



**PARK CITY MUNICIPAL CORPORATION  
BOARD OF ADJUSTMENT MEETING  
SUMMIT COUNTY, UTAH  
MINUTES OF NOVEMBER 19, 2024**

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

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

**1. MEETING CALLED TO ORDER AT 5:00 PM**

Chair Jennifer Franklin called the meeting to order at 5:00 p.m.

**2. ROLL CALL**

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

It was noted that Board Member John Stafsholt would participate remotely and only participate in the first item.

**3. STAFF AND BOARD COMMUNICATIONS AND DISCLOSURES**

Planning Director, Rebecca Ward reported that the third item on the agenda was withdrawn and wokeyes  
uld not be discussed or have a public hearing.

Board Member Wintzer stated that she would recuse herself from the first item on the agenda since she was not in attendance to the original discussion and vote.

**4. PUBLIC COMMUNICATIONS**

There were no public communications.

**5. REGULAR AGENDA**

- A. **Appeal of 220 King Road Final Action – The Board of Adjustment will Review and Ratify a Final Action Letter Approving the Appeal of the Planning Director’s Historic District Design Review Approval of a Single-Family Dwelling and Accessory Building at 220 King Road in the Sweeney Master Planned Development, Historic Residential-1- Zoning District-Master Planned Development Zoning District. PL-24-06263.**

Chair Franklin reported that the applicant requested that the Board reconsider their decision and hold a new hearing, or alternatively, consider remanding their decision to the Planning Director.

Senior City Attorney, Mark Harrington clarified the Board’s options. The first was to ratify the Final Action Letter as presented. The second option was to reopen the discussion amongst themselves to decide whether the Board was open to reconsideration or amending the order to remand the matter to the Planning Director. The third option was to allow the appellant and the applicant an opportunity to address the Board regarding the applicant’s request for reconsideration.

Board Member Gezelius did not want to discuss it further. Board Member Wilson agreed.

Chair Wilson recommended adding Finding of Fact 14 to incorporate the Board of Adjustment’s November 12 action in the findings.

**MOTION:** Board Member Stafsholt moved that the Board of Adjustment APPROVE the Final Action Letter as amended for Item 5A on the meeting agenda subject to the following:

**Findings of Fact:**

**The Board of Adjustment hereby finds:**

1. In 2022 and 2023, the Applicant submitted a Plat Amendment, Steep Slope Conditional Use Permit (SSCUP), Conditional Use Permit (CUP), and Historic District Design Review applications for the construction of a new Single-Family Dwelling (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. On 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.

4. On October 11, 2023, the Planning Commission conducted a work session on the 220 King Road applications.
5. On January 24, 2024, the Planning Commission conducted a work session on the 220 King Road applications.
6. On February 14, 2024, the Planning Commission conducted a public hearing and approved the Plat Amendment, SSCUP, and CUP for the SFD and Accessory Building.
7. On February 21, 2024, the Planning Commission ratified the Final Action Letter outlining their February 14 approval.
8. On March 1, 2024, the Appellant appealed the Planning Commission's approval of the 220 King Road development applications.
9. On 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.
10. On June 26, 2024, the Planning Commission determined the Sensitive Land Overlay did not apply to 220 King Road.
11. On July 22, 2024, the Appeal Panel signed the Final Action Letter denying the appeal of the Planning Commission's approval.
12. On August 15, 2024, the Planning Director approved the Historic District Design Review.
13. On August 29, 2024, the Appellant appealed the Planning Director's approval of the Historic District Design Review.
14. *The Planning Director erred as follows:*
  - a. The project does not comply with Land Management Code Section 15-13-8(A)(1)(5) because the building and site are not designed to respect the existing topography, the character-defining site features, including existing trees and vegetation, and does not minimize cut, fill, and the use of retaining walls. Although the proposed building uses prior disturbed areas, the design does not minimize cuts and retaining resulting in its near singular massing and scale projecting outward, looming over the district, rather than stepping with the topography.
  - b. The project does not comply with Land Management Code Section 15-13-8(B)(2)(a)(9) because regardless of lot frontage, the primary façade

is not compatible with the width of surrounding historic buildings. The greater width of a building is not set back significantly from the plane of the primary façade. The width of the new building shall not appear to be visibly greater than historic buildings in the streetscape or character area. Modules on a primary façade should generally not exceed 11 feet to 25 feet in width. The modest roof change and color variation do not result in modules of a scale and massing compatible with historic massing in the streetscape or character area, including the Sweeney MPD.

- c. The project does not comply with Land Management Code Section 15-13-8(B)(1)(d) because retaining walls are not used to create gradual steps consistent with historic retaining walls in terms of mass, scale, and design.

### Conclusions of Law

- 1. The appellant met their burden of proving the Planning Director erred in the application and interpretation of the LMC to grant Historic District Design Review approval.

Board Member Wilson seconded the motion. The motion passed unanimously with one abstention by Board Member Wintzer.

Staff was thanked for their complete Staff Report on the issue. Board Member Stafsholt was excused from the remainder of the meeting.

- B. 1234 Rothwell Road – Appeal – The Applicant Appeals a Historic District Design Review Modification Denial to Enclose Existing Deck Space on the Main Level to Increase the Building Footprint to Create Additional Living Space in the Recreation Commercial Zoning District. PL-24-06288.**

Planner III, Lillian Zollinger, presented the Staff Report and stated that the request is for an Appeal of a Historic District Design Review (“HDDR”) Modification Denial. 1234 Rothwell Road is an existing single-family dwelling in the Recreation Commercial (“RC”) Zoning District. The maximum Building Footprint for the lot is 900 square feet and the existing built footprint is 896 square feet. The applicant previously proposed to convert an existing 96-square-foot deck into livable space. The proposal exceeded the building footprint by 92 square feet. The Planning Director denied the HDDR Modification for the proposal on August 22, 2024, as it exceeded the maximum Building Footprint. A rendering of the deck in the rear was displayed. Per the Land Management Code (“LMC”), the definition of Building Footprint specifies that the total area of the foundation of the structure or the further exterior wall of the structure is projected to natural grade, not including exterior stairs, patios, and decks. Planner Zollinger explained that as built, the deck does not currently count toward the building footprint and is currently in compliance. The applicant proposed to fill in

that space, which would have exceeded the Building Footprint. The appellant argued that there is no basis in the Code to interpret the Building Footprint to the stricter of the two methods.

Planner Zollinger clarified that staff has enforced the Building Footprint to be the total area of the foundation of the structure or the furthest exterior wall of the structure projected to natural grade, whichever is greater. The applicant argues that it can be interpreted as either/or and that there are other properties in the same neighborhood that were calculated differently and that the denial is illegal and violates equal protections of the Constitution. Planner Zollinger clarified that if the footprint was calculated as either/or, it would allow for all property owners to expand upper stories so long as they are within the setbacks. As shown in the image from LMC, the Building Footprint is outlined in a dark line and the building pad is a dashed line with diagonal lines going through it. Based on that interpretation, the foundation level would have to meet the Building Footprint in which case anyone would be able to build out to the full setback based on the applicant's proposal.

Planner Zollinger reported that the applicant also referenced four other Rothwell properties with footprints that exceed the allowed Building Footprint. Three were submitted with plans noting a compliant Building Footprint. With 1240 Rockwell Road, all of those levels comply as measured by staff, which is an exception. 1228 Rothwell is over by approximately six square feet. With respect to 1264 Rockwell, the third level is approximately 15 square feet over the allowed building footprint. 1270 Rothwell at its largest, is approximately 47 square feet over. When staff reviewed and approved the building plans that were submitted, the person who submitted the Building Permit noted on the plans as outlined in Staff Report, a building footprint that was compliant with the size of the lot. However, when staff looked at each level of the building plans, there were discrepancies, and not all of the plans were the same. This does not mean that there are exceptions to be granted and that there can be exceptions to the maximum building footprint in other areas.

Planner Zollinger reported that when projects come forward to be built, they still need to comply with the existing Code. An applicant's representative is responsible for complying with all application requirements and presenting information that is true and correct. The LMC outlines that the failure of any person to properly interpret or apply the Code or any provision of it, shall not operate to waive or estop the City from subsequent enforcement action. Permits issued in violation of this ordinance shall have no force or effect. Persons knowingly or negligently building under improperly issued permits do so at their own risk. Planner Zollinger explained that pursuant to the LMC, the applicant has the burden of proving that the Planning Director erred in denying the HDDR modification to expand the Building Footprint beyond what is allowed in the LMC at 1234 Rothwell Road. The Board shall determine the correctness of the Planning Director's interpretation and application of the meaning of the land use regulations and interpret and apply land use regulation to favor a land use application unless the land use regulation restricts the land use application. In this instance, the Board may review and deny the appeal, grant the appeal, and direct staff to prepare Findings of Fact within 15 working days or continue the appeal to a date certain.

The applicant's representative, Charles Pearlman, introduced his clients Chris and Jill Tancill. Mr. Tancill stated that their living room is very small. They built the home four or five years ago and their builder introduced them to an architect who built the homes on either side of them. His opinion was based on the way the homes were built and how the Code was interpreted. He told the Tancills that they have more building space available and described the deck as "unlivable". The Tancills hired him to draw up the plans, which were submitted to the Planning Department. To their surprise, they were rejected. The frustration for them was that they were never given a reason for the denial. For that reason, they retained Messrs. Pearlman and Keys. Mr. Tancill did not feel they were being treated fairly or the same as their neighbors.

Jill Tancill reiterated that their living room is tiny. They have three adult children and can only fit five people in their living room at one time. They would like to utilize the walkway, which is non-functional space, enclose it, make it functional, and add onto the living room. They want to be able to have their whole family in the living room at one time. They received a letter of support from their Homeowners Association ("HOA") as well as a letter from their neighbors on either side who were all in support. They were asking to be treated fairly and allowed to do what many of their neighbors have done. They would like to go from 2,100 square feet to just over 2,200 square feet. Mrs. Tancill stated that having extra space just in the living room will make a huge impact.

The appellant's representative, Justin Keys referenced the specific language at issue. He stated that the appeal is about the Building Footprint and how it is measured. One question is what is the proper interpretation application of the LMC's definition of building footprint. The second is whether eliminating an existing deck impacts the proper application of the LMC definition of Building Footprint. The last question is whether the City treating the Tancills differently than their neighbors by changing the interpretation application of the definition of Building Footprint. Mr. Keys referred to the rules of interpretation and stated that the Code is viewed like any other contract and is read based on its plain language. With the LMC, the State Legislature has weighed in on the interpretation and how it should be applied. Utah Code Annotated Section 10-9-A306 specifies that a land use authority shall apply the plain language of land use regulations. If a land use regulation does not plainly restrict the land use application, the land use authority shall interpret and apply the land use regulation that favors the applicant. This creates a presumption for the applicant that if there is any ambiguity or if it can be construed one way or another, it should be interpreted and applied in favor of the applicant unless it plainly restricts it. He considered that to be important in the context and definition of Building Footprint, which is the total area of the foundation of the structure or the furthest exterior wall of the structure projected to natural grade, not including exterior stairs, patios, decks, and accessory buildings listed on the Park City Historic Structures inventory that are not expanded, enlarged, or incorporated into the main building.

The first measurement references the total area of the foundation of the structure. Mr. Keys stated that foundation walls are easy to identify because they are often associated with the exterior wall of the property. Sometimes, however, it is further out and the walls are further

back depending on the design and what is most convenient. For that reason, the second part specifies, "...or the furthest exterior wall of the structure projected to natural grade."

With either approach, the exterior stairs, patios, decks, and accessory buildings do not count within the Building Footprint unless you add them to it. That modifies the prior two ways of measuring. He displayed a rendering of the Tancill's home and the deck area they want to eliminate. They then want to bring a new exterior wall around and take that space and make it a part of the living room. The new proposed plan was presented. Mr. Keys explained what took place with the other homes in the area. He noted that the homes on both sides have pop-outs. In one instance, the allowable Building Footprint is 1,100 square feet while the analysis shows that it is 1,215 square feet. On 1270 Rothwell, the area shown in red is not included in the footprint because it is a pop-out feature. 1264 Rothwell is very similar. The Building Footprint is allowed to be 891 square feet but there is a pop out. At 1228 Rothwell, the footprint allowed is 965.18 square feet while the upper level is 1,014 square feet. 1228 Rothwell shows a pop-out in the front. 1230 Rothwell has an allowable footprint of 913.4 square feet while the home is at 1,036 square feet. In this case, again a pop-out was not included in the footprint area because it cantilevers out.

In the case of Mr. Keys' clients, he is proposing to eliminate the deck and bring it out very similar to what the properties on each side did. Mr. Keys stated that one of the arguments in the Staff Report is that they are converting a deck into a living space and/or enclosing a deck. He clarified that they are not enclosing a deck but eliminating a deck entirely to construct a house that is more in line with what was constructed on either side and establishing a new exterior wall.

Mr. Keys felt that the proper interpretation and application of the LMC's definition of Building Footprint is to measure the footprint as it was previously to include the total area of the foundation of the structure. The foundation of the structure remains unchanged. They are adding a pop-out, but the Building Footprint is still 896 square feet, which is what the foundation measures. The foundation of the structure measurement in this circumstance is the least restrictive of the two methods for measuring building footprint. During the staff presentation, staff indicated that it is necessary to look at the greater of the two. The problem is that that is nowhere in the Code. If the City Council had wanted that to be the definition of Building Footprint, they could have easily put that language in the definition. They could have specified either the foundation or the furthest exterior wall projected to grade, whichever is greater. The "whichever is greater" language, however, is lacking.

The next question was whether the elimination of the deck impacts the proper application of the LMC definition of Building Footprint. Mr. Keys contended that it does not. It does not modify the other two definitions and they are not enclosing a deck, but eliminating one. Mr. Keys asked if the City is treating the Tancills differently than their neighbors by changing its interpretation or applying a different definition for Building Footprint. He felt the answer was clearly yes but that it was an oversight of some kind. He stated that the plans for the neighboring properties all contemplate that the Building Footprint would be measured based on the foundation. He stressed that the argument comes down to the definition. He encouraged the Board to look closely at that Building Footprint. He felt that the proper forum

to vet out the issue with the definition is to amend the Code to specify that the strictest of the two applies. He commented that this definition of Building Footprint does not plainly restrict pop-outs on upper floors that do not count towards the Building Footprint.

Planner Zollinger commented that per the Staff Report, Staff's interpretation of the Building Footprint is both the foundation and the furthest wall projected to grade. Staff disagrees on that point. She displayed an image from the LMC that specifies that the Building Footprint is not the same area as the building pad and, therefore, the footprint is supposed to comply on all levels of the structure. She reviewed the approved stamped Building Permit plans that were submitted for the four different Rothwell properties referenced. She personally looked at the plans and measured them, which is where her numbers came from. She noted that it is the responsibility of the applicant's representative to correctly represent what the Building Footprint is. There are 37 homes in the Rockwell area of the Kings Crown Subdivision and only two applicants misrepresented the Building Footprint. To ensure that it is compliant, they need information to be on the plans correctly. Planner Zollinger reported that the applicant's allowed Building Footprint is 900 square feet and the addition of the deck area to bring it into livable space exceeds the allowed Building Footprint for this lot.

Board Member Gezelius stated that regrettably, mistakes are made but two wrongs never make a right. While the public can generally look forward to being treated equally and fairly, the idea of trying to exceed the standards set should not be encouraged or allowed. In the constraints of the Historic District, several properties have small living spaces, which is the nature of the Historic District. While it might be personally inconvenient, if it does not meet the basic rule regarding size, it should not be approved.

Mr. Keys provided the definition of Building Footprint and stated that staff's position is that they have to confirm that it is the total area of the foundation of the structure *and* the furthest exterior wall projected to grade. Mr. Keys stated that it does not say *and* but states that "The total area of the foundation of the structure *or* the furthest exterior wall of the structure projected to natural grade." While he agreed that all have to obey the rules, the rules are the Code. He stressed the importance of setting a precedent and specifying that this is the proper interpretation. If they are uncomfortable with it, the City Council should modify it to say *and* to be more limiting.

Planner Zollinger stated that it goes back to the image presented where the intent of the Code was to be *or* then they would not have the image in the Code that outlines a Building Footprint in a building pad. This is how staff reviews plans in terms of what is most restrictive and it should be followed on all levels and hopefully accurately represented.

Board Member Wintzer stated that many have lived in small spaces in Park City with small living rooms so they understand the dilemma. She commented that if this is to be changed it is up to the City Council and not this Board. She understood where staff was coming from and agreed with Board Member Gezelius.

Chair Franklin opened the public hearing.

*Patricia Crafton* gave her address as 1240 Lowell Avenue and stated that she lives across the street from the subject property. Her concern was the impact of this case if ruled in favor of the applicant. Within the development, there are 27 homes and 14 townhomes. If the Board were to find in the applicant's favor, they would be allowing each of the properties to expand in other ways. The area is already very dense and she would be very concerned about a favorable ruling and potential negative impacts on the general massing of the homes being in a very small area.

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

Mr. Keys' understanding from Planner Zollinger was that the demonstrative included in the definitions under Building Pad somehow justifies reading an *and* into the definition above it for Building Footprint. He did not see how that was possible. He noted that the Building Footprint demonstrative shows the building pad versus the Building Footprint and how it works with side setbacks consistent with the Building Pad definition, which shows exclusive areas as defined by setbacks in which the entire Building Footprint must be found. He clarified that the pop-out that is proposed is within the setbacks so the building pad is not being violated in any way. From his read of the Code, the demonstrative is irrelevant because it just shows a Building Footprint within a building pad within the setbacks. There was no allegation that the Building Footprint as calculated, exceeds the building pad or setbacks. The allegation was that they are misapplying the term Building Footprint because the *or* should be an *and*. They have to comply both with the total area of the foundation of the structure *and* the furthest exterior wall of the structure's projected natural grade. He considered that to be an incorrect application of the plain language of that term.

Mr. Keys considered this to be the appropriate body as they are the appeal body from the HDDR review. If it is being misapplied, this is the only body they can come to. He contended that they comply in that the total area of the foundation of the structure meets the footprint requirements for the area without violating any setbacks. He was confused as to what the issue is. Planner Zollinger was not saying that the proposed addition was going into the setbacks; however, with the way that the Building Footprint is defined by the applicant, in each section of the Code, wherever there is a Building Footprint required in the HR1 or RC Zoning District, there is a section that says Building Footprint and this image is included there. For the cantilevered portion, if they were to not include the furthest exterior wall plane and it was just to be read as the foundation, that would mean that the applicant could build up to the setbacks. As a result, just the foundation area would have to comply with the Building Footprint, and the rest of the portions that were cantilevered could go out to the building pad and max out the space that would not count toward the Building Footprint. The definition and image show that it is whichever is furthest, whichever is greater. Otherwise, someone could build out to the building pad with a smaller building footprint at the foundation level.

Board Member Wilson did not understand why there would be two methods if all of the Building Footprints could be measured by the foundation. The only logical answer to that is if there is an exterior wall that exceeds the foundation. The argument did not seem to make sense.

Board Member Gezelius reiterated her earlier statement that she believes the appeal should be denied based on the staff analysis of the footprint and the implications as outlined. Board Member Wintzer agreed.

Chair Franklin agreed with Board Members Wilson and Gezelius and felt that the consistent application of the Code as it is interpreted and discussed by staff is what they are looking for. She did not agree that this is the appropriate body. With the appeal, the burden of proof is on the appellant.

**MOTION:** Board Member Gezelius moved to DENY the application for 1234 Rothwell Road subject to the following:

**Findings of Fact**

1. 1234 Rothwell Road is Lot 12 of the King's Crown Re-Subdivision.
2. 1234 Rothwell Road is in the Recreation Commercial (RC) Zoning District.
3. On May 15, 2019, the Planning Department approved a Historic District Design Review (HDDR) for a Single-Family Dwelling at 1234 Rothwell Road.
4. On August 18, 2019, the Building Department issued Building Permit BD-19-26965 to construct the Single-Family Dwelling.
5. On December 26, 2023, the Applicant submitted a Historic District Design Review Pre-Application to enclose a deck area to expand the Building Footprint.
6. On February 13, 2024, the Planning Department issued the Applicant a memo outlining the proposal's non-compliance with Building Footprint regulations established in Land Management Code Section 15-2.16-5(D).
7. The Applicant provided a response to the memo and on May 2, 2024, applied for a modification to the Historic District Design Review to enclose a deck area and expand the Building Footprint.
8. On August 22, 2024, the Planning Director held a public hearing and denied the Historic District Design Review Modification to enclose the existing deck and increase the Building Footprint in excess of what is allowed in the Land Management Code Section 15-2.16-5(D) by 92.25 square feet.
9. On September 23, 2024, the Applicant appealed the Planning Director's Historic District Design Review Modification denial.
10. Staff published notice on the City's website and posted notice to the property on November 5, 2024. Staff mailed courtesy notice to property owners within 100 feet

and posted notice to the property on November 5, 2024. The Park Record published courtesy notice on November 5, 2024.

### Conclusions of Law

1. The Appellant did not meet their burden of proof pursuant to Land Management Code Section 15-1-18(G) to demonstrate the Planning Director erred in denying the Historic District Design Review Modification.
2. The proposal to enclose the deck area and increase the Building Footprint by 96.25 square feet does not comply with Land Management Code Section 15-2.16-5(D).

Commissioner Armstrong seconded the motion. The motion passed with the unanimous consent of the Board. Board Member Stafsholt was not present for the vote.

- C. **3295 Thistle Street – Variance – The Applicant Requests a Variance from Land Management Code Section 15-2.13-3 Residential Development Zoning District Lot and Site Requirements to Allow for a 47-square-foot Paved Area within the Required Three-Foot Landscape Buffer. PL-24-06295.**

The above matter was withdrawn.

### 6. **ADJOURNMENT**

The Board of Adjustment Meeting adjourned at 6:00 PM.