

Administrative Action Meeting
August 29, 2024
Page 1

PARK CITY MUNICIPAL CORPORATION
ADMINISTRATIVE ACTION MEETING MINUTES
PLANNING DEPARTMENT
<https://us02web.zoom.us/j/88167820277>
August 29, 2024

STAFF:

Rebecca Ward, Planning Director; Elissa Martin, Assistant Planning Director; Virgil Lund, Planner II; Jacob Klopfenstein, Planner I; Meredith Covey, Planner I; E. Roman, Administrative Assistant.

PUBLIC:

Ginny Schulman, Bruce Raile, Jason Boal.

=====
The Planning Director called the meeting to order at 12:00 PM.

REGULAR AGENDA/PUBLIC HEARINGS/POSSIBLE ACTION

255 Heber Avenue – Administrative Permit – PL 24-06208 – Proposing a Replacement of the Sidewalk in the Frontage Protection Zone.

Planning Director Rebecca Ward noted that this application had been Withdrawn.

9200 Marsac Avenue – Administrative CUP – PL 24-06197 – Proposing a 1,106 square foot Yurt with a 1,894 square foot Deck on the Existing Lawn Outside the Empire Day Lodge in the Residential Development Zoning District and Sensitive Land Overlay.

At 12:01 PM, the Planning Director opened a public hearing. There was no public input.

At 12:01 PM, the Planning Director closed the public hearing.

MOTION: The Planning Director **CONTINUED** the Administrative Conditional Use Permit to a date uncertain.

1115 Aerie Drive – Administrative CUP – PL 21-05100 – Proposing a 10-Foot tall Fence and Retaining Walls Over 6 Feet in Height and Building Within the Side Setback in the Estate Zoning District.

Planner Jacob Klopfenstein presented the application and noted that the Planning Commission had approved a Conditional Use Permit on May 8 of this year for the sports court which required reducing the sports court as it was currently built, it was originally constructed without proper permitting. Planner Klopfenstein added that the Planning Commission approval also included other mitigation measures and required the applicant to install a soundproof fence around the perimeter of the retaining wall.

Planner Klopfenstein indicated that the updated site plan showed the portions of the Retaining Walls to be removed and relocated, including sections where the top 4 Feet of the retaining wall would be removed to be less than 6 Feet, as well as the proposed location for the soundproof fencing. He also gave an overview of the Conditions of Approval.

Applicant Jason Boal asked for clarification regarding Conditions of Approval #9 and its reference to a soundproof fence, which he believes would imply free of sound, instead of mitigating sound, as proposed by the Planning Commission. He also indicated that Condition of Approval #10 seemed to relate to the sports court, as opposed to the fencing and retaining walls and wondered if it was appropriate for that to be included in this application, since the conditions were identified by the Planning Commission for the sports court, and this application was intended for the fence and retaining walls.

Planning Director Ward asked the applicant to elaborate on the modifications proposed since the Planning Commission's approval of the sports court Conditional Use Permit. Jason indicated that in response to the Planning Commission and neighbors' concerns about the chain-link fence, a Pickleglass fencing product was found to meet the condition that the Planning Commission had identified. He also noted that there had been some clarifications made to the site plans since then and said that the submittal of the proposed Pickleglass fencing included details about the product's reflectivity and sound mitigation properties.

At 12:12 PM, the Planning Director opened a public hearing. There was public input.

Ginny Schulman, who lives in Aerie Drive provided public input and noted that she talked to the manufacturer of the Pickleglass product and was told that the mitigation would be mostly horizontal, not vertical. She also indicated that she has lived in the area for 26 years, has been a realtor for 28 years and has never seen a home with a 10-foot fence before. Ginny also stated that it is not a good thing to set a precedent to allow a

10-foot fence that would be visible from the road.

Bruce Raleigh, who lives above the property on Mountain Road provided public input and said he had some concerns regarding the reflectivity of the Pickleglass and how much his property would be impacted by this.

At 12:16 PM, the Planning Director closed the public hearing.

Planning Director Ward noted conditions of approval I, J, K and L included in the Planning Commission Final Action Letter and mentioned that those conditions were also included in Condition of Approval #10 of the draft Final Action, in alignment with the Planning Commission Approval. Director Ward asked Planner Klopfenstein to modify Condition of Approval #4, to include that the applicant shall submit an updated landscape plan for the Planning Department to review, regarding the landscaping that shall fully screen the 10-foot-tall fence during all seasons and in all directions.

Director Ward asked the applicant if he could confirm if the exterior lighting for the property would be dark sky compliant. The applicant replied that the shielding plans had been submitted to the city but could provide them again if needed. Planning Director Rebecca Ward also asked if Condition of Approval #8 had been reviewed by the applicant. Jason Boal indicated that he did not have a response to that suggestion.

Planning Director Rebecca Ward asked Planner Klopfenstein to clarify Condition of Approval #10 on the sports court. She also called attention to the Planning Commission Approval and the Conditions of Approval that require compliance with the City's noise Ordinance.

MOTION: The Planning Director **APPROVED**, the Administrative Conditional Use Permit in accordance with the Findings of Fact, Conclusions of Law, and Conditions of Approval.

Findings of Fact

1. The Applicant proposed a 10-foot-tall Pickleglass Fence built around the perimeter of the sports court and retaining walls over 6 feet in height and built within the Side Setback.
2. 1115 Aerie Drive is a Single-Family Dwelling in the Estate Zoning District.
3. The retaining walls were built in 2021 without an Approved Building Permit. The City has not issued an Approved Building Permit for the retaining walls.
4. The retaining walls range from under 4 feet in height to 8 feet in height.

5. The Applicant submitted a complete Administrative Conditional Use Permit (ACUP) application for the Fence over 6 feet in height and retaining walls over 6 feet in height and built within the Side Setback and paid associated application fees on December 20, 2021.
6. 1115 Aerie Drive includes a concrete sports court, approved by the Planning Commission through a Conditional Use Permit on May 8, 2024.
7. The ACUP for the Fence and retaining walls was put on hold while the Applicant sought approval of the sports court CUP.
8. The Planning Commission's May 8, 2024 Final Action Letter approving the sports court CUP includes the following conditions of approval regarding the sports court:
 - I. Use of the Sports Court will be prohibited from 10:00 PM to 7:00 AM and the use of pickleball is restricted from 8:00 PM to 8:00 AM.
 - J. The surface of the Sports Court shall be comprised of SportGame PB Open Cell materials or similar noise-reducing materials.
 - K. An "Acoustic Fence" or similar soundproofing fencing must be installed around the Sports Court.
 - L. Sports court may be used for paddle games (including pickleball), but only when USA Pickleball's Quiet Category compliant paddles and soft balls are used.
9. The Applicant proposes the 10-foot Pickleglass Fence to comply with the above condition K.
10. The retaining walls are built immediately south of the sports court and south of an astroturf playground area to stabilize the built areas of the sports court and other outdoor amenity spaces.
11. The proposal to build a 10-foot-tall Fence and retaining walls over 6 feet in height and within the Side Setback, as conditioned, complies with LMC § 15-2.10 Estate (E) District.
 - a. LMC § 15-2.10 states that retaining walls built over 6 feet in height and within the Side Setback require an ACUP. LMC § 15-2.10-3(F) also states that retaining walls may have multiple steps, but each exposed face shall not exceed 6 feet in height and the horizontal distance between the walls, from the front face to rear face, must be at least 3 feet and planted with approved vegetation. Pursuant to this provision, the Planning Director may approve minor deviations to the height and stepping requirements based on Site specific review.

- b. No other properties in the surrounding area have 10-foot-tall Fences. The Fence is not compatible with the surrounding neighborhood and therefore does not contribute to neighborhood cohesiveness as outlined in LMC § 15-2.10-1.
 - c. The Fence also is not consistent with environmentally sensitive residential Development as required by LMC § 15-2.10-1. The Fence interrupts Areas of Open Space and undeveloped land and may be visible from Vantage Points in Old Town Park City, discussed in more detail below.
 - d. Staff recommends various conditions of approval, discussed below, to mitigate the Fence's incompatibility with the Estate zoning district.
12. The proposal to build retaining walls over 6 feet in height and within the Side Setback, as conditioned, complies with LMC § 15-4-2 Fences and Retaining Walls.
- a. LMC § 15-4-2 Fences and Retaining Walls states that retaining walls in the Side Setback may exceed 6 feet subject to approval of an ACUP.
13. The proposal to build a 10-foot-tall Fence and retaining walls over 6 feet in height and within the Side Setback, as conditioned, complies with the Conditional Use Permit criteria outlined in LMC § 15-1-10(E).
- a. Size and location of the Site
 - i. The sports court, after it is reduced in size, and Fence will be located outside of the Front and Side Setbacks for the Site. The original grading of the sports court site exceeded 40% but the site has been retained and is now level.
 - ii. The retaining walls over 6 feet in height are located immediately south of the sports court and immediately south of the astroturf playground area and within the Side Setback.
 - b. Traffic considerations including capacity of the existing Streets in the Area
 - i. No changes are proposed
 - c. Utility capacity, including Storm Water run-off
 - i. The Applicant provided an updated drainage plan in March 2024 showing mitigation plans for Storm Water run-off.
 - ii. The Engineering Department finds that the Applicant's proposed 12"x12"x24" drop inlet detailed on the drainage plan for the Site is insufficiently sized to manage the drainage from the newly created impervious area of the sports court.
 - iii. No other changes are proposed regarding utility capacity.

- d. Emergency vehicle access
 - i. No changes are proposed
- e. Location and amount of off-Street parking
 - i. No changes are proposed
- f. Internal vehicular and pedestrian circulation system
 - i. No changes are proposed
- g. Fencing, Screening, and landscaping to separate the Use from adjoining Uses
 - i. The Applicant's landscaping plan proposes screening the fence with trees, including 42 Evergreen Spruce, 35 Autumn Blaze Maple and 20 Quaking Aspen, on the north and east sides of the reduced-size sports court,
 - 1. Evergreen Spruce trees typically reach 60-200 feet in height, Autumn Blaze Maple typically reach 40-60 feet in height, and Quaking Aspen typically reach 40-50 feet in height.
 - ii. The Applicant's landscaping plan also proposes 65 Karl Foerster shrubs and 50 Russian sage shrubs on the south side of the sports court.
 - 1. The Karl Foerster plants typically reach heights of up to six feet and Russian sage reaches heights of up to three feet.
 - 2. With the proposed Karl Foerster and Russian Sage shrubs, the 10-foot-tall Fence would be only partially screened on the south side from adjoining Uses. The Fence would be visible from other nearby Single-Family Dwellings to the north and south along Aerie Drive and to the east along Mellow Mountain Road, which is higher in elevation than 1115 Aerie Drive. Surrounding neighboring Single-Family Dwellings are situated above 1115 Aerie Drive, which is located on the side of a hill overlooking a small canyon.
 - iii. The retaining walls are not screened on the south side and are not visually separated from adjoining Uses. LMC Section 15-5-5(N) requires at least 50 percent of the Landscaped Area be Water Wise Landscaping containing approved non-invasive drought tolerant plants, and/or minimal irrigation.
- h. Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots

- i. The 10-foot-tall glass Fence would extend 69 feet, 6 inches along the length of the sports court and 30 feet along the depth of the court, enclosing an area 2,085 square feet in size. The Fence, as proposed, is partially screened on the south side (see Exhibit E, Landscaping Plan for 1115 Aerie) and would be visible from neighboring Single-Family Dwellings to the north and south along Aerie Drive and to the east along Mellow Mountain Road.
 - ii. No changes are proposed regarding the building mass, bulk, or orientation of the retaining walls.
- i. Usable Open Space
 - i. The property includes landscaped Open Space with astroturf and playground equipment.
- j. Signs and lighting
 - i. No signs or lighting are proposed.
 - ii. Overhead lighting associated with the sports court is prohibited as a condition of approval for the sports court CUP.
- k. Physical design and Compatibility with surrounding Structures in mass, scale, style, design, and architectural detailing
 - i. The proposed glass surface of the 10-foot-tall Fence is not compatible with development in the surrounding areas. No other nearby properties contain such Fences.
 - ii. The glass surface of the Fence is reflective and may create glare issues for properties in the surrounding area and further down-canyon in Old Town Park City (see visual impact analysis discussed in item 15 below). The outside surface, which faces the rest of the property and is oriented toward neighboring properties, and the inside surface, which faces the sports court, are both reflective glass surfaces. While the analysis above recommends conditions of approval to address landscaping and screening on the outside of the Fence, the inside surface cannot be screened because of the sports court. The trees proposed to screen the Fence will also take time to reach mature height and with, and the outside of the Fence will not be fully screened before the trees reach maturity.
 - iii. The proposed "Pickleglass" Fence does not comply with the CUP criteria outlined in LMC § 15-1-10(E) and the reasonably

anticipated detrimental effects of the "Pickleglass" Fence cannot be reasonably mitigated through careful planning and conditions of approval.

- iv. The Applicant initially proposed a chain-link "AcousticFence" design for the 10-foot-tall Fence. This Fence design is more appropriate than "Pickleglass" because it would not create glaring issues.
- v. The retaining walls are constructed out of natural stacked boulders built into the hillside.
- I. Noise, vibration, odors, steam, or other mechanical factors that might affect people and Property Off-Site
 - i. The Applicant proposes the Pickleglass fence in part to mitigate noise and sound impacts from activity on the sports court, including but not limited to the playing of pickleball.
 - ii. The Applicant's representative completed some sound analysis on July 26, 2024. Planner Jacob Klopfenstein and Assistant Planning Director Elissa Martin monitored the sound analysis. The Applicant's representative took sound measurement readings from the east, northeast, south, and west sides of the sports court as another individual bounced pickleballs on the court using a standard pickleball and a quiet pickleball paddle.
 - iii. During this sound analysis, ambient noise at the site measured between 46 and 53 decibels (dB). Sound while bouncing the pickleball at the site measured as follows:
 - 1. Approximately 66 dB from above the court adjacent to Aerie Drive on the east;
 - 2. Approximately 56 dB from the northeast corner of the sports court;
 - 3. Approximately 59 dB from the south edge of the sports court; and
 - 4. Approximately 47 dB from the west side of the sports court.
 - iv. The sports court surface will be finished with an open cell surface pursuant to the required conditions of approval for the sports court CUP. The applicant estimates that the forthcoming open cell surface will absorb 20% of downward reflective sound waves. The Applicant also estimates that further sound mitigation measures, such as the use of quiet pickleballs instead of standard balls and

additional landscaping, would further reduce sound impacts from the playing of pickleball on the sports court.

- v. Municipal Code of Park City (MCPC) § 6-3-9(A) Maximum Permissible Sound Levels indicates the maximum permissible sound level for Residential areas is 55 dBA between 6 a.m. and 10 p.m. The maximum permissible sound level for Residential areas between 10 p.m. and 6 a.m. is 50 dBA; however, pursuant to the Applicant's sports court CUP final action letter, use of the sports court is prohibited from 10 p.m. to 7 a.m.
- vi. No other changes are proposed for other mechanical factors that might affect people and Property Off-Site.
- m. Control of delivery and service vehicles, loading and unloading zones, and Screening of trash and recycling pickup Areas
 - i. No changes are proposed.
- n. Expected Ownership and management of the project as primary residences, Condominiums, time interval Ownership, Nightly Rental, or commercial tenancies, how the form of Ownership affects taxing entities
 - i. The property is privately owned and operated as a Single-Family Dwelling.
- o. Within and adjoining the Site, Environmentally Sensitive Lands, Physical Mine Hazards, Historic Mine Waste and Park City Soils Ordinance, Steep Slopes, and appropriateness of the proposed Structure to the existing topography of the Site
 - i. The Site is governed by the Sensitive Land Overlay Zone.
 - ii. The original grading of the sports court site exceeded 40% (Very Steep Slopes) but that portion of the Site has been retained and is now level. The south portion of the Site contains Very Steep Slopes, but no Development is proposed there.
 - iii. The Applicant's visual assessment, completed in 2021 as a part of the required sensitive lands analysis, shows that the Site may be visible from Vantage Points within Old Town Park City, such as the intersection of Main Street and Heber Avenue.
 - iv. LMC § 15-2.21-5(A) states that the intent of the SLO regulations relating to Ridge Line Area Protections is to "ensure that Development near Ridge Line Areas blends with the natural contour of these land forms. Significant Ridge Line Areas should be

retained in a natural state, and Development should be sited in such a manner so as not to create a silhouette against the skyline or mountain backdrop as viewed from designated Vantage Points.”

1. The 10-foot Fence may be visible from Vantage Points in Old Town Park City.
- v. The Sensitive Land Overlay Zone requires that the Applicant must avoid or, to the greatest extent possible, minimize proposed cuts and fills. Cutting and filling to create additional or larger Building Sites shall be kept to a minimum and shall be avoided to the maximum extent feasible.
- p. Reviewed for consistency with the goals and objectives of the Park City General Plan; however such review for consistency shall not alone be binding
 - i. Small Town Goal 1 of the General Plan states that “Park City will protect undeveloped lands, discourage sprawl, and direct growth inward to strengthen existing neighborhoods.” Objective 1A of this goal suggests that Park City should “direct complementary land use and development into existing neighborhoods that have available infrastructure and resource capacity.” As discussed above, the Fence is inconsistent with other Uses in the surrounding area and is not a complementary Use or development.
 - ii. Small Town Goal 2 of the General Plan states that “Park City will emphasize and preserve our sense of place.” Objective 2D of this goal states that “materials and methods of construction should be specific to the region, exhibiting a continuity of history and culture and compatibility with the local character and community identity.” Ten-foot-tall glass Fences have not been used historically in Park City and are not consistent with the history and culture of Park City. There are no provisions in the LMC that outline regulations for or allow glass Fences.
 - iii. Natural Setting Goal 4 of the General Plan states that Park City should “conserve a connected, healthy network of open space for continued access to and respect for the Natural Setting.” Objective 4B states that the city should “Buffer entry corridors from development and protect mountain vistas to enhance the natural setting, quality of life, and visitor experience.” As discussed above,

this Fence may be visible from multiple vantage points in Old Town Park City and does not protect mountain vistas. As a 10-foot-tall Fence, it also does not enhance the natural setting.

- iv. Objective 4D of the General Plan states that Park City should “minimize further land disturbance and conversion of remaining undisturbed land areas to development to minimize the effects on neighborhoods.” As discussed above, the Fence as proposed does not minimize the effect on neighborhoods due to the lack of screening or landscaping that could otherwise minimize the visual impacts of the Fence on surrounding neighborhoods.
- v. Section 7.1 of the General Plan Neighborhoods Plan discusses the Masonic Hill area, which includes Aerie Drive. Section 7.1 notes that the future of the Masonic Hill neighborhood includes “being further camouflaged into the existing landscape.” Section 7.4 also states that “the neighborhood should continue to build out with controlled pads protecting the natural vegetation.” The 10-foot-tall Fence does not further camouflage the Site into the existing landscape or minimize impacts to natural vegetation.
- vi. Section 7.1 also states that programs to be considered that result in preserving the natural vegetation of the Masonic Hill neighborhood should include prohibiting tall fencing.
- vii. Section 7.1 of the Park City General Plan Neighborhoods section discusses the Masonic Hill neighborhood, which includes Aerie Drive. This section states that protecting natural vegetation is a key goal for the area as native plants can continue to play their crucial role in the ecosystem by preventing erosion. Retaining walls may also prevent erosion in the area by providing stability to sloped areas.

Conclusions of Law

1. The 10-foot-tall Fence and retaining walls over 6 feet in height and within the Side Setback comply, as conditioned, with the requirements of the LMC.
2. The 10-foot-tall Fence and retaining walls will be compatible with surrounding Structures in use, scale, mass, and circulation.
3. The effects of any difference in Use or scale for the 10-foot-tall Fence and retaining walls have been mitigated through careful planning.

Conditions of Approval

1. Retaining walls within the Side Setbacks may have multiple steps, however, each exposed face shall not exceed 6 feet in height and the horizontal distance between the walls, front face to rear face, must be at least 3 feet and planted with approved vegetation.
2. The Applicant shall submit engineered plans certified and stamped by a professional engineer for the retaining walls prior to building permit issuance.
3. The Applicant shall obtain Engineering Department approval for drainage and storm water management plans prior to building permit issuance. Drainage and storm water management shall comply with Municipal Code of Park City Section 13-5 Regulation and Enforcement of Storm Water Discharges Associated with Post-Construction Activities.
4. The Applicant shall implement additional landscaping or vegetation that shall fully screen the 10-foot-tall Fence adjoining Uses. The applicant shall submit an updated landscaping plan for Planning Department review regarding landscaping that shall fully screen the 10-foot-tall Fence in all seasons. At least 50 percent of the Landscaped Area shall be Water Wise Landscaping containing approved non-invasive drought tolerant plants, and/or minimal irrigation, pursuant to LMC § 15-5-5(N).
5. The Applicant shall implement additional landscaping or vegetation that shall fully screen the retaining walls south of the sports court from adjoining Uses. At least 50 percent of the Landscaped Area shall be Water Wise Landscaping containing approved non-invasive drought tolerant plants, and/or minimal irrigation, pursuant to LMC § 15-5-5(N).
6. Retaining walls on the site shall not exceed 6 feet in height. The applicant shall remove excess height from retaining walls exceeding 6 feet in height.
7. All exterior lighting for walkways and landscaping shall be down-directed, fully shielded, with bulbs 3,000 degrees Kelvin or less to prevent glare onto adjacent property, and shall comply with the City's outdoor lighting code per LMC 15-5-5(J). Final lighting details must be reviewed by the City's planning staff prior to installation and final inspection.
8. The Fence shall be constructed of material that reflects 35 percent or less of the light that strikes it. The Applicant shall consider implementing a cover to be installed on the Fence when the sports court is not in use to reduce reflectivity and glare and is made out of a material and color consistent with LMC § 15-5-5(E).

9. The approved fence shall be soundproof, sufficient to mitigate noise associated with the sports court, to comply with Municipal Code of Park City Chapter 6-3 Noise, and as required by Condition of Approval (K) listed in Planning Commission Approved Conditional Use Permit Final Action letter dated May 8, 2024 (PL-21-05101).
10. The Applicant shall include language in Nightly Rental lease agreements and install a sign on the sports court informing guests of the use of the sports court, including:
 - The use of the sports court is prohibited between 10:00 PM and 7:00 AM.
 - The use of pickleball is prohibited between 8:00 PM to 8:00 AM.
 - Users of the sports court must use USA Pickleball's Quiet Category compliant paddles and soft balls.
 - The use of the sports court must comply with the regulations of Municipal Code of Park City Chapter 6-3 Noise.
11. The Applicant must landscape and revegetate exposed Slopes. Topsoil from any disturbed portion of a Steep Slope must be preserved and utilized in re-vegetation. Fill soil must be of a quality to support plant growth.
12. The Applicant shall obtain a building permit for the Fence and complete engineering review for retaining walls prior to construction.
13. Any changes, modifications, or deviations from the approved Proposal that have not been approved in advance by the Planning Department may result in a stop work order.
14. The Applicant is responsible for notifying the Planning Department prior to making any changes to the approved retaining walls and Fence.
15. Any changes, modifications, or deviations from the approved scope of work shall be submitted in writing for review and approval/denial in accordance with the applicable standards by the Planning Director or designee prior to construction.

The Park City Administrative Action meeting adjourned at 12:23 PM.

Approved by Planning Director:

A handwritten signature in blue ink, consisting of several loops and strokes, positioned below the text "Approved by Planning Director:".