



**PARK CITY BOARD OF ADJUSTMENT MEETING
SUMMIT COUNTY, UTAH
December 7, 2021**

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, December 7, 2021.

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 August 17, 2021.
Consideration to Approve the Board of Adjustment Meeting Minutes from August 24, 2021.
Consideration to Approve the Board of Adjustment Meeting Minutes from November 16, 2021.
[08.17.2021 Board of Adjustment Minutes - Pending Approval](#)
[08.24.21 Board of Adjustment - Minutes - Pending Approval](#)
[11.16.21 - Minutes - Pending Approval](#)

3.PUBLIC COMMUNICATIONS

4.STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

WORK SESSION - 5:00 PM

Board Member Training
[LWH OPMA PowerPoint 2021](#)

5.REGULAR AGENDA

- 5.A. 1. Resolution: Consideration of a resolution authorizing electronic meetings and hybrid meetings with an anchor location.
A) Action
[BOA 12.07.2021 Draft Rule-Resolution re Electronic Meeting](#)

6.ADJOURN

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.

***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 AUGUST 17, 2021**

BOARD MEMBERS IN ATTENDANCE: Chair Ruthie Gezelius-Chair, Jennifer Franklin, Hans Fuegi, Dave Robinson, Stephanie Wilson, Mary Wintzer

STAFF: Browne Sebright, City Planner

1. ROLL CALL

Chair Ruthie Gezelius called the meeting to order at 5:00 p.m.

2. MINUTES APPROVAL

A. Consideration to Approve the Board of Adjustment Meeting Minutes from January 26, 2021.

MOTION: Board Member Franklin moved to APPROVE the Minutes of January 26, 2021, as written. Board Member Fuegi seconded the motion. The motion passed with the unanimous consent of the Board.

3. PUBLIC COMMUNICATIONS

No ecomments were submitted and no hands were raised on Zoom.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

There were no Board communications or disclosures.

5. CONTINUATIONS

There were no continuations.

6. REGULAR AGENDA

A. 45 Hillside Avenue – Variance – The Applicant Requests Variances to the Front Setback Requirements in the Historic Residential-1 (HR-1) Zoning District. PL-21-04861.

City Planner, Browne Sebright, reported that he joined the Planning Department in April 2021. He presented the staff report and stated that the applicant is proposing a

subterranean detached single-car garage on the front of the property. It is a non-historic single-family dwelling that does not have any existing off-street parking. The applicants are proposing to add parking to the property to bring it closer into compliance with the Land Management Code. They are requesting variances to the front setback, which is normally 10 feet and locate an accessory building in front of the primary structure. The proposal complies with the requirements of the HR-1 Zoning District with the exception of the variances being sought.

Mr. Sebright reported that the property is an uphill lot in Old Town at the intersection of Hillside and Daly Avenues. One of the features of the site is that the Hillside Avenue right-of-way is east of where the road is located. As a result, there is public right-of-way in what appears to be the front portion of the property. A photo showing the view of the property from the street was displayed. The proposal is to locate a partially subterranean single-car garage in the front setback. A 12-foot driveway will be located within the Hillside Avenue right-of-way. A separate Conditional Use Permit ("CUP") will be required for the addition of the driveway and the associated retaining walls. The existing elevation includes a small shed in front of the property. The proposal was found to comply with the variance criteria.

The five variance review criteria were identified as they appear in the staff report along with an analysis of the proposal. Staff recommended that the Board conduct a public hearing and continue the item to August 24, 2021, at which time final action should be taken. It was noted that a Conditional Use Permit will also be required for development on steep slopes as the front yard is quite steep. Mr. Sebright clarified that his understanding was that the applicants are pursuing the request since without it there would be nothing to pursue with the steep slope CUP. They would not otherwise be proposing any other changes to the right-of-way that require a separate CUP.

The proposed garage will be approximately 22 feet deep and 15 feet wide. Caitlyn Barhorst identified herself as the Project Manager and stated that the dimensions of the garage were not proposed to house the garbage cans. The 15-foot width, however, will allow for space for garbage cans to be stored inside if desired by the Board. Another option was to construct a small enclosure alongside the driveway. She explained that a variance will run with the property and a CUP is a more conditional use that has a different set of rules and requirements. As a result, they believed the variance process would be the best place to start.

A question was raised regarding the source of the information regarding the date the home was built. Ms. Barhorst stated that the property was not designated on the Historic Sites inventory. The source of the information was the Summit County Recorder's Office. There was also an inquiry regarding the location of the shed and whether it is adjacent to the City-owned property and/or on the adjacent lot. The question was whether the variance was granted or if it is on the subject property. Mr. Sebright's understanding was that the shed is located on the City right-of-way. It was requested that there be clarification prior to the next meeting regarding the location

of the property line. Staff and the applicant were complimented on the quality of the photographs and drawings, which made it easy to understand the application.

Mr. Sebright stated that they spoke with the Development Review Committee who did not have concerns with the proposed location on the hillside. The potential need for an Encroachment Agreement was discussed. It would specify that if the road were ever extended to encompass the full platted right-of-way, the driveway would be the applicant's responsibility to remove.

Further clarification was desired as to whether there is a Utility Easement and if the power/phone line would need to be relocated. The image seemed to make it appear wider than looking at it from the right side. Ms. Barhorst stated that when they began the process, they engaged PacifiCorp and it appeared that the cost of relocating the power pole would be borne by the applicant. However, within the last three weeks, they have replaced the pole and identified the steps required to remove the old one as it is angled toward the property. The power pole to be installed is located further south and closer to the manhole on the site, which would leave more space for the proposed driveway.

Chair Gezelius opened the public hearing. There were no public comments. The public hearing was closed.

MOTION: Board Member Robinson moved to continue the matter to August 24, 2021. The motion was seconded by Board Member Fuegi. The motion passed with the unanimous consent of the Board.

B. 91 King Road – Variance – The Applicant Requests Variances to the Minimum Lot Size and Front and Side Setback Requirements in the Historic Residential – Low Density (HRL) Zoning District). PL-21-04829.

Chair Gezelius opened the public hearing. There were no public comments. The public hearing was closed.

MOTION: Board Member Fuegi moved to continue the matter to August 24, 2021. The motion was seconded by Board Member Robinson. The motion passed with the unanimous consent of the Board.

7. ADJOURN

MOTION: Board Member Wintzer moved to adjourn. The motion was seconded by Board Member Franklin. The motion passed with the unanimous consent of the Board.

Board of Adjustment Meeting
August 17, 2021

The Board of Adjustment Meeting adjourned at 5:30 p.m.

Approved by _____
Randy Scott, Chair
Historic Preservation Board

PENDING APPROVAL



**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF AUGUST 24, 2021**

BOARD MEMBERS IN ATTENDANCE: Chair Ruthie Gezelius-Chair, Jennifer Franklin, Hans Fuegi, Dave Robinson, Mary Wintzer

STAFF: Browne Sebright, City Planner; Mark Harrington, City Attorney;

1. ROLL CALL

Chair Ruthie Gezelius called the meeting to order at 5:00 p.m. and noted that all Board Members were present.

2. MINUTES APPROVAL

3. PUBLIC COMMUNICATIONS

No ecomments were submitted and no hands were raised on Zoom.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

There were no Board communications or disclosures.

5. CONTINUATIONS

There were no continuations.

6. REGULAR AGENDA

- A. 45 Hillside Avenue – Variance – The Applicant Requests Variances to the Front Setback Requirements in the Historic Residential-1 (HR-1) Zoning District. PL-21-04861.**
- B. 91 King Road – Variance – The Applicant Requests Variances to the Minimum Lot Size and Front and Side Setback Requirements in the Historic Residential – Low Density (HRL) Zoning District). PL-21-04829.**

The above two items were discussed together.

(audio starts here)** Dave Robinson raised a question regarding how granting the requested variances will help given that there is no definitive time frame in terms of new construction. Once the variances are granted, the property could be sold. He commented that there is nothing that requires the property to be developed or reconstructed to come closer into compliance. It would seem that granting the variances is putting the cart before the horse in that per the norm, an applicant will have a building design and go through the process. At that time, they will seek variances if needed. New construction will bring the property into compliance with the exception of the square footage. There was some uncertainty expressed as to how granting the variance improves the existing situation.

City Planner, Browne Sebright, reported that the application is also associated with the plat amendment. The plat amendment is for this property and the neighboring parcel. 95 King Road previously received a similar variance for lot size, specifically because the lots are smaller anticipated by the current zoning. Because there are residual lot lines, the applicants need to go through the plat amendment process prior to future development taking place. Once both of the properties have the correct variances in place prior to the plat amendment, the applicants can determine what kind of redevelopment is appropriate for the property.

A question was raised with regard to the side yard setbacks. It was noted that the rules have changed four times since the homes were built on the two lots and obviously the setback is inadequate at 1.3 feet. It is not useful for snow storage, privacy, access, or maintenance. It was suggested that the Board be sure that whatever is developed will be an improvement in the setback as it will benefit the neighbors. If the property is sold, the new owners will have to abide by the requirement. Mr. Sebright clarified that the variances for lot size and width will run with the land while the variance for setbacks is specific to the existing structure.

A question was raised regarding whether the current owners were aware of the inconsistencies with the Code. The understanding was that the owners were planning to rent up until the design work is complete. There was no indication that the applicants plan to “flip” the property.

Chair Gezelius noted that historically the Historic Residential-Low Density (“HRL”) was created with the existing varying lot sizes and was not vacant. As a result, there has been confusion regarding the goals of the HRL and that they were trying to reduce the density in steeper, high neighborhoods and not have as many nightly rentals and high traffic on dangerous streets.

Board Member Franklin asked if the plat amendment should have remained in the appropriate zone with respect to lot size where it would be in compliance. It was noted that there are conditions in the Code for lots that are substandard. In the current Code it was acknowledged that there will be substandard lots. Nothing would have ever been required to be demolished because it was on an existing smaller parcel. At the same

time, smaller parcels generally have not been granted size exceptions for dwellings. It was clarified that the home is eligible for demolition by virtue of its young age. The property is still the same square footage but in order to demolish a structure and build a new one, there must be a legal lot of record. Currently, there are 100-year old lot lines shown on the original plat. Those lot lines must go through the process of being removed so that there is one lot of record. Chair Gezelius commented that for years they have tried to clean up leftover lot lines and have made significant headway.

In studying the five variance criteria, a Board Member struggled with the idea that they are meeting the criterion based on some future action. He was not comfortable with that. It was noted that no future additions to the existing structure may encroach into the required setbacks. Any future owner will have to apply with the setback requirements. Mr. Sebright commented that lots that are unusually small or large will not appear specifically in the HRL zone and should be evaluated in the context of the street they are on. Condition number two also specifies that if anything has been demolished it must be rebuilt as it was previously.

Chair Gezelius opened the public hearing. There were no public comments. The public hearing was closed.

Board Member Fuegi commented that anything that is built there will likely be an improvement over what exists currently.

MOTION: Board Member Fuegi moved to approve the new, subterranean single-car garage in the Front Setback subject to the following:

Findings of Fact

1. The property is located at 45 Hillside Avenue in the Historic Residential-1 (HR-1) Zoning District.
2. The HR-1 zone is characterized by historic and contemporary homes on one (1) to two (2) lot combinations.
3. The property consists of 6,575 square feet.
4. There is an existing ~1,408 square foot Single Family Dwelling on the property. It is a non-historic site.
5. The existing house is set back from the front property line by 12 feet to 22 feet. It is set back from the edge of asphalt on Ontario Avenue by ~30 feet.
6. The owner currently parks in an asphalt parking pad parallel to Hillside Avenue and accesses the house via stairs and paths. This space is not

approved private parking for 45 Hillside Avenue, but, rather, it is located in the City ROW and is considered public parking.

7. The applicant is requesting a Variance to Land Management Code ("LMC") Sections 15-2.2-3(F) to reduce the required ten-foot (10') front yard setback to zero feet (0') and to Section 15-2.2-3(G)(6) to locate a Detached Accessory Building in front of the front façade of the Main Building, to allow for a single car garage to be constructed behind the property line and within the Front Yard Setback.
8. If at some point in the future the ROW is re-aligned, the applicant shall be responsible for the removal of the retaining walls and any parking in the ROW at their own expense.
9. 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 as there are circumstances specific to this property that are unique and are not conditions general to the neighborhood such as the width of the platted unbuilt ROW, and the steepness and topography of the slope along Hillside Avenue. (Criteria 1)
10. There are special circumstances attached to this property that do not generally apply to other properties in the same zone. The proposed garage would have to be pushed further into the hill if the Variances are not granted, thus (1) increasing the height and unsightliness of retaining walls, (2) increasing the amount of excavated materials, and (3) increasing the length of the driveway. (Criteria 2)
11. Granting the Variances are essential to the enjoyment of a substantial property right possessed by other property in the same zone. Granting the Variances allows the property owner to construct a Detached Accessory Building (garage) at the street level without severely impacting existing grade, while also alleviating congestion and safety concerns on Hillside Avenue by providing off-street parking. (Criteria 3)
12. The Variances will not substantially affect the General Plan and will not be contrary to the public interest. It is within the public interest to reduce vehicle conflicts on Hillside Avenue. Parked cars are a safety hazard to other cars, delivery vehicles, emergency vehicles, pedestrians, and cyclists utilizing Hillside Avenue. (Criteria 4)
13. In order to construct a garage that meets the required Front Setbacks, the garage would need to be carved into the hill deeper than the proposed garage and require greater excavation to accommodate an uphill

driveway. If the garage were constructed to comply with the LMC, it would not meet the intent of the General Plan.

14. The spirit of the LMC is observed, and substantial justice is done. Granting the Variances will allow the applicant to construct a garage for the Site that will be set back from the edge of the curb by twenty feet, consistent with the required front yard setback outlined in 15-2.2-3 (F). The Variances permit the owner to increase off-street parking in the neighborhood for two properties while reducing the impact of a long driveway, higher retaining walls, and greater excavation of the existing hillside. (Criteria 5)
15. All other LMC-related site and lot criteria, including the other setbacks, height, footprint, parking, uses, etc. will be met.

Conclusions of Law

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 Variances is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
4. The proposal is consistent with the General Plan.
5. The spirit of the zoning ordinance is observed by this application.

Conditions of Approval

1. The Variances are limited to the construction of a single-car garage to be constructed as close to the front property line as possible, as indicated on the plans submitted with this application dated June 23, 2021, unless otherwise approved with an HDDR approval.
2. No portion of the garage shall be used for additional living space.
3. No other structures including decks are allowed in the front setback.
4. The garage interior shall be used for parking. Limited storage is permitted to the extent that it does not preclude the parking of a vehicle. Trash and recycling bins may be stored in the garage.

5. The applicant will need to receive a Conditional Use Permit for Steep Slopes and Permits for Construction in the Right-of-Way prior to the issuance of a building permit.
6. An Administrative Conditional Use Permit for retaining walls exceeding six feet (6') in height in the Front Setback may be required subject to the final design and configuration of the proposed garage.
7. The applicant will need to submit an HDDR application for the proposed design to the Planning Department for review for compliance with the Design Guidelines for Historic Districts and Historic Sites prior to the issuance of a building permit for the new construction.
8. If at some point in the future Hillside Avenue is re-aligned, the applicant will be responsible for the removal of retaining walls and parking within the ROW at their sole expense and in an expeditious manner (within 90 days of written notice).
9. The applicant will need to enter into an Encroachment Agreement with Park City Engineering Department for the retaining walls located within the Public Right-of-Way.
10. City Engineer review and approval of all appropriate grading, utility installation, public improvements is a condition precedent to Building Permit issuance. An approved shoring plan is required prior to excavation.
11. Prior to the issuance of a building permit a Construction Mitigation Plan that includes careful consideration of how construction-related parking will be managed shall be submitted to the Building, Engineering, and Planning Departments for review and approval.

The motion died for lack of a second.

MOTION: Board Member Franklin moved to grant Variances 2 and 3 addressing lot size and lot width. The motion was seconded by Board Member Robinson.

Board Member Franklin felt there were too many concerns with the side and front setbacks. City Attorney, Mark Harrington stated that the Board should still consider and discuss findings and reasons for the denial. A Board Member expressed discomfort with not addressing the entire request at one time. Chair Gezelius thought it made more sense from a planning standpoint to address the order outlined. She suggested that they work toward compliance with the Code. It was clarified that if the variances are not granted, the property remains the same. It was suggested that the conditions of

approval include language to address the open-ended approval and perhaps require a condition that action be taken within a certain time period. Mr. Harrington stated that that is controversial in Utah due to the way state law governs the definition of variances. They have typically included a condition specifying that a Building Permit must be similar to the International Building Code and granted within one year for the variance to be effective. The rules for the existing structure do not change with respect to what they can and cannot do in terms of this approval. Mr. Harrington explained that this type of approval cleans up the title in a manner that makes the financing for the property owner for the remodel much more consistent with typical lending and resolves any status issues with the property.

Board Member Franklin was comfortable with variances 2 and 3. If it is truly new construction, what prohibits it from complying with the 2021 Land Management Code once it is constructed and then put the setbacks in place. Planner Sebright commented that any future additions or development on the lot must abide by the current Land Management Code setbacks.

Board Member Robinson expressed concern that they are basing the decision on something that will take place in the future rather than on the five criteria that the Board is supposed to follow. Planner Sebright explained that any future development on the lot is predicated on the plat amendment that will come after the variance. Because a dual lot line exists, there is currently no option for future development. The variance will make way for the removal of the residual lot line so that future development is possible.

Board Member Fuegi was uncomfortable with the fact that it could be indefinite. He suggested that a time limit be imposed. It was suggested that a condition be added to specify that in order for the variance to be effective, a Building Permit must be granted within two years of approval of the variance request. Mr. Harrington did not want the plat amendment to be subject to that condition since it will have its own deadline for the minimum lot area. Chair Gezelius suggested that the condition apply to the side yard. Mr. Harrington stated that any new construction does not require the side yard setback so he considered the condition to be in conflict. Condition number 12 was restated to specify that in order for the side and front yard setback variances to be effective, development must commence within two years.

The motion was restated as follows:

MOTION: Board Member Franklin moved to approve the variance request subject to the following:

Findings of Fact

1. The property is located at 45 Hillside Avenue in the Historic Residential-1 (HR-1) Zoning District.

2. The HR-1 zone is characterized by historic and contemporary homes on one (1) to two (2) lot combinations.
3. The property consists of 6,575 square feet.
4. There is an existing ~1,408 square foot Single Family Dwelling on the property. It is a non-historic site.
5. The existing house is set back from the front property line by 12 feet to 22 feet. It is set back from the edge of asphalt on Ontario Avenue by ~30 feet.
6. The owner currently parks in an asphalt parking pad parallel to Hillside Avenue and accesses the house via stairs and paths. This space is not approved private parking for 45 Hillside Avenue, but, rather, it is located in the City ROW and is considered public parking.
7. The applicant is requesting a Variance to LMC Sections 15-2.2-3(F) to reduce the required ten-foot (10') front yard setback to zero feet (0') and to Section 15-2.2-3(G)(6) to locate a Detached Accessory Building in front of the front façade of the Main Building, to allow for a single car garage to be constructed behind the property line and within the Front Yard Setback.
8. If at some point in the future the ROW is re-aligned, the applicant shall be responsible for the removal of the retaining walls and any parking in the ROW at their own expense.
9. 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 as there are circumstances specific to this property that are unique and are not conditions general to the neighborhood such as the width of the platted unbuilt ROW, and the steepness and topography of the slope along Hillside Avenue. (Criteria 1)
10. There are special circumstances attached to this property that do not generally apply to other Properties in the same zone. The proposed garage would have to be pushed further into the hill if the Variances are not granted, thus (1) increasing the height and unsightliness of retaining walls, (2) increasing the amount of excavated materials, and (3) increasing the length of the driveway. (Criteria 2)
11. Granting the Variances are essential to the enjoyment of a substantial property right possessed by other property in the same zone. Granting the Variances allows the property owner to construct a Detached Accessory Building (garage) at the street level without severely impacting existing

grade, while also alleviating congestion and safety concerns on Hillside Avenue by providing off-street parking. (Criteria 3)

12. The Variances will not substantially affect the General Plan and will not be contrary to public interest. It is within the public interest to reduce vehicle conflicts on Hillside Avenue. Parked cars are a safety hazard to other cars, delivery vehicles, emergency vehicles, pedestrians, and cyclists utilizing Hillside Avenue. (Criteria 4)
13. In order to construct a garage that meets the required Front Setbacks, the garage would need to be carved into the hill deeper than the proposed garage and require greater excavation to accommodate an uphill driveway. If the garage were constructed to comply with the LMC, it would not meet the intent of the General Plan.
14. The spirit of the Land Management Code is observed, and substantial justice is done. Granting the Variances will allow the applicant to construct a garage for the Site that will be set back from the edge of the curb by twenty feet, consistent with the required front yard setback outlined in 15-2.2-3 (F). The Variances permit the owner to increase off-street parking in the neighborhood for two properties while reducing the impact of a long driveway, higher retaining walls, and greater excavation of the existing hillside. (Criteria 5)
15. All other LMC-related site and lot criteria, including the other setbacks, height, footprint, parking, uses, etc. will be met.

Conclusions of Law

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 Variances is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
4. The proposal is consistent with the General Plan.
5. The spirit of the zoning ordinance is observed by this application.

Conditions of Approval

1. The Variances are limited to the construction of a single-car garage to be constructed as close to the front property line as possible, as indicated on the plans submitted with this application dated June 23, 2021, unless otherwise approved with an HDDR approval.
2. No portion of the garage shall be used for additional living space.
3. No other structures including decks are allowed in the front setback.
4. The garage interior shall be used for parking. Limited storage is permitted to the extent that it does not preclude the parking of a vehicle. Trash and recycling bins may be stored in the garage.
5. The applicant will need to receive a Conditional Use Permit for Steep Slopes and Permits for Construction in the Right-of-Way prior to the issuance of a building permit.
6. An Administrative Conditional Use Permit for retaining walls exceeding six feet (6') in height in the Front Setback may be required subject to the final design and configuration of the proposed garage.
7. The applicant will need to submit an HDDR application for the proposed design to the Planning Department for review for compliance with the Design Guidelines for Historic Districts and Historic Sites prior to the issuance of a building permit for the new construction.
8. If at some point in the future Hillside Avenue is re-aligned, the applicant will be responsible for the removal of retaining walls and parking within the ROW at their sole expense and in an expeditious manner (within 90 days of written notice).
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9. The applicant will need to enter into an Encroachment Agreement with Park City Engineering Department for the retaining walls located within the Public Right-of-Way.
10. City Engineer review and approval of all appropriate grading, utility installation, public improvements is a condition precedent to Building Permit issuance. An approved shoring plan is required prior to excavation.
11. Prior to the issuance of a Building Permit, a Construction Mitigation Plan that includes careful consideration of how construction-related

parking will be managed shall be submitted to the Building, Engineering, and Planning Departments for review and approval.

12. In order for the side and front yard setback variances to be effective, development must commence within two years.

Board Member Robinson seconded the amended motion. The motion passed with the unanimous consent of the Board.

7. ADJOURN

MOTION: Board Member Robinson moved to adjourn. Commissioner Franklin seconded the motion. The motion passed with the unanimous consent of the Board.

The Board of Adjustment Meeting adjourned at [REDACTED] p.m.

Approved by _____



**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF NOVEMBER 16, 2021**

BOARD MEMBERS IN ATTENDANCE: Ruthie Gezelius - Chair, Jennifer Franklin, Hans Fuegi, Mary Wintzer

STAFF: Gretchen Milliken, Planning Director; Lillian Lederer, Planner I; Alexandra Ananth, Senior Planner; Mark Harrington, City Attorney

1. ROLL CALL

Chair Ruthie Gezelius called the meeting to order at 5:01 p.m.

2. MINUTES APPROVAL

- A. Consideration to Approve the Board of Adjustment Meeting Minutes from August 17, 2021. Consideration to Approve the Board of Adjustment Meeting Minutes from August 24, 2021.**

There was discussion regarding the Board of Adjustment Meeting Minutes from August 17 and 24, 2021. It was noted that there were inconsistencies on Page 8 with the name of the street address. There was also confusion about the item discussions and the actions taken. The Board directed Staff to review the Meeting Minutes and make clarifications as necessary.

MOTION: Board Member Wintzer moved to CONTINUE approval of the August 17 and 24, 2021 Board of Adjustment Meeting Minutes, to a date uncertain, to allow Staff to make the necessary edits. Board Member Fuegi seconded the motion. The motion passed with the unanimous consent of the Board.

3. PUBLIC COMMUNICATIONS

No eComments were submitted and no hands were raised on Zoom.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

Planning Director, Gretchen Milliken reported that State and City law recently changed as it relates to public meetings and meetings being held virtually without an anchor location. Staff recommended that the Board hold a Special Meeting in December for the purpose of adopting new meeting rules and procedures. The Board discussed possible dates and asked Planning Staff to find an appropriate meeting time.

5. REGULAR AGENDA

A. 316 Ontario Avenue – Modification to a Variance – The Applicant Proposes a Modification to a Variance from the Minimum Lot Size in the Historic Residential Low - Density Zoning District. PL-21-05045.

Planner I, Lillian Lederer presented the Staff Report and stated that the subject property is located at 316 Ontario Avenue in the Historic Residential – Low Density (HRL) Zoning District and is a Landmark Historic Site. The applicant was requesting a modification to a variance from the minimum lot size requirement for the HRL Zone. Planner Lederer explained that the hearing would include a Board of Adjustment review and possible final action. Background information was shared with the Board.

Planner Lederer explained that on October 15, 2019, the Board of Adjustment approved a variance from the front setback to locate a detached garage that faced Ontario Avenue. The proposed application was to modify the scope of the 2019 variance approval to include a variance from the minimum lot size in the HRL Zone to correct an oversight. Planner Lederer shared Lot Plans and the Design Proposal with the Board to provide additional context.

316 Ontario Avenue was designated as a Landmark Historic Site on the Park City Historic Sites Inventory. Planner Lederer explained that the Historic Structure is a cross-wing style home that was constructed circa 1895 and contained no on-site parking. She noted that Historic Structures are exempt from Land Management Code parking requirements. The applicant proposed the detached garage to provide on-site parking along Ontario Avenue. To allow for the construction of a detached garage, the applicant completed several Planning Department approvals following the 2019 Board of Adjustment variance approval, which included the following:

- October 14, 2021:
 - Staff determined that the detached garage complied with the Design Guidelines For Historic Residential Sites and approved the Historic District Design Review;
 - Staff found that the proposal complied with Land Management Code 15-2.1-6, Development on Steep Slopes, and approved a Steep Slope Conditional Use Permit for the detached garage.
- October 28, 2021:
 - The applicant proposed a Plat Amendment to remove remnant lot lines, which the City Council approved. Recordation of the plat was dependent upon the Board of Adjustment approval of the modification to a variance.

Planner Lederer reminded those present that the Board of Adjustment approved a variance to the front setbacks to locate the detached garage along Ontario Avenue on October 15, 2019. However, due to an oversight in the Staff Report, the minimum lot size

was not addressed as part of the Board of Adjustment review. The applicant was requesting that the Board of Adjustment also approve a variance for the minimum lot size. In all other requirements, the proposed project complied with the Land Management Code 15-2.1-3, which outlined lot and site requirements.

In order to grant the requested variance to the minimum lot size required in the HRL Zone, the Board of Adjustment would need to find that all five criteria outlined in the Land Management Code 15-10-8(C) were met. Planner Lederer outlined the five criteria for the Board of Adjustment:

- Criteria 1: Literal enforcement of the Land Management Code would cause an unreasonable hardship for the applicant that was not necessary to carry out the general purpose of the Land Management Code;
- Criteria 2: There were special circumstances attached to the property that would not generally apply to other properties in the same zone;
- Criteria 3: Granting the modification to a variance was essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- Criteria 4: The modification to a variance to include the minimum lot size would not substantially affect the General Plan and would not be contrary to the public interest; and
- Criteria 5: The spirit of the Land Management Code was observed and substantial justice was done.

Planner Lederer explained that one of the Conditions of Approval states that the applicant must enter into an Encroachment Agreement with the City for the retaining walls and driveway access located over the unbuilt public right-of-way. Adjacent property owners were noticed 14 days prior to final action and at the time of the Board of Adjustment Meeting, there had been no public comments related to the application. She explained that the Board of Adjustment may:

- Approve the modification to a variance;
- Deny the modification to a variance and direct Planning Staff to make findings for the denial; and
- Request additional information and continue the discussion to a date certain.

Staff recommended that the Board of Adjustment review the proposal for a modification to a variance from the minimum lot size, conduct a public hearing, and consider approval based on the Findings of Fact, Conclusions of Law, and Conditions of Approval listed in the Staff Report.

Board Member Wintzer noted that there are currently two homes on Ontario Avenue where garages were turned into living spaces. Planner Lederer explained that there is a condition in the Plat Amendment and the Steep Slope Conditional Use Permit that specified that the applicant was unable to turn the detached garage into a living space. Chair Gezelius wondered how that would be enforced. Planner Lederer noted that it would be regulated through a building inspection when the garage was complete. Chair Gezelius asked if a sewer connection would be permitted. Planner Lederer stated that it would not be permitted.

Board Member Wintzer made note of the landing as the stairs came down on top of the garage. She assumed the landing was as wide as the garage and expressed concerns that it may become a deck in the future. Planner Lederer noted that the garage was as narrow as it could be. The design was approved through the Historic District Design Review process. Board Member Wintzer wondered if it would be possible to create a Condition of Approval that stated the landing could not be used as a deck. Planner Lederer explained that it could be added.

Chair Gezelius wondered where the Condition of Approval should be added. Board Member Wintzer suggested adding additional language to Condition of Approval #2, which stated, 'No portion of the garage shall be used for additional living space.' Chair Gezelius felt it would be more appropriate to add another numbered condition rather than trying to modify Condition of Approval #2 or Condition of Approval #3. Board Member Wintzer explained that the new Condition of Approval #4 could read:

- The walkway on the top of the garage is expressly used as a passageway to the stairs and can in no way be used as a party deck.

Chair Gezelius suggested alternate language for Condition of Approval #4:

- The walkway above the garage is defined as being used to access the garage and may not be converted to a party deck space.

Board Member Franklin noted that there were differences in the Condition of Approval language in the current application versus the 2019 application. Planner Lederer confirmed this and explained that there was a condition that reminded the applicant that all other conditions from previous planning applications would apply.

The applicant's representative, Bruce Taylor from Summit Design Group explained that the applicant wants to build a detached garage to remove his vehicle from Ontario Avenue. He understood that the variance that was recently approved had erased some interior property lines. There was an oversight, and it was not realized that the resulting property was substandard. It was not large enough to meet the directives of the City. Mr. Taylor explained that the landing was not intended to be usable space.

Board Member Fuegi had a question related to the language on Page 40 and Page 41 of the Staff Report. He noted that there was a grammatical error in Condition of Approval #4. The condition stated the following:

- This approval will expire on October 14, 2022, if a Building Permit has not been issued by the Building Department before the expiration date unless the applicant submits an extension that requires in writing to the Planning Department and the Planning Director approves an extension of this approval.

Planner Lederer explained that the language could be modified. Chair Gezelius suggested that the language on Pages 40 and 41 of the Staff Report state:

- This approval will expire on October 14, 2022, if a Building Permit has not been issued by the Building Department before the expiration date. The applicant has the option to submit an extension in writing, as required by the Planning Department and the Planner Director, which could result in an extension.

City Attorney, Mark Harrington noted that the Conditions of Approval in that portion of the Staff Report were from October 14, 2021, and the edits could be done internally. Senior Planner, Alexandra Ananth, explained that it could be documented as a scrivener's error and the Planning Department could correct the language.

MOTION: Board Member Franklin moved to APPROVE the Modification to a Variance from the required minimum lot size, citing the following Findings of Fact, Conclusions of Law and Conditions of Approval, with the addition of another Condition of Approval and the revision of the scrivener's error on Page 40 and Page 41 of the October 14, 2021, notes.

Findings of Fact

1. The property is located at 316 Ontario Avenue in the Historic Residential – Low Density (HRL) Zoning District.
2. The HRL Zoning District is characterized by historic and contemporary homes on one (1) to two (2) lot combinations.
3. There is an existing ~666 square foot Single Family Dwelling on the property. It is designated as a Landmark Site on the City's Historic Sites Inventory.
4. The property consists of 2,444 square feet. The minimum Lot size in the HRL Zoning District is 3,750 square feet. The Applicant requests a variance for this smaller Landmark Historic Site.
5. The existing Landmark Structure is set back from the front property line by ~25 feet and set back from the edge of asphalt on Ontario Avenue by ~57 feet.

6. The owner currently parks in an asphalt parking pad parallel to Ontario Avenue and accesses the Landmark Structure via stairs and paths. The current parking space is not approved private parking for 316 Ontario Avenue, but rather is in the Ontario Avenue right-of-way (ROW) and is public parking.
7. The applicant is requesting a variance from LMC Section 15-2.1-3(A) to exempt the project from the minimum Lot Area of 3,750 square feet, to allow for a single car garage to be constructed behind the property line and within the Front Yard Setback.
8. 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 as there are circumstances specific to this property that are unique and are not conditions general to the neighborhood such as the width of the platted unbuilt ROW which appears as the property's front yard (the distance of the front property line from paved Ontario Avenue), the steepness and topography of the slope along Ontario Avenue, and the fact that the residence is a Landmark Site.
9. Variance Criteria 2: There are special circumstances attached to this property that do not generally apply to other Properties in the same zone. The proposed garage would have to be pushed further into the hill if the modification is not granted, thus (1) increasing the height and unsightliness of retaining walls, (2) increasing the amount of excavated materials, and (3) increasing the length of the driveway.
10. Variance Criteria 3: Granting the modification to the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. Granting the modification allows the property owner to construct a detached garage at the street level without severely impacting existing grade, while also alleviating congestion and safety concerns on Ontario Avenue by providing off-street parking.
11. Variance Criteria 4: The modification to the variance will not substantially affect the General Plan and will not be contrary to public interest. It is within the public interest to reduce vehicle conflicts on Ontario Avenue. Parked cars are a safety hazard to other cars, delivery vehicles, emergency vehicles, pedestrians, and cyclists utilizing Ontario Avenue. To construct a garage that meets the required Front Setback, the garage would need to be carved into the hill deeper than the proposed garage and require greater excavation to accommodate an uphill driveway. If the garage were constructed to comply with the LMC, it would not meet the intent of the General Plan.
12. Variance Criteria 5: The spirit of the Land Management Code is observed, and substantial justice is done. Granting the variance from the minimum Lot size will allow the applicant to construct a detached garage for the Landmark Site that will be set back from the edge of curb by thirty feet, consistent with the required front yard setback outlined in LMC Section 15-2.1-3(F). The variance from the minimum Lot size permits the owner to increase off-street parking in the neighborhood for two properties while reducing the impact of a long driveway, higher retaining walls, and greater excavation of the existing hillside.

13. All other LMC-related site criteria, including Side and Rear setbacks, height, and footprint are met.
14. The Board of Adjustment approved a variance to the Front Setback on October 15, 2019. Staff approved a Historic District Design Review and Steep Slope Conditional Use Permit on October 14, 2021. City Council approved a Plat Amendment on October 28, 2021.

Conclusions of Law

1. The proposed detached garage complies with the Land Management Code Chapter 15-2.1, Historic Residential – Low-Density Zoning District.
2. The proposed detached garage complies with the Land Management Code Section 15-13-2, Design Guidelines For Historic Residential Sites.
3. Literal enforcement of the HRL Zoning District requirements for this property causes an unreasonable hardship that is not necessary to carry out the general purpose of the Land Management Code.
4. There are special circumstances attached to the property that do not generally apply to other properties in the same Zoning District.
5. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same Zoning District.
6. The variance from the minimum Lot size is consistent with the General Plan.
7. The spirit of the Land Management Code is observed

Conditions of Approval

1. The variance is limited to the construction of a single-car detached garage to be constructed as close to the front property line as possible, as indicated on the plans submitted with this application dated October 25, 2021.
2. No portion of the garage shall be used for additional living space.
3. No other structures, including decks, are allowed in the front setback.
4. The walkway above the garage is defined as being used to access the garage and may not be converted to a party deck space.
5. The garage interior shall be used for parking. Limited storage is permitted to the extent that it does not preclude parking of a vehicle. Trash and recycling bins may be stored in the detached garage.

6. The applicant shall install a new water line to the house from the street during construction of the detached garage to the satisfaction of the Park City Public Utilities Department.
7. If at some point in the future Ontario Avenue is re-aligned, the applicant will be responsible for the removal of retaining walls and parking within the ROW at their sole expense and in an expeditious manner (within 90 days of written notice).
8. The applicant must enter into an Encroachment Agreement for the retaining walls and driveway located within the Public Right-of-Way.
9. City Engineer review and approval of all appropriate grading, utility installation, public improvements are conditions precedent to building permit issuance. An approved shoring plan is required prior to excavation.
10. Prior to the issuance of a building permit a Construction Mitigation Plan that includes careful consideration of how construction-related parking will be managed shall be submitted to the Building, Engineering, and Planning Departments for review and approval.
11. Site plans and building designs must resolve snow release issues to the satisfaction of the Chief Building Official.
12. 316 Ontario Avenue does not have a culinary water meter or sanitary sewer lateral. As part of the plat application, the Engineering Department requires that the Applicant submit a site plan showing utilities, grading, and storm drainage design and calculations for review and approval prior to submitting a building permit.
13. All other Conditions of Approval from the Historic District Design Review, Steep Slope Conditional Use Permit, Plat Amendment, and any other previous planning applications shall apply.

Board Member Fuegi seconded the motion.

VOTE: The motion passed with the unanimous consent of the Board.

6. ADJOURN

MOTION: Board Member Franklin moved to adjourn. Board Member Fuegi seconded the motion. The motion passed with the unanimous consent of the Board.

The Board of Adjustment Meeting adjourned at 6:05 p.m.

Approved by _____
Ruthie Gezeliuss, Board of Adjustment Chair

Board of Adjustment Agenda Item Report

Meeting Date: December 7, 2021

Submitted by: Julie Schultz

Submitting Department: Planning

Item Type: Work Session

Agenda Section:

Subject:

Board Member Training

Suggested Action:

Attachments:

[LWH OPMA PowerPoint 2021](#)

An aerial photograph of a mountain town, likely Park City, Utah, covered in a thick layer of snow. The town is nestled in a valley, with snow-covered mountains rising in the background. The houses and buildings are densely packed, and their roofs are covered in snow. The overall scene is serene and wintry.

Annual Training

Open and Public Meetings Act





Utah Open And Public Meetings Act

Utah Code §§ 52-4-101 to 305



OPMA

MEETINGS of a
PUBLIC BODY are open
to the public, unless an
EXCEPTION is available
under the Act that allows
the meeting to be
CLOSED.



Meetings

MEETINGS of a PUBLIC BODY are open to the public, unless an EXCEPTION is available under the Act that allows the meeting to be CLOSED.

MEETINGS

- Convening of
- At least a quorum
- To discuss, receive comments, or act on a matter over which the Board has jurisdiction or advisory power.



Meetings

INCLUDE:

- Retreats
- Workshops
- Field trips
- Electronic meetings

DO NOT INCLUDE:

- Chance meetings
- Social gatherings
- When no quorum is present



Public Body

MEETINGS of a **PUBLIC BODY** are open to the public, unless an EXCEPTION is available under the Act that allows the meeting to be CLOSED.

PUBLIC BODY

Any local administrative, advisory, executive, or legislative body which:

- Consists of two or more persons;
- Spends, distributes, or is supported by tax money;
- Authority to make decisions about the public's business (the includes advisory boards or groups)





Public Notice

Requirements of the Open and Public Meetings Act



Notice

PUBLIC NOTICE

HOW?

- Post
- Publish

WHAT?

- Annual meeting schedule
- Every meeting

EMERGENCY MEETINGS

MUST BE:

- **Posted** at the principal office or where the meeting will be held.
 - o (Except for electronic meetings without an anchor location.)
- **Published** on the Utah Public Notice **website**.



Notice

PUBLIC NOTICE

HOW?

- Post
- Publish

WHAT?

- Annual meeting schedule
- Every meeting

EMERGENCY MEETINGS

ANNUAL MEETING SCHEDULE

- Once a year provide notice of:
 - o Date
 - o Time
 - o Place



Notice

PUBLIC NOTICE

HOW?

- Post
- Publish

WHAT?

- Annual meeting schedule
- **Every meeting**

EMERGENCY MEETINGS

EVERY MEETING

- 24 hours notice
- Content
 - o Date
 - o Time
 - o Place
 - o Agenda



Notice

PUBLIC NOTICE

HOW?

- Post
- Publish

WHAT?

- Annual meeting schedule
- **Every meeting**

EMERGENCY MEETINGS

EVERY MEETING

- 24 Hour Notice
- Content
 - o Date
 - o Time
 - o Place
 - o **Agenda**
 - Reasonable specificity.
 - Cannot take action on items that are not on agenda.



Notice

PUBLIC NOTICE

HOW?

- Post
- Publish

WHAT?

- Annual meeting schedule
- Every meeting

EMERGENCY MEETINGS

EMERGENCY MEETINGS

- **MUST attempt to notify** all Board members and **a majority of Board** members must approve holding the meeting because of an “emergency or urgent matter.”
- **Best notice practicable** of time, place, and topics.
- **Final action** may be taken at an emergency meeting.
- **Minutes** should include a statement of the unforeseen circumstances that made the meeting necessary.





Meeting Records

Requirements of the Open and Public Meetings Act



Meeting Records

OPEN MEETINGS

- Recording
- Written minutes
 - o Date, time, and place.
 - o Members present and absent.
 - o Substance of all matters proposed, discussed, or decided.
 - o Record of each vote.
 - o Name of anyone who provided testimony/comments and a summary of the comments.
 - o Other information requested.

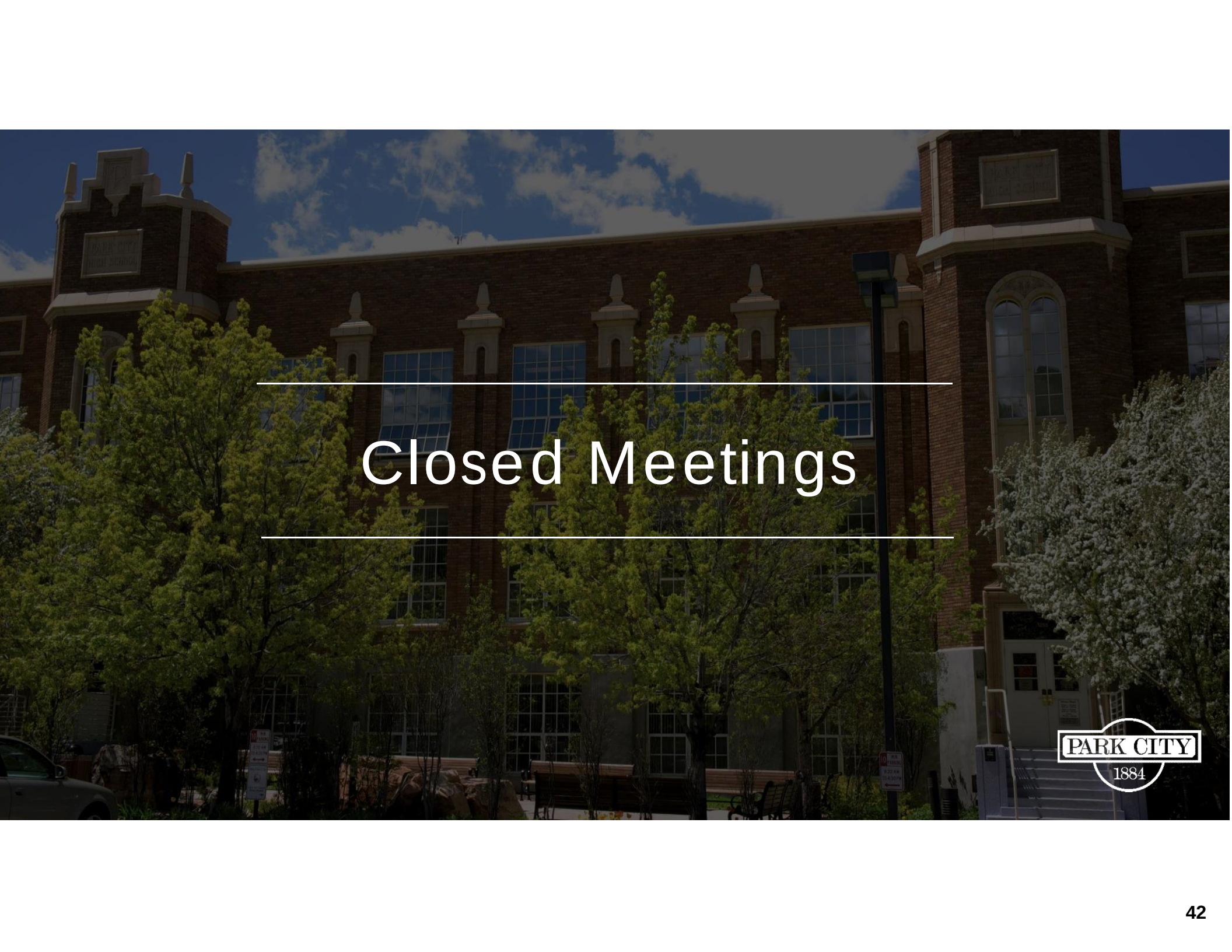


Meeting Records

Make the recording and minutes of the open meeting available to the public.

- **Recordings** should be made available to the public within **3 business days** after the meeting.
- **Written minutes**
 - For public bodies other than Council, **draft minutes** which must be clearly marked as “pending approval” should be made available within **a reasonable time**.
 - Approved minutes as well as any public materials distributed at the meeting should be made available to the public within 3 business days by:
 - Posting to the Utah Public Notice Website;
 - Making a copy available at the public body’s primary office; and
 - Posting on the public body’s website, if applicable.





Closed Meetings



— Closed Meetings —



MEETINGS of a
PUBLIC BODY are
open to the public,
unless an
EXCEPTION is
available under the Act
that allows the
meeting to be
CLOSED



Closed Meetings

A meeting may be closed **only** to discuss **specified topics**

- An Individual's Character, Professional Competence, or Physical or Mental Health
- Pending or Reasonably Imminent Litigation
- Deployment of Security Devices
- Criminal Misconduct Investigations
- Advice of Legal Counsel



— Closed Meeting Procedures —

- Open meeting with quorum present
- 2/3 vote to approve closing the meeting
- Publicly announce and enter into the minutes:
 - o Reason for closing the meeting.
 - o Location of the meeting.
 - o Vote by name.



— Closed Meeting Records —

CLOSED MEETINGS

- **Recording**
- **Written** minutes optional
 - o Date, time, and place.
 - o Names of all present and absent (unless disclosure would impair confidentiality necessary for original purpose of closing the meeting).
- **Exception to recording requirement** if discussing:
 - o Character, professional competence, or physical or mental health of an individual.
 - o Deployment of security personnel, devices, or systems.
- **Protected Records** under GRAMA.





Electronic Meetings

New rules in 2021



Types Of Electronic Meetings

- Resolution or Rule governing use of electronic meetings.
- **Electronic Meetings WITH Anchor Location**
 - o Provide anchor location for the public to join.
- **Electronic Meetings WITHOUT Anchor Location**
 - o Chair must make determination.
 - o Notice must detail the Chair's determination, facts supporting Chair's determination, and include information on how to connect.
 - o Determination renewed every 30 days.





Public Comment or Participation



Public Comment or Participation

- **Public must be allowed to come and watch**, but there is no requirement to allow them to comment.
 - o Unless the meeting is a public hearing, which does require an opportunity for public comment.
- **Public comments about items not on agenda.**
 - o At discretion of the Chair, comments may be discussed during open meeting if not on agenda.
 - o No FINAL ACTION if not on agenda.
- **Public has a right to record meetings** if they can do so without disrupting the meeting.



— Disruption of Meeting —

- Acceptable to keep people on point.
- Disruptions at meetings do not have to be tolerated.
- May **remove** an individual from the meeting if:
 - o **Willfully disrupts** and
 - o The orderly conduct of the meeting is **seriously compromised**.

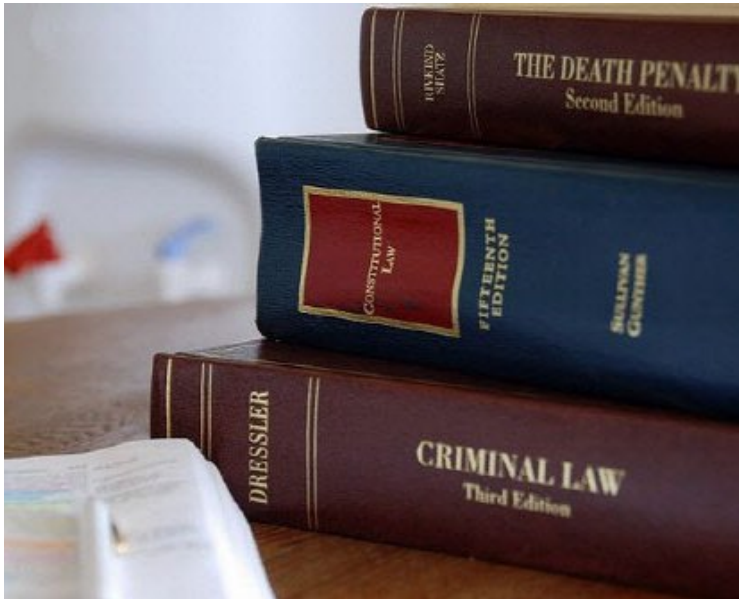


A large, multi-story brick building with many windows, identified as Park City High School. The building is partially obscured by green trees in the foreground. The sky is blue with some clouds. The title text is centered over the image, flanked by two horizontal white lines.

Consequences of Violating the Act



Consequences of Violating the Act



- Private individuals can bring lawsuits for violations of the Act
 - Final action may be voidable.
- Class B misdemeanor for knowingly violating the closed meeting provisions of the Act

A photograph of Park City High School, a large brick building with multiple windows and decorative architectural elements. The building is partially obscured by green trees in the foreground. The sky is blue with some clouds. The word "Questions?" is centered over the image, flanked by two horizontal white lines.

Questions?



RESOLUTION NO. ____

**A RESOLUTION GOVERNING THE USE OF ELECTRONIC MEETINGS BY THE BOARD OF
ADJUSTMENT.**

WHEREAS, Park City values transparency and conducting the public's business in public meetings where actions are taken and deliberations are conducted openly;

WHEREAS, while the preference is for Park City public bodies to convene in person, it is understood that there may be circumstances where electronic meetings are necessary;

WHEREAS, the Open and Public Meetings Act was amended during the 2021 General Session to grant additional flexibility in how public bodies conduct electronic meetings;

WHEREAS, the COVID-19 virus continues to raise health or safety concerns for in-person public meetings and electronic meetings help facilitate social distancing;

BE IT ORDAINED BY THE BOARD OF ADJUSTMENT OF PARK CITY, UTAH, THAT:

The Board of Adjustment may hold electronic meetings in accordance with section 52-4-207 of the Utah Code, as amended.

PASSED AND ADOPTED this _____ day of December 2021.

Board of Adjustment: _____

Chair or Chair Pro Tem

Approved as to form: _____

City Attorney's Office