

It appears that the applicant is also claiming entitlement to an additional 20 U.E.s over what would otherwise be permitted in the RC zone in which it is located. That "bonus" amount appears to be requested pursuant to Section 15-6-7(E), which provides that "[t]he reviewing agency may increase the allowable Density to a maximum of twenty (20) Unit Equivalents per acre." That maximum amount should not be granted here given the fact that this is a residential neighborhood located on historic, narrow streets already substantially past capacity in terms of traffic and street parking.

Child Care

The MPD does not comply with the child care requirements in Section 15-6-5. Subsection (K) provides that a "Site designated and planned for a Child Care Center may be required for all new single and multi-family housing projects if the Planning Commission determines that the project will create additional demands for Child Care." Given that these are multi-bedroom affordable housing units, the Planning Commission could not possibly conclude that the project would not create additional demands for child care. To the contrary, the only possible conclusion is that such units would be occupied by families with both parents working to make ends meet and that those families would certainly require child care. Plans for such much therefore be a component of this MPD project.

CUP Criteria

In addition to failing to meet the mandatory MPD requirements, the project will also fail under the 15-factor CUP analysis.

First, the size and location of the project are inappropriate for this historic residential neighborhood and its narrow streets, no sidewalks, an extremely limited parking.

Second, there are major traffic and parking issues already on Empire and Woodside, which are the streets feeding into this development. Although the applicant claims that Woodside is a "low traffic access boulevard," nothing could be further from the truth. Like Empire, Woodside is an extremely narrow, crowded street with no sidewalks or on-street parking. In the winter, it is barely accessible. And both Empire and Woodside are crowded with pedestrians slipping, falling, and dropping skis and poles in the middle of the street as they attempt to navigate the treacherous conditions to reach the resort. Adding 58 new units primarily comprised of 2-3 bedroom units to this small neighborhood and these streets will unbearably compound already impossible traffic, pedestrian, and parking problems.

Third, emergency vehicle access is already incredibly difficult given the road and traffic situation. Mr. Lee personally observed an ambulance unable to get through Empire this winter because of the traffic and road conditions. Again, the MPD would add 58 units and twice that many cars to these narrow, crowded roads.

Fourth, as detailed above, the off-street parking is insufficient as a matter of law under the LMC. The lack of on-street parking will only compound the parking shortage and problems.

Fifth, the massing and bulk of the buildings is substantial and will overwhelm this small residential neighborhood.

Sixth, as detailed above, the open space is insufficient as a matter of law and largely consists of low-value border plantings.

Seventh, the proposed project is not compatible with the surrounding historic structures in mass or scale.

Given the intrinsic infrastructure issues and large scale of the project, there do not appear to be any conditions that could reasonably mitigate these impacts.

Required Findings and Conclusions of Law

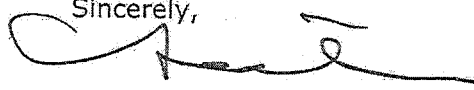
Section 15-6-6 requires the Planning Commission to make various findings before it can approve an MPD. Those requirements include the following:

- The MPD "complies with all the requirements of the Land Management Code"
- The MPD "meets the minimum requirements of Section 15-6-5"
- The MPD "provides the highest value of Open Space"
- The MPD is "Compatible in Use, scale, and mass with adjacent Properties and promotes neighborhood Compatibility . . . and protects residential neighborhoods and Uses"
- The MPD "provides amenities to the community so that there is no net loss of community amenities".

For the reasons stated above, none of these findings can reasonably be made here. The MPD clearly does not comply with the provisions of the LMC, including the minimum requirements of 15-6-5 or 15-6-7. The purported open space identified in the MPD is insufficient and certainly not of "highest value" in any sense of the word. The MPD is also plainly incompatible with the residential neighborhood into which it would be shoe-horned and would only further deteriorate the already deplorable traffic, pedestrian, and on-street parking situation in the neighborhood—particularly given the grossly insufficient off-site parking spaces. The MPD would also result in the loss of a large community senior center currently located on the property without any offsetting community amenities provided. Because the Planning Commission cannot make the requisite findings for approval of the MPD, the proposed project cannot be approved in its current form.

Thank you for your consideration of these serious concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicole M. Deforge', with a stylized flourish at the end.

Nicole M. Deforge

cc: client

Exhibit 2: Planning Commission's Final Action Letter



May 23, 2019

Park City Municipal Corporation
ATTN: Jason Glidden
445 Marsac Avenue
P.O. Box 1480
Park City, UT 84103

CC: Method Studios, Project Architects

NOTICE OF PLANNING COMMISSION ACTION - AMENDED

Description

Project Description: Woodside Park Phase II Master Planned Development
Project Number: PL-18-03822
Project Address: 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue.
Date of Final Action: May 22, 2019

Action Taken

On May 22, 2019 the Planning Commission conducted a public hearing and approved the Woodside Park Phase II Master Planned Development (MPD) with a 5-1 vote according to the following findings of fact, conclusions of law, and conditions of approval:

Findings of Fact:

1. The proposed site location consists of 1330 Empire Avenue, 1302 Norfolk Avenue ("Significant" Single-Family Dwelling), 1361 Woodside Avenue, and 1323 Woodside Avenue.
2. The proposed site is located in the Recreation Commercial (RC) Zoning District.
3. The site is known as the Woodside Park Affordable Housing Project Phase II.
4. Phase II of the Woodside Park Affordable Housing Project will be located between Woodside Avenue and Empire Avenue, with a small portion of the development abutting Norfolk Avenue. There will be a total of 58 units, 52 of which will be deed restricted Affordable Housing units. The scope will include the following:
 - Deed-restricted Affordable Housing Units (52 total):
 - Two (2) Triplex Dwellings abutting Woodside Avenue. The Triplex Dwellings take the form of "townhome style" units.

- Two (2) Multi-Unit Dwellings centrally located on Lot 2 and accessed via Woodside Avenue. There will be a total of 46 “flats” comprised of studio, one (1), and two (2), bedroom units split between two (2) Multi-Unit Dwellings
 - Market Rate Units (six [6] total):
 - A Multi-Unit Dwelling abutting Empire Avenue which will contain five (5) townhomes style attached units – 1330 Empire Avenue
 - One (1) “Significant” Single-Family Dwelling – 1302 Norfolk Avenue
 - A Parking Garage located beneath the Woodside Avenue townhomes and Multi-Unit Dwellings (flats)
 - A Public Access Easement running east-west which will link to the Woodside Park Phase I Access Easement. The Public Access Easement will also contain Public Art as determined by the Park City Public Art Board.
 - Central gathering areas in the plaza space adjacent to the Public Access Easement.
 - A trail connecting Norfolk Avenue to the central gathering area in the plaza and Public Access Easement.
5. The Woodside Park Phase II Project Team (Method Studios, Housing, and Community Development) is proposing the Land Use applications for the Phase II of the Woodside Park Affordable Housing Project as a significant step towards implementing the City’s Affordable Housing critical priority goals.
 6. Throughout the process, the Affordable Housing Team has conducted public outreach efforts during the following events:
Public Open Houses:
 - Tuesday, March 20th, 2018 – 4pm-6pm – Miner’s Hospital
 - Tuesday, March 27th, 2018 – 5pm-7pm – Park City Library
 - Tuesday, September 11th, 2018 – 7pm – Park City Library (in cooperation with the Sustainability Department)
 - Tuesday, September 18th, 2018 – 5pm-7pm – Park City Library
 - Scheduled for, Monday, May 20th, 2019 – 6pm – 7pm – Park City LibraryDigital Public Engagement:
 - Neighborhood E-mail Blasts: the Affordable Housing staff collected emails from interested neighbors to the project and sent out informational emails letting them know of any public events were taking place along with contact information if they had further questions or comments.
 - Engage Park City: The project has been posted on the Engage Park City website. This site allows the general public to look at proposed plans and provide feedback.
 7. The MPD application was deemed complete on February 1, 2019.
 8. There are three (3) applications total for the entire scope of Phase II, including a Master Planned Development, Conditional Use Permit, and Plat Amendment.
 9. The Planning Commission reviewed, held a public hearing, and continued the Master Planned Development application during a Work Session on March 27, 2019.
 10. At the March 27, 2019 Work Session, the Planning Commission reviewed the entire scope of the project and requested that the following items be addressed:
 - Identify Usable Open Space within the Open Space calculation – a diagram was recommended.

- Clarify the Parking Calculation as the applicant indicated that changes would occur to the Market Rate units on Empire Avenue.
 - Provide additional information regarding the pedestrian access off of Norfolk Avenue.
 - Address crosswalk concerns on the western end of the Pedestrian Access Easement.
 - Address the Public Comment Letter submitted on March 21, 2019. The applicant has prepared a response as Exhibit F. The Planning Department has reviewed and verified the accuracy of the applicant's response; the Planning Department is in agreement with the applicant's response provided in Exhibit F as the document addresses all points of the Public Comment Letter submitted on March 21, 2019.
11. On March 13, 2019 and May 8, 2019 the property was posted and notice was mailed to property owners within 300 feet. Legal notice was also published on the Utah Public Notice Website and Park Record on March 9, 2019 and May 4, 2019 according to requirements of the Land Management Code.
 12. The proposal complies with Land Management Code (LMC) § 15-6-5(A) Density as the proposed Density of the MPD does not exceed the maximum Density in the zone. The proposed MPD consists of a .938 Floor Area Ratio (FAR) which is less than the base zone density of 1.0 FAR.
 13. Land Management Code (LMC) § 15-6-5(B) Building Footprint is not applicable as the site is not located in the HR-1 or HR-2 District. The proposed MPD is located in the Recreation Commercial (RC) Zoning District.
 14. The proposal complies with Land Management Code (LMC) § 15-6-5(C) Setbacks. Per [LMC 15-6-5\(C\) MPD Requirements - Setbacks](#), the minimum Setback around the exterior boundary of an MPD shall be twenty five feet (25') for Parcels greater than one (1) acre in size. However, per [LMC 15-6-5\(C\)\(1\) MPD Requirements - Setbacks](#), the Planning Commission may decrease the required perimeter Setback from twenty-five feet (25') for MPD applications one (1) acre or larger to the zone required Setback if it is necessary to provide desired architectural interest and variation.
 15. Woodside Park Affordable Housing Phase II is requesting a Setback reduction to the Zone required Setback so that the development is aligned with the neighboring properties along the streetscapes of Empire Avenue, Norfolk Avenue, and Woodside Avenue. This setback reduction will not result in increased density. The Setback reduction will result in increased architectural variation because of the broken up massing of multiple buildings rather than one larger mass, the clustering of density towards the center of the site, decreased Setbacks resulting in increased Public plaza space and walkway, trail connection, and the variation between the architecture of each building.
 16. The minimum Setbacks for the proposed Multi-Unit Dwelling on Lot 1 shall be:
 - Front Yard: 20 feet (20')
 - Side Yard: 10 feet (10')
 - Rear Yard 10 feet (10')
 17. The minimum Setbacks for the Multi-Unit Dwellings on Lot 2 shall be:
 - Front Yard: 20 feet (20')
 - Side Yard: 10 feet (10')

- Rear Yard: 10 feet (10') and reduced to five feet (5') for the area highlighted in Figure 8 on page 8 in the staff report. The applicant is requesting an additional Rear Yard setback reduction to five feet (5') from the required 10 feet (10') for a portion of Lot 2. The purpose of the Setback Reduction is to accommodate a utility easement for Lot 1 (1330 Empire Avenue).
18. The minimum Setbacks for existing Historic Single-Family Dwelling on Lot 3 shall be:
- Front Yard: 10 ft. for new construction; however the existing Historic Structure is a Legal Non-Complying Structure with a Front Yard Setback measuring six feet eleven inches (6'11")
 - Side Yard: Minimum five feet (5') and a minimum total of 14 feet (14')
 - Rear Yard: 10 feet
19. The proposal complies with Land Management Code (LMC) § 15-6-5(D) Open Space because the proposed MPD is considered a redevelopment of existing Development; therefore, the Planning Commission may reduce the required open space to 30% in exchange for project enhancements. The applicant is proposing 44.62% Open Space which equates to 28,962 square feet. Staff finds that in addition to being a redevelopment, this project provides ample project enhancements, including but not limited to:
- 52 deed restricted Affordable Housing units.
 - A Public Access Easement running east-west which will link Woodside Park Phase I (Park Avenue) to Empire Avenue (Park City Mountain base).
 - Common hardscaped gathering/plaza spaces landscaping areas for use by the property owners within the Woodside Park Phase II.
 - Public Art will be installed within the Public Access Easement as determined by the Park City Public Art Board.
 - Excess Bicycle Parking stalls from what is required (36 total).
 - A trail connecting Norfolk Avenue to the central gathering area in the plaza and Public Access Easement.
20. The proposal complies with LMC 15-3-5(E) as the total required Parking Spaces of the entire project is 63 Parking Spaces. The total number of Parking Spaces provided by the project is 71 Parking Spaces.
21. Per LMC 15-3-9 Bicycle Parking Requirements, the Multi-Unit Dwelling must provide at least seven (7) bicycle Parking Spaces or ten percent (10%) of the required off-Street Parking Spaces, whichever is greater, for the temporary storage of bicycles. The applicant is proposing to provide 36 Bicycle Parking Spaces.
22. The proposal complies with Land Management Code (LMC) § 15-6-5(F) Building Height because the proposed MPD complies with the Building Height requirements for the RC Zoning District. No Height exception is requested.
23. The proposal complies with Land Management Code (LMC) § 15-6-5(G) Site Planning because; the units are sited in such a way that is compatible with other residential structures in the RC Zoning District, specifically respecting the rhythm and scale of the streetscape on Norfolk Avenue, Woodside Avenue and Empire Avenue; The applicant has stepped the series of five (5) townhomes with the topography which helps retain the site. Lot 2 and Lot 3 have a slight slope but the parking garage will accomplish a bulk of the retaining for the Multi-Unit Dwellings on this site; Roads, utility lines, and Buildings are designed to work with the Existing

Grade. Cuts and fills are minimized; There is a pedestrian walkway and connecting trail that are valuable connector trails; The project scope includes an Access Easement running east-west which will link the City Park and Park Avenue bus stops (from Woodside Park Phase I) to Empire Avenue; Enclosed trash and recycling areas have been provided on site.

24. The proposal complies with Land Management Code (LMC) § 15-6-5(H) Landscape and Street Scape as the applicant is proposing landscaping throughout the project that is consistent with the area, including, but not limited to, natural turf, native grasses, deciduous trees, shrubs, and other alpine perennials.
25. Land Management Code (LMC) § 15-6-5(I) Sensitive Lands Compliance is not applicable as the site is not located within the Sensitive Lands Overlay District.
26. The proposal complies with Land Management Code (LMC) § 15-6-5(J) Employee/Affordable as the proposed MPD exceeds to required Affordable Housing obligation for a project of this size. 52 of the 58 proposed units are designated as Affordable Housing and will be deed restricted as such. The Affordability has been established by [Resolution 03-2017](#), specifically in Section 17 (B) Rental Units and (C) For Sale Units. This project will comply with the above Sections of [Resolution 03-2017](#) and definitions of Affordable.
27. The proposal complies with Land Management Code (LMC) § 15-6-5(K) Child Care as this project does not trigger the requirement for a Child Care Center as the scale of this project is less than the allowed Zone Density. In addition, the Park City Library has Child Care which is located within walking distance and there is significant open space within the vicinity and on the proposed project site (City Park, Library Park, etc.).
28. Land Management Code (LMC) § 15-6-5(L) Mine Hazards is not applicable as there are no known Physical Mine Hazards on the property.
29. Land Management Code (LMC) § 15-6-5(M) Historic Mine Waste Mitigation is not applicable as there are no known Physical Mine Hazards on the property.
30. The proposal complies with Land Management Code (LMC) § 15-6-5(N) General Plan Review as the proposed MPD fulfills the following Goals 3, 5, 7, 8, 15 of the General Plan and the applicable Objectives and/or Implantation Strategies of each as further described in the Analysis section of this report.
31. The proposal complies with Land Management Code (LMC) § 15-6-5(O) Historic Sites as the applicant provided a site plan and documentation for Historic Single-Family Dwelling located at 1302 Norfolk Avenue. At this time, no work is proposed on the "Significant" Single-Family Dwelling structure located at 1302 Norfolk Avenue. A new driveway will be installed triggering related removal of non-historic fence material and landscape materials on the site; however, all work complies with the Design Guidelines for Historic Districts and Historic Sites and would not trigger a full Historic District Design Review (HDDR). Any future work to the "Significant" Single-Family Dwelling structure will require a HDDR application.
32. This project is a redevelopment because the Phase 1 and Phase 2 project is within the Lower Park Redevelopment Authority Area (LPRDA), the new development modernizes the area consistent with LPRDA goals and City critical priorities, and replaces several demolished structures which included:
 - 1323 Woodside Avenue – Significant Structure was demolished in 2009 after the being approved for Deconstruction through the Certificate of Appropriateness for Demolition (CAD) process; however, part of the approval for a Deconstruction

was that it would need to be Reconstructed. This building was ultimately Relocated through the Historic District Design Review process (including Historic Preservation Board approval) as a part of the Woodside Park Phase I Affordable Housing MPD and is now being Reconstructed at 1353 Park Avenue.

- 1330 (1350) Empire Avenue – There was a building located at what is now considered 1330 Empire Avenue. Prior to the Plat Amendment in 2014, this property was known as 1350 Empire Avenue. In 2003, the owner applied for a Determination of Significance to remove the Single Family Dwelling that was once located on the site from the Historic Sites Inventory (HSI). The Historic District Commission removed the structure from the HSI and the Structure was then demolished in 2005. There were no requirements for Reconstruction as it was removed from the HSI.

33. The analysis section of the staff report is hereby incorporated herein.

Conclusions of Law:

1. The MPD, as conditioned, complies with all the requirements of the Land Management Code;
2. The MPD, as conditioned, meets the minimum requirements of Section 15-6-5 herein. LMC § 15-6-7 is not applicable;
3. The MPD, as conditioned, provides the highest value of Open Space, as determined by the Planning Commission;
4. The MPD, as conditioned, strengthens and enhances the resort character of Park City;
5. The MPD, as conditioned, compliments the natural features on the Site and preserves significant features or vegetation to the extent possible;
6. The MPD, as conditioned, is Compatible in Use, scale, and mass with adjacent Properties, and promotes neighborhood Compatibility, and Historic Compatibility, where appropriate, and protects residential neighborhoods and Uses;
7. The MPD, as conditioned, provides amenities to the community so that there is no net loss of community amenities;
8. The MPD, as conditioned, is consistent with the employee Affordable Housing requirements as adopted by the City Council at the time the Application was filed.
9. The MPD, as conditioned, meets the Sensitive Lands requirements of the Land Management Code. The project has been designed to place Development on the most developable land and least visually obtrusive portions of the Site;
10. The MPD, as conditioned, promotes the Use of non-vehicular forms of transportation through design and by providing trail connections; and
11. The MPD has been noticed and public hearing held in accordance with this Code.
12. The MPD, as conditioned, incorporates best planning practices for sustainable development, including water conservation measures and energy efficient design and construction, per the Residential and Commercial Energy and Green Building program and codes adopted by the Park City Building Department in effect at the time of the Application.
13. The MPD, as conditioned, addresses and mitigates Physical Mine Hazards according to accepted City regulations and policies.
14. The MPD, as conditioned, addresses and mitigates Historic Mine Waste and complies with the requirements of the Park City Soils Boundary Ordinance.

15. The MPD, as conditioned, addresses Historic Structures and Sites on the Property, according to accepted City regulations and policies, and any applicable Historic Preservation Plan.

Conditions of Approval:

1. The project shall fully comply with any provisions indicated in the LMC or approved MPD regarding lighting, trash/recycling enclosures, mechanical equipment, etc.
2. A conditional use permit is required for the Multi-Unit Dwelling(s) prior to issuance of a building permit.
3. A development agreement as described in LMC Section 15-6-4(G) shall be ratified by the Planning Commission within 6 months of this approval and prior to issuance of a building permit for the project.
4. Required Parking Space allocation by a parking pass system shall be established in the CC&Rs.
5. The east-west Public Easement as shown on the Woodside Park Subdivision – Phase II shall be maintained by Park City Municipal Corporation.
6. A four foot (4') wide sidewalk shall be installed on Lot 1 adjacent to Empire Avenue prior to the issuance of a Certificate of Occupancy for any of the newly constructed buildings.
7. Signs shall be installed at the entrance of the east-west Public Easement as shown on the Woodside Park Subdivision – Phase II on Woodside Avenue and Empire Avenue providing directions and identification of the Public Easement. The applicant shall consider additional signs on Park Avenue for the Public Easement.

If you have any questions or concerns regarding this letter, please do not hesitate to call me at (435)615-5059 or contact Project Planner, Hannah Tyler, by email at hannah.tyler@parkcity.org.

Sincerely,



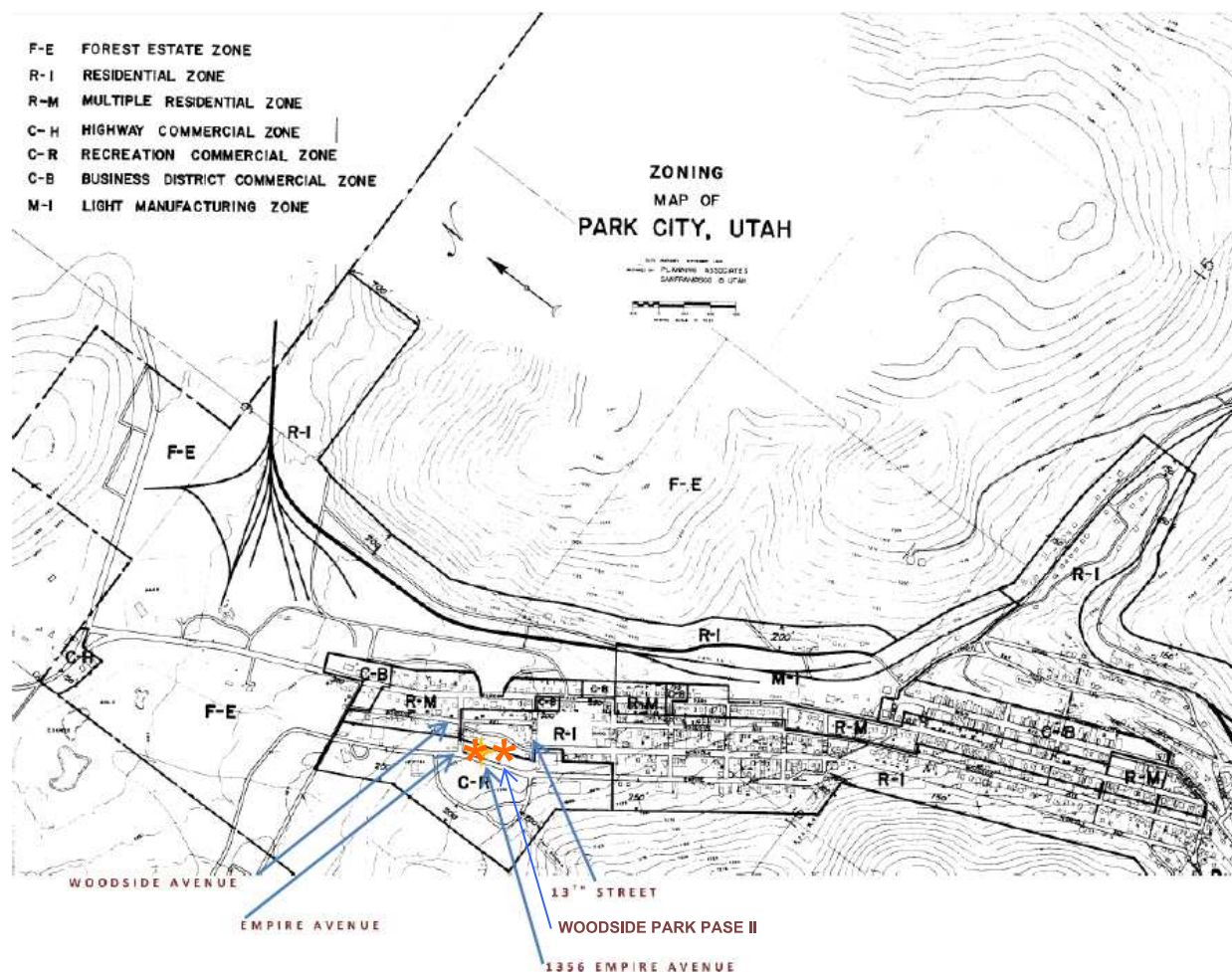
John Phillips
Planning Commission Chair

CC: Hannah M. Tyler, AICP - Senior Planner

Exhibit 3 – History of the Recreation Commercial (RC) Zoning District

1356 Empire Avenue and Park City Zoning Ordinances

The residence located at 1356 Empire Avenue has been encompassed in the Residential Commercial zone for over fifty years. In 1968, Park City adopted its first Zoning Ordinance, codified in the Municipal Code of Park City (MCPC) § 67-1-1 et seq. In 1968, the City established seven zones: Forest Estate, Residential, Multiple Residential, Highway Commercial, Recreation Commercial, Business District Commercial, and Light Manufacturing. While vestiges of the 1968 Residential Zone (R-1) remain, most zones have been significantly amended over the decades as the City prioritized historic preservation and the City boundary expanded through a series of annexations. However, the Recreation Commercial zone encompassing Empire Avenue has remained relatively unchanged for half a century. The 1356 Empire Avenue site is located within the Recreation Commercial (C-R) zone, shown as a star on the Park City Zoning Map of 1968 below:



Some of the conditional uses in the 1968 Recreation Commercial zone included apartments of over four units, apartment hotels, commercial recreational facilities and uses, cafes, stores, multiple-family dwellings of over four units, recreation centers, and theaters. MCPC § 67-12-1 (1968). Minimum lot areas were set at 5,000 square feet for multiple family dwellings of four units with 750 square feet added for each additional unit. MCPC § 67-12-2 (1968). Residences were required to have a minimum

width of 50 feet with a 20-foot frontage setback and a 20-foot street setback. MCPC § 67-12-2; MCPC § 67-12-3 (1968). The 20-foot frontage setback remains in effect in the LMC today. LMC § 15-2.15-3(C). Non-residential uses were exempt from the width requirements. *Id.* Buildings could be four stories and up to 50 feet in height and the City had discretion to grant an exception to height restrictions for planned unit developments. MCPC § 67-12-5 (1968).

In 1976, Park City [repealed](#) the 1968 MCPC Zoning Ordinance and [adopted](#) the Land Management Code (LMC). The 1356 Empire Avenue site remained in the Recreation Commercial zone, a zone designated “[t]o allow for the development of hotel and convention accommodations in close proximity to the major recreation facilities. [The Residential Commercial District] allows by special exception and negotiation, a relatively high density of transient housing with appropriate supporting commercial and service activities.” LMC Chapter IV(1) (1976).

Lot sizes were increased to 14,500 square feet for the first four units of a multi-unit dwelling with 2,000 square feet of lot area added for each additional unit up to a maximum of 15 units. Other uses were required to have a minimum 3,750 square-foot lot. Building height was reduced by 15 feet from the 1968 allowance and was capped at 35 feet. LMC Chapter IV(5) and (6) (1976). The 35-foot limitation on height remains in the LMC today. LMC § 15-2.16-4 (2019).

In 1985, Park City passed [Ordinance 85-17](#) (see p. 188) and adopted an official zoning map, which continued to include the 1356 Empire Avenue property within the Recreation Commercial zone. Throughout the 1980s, the City amended the LMC provisions for the Recreation Commercial zone and designated certain residential and nonresidential uses as permitted uses and expanded potential conditional uses. The City instigated a development credit system that allocated one development credit per 1,000 square feet and capped certain permitted developments at 8 credits, requiring a conditional use permit for projects over 8 credits. LMC § 7.10.3 (1989). The Development Floor Area Ratio applied to projects within today’s LMC is rooted in the 1989 development credit system. LMC § 15-2.16-3(B).

However lot, height, and setback restrictions remained relatively unchanged and the purpose of the Recreation Commercial zone mirrored the purpose first expressed in 1976: “[t]o allow for the development of hotel and convention accommodations in close proximity to the major recreation facilities. [The Recreation Commercial District] allows a relatively high density of transient housing with appropriate supporting commercial and service activities.” LMC § 7.10.1 (1989). In the 1990s, the City amended the LMC to apply certain single family and duplex regulations in the Recreation Commercial Zone, but other provisions within the zone did not significantly change ([Ord. 94-16](#)).

In 2002, Park City passed [Ordinance No. 02-07](#) and adopted the zoning map dated May 2001. In 2006, Park City passed [Ordinance 06-46](#) and amended the official zoning map. The 1356 Empire Avenue property remained within the Recreation Commercial zone and the property remains within the Recreation Commercial zone in the Park City 2019 zoning map.

While the purpose of the Recreation Commercial zone has expanded over the years to include development clustering, open space preservation, view-shed protections, pedestrian connections, and historic and traditional architecture, the initial purposes expressed in Park City’s Recreation Commercial

zone back in 1968 are still embedded in the LMC today: to “allow for the Development of hotel and convention accommodations in close proximity to major recreation facilities [and to] allow for resort-related transient housing with appropriate supporting commercial and service activities.” LMC § 15-2.16-1(A) and (B). Additionally, lot, height, and setback restrictions have remained relatively consistent in the Recreation Commercial zone throughout the decades.