



**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT MEETING
SUMMIT COUNTY, UTAH
MINUTES OF MAY 21, 2024**

BOARD MEMBERS IN ATTENDANCE: Ruth Gezelius-Chair, Stefanie Wilson, Beth Armstrong, Mary Wintzer, John Stafsholt

STAFF: Rebecca Ward, Planning Director; Lillian Zollinger, Planner II; Mark Harrington, Senior City Attorney; Jacob Klopfenstein, Planner I

1. ROLL CALL

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

2. MINUTES APPROVAL

A. Consideration to Approve the Board of Adjustment Meeting Minutes from April 16, 2024.

MOTION: Board Member Armstrong moved to APPROVE the Minutes of April 16, 2024, as presented. Board Member Wintzer seconded the motion. Vote on motion: John Stafsholt-Yes, Beth Armstrong-Yes, Mary Wintzer-Yes, Chair Gezelius-Yes, Stefanie Wilson-Yes. The motion passed unanimously.

3. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

Planning Director, Rebecca Ward requested a June 18, 2024, Board of Adjustment Meeting if a quorum is available.

Chair Gezelius thanked staff for their work on the Board's compensation.

4. PUBLIC COMMUNICATIONS

There were no public communications.

5. **REGULAR AGENDA**

1. **341 Ontario Avenue – Appeal – The Applicant Appeals the Planning Director’s Denial of a Historic District Design Review Modification for the Relocation of a Hot Tub and New Stairs in the Side Setback on a Significant Historic Site and Steep Slope in the Historic Residential-1 Zoning District. PL-24-06091.**

Chair Gezelius commended staff for the packet and presentation being in such good chronological order.

City Planner, Lillian Zollinger presented the Staff Report and stated that a single-family dwelling is currently under construction. Renderings of the site were presented. The site is on a very steep slope and is in the Historic Residential-I Zoning District. The list of approvals the applicant has received over the past year was presented. There have been three modification approvals and one denial, which was under review tonight. The applicant applied for a fourth modification for Historic District Design Review (“HDDR”) to construct a 58.5-square-foot inground hot tub and stairs within the side setback and on a very steep slope. The Planning Director found that the proposal was beyond the scope of the HDDR approvals and not compliant with the Land Management Code (“LMC”) and would require modification to the Steep Slope Conditional Use Permit with Planning Commission review. An image of the proposed hot tub location and stairs on the south side of the structure was displayed.

Planner Zollinger reported that the Appellant is arguing that the setback exceptions for the hot tub and stairs apply to this request. However, the site is on a very steep slope and is subject to all Steep Slopes Conditional Use Permit requirements, previous approvals, and conditions of approval. This is a significant historic site so in addition to zoning regulations, the site is subject to Historic District regulations.

The Appellant argued the following:

1. Explicit Code sections providing for the requested modification were not applied.
2. No regard was given to safety, noise, visual improvement, or desirability of neighbors.
3. No regard was given for practical access to the setback area.

Staff found the following:

1. The Land Management Code requirements were plainly applied to the proposed modifications.

Planner Zollinger reported that the LMC requirements were plainly applied to the proposed modification. In the HR-1 Zoning District, steps may be no more than 30 inches in height above final grade and are an allowed exception in the side setback. The LMC also requires hot tubs to be screened. They may be located three feet from the side lot line and in the side setback. That section of Code would be compliant; however, the LMC also requires a historic site to be returned to original grade following the construction of the foundation.

The proposed inground hot tub and stairs do not comply because they further disrupt the restoration of the natural topography and original grading and do not comply with the established findings. The image highlighted in green was the original proposed natural slope from the steep slope Conditional Use Permit. The image on the right shows retaining walls that were approved under an ACUP modification because the last proposal was found to need retaining walls to address the steep slope. As discussed, the site needs to be returned to as close to a natural grade as possible.

2. Safety, noise, and visual impact were previously reviewed and approved.

The approved plans issued with the Building Permit were reviewed by the Building, Engineering, and Planning Departments. The plans attached to the Permit include a proposal from a licensed Architect with a screened hot tub on the third-level rear deck as placed and proposed by the applicant and his professionals. All three of the departments approved of the proposed location. Regardless of the hot tub location, the use must comply with the City's Noise Ordinance. Safety is not a criterion under the HDDR regulations and was not reviewed as part of the proposed modification.

3. The proposed access was not compliant with previous setback approvals.

The applicant stated that there is an existing side setback platform for the hot tub to be located on. This area was created because of the steep grade and the need for retaining walls, which was not presented with the original steep slope approvals. The applicant had to request a modification to add the retaining walls to hold the grade back while the site was under construction. This occurred five years after the steep slope Conditional Use Permit was approved. From that ACUP modification, the Planning Director approved the retaining walls to retain the slope, but all platforms must be returned to approximate the grade prior to the construction of the addition. As determined by the Planning Director and past approvals, the applicant is required to return the site to as close to the existing grade as possible. The proposed inground hot tub and stairs on a very steep slope further impact the final grade of this historic site and do not bring the grade into closer compliance with the existing grade. Therefore, the HDDR modification was denied.

Board Member Stafsholt asked if the Board is deciding whether the Planning Director erred in her application of the LMC or looking to grant one or both variances that are requested. Senior City Attorney, Mark Harrington explained that the Board is to determine whether the Planning Director erred. That was the limit of their decision. Board Member

Stafsholt referenced the photos slide presented earlier. He asked if there had been a recent ownership change. Planner Zollinger explained that the two images at the top are attached to the Building Permit that was approved for the single-family dwelling.

Board Member Stafsholt reported that approval was originally granted in 2014 but the Board approved reducing the front setback from 10 feet to 4.6 feet, increasing the height from 27 feet to 35 feet, and increasing the interior height from 35 feet to 39.6 feet. Planner Zollinger confirmed that the ownership of the property has remained unchanged. The approvals and conditions of approval, however, run with the project and the site. A question was raised regarding the grade being restored to as close to the original grade as possible and could require the applicant to cover the platforms with fill. Planner Zollinger confirmed that was the case.

The applicant, Matthew Day, commented that this is the first time he has heard that and confirmed that they are referring to the piece on the edge and not the forms. He reported that it explicitly states that they need to be shielded with vegetation, which they will be, but dirt cannot be added. The point of having them is to serve as large planter boxes with vegetation. A Board Member commented that returning to the existing grade means to fill with dirt on the platforms to cover the retaining wall.

Board Member Stafsholt commented that the home appears to be on a 50' x 75' lot. He noted that the side yard setbacks seem to be quite different than what is typical. He read the Findings of Fact in the original approval that states that the design meets the side yard setbacks as required for lots of this size. It also specifies that they have zero feet on the front and 10 feet in the back on the south side. Planner Zollinger stated that it is the front and back of what is adjacent to the road and staff is looking at the side setbacks rather than the front and rear setbacks.

Board Member Stafsholt commented on the setback and stated that it does not appear that there is a 20-foot setback between this home and the one to the south. The Code specifies that there must be five feet on each side while the Conclusions of Law reference a 10-foot setback for the new addition along the south side of the property. He questioned whether that requirement had been adhered to. Planner Zollinger explained that retaining walls are an allowed exception in the side setback under an Administrative Conditional Use Permit ("ACUP"), which the applicant has received approval for. Stairs that are less than 30 inches from final grade are also an allowed exception in the setback. The hot tub can also be partially in the side setback. It needs to be three feet from the sideline. The proposal was denied based on non-compliance with the Historic District Design Regulations.

Mr. Day identified himself as the owner of 341 Ontario Avenue. His understanding was that the Board of Adjustment was acting as an Appeals Panel in this instance. Attorney Harrington reported that Mr. Day serves on the City's newly appointed Appeal Panel and is present in his individual capacity. Attorney Harrington explained that the Board of Adjustment can review factual issues de Novo as they pertain to the Director's decision.

They cannot grant different theories of relief or exceptions. If Mr. Day believes that he qualifies for something within the scope of prior approvals or in the Code, they can address that in relation to the Planning Director's decision to deny and not a separate request for a variance.

Mr. Day stated that they are not asking for a variance. Chair Gezelius stressed that the Board of Adjustment is not a planning board and is only an appeal board. They can ask for further facts to make a decision based on what they are asked to rule on. She noted that their scope is very limited.

Mr. Day reported that the project has been underway for 10 years and the property has one of the steepest slopes in Old Town. When he purchased the property 10 years ago, he was single. He now has a wife and two children. He was questioning the hot tub location and stated that it is very high up and visible from his neighbor's living room. He would like to make the change, which is a better outcome for all involved. Mr. Day indicated that the comment that the steps need to be regraded afterward is completely incorrect and has never been part of the process. He will have to regrade everything that is not in the steps, however. He noted that the purpose of the steps was to put plants in to shield the retaining walls, which are permanent. To comply with what is required, there must be access.

Mr. Day referenced the Code and stated that what is proposed is allowed in the setbacks. He stressed that this is a setback issue, which includes the stairs and the hot tub. He asked that they be decided on separately although the same sections of the Code apply. Mr. Day stated that the Code explicitly allows stairs as long as they are no more than 30 inches above grade in the side setback. The other portion of the Historic District Design Review section is the reason they are being denied. One section is very specific and states that what is proposed is allowed while the other is very broad and vague. He contended that the broad portion does not apply.

Mr. Day referred to Section 15.13.2.B, which requires the natural topography to be maintained along with the original grading of the site when and where feasible. He felt staff was misconstruing what has already been approved versus what is being discussed. A photo of what was proposed was displayed and features a six-foot high retaining wall, which has been approved. Mr. Day is proposing is to place stairs at the top to get past the six-foot retaining wall. To plant down below, there cannot be a drop-off and access is required. The stairs are explicitly allowed within the Code as an exception. The only reason to deny the request is the subsections that specify that the natural topography and original grade must be maintained. What is proposed follows the original grade and the natural topography.

A current photo of the site was displayed showing the grade and topography. Subsection 2 specifies that the historic character of the site should not be significantly altered by substantially changing the proportion of the built or paved area. He noted that 44 square feet of stairs is not significant and is already allowed in the side setback.

Section 3 specifies that the topography and the grading of the historic site must respect and maintain the existing landscaping features and contribute to the historic character of the site. Mr. Day explained that it is the same grade and all that was ever there was rocks. The same grade is being followed with the addition of stairs. He presented a photo of what exists currently with a shoring wall. To build the home, they had to dig a 40-foot hole. He explained that the steps are an exception that is allowed in the side setback and Sections 1, 2, and 3 of Subsection 1 do not apply.

Mr. Day next addressed the hot tub, which sits very high. If allowed in the side setback at grade, it should be allowed because it is a better location and permitted. The Code specifically states that hot tubs are allowed in the side setback as long as they are three feet from the edge of the lot line. That is the case in this instance. Mr. Day suggested it be installed inground so that it is less visible. Planning argued that is not allowed because the grade cannot be moved by more than four feet per Code. Their argument was that it should be measured from the bottom of the hot tub rather than from the surface. He remarked that this is a very novel argument that has never been applied.

Mr. Day recalled a request from the previous month for a swimming pool built on McHenry. No one argued whether a swimming pool was appropriate in Old Town or that it is five feet deep by definition. It should not have been allowed because the four-foot rule was breached. That issue has never come up before and it does not make logical sense since retaining walls are often greater than four feet below ground. If the rule is applied regarding the change in grade or final grade including everything that is underground, it will trip up other portions of the Code.

Mr. Day was happy to swap the hot tub from being inground to a regular one and set it on the platform, however, he felt it was better in the ground. He referred to Subsection 1, which specifies that the natural topography and the original grading of the site shall be maintained where feasible. He explained that the height of that level will not be changed but he suggested that the hot tub be put at the level or on top of the level since it has already been approved. He stressed that he is not proposing to change anything that has not already been approved. With regard to maintaining the natural topography, Mr. Day reiterated that he is not changing anything that has already been approved. Unless the Board agrees that it should be measured from the bottom of the hot tub, which is in violation, he would be willing to put in a regular hot tub there.

Mr. Day commented that what is proposed does not significantly change the proportion of the build space. He argued that the Code explicitly states that stairs and a hot tub are not allowed. From Mr. Day's perspective as well as the neighbors, it is better and the right thing to do. In addition, to shield the area there must be access to it. He noted that the stairs can be above the historic grade by no more than 30 inches.

Board Member Armstrong was concerned that what is proposed is not natural topography. Mr. Day reported that the proposed action was driven by City Engineering.

When it was approved, they had no plans regarding what to do with the edge. Things have gotten better over time. They worked with the City Engineer to figure out exactly what is needed to retain the hill. They also have platforms to address. While it is not natural topography, it does not change what is already there. It was clarified that the materials shown in the photo are construction rubble from concrete pours that was not on the site before. Mr. Day stated that there has never been vegetation there. He identified a concrete shoring wall with the stairs to be constructed on top.

Board Member Wilson questioned whether the applicant has to bring the area back to grade as the Board was hearing conflicting messages from staff and the applicant. Planner Zollinger referred to the LMC regarding the HDDR, which does not specify what it should be. However, the original HDDR states that after construction of the basement, the site should be regraded to approximate the grading prior to construction of the addition. All past conditions of approval continue to apply moving forward. This is one of the reasons the request was not approved since the proposal was not consistent with past conditions of approval for this structure. Mr. Day claimed that was wrong and might have applied a long time ago. When approval was granted to construct the retaining walls, that action was driven by the Engineering Department. He stated that there has never been a conversation about putting dirt over the top. He claimed that it would not work and they are not designed for that.

Director Ward explained that within the LMC in the HDDR and the Historic Residential zoning district, there is a provision that prohibits more than four feet in a change to final grade. When the original ACUP was submitted for the retaining walls to retain the very steep slope, the hot tub was included. Staff, however, would not approve that. The reason is that some of the retaining walls manipulate grade more than four feet so infill will be required. After staff went through the retaining wall review, another modification was submitted for the inground hot tub. The conflict arose in the original conditions of approval where the requirements of the Historic District Regulations and the Historic Residential-1 zoning district regulations led back to as close to that existing grade at the end of the project.

Mention was made of one of the approvals requiring robust vegetation. Building such a large home created a situation where there is no access on the side to maintain the vegetation that was required. Mr. Day stated that the house stops 10 feet from the lot line and he is allowed to go to five. He noted that they did not maximize the width. Because the property is so deep, they had to excavate a large hole and did not have the luxury of maintaining the edges. Massive retaining walls were required to hold the hill back. They were intentionally designed to be planted in. He explained that the walls had to be rebuilt and because it is so steep, one had to be six feet.

Board Member Stafsholt reported that the undisturbed lot line can only be exceeded by four feet. Director Ward commented that the survey shows what the grade was prior to construction and the four-foot change can be above or below that line but it ties into that limitation consistently throughout the site. Board Member Stafsholt stated that he was

involved in creating that and explained that it was because people were digging out the lots way down and building three and four-story houses. Director Ward stated that that is reviewed with the excavation required for steep slopes to avoid eight, 10, or 12-foot retaining walls to terrace and preserve a more natural grade. Board Member Stafsholt was pleased to see a Condition of Approval that was caught that after construction of the basement, the side needs to be regraded to approximate the grading prior to construction. That was a Condition of Approval that was not followed.

Board Member Wilson commented that her understanding was that the applicant needs to fill that somewhat to get it back to the original grade. Mr. Day has to fill the platforms, which makes the hot tub a moot point. She asked if they were deciding the two issues separately. Attorney Harrington responded that it can be partial and the Board can distinguish. Mr. Day referred to the Conditions of Approval and stated that there is no mention of filling up the steps. It specifies that the proposed retaining walls shall be shielded with vegetation to minimize the visual impact. The intent was for them to be planter boxes.

Planner Zollinger referred to a letter from December 2023 that contains Finding a Fact number five, which specifies that all conditions of approval of the Action Letter shall apply. She explained that this was approving the retaining walls. As a result, the condition to regrade to the proximate grading prior to construction applies. Mr. Day contended that that related to the area that was next to the retaining wall. He saw no reason to require retaining walls and then cover them with dirt.

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

Chair Gezelius commented that when they build in the Historic District and make an effort to maintain an existing historic home, it is always complicated. However, there is nothing about a hot tub that is historic or required to live adequately in a home. When discussing the screening of a hot tub from neighbors, there is never a guarantee that the neighboring home will not be demolished or remodeled, or neighbors change. While there is very little privacy in Old Town, she did not see that as an argument in relation to relocating a hot tub. She felt that the process has become so complicated that it is very difficult to understand and interpret. Her opinion was that the Planning Director made an onerous and correct decision to deny the request.

MOTION: Board Member Wintzer moved to DENY the Appeal of the Planning Director's decision for 341 Ontario Avenue and that the decision should stand subject to the following:

Findings of Fact:

1. 341 Ontario Avenue is a Significant Historic Structure within the Historic Residential – 1 (HR-1) Zoning District.

2. The historic structure was constructed circa 1900.
3. On July 31, 2014, the City Council approved Ordinance No. 14-42, approving the 341 Ontario Avenue Subdivision Plat.
4. On April 18, 2018, the Board of Adjustment approved Variance to the Front yard Setbacks, Building Height, and Interior Height.
5. On August 14, 2018, the Planning Director approved a Steep Slope Conditional Use Permit ("SSCUP") for the construction of an addition on the historic structure on a steep slope.
6. On June 10, 2019, the Planning Director approved an Administrative Conditional Use Permit for retaining walls greater than four feet in the Front Setback.
7. On June 14, 2019, the Planning Director approved a Historic District Design Review (HDDR) to construct an addition to the historic structure.
8. On February 10, 2021, the Planning Director approved an extension to the HDDR approval.
9. On April 12, 2021, the Planning Director approved an SSCUP Extension to the approval from August 14, 2018.
10. On March 2, 2022, the Historic Preservation Board approved an HDDR for material deconstruction and panelization of the historic structure to prepare for an addition.
11. On March 3, 2023, the Planning Director approved an HDDR Modification for window changes.
12. On July 27, 2023, the Interim Planning Director approved an HDDR Modification for window and deck changes.
13. On December 21, 2023, the Interim Planning Director approved an ACUP Modification for retaining walls in the Side Setbacks.
14. On March 7, 2024, the Applicant applied for an HDDR Modification and requested approval for a hot tub and stairs in the Side Setback.
15. On March 29, 2024, the Planning Director denied the HDDR Modification, finding the following:

- i. “Land Management Code (LMC) § 15-2.2-5 outlines height requirements for the Historic Residential – 1 Zoning District and states final grade must be within four vertical feet of existing grade, except for window wells, emergency egress, and a garage entrance. The hot tub is not a window well, emergency egress, or garage entrance and is proposed to be sunken into grade by five feet, eight inches disturbing the existing grade by five feet, eight inches, and therefore does not comply.
- ii. LMC § 15-2.2-6 outlines requirements for development on Steep Slopes within the Historic Residential – 1 Zoning District and states, “[d]evelopment on Steep Slopes must be environmentally sensitive to hillside Areas, carefully planned to mitigate adverse effects on neighboring land and Improvements, and consistent with the Design Guidelines for Planning Department Historic Districts and Historic Sites Chapter 15-13 and Architectural Review Chapter 15-5.”
- iii. LMC § 15-13-2(B)(1)(b)(1) outlines requirements for Historic Sites and states that work in the Historic Districts must, “[m]aintain the natural topography and original grading of the site when and where feasible.” The Significant Historic Site with a Steep Slope has been substantially disturbed because of the construction of the addition to the Significant Historic Structure. The SSCUP approval Finding of Fact 22 notes, “The applicant has located the new addition in such a way that the original grade of the site can be largely restored following the construction of the addition.” Additionally, LMC § 15-13-2(b)(3) requires a Historic Site to be returned to original grade following the construction of a foundation. The proposed hot tub and stairs do not comply because they further disrupt the restoration of the natural topography and original grading and do not comply with established findings.
- iv. LMC § 15-13-2(B)(1)(b)(2) states 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 and vice versa. The proposed stairs and hot tub alter the portion of open space within the side setback by imposing 90 square feet of paved area on the already significantly disturbed site.
- v. LMC § 15-13-2(B)(1)(b)(3) requires that topography and grading for Historic Sites must “[r]espect and maintain existing landscape features that contribute to the historic character of the site...” The proposed stairs and hot tub do not respect and maintain the existing

landscape features that are required to be restored upon completion of the project.”

16. On April 10, 2024, the Applicant appealed the decision, and argued three points:
 - i. Explicit code sections providing for the requested modification were not applied.
 - ii. No regard was given to safety, noise, visual improvement, or desirability of neighbors.
 - iii. No regard was given for practical access to the setback area.
17. Staff finds that the Planning Director did not err in the interpretation and application of the plain meaning of the LMC and upheld the Findings and Conditions of the previous approvals, based on the following:
 - i. The proposal complied with LMC § 15-2.2-3(J), Side Setback exceptions; however, the Planning Director denied the proposal based on non-Planning Department compliance with LMC § 15-13-2(B)(1)(b) and the previous SSCUP approval.
 - ii. On November 4, 2021, the Building Department issued a Building Permit 21- 1339 for a Single-Family Addition to a historic structure at 341 Ontario Avenue, which included an approved location for a hot tub on the third level.
 - iii. Condition of Approval 18 from the original HDDR approval states, “After construction of the basement, the site should be re-graded to approximate the grading prior to construction of the addition.” This condition continues to apply. To comply with this condition, the Applicant is required to regrade the area between the retaining wall steps. The proposed location of the hot tub and stairs creates a greater impact on the historic site’s steep slope and is not compliant with previous conditions of approval, or the Historic District Regulations outlined in the LMC.
18. Staff published notice on the City’s website and posted notice to the property on May 7, 2024. Staff mailed a courtesy notice to property owners within 100 feet and posted notice to the property on May 7, 2024. *The Park Record* published courtesy notice on May 7, 2024.

Conclusions of Law:

1. The appellant did not meet their burden of proving the Planning Director erred in denying the HDDR Modification.
2. The Planning Director was correct in interpreting and applying the plain meaning of LMC Sections 15-13-8, finding that the proposed design did not comply.
3. The proposal did not comply with the previous Steep Slope Conditional Use and Historic District Design Review approvals and required a re-review of the proposal.

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

6. ADJOURN

The Board of Adjustment Meeting adjourned at approximately 5:50 p.m.

Approved by _____
Ruth Gezelius, Board of Adjustment Chair