



**PARK CITY MUNICIPAL CORPORATION  
BOARD OF ADJUSTMENT MEETING  
SUMMIT COUNTY, UTAH  
MINUTES OF NOVEMBER 12, 2024**

**BOARD MEMBERS IN ATTENDANCE:** Jennifer Franklin - Chair, Beth Armstrong, Stefanie Wilson, Ruth Gezelius, John Stafsholt

**STAFF:** Planning Director, Rebecca Ward; Senior City Attorney, Mark Harrington

**1. MEETING CALLED TO ORDER AT 5:00 P.M.**

Chair Jennifer Franklin called the Board of Adjustment Meeting to order at 5:05 p.m.

**2. ROLL CALL**

A roll call was conducted and the Board Members present were identified.

**3. MINUTES APPROVAL**

- A. Consideration to Approve the Board of Adjustment Meeting Minutes from August 20, 2024.**

**MOTION:** Board Member Armstrong moved to APPROVE the Meeting Minutes of August 20, 2024, as presented. Board Member Gezelius seconded the motion. The motion passed with the unanimous consent of the Board.

**4. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES**

There were no communications or disclosures.

**5. PUBLIC COMMUNICATIONS**

There were no public communications.

## 6. REGULAR AGENDA

### A. Appeal of 220 King Road Final Action – The Board of Adjustment will Review an Appeal by Eric Hermann and Susan Fredston-Hermann of the Final Action Taken by the Planning Director Approving the Historic Design Review of the Proposal to Construct a New Single-Family Dwelling, Accessory Structure, and Outdoor Pool in the Sweeny Master Planned Development, Historic Residential-1-Master Planned Development Zoning District. PL-24-06263

Planning Director, Rebecca Ward, explained that she will share an introduction to the first appeal scheduled for review. Before doing so, she called to the attention of the Board the argument from the applicant that the appellants lack standing. The applicant bases this on Land Management Code (“LMC”) Section 15-1-18(E) *Timing*, which establishes a specific time for appeal for the development applicant. That is different than the general rule applicable to non-applicants. Standing is set forth more specifically in LMC Section 15-1-18(D) *Standing to Appeal*, and the applicant does not allege that the appellants fail to meet this section. Staff recommends that the Board consider the appeal and allow the appeal to move through the process. Board Members discussed the recommendation.

**MOTION:** Board Member Gezelius moved that the Board of Adjustment continue to hear the appeal for Item 6A on the meeting agenda. Board Member Wilson seconded the motion. The motion passed with the unanimous consent of the Board.

Director Ward reported that this item is an appeal of the Historic District Design Review (“HDDR”) for 220 King Road. The appellant submitted 47 pages of analysis and 246 pages of exhibits for Board review. The appellant is requesting that the Board:

- Disregard zoning and plat regulations;
- Rely on recommendations of a non-binding SWCA Technical Memorandum that preceded Planning Commission zoning determinations and was based on plans that were later revised;
- Reconsider matters within the authority of the Planning Commission that the appellant appealed and the Appeal Panel denied;
- Conclude the Planning Director erred in applying the HDDR criteria consistent with zoning, the Master Planned Development (“MPD”), and plat regulations.

The SWCA Technical Memorandum is advisory only and is similar to a letter that was submitted by the Park City Historical Society. The latter is a museum in support of the proposed development at 220 King Road, finding that it is compatible and an asset to the City’s historic districts. While both can be considered as input, in the end, it is the code criteria in LMC Section 15-13-8 that regulates new residential infill. Ultimately, that is the criteria that is under evaluation at the current Board of Adjustment Meeting.

220 King Road is in the Historic Residential - 1 Sweeney MPD Zoning District. The Sweeney MPD reduced 450 units to 277 and clustered development. Over 40 acres were dedicated as open space in the Treasure Hill Subdivision and larger lots for seven homes were established as a transition area between open space and Old Town. In 1990, the City Council zoned 200 King Road (the appellant property) and 220 King Road (the applicant property) HR-1-MPD. In 1995, the City Council approved the Treasure Hill Subdivision, outlining additional plat regulations for the properties, including 220 King Road. Director Ward shared Ordinance 90-24, an ordinance zoning portions of the Historic District. It includes two King Road lots, including 200 King Road and 220 King Road. The zoning went from HR-1 to HR-1-MPD. These are larger transitional lots that are between the industrial mining structures and the residential structures of Old Town.

The Treasure Hill Subdivision map was shared. It outlines in green the 40 acres that were required to be dedicated as open space. In blue, it is possible to see 220 King Road, which is Lot 2 of the Treasure Hill Subdivision. It is a larger lot, but with the larger lots, there were additional restrictions imposed for future development through the Treasure Hill Subdivision. This includes some regulations that are more restrictive than would otherwise be allowed in the HR-1 Zone. For example, 220 King Road is substantially larger than an Old Town lot. However, there is a platted building area limit. In addition, there are massing requirements, with a maximum building footprint of 3,500 square feet. In the HR-1 Zoning District, that could be up to 4,500 square feet, with an exemption to square footage for a garage. Director Ward noted there is a more restrictive building footprint imposed through plat regulations. Additionally, the plat regulations require the massing of the footprint be offset in modules of 1,500 square feet.

Within the Sweeney MPD, there are Conditional Use Permits ("CUP") that are required first. The Planning Commission has discretion beyond Staff discretion in the review of these projects. In the HR-1 Zone, a home is not required to go to the Planning Commission for approval. That is an additional review that is required for Sweeney MPD/Treasure Hill single-family homes. Through the CUP criteria, the Planning Commission reviews building mass, bulk, orientation, physical design, and compatibility with surrounding structures in mass, scale, style, design, and architectural detailing.

Additionally, through the CUP, there is a review of construction on steep slopes. That includes the form, scale, volume, access, slope stabilization, erosion mitigation, and minimizing cut and fill within building area limits. Director Ward reviewed the process for the single-family homes within the Sweeney MPD/Treasure Hill Subdivision. The appellant property is the last vacant lot within the subdivision. There has been a process where the Planning Commission reviews the CUP first and then Staff reviews the HDDR criteria to ensure that it complies with the design review criteria. That was the case for the structures that were demolished this past summer. The one lot that did not go through this process is in a different zone, as it is within the Estate MPD Zoning District.

Director Ward shared an example illustration from the CUP and HDDR of two of the homes within the Sweeney MPD HR-1 Zoning District. In the foreground, some homes

are constructed on lots that are closer to a standard Old Town lot (25' x 75'). Behind, there are the two homes within the Sweeney MPD that are limited to the footprint that is more restrictive than otherwise allowed for lots of that size. There was also a requirement to have the parking be subterranean and the massing needed to be broken up into modules within every 1,500 square feet. She shared a photograph of the built projects.

The appellant is arguing that the approval of the HDDR is illegal because of the following:

- The project fails to meet most of the Universal Regulations in Section 15-13-8(A);
- The project creates an unmitigable risk of physical damage to nearby historic sites;
- The project fails to meet many of the Specific Regulations in Section 15-13-8(B).

Staff reviewed the project for compliance with the requirements of LMC Section 15-13-8. The HDDR Staff Report from August 15 outlines in detail each criterion with an analysis outlining compliance. Director Ward explained that she is limited in her presentation time and will not review all of the information, but that Staff Report was provided to the Board.

Director Ward highlighted some of the items the appellant argues do not comply. This includes the Universal Regulations - Criteria #4. It talks about residential buildings and how they need to differentiate from historic structures, but also be compatible with historic structures in materials, features, size, scale, proportion, and massing. This is recommending that larger masses be located at the rear of the lot. As previously mentioned, there are more restrictive requirements through the Treasure Hill Subdivision plat notes. The applicant complies, varying the volume of the proposed home in five masses, based on the 1,500 square foot requirement that is mentioned in the plat. Additionally, the larger mass is located at the rear of the lot.

Universal Regulations - Criteria #5 states that building and site design shall respect existing topography, and character-defining site features, and minimize cut, fill, and the use of retaining walls. Within this lot, there is a platted building area limit. The single-family home is proposed to be located where the site is already disturbed, which is where the former home and guest home were located within the site. New site disturbances, including the subterranean accessory building that requires cut, fill, and retaining walls, were required to be located behind the single-family dwelling to minimize visual impacts. This was addressed through the Planning Commission CUP review. Significant vegetation is required to be protected during and after construction occurs on the site.

Universal Regulations - Criteria #7 states that the scale and height of new infill shall follow the predominant pattern and respect the architecture of the streetscape or character area, with special consideration given to historic sites. In this case, there were some Conditions of Approval regarding modifications to the roof to be more reflective of the historic site roof forms that the project is aiming to respond to in the Sweeney MPD character area.

Universal Regulations - Criteria #8 relates to the size and mass of a structure. It shall be compatible with the size of the site and compatible with historic sites within the streetscape or character area. Within the Sweeney MPD/Treasure Hill Subdivision, there is a lot that is nearly 29 times the size of an Old Town lot. While the building footprints under the HR-1 Zoning would allow up to 4,500 square feet, that is not the case here, as there are additional restrictions imposed through the Treasure Hill Subdivision.

Universal Regulations - Criteria #9 states that new construction activity shall not physically damage nearby historic sites. This is where the appellant references a 1984 report. Director Ward reported that there are no designated historic sites on the Park City Historic Sites Inventory near 220 King Road. She shared a map and noted that several historic sites are highlighted in blue. There are none within the vicinity of 220 King Road.

Director Ward explained that she required two Conditions of Approval. The applicant must modify their plans to meet the following standards:

- Ratios of solid-to-void must be compatible with surrounding historic buildings and large expanses of glazing are inappropriate on residential structures.
  - Condition of Approval #18 requires the applicant to update the glazing on the eastern façade, the facade most visible from Old Town, to replace floor-to-ceiling windows with industrial patterns that create a compatible solid-to-void ratio comparable to Historic Mine Sites and approved by Planning Staff.
- Roofs must be visually compatible with roof shapes and orientation of surrounding historic sites and adjacent buildings that contribute to the character of the Historic District. Roofs shall be in scale with those on historic structures.
  - Condition of Approval #12 requires the applicant to reduce the length of the roof overhang on the north end of the home.

As part of the HDDR review, Director Ward worked to correctly apply the standards of LMC Chapter 15-13 *Regulations for Historic Districts and Historic Sites* based upon substantial evidence on the record. Her findings regarding the criteria are not pulled out of thin air. As detailed in the Staff Report from August 15, the reviews associated with the HDDR are evaluated consistent with the underlying zoning and plat regulations.

The standard of review for the Board of Adjustment is to review factual matters de novo, without deference to the Planning Director's determination of factual matters. The Board shall determine the correctness of the Planning Director's interpretation and application of the plain meaning of the land use regulations, and interpret and apply a land use regulation to favor a land use application unless the land use regulation restricts the land use application. She posed a question for the Board of Adjustment:

- Does the appeal demonstrate that the Planning Director incorrectly applied the LMC standards to this application for a Historic District Design Review within the context of the HR-1-MPD Zoning approvals?

Board Member John Stafsholt had a question about the process. He wanted to know if there would be a presentation from the applicant and appellant. City Attorney, Mark Harrington, reported that each has approximately 15 minutes to present. Board Member Stafsholt wondered if it is appropriate to ask questions of the Planning Director. Attorney Harrington explained that typically, all three sides present, and then questions can be asked as necessary. Chair Franklin reported that the appellant will present, then the applicant, and then Staff will have the opportunity to speak to those presentations. From that point, the public hearing will be opened and there will be Board deliberations.

Board Member Beth Armstrong asked if the CUP is reviewed first because of precedent or rule of law. Director Ward explained that there were multiple applications submitted for this project, including a Plat Amendment, CUP, Steep Slope CUP, and HDDR. Those are reviewed simultaneously and there must be compliance with all of them. Staff worked with the applicant through the HDDR criteria prior to going to the Planning Commission for the CUP. In the CUP, the Planning Commission has more discretion than Staff does through HDDR. For example, in a steep slope review of a CUP, the Planning Commission can increase setbacks or decrease height. The final action of the Planning Commission lays the groundwork for the HDDR. That was the process followed in this case.

Board Member Stefanie Wilson asked if, in the CUP process, the Planning Commission is allowed to grant variances without bringing them to the Board of Adjustment for approval. Director Ward clarified that a variance would be a request for an exception to the requirements of the LMC. When reviewing a CUP, the Planning Commission is looking for compliance with the underlying plat and zoning district. The Commission also has discretion to impose Conditions of Approval that can mitigate detrimental effects of the proposed use. She explained that the Planning Commission can address and mitigate impacts, but cannot grant a variance from the requirements of the LMC.

Eric Lee and Justin Keys were present at the Board of Adjustment Meeting to represent the appellants. The appellants, Eric Hermann, and Susan Fredston-Hermann, are also at the meeting. Mr. Lee started by addressing the arguments that the applicant made in their opposition brief. As for standing, the argument is that this appeal must be dismissed because under the Pesky Porcupine, LLC, interpretation of the code, the appellants do not have standing to appeal. However, under LMC Section 15-1-18(A) it states:

- Final Action by either the Planning Director or Planning Staff may be appealed to the Planning Commission. Final Action regarding the Design Guidelines for Historic Districts and Historic Sites shall be reviewed by the Board of Adjustment.

Under LMC Section 15-1-18(D), the standing portion of that section, states that anyone who owns property within 300 feet of the subject project has standing to come before the Board of Adjustment and appeal any final action. The appellants plainly satisfy the requirements, as they own property contiguous to the project. The Pesky Porcupine, LLC, supporting argument is based on a separate subsection related to timing. That does not apply. There is a word in the timing subsection portion of the code that creates some

confusion. It says that an applicant may appeal the decision within 30 days. The applicant is interpreting that to state that only the applicant is able to appeal the decision, but that is actually a reference to the person submitting the application for the appeal to the Board. In this case, the appellants are the ones who applied for the appeal.

Pesky Porcupine, LLC, has also presented arguments about jurisdiction. There are several problems with their jurisdiction arguments. Both the LMC and Utah Code confer authority on the Board of Adjustment to hear the appeal. Pesky Porcupine, LLC, tries to argue that the rules governing District Court jurisdiction over cases on appeal to an Appellant Court somehow apply here. However, there is nothing in Utah law that applies that kind of rule to this body. There is no jurisdictional problem here and the Board of Adjustment has jurisdiction over the appeal. Any argument to the contrary does not apply.

Mr. Lee stated that Pesky Porcupine, LLC, also argued that the Planning Commission already approved the design of the house and it is not possible to render a decision inconsistent with that approval. Staff addressed this argument in the Staff Report for the Pesky Porcupine, LLC, appeal. It stated: "Prior approvals do not pre-empt the Planning Department from requiring further modifications for the development to be compliant with the HDDR. The Historic District regulations outlined in LMC 15-13-8 are meant to be "in addition" to requirements imposed on the development through prior approvals, such as a CUP or SSCUP, so long as the regulation or finding is not in conflict with prior approvals or vested determination." The HDDR regulations apply regardless of whatever happened before with the Commission. The Planning Commission is one step in the process. The Commission approval does not supplant the HDDR requirements. The Commission agrees with that interpretation and expressly conditioned the approval on the HDDR. There is agreement with all but Pesky Porcupine, LLC, that the Planning Commission approval is the first step in the process. The second step in the process is the HDDR.

Mr. Lee read some of the language from Page 6 of the Staff Report for Item 6B:

- The February 2024 Plat Amendment, CUP, and SSCUP approval for 220 King Road includes COAs to mitigate the visual impact of the overall development, whereas, the HDDR goes further to ensure the proposed building materials and design are consistent with Historic District Design standards. Both Land Use Reviews take into consideration the original COAs of the Sweeney MPD and the Treasure Hill Subdivision Plat regulations.

The Staff Report notes that the HDDR requirements are a further step and are important in terms of both building materials and designs. Mr. Lee mentioned another issue from the Pesky Porcupine, LLC, opposition brief, which is the idea that the Sweeney MPD somehow modifies the HDDR regulations. There is nothing in the code to support that conclusion. It is also inconsistent with what Staff says in the report on the Pesky Porcupine, LLC, appeal. The HDDR approval is a standalone approval that includes its own regulations and requirements, regardless of the Sweeney MPD or Planning Commission approval. He asked Mr. Keys to share additional information with the Board.

Mr. Keys expressed appreciation to everyone who took the time to read the brief that was submitted. He acknowledged that it was lengthy. Much of the brief is focused on the SWCA Technical Memorandum by Anne Oliver. It is the premise of many of the arguments, which is appropriate given that the SWCA report was commissioned by the City. Though the report is from 2023, it is still relevant. To date, it is the only expert report there is on the record that reviews the applicant proposal under the HDDR guidelines.

Park City's Design Guidelines are intended to protect the historic character of Park City. As identified in LMC 15-2.2-1, the purpose of the HR-1 Zone regarding residential infill is:

- Preserve present land uses and the character of the Historic Residential Areas of Park City;
- Encourage construction of historically compatible structures that contribute to the character and scale of the Historic District and maintain existing residential neighborhoods;
- Encourage single-family development on combinations of 25' x 75' historic lots;
- Define development parameters that are consistent with the General Plan policies for the historic core; and
- Establish development review criteria for new development on steep slopes which mitigate impacts to mass and scale and the environment.

Mr. Keys stated that the purpose of the HDDR guidelines is to ensure compatibility in residential scale with new infill construction. The first argument he believes the Board will hear from Pesky Porcupine, LLC, is that they are looking at the wrong documents. They will likely state that the SWCA report is not valid, because different modifications have been made. Mr. Keys shared a rendering of the proposed residence at 220 King Road. He next shared the rendering that was included as part of the HDDR process. The two images were shown side-by-side for comparison. He sees very few differences. There is a slight pop-up in the roof on one side, which was something required by the Planning Commission since there was concern about the lengthy shed roof. Other than that, there is some different coloring on the facades. Mr. Keys shared additional renderings from different views. He reiterated that the images are similar and with few modifications.

The Massing Models were shared for reference. The reason the massing model is so similar is because the masses have not really changed. Much of the proposal is the same. Mr. Keys explained that the materials in the submissions are substantially similar. There have not been notable changes in the designs or drawings for massing and scale.

LMC Section 15-13-8 was referenced. Mr. Keys read a portion of the language aloud:

- 15-13-8(A)(4): New infill residential buildings shall differentiate from historic structures but be compatible with historic structures in materials, features, size, scale, proportion, and massing to protect the integrity of the Historic District as a whole. The massing of the new infill residential buildings shall be further broken

up into volumes that reflect the original massing of historic buildings; larger masses shall be located at the rear of the lot.

The SWCA report states that: “The proposed materials and features of the residence at 220 King Road are compatible with industrial designs in and around Park City. However, the size, scale, and proportions of the residence and its component elements, including the shed roof and cantilevered flat roof, are reminiscent of a large-scale industrial building rather than a residential building, which is not compatible with the HR-1 Zone. While projecting portions of the building on the downslope elevation provides some modulation of mass, additional size reduction or modulation of the building mass itself (as well as its roofs) is required to reflect the size and massing of historic residential buildings, which were typically built on 25-foot-wide lots in this zone.”

Mr. Keys next read language from LMC 15-13-8(A)(6), which is as follows:

- Exterior elements - roofs, entrances, eaves, chimneys, porches, windows, doors, steps, garages, etc. - of the new infill residential building shall be of human scale and shall be compatible with neighboring Historic Structures.

In the SWCA report, it states that: “The proposed residence at 220 King Road will span multiple lots, with a single shed roof also spanning multiple lots. While the use of an industrial mining aesthetic is encouraged, the scale of the roof and eaves should be compatible with the scale of historic residences in the HR-1 Zone, not to an industrial mining building. To comply with this guideline, the wide shed roof would need to be divided into three to five modules to achieve the appropriate residential scale and the cantilevered flat roof would need to be reduced in size.” Mr. Keys shared an example image of a Sweeney MPD residence. It is clear what the difference is between that and the proposal.

Mr. Keys read language from LMC 15-13-8(A)(7), which is as follows:

- Scale and height of new infill residential buildings shall follow the predominant pattern and respect the architecture of the streetscape or character area with special consideration given to Historic Sites.

The SWCA report states that: “The proposed infill references the industrial buildings of the Silver King Mine, but the guidelines require that infill residential buildings maintain a historic residential scale appropriate to the historic district or zone in which they are being constructed. The proposed residence at 220 King Road will be on a relatively isolated site and will not be directly adjacent to any Historic Sites. In the absence of a streetscape lined by other buildings, the predominant pattern of the historic district or residential zone applies. The proposed design does not comply with this guideline.”

Mr. Keys explained that streetscape and character areas will be important to consider during the Board of Adjustment Meeting. Staff and the applicant are arguing that the

character area is not Old Town or the Historic District, rather it is the mining structures and other Sweeney MPD structures. That approach was rejected by Ms. Oliver and he believes it should also be rejected by the Board of Adjustment. Mr. Keys shared the definitions of streetscape and character areas for reference. Streetscape is defined by the code, but the character area is not. The SWCA report states: "In the absence of a streetscape lined by other buildings, the predominant pattern of the historic district or residential zone applies." The character area that applies and should apply in this case is the HR-1 Zone.

The Staff interpretation of the character area was included in the Staff Report. In that section, it states: "The LMC requires application of the HR-1-MPD Zoning District, where the "Character Area" is not defined by historic residential buildings on 25-foot by 75-foot Old Town lots, but rather by the Sweeney MPD, a transitional area between the Historic Mine Sites and Old Town." Mr. Keys has never seen this type of definition proposed previously and it runs counter to what the original intention of the rezone was. He shared Figure 4: Olson Kundig, Exhibit 1. The red pin in the middle is the applicant site. The applicant is arguing that the character area is the section shown in red that runs over the mountain and down the back. However, that mine on the back side of the mountain is not visible from anywhere in the HR-1 Zone and most of the Sweeney MPD homes are not either.

On August 16, 1990, there was a rezone of 220 King Road. Mr. Keys shared the Meeting Minutes from that time. During that rezone, there was a question about what the impact of this would be. The City Attorney at the time stated that the MPD designation is a more restrictive zone that provides the City with more control. The idea was that this would be more restrictive rather than less restrictive. Everything he has heard in previous presentations is that the MPD Zone somehow makes the HR-1 Zone less restrictive and it allows them to do more rather than less. As he reads the Meeting Minutes from 1990, that was not the intention. The intention was to make it more restrictive rather than less.

LMC 15-11-12 prioritizes historic district regulations over the LMC when historic district provisions are more restrictive. It states, "Whenever a conflict exists between the LMC and the Regulations for Historic Districts and Historic Sites, the more restrictive provision shall apply to the extent allowed by law." That is why in the SWCA report, the character zone was defined as the HR-1 Zone. In that report, it was pointed out that the mass and scale are not consistent with the HR-1 Zone and it does not reinforce visual unity.

Mr. Keys further reviewed LMC 15-13-8, including 15-13-8(B)(2)(a)(1) and 15-13-8(B)(2)(a)(3). The Specific Guidelines also look at mass, scale, and height:

- 15-13-8(B)(2)(a)(1):
  - The size and mass of a new residential infill building in relation to open spaces, shall be visually compatible with adjacent historic buildings and historic structures in the surrounding streetscape or character area.
- 15-13-8(B)(2)(a)(3):

- Historic height, width, and depth proportions are important in creating compatible infill and maintaining the historic mass and scale of the streetscape or character area.

Language from the SWCA report for 15-13-8(B)(2)(a)(1) and 15-13-8(B)(2)(a)(3) stated:

- 15-13-8(B)(2)(a)(1):
  - The proposed residence at 220 King Road is sited on an open slope above much of the HR-1 Zone. This provides some flexibility in allowing greater size because of the building's relation to more open space. However, the size of the building and its component elements must be broken into distinct masses more reminiscent of the size and mass of historic buildings in the zone to achieve visual compatibility.
- 15-13-8(B)(2)(a)(3):
  - The height, width, and depth of the proposed residence at 220 King Road are of an industrial scale and not compatible with the residential streetscapes in Park City's historic districts. As noted above, while the large lot and open hillside allow for greater building size, it is necessary to break up the massing and roof forms to be more similar to historical residential massing and scale to achieve compatible infill.

15-13-8(B)(2)(a)(5) and 15-13-8(B)(2)(a)(10) deal with mass and scale, looking at roof heights and modules. In both of these, the report concluded that it could not comply because it does not comply with the residential scale. Mr. Keys explained that there is support for the industrial aesthetic and design, but not the industrial mass and scale. He shared an architect overlay that shows the proposed project above the HR-1 Zone.

Mr. Keys discussed topography and grading. He explained that the LMC provisions are clear. The LMC provisions require that there be respect for the natural topography, that cuts are minimized, and that natural features are respected. When feasible, a site shall be contoured in a way that reduces the need for retaining walls. What he hears from Staff is that this is already a disturbed site and since the proposed location is where the previous building occurred, that is considered acceptable. It was also stated that even though there were cuts and retaining walls, there was Planning Commission support. As argued earlier by Mr. Lee, the question is not whether the Planning Commission supported the cuts and retaining walls, because the Board is able to review this matter.

The fill analysis was shared. Mr. Keys noted that it was also referenced in the brief that was submitted. There are substantial cuts beyond the cuts that were already in place to accommodate the two homes. He pointed out the 5,000-square-foot underground parking area and noted that it requires cuts and retaining walls. The Grading Plan was reviewed.

Mr. Keys mentioned the Condition of Approval from the Planning Commission that says the retaining walls need to be no more than 4 feet unless behind the structure. The question is what is considered to be behind the structure. Along the south façade, there

are retaining walls that are 18 feet tall. It is hard to find one on the plan that is under 4 feet. He explained that there are retaining walls that are 10, 12, and 16 feet.

Mr. Keys shared a profile view that shows an 18-foot retaining wall that is partially hidden by some creeping vine on the top. However, it is still highly visible from that location. He next shared language and an image from the August 14, 2024, Staff Report. It stated that 220 King Road fronts King Road and the primary façade is the southern façade. Even in the rendering shown, the retaining walls are prevalent from the primary façade. Mr. Keys reported that new balconies and roof decks are supposed to be subordinate to the new building, minimally visible from the primary public right-of-way, simple in design, and primarily on the rear side of the property. Staff says that is the case and what is proposed is not in the primary public right-of-way, but that is not accurate.

Mr. Keys shared an example image with the Marsac building overlaid in front of the proposed building. The proposed building can be seen above and to either side. That provides a better idea of the mass proposed. It is taller and wider than the Marsac building and it will sit over the historic district. His conclusion is the same as the one from Ms. Oliver in the SWCA report, which is that this project does not comply. The industrial aesthetic is appropriate, but the guidelines are clear regarding requirements for residential massing and scale and the proposed design is not in compliance. Mr. Keys encouraged the Board to reverse the conclusion from the Planning Director that this project complies with the HDDR guidelines. He is available to answer any questions.

Chair Franklin stated that the applicant presentation will now take place. The applicant representative, Wade Budge, introduced himself to the Board and explained that he was at the meeting on behalf of the owner of Pesky Porcupine, LLC. Pesky Porcupine, LLC, is an entity owned by Matthew and Tatiana Prince. Urban Planner, Jason Bull, and co-counsel, Bruce Baird, are also present at the Board Meeting.

Mr. Budge explained that when an HDDR decision is reviewed, that review needs to consider the context of what has happened in prior approvals. He is grateful that Staff did such a complete job analyzing this manner. The Staff Report covers every item in detail. This is not an application that has not been reviewed thoroughly. As indicated by the materials that have been submitted and are in the Staff Report, this has been to multiple Planning Commission hearings and a five-hour Appeal Panel hearing. All of the same types of arguments being presented now were presented to other bodies.

Mr. Budge stated that he intends to focus on a few key items. This is a situation where there is a very different influence zone than what would be found in the residential zone, which is adjacent to the Sweeney MPD. It is important to understand that the lots are of a different dimension. There is agreement with what is in the Staff Report that developing in the Sweeney MPD is more restrictive than what would otherwise be seen in the HR-1 Zone. The structure needs to be contained within a smaller footprint and there are massing requirements. All of these items are indicated in the MPD, which dates back to 1986. There have been various iterations, changes, and updates over the years.

The reason that this matter comes to the HDDR last for consideration is because there needs to be an understanding of the structure being analyzed. The appellant representatives have not said there is a problem with the compliance of dimensional elements of the code, plat, or MPD. Instead, what is being discussed is how the various historical elements and guidelines were applied to this site. These were applied in a way that takes into account the residential zone and the industrial zone that is up the mountain.

This particular building takes great influence from the Silver King Mine as well as the Ontario Mine structure. When the site was first acquired by Mr. Prince, he hired an architect and then took him around to some of the mines and the museum. Context was shared with the architect before the concept was created. Mr. Budge reported that two structures were demolished once there was approval. Those structures did not contribute to the community and were not consistent with the influence zone they were located.

Mr. Budge shared the HDDR pre-application review rendering and the approved plan rendering. Through meetings with the Planning Staff, certain changes were made and a secondary roof element was created. After reading the historical guidelines, it was clear that this was a reasonable request consistent with those guidelines. The discussions continued, but there are a few issues with what happened relative to SWCA. It is a guiding document that helped them further evolve the plan. It does not reflect an opinion or determination. Mr. Budge reported that SWCA did not take into account that this particular project does not front a public road. This is a private drive-access road. Additionally, SWCA did not take into account the requirements of the MPD and plat.

In response to SWCA, there was variation in the structural colors to appear more historic and consistent with what influenced the design. Additionally, there were reductions in the amount of glazing. Mr. Budge noted that the Planning Commission addressed items such as light, glazing, height, and the roofline. All of their requirements were responded to. He noted that one of the guiding principles in the historic guidelines is that the principle that the larger impacts be moved to the rear. The buildable footprint used to be 500 square feet larger, but it shrunk based on what was approved on February 14, 2024. It was also adjusted so the accessory structure was more to the rear.

When thinking about how to analyze the criteria, it needs to be analyzed in the way the Planning Director did so when she conducted the hearing. The Planning Director analyzed the criteria and SWCA was used, but the decision was not controlled by that report, as plans had evolved since then. Instead, the Planning Director looked at how to make sure there was compliance with the Design Guidelines but also consistency with what occurred in many hours of meetings and prior decision-making by other bodies.

Mr. Budge explained that he views the role of the Board of Adjustment as a confirming role. The Board will determine whether the Planning Director complied with the design requirements found in the Park City Code that apply to historic properties. He feels the Planning Director did comply. The next question is if there is evidence to support that,

which there is. The Staff Report outlines what the final decision was in August relative to the HDDR, but also the deliberations and reports relative to the Planning Commission and Appeal Panel. The last question to consider is whether any sort of illegality has been identified by the appellant. The appellant is the one who needs to show there was an error, but in every regard, the requirements have been followed. The project is not seeking a variance, exception, or variation. The intention is to construct the structure in a way that is consistent with the expectations for infill development as indicated in City codes.

Mr. Budge next discussed context. He shared images of Sweeney MPD homes located at 375 Norfolk Avenue, 425 Norfolk Avenue, 503 1/2 Woodside Avenue, and 503 Woodside Avenue. This illustrates that other homes in the Sweeney MPD would not be expected to be seen in the HR-1 Zone. He pointed out that the appellant is the owner of the one vacant lot that will also need to go through a process similar to what the applicant is going through now. When developing the Sweeney MPD, is a more involved process. This is an area that a great deal of attention has been paid to over the years. In 1990, a separate zone was created to reflect the fact that this is an area that is different than the regular HR-1. He reminded the Board that this is the HR-1-MPD Zone.

Several SWCA scoping items were reviewed with the Board, including the following:

- The home design was revised and approved by the Planning Commission (2-2024) after the SWCA letter (4-2023);
- Sweeney MPD and Treasure Hill Plat were not included in their review;
- Sweeney Master Plan utilized the Lower Creole Mine site and other industrial/mining sites along the hillsides above downtown;
- Portions of the Sweeney Master Plan were zoned HR-1-MPD, including 220 King Road, which was never a part of any historic residential neighborhood, as it was historically industrial;
- 220 King is a 1.24-acre lot, not a 25' x 75' (0.43 acre) historic lot the HR-1 Design Guidelines are designed to preserve;
- The Treasure Hill Plat explicitly allows a new home with a footprint of 3,500 square feet, which is not even possible on a historic HR-1 lot. Additional design standards are identified on the Treasure Hill Plat;
- King Road is a private road and not a public road as indicated in the SWCA letter. The intent of the Design Guidelines is to control what is seen from the public right-of-way;
- SWCA mistakenly assumed that the proposed design would span multiple lots;
- What is being proposed is shorter, less massive, and more in line with the historical design criteria than the two existing buildings in the process of being replaced;
- Park City Historical Society, Friends of Park City Mines, and the Park City Museum were consulted on the design.

Mr. Budge reported that during the Planning Commission process, there were adjustments made to the roof and footprint. This was a very iterative process. He pointed

out that what is proposed is a single-family structure, consistent with the MPD requirements being applied to one single lot in the Sweeney MPD. He noted that significant stakeholders supported the structure because it is recognized that this is consistent with the influence zone. It pays respect to the mine structures of the past.

There was significant neighborhood support presented to the Planning Commission at the February 14, 2024, Planning Commission Meeting. Mr. Budge noted that there was no support from the appellants by the time the item went to the Planning Commission. He shared a map that shows the subject property in yellow. All of the green sections indicate lot owners who shared support for the structure and what is proposed. Mr. Budge explained that there is a desire to build a home for a Park City resident on a lot the applicant purchased and spent a great deal of time on. He asked that the Board uphold the decision of the Planning Director. Director Ward prepared the HDDR opinion based on all of the information and he believes that decision should be upheld.

Board Member Stafsholt asked which direction the frontage is. Mr. Budge believes the frontage would be either south or east. Those who experience the home will mostly be seeing it from the east side. Board Member Stafsholt pointed out that a lot of the analysis is based on the frontage. Mr. Budge clarified that an analysis was done from both sides so it is possible to prevail under either scenario. Board Member Stafsholt asked for a dimensional analysis of the height of the roofs. Mr. Budge offered to find that and noted that it was included in the Planning Commission approval. The current discussion has to do with the design and making sure the structure is consistent with the Design Guidelines. Compliance with the height has already been considered by Staff, the Planning Commission, and the Appeal Panel. The height exhibit was shared with the Board. As part of the Commission approval, there is a specific plat note to govern the pop-up height.

Board Member Armstrong asked to see the comparison of the two renderings. Mr. Budge shared the HDDR Pre-Application Review versus Approval Plans slide. The one on the left is the pre-application rendering. Changes were made, which includes changes to the glazing. Board Member Armstrong asked that the changes be clarified. It was noted that the pop-up was added to break up the mass and there are color variations.

There was a condition imposed by the Planning Commission on glazing, which mentions that 60% of the eastern facing façade is permitted to be glazing. Lighting impacts from the eastern façade shall be mitigated by interior fixtures designed to minimize direct visibility of the lighting element from residences within one-third mile of the residence. Mr. Budge explained that this shows there needs to be compliance with that plat note before building. There are additional glazing restrictions that have been imposed as part of the HDDR.

Mr. Budge addressed the earlier question from Board Member Stafsholt about the height. Plat Note #5 states that: "The building height shall be measured from existing grade to the top of the flat roofs and the ridge of pitch roofs. The maximum height in general shall be 25 feet for flat roofs and 30 feet for pitched roofs. A maximum height of 28 feet for flat

roofs and 33 feet for pitched roofs shall be permitted for the express purpose of accommodating access and light features no greater than 24 feet in length.” Mr. Budge explained that the pop-up cannot be longer than 24 feet in length based on that.

Board Member Stafsholt noted that the original Sweeney MPD states:

- Building heights shall be limited to the maximum envelope described in the Restrictions and Requirements exhibit. At the time of conditional use approval, projects shall be reviewed for conformance with the heights prescribed thereon, and the following:
  - The various parcels located within the Historic Residential (HR-1) zone district shall abide by the Land Management Code and no height exceptions will be considered. Maximum building height on the single-family lots shall be limited to 25 feet in order to reduce potential visibility.
- At the time of project review and approval, all buildings shall be reviewed for conformance with the Historic District Design Guidelines and related architectural requirements.

Based on this language, Board Member Stafsholt does not believe the argument that this is not in the HR-1 Zone. He discussed the Treasure Hill Subdivision approval after Lot 2 was zoned HR-1-MPD. The plat notes all carried over from the original 1985, 1986, and 1987 MPD approvals. Each of the notes is more restrictive than the original HR-1 Zone. The spirit of the MPD approval was to impose more restrictive zoning, as discussed. It is more restrictive on these HR-1-MPD properties. Everyone at that time knew the lots were larger than HR-1 properties. The stated goal was to make these residential properties less intrusive. The idea of making it more restrictive was so the houses fit into the fabric of the area. Mr. Budge pointed out that while HR-1 was the original zoning, it was rezoned to HR-1-MPD in 1990. That communicates to the landowner that there are more restrictions imposed and those are the ones coming out of the MPD. As a result, they do not look to the HR-1 Zone to determine what to do, but at the MPD.

Mr. Budge reported that there is not a single element of the plat that anyone has alleged is unlawful and there is not a single element of their proposal, as reviewed and approved, where it was determined to be unlawful. Instead, there are discussions about whether the Design Guidelines could've been applied better. There is a desire to hear from the Board on that matter. The Planning Director correctly applied guidelines to the project.

Board Member Wilson thanked the applicant representatives for the thorough presentation. Throughout the SWCA report, it discusses size, scale, and mass. It says: “Additional size reduction or modulation of the building mass itself (as well as its roofs) is required to reflect the size and massing of historic residential buildings, which were typically built on 25-foot-wide lots in this zone.” She asked what had been done to mitigate the size, scale, and mass of the structure. Mr. Budge reported that the building footprint has been adjusted, consistent with the MPD and LMC. The mass has been moved to the rear and the drawings have been revised to break up the roof. There are

five conforming masses, which requires that no single mass be greater than 1,500 square feet in terms of its module. SWCA did not have the elements of the MPD and those were not referenced in the report. Instead, Ms. Oliver looked at the site and shared comments about applying the HR-1. There are a number of SWCA comments that would be helpful if this was on a typical HR-1 lot, but that is not the case. As for the useful comments, those were taken into consideration and the appropriate adjustments were made.

Board Member Wilson understands that some changes were made, but she is struggling to see how the mass and scale was reduced. Mr. Budge shared images and information about Lot 3 and Lot 4 of the Sweeney MPD. That does not compare to a home on a 25-foot wide lot. What is proposed in this case is more consistent with the interface zone than what is seen in the example images. Lot 6 was reviewed. It is a larger structure than what would be seen on a 25-foot wide lot. These lots provide context and he believes the applicant's proposal compares favorably. Lot 5 was shared as another example. When comparing the proposal to the neighborhood, meaning those in the Sweeney MPD, the massing principles and Design Guidelines are being applied in a way that is consistent.

Mr. Keys noted that the square footage of the structure is at least double the largest square footage of the ones shown. He pointed out that the applicant representatives stated the mass has been moved to the back. In order for that to be true, the south façade must be front. Additionally, to state that no one has objected legally to the plat notes is not accurate, because there has been an objection, appeal, and further appeal. It is important to discuss what the rear façade is and where the mass has been placed.

Mr. Budge shared a height comparison image. It compares the two structures that were demolished in the summer. In blue, the outline of those items is shown, and in the lighter color is the proposed structure. The proposed structure is lower than the northern of the two structures, which was non-conforming in terms of height. That is the reason the condition of the site will be improved with the proposal. Additionally, the activity is being contained within the disturbed area. The structure has been moved to the west of the western boundary of the blue structure, which is the now demolished second home.

Board Member Stafsholt asked to review the Character Area – Presented to Planning Commission (2-14-2024) slide. He noted that it shows the Ontario Mine Building and asked to see it on the map. Mr. Budge clarified that it is not on the map. The map shows areas where there is a transition from a residential context to industrial buildings up the mountain. It also shows the Sweeney MPD areas. The four homes shown previously are indicated on the map in yellow. Board Member Stafsholt keeps hearing references to transitional zones and asked for a document that references that. Mr. Budge explained that a transition is an influence area, which is a historic concept. It is not a regulating document. What is a regulating item is the zoning district. Below the applicant property is the HR-1 Zone and the site is located in the HR-1-MPD.

Chair Franklin reported that Staff will now have the opportunity to comment. Director Ward noted that there has been a lot of discussion about the SWCA Technical Memorandum during the Board of Adjustment Meeting so far. That was completed prior to the Planning Commission's determinations on zoning and the plat. She clarified that there was a rezone in 1990. She agrees that the rezone to HR-1-MPD imposed additional restrictions. As mentioned previously, the building footprint is reduced by 1,000 square feet. The rezone of the property in 1990 was applied to the Sweeney MPD homes through the plat regulations that were adopted in 1995. That includes height, where the maximum height shall be 25 feet for flat roofs and 30 feet for pitched roofs. When it comes to the SWCA report, some items provided value in terms of shaping the proposed structure to be compatible with the underlying zoning, plat regulations, and Historic District regulations.

The appellant made a statement during their presentation about the relevance of the SWCA report as far as building materials and design. With the building materials and design, there is encouragement through the SWCA report for this industrial mining aesthetic. There were requirements that the roof be broken into modules. There are some distinguishing factors between the modules of the roof and the 1,500-square-foot modules of the massing. In the plat notes, the actual building has a prescriptive massing with the 1,500 square feet modules. With the roof form, the SWCA recommendation was that the proposed roof form either be broken into modules or modulated. The input there was not to break up the roof into 1,500 square foot modules, but that further reduction or modulation was required. Additionally, in the Historic District regulations for new residential infill, there are limitations on glazing. The SWCA report does encourage the industrial mining aesthetic, which they conclude allows for greater solid-to-void ratio windows to cladding. The requirements of the LMC are more restrictive in that the solid-to-void ratio must be reduced. Floor-to-ceiling windows are not allowed. That was another Condition of Approval that was imposed for conformance with the Historic District review.

With the HDDR applications, the underlying zoning results in different buildings. For example, there are some transition zones. In this case, there are Sweeney MPD properties with larger lots. The SWCA report acknowledges that. Since these are larger lots between open space and Old Town, it is appropriate for a larger structure to be on the lot. However, there are more restrictive requirements imposed through the HR-1-MPD Zoning and the plat regulations through the Treasure Hill Subdivision. The appellant noted the review criteria for Staff in the HDDR, which is in Section 15-11-12. Whenever a conflict exists between the code and the regulations for Historic Districts and Historic Sites, the most restrictive provision shall apply to the extent allowed by law. By law, the Planning Staff does not have the authority to amend plat regulations or to amend a zoning ordinance for the property. Staff takes the underlying zoning and plat regulations that have been established for a property and reviews those for compliance through the criteria outlined in Chapters 15-13. She is able to answer questions about the criteria.

Board Member Stafsholt had a question about the Conditions of Approval. Two of the ones imposed were mentioned: Condition of Approval #12 and Conditional of Approval #18. He asked where the other conditions came from. Director Ward reported that the Conditions of Approval are based on the standards of the LMC. Two were required for compliance with the requirements in Section 15-13-8. In order for the plans to meet those criteria, the roof needs to be reduced and the glazing needs to be reduced. Additional Conditions of Approval incorporate those required by the Planning Commission moving forward. Those include details from other sections of the LMC, which will be applied at the Building Permit phase. For example, protection of significant vegetation. Board Member Stafsholt asked what the total number of Conditions of Approval were for the project. Director Ward reported that there were 24 for the Historic District application.

Chair Franklin asked about the comment made by Director Ward about the module being 1,500 square feet or the roof being modulated. Director Ward explained that the modulation requirements that are established through the Treasure Hill Subdivision Plat come from Plat Note #6, which is related to the house. House designs may be comprised of one or more connected or unconnected building masses. No one building mass within the 3,500 square foot footprint shall have a footprint that exceeds 1,500 square feet. The imposed Condition of Approval about the roof comes from the criteria within the Historic District regulations. Roofs of new residential infill buildings must be visually compatible with roof shapes and orientation. This is something that the appellant has raised a lot, whether the front façade is viewed from the streetscape or primary right-of-way. It depends on the criteria. That is very clearly established in Section 15-13-8. With roofs, the roof form is required to be visually compatible with surrounding historic sites or adjacent buildings that contribute to the character of the Historic District. Roofs composed of a combination of roof planes, but simple in form, are encouraged. Roofs shall be in scale with those on historic structures. That is where the Condition of Approval comes into play, where the applicant is proposing a type of industrial style. There were no additional roof overhangs on the historic mine structures, so for compatibility with those, the Condition of Approval was imposed to require that massing be reduced.

Board Member Stafsholt referenced 15-13-8(B)(2)(a)(6), which states that modules shall be clearly expressed throughout the entire building. The pictures that were shown of Lot 3, Lot 4, Lot 6, and Lot 7 show the breakup and what a module actually looks like. There are examples of what the modulation should be and what is required under the HDDR.

Board Member Wilson asked about the possibility of having the SWCA report updated. Director Ward stated that the original report was based on previous iterations. Ms. Oliver is no longer with SWCA. With the iterative process and revisions implemented by the applicant, there was an internal review where SWCA was the consultant. As the project went through different iterations, it was reviewed through the Design Review process in place at that time. The report was not updated based on the revised plans.

Board Member Stafsholt noted that Director Ward stated earlier that the appellant was relying strictly on the SWCA document. However, the appellant acknowledges the

changes after the SWCA document was put forth but felt those were minimal and did not materially affect what was brought up in the SWCA document. The City engaged SWCA and it is up to the City to decide whether or not to bring them back after design changes.

Board Member Armstrong referenced 15-13-8(A)(5): "Building and site design shall respect the existing topography, the character-defining site features, including existing trees and vegetation, and shall minimize cut, fill, and the use of retaining walls." Nowhere in that language does it state that as long as it occurs in the back of the site, it is appropriate. Board Member Stafsholt mentioned Lot 6 and Lot 7. Those were shown as part of the MPD, which is accurate. However, those caused a lot of problems in the City. Those projects went around all of the codes and the codes changed after that occurred. Those two buildings are outliers and at the time, it was noted that there was not a desire for those to set a precedent. Those buildings caused problems that the City tried to remedy over the years. As a result, he does not feel those lots are good examples.

Chair Franklin explained that the next portion of this process is the public hearing. She asked anyone interested in commenting to sign in, state their full name, and keep the comments to three minutes or less. Comments should be directed to the Board of Adjustment rather than to the appellant or applicant. If there are questions posed during the public hearing, the Board can ask those questions during the deliberations.

Ahead of the public comment period, the Board of Adjustment took a five-minute break.

**MOTION:** Board Member Gezelius moved that the Board of Adjustment take a brief recess. Board Member Armstrong seconded the motion. The motion passed with the unanimous consent of the Board.

Chair Franklin called the meeting back to order. Anyone interested in commenting that was attending via Zoom is asked to raise their hand to indicate a desire to speak.

Chair Franklin opened the public hearing.

*Eric Hermann* explained that he is a resident of Old Town and the neighbor to this property. He discussed the presentation slide that highlighted community support. A number of those properties were asked whether they would prefer a property with nightly rentals or without. Understandably, those residents preferred one without nightly rentals and that was counted as community support. At least three of the properties that offered community support are owned by Mr. Prince, including the home he stays in while in Park City. The image of community support is thinner than the slide that was shared earlier.

Mr. Hermann talked about what the Board is looking at in terms of the HDDR, which is mass and scale as it relates to the footprint of the home. He asked that the side-by-side renderings be shared. On the lefthand rendering is the footprint that Staff calculated was 11,300 square feet. That compares with the footprint of the Marsac building of 8,422 square feet. What is proposed is significantly larger than the Marsac building footprint.

On the rendering to the right, the footprint is 3,475 square feet. He asked the Board of Adjustment to consider the idea that the one on the right is one-third the footprint size than the one on the left. He would like the Board to try to figure out how that happened. Mr. Hermann pointed out that the largest of the Sweeney MPD properties being used for comparison is less than half of the proposal at 5,200 square feet versus 11,300.

*Pat Sweeney* gave his address as 445 King Road. He supports the Prince family being able to build their home. Mr. Sweeney believes this is consistent with the intent of the MPD and likes the design, as it is contemporary but reflects historic elements. Some examples that come to mind are the Marsac Mill and the mining building up the street.

*Jim Doilney* stated that he lives at 50 Sampson Avenue, which is near the applicant site. He is a 50-year resident and was a former City Council Member. He was one of two dissenting votes on the original MPD. Mr. Doilney addressed the claim made by the applicant representative that there is community support for the project. When he heard that historic preservation and museum leaders wrote letters supporting the plans, he called letter writer, Sally Elliott. He asked Ms. Elliott about rumors that she had been given \$1 million to write the letter. She said that was not true and it was \$1.6 million. She said that she had been promised by Mr. Prince that with her historic work, problems would disappear, such as the \$1.6 million worth of projects she wanted to see done. The amount of pressure that has been placed on City Officials and the Mayor by the State Legislature is immense. Everyone is aware of the fact that the Utah House rejected a bypass effort to try to bypass City regulations and approve the Prince plans.

There were no further comments. The public hearing was closed.

Chair Franklin stated that the appellant or applicant could respond. Mr. Lee believed that context had been lost in this process. The reason context has been lost is because Mr. Budge is talking about an influence zone. What he means by context is what the Board is measuring this project against. The context that the Board is being asked to measure this against by the applicant is a lot of old mining buildings several miles up the hill that have no bearing on what can be seen from Old Town. However, that is not the context that is required by the HDDR. The context required by the HDDR is streetscape or character area. In this case, that means what can be seen from the project location, such as the street and Old Town itself. If the building is being measured against industrial mining buildings five miles away, then the design would be considered compatible, but if the building is being measured against what can be seen, then it is not.

Mr. Baird explained that he was present on behalf of the applicant. When the Staff Report was received, it became apparent the Staff was linking HDDR compliance to compliance with Condition of Approval #12 and Condition of Approval #18. It occurs to the team that granting the appellant appeal would moot the appeal on Condition of Approval #12 and Condition of Approval #18 because there would be no need to discuss at this level whether the glazing requirement was appropriate or not. If the Board of Adjustment grants the appeal and overturns the decision made by Director Ward, they will appeal that to the

District Court. The remedy in District Court would be a remand to this Board, at which time, the Condition of Approval #12 and Condition of Approval #18 argument would be raised again. It is mooted if the appellant's appeal is granted. It is also mooted if the denial is made conditional upon compliance with those two Conditions of Approval. They do not see any reason to hear the second appeal tonight. Chair Franklin stated that the Board is currently only hearing 6A, which is the appellant argument. Separately, Item 6B will be discussed, which is the conversation about the two Conditions of Approval stated.

Mr. Baird understands the comments shared by Chair Franklin but explained that 6B is effectively mooted if 6A is granted. If 6A is denied on the basis of Condition of Approval #12 and Condition of Approval #18, he will withdraw his appeal on those conditions. Chair Franklin stated that the Board scope for 6A does not include those conditions.

Attorney Harrington noted that he understands what has been proposed by Mr. Baird. That is something that can be discussed when it is time to consider Item 6B. It appears that the applicant representatives are clarifying that the item will be withdrawn regardless of the decision made by the Board. That can be explained further later on in the meeting.

Mr. Budge explained that this is a matter where the appropriate determination is to deny the appeal that has been brought forward by the appellant. There have been some factual inconsistencies. The structure that has been identified to be built on Lot 2, is a 7,500 square foot finished home. There was a suggestion in the public comment to this being larger. In the record that was presented to the Planning Commission, it was shown that Lot 4 is 10,800 square feet, which is considerably larger than 7,500 square feet. Lot 6 is 9,000 square feet and Lot 7 is 9,200 square feet. Since context is so important here, he believes that factual correction needs to be made. Mr. Budge stated that there are important elements in the code relative to retaining walls, cuts, modularity, and roofs. He explained that he would address each of those items more specifically.

The retaining wall requirement is found in Section 15-13-8(B)(1)(d). In that section, it states: "When retaining walls are necessary, the visual impact shall be minimized by creating gradual steps or tiers and by using perennial plant material." The Planning Director carefully applied this to the application. What she put in as a specific condition is Condition of Approval #6. It states that visible retaining walls shall not exceed more than 4 feet in height. That shows that there will not be a visual blight created in this case.

Mr. Budge believes it is important to consider modules. Section 15-13-8(B)(2)(a)(6) states: "A larger building shall be divided into modules that reflect the mass, scale, proportions, and size of historic buildings within the streetscape or character area." Multiple modules have been created to comply with this requirement and the more restrictive requirement in the plat. There is consistency with modularity. Reading through the conditions imposed, the Planning Director correctly ensured that the approval was consistent with those guidelines. As for roofs, there is clear language in Section 15-13-8(B)(2)(e)(1): "Roofs composed of a combination of roof planes, but simple in form, are

also encouraged. Roofs shall be in scale with those on historic structures.” A rendering was shared to illustrate scale. It shows consistency, pitches, and a simple form.

The purpose of the section is to guide the planning process. Mr. Budge explained that the guidelines referred to and referenced in the SWCA report are not the same as a plat note or a dimensional limit in the zoning code or an explicit restriction in the MPD. These are guidelines to make sure that as the aesthetic elements are prepared, all of the important values are caught. That has happened through this process. There was careful attention to detail to ensure that all elements were applied.

Mr. Budge pointed out that there was a public comment made that is outside the scope of the appeal. He received a response from Mr. Prince about the statement associated with Ms. Elliott and said it was untrue. That comment was public clamor and is irrelevant to the actions here. However, due to the seriousness of the comment, it needed to be addressed. Chair Franklin stated that public clamor will not be a factor in the decision.

Mr. Budge explained that to grant the appeal that has been brought forward, the Board needs to ignore the Planning Commission. He pointed out that the Planning Commission carefully considered the complex regulatory requirement that applies to the Sweeney MPD, which has evolved over time. To grant the appeal would also mean to ignore the work of the Appeal Panel. The Appeal Panel deliberated during a five-hour meeting. When a question arose, it was sent back to the Planning Commission, and then it was brought back to them. Lastly, to grant the appeal would mean to ignore the work done by Staff, who is charged with safeguarding the historic values and making sure they are applied appropriately. Mr. Budge reminded those present that the purpose statement, which is quoted in the Staff Report, notes that these regulations are not intended to be a technical manual. What has been brought forward meets the requirements. As a result, he respectfully asked that the Board of Adjustment deny the appeal.

Director Ward referenced LMC Section 15-13-8(B)(1)(3). It states: “The historic town grid shall be preserved by retaining the formal street pattern, maintaining historic lot sizes...” Through that criteria, there would need to be a plat imposed that is 25' x 75'. Staff does not have the authority to amend a plat or to create a new lot. Instead, Staff looks to what is established in zoning and plat regulations. That is what was done in this case. Much of what has been discussed at the meeting is in relation to the plat and how the plat regulations imposed through the HR-1-MPD Zoning as well as the Treasure Hill Subdivision apply to this lot. Additionally, she noted that 15-13-8 is divided into two sections. Section A has the Universal Regulations and Section B has the Specific Regulations. Director Ward read example language from portions of Section 15-13-8.

Section 15-13-8(A)(8) states: “Size and mass of a structure shall be compatible with the size of the site so that lot coverage, building bulk, and mass are compatible with Historic Sites within the streetscape or character area.” Staff has already outlined plat regulations that are more restrictive than what would otherwise be allowed for the massing of the site. Section 15-13-8(B)(2)(a)(1) states: “The size and mass of a new residential infill building

in relation to open spaces, shall be visually compatible with adjacent historic buildings and historic structures in the surrounding streetscape or character area.”

Section 15-13-8(B)(2)(a)(6) states: “Modules shall be clearly expressed throughout the entire building and a single form shall remain the dominant element so the overall mass does not become too fragmented. To minimize the scale perceived from the primary public right-of-way, stepping down the mass of a larger building shall be considered.” Directly following that, it states: “Larger-scaled projects shall also include variations in roof height in order to break up the form, mass, and scale of the overall structure.” Director Ward explained that it is the roof height that is recommended to vary to break up the form, mass, and scale of the overall structure. This is a very detailed and thorough section of code. It requires a full evaluation and careful Conditions of Approval for a site to comply with the HR-1-MPD Zoning regulations, the Treasure Hill Subdivision plat regulations and restrictions, as well as Section 15-13-8. The August 15, 2024, Staff Report goes through the nuances and details of those regulations, including where the different requirements are viewed from and the purpose of those requirements when looking at the whole site.

Mr. Keys asked to make some factual clarifications. He noted that Mr. Budge stated that there is 7,500 square feet of finished square feet, which implies that he was misrepresenting what the square footage of the home was. He mentioned the Staff Report from August 15, 2024. In that, the exact square footages are listed. It is 7,461 square feet of finished space, but there is another 5,898 square feet of unfinished space. The Planning Commission was uncomfortable because of the interior height and required it to be unfinished. There is also another 1,103 square feet for the accessory building, a 243 square foot outdoor pool, and a 4,794 square foot underground parking area. The total is approximately 20,000 square feet of structure. There was no intention to mislead.

As for the retaining walls, there is a note that says the retaining walls are limited to 4 feet where visible. Mr. Keys explained that this is the reason is it important to determine the visibility. If the south is the primary façade, there is an 18-foot visible retaining wall there.

Chair Franklin stated that there will now be Board of Adjustment deliberations. She reviewed the scope of the Board decision. The appellant has the burden of proof that an error has been made. The Board is looking to answer the following question:

- Does the appeal demonstrate that the Planning Director incorrectly applied the LMC standards to this application for a Historic District Design Review within the context of the HR-1-MPD Zoning approvals?

There is a minimum of three votes needed to overturn an action in any form. Chair Franklin asked to hear from members of the Board. Board Member Ruth Gezelius commented that open space development and vacant space development in Old Town are significant and requires a great deal of attention and detail. She recognizes that the Planning Commission, Appeal Panel, and Staff have carefully evaluated, assessed, and

made a recommendation based on their legal and professional judgment regarding this application. She has confidence that the Planning Staff and Planning Director have made a recommendation based on facts. As a result, she recommends denial of the appeal.

Board Member Stafsholt agrees with the comments shared by Board Member Gezelius, except for the recommendation to deny the appeal. He recommends that the Board grant the appeal. He feels the appellants have demonstrated that the Planning Director has incorrectly applied the LMC standards to this application. Board Member Wilson has no doubt that Staff and the Planning Director took great care in their decision and did what they thought was appropriate. However, she is stuck on the streetscape, specifically Section 15-13-8(B)(2)(a)(9): "The width of a new building shall not appear to be visibly greater than historic buildings in the streetscape or character area." The massing looming over Old Town makes her question what is proposed based on that specific language.

Chair Franklin explained that in reviewing the entire process this has gone through and breaking down LMC 15-13-8, she believes that reasonable decision-making occurred. Director Ward is supported by substantial evidence in making her decision. As a result, she supports a denial of the appeal that is currently before the Board. Discussions were had about a motion. It was noted that the Board can move to deny the appeal, grant the appeal, grant the appeal in part, or continue the item to a date certain.

**MOTION:** Board Member Gezelius moved to DENY the appeal according to the following Findings of Fact, Conclusions of Law, and Conditions of Approval:

**Findings of Fact:**

1. In 2022, the Applicant submitted a Plat Amendment, Steep Slope Conditional Use Permit (SSCUP), Conditional Use Permit (CUP), and Historic District Design Review (HDDR) applications for the construction of a new SFD and Accessory Building at 220 King Road.
2. 220 King Road is a 1.23-acre lot in the Historic Residential-1-Master Planned Development (HR-1-MPD) Zoning District and is Lot 2 of the Treasure Hill Subdivision Phase I within the Sweeney Master Planned Development (Sweeney MPD).
3. The Sweeney MPD and Treasure Hill Subdivision background is outlined below:
  - a. In 1986, the City Council approved the Sweeney MPD, which required development to be clustered, to minimize the impact of development on Old Town through the platting process, as well as Condition of Approval 6 which requires review for conformance with the Historic District Guidelines and related architectural requirements.

- b. In 1987, the City Council approved an Amendment to the Sweeney MPD, which reallocated 12 Unit Equivalents to accommodate extended ski trails. The amended Sweeney MPD located two Unit Equivalents off King Road, one off Upper Norfolk, and one off 5th Street, with approximate Single-Family Dwellings that later became part of the Treasure Hill Subdivision. The 1987 amendment created 200 and 220 King Road and required a CUP for future development to ensure that impacts of the development are minimized.
- c. The Sweeney MPD required the rezone of parcels within the MPD.
- d. In 1990, the City Council approved Ordinance No. 90-24 to rezone 200 and 220 King Road from HR-1 to HR-1-MPD.
- e. In 1995, the City Council approved the Treasure Hill Subdivision Phase I with plat notes that regulate development at 220 King Road in accordance with the Sweeney MPD, including Building Footprint, Building Area Limits, Façade Height, and Massing.
- f. All SFDs within the HR-1-MPD Zoning District in the Treasure Hill Subdivision were required to obtain CUP approval from the Planning Commission for conformance with the Treasure Hill Subdivision plat regulations and Sweeney MPD prior to HDDR approval:
  - i. Lot 1, 200 King Road – Appellant’s vacant property.
  - ii. Lot 2, 220 King Road – On March 12, 1997, the Planning Commission approved a CUP for the SFD and Guest House at 220 King Road. On March 17, 1997, the Planning Department approved an HDDR for the project.
  - iii. Lot 3, 425 Norfolk Avenue – On January 8, 1997, the Planning Commission approved a CUP for the SFD. On January 27, 1997, the Planning Department approved an HDDR for the project.
  - iv. Lot 4, 375 Norfolk Avenue – On January 22, 1997, the Planning Commission approved a CUP for the SFD. On January 27, 1997, the Planning Department approved an HDDR for the project.
  - v. Lot 5, Open Space
  - vi. Lot 6, 503 ½ Woodside Avenue – On March 23, 2005, the Planning Commission approved a CUP for the SFD. On May 2, 2005, the Planning Department approved an HDDR for the project.
  - vii. Lot 7, 503 Woodside Avenue – On March 23, 2005, the Planning Commission approved a CUP for the SFD. On May 2, 2005, the Planning Department approved an HDDR for the project.
  - viii. Lot 8, 445 King Road – This singular property within the Sweeney MPD is in the Estate Zoning District and does not require HDDR review.

4. The proposed project was reviewed as follows:
  - a. October 26, 2022 – the Planning Commission was scheduled to conduct a Work Session on the 220 King Road applications. The Work Session was continued to a later date at the request of the Applicant for additional time to consider their proposal.
  - b. October 11, 2023 – the Planning Commission conducted a work session on the 220 King Road applications.
  - c. January 24, 2024 – the Planning Commission conducted a work session on the 220 King Road applications.
  - d. February 14, 2024 – the Planning Commission conducted a public hearing and approved the Plat Amendment, SSCUP, and CUP for the development of the SFD and Accessory Buildings at 220 King Road.
  - e. February 21, 2024 – the Planning Commission ratified the Final Action Letter outlining their February 14 approval.
  - f. March 1, 2024 – the Appellant appealed the Planning Commission’s approval of the 220 King Road development applications.
  - g. April 30, 2024 – the Appeal Panel denied the appeal in part and remanded questions related to the applicability of the Sensitive Land Overlay to the Planning Commission.
  - h. June 26, 2024 – the Planning Commission determined the SLO did not apply to 220 King Road.
  - i. July 22, 2024 – the Appeal Panel signed the Final Action Letter denying the appeal of the Planning Commission’s approval.
  - j. August 15, 2024 – the Planning Director approved the HDDR.
  - k. August 29, 2024 – the Appellant appealed the Planning Director’s approval of the HDDR.
5. The final action by the Planning Director addressed prior input from the 2023 Technical Memorandum. The Appellant’s characterizations of the 2023 Technical Memorandum are incorrect, and did not factor in subsequent plan changes, Planning Commission determinations, MPD vesting, or conditions of approval imposed by the Planning Director.
6. The Planning Director’s evaluation of regulations regarding compatibility, including streetscape and character area, consistent with the Sweeney MPD properties, complied with existing approvals and Land Management Code.
7. The Planning Director’s HDDR determination, as reflected in the staff analysis of the original HDDR report, demonstrates the decision was neither illegal nor arbitrary or capricious. The decision was based upon the appropriate code criteria and evidence accumulated over nearly 2 years,

including plan changes and public input specific to HDDR compliance. While reasonable people may disagree with certain determinations, such determinations were within the scope of the Director's authority, consistent with the Purpose and Policy of LMC 15-13-1, and based upon evidence on the record. The Staff Report analysis section and original HDDR report and Exhibits are incorporated herein.

**Conclusions of Law:**

1. The Appellant did not meet their burden of proving the Planning Director erred in approving the HDDR.
2. The Planning Director was correct in interpreting and applying the plain meaning of LMC Section 15-13-8 finding that the proposed design complies.

Chair Franklin seconded the motion. Vote on Motion: Board Member Armstrong-Nay; Board Member Wilson-Nay; Board Member Gezelius-Aye; Board Member Stafsholt-Nay; Chair Franklin-Aye. The motion failed with a vote of 2-to-3.

Board Member Stafsholt made a motion to grant the appeal. Discussions were had about how to proceed. Attorney Harrington explained that the Chair is calling for a point of discussion before requesting a second to the motion. There are no draft Findings of Fact, Conclusions of Law, and Conditions of Approval before the Board for a denial. As a result, that cannot be incorporated into the motion. The Board can direct Staff to prepare that information, consistent with the motion, but the Board has not identified specific errors.

Board Member Stafsholt stated that he has made note of 13 specific sections of 15-13-8. Attorney Harrington explained that if he feels the Planning Director has erred in all or some of those, then those sections should be identified. He informed the Board that it is necessary to identify where the error actually occurred. Additional discussions were had about the motion language and whether or not additional discussion is needed.

Attorney Harrington reiterated that the Board needs to identify an error in order to grant the appeal. Chair Franklin suggested asking Board Member Wilson and Board Member Armstrong what their items are. If this matter needs to be continued for further deliberations, then that can also be done. Board Member Wilson explained that the item she is stuck on has to do with the scale and massing. She repeated her earlier reference to 15-13-8(B)(2)(a)(9). Board Member Armstrong stated that her issue relates to 15-13-8(A)(1)(5). This comes up in the Universal Regulations and Specific Regulations.

Board Member Stafsholt noted that many of the items are repetitive as far as size, mass, and scale. He would deny the application based on 15-13-8(A)(4), 15-13-8(A)(6), 15-13-8(A)(7), 15-13-8(A)(8), and 15-13-8(A)(10), which all have to do with size, mass, and scale. Under the Specific Regulations, he referenced 15-13-8(B)(2)(a)(1), 15-13-8(B)(2)(a)(2) about building forms, and 15-13-8(B)(2)(a)(3) about historic height, depth,

and width. He also mentioned 15-13-8(B)(2)(a)(4), 15-13-8(B)(2)(a)(5), 15-13-8(B)(2)(a)(6), 15-13-8(B)(2)(a)(9), and 15-13-8(B)(2)(d)(1). Attorney Harrington stated that it is up to the other Board Members to determine whether they agree with the issues Board Member Stafsholt has shared, either in full or in part. He explained that the majority needs to adopt findings together. Discussions were had about motion language.

**MOTION:** Board Member Wilson moved to GRANT the appeal based on Findings of Fact and Conclusions of Law relative to LMC 15-13-8(B)(2)(a)(9), 15-13-8(A)(1)(5), and 15-13-8(B)(1)(9). Board Member Armstrong seconded the motion. Vote on Motion: Board Member Armstrong-Aye; Board Member Wilson-Aye; Board Member Gezelius-Nay; Board Member Stafsholt-Aye; Chair Franklin-Nay. The motion passed with a vote of 3-to-2.

Chair Franklin stated that the appeal is granted in part by a 3-to-2 vote, according to Findings of Fact, Conclusions of Law, and based on the LMC cited. Staff is now directed by the Board of Adjustment to prepare Findings within 15 working days.

- B. Appeal of 200 King Road Final Action Conditions of Approval – The Board of Adjustment will Review and Appeal by Applicant Pesky Porcupine, LLC of the Final Action Taken by the Planning Director Imposing Conditions of Approval in the Historic District Design Review Final Action Letter for the Proposal to Construct a New Single-Family Dwelling, Accessory Structure, and Outdoor Pool in the Sweeny Master Planned Development, Historic Residential-1-Master Planned Development Zoning District. PL-24-06259.**

Based on earlier comments shared by Mr. Baird, no discussion for Item 6B is needed.

## **7. ADJOURN**

**MOTION:** Board Member Gezelius moved to ADJOURN. Board Member Stafsholt seconded the motion. The motion passed with the unanimous consent of the Board.

The Board of Adjustment Meeting adjourned at 8:12 p.m.

Approved by \_\_\_\_\_  
Jennifer Franklin, Board of Adjustment Chair