



**PARK CITY BOARD OF ADJUSTMENT MEETING
SUMMIT COUNTY, UTAH
January 21, 2020**

PUBLIC NOTICE IS HEREBY GIVEN that the BOARD OF ADJUSTMENT of Park City, Utah will hold its Board of Adjustment Meeting at the City Council Chambers, 445 Marsac Avenue, Park City, Utah 84060 for the purposes and at the times as described below on Tuesday, January 21, 2020.

MEETING CALLED TO ORDER AT 5:00 PM.

1.ROLL CALL

2.MINUTES APPROVAL

- 2.A. Consideration to Approve the Board of Adjustment Meeting Minutes from December 10, 2019.
[BOA Minutes 12.10.19 - Pending Approval](#)

3.PUBLIC COMMUNICATIONS

4.STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

5.CONTINUATIONS

6.REGULAR AGENDA

- 6.A. Appeal of the Woodside Park Phase II Master Planned Development Application – Setbacks Remand - The appellant is appealing a October 9, 2019 decision made by the Planning Commission to approve (as amended) the Remand of the Woodside Park Phase II Master Planned Development specific to LMC 15-6-5(C) Master Planned Development Requirements – Setbacks. The Appellant's letter preserves his right to challenge and seek judicial review of the previous decision of the Board of Adjustment and outlines those additional reasons for his appeal. However, the scope of this particular appeal is limited to the topics reviewed by Planning Commission on the Remand, which in this case, only pertains to Setbacks. PL-19-04359
(A) Public Hearing (B) Possible Action
[PL-19-04359 1330 Empire Avenue - BOA 1.21.20 Staff Report](#)
[Exhibit A: Appellant's Submitted Appeal and Exhibits](#)
[Exhibit B: Planning Commission Action Letter - October 9, 2019](#)
[Exhibit C: Proposed MPD Plans \(updated\)](#)
[Exhibit D: link to Proposed Woodside Park Phase II Plans](#)
[Exhibit E: link to March 27, 2019 Planning Commission Work Session Staff Report](#)

Exhibit F: link to March 27, 2019 Planning Commission Meeting Minutes (page 2)
Exhibit G: link to May 22, 2019 Planning Commission Staff Report
Exhibit H: link to May 22, 2019 Planning Commission Meeting Minutes (page 3)
Exhibit I: link to June 6, 2019 City Council referral of the Appeal to the Board of Adjustment
Exhibit J: link to June 6, 2019 City Council Minutes (page 9)
Exhibit K: link to July 16, 2019 Board of Adjustment Staff Report
Exhibit L: link to July 16, 2019 Minutes (DRAFT)
Exhibit M : link to August 28, 2019 Planning Commission Continuation Staff Report
Exhibit N: link to September 11, 2019 Planning Commission Staff Report
Exhibit O: link to September 11, 2019 Planning Commission Minutes (page 10)

7.ADJOURN

A majority of BOARD OF ADJUSTMENT members may meet socially after the meeting. If so, the location will be announced by the BOARD OF ADJUSTMENT Chair Person. City business will not be conducted. Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the Planning Department at 435-615-5060 or planning@parkcity.org at least 24 hours prior to the meeting. Wireless internet service is available in the Marsac Building on Wednesdays and Thursdays from 4:00 p.m. to 9:00 p.m. Posted: See: www.parkcity.org

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

PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF DECEMBER 10, 2019

BOARD MEMBERS IN ATTENDANCE: Ruth Gezelius – Chair; Hans Fuegi, Jennifer Franklin, Stefanie Wilson (Alternate)

EX OFFICIO: Director Bruce Erickson; City Attorney Mark Harrington; Jessica Nelson

ROLL CALL

Chair Gezelius called the meeting to order at 5:00 p.m. and noted that all Board Members were present except for Mary Wintzer and Dave Robinson, who were excused.

ADOPTION OF MINUTES

July 16, 2019

Board Member Fuegi noted that his name was misspelled on page 2 of the Minutes and asked that it be corrected.

MOTION: Board Member Fuegi moved to APPROVE the Minutes of July 16, 2019 as corrected. Chair Wilson seconded the motion.

October 15, 2019

Board Member Franklin referred to page 7 of the Minutes, page 13 of the Staff report, and noted that under the Findings of Fact, the site was designated as a Landmark site in Finding #4; but the motion indicates Finding of Fact #1. She suggested only saying "Finding of Fact" in the motion and eliminate a specific number.

Board Member Fuegi noted that he was not at the October 15th meeting and questioned whether he could vote on the Minutes. City Attorney Harrington stated that he could rely on the assertions of the Board members who were present.

MOTION: Board Member Franklin moved to APPROVE the Minutes of October 15, 2019. Board Member Wilson seconded the motion.

VOTE: The motion passed unanimously.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

Director Erickson introduced Jessica Nelson to the Board members who were not present at the last meeting. Jessica handles all the front desk operations in the Planning Department and coordinates with all the Boards and Commissions.

Director Erickson explained the new sound system that was recently installed in the Council Chambers.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

Appeal of the Woodside Park Phase II Master Planned Development Application – Setbacks Remand - The appellant is appealing a October 9, 2019 decision made by the Planning Commission to approve (as amended) the Remand of the Woodside Park Phase II Master Planned Development specific to LMC 15-6-5(C) Master Planned Development Requirements – Setbacks. The Appellant's letter preserves his right to challenge and seek judicial review of the previous decision of the Board of Adjustment and outlines those additional reasons for his appeal. However, the scope of this particular appeal is limited to the topics reviewed by Planning Commission on the Remand, which in this case, only pertains to Setbacks. (Application PL-19-04359)

Director Erickson presented this item on behalf of Hannah Tyler, the project planner.

Director Erickson stated that the applicant was ill and requested that this item be continued. The recommendation was to continue this item to January 21, 2020.

MOTION: Board Member Fuegi moved to CONTINUE the Appeal of the Woodside Park Phase II Master Planned Development Application – Setbacks Remand, to January 21, 2020. Board Member Wilson seconded the motion.

VOTE: The motion passed unanimously.

City Attorney Harrington thanked the Board members for attending this evening even though the agenda item was continued. He clarified that the Staff carefully vets all requests for continuation and they found this to be a serious enough occurrence to allow the continuance. He appreciated their cooperation in trying to meet the January 21st meeting schedule to ensure the Board has a quorum to move this item forward.

City Attorney Harrington explained that the Code gives the Staff the ability to grant up to two continuances if the request comes in at least five business days

before the hearing is scheduled. If the request comes in within that five-day window, it must come to the Board of Adjustment. Due to past abuses, a codified rule now requires the Board to convene to affirmatively vote for the Continuance. Mr. Harrington commented on the cooperation in this case to get three Board Members on short notice to arrange their schedule to attend this meeting. He appreciated their efforts.

Chair Gezelius thanked the Staff for being understanding of the applicant's dilemma; and for following the correct procedure regarding the Continuance.

Director Erickson stated that the Staff would do their best to re-establish a schedule for the BOA meetings and to keep the meetings on schedule with as much notice as possible.

Chair Gezelius recognized that a member of the public came in late. She explained that the Board had continued the Woodside Park item on the agenda to January 21, 2020 at the applicant's request.

Chair Gezelius adjourned the meeting at 5:15 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 – Setbacks Remand
Author: Hannah M. Tyler, AICP – Senior Planner
Project Number: PL-19-04359
Date: January 21, 2020
Type of Item: Appeal of Planning Commission's Approval of the Remand of Master
Planned Development Application – Setbacks

Summary Recommendations

Staff recommends the Board of Adjustment review the Appeal of the Planning Commission's Approval of the Remand of Master Planned Development – Setbacks 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 and deny the Appeal based on the Findings of Fact and Conclusions of Law.

Executive Summary

The appellant is appealing a October 9, 2019 decision made by the Planning Commission to approve (as amended) the Remand of the Woodside Park Phase II Master Planned Development specific to LMC 15-6-5(C) Master Planned Development Requirements – Setbacks. The Appellant's letter preserves his right to challenge and seek judicial review of the previous decision of the Board of Adjustment and outlines those additional reasons for his appeal. However, the scope of this particular appeal is limited to the topics reviewed by Planning Commission on the Remand, which in this case, only pertains to Setbacks.

Background

On July 16, 2019, the Board of Adjustment reviewed an Appeal of the May 22, 2019 Planning Commission approval of the Master Planned Development application and remanded the review of Setbacks for the Master Planned Development application to the Planning Commission pursuant to LMC 15-6-5(C). On September 11, 2019, the Planning Commission reviewed the proposal for compliance with 15-6-5(C) Master Planned Development Requirements – Setbacks and directed staff to prepare Findings of Fact, Conclusions of Law, and Conditions of Approval to reaffirm their approval as amended. The Planning Commission made one (1) amendment and required a Minimum Setback of twenty-five feet (25') on the western boundary (adjacent to Empire Avenue). On October 9, 2019, the Planning Commission ratified the Findings of Fact, Conclusions of Law, and Conditions of Approval specific to LMC 15-6-5(C) Master Planned Development Requirements – Setbacks as amended. On October 18, 2019, the City received an Appeal of the October 9, 2019 Planning Commission remand approval. The Board of Adjustment will review the proposed setbacks for compliance with 15-6-5(C) Master Planned Development Requirements – Setbacks.

On December 9, 2019, the Appellant requested a Continuation. On December 10, 2019, the Board of Adjustment held a public hearing and continued the item to January 21, 2020.

Links to all public meeting staff reports and minutes for the Woodside Park Phase II MPD can be found below.

- March 27, 2019 Planning Commission Work Session [Staff Report](#) (page 4) and [Minutes](#) (page 2)

- May 22, 2019 Planning Commission [Staff Report](#) (page 31) and [Minutes](#) (page 3)
- June 25, 2019 Board of Adjustment [Staff Report](#) and [Minutes](#)
- July 16, 2019 Board Of Adjustment [Staff Report](#)
- August 28, 2019 Planning Commission [Continuation Staff Report](#)
- September 11, 2019 Planning Commission [Staff Report](#) and [Minutes](#) (page 10)
- October 9, 2019 Planning Commission [Staff Report](#), [Exhibits](#), and [Minutes](#) (page 5)
- December 10, 2019 Board Of Adjustment (Continued) [Staff Report](#) and [Exhibits](#)

Burden of Proof

The appellant has the burden of proving that the Planning Commission erred. LMC 15-1-18(G).

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 treats these appeals as a non-adversarial process under the following provisions ([LMC 15-1-18 \(H\)](#)):

1. The procedural hearings and reviews established by the City's regulatory procedures do 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.

When reviewing an appeal, the Board of Adjustment acts 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 concerning this appeal should occur.

[LMC 15-6-5\(C\) MPD Requirements](#) establishes the criteria for which [MPD Setbacks](#) are reviewed.

Intent of the Master Planned Development Application Process

The intent of the Master Planned Development (MPD) Application Process is to allow for design flexibility in order to achieve well-planned and Compatible projects. The Planning Commission has been given the authority through the Land Management Code (LMC) to vary Land Use Requirements outlined in [LMC 15-6-5 MPD Requirements](#) (Density, Setbacks, Open Space,

etc.) for projects that achieve the goals and intent of the Master Planned Development Process as outlined in [LMC 15-6-1 Purpose](#). For these reasons, the applicant is proposing the Setback reduction to match the normal setbacks in the zone, Recreation Commercial (RC) Zone Required Setback. The LMC provides for this reduction if the applicant demonstrates “it is necessary to provide desired architectural interest and variation.”

To help evaluate the proposed setbacks and resulting architectural interest and variation, the staff first reviewed the purpose statements of the MPD (in Times New Roman font), staff has provided an analysis in bullet points (in *Arial italics font*) for each of the established goals of the MPD per [LMC 15-6-1 Purpose](#):

15-6-1 Purpose

The purpose of this Chapter is to describe the process and set forth criteria for review of Master Planned Developments (MPDs) in Park City. The Master Planned Development provisions set forth Use, Density, height, parking, design theme and general Site planning criteria for larger and/or more complex projects having a variety of constraints and challenges, such as environmental issues, multiple zoning districts, location within or adjacent to transitional areas between different land Uses, and infill redevelopment where the MPD process can provide design flexibility necessary for well-planned, mixed use developments that are Compatible with the surrounding neighborhood. The goal of this section is to result in projects which:

1. complement the natural features of the Site;
 - *The proposed structures are stepped with the natural topography of the site.*
2. ensure neighborhood Compatibility;
 - *The variation in massing from Woodside Avenue to Empire Avenue allows the structure to blend with the neighboring Historic Residential-1 Zone on Woodside Avenue as well as the resort-base area housing and Multi-Unit Dwellings.*
3. strengthen the resort character of Park City;
 - *The connection of the development via a public staircase through the center of the development allows for the continued pedestrian circulation from Park Avenue to the resort base and Empire Avenue areas.*
4. result in a net positive contribution of amenities to the community;
 - *The proposed project will result in 52 Affordable Housing units as well as Public Access Easements.*
5. provide a variety of housing types and configurations;
 - *The proposed project provides a variety of Affordable Housing and Market Rate housing types.*
6. provide the highest value of open space for any given Site;
 - *The project architect has provided an analysis of the usable Open Space versus that achieved within the Setback areas. The RC Zone required Setbacks enables the interior plaza area to achieve more Usable Open space providing the highest value to the proposed project and public access points.*
7. efficiently and cost effectively extend and provide infrastructure;
 - *The proposed project extends public access infrastructure allowing for pedestrian access connecting Park Avenue to the Empire Avenue resort-base area.*
8. provide opportunities for the appropriate redevelopment and reuse of existing structures/sites and maintain Compatibility with the surrounding neighborhood;
 - *The proposed project has been deemed a redevelopment. The proposed project has stepped the massing from Woodside Avenue to Empire Avenue in order to compliment and maintain compatibility with the neighboring HR-1 Zoning District on*

Woodside Avenue and transition in the RC Zoning District and Empire Avenue resort-base area.

9. protect residential uses and residential neighborhoods from the impacts of non-residential Uses using best practice methods and diligent code enforcement; and
 - *The proposed project contains 100% residential uses.*
10. encourage mixed Use, walkable and sustainable development and redevelopment that provide innovative and energy efficient design, including innovative alternatives to reduce impacts of the automobile on the community.
 - *The proposed project encourages walkability through the increased pedestrian connectivity; the proposed project is a Net-Zero project achieved through innovative and energy efficient design.*
11. Encourage opportunities for economic diversification and economic development within the community.
 - *The proposed project contains both Affordable Housing and Market Rate Housing.*

Woodside Park Phase II is located within the Recreation Commercial (RC) Zoning District. Proposed projects utilizing the MPD section of the LMC are measured against the Purpose statement of [LMC 15-6-1 Purpose](#) as well as the Purpose statement of the underlying Zoning District. Staff has provided analysis in italics for each of the established purposes of the RC Zoning District is outlined in [LMC 15-2.16-1 Purpose](#):

15-2.16-1 Purpose

The purpose of the Recreation Commercial RC District is to:

1. allow for the Development of hotel and convention accommodations in close proximity to major recreation facilities,
 - *The Market Rate units will not be precluded to have Nightly-Rental Licenses.*
2. allow for resort-related transient housing with appropriate supporting commercial and service activities,
 - *The proposed project contains 52 Affordable Housing Units which could house resort-related transient staff.*
3. 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,
 - *The proposed project has clustered the structures and broken up the massing in order to achieve more usable Open Space, provide more consistent massing when compared to neighboring structures, and connect into existing services.*
4. limit new Development on visible hillsides and sensitive view Areas,
 - *The proposed project has been stepped with the existing topography and within the RC Zone Required Maximum Height standards. No Height Exception is requested for the proposed development.*
5. provide opportunities for variation in architectural design and housing types,
 - *The proposed project has a variety of housing types as well as several different types of buildings ranging from Single-Family Dwellings, Triplexes, town-house type structures, and Multi-Unit Dwellings.*
6. promote pedestrian connections within Developments and to adjacent Areas,
 - *The proposed project extends public access infrastructure allowing for pedestrian access connecting Park Avenue to the Empire Avenue resort-base area.*
7. minimize architectural impacts of the automobile
 - *The bulk of the parking for the proposed project will be accommodated in an underground parking garage and individual garages.*

8. promote the Development of Buildings with designs that reflect traditional Park City architectural patterns, character, and Site designs,
 - *The proposed design of the project has taken into account the vernacular architecture of the surrounding resort-base area. The architect has incorporated architectural features and materials consistent with the Park City mountain-modern architecture.*
9. promote Park City's mountain and Historic character by designing projects that relate to the mining and Historic architectural heritage of the City, and
 - *The proposed project has incorporated architectural features and massing on the Woodside Avenue streetscape in order to maintain compatibility with the neighboring HR-1 Zoning District.*
10. promote the preservation and rehabilitation of Historic Buildings.
 - *The proposed project will create a legal lot of record for the Significant Single-Family Dwelling located at 1302 Norfolk Avenue. At this time, no work is proposed for 1302 Norfolk Avenue.*

Analysis

The Appeal Submittal is included as Exhibit A. The appellant argues the City is treating itself differently when in fact the applicant has held itself to a high standard by not seeking to maximize the site's development potential (and further reduce the cost of housing and/or deliver a housing product at a lower cost) by not taking advantage of many of the MPD site flexibility or density/height increases. It is important to note that reason behind the larger setbacks for MPDs is generally to address increased densities and height increases afforded by the MPD chapter and clustering. Neither of those circumstances are present with this application.

The Planning Commission reviewed the Setbacks in the Remand process and found Woodside Park Phase II consistent with the Purpose of both the MPD and RC Zoning District as outlined above. The Planning Commission ultimately amended the boundary on the western edge of the project (adjacent to Empire Avenue) to comply with the minimum MPD twenty-five foot (25') requirement, but determined that the remaining boundary Setbacks as proposed comply with met the LMC criteria because they were necessary to provide desired architectural interest and variation. Note that the resulting reduced MPD setbacks complies with the RC Zoning District and the allowed boundary Setbacks as outlined in the LMC below. The appeal is specific to [LMC 15-6-5\(C\) Master Planned Development Requirements – Setbacks](#) which states:

C. Setbacks.

1. 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. 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.
2. For parcels less than one (1) acre in size and located inside the HRM, HR-1, HR-2, HR-L, HRC, and HCB Districts, the minimum Setback around the exterior boundary of an MPD shall be determined by the Planning Commission in order to remain consistent with the contextual streetscape of adjacent Structures. *(Not Applicable)*
3. For parcels less than one (1) acre in size and located outside of the HRM, HR-1, HR-2, HR-L, HRC and HCB, the minimum Setback around the exterior boundary of an MPD shall be determined by the Planning Commission and shall be no less than the zone required Setback. *(Not Applicable)*
4. In all MPDs, for either the perimeter setbacks or the setbacks within the project, the Planning Commission may increase Setbacks to retain existing Significant Vegetation or natural

features or to create an adequate buffer to adjacent Uses, or to meet historic Compatibility requirements. *(Not Applicable)*

5. The Planning Commission may reduce Setbacks within the project boundary, but not perimeter Setbacks, from those otherwise required in the zone to match an abutting zone Setback, provided the project meets minimum Uniform Building Code and Fire Code requirements, does not increase project Density, maintains the general character of the surrounding neighborhood in terms of mass, scale and spacing between houses, and meets open space criteria set forth in Section 15-6-5(D). *(Not Applicable)*

As is noted above, there are five (5) criteria for Setbacks. The only applicable criterion for the proposed project is to [LMC 15-6-5\(C\)\(1\)](#). Per [LMC 15-6-5\(C\)\(1\) 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, 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.

On September 11, 2019 and October 9, 2019, the Planning Commission reviewed the remand of the Woodside Park Affordable Housing Phase II request for the Setback reduction to the Zone required Setbacks “necessary to provide desired architectural interest and variation.” The applicant submitted a supplemental visual detailing the architectural interest and variation consistent with the October 9, 2019 Planning Commission Remand (Exhibit C). The Planning Commission agreed with the Applicant’s argument that the requested Setback reduction to the Zone required Setbacks will achieve the following results, except for the Empire street frontage reduction which the Commission did not agree was necessary:

- the massing of the Structures to be varied placing the townhomes along the Woodside Avenue to Empire Avenue street frontages - consistent with the neighborhood look and feel from the public right-of-ways and to buffer the multi-family condo (apartment style) units in-between them;
- less bulk and mass of the buildings (smaller buildings rather than larger buildings) because the Density can be spread out throughout the site into more Structures that are more compatible in scale with those found throughout the neighborhood;
- more architectural interest and variation resulting from the increase in structures with less bulk and mass spread throughout the site, including porches, roof eave overhangs, and a wider public access through the middle of the site in the east/west direction;
- more welcoming and approachable pedestrian access and trail connectivity including landscaping and outdoor gathering areas along the path; and,
- generally more architecturally interesting development that follows the predominant architectural vernacular and pattern of the Woodside Avenue streetscapes – dimensions of setbacks are consistent with other properties in the neighborhood.

The Planning Commission made the following observations and comments in finding that the Setbacks as amended were necessary to provide desired architectural interest and variation:

- increasing the setbacks would negatively impact the streetscapes, as the architects had illustrated.
- in looking at the architectural character and the massing of the buildings, the reduced setbacks are necessary to maintain the character of this neighbor.
- breaking down the mass with the six townhouse units that touch Woodside Avenue in a residential way was important. Having a stoop and a porch and the feeling of a front

door along Woodside Avenue is the right thing to do. A multi-story stacked flat building along that face would take away from the overall character.

- The scaling and the spacing provide the architectural requirement that allows for it.

The Commission's deliberation resulted in the following revised findings of fact:

19. Upon evaluating the Applicant's representations and figures in the Analysis section of the September 11, 2019 Staff Report, which are incorporated herein, and based upon the Planning Commission deliberation after public hearing, the Commission finds that the requested setbacks, except as conditioned below, are necessary to provide desired architectural interest and variation because:

a) The desired architectural interest and variation complement existing streetscapes and achieve a site plan consistent with the zone, general plan and sustainability goals. On this site, the desired results are best evaluated from the totality of the architectural characteristics of the entire site plan and the buildings collectively, rather than individually. The proposed setbacks are necessary to achieve broken up massing of multiple buildings rather than one larger mass, the clustering of density towards the center of the site, and increased the Public plaza space and walkway.

b) Building to the larger MPD setbacks on Woodside Avenue is not desired because the result would be inconsistent with the existing buildout on the street and would detract from the character of the neighborhood. The proposed townhouse configuration with smaller setbacks and porches is desired.

c) The large public plaza and east-west connection are desired public amenities, which help reduce the overall massing, and the setbacks proposed are necessary for the desired dense site plan which balances affordability, pedestrian connections, open space and variations in building scale.

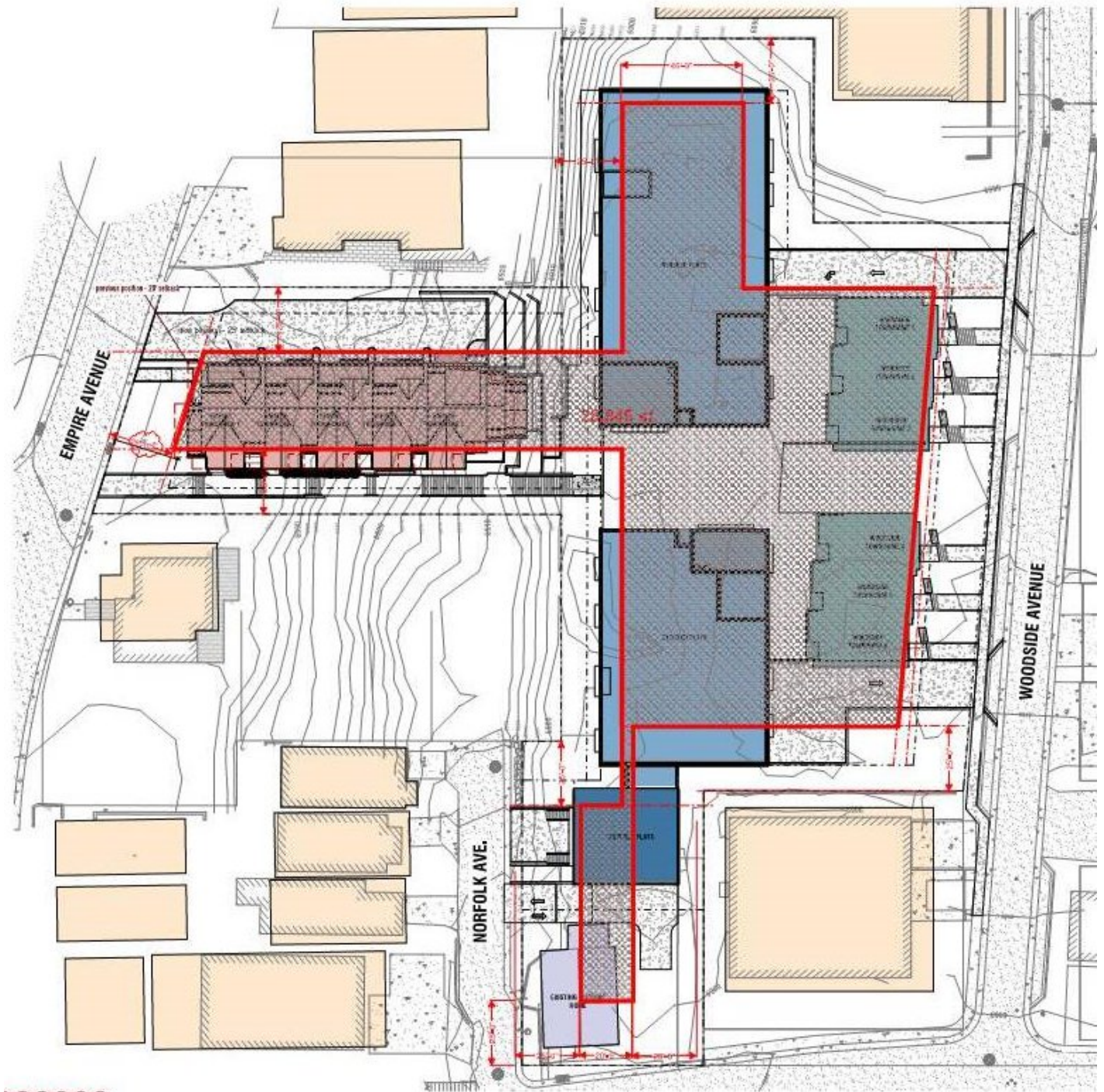
d) The additional 5' Front Setback on Empire Avenue is not necessary as the proposed buildings may be shifted without materially impacting the desired site plan or architecture. Height will still comply with the zone height although perceived height due to the shift of the building pad on the slope will slightly increase.

20. 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, generally more architecturally interesting development that follows the predominant architectural vernacular and pattern of the Woodside Avenue and Empire Avenue streetscapes, increased parking, more welcoming and approachable pedestrian and trail connectivity, and the variation between the architecture of each building.

Figure 1: Excerpt from Exhibit A (Sheet C102). Elevation drawing of the proposed Setback reduction to the Zone Required Setback.



Figure 2: Excerpt from Exhibit A (Sheet D100). Site Plan of the proposed development using the Setback reduction to the Zone Required Setback. The twenty-five foot boundary Setback is overlaid in red for reference.



The following table details the setbacks as approved by the Planning Commission through the Remand process.

Table 1: The proposed Setbacks and applicable Land Management Code (LMC) Setbacks and compliance in the RC District or as approved by Planning Commission.

	Proposed:			Requirement:
	Lot 1	Lot 2	Lot 3	
Front Yard Setbacks by Use – feet (ft.)	Multi-Unit Dwelling (Empire Avenue) 25 ft.	Multi-Unit Dwellings (Woodside Avenue) 20 ft.	Historic Single-Family Dwelling 6 ft. 11 in.	Multi-Family Dwelling 25 ft.; <i>complies as approved by Planning Commission</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, as approved by Planning Commission</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>

Process

As per the procedures for Appeals of Final Actions by the Planning Commission's as outlined in LMC 15-1-18(C), the City or any Person with standing adversely affected by a Final Action may petition the District Court in Summit County for a review of the decision. Final Action by the Planning Commission on Master Planned Developments (MPDs) involving City Development may be appealed to the Board of Adjustment at the City Council's request. MPDs may be appealed to the City Council. When the City Council determines it necessary to ensure fair due process for all affected parties or to otherwise preserve the appearance of fairness in any appeal, the City Council may appoint an appeal panel as appeal authority to hear any appeal or call up that the Council would otherwise have jurisdiction to hear. The appeal panel will have the same scope of authority and standard of review as the City Council. Only those decisions in which the Planning Commission has applied a land Use ordinance to a particular Application, Person, or Parcel may be appealed to an appeal authority.

Department Review

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

Notice

On November 26, 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 November 23, 2019 according to requirements of the LMC.

Public Input

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

Alternatives

- The Board of Adjustment may affirm the Planning Commission's decision for the Woodside Park Phase II Master Planned Development Setbacks 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 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 Remand of Master Planned Development – Setbacks 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 and deny the Appeal based on the proposed Findings of Fact and Conclusions of Law set forth below.

Exhibits

- Exhibit A – Appellant's Submitted Appeal and Exhibits
- Exhibit B – Planning Commission Final Action Letter
- Exhibit C – Proposed MPD Plans
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- Exhibit N – [link to September 11, 2019 Planning Commission Staff Report](#)
- Exhibit O – [link to September 11, 2019 Planning Commission Minutes \(page 10\)](#)

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

Findings of Fact:

1. On October 18, 2019, the City received an application for an Appeal of the Planning Commission's Remand Approval of the Master Planned Development Setbacks 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. This appeal was submitted within 10 days of the Final Action of the Planning Commission.
2. On September 11, 2019, the Planning Commission reviewed the applicant's updated submittal for compliance with 15-6-5(C) Master Planned Development Requirements – Setbacks and directed staff to prepare Findings of Fact, Conclusions of Law, and Conditions of Approval to reaffirm their approval. On October 9, 2019, the Planning Commission ratified the Findings of Fact, Conclusions of Law, and Conditions of Approval for approval specific to LMC 15-6-5(C) Master Planned Development Requirements – Setbacks.
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 proposed site location consists of 1330 Empire Avenue, 1302 Norfolk Avenue ("Significant" Single-Family Dwelling), 1361 Woodside Avenue, and 1323 Woodside Avenue.
5. The proposed site is located in the Recreation Commercial (RC) Zoning District.
6. The site is known as the Woodside Park Affordable Housing Project Phase II.
7. 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.
8. The MPD application was deemed complete on February 1, 2019.

9. On December 9, 2019, the Appellant requested a Continuation. On December 10, 2019, the Board of Adjustment held a public hearing and continued the item to January 21, 2020.
10. There are three (3) applications total for the entire scope of Phase II, including a Master Planned Development, Conditional Use Permit, and Plat Amendment.
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. On May 22, 2019, the Planning Commission approved the Master Planned Development application.
13. 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.
14. On June 25, 2019, the Board of Adjustment reviewed an Appeal of the May 22, 2019 Planning Commission approval of the Master Planned Development (MPD) application and directed staff to prepare Findings of Fact to remand the review of Setbacks for the Master Planned Development application to the Planning Commission pursuant to LMC 15-6-5(C).
15. The Board of Adjustment ratified the Findings of Fact on July 16, 2019 denying the Appeal in Part and remanding the review of Setbacks for the Master Planned Development application to the Planning Commission pursuant to LMC 15-6-5(C).
16. On September 11, 2019, the Planning Commission reviewed the applicant's updated submittal for compliance with 15-6-5(C) Master Planned Development Requirements – Setbacks and directed staff to amend the Findings of Fact to reflect their comments including a new Condition of Approval that the Empire Avenue Multi-Unit Dwelling shall maintain a minimum Front Yard Setback of twenty-five feet (25') excluding an exception for overhangs consistent with the underlying Zone Requirements.
17. On March 13, 2019, May 8, 2019, August 14, 2019, and September 25, 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 May 4, 2019, August 10, 2019, and September 25, 2019 according to requirements of the Land Management Code.
18. 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.
19. 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 Norfolk Avenue and Woodside Avenue. This setback reduction will not result in increased density.
20. Upon evaluating the Applicant's representations and figures in the Analysis section of the September 11, 2019 Staff Report, which are incorporated herein, and based upon the Planning Commission deliberation after public hearing, the Commission finds that the requested setbacks, except as conditioned below, are necessary to provide desired architectural interest and variation because:
 - a) The desired architectural interest and variation complement existing streetscapes and achieve a site plan consistent with the zone, general plan and sustainability goals. On this site, the desired results are best evaluated from the totality of the architectural

- characteristics of the entire site plan and the buildings collectively, rather than individually. The proposed setbacks are necessary to achieve broken up massing of multiple buildings rather than one larger mass, the clustering of density towards the center of the site, and increased the Public plaza space and walkway.
- b) Building to the larger MPD setbacks on Woodside Avenue is not desired because the result would be inconsistent with the existing buildout on the street and would detract from the character of the neighborhood. The proposed townhouse configuration with smaller setbacks and porches is desired.
 - c) The large public plaza and east-west connection are desired public amenities, which help reduce the overall massing, and the setbacks proposed are necessary for the desired dense site plan which balances affordability, pedestrian connections, open space and variations in building scale.
 - d) The additional 5' Front Setback on Empire Avenue is not necessary as the proposed buildings may be shifted without materially impacting the desired site plan or architecture. Height will still comply with the zone height although perceived height due to the shift of the building pad on the slope will slightly increase.
21. 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, generally more architecturally interesting development that follows the predominant architectural vernacular and pattern of the Woodside Avenue and Empire Avenue streetscapes, increased parking, more welcoming and approachable pedestrian and trail connectivity, and the variation between the architecture of each building.
22. The minimum Setbacks for the proposed Multi-Unit Dwelling on Lot 1 shall be:
- Front Yard: 25 feet (25')
 - Side Yard: 10 feet (10')
 - Rear Yard 10 feet (10')
23. 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. An additional purpose of the Setback Reduction is to accommodate a utility easement for Lot 1 (1330 Empire Avenue).
24. 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
25. The analysis section is incorporated herein.

Conclusions of Law:

1. The MPD, as approved and conditioned on May 22, 2019, and as further approved and conditioned on October 9, 2019, complies with the required Findings and Conclusions A-O pursuant to Land Management Code Section 15-6-6.

Order:

1. The appeal of the Planning Commission's approval of the Master Planned Development Setback Remand at 1330 Empire Avenue, 1302 Norfolk Avenue, 1361 Woodside Avenue, and 1323 Woodside Avenue is denied. The decision of the Planning Commission on October 9, 2019 modifying the setback approval for the Master Planned Development is upheld in accordance with the Final Action Letter attached as Exhibit B.

Ruth Gezelius
Park City Board Of Adjustment Chair

CC: Hannah M. Tyler, AICP – Senior Planner

October 17, 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 PL-18-03822

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 PL-18-03822 ("Project"), which occurred on October 9, 2019 following remand on the sole issue of setback reductions from the Board of Adjustment.

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 comments and testified regarding the Project on multiple occasions.

Grounds for Appeal:

1. Setback Reductions

On October 9, 2019, the Planning Commission erroneously approved setback reductions for the Project despite the fact that the proposed reductions do not comply with the governing ordinances. Mr. Lee incorporates by reference his prior appeal on the issue to the Board of Adjustment, the comment letters he has previously submitted on this issue to the Planning Commission, and the public comments made at the various Planning Commission meetings by and on his behalf, including most recently at the September 11, 2019 Planning Commission hearing.

Additionally, Mr. Lee submits the following argument in support of his appeal:

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

ATTORNEYS AT LAW

perimeter of the Project. Few of the setbacks for the Project will be 25'. Instead, they will generally 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.

It is clear from the testimony and evidence to-date that the Woodside Project was *designed* for reduced setbacks from the outset. The City simply assumed that it could get reduced setbacks if it asked because everyone at the table is the "City". The City then proceeded to create a design that it could later argue required reduced setbacks to implement. It was a self-fulfilling prophecy.

But that is not the legal standard. A self-created necessity is not a true necessity under the ordinance. If it were, then every developer could design their projects so that they require reductions and then claim that reductions were necessary to implement those designs. Under that interpretation of the term "necessary" as used in Section 15-6-5(C), the requisite MPD setback requirements would *never* be met because no developers would ever willingly design to them, especially knowing that they could get more density and space if they simply designed to the reduced setbacks instead. That is precisely what the City has done here.

As an architect, Mr. Lee can unequivocally say that the Woodside MPD, with all its public spaces and other bells and whistles that the City desires, could have been designed in countless ways so as to accomplish precisely the same thing within the required MPD setbacks. Instead, the City designed to the reduced setbacks and now claims, unsurprisingly, that its design requires reduced setbacks. This circular reasoning is legally unsupportable, regardless of how many times the Planning Commission tweaks its findings to create the false appearance of necessity.

The machinations that the City and the Planning Commission have had to go through to somehow justify the setback reductions and attempt to comply with the governing ordinances is evidence enough that the reductions are not truly necessary. 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 were necessary to create that architectural variation. The Planning Commission's ever-evolving findings amount to nothing more than that.

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 simply because it likes and wants the public spaces and other features that are part of the current design. But there is no evidence that reduced setbacks were necessary to accomplish any of those features had the City simply attempted to design to the MPD setback requirements. The approved setback reductions therefore do not comply with the governing ordinances and the findings do not support the reductions.

2. Prior Objections and Appeal

Although the October 9, 2019 Planning Commission decision was limited to consideration of setback reductions only, Mr. Lee incorporates by reference and restates briefly below his prior objections to the Woodside MPD approval and, to the extent necessary to preserve his further appeal rights, renews his appeal of that decision for the reasons set forth below:

a. 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, 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. The Planning Commission also 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.

b. 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. 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.

c. 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 approving the Woodside 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,



Nicole M. Deforge

cc: client

Woodside MPD

Planning Commission

September 11, 2019

Woodside Appeal

- Board of Adjustment unanimously voted to remand because of setback reduction
- No basis for finding that setback reductions warranted under the ordinance

MPD Minimum Setback Requirement

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. 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**.

This is the only legal basis for allowing setback reductions

Mandatory Legal Standard

- Must conclude that setback reductions are necessary to provide architectural interest and variation
- Not enough to simply point out some architectural interest and variation in the project
- Not enough to find that reducing setbacks might result in some architectural interest and variation
- Not legal to agree to setback reductions because of the “benefits” of the project, because of any public amenities, because of any developer concessions, or because you like or need the project

Setback Requirements Protect Neighbors

- Setback reductions only allowed under very limited conditions
- Requested setback reductions:
 - Front setbacks: reduced from 25' to only 10-20'
 - Side setbacks: reduced from 25' to only 5-10'
 - Rear setbacks: reduced from 25' to only 5-10'
- Up to 80% reductions in setbacks
- Imagine you lived next door

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

- Not a single claim by the Applicant or a finding by Staff that reduced setbacks are “necessary” in order to provide desired architectural interest and variation
- Simply point out the architectural interest and variety in the project
- Doesn’t meet the legal standard

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

“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. The applicant is also requesting an **additional Rear Yard setback** reduction to five feet (5’) from the required 10 feet (10’) for a portion of Lot 2 **to accommodate a utility easement** for Lot 1 (1330 Empire Avenue).”

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

- Reduced front setback to align streetscapes
 - Many neighboring properties on the streetscapes have 25' front setbacks—including Mr. Lee's home
- Not necessary to reduce setbacks to align
- Attempting to justify reduced setbacks by claiming they align—not the reason for the reduced setbacks at all—just after-the-fact excuse

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

- Reduced rear setback for utility easement
 - No pretense that this setback reduction is even remotely necessary for architectural interest or variety
- Just “request it”
- The building parapet wall on the other side of this 5’ setback will be at elevation 6935’, with the apartments at this level looking straight into Mr. Lee’s bedroom which is at elevation 6920’
- No legal basis whatsoever for this setback reduction—and no proposed finding in support of this reduction

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

“The Setback reduction **will result in** increased architectural variation because of ... generally more architecturally interesting development that follows the predominant architectural vernacular and pattern of the Woodside Avenue and Empire Avenue streetscapes.”

- result in ≠ necessary for
- only applies to front setbacks
- doesn't require reduced setbacks to achieve this—many homes along these streets already have at least a 25' setback, including Mr. Lee's which is directly adjacent to the project on Empire
- complying with 25' front setback requirements wouldn't alter the variable architectural vernacular or pattern of the streetscapes

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

“The Setback reduction **will result in** increased architectural variation because of the broken up massing of multiple buildings rather than one larger mass.”

- result in ≠ necessary for
- Reduced setbacks are not required to break up massing—can still do so while complying with minimum setback requirements

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

“The Setback reduction **will result** in increased architectural variation because of ... the clustering of density towards the center of the site.”

- result in ≠ necessary for
- clustering of density does not require reduced setbacks— it eliminates the need for reduced setbacks

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

“The Setback reduction **will result in** increased architectural variation because of ... increased public plaza space and walkway.”

- result in ≠ necessary for
- can easily have public plaza and walkway space without reduced setbacks
- Improper to increase public plaza space at the expense of neighbor’s setback rights
- Not an issue of necessity for architectural interest and variety—but a land grab

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

“The Setback reduction **will result in** increased architectural variation because of ... more welcoming approachable pedestrian and trail connectivity.”

- result in ≠ necessary for
- reduced setbacks not necessary to achieve this

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

“The Setback reduction **will result in** increased architectural variation because of ... variation between the architecture of each building.”

- result in ≠ necessary for
- reduced setbacks not necessary to achieve this

Are Big Setback Reductions Really Necessary for Architectural Interest and Variety?

- No findings as to why reduced setbacks are necessary
- Reality: City designed the project based on assumption that they could get reduced setbacks—not out of necessity
- Nothing more than after-the-fact excuses and justifications for those assumed setbacks in order to push through the project design
- No legal basis for setback reductions

Be good neighbors.

Thank you.

October 9, 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

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: October 9, 2019 [Partial Remand Re: Setbacks of May 22, 2019 MPD Approval]

Action Taken

On October 9, 2019 the Planning Commission reviewed and approved the following amended Findings of Fact, Conclusions of Law, and Conditions of Approval for the Setback Reductions for Woodside Park Phase II Master Planned Development (MPD):

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:
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 - 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 MPD application was deemed complete on February 1, 2019.
 6. There are three (3) applications total for the entire scope of Phase II, including a Master Planned Development, Conditional Use Permit, and Plat Amendment.
 7. The Planning Commission reviewed, held a public hearing, and continued the Master Planned Development application during a Work Session on March 27, 2019.
 8. On May 22, 2019, the Planning Commission approved the Master Planned Development application.
 9. 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.
 10. On June 25, 2019, the Board of Adjustment reviewed an Appeal of the May 22, 2019 Planning Commission approval of the Master Planned Development (MPD) application and directed staff to prepare Findings of Fact to remand the review of Setbacks for the Master Planned Development application to the Planning Commission pursuant to LMC 15-6-5(C).
 11. The Board of Adjustment ratified the Findings of Fact on July 16, 2019 denying the Appeal in Part and remanding the review of Setbacks for the Master Planned Development application to the Planning Commission pursuant to LMC 15-6-5(C).
 12. On September 11, 2019, the Planning Commission reviewed the applicant's updated submittal for compliance with 15-6-5(C) Master Planned Development Requirements – Setbacks and directed staff to amend the Findings of Fact to reflect their comments including a new Condition of Approval that the Empire Avenue Multi-Unit Dwelling shall maintain a minimum Front Yard Setback of twenty-five feet (25') excluding an exception for overhangs consistent with the underlying Zone Requirements.
 13. On March 13, 2019, May 8, 2019, August 14, 2019, and September 25, 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 May 4, 2019, August 10, 2019, and September 25, 2019 according to requirements of the Land Management Code.
 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 Norfolk Avenue and Woodside Avenue. This setback reduction will not result in increased density.
16. Upon evaluating the Applicant's representations and figures in the Analysis section of the September 11, 2019 Staff Report, which are incorporated herein, and based upon the Planning Commission deliberation after public hearing, the Commission finds that the requested setbacks, except as conditioned below, are necessary to provide desired architectural interest and variation because:
 - a) The desired architectural interest and variation complement existing streetscapes and achieve a site plan consistent with the zone, general plan and sustainability goals. On this site, the desired results are best evaluated from the totality of the architectural characteristics of the entire site plan and the buildings collectively, rather than individually. The proposed setbacks are necessary to achieve broken up massing of multiple buildings rather than one larger mass, the clustering of density towards the center of the site, and the Public plaza space and walkway.
 - b) Building to the larger MPD setbacks on Woodside Avenue is not desired because the result would be inconsistent with the existing buildout on the street and would detract from the character of the neighborhood. The proposed townhouse configuration with smaller setbacks and porches is desired.
 - c) The large public plaza and east-west connection are desired public amenities, which help reduce the overall massing, and the setbacks proposed are necessary for the desired dense site plan which balances affordability, pedestrian connections, open space and variations in building scale.
 - d) The additional 5' Front Setback on Empire Avenue is not necessary as the proposed buildings may be shifted without materially impacting the desired site plan or architecture. Height will still comply with the zone height although perceived height due to the shift of the building pad on the slope will slightly increase.
17. The minimum Setbacks for the proposed Multi-Unit Dwelling on Lot 1 shall be:
 - Front Yard: 25 feet (25')
 - Side Yard: 10 feet (10')
 - Rear Yard 10 feet (10')
18. 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. An additional purpose of the Setback Reduction is to accommodate a utility easement for Lot 1 (1330 Empire Avenue).

19. 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

Conclusions of Law:

1. The MPD, as approved and conditioned on May 22, 2019, and as further approved and conditioned below, complies with the required Findings and Conclusions A-O pursuant to Land Management Code Section 15-6-6(A-O).

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 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.
3. All conditions of the original May 22, 2019 Planning Commission Master Planned Development application approval apply except as modified by #4 below.
4. The Empire Avenue Multi-Unit Dwelling shall maintain a minimum Front Yard Setback of twenty-five feet (25'). This Front Setback is still eligible for the exception for roof overhangs consistent with the underlying Recreation Commercial (RC) Zone Section 15-2.16-3(D)(4).



John Phillips

Park City Planning Commission Chair

CC: Hannah M. Tyler, AICP – Senior Planner

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method studio
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PORTLAND, OR 97209
PHONE (503) 522-4422

consultant:

PROGRESS SET
NOT FOR
CONSTRUCTION

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project:
PARK CITY
AFFORDABLE
HOUSING -
WOODSIDE PHASE II

drawings: 12/07/19
date: 04/15/2020
revisions: DATE
1 12/03/19

title:
Key Plan

sheet:

A9014

MFD APPLICATION

SITE PLAN LEGEND

- EMPIRE TOWNHOMES - (6) 3 BEDROOM UNITS
- WOODSIDE TOWNHOMES - (6) 3 BEDROOM UNITS
- STACKED CONDOS (2 LEVELS + PARKING)
- STACKED CONDOS (2 LEVELS + PARKING)
- EXISTING HISTORIC HOME
- ADJACENT RESIDENTIAL PROPERTIES

UNIT COUNTS (FLATS)

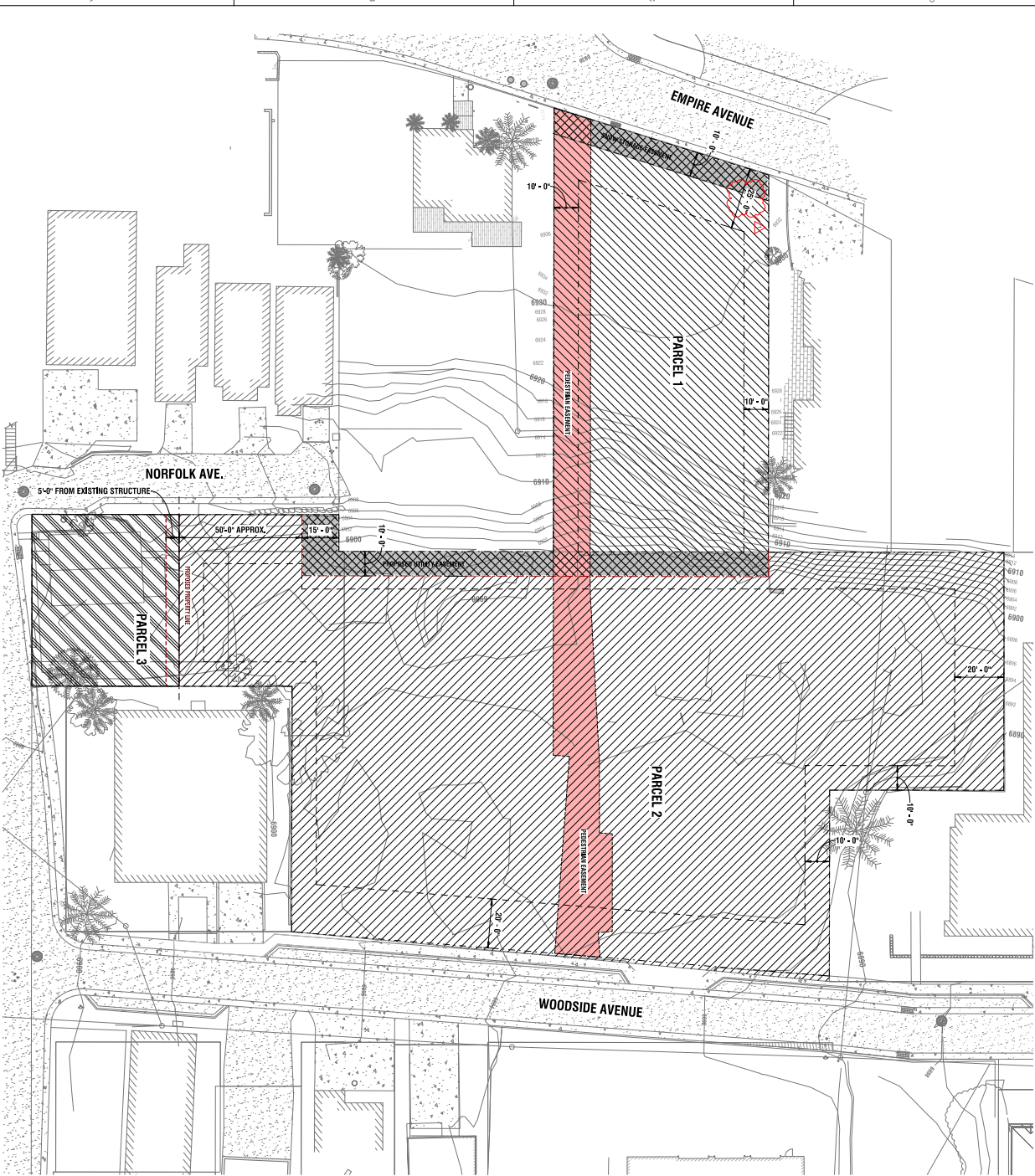
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Unit 3	10
Unit 4	10
Unit 5	10
Unit 6	10
Unit 7	10
Unit 8	10
Unit 9	10
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Unit 11	10
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Unit 14	10
Unit 15	10
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Unit 91	10
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Unit 93	10
Unit 94	10
Unit 95	10
Unit 96	10
Unit 97	10
Unit 98	10
Unit 99	10
Unit 100	10

UNIT COUNTS (TOWNHOMES)

Name	Count
Unit 1	1
Unit 2	1
Unit 3	1
Unit 4	1
Unit 5	1
Unit 6	1
Unit 7	1
Unit 8	1
Unit 9	1
Unit 10	1
Unit 11	1
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Unit 94	1
Unit 95	1
Unit 96	1
Unit 97	1
Unit 98	1
Unit 99	1
Unit 100	1

KEY PLAN
1" = 20'-0"

BUILDABLE AREA - 25'-0" PERIMETER SETBACKS



LOT SIZES		
Space type	Area	Percentage of Site
Lot Sizes		
Parcel 1	10,735 SF	25.51%
Parcel 2	10,735 SF	25.51%
Parcel 3	10,735 SF	25.51%
Grand total	32,205 SF	100.21%

SITE PLAN LEGEND	
	PROPERTY LINE
	PROPOSED PROPERTY LINE
	SETBACK LINE
	PROPOSED OR EXISTING EASEMENT
	PROPOSED EASEMENT SETBACK

PROGRESS SET
NOT FOR
CONSTRUCTION

method studio
3031 N. 40TH AVE.
SUITE 100
DENVER, CO 80212
PHONE: (303) 733-4432

consultant:

project:
PARK CITY
AFFORDABLE
HOUSING -
WOODSIDE PHASE II

PROJECT:	12/20/19
DATE:	04/20/2020
REVISIONS	DATE
1	WFO Update 12/20/19

file:
Lot Sizes

sheet:

A903

WFO APPLICATION

consultant:

project:

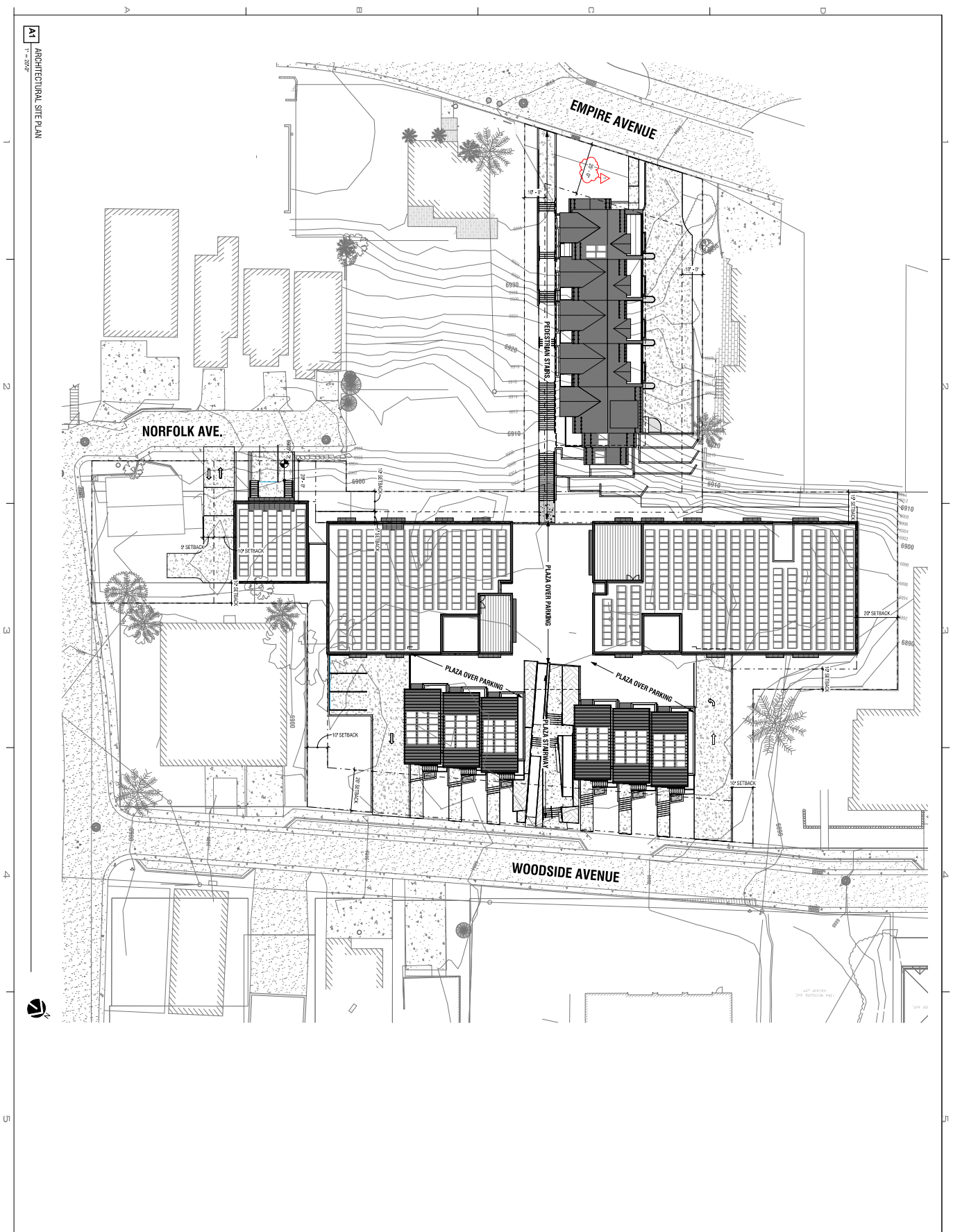
**PARK CITY
AFFORDABLE
HOUSING -
WOODSIDE PHASE II**

project#:	170755
date:	04/25/2019
REVISIONS	DATE
1	MPO Update 12/03/19

title:
**Architectural
Site Plan**

sheet:

MPD APPLICATION



consultant:

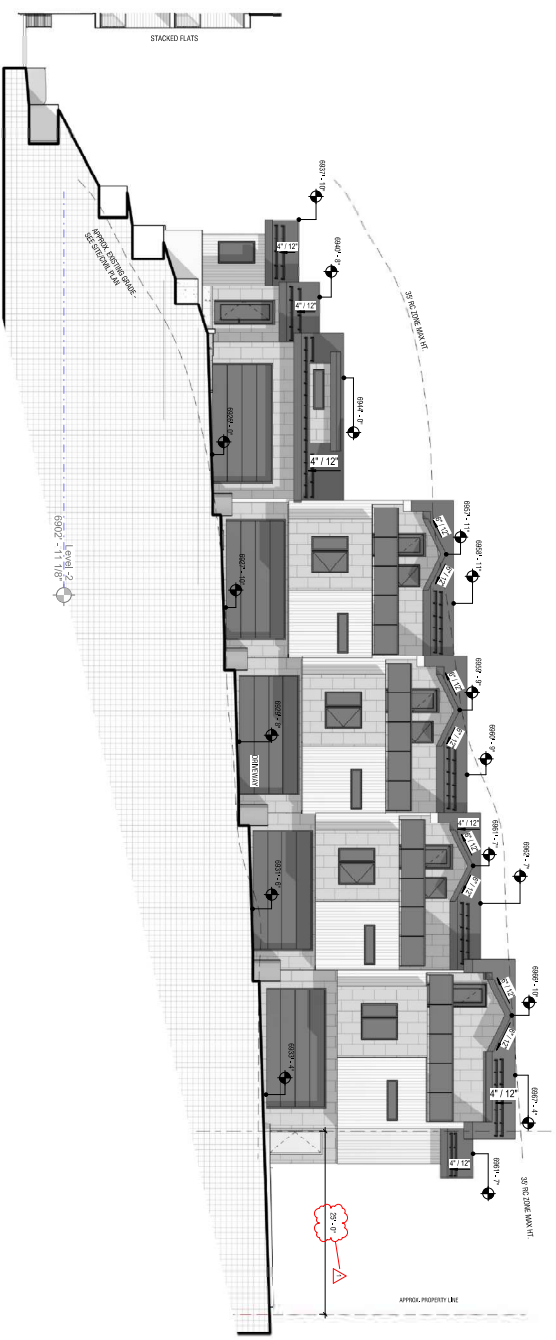
THE DESIGN SHOWN AND DESCRIBED HEREIN INCLUDES ALL THE NECESSARY DRAWINGS, SPECIFICATIONS AND DETAILS THEREOF. ANY PROPOSAL THAT CANNOT BE COMPLETED OR COMPLETED AT A COSTED IN PRICE OR IN PART ATTRIBUTED TO THE AND EXPRESSLY IN THE PRESENTATION REQUIREMENTS OF THE STUDY.

project#: 17-0755	
date: 04/15/2019	
	REVISIONS
1	DATE
MPD Update	12/03/19

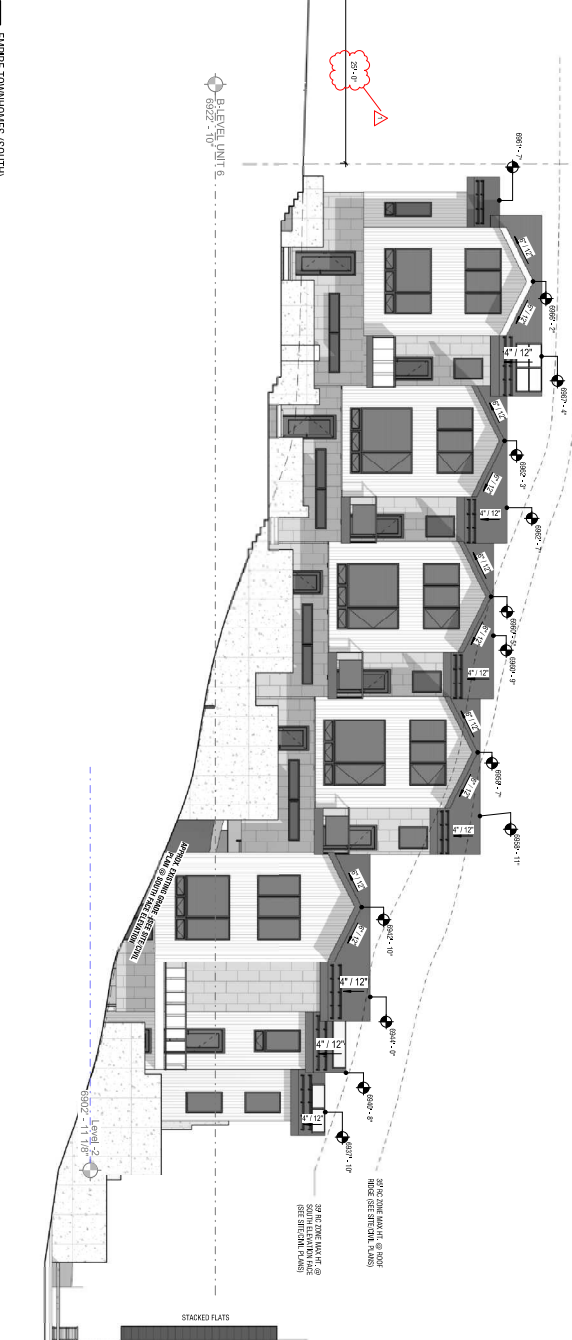
sheet:

MPD APPLICATION





MATERIAL LEGEND	
	WOOD SIDING
	CONCRETE
	METAL PANEL
	METAL PANEL
	METAL PANEL



PROGRESS SET
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CONSTRUCTION

method studio
350 W. ASHBLANE, SUITE 101
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consultant:

project:
PARK CITY
AFFORDABLE
HOUSING -
WOODSIDE PHASE II

project#:		170755
date:		04/25/2016
REVISIONS		DATE
1		MPD Updates
		12/03/19

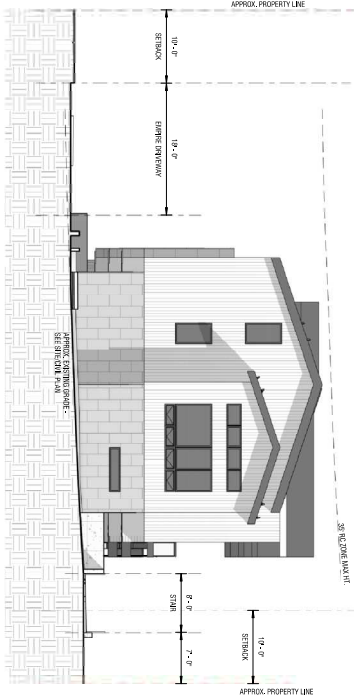
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Exterior
Elevations -
Empire

sheet:
A916

MPD APPLICATION

MATERIAL LEGEND

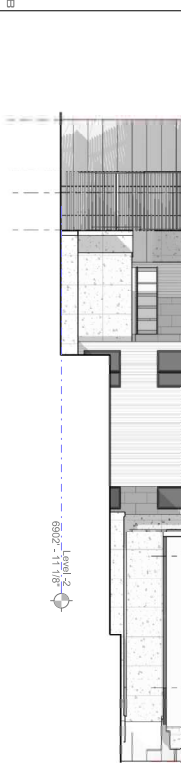
- WOOD SIDING
- CONCRETE
- METAL PANEL
- METAL PANEL
- METAL PANEL



B3 EMPIRE TOWNHOMES (WEST)
1/8" = 1'-0"



B1 EMPIRE TOWNHOMES (EAST)
1/8" = 1'-0"



PROGRESS SET
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project:

PARK CITY
AFFORDABLE
HOUSING -
WOODSIDE PHASE II

PROJECT: 12.07.25
DATE: 04/15/2025
REVISIONS DATE

title:
Exterior
Elevations -
Empire

sheet:

A917

MPD APPLICATION

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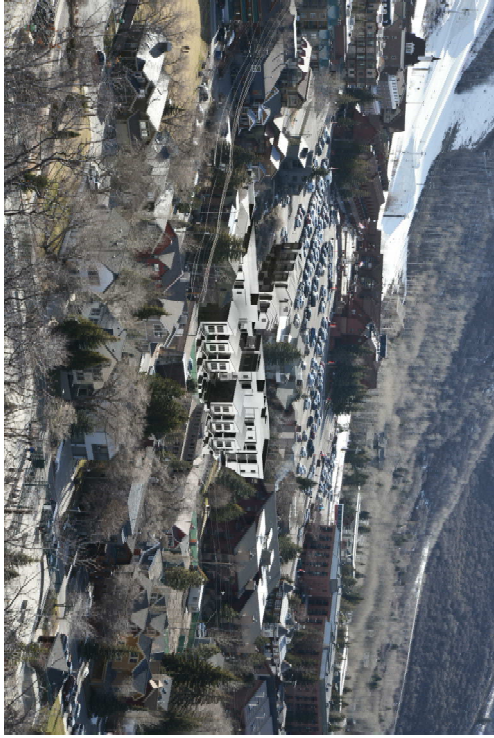
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DATE:	04/15/2020
REVISIONS:	DATE
1	MPD Update 12/03/19

title:
Context
Renderings

sheet:

A930

MPD APPLICATION



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consultant:

PROGRESS SET
NOT FOR
CONSTRUCTION

project:
PARK CITY
AFFORDABLE
HOUSING -
WOODSIDE PHASE II

PROJECT:	12.07.16
DATE:	04/15/2019
REVISIONS	DATE
1	MPC Update 12/03/19

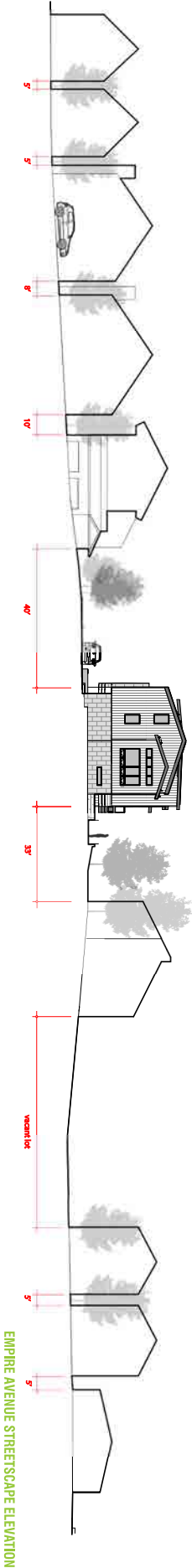
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Context
Renderings

sheet:

A931

MPC APPLICATION





PARK CITY HOUSING - WOODSIDE PHASE II
PARK CITY, UTAH

12.03.2019





PARK CITY HOUSING - WOODSIDE PHASE II
PARK CITY, UTAH

12.03.2019





EMPIRE TO PARK AVENUE SECTION

Exhibit D – [link to Proposed Woodside Park Phase II Plans](#)

Exhibit E – [link to March 27, 2019 Planning Commission Work Session Staff Report](#)

Exhibit F – [link to March 27, 2019 Planning Commission Meeting Minutes \(page 2\)](#)

Exhibit G – [link to May 22, 2019 Planning Commission Staff Report](#)

Exhibit H – [link to May 22, 2019 Planning Commission Meeting Minutes \(page 3\)](#)

Exhibit I – [link to June 6, 2019 City Council referral of the Appeal to the Board of Adjustment](#)

**Exhibit J – [link to June 6, 2019 City Council Minutes](#)
[\(page 9\)](#)**

Exhibit K – [link to July 16, 2019 Board of Adjustment Staff Report](#)

Exhibit L – [link to July 16, 2019 Minutes \(DRAFT\)](#)

Exhibit M – [link to August 28, 2019 Planning Commission Continuation Staff Report](#)

Exhibit N – [link to September 11, 2019 Planning Commission Staff Report](#)

Exhibit O – [link to September 11, 2019 Planning Commission Minutes \(page 10\)](#)