



**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT MEETING
SUMMIT COUNTY, UTAH
MINUTES OF AUGUST 20, 2024**

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

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

1. MEETING CALLED TO ORDER

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

2. ROLL CALL

Chair Gezelius identified the Board Members present as noted above and stated that Board Member John Stafsholt was excused. She reported that a quorum was present.

3. MINUTES APPROVAL

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

MOTION: Board Member Jennifer Franklin moved to APPROVE the Minutes of July 16, 2024, as presented. Board Member Stefanie Wilson seconded the motion. The motion passed with the unanimous consent of the Board.

4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES

A. Board of Adjustment Chair Election - Pursuant to Land Management Code Section 15-10-5, the Board of Adjustment Will Elect One of Its Members to Serve as Chair for a Term of One Year.

Chair Gezelius reported that as explained by legal counsel at the last meeting, there are rules regarding the number of consecutive terms that can be served by a Chair, and she had now met that term limit. Therefore, the Board was required to elect a new Chairperson. She stated that this job is not done alone and there was help from Staff, support staff, applicants, and fellow Board Members. She highlighted that ability to work together as a reason why this Board is able to function so efficiently and cohesively.

Chair Gezelius invited discussion. Board Member Franklin noted that during the last meeting, it was noted that there is no Co-Chair, but noted that they had an alternate Board Member and wondered if there was also an alternate Chair so they could have advance notice when the Chair would not be in attendance.

Senior City Attorney, Mark Harrington answered in the negative and explained that the particular chapter in the Code provides that the Board shall appoint a Chair Pro Tem per meeting. He offered that the Historic Preservation Board used to have the same process, but that had changed.

Board Member Franklin asked if the appointment of a Chair Pro Tem could be done when the Board RSVPs for the meeting. City Attorney Harrington stated they would start the meeting with the appointment, which would be effective only for that meeting.

Chair Gezelius remarked they need to discuss whether there would be a nomination or a volunteer for Chair. Board Member Franklin stated that neither she nor Board Member Wilson wished to volunteer for the position of Chair, but that both would be willing to serve as Chair.

MOTION: Board Member Beth Armstrong moved to nominate Board Member Franklin for the position of Chair. Board Member Wilson seconded the motion. The motion passed with the unanimous consent of the Board.

Board Member Franklin assumed the Chair.

5. PUBLIC COMMUNICATIONS

There were no public communications.

6. REGULAR AGENDA

A. 1251 Kearns Boulevard – Variance – The Applicant Proposes to Relocate an Existing Sign Within the Frontage Protection Zone and General Commercial Zoning District. PL-24-06198.

City Planner, Lillian Zollinger reported that the above application will address an existing sign at the location. The site falls within the General Commercial (“GC”) zone, and more specifically, within the Frontage Protection Zone (“FPZ”). She presented a graphic showing the current location of the sign, along with a rendering that showed the proposed location. A Site Plan view showed that the existing sign was just over 9 feet from the existing right-of-way. The proposed sign would be just less than 25 feet from the right-of-way.

Planner Zollinger explained that the Frontage Protection Zone prohibits structures within 30 feet of a Right-of-way. She stated that this particular sign has been in place for a few years, and was an existing non-complying structure as outlined in the Staff Report. She reported that the applicant requested the relocation of the sign to allow for the construction of a 12-foot pedestrian sidewalk. The current location of the sign would be in the middle of the proposed sidewalk. The proposal would not bring the sign into full compliance with the Frontage Protection Zone, but it would reduce the current non-compliance.

Planner Zollinger summarized the five criteria for a Variance as follows:

1. Literal enforcement of the Land Management Code (“LMC”) would cause an unnecessary hardship. *This request would allow for future pedestrian improvements and would relocate an existing sign that was installed prior to the Frontage Protection Zone regulations.*
2. There are special circumstances attached to the property. *The relocation of the existing sign would reduce the non-conformity and would allow for construction of the pedestrian path.*
3. Granting the Variance is essential to the enjoyment of substantial property rights. *Other properties along Kearns Boulevard do not have existing non-complying signs, and if the sign were not relocated it would become the only property in the area with a smaller path width.*
4. The Variance would not substantially affect the General Plan. *It was detailed in the Staff Report how this Variance would support the goals and objectives of the General Plan.*
5. The spirit of the LMC is observed and substantial justice done. *The proposed relocation would allow for a non-complying structure to exist while also allowing for the improvements of a pedestrian, cyclist, and transit-user experience along Kearns Boulevard. The sign’s new location would reduce the non-compliance of the sign in the Frontage Protection Zone.*

Planner Zollinger reported that the applicant submitted a concept video after publication of the Packet.

Philip Adams appeared on behalf of the applicant, Park City Municipal Corporation. He serves as Senior Project Manager in the Engineering Office. The drawing presented to the Board represents the proposed pedestrian path and multi-use enhancements from Park Avenue to Bonanza. The proposed path is part of the overall Dan’s to Jans goal of making this area safe. Presently, there is a four-foot-wide sidewalk running the length of that section. Applicant Adams advised that he had been in negotiations with the

property owner to acquire a perpetual easement for the construction of a 12-foot wide multi-use path. He explained that they would have a 15-foot wide corridor, plus or minus a few feet.

He presented a depiction that showed a three-foot buffer that could take the form of a planter strip or park strip, followed by the 12-foot wide multi-use path. Applicant Adams advised that Phase 2 of the Homestake roadway improvements were slated for 2025. These would involve the construction of a 12-foot wide multi-use path along the south side of the road from Park Avenue at Fresh Market to Kearns Boulevard. The hope was that they could then turn the corner and extend it down across this property.

In subsequent years, the plan was to go toward Park Avenue/State Route 224 and to Bonanza. Applicant Adams stated that this proposal was the first step in addressing the safety in this entire area. Currently, the area has a very narrow and treacherous sidewalk at this point.

Applicant Adams reported that during construction of the current sidewalk, he observed families pushing strollers into the street, and cyclists having to use the roadway; this occurred even after the sidewalk was reopened, and this proposal would definitely enhance pedestrian safety. He reiterated the plan to construct this sidewalk next season if funds allow it, but at a minimum, the City would have the perpetual easement in place so that when the funding is allocated they could undertake the project.

Board Member Gezelius commented that the snow removal efforts along this stretch have been limited because of the limited size of the sidewalk. She noted it had sometimes forces pedestrians into the street, which was dangerous, so she was glad the City was addressing the problem.

Board Member Wilson agreed and stated that she rides her e-bike all over town, and it was always a question of how to get from point A to point B if that stretch of road were involved. She stated she was very much in favor of this project.

Board Member Wilson asked if the property owner was unwilling to bring the sign into compliance with the Code. Applicant Adams reported that the property owner expressed a strong desire to keep the sign "as is" because it had been there for so long. He added that the property owner believed the sign to be somewhat historic in nature. Applicant Adams acknowledged that he was somewhat new to the City and could not comment on things dating back 20, 20, or 40 years ago; however, he felt that this would be a fair trade for the acquisition of a free easement to allow the relocation of the sign. Planner Zollinger noted that the property owner could not move the sign any further because of existing utilities in that area. Applicant Adams confirmed there were some utility conflicts and some other issues that would make it more difficult if they pushed the sign further back.

With respect to the easement, Board Member Armstrong asked if the City had already purchased all of the easement property. Applicant Adams explained that the City did not need to purchase this property; rather, the property owner would just need to grant the City a perpetual easement.

Chair Franklin referenced the Connectivity Visions section on page 5 of the Packet. She noted that there were 2 – 3 driveways on that property and asked if the Kearns Boulevard driveway would continue to be the main driveway. She noted that there was another driveway on Munchkin Road and just today she observed the property owner's large food trucks entering on Kearns Boulevard and then egressing onto Munchkin Road, which is the road that continues towards the Recycle Center.

Chair Franklin also mentioned a hybrid driveway/parking space area. She questioned whether the Kearns Boulevard driveway would remain as the main ingress and egress in the future designs. Applicant Adams did not know at this time.

Chair Franklin opened the public hearing. There was no public comment. Chair Franklin closed the public hearing.

MOTION: Board Member Gezelius moved to APPROVE the Variance for 1251 Kearns Boulevard to Move the Existing Sign within the Frontage Protection Zone, as outlined in the Findings of Fact, Conclusions of Law, and Conditions of Approval set forth in the Draft Final Action Letter as follows:

Findings of Fact

1. 1251 Kearns Boulevard is in the General Commercial (GC) Zoning District and Frontage Protection Zone (FPZ) and is Lot 1 of The Yard Subdivision – First Amended.
2. The site was formerly the Anderson Lumber Store, constructed in 1972. When Anderson Lumber was built, a 19-foot-tall sign viewed from Kearns Boulevard was installed approximately 9.5 feet from Kearns Boulevard prior to enactment of the FPZ regulations adopted in 2000.
3. The Sign is an existing Non-Complying Structure, as outlined in LMC § 15-9-6.
4. The Applicant proposes to move the sign from its existing location to a location approximately 58 feet southeast, which would be approximately 24.5 feet from the ROW, and still within the FPZ 30' Setback Area.
5. The new location reduces the Non-Complying sign from 20.5 feet into the FPZ to 5.5 feet into the FPZ.

6. The Applicant requests a Variance from the 30' FPZ Setback Area to relocate the sign to be able to construct a 12' multi-use pathway. There are no other changes proposed.
7. The Applicant's request to relocate the sign allows for future pedestrian improvements along Kearns Boulevard and relocates an existing sign that was installed prior to the FPZ regulations, outlined in Section 2 below.
8. The relocation of the existing sign reduces the Non-Conformity because it increases the setback from just under ten feet to 24.5 feet from Kearns Boulevard, a required relocation to improve the pedestrian and bicyclist access in the Bonanza Park neighborhood.
9. Other properties along Kearns Boulevard do not have existing non-complying signs in the proposed area of improvements. If the sign was not relocated, it would become the only property in the area with a smaller path width. The relocation of the existing sign is required in order to improve pedestrian and bicyclist access in the Bonanza Park neighborhood.
10. The requested Variance supports the goals and objectives of the General Plan, including:
 - Objective 3A - "Streets, pedestrian paths, and bike paths should contribute to a system of fully connected and interesting routes to all destinations. Their design should encourage pedestrian and bicycle use by being small and spatially defined by buildings, trees, signs, and lighting; and by discouraging high-speed traffic."
 - Objective 3.4 - "Create safe bike/pedestrian pathways between all public spaces within the City limits."
 - Objective 3.5 - "Identify needed connectivity of roads, sidewalks, and trail systems to decrease vehicle miles traveled and increase direct pedestrian/bicycle routes to neighborhood amenities, as identified in individual neighborhood plans."
11. The proposed relocation allows for a Non-Complying Structure to remain while accommodating a Park City Municipal project to improve the pedestrian, cyclist, and transit user experience along a busy highway corridor. No changes to enlarge the sign are proposed – its presence in the FPZ will be reduced because it will be set back from Kearns Boulevard 24.5 feet rather than the current nine-and-a-half feet. The new location reduces the Non-Complying sign from 20.5 feet into the FPZ to 5.5 feet into the FPZ.

12. Staff published notice on the City's website and the Utah Public Notice website and posted notice to the property on August 6, 2024. Staff mailed courtesy notice to property owners within 300 feet on August 6, 2024. The Park Record published courtesy notice on August 6, 2024.

Conclusions of Law

1. The Applicant proved their request meets the five criteria outlined in Land Management Code Section 15-10-8:
 - i. Literal enforcement of the HR-1 Zoning District causes an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.
 - ii. There are special circumstances attached to the Property that do not generally apply to other properties in the same district.
 - iii. Granting the Variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone.
 - iv. The proposal is consistent with the General Plan and not contrary to the public interest.
 - v. The spirit of the Land Management Code is observed by this application and substantial justice is done.

Conditions of Approval

1. The Variance is limited to the proposed location for the existing Sign, approximately 24.5 feet from the nearest ROW. No other modifications to the Sign, its height, or design are proposed or approved.
2. Basic maintenance and minor repairs are allowed. A Sign Permit is required for changes to the design of the sign.
3. Removal of the Sign in its new location invalidates this Variance.
4. Lighting is prohibited on the sign.
5. Any other construction in the Frontage Protection Zone on this site requires Planning Review and compliance with LMC § 15-2.20-4.
6. The proposed path, other essential public facilities, or minor remodels or improvements to paths or facilities requires an Administrative Permit or Administrative Conditional Use Permit pursuant to LMC § 15-2.20-4(F).

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

B. 844 Empire Avenue - Variance - The Applicant Requests a Variance from the Front Setback Requirements of LMC Section 15-2.2-3(F) in the Historic Residential-1 Zoning District and from the Requirements of LMC Section 15-13-2, Regulations for Historic Residential Sites to Construct an Accessory Building. PL-24-06051.

City Planner, Jacob Klopfenstein noted the presence of the applicant's representatives, Justin Keyes and Jonathan DeGray.

Planner Klopfenstein advised that the applicant proposed to construct an addition to a Significant Historic Structure on this site, as well as a two-story detached Accessory Building with a garage and living space. The Accessory Building would encroach into the 10-foot Setbacks located along the un-built 9th Street right-of-way and Crescent Tram Road. He stated that the applicant requested a Variance from those Setbacks. He presented an image of the site taken from the corner of Empire Avenue and Crescent Tram Road. He also presented a map that showed the layout of the site and noted it was an unusual Lot. He pointed out the un-built but platted 9th Street Right-of-way and the 9th Street stairs that were located in that Right-of-way.

Planner Klopfenstein presented the applicant's renderings of the proposed construction. He stated that 844 Empire Avenue contains a Significant Historic Structure that was damaged by fire in 2014. The applicant's proposal involved, in part, efforts to rehabilitate this site to repair some of that fire damage. He offered that the structure had been vacant since the 2014 fire.

The Lot is unusual in that it has three front yards that run along the platted un-built 9th Street, Empire Avenue, and Crescent Tram Road. He advised that the Plat approved in 2016 included a Plat Note that restricted vehicle access and required the site be accessed by vehicles only by Empire Avenue or through the platted and un-built 9th Street.

Planner Klopfenstein reported that the applicant applied for a Plat Amendment to remove that Plat Note, which was initially denied but then reversed by the Appeal Panel. This Plat Note has therefore been removed, and vehicular access to the site from Crescent Tram Road is now possible. Additionally, in February 2024, the Historic Preservation Board approved Material Deconstruction and Panelization of the structure.

Planner Klopfenstein presented an image depicting the three front yards. In 2016, the Planning Director issued a determination that the frontages along Crescent Tram Road, Empire Avenue, and the 9th Street Right-of-way were all subject to 10-foot Setbacks. An illustration showing the proposed Accessory Building's encroachment into the Setbacks was shown. The red line in the graphic showed the approximate Setbacks on the site. Planner Klopfenstein next addressed the five Variance criteria as follows:

1. Literal enforcement of the Land Management Code would cause an unreasonable hardship. *As described previously, based on the removal of Plat Note 3, the applicant can now access the site with vehicles from Crescent Tram Road. The applicant could therefore access an off-street parking pad from Crescent Tram Road; therefore Staff determined the lack of an Accessory Building would not constitute an unreasonable hardship.*
2. There are special circumstances attached to the property that do not apply to other properties in the same zone. *This is an unusual Lot configuration, however, there is a process outlined in the LMC to address unusual Lots like this one. Other properties with unusual Lot configurations would be subject to that same provision in the LMC Section 15-4-17.*
3. Granting the Variance is essential to the enjoyment of a substantial property right. *Historic buildings are exempt from off-street parking requirements; however, a property owner can choose to provide off-street parking. Because off-street parking was not required for this site, Staff determined that the proposed garage was not essential to the enjoyment of a substantial property right.*
4. The Variance would not substantially affect the General Plan. *The requested Variance was not aligned with the historic preservation goals of the General Plan. The General Plan provides that "new construction should reinforce the visual dominance of the Historic Structures." Because the Accessory Building would block the view of the Significant Historic Structure from Empire Avenue, Staff determined that this proposal was not aligned with the historic preservation goals of the General Plan.*
5. The spirit of the Land Management Code is observed and substantial justice done. *LMC Section 15-13-2 states that new Accessory Buildings should be located on the rear of sites with Historic Structures, and additions should be visually subordinate to historic buildings when viewed from the primary public Right-of-way. Staff found that this proposal did not observe the spirit of the LMC and substantial justice was not achieved.*

Planner Klopfenstein reported that Staff recommended the Board review the requested Variance, conduct a public hearing, and consider denying the requested Variance based on the Findings of Fact and Conclusions of Law in the Draft Final Action Letter.

On behalf of the applicant, attorney Justin Keyes thanked the Board and Staff for their time and work on this matter. He offered that applicants were very excited to construct this home in Old Town, and because they have small children it was important for them to have off-street parking in the form of a garage for their children. He expressed appreciation for the Appeal Board's ruling and City Engineer John Robertson's reassessment of the issue and conclusion that this was a safe location for off-street

parking. He noted that this section of Old Town gets a lot of snow, and can be a rigorous area to live depending on the time of year. He echoed that this is an unusual Lot, and noted there was a section of Code that addressed unusual Lots, which was not analyzed much in 2015 and 2016. This Lot is unusual due to its configuration.

Applicant-representative Keyes presented an image showing how the Lot fronts three different roads. Historically, the home faced the 9th Street Right-of-way. In 2016, as part of the home's restoration, it was determined that access should be via the 9th Street Right-of-way. Between 2016 and the present, upgrades were made to the 9th Street Right-of-way that included a set of public stairs and utility upgrades. The stairs and utility upgrades rendered vehicular access to the site impossible. He stated this prompted the City Engineer to recommend the driveway be moved to Crescent Tram Road.

He remarked that when the Planning Director looked at this in 2016, it was determined there was no real rear Lot line; rather, it was all 10-foot Front Setbacks. He noted that the largest Setback in Old Town was invariably the Front Setback.

Applicant-representative Keyes argued that the unique hardship was the Setbacks. He stressed that this property had 10-foot Setbacks on three different sides of the property. As property in Old Town was valuable, 10 feet was a large amount of area taken up.

In addition, Applicant-representative Keyes averred that Crescent Tram Road actually ran over this property, and the Historic Structure on the site actually violated the Front Setback. As a part of the Plat Amendment, this portion of the Lot was actually vacated and it became a part of Crescent Tram Road.

Keeping in mind all the changes since 2016, Applicant-representative Keyes submitted that in order to get a garage structure similar to other structures in the area, it was appropriate to consider the 9th Street Right-of-way as the rear of the home. He stated that one of the considerations in determining the true front of the home pursuant to LMC Section 15-4-17 was where the driveway comes into the property. He advised that the driveway would now come in from Crescent Tram Road.

Applicant-representative Keyes proffered that it would be appropriate to grant a Variance on the rear side of the property, even though technically it was a Front Setback, more in line with what a Rear Setback would be. This explained why they oriented the structure back towards the 9th Street Right-of-way because that would become the rear of the structure now that the driveway would come in off of Crescent Tram Road.

The applicants also felt a small Variance was warranted on the Crescent Tram Right-of-way given that there was a vacation of that right-of-way and the unique circumstance of having a roadway that runs across a historic property. He stressed that all of these

issues led to a very unique property, and he felt there was not another property in Park City shaped like this one.

Given the unique configuration of the parcel was another reason why it would not apply to other parcels in the area. He stated it was essential to have a Variance of some kind in order to construct a garage or to even just keep the historic home in place.

Applicant-representative Keyes next addressed the factor that the proposed zoning ordinance would not substantially affect the General Plan, would not be contrary to the public interest, and would be in keeping with the zone. He stated that there were very similar structures throughout Old Town and deferred to Jonathan DeGray, AIA to share information on this issue.

Planner Klopfenstein announced that the applicant, Todd Gilbert, had joined the meeting remotely. Applicant Gilbert echoed the prior comments of Applicant-representative Keyes that they were originally going to develop this property in 2016 when they believed an agreement with the City was in place. A lot of time had passed, and now he had two children aged 4 and 6, with the older child having a condition known as juvenile neopathic arthritis, for which he and his wife have handicapped parking. He stressed that his family would love to move to this property and be a part of the community. They have been able to visit, but want to be able to live here full-time and for this to be the family home. However, it could not be the family home without a garage given his child's mobility issues. He commented that they would have to sell the property and someone else would likely use it as an Airbnb.

Applicant Gilbert appreciated the Board's consideration of this request and noted this would have been approved in 2016, however since that time the City installed utility improvements that were not contemplated during the prior discussions, and due to other personal priorities, he was unable to address it at that time. He echoed the statements that this was a unique property, and everything about it was unique which was why he believed a Variance was appropriate.

On behalf of the applicant, Architect DeGray reiterated the uniqueness of this Lot as compared with other lots in the area, and presented a series of photographs and site diagrams of corner lots similar to 844 Empire Avenue. At 9th Street and Woodside, for example, there was no requirement for a 10-foot Setback along the street, and based on the site plans the Setbacks were either 3 feet or 5 feet. He highlighted a historic home on Norfolk Avenue that was built right on the Setback lines and had an addition to the rear that was five feet off the property line. He stressed the uniqueness of 844 Empire Avenue in comparison with the other properties in the neighborhood.

Architect DeGray advised that the property across the street from 844 Empire was a renovated home that was relocated on the lot to be compliant with Setbacks, however, the Side Setbacks were three feet and five feet.

On 10th Street, the lots were not required to have 10-foot Setbacks in most cases. He noted a corner lot on Park Avenue that was not required to have a 10-foot Setback.

Architect DeGray mentioned 368 Woodside Avenue, which was a home constructed around 2000 to 2002, with an accessory structure with a living unit below. He stated this was built one foot from the property line against the 4th Street stairs and less than 10 feet off Woodside Avenue. He expressed uncertainty as to how this was approved, as it was entirely non-conforming with current zoning requirements. He assumed it received some sort of Variance. He stated it was very rare to see the kinds of Setbacks in the area that were being applied to the subject property.

Architect DeGray submitted that Staff determined there were no other similar Accessory Buildings as proposed by applicants. He found Accessory Buildings on properties along Woodside Avenue across from the ski run. He presented several images of homes with Accessory Buildings like that proposed by the applicant. He noted a freestanding garage on a property further down Empire Avenue that fronted directly onto Empire Avenue.

Architect DeGray offered that there were at least four other accessory structures along the Norfolk/Empire/Crescent Tram block, and concluded that Staff's argument that there was no pattern of accessory structures in the neighborhood was flawed.

With respect to Staff's position that off-street parking was not provided to all homes in the neighborhood, applicants took exception as just driving around the neighborhood showed that one historic home on Empire Avenue had no off-street parking; by and large, all other properties within the block have off-street parking, and in most cases, had garages.

Architect DeGray highlighted some comments in the Staff Report that he felt were not completely in keeping with the applicant's position. He referenced the statement that historic structures should not be visually subordinate as viewed from the primary public Right-of-way. He noted the Staff's comment was based on a view from Empire Avenue and Crescent Tram Road. Because of the driveway location, the entry that had been used for this property for the past 40 – 50 years was off of Crescent Tram Road. Therefore, the primary Right-of-way was Crescent Tram Road, whereas Staff presented a secondary or even tertiary elevation of the building. He stressed that the primary elevation would be either Crescent Tram Road or the historic elevation along the 9th Street right-of-way.

With respect to the paragraph at the beginning of page 15 of the Staff Report that "Additionally, while LMC § 15-13-2(B)(9)(b) allows for new accessory structures to be located on a site with a Historic Structure at the street front (1) if a pattern of front yard historic accessory structures has been established along the street..." he proffered that the images shown to the Board demonstrated a pattern of accessory structures on the street. He felt it would be unreasonable to assume that every home would have such

structures, but by and large, the neighborhood had properties with accessory structures so the creation of the applicant's accessory structure would not be out of character.

With regard to the second LMC requirement that "...the proposed placement does not create any danger or hazards to traffic, he noted the City Engineer had already determined that was met.

Architect DeGray also responded to the Staff Report conclusion that there was no established pattern along nearby Empire Avenue by referring to his presented images that showed an accessory garage just down the street from the applicant's property. He stated that the only property along Empire Avenue without off-street parking was the previously referenced historic home that had not yet been renovated.

With respect to the second Variance criteria, Architect DeGray reiterated that the streetscape and character of the area would allow for the accessory structures to be located in the front yard. He stressed that the references in the Staff Report were based on a view from Empire Avenue, whereas applicants proposed that the primary elevation was the driveway side of the property, which is Crescent Tram Road.

With respect to Staff's comments that a parking pad would be much less impactful than a detached structure, Architect DeGray disagreed, stating that when talking about "impact on topography," the amount of site disturbance would initially be greater with the accessory structure, but the final appearance would be the same as for a parking pad.

In terms of Staff's position that off-street parking areas should be located in the rear yard or be physically buffered from adjacent properties and primary Rights-of-Ways, Architect DeGray stated that the proposed garage would provide the buffer to conceal the vehicle from adjacent properties and from the right-of-way. He offered the same argument in response to Staff's statements that additions should be visually subordinate to historic buildings. He stressed that the primary façade was off of Crescent Tram Road, whereas the view off of Empire Avenue was secondary.

Architect DeGray expressed that the fact that parking was not required on this site did not trump the fact that the owners should be able to enjoy the essential property rights enjoyed by other properties in the same zone, many of which have garages. He stressed that the photographic evidence illustrated that detached garages exist in the area and should be considered part of the fabric of the entire area. By and large, all other properties in the area have on-site parking, if not garages.

In terms of the fourth criterion regarding consistency with the General Plan and Staff's reference to Historic Character Goal 15, Architect DeGray proffered that given the mass and scale of the other accessory structures on Empire Avenue, the proposed accessory structure would fit this criteria.

He offered that the Detailed Strategies document referenced in the Staff Report states that massing and Setbacks of new construction should complement and reinforce the visual dominance of historic structures, and additions to historic structures should be made visually compatible. He stated the existence of other accessory structures in and around the area would support this notion.

Architect DeGray reiterated his argument about the primary façade in response to the claim in the Staff Report that the proposed detached two-story accessory structure would impact the visibility of the Significant Historic Structure on site.

With respect to Staff's comments regarding the fifth criterion for the Variance that "new accessory buildings shall be located on or near sites with Historic buildings and additions shall be visually subordinate to Historic buildings when viewed from primary public Rights-of-Way," he referenced LMC Section 15-13-2(B)(9)(a) that "Unless dictated by the streetscape or character area are to be located in the front yard."

Based on this section of the Code, Architect DeGray opined that an accessory structure in the front yard was completely justified if the fabric of the neighborhood supported accessory structures, which he showed it does.

Applicant-representative Keyes explained that most of Staff's complaints related specifically to Historic District Design Review ("HDDR") issues, and he noted that this project had not yet gone through the HDDR process. He felt that many of the issues raised by Staff would be addressed during the HDDR process. He stated that they were excited about this project and the applicant's willingness to make a substantial investment to bring this home forward in keeping with the neighborhood.

In response to an inquiry, Architect DeGray stated the total square footage of the Accessory Building would be 250 square feet. He stated the parking area would be 11' x 20', which was the minimum Code requirement for a parking space.

Board Member Gezelius felt the Staff's analysis of the five criteria aligned with her thinking, and whether a property owner could construct an Accessory Building in front of a historic home was not what they were trying to do in terms of historic preservation. When these accessory units are created, an additional parking demand is also created. She commented the idea of needing parking for the historic structure was one issue; but when the need for additional spaces for the type of occupancy they see with accessory units is added to the analysis, she did not buy it because they were creating an additional problem.

Board Member Gezelius also expressed sensitivity to the fact that there were many lots with irregular configurations and they were all site-constrained. Even the ones constructed before the current laws created visual, Setback, and snow storage problems. Where they have the opportunity to work with a larger parcel of land, she felt that they should follow the rules regarding the Setbacks.

Board Member Gezelius concurred with every one of Staff's evaluations on the five Variance criteria.

Chair Franklin opened the public hearing. She noted for the record that two letters were submitted and were attached to the Staff Report as Exhibit D.

There was no public comment. Chair Franklin closed the public hearing.

MOTION: Board Member Gezelius moved to DENY Applicant's Request for a Variance from the Front Yard Setback at 844 Empire Avenue, based on the five criteria as outlined by Staff and the Findings of Fact and Conclusions of Law outlined in the Draft Final Action Letter:

Findings of Fact

1. The Site is located at 844 Empire Avenue.
2. The Site is located within the Historic Residential – 1 (HR – 1) Zoning District.
3. The existing Structure is designated to the Park City Historic Sites Inventory as a Significant Historic Structure.
4. The existing Structure was constructed c. 1904.
5. The Structure sustained heavy damage in a fire in 2014.
6. The Site is Lot 1 of the 844 Empire Avenue Plat Amendment, which was approved in 2016.
7. Ordinance 2016-26 Finding of Fact 13 states that the width of the 844 Empire Lot is 31 feet wide.
8. Ordinance 2016-26 Finding of Fact 15 states that pursuant to LMC Section 15-4- 17, the Planning Director determined the Lot has three Front Lot Lines, one Side Lot Line, and one Rear Lot Line with the following setbacks:
 - a. From 9th Street, platted un-built ROW, front yard, ten feet (10') minimum. This is the historic front of the structure.
 - b. From Empire Avenue, front yard, ten feet (10') minimum.
 - c. From Crescent Tram, front yard, ten feet (10') minimum
 - d. From the south neighbor, rear yard, ten feet (10') minimum. This side is opposite of the historic front of the house.

- e. From the east neighboring property, side yard, five feet (5') minimum.
9. On February 7, 2024, the Historic Preservation Board conducted a site visit to examine the fire-damaged materials at 844 Empire Avenue and approved the Applicant's Material Deconstruction and Panelization request to facilitate the rehabilitation of the Historic Structure and an addition.
 - a. The Applicant intends to construct an addition to the Historic Structure on the east side of the building, as well as a detached garage on the west.
10. On March 13, 2024, the Planning Commission conducted a public hearing and denied the Appellant's Plat Amendment to remove Plat Note 3 of the 844 Empire Avenue Plat Amendment, which required that vehicle access to the site be from Empire Avenue or through platted un-built 9th Street in a location approved by the City Engineer. The Planning Commission ratified the Final Action denial on April 10, 2024.
11. On April 22, 2024, Applicant appealed the Planning Commission's denial of the Plat Amendment. On May 20, 2024, the Appeal Panel conducted a public hearing and continued the appeal to June 3, 2024.
12. On June 3, 2024, the Appeal Panel heard the appeal and voted 2-1 to grant the appeal, reversing the Planning Commission's decision to deny the Plat Amendment.
13. In 2024, the City completed construction of public access stairs in the 9th Street right-of-way between Norfolk Avenue and Empire Avenue, adjacent to 844 Empire Avenue.
14. The Applicant requested a Variance as follows:
 - a. Reducing the Front Setback on Crescent Tram Road by approximately 8 feet.
 - b. Reducing the Front Setback on the platted but unbuilt 9th Street right-of-way by approximately 10 feet.
15. To grant the requested Variance, the Board of Adjustment must find that all five criteria in LMC Section 15-10-8(C) are met.
16. The Applicant bears the burden of proving that all the conditions justifying a Variance have been met.

17. The five criteria outlined in LMC Section 15-10-8(C)(1) are outlined below with analysis:
- a. Literal enforcement of the Land Management Code would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the Land Management Code.
 - i. Literal enforcement of the LMC prevents the Applicant from constructing a detached garage as proposed. This Variance criterion is not met because the lack of a garage on the property does not constitute an unreasonable hardship.
 - ii. The Accessory Building, as proposed, does not encourage the character of the Historic residential area and is not Historically Compatible because it would impede the visibility of the Significant Historic Site from Empire Avenue. Pursuant to LMC § 15-13- 2(B)(4)(a)(3), additions to Historic Structures should be visually subordinate when viewed from the primary public right-of-way.
 - iii. While LMC § 15-13-2(B)(9)(b) allows for new accessory structures to be located on a site with a Historic Structure at the street front (1) if a pattern of front yard historic accessory structures has been established along the street, and (2) the proposed placement does not create any danger or hazards to traffic by obstructing the view of the street, in this case, the Historic Structures in the character area do not support an Accessory Building. The Engineering Department confirmed the proposed Accessory Building would not create a danger or hazard to traffic by obstructing the view of the street. Also, while there is an Accessory Structure and addition for two Historic Sites visible from Crescent Tram Road, these are at the rear of the Historic Sites and there is no established pattern of front yard historic accessory structures for this character area. There is also no established pattern along nearby Empire Avenue of detached Accessory Buildings within the Front Setback.
 - iv. Denial of an Accessory Building to accommodate a garage is not an unreasonable hardship. Since the Appeal Panel reversed the Planning Commission's denial of the Applicant's Plat Amendment, the Applicant now can access a parking pad from Crescent Tram Road to 844 Empire Avenue. Pursuant to LMC § 15-2.2-3(F), driveways leading to an approved Parking Area, such as a parking pad, and approved parking pads, are an allowed exception to the Front Setbacks for 844 Empire Avenue, allowing the Applicant to park on site, without construction of an incompatible Accessory Building.

- b. There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone.
 - i. While in 2015, the Planning Director determined the 844 Empire Avenue Lot was an unusual configuration with three front yards, one rear yard, and one side yard pursuant to LMC § 15-4-17, as noted above, addressing unusual Lots is established through code. 844 Empire Avenue is a Significant Historic Site and is subject to the same regulations as other properties designated Historic Sites on Park City's Historic Sites Inventory.
 - ii. Pursuant to LMC § 15-13-2 Regulations For Historic Residential Sites, this requires additional protections of the Historic Structure when viewed from the primary right-of-way, including:
 - 1. LMC § 15-13-2(B)(9)(a): New accessory buildings on flat or downhill sites with a historic building shall generally be located to the rear of the site, unless dictated by the Streetscape or character area are to be located in the front yard. As demonstrated above, the Streetscape and character area do not support an Accessory Building in the Front Setback.
 - 2. LMC § 15-13-2(B)(9)(b): New accessory structures on a site with a historic building may be located at the street front if 1) a pattern of front yard historic accessory structures has been established along the street, and 2) the proposed placement does not create any danger or hazard to traffic by obstructing the view of the street. Please see the analysis above.
 - 3. LMC § 15-13-2(B)(1)(a)(1): Maintain the existing front and side yard setbacks of Historic Sites. The Applicant requests reductions to the front yard setbacks, increasing the massing proposed as part of the rehabilitation and addition, diminishing the prominence of the Significant Historic Structure when viewed from Empire Avenue.
 - 4. LMC § 15-13-2(B)(1)(g)(1): Minimize the visual impacts of on-site parking by incorporating landscape treatments for driveways, walkways, paths, building(s), and accessory structures in a comprehensive, complementary and integrated design. A parking pad would be much less impactful to the Historic Site and landscaping treatments could minimize visibility as part of the Applicant's Historic District Design Review application.

5. LMC § 15-13-2(B)(1)(g)(3): When locating new off-street parking areas, the existing topography of the site and integral site features should be minimally impacted. A parking pad will be much less impactful than a detached two-story Accessory Building.
 6. LMC § 15-13-2(B)(1)(g)(4): Off-street parking areas should be located within the rear yard and beyond the rear wall plane of the primary structure. If locating a parking area in the rear yard is not physically possible, the off-street parking area and associated vehicles should be visually buffered from adjacent properties and the primary public right-of-way. Consider providing a driveway along the side yard of the property where feasible. The Applicant has an opportunity to install a driveway and parking pad, without the massing of a detached Accessory Building.
 7. LMC § 15-13-2(B)(4)(a)(3): Additions should be visually subordinate to historic buildings when viewed from the primary public right-of-way. As discussed above, the proposed Accessory Building will impact the visibility of the Significant Historic Structure when viewed from Empire Avenue.
- c. Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone.
 - i. Pursuant to LMC § 15.2.2-4, existing Historic Buildings are exempt from Off-Street Parking requirements. If a property owner chooses to provide Off-Street Parking for such properties, the parking must comply with the requirements of LMC § 15-3-4 and LMC § 15-2.2-3. Staff finds that this Variance criterion is not met because Off-Street Parking is not required by the LMC for 844 Empire Avenue, and therefore is not essential to the enjoyment of the property. Additionally, the Applicant may construct a parking pad within the Front Setback, an allowed exception pursuant to LMC § 15-2.2- 3(G)(6).
 - ii. Without the requested Variance, the Applicant still enjoys property rights possessed by properties in the HR-1 Zoning District and exceeds some Historic Sites in that the Appeal Panel's determination allows the Applicant to have access from Crescent Tram, opening up on-site parking for the Significant Historic Site, unlike other Historic Sites with restrictions that do not allow for onsite parking.
 - d. The variance will not substantially affect the General Plan and will not be contrary to the public interest.

- i. Historic Character Goal 15 of the General Plan is to “[p]reserve the integrity, mass, scale, compatibility and historic fabric of the nationally and locally designated historic resources and districts for future generations.” Historic Character Goal 15 also notes that though it may evolve over time, the built environment of historic districts “should stay true to its architectural roots, specifically relative to the integrity, mass, scale, and historic fabric of the mining boom era (1872-1929).”
- ii. The Park City General Plan’s Detailed Strategies for Historic Character acknowledges that historic structures represent their era of significance, but that “the district as a whole is not frozen in time.” The strategies document goes on to note that “[i]t is necessary to create appropriate infill, spur investment, and promote the economic vitality of the community.” The Detailed Strategies document also states that massing and setbacks of new construction should complement and reinforce the visual dominance of historic structures, and additions and modifications made to historic structures should be visually compatible with the historic structure.
- iii. As noted above, the Historic Preservation Board approved the Applicant’s Material Deconstruction and Panelization request on February 7, 2024, to facilitate the rehabilitation of the structure, as well as a new addition to the Historic Structure, in accordance with the above General Plan goals and strategies. However, the proposed Accessory Building—which was not part of the Historic Preservation Board’s purview—blocks the visibility of the Significant Historic Site from Empire Avenue and does not comply with LMC § 15-13-2 Regulations For Historic Residential Sites, as noted above, and the requested Variance is not aligned with the goals of the General Plan and is therefore contrary to the public interest.
- e. The spirit of the Land Management Code is observed and substantial justice done.
 - i. The purpose of the HR-1 Zoning District is, in part, to preserve present land Uses and character of the Historic residential Areas of Park City, and encourage the preservation of Historic Buildings and/or Structures.
 - ii. Pursuant to LMC § 15-2.2-3(G), driveways leading to an approved Parking Area, such as a parking pad, and approved parking pads, are an allowed exception to the Front Setbacks for the HR-1 Zoning District. The Applicant can now access the property from Crescent Tram Road

following the Appeal Panel's reversal of the Planning Commission's denial of the Applicant's Plat Amendment petition, as noted above.

- iii. Pursuant to LMC § 15-13-2, new accessory buildings shall be located on the rear of sites with historic buildings, and additions should be visually subordinate to historic buildings when viewed from the primary public right-of-way. Accessory Buildings are not allowed as an exception to the Front Setbacks in the HR-1 Zoning District, pursuant to LMC § 15-2.2-3(G). As a result, the spirit of the LMC is not observed and substantial justice is not achieved through the requested Variance.

Conclusions of Law

1. Literal enforcement of the Land Management Code for this Property does not cause unreasonable hardship and is not necessary to carry out the general purpose of the Land Management Code.
2. Special circumstances are not attached to the Property that does not generally apply to other properties in the same district.
3. Granting the Variance is not essential to the enjoyment of a substantial property right possessed by other Properties in the same zone.
4. The proposal is not consistent with the General Plan.
5. The spirit of the zoning ordinance is not observed, and substantial justice is not done.
6. The Applicant did not meet the burden that all the conditions justifying a Variance have been met.

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

There was discussion regarding the plans for a Board of Adjustment meeting in August 2024. Planning Director Rebecca Ward advised that at this point, they had not received any Variance applications.

7. ADJOURN

Board Member Gezelius moved to ADJOURN. Board Member Armstrong seconded the motion. The motion passed with the unanimous consent of the Board.

Board of Adjustment Meeting
August 20, 2024

The Board of Adjustment Meeting adjourned at approximately 6:05 PM.

Approved by _____
Jennifer Franklin, Board of Adjustment Chair

Approved 11.12.2024

844 Empire Avenue

Variance

PL-24-06051
August 20, 2024



844 Empire Avenue

Variance

- Applicant proposes addition to Historic Structure and two-story detached Accessory Building with garage and living space
- Accessory Building would encroach into required 10-foot Front Setbacks along un-built 9th Street ROW and Crescent Tram Road
- Applicant requests Variance from the restrictions of the Front Setbacks, which exclude Accessory Buildings as an allowed exception within a Front Setback

844 Empire Avenue

Existing Conditions



844 Empire Avenue

Existing Conditions



844 Empire Avenue

Proposal



844 Empire Avenue

Background

- 844 Empire is a Significant Historic Structure that was damaged in a 2014 fire
- Site is an unusual lot that has three front yards (along un-built 9th Street ROW, Empire Avenue, and Crescent Tram Road)
- Plat approved in 2016 included Plat Note 3 requiring vehicle access to the site be from Empire Avenue or through platted un-built 9th Street in a location approved by the City Engineer

844 Empire Avenue

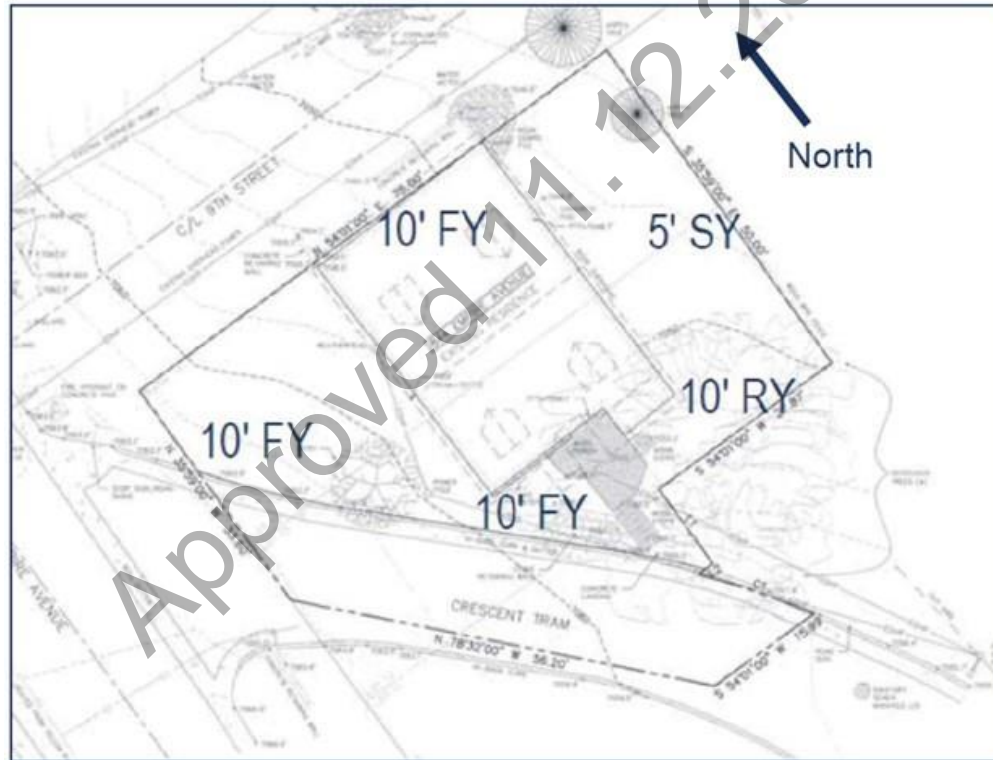
Background

- Applicant applied for Plat Amendment to remove Plat Note 3 regarding vehicle access, but Planning Commission denied on March 13, 2024
- Applicant appealed the Plat Amendment denial and Appeal Panel reversed the Planning Commission denial
- Vehicular access to the site from Crescent Tram Road is now possible
- HPB approved Material Deconstruction/Panelization in February 2024



844 Empire Avenue

Setbacks



844 Empire Avenue

Variance Criteria

- In order to grant the requested Variance, the Board of Adjustment must find that all five criteria in LMC § 15-10-8(C) are met. The Applicant bears the burden of providing that all the conditions justifying a Variance have been met.
- In determining whether or not enforcement of the ordinance will cause unreasonable hardship under LMC § 15-10-8(C)(1), the Board of Adjustment may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the Variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood.
- In determining whether or not enforcement of the LMC would cause unreasonable hardship, the Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic.

844 Empire Avenue

Analysis

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

- Literal enforcement of the LMC prevents the Applicant from constructing an Accessory Building as proposed. The lack of an Accessory Building on the property does not constitute an unreasonable hardship.
- Applicant can now access a parking pad from Crescent Tram Road.
- The Accessory Building, as proposed, does not encourage the character of the Historic residential area and is not Historically Compatible because it would impede the visibility of the Significant Historic Site from Empire Avenue. Additions to Historic Structures should be visually subordinate when viewed from the primary public right-of-way.

844 Empire Avenue

Analysis

2. There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone.

- Addressing unusual Lots is established through LMC § 15-4-17.
- 844 Empire is a Significant Historic Site and is subject to the same regulations as other properties designated as Historic Sites in Park City, pursuant to LMC § 15-13-2 *Regulations for Historic Residential Sites*.



844 Empire Avenue

Analysis

3. Granting the Variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone.

- Pursuant to LMC § 15.2.2-4, existing Historic Buildings are exempt from Off-Street Parking requirements. If a property owner chooses to provide Off-Street Parking for such properties, the parking must comply with the requirements of LMC § 15-3-4 and LMC §15-2.2-3.
- This Variance criterion is not met because Off-Street Parking is not required by the LMC for 844 Empire Avenue, and therefore is not essential to the enjoyment of the property.
- The Applicant may construct a parking pad within the Front Setback, an allowed exception pursuant to LMC § 15-2.2-3(G)(6).
- On-Street Parking, with a residential parking permit, is available for this neighborhood. Many properties in the area have direct driveway access from their streets to a garage; however, detached garages are not common, as shown in the photos in the Staff Report.

844 Empire Avenue

Analysis

4. The Variance will not substantially affect the General Plan and will not be contrary to the public interest.

- The requested Variance is not aligned with the Historic Preservation goals of the General Plan and is therefore contrary to public interest.
- The General Plan states that the massing and Setbacks of new construction should compliment and reinforce visual dominance of historic structures, and additions and modifications made to historic structures should be visually compatible with the historic structure.
- The Historic Preservation Board approved the Applicant's Material Deconstruction and Panelization request on February 7, 2024 to facilitate the rehabilitation of the structure, as well as a new addition to the Historic Structure, in accordance with the General Plan goals and strategies. However, the proposed Accessory Building was not part of the HPB's purview and blocks the visibility of the Significant Historic Site from Empire Avenue.

844 Empire Avenue

Analysis

5. The spirit of the Land Management Code is observed and substantial justice done.

- The spirit of the LMC is not observed and substantial justice is not achieved through the requested Variance.
- Driveways leading to an approved Parking Area and approved parking pads, are an allowed exception to the Front Setbacks for the HR-1 Zoning District. The Applicant can now access the 844 Empire property from Crescent Tram Road following the Appeal Panel's reversal of the Planning Commission's denial of the Applicant's Plat Amendment petition.
- LMC § 15-13-2 states that new accessory buildings shall be located on the rear of sites with historic buildings, and additions should be visually subordinate to historic buildings when viewed from the primary public right-of-way. Accessory Buildings are not allowed as an exception to the Front Setbacks in the HR-1 Zoning District.

844 Empire Avenue

Recommendation

(I) Review the requested Variance to Front Setback Requirements of Land Management Code § 15-2.2-3(F) and § 15-2.2-3(G) for an Accessory Building at 844 Empire Avenue, (II) conduct a public hearing, and (III) consider denying the Variance based on the Findings of Fact and Conclusions of Law outlined in the draft Final Action Letter (Exhibit A).