



**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT MEETING
SUMMIT COUNTY, UTAH
MINUTES OF JANUARY 13, 2026**

BOARD MEMBERS IN ATTENDANCE: Ruth Gezelius, Ginny Schulman, Beth Armstrong, John Stafsholt

STAFF: Planning Director, Rebecca Ward; Planner II; Meredith Covey; Chief Building Official, Dave Thacker; Senior City Attorney, Mark Harrington

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

In the absence of Chair Jennifer Franklin, Board Member Ruth Gezelius called the Board of Adjustment Meeting to order at 5:00 p.m. It was noted that the Board of Adjustment must nominate and elect a Temporary Chair for this meeting. Board Member Beth Armstrong nominated Board Member Gezelius to serve as Chair for this meeting.

MOTION: Board Member Armstrong moved to APPOINT Board Member Gezelius as the Temporary Chair for this Board of Adjustment Meeting. Board Member Schulman seconded the motion. The motion passed with the unanimous consent of the Board.

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 19, 2025.

MOTION: Board Member Stafsholt moved to APPROVE the Meeting Minutes of August 19, 2025, as presented. Board Member Armstrong 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. 416 Ontario Avenue – Variance – The Applicant Seeks a Variance from Land Management Code § 15-2.2-3(G) Front Setback Exceptions in the Historic Residential – 1 Zoning District and § 15-13-8(B)(7) Regulations for Decks for Non-Historic Residential Sites to Construct a Deck in the Front Yard of a Single-Family Dwelling in the Historic District. PL-25-06764.

Planner II, Meredith Covey, presented the Staff Report and explained that the Regular Agenda item is a variance request for 416 Ontario Avenue. She reported that 416 Ontario Avenue is a non-historic single-family dwelling in the Historic Residential – 1 (“HR-1”) Zoning District. Planner Covey shared an image of a deck. It previously existed at the site for some time and encroached into both the front setback and the public right-of-way.

On May 17, 2019, the property owner entered into an Encroachment Agreement with Park City, which was recorded with Summit County. The Encroachment Agreement was for the stairs, retaining walls, and deck that encroached into Ontario Avenue. Planner Covey shared an image with the Board of Adjustment and pointed out the previously existing deck in blue and the property line in red. Any future encroachments or expansion of the encroachments into the City right-of-way would require additional review by City Council.

On January 24, 2025, the City issued the property owner a Demolition Permit. Some of the conditions were highlighted. If the deck was removed, it may not be replaced without a Historic District Design Review (“HDDR”) Pre-Application. Additionally, new construction must comply with the Land Management Code (“LMC”) regulations.

On May 21, 2025, the Planning Department issued an HDDR Pre-Application Waiver Letter for the repair of the decking material. There were several conditions, such as:

- Modifications must be submitted to the Planning Department through a Modification Application;
- Work is limited to repair only.

On June 2, 2025, the applicant uploaded structural plans to the Building Permit without submitting a Modification Application or HDDR Pre-Application. The LMC defines a non-complying structure as a structure that legally existed before the current zoning designation. Based on this definition, the previous deck was a non-compliant structure.

Pursuant to LMC 15-9-6, a non-complying structure can be repaired, so long as it does not increase the degree of non-compliance. If there was a replacement, the non-complying status would be removed. Any new construction must comply with the current zoning district regulations. Planner Covey shared an image of the newly constructed deck at 416 Ontario Avenue, which is 25 feet wide and 12 feet deep. It encroaches 7 feet

into the front setback and 5 feet into Ontario Avenue. The regulations for decks on new infill construction in the Historic District are outlined in LMC 15-13-8(B)(2)(7) and state:

- Decks should be constructed in inconspicuous areas where visually minimized from the primary public right-of-way;
- The visual impact of a deck should be minimized by limiting its size and scale. Introducing a deck that visually detracts from a new structure or substantially alters a site's proportion of built area to open space is not appropriate.

Planner Covey explained that for the variance request, the applicant bears the burden of proof for the five variance criteria. She reviewed the criteria and the Staff findings:

- Literal enforcement of the LMC would not cause an unreasonable hardship that is necessary to carry out the general purpose of the LMC:
 - A front deck is permitted subject to LMC and HDDR approval when it is compliant with the scale required in the Historic District. The proposed deck is requested for increased enjoyment of a viewshed, which does not constitute a hardship. No deck on the front facade of the structure, or a deck that is substantially reduced in size, complies with the purpose of the LMC to encourage construction of historically compatible structures that contribute to the historic character and scale in the Historic District.
- There are not special circumstances attached to the property that do not generally apply to other properties in the same zone:
 - All new construction or additions to historic structures are required to comply with the LMC in effect at the time of construction. The structure at 416 Ontario Avenue is not a historic structure, and the proposed deck is new construction, which is required to comply with the LMC. This standard is applied equally to all new construction and additions in the HR-1 Zoning District.
- Granting the variance is not essential to the enjoyment of a substantial property right possessed by other property in the same zone:
 - The applicant is permitted to have a deck on the front facade as long as it complies with the LMC regulations and HDDR approval. Denying the request to create a deck that is over-scaled in the Historic District and encroaches into the front setback and Ontario Avenue does not infringe on the applicant's ability to enjoy their property or utilize a front deck in a manner that is consistent with the ability of other properties in the same zoning district. All other properties in the zoning district are required to comply with setback requirements. The requirements in the LMC are applied consistently to properties in the HR-1 Zoning District, and applying the code to this site does not infringe on a substantial property right and reflects the requirements at the time of construction.
- The variance will substantially affect the General Plan and will be contrary to the public interest:

- Maintaining the integrity of the historic fabric of the nationally and locally designated Historic District is integral to the goals of the General Plan. The proposed deck does not comply with these goals.
- The spirit of the LMC is not observed and substantial justice is not done:
 - The standards of the LMC are applied equally and consistently to all property owners and projects based on the code that is in effect at the time. To grant an exception to one property owner that is contrary to the regulations outlined in the LMC does not support the equal application of the code. An exception in this manner is not equitable to the other property owners that have, and will be required to, comply with the LMC.

Staff recommends the Board of Adjustment review the requested variance and consider denying the request based on the Findings of Fact and Conclusions of Law outlined in the Draft Final Action Letter. The applicant is present to answer outstanding questions.

The applicants, Pei-Yu Wen and Rafael Baez, introduced themselves to the Board. Mr. Baez explained that they are the owners of 416 Ontario Avenue, but do not live in the home full-time. He shared information about the timeline. The house was purchased in late 2024, and the deck was existing with two large trees. The two trees were overgrown and had caused damage to some of the sideboards, so two arborists were hired to review the conditions. Both arborists concluded that the trees were hazards and recommended immediate removal. From there, a permit was filed for tree removal. In order to remove the trees, a portion of the deck had to be removed. The deck is roughly 20 feet above street level and is not in the sight of pedestrians or vehicles passing by the area.

Once the permits were obtained, the trees were removed. Mr. Baez reported that there were subsequent permits filed. This included structural engineering drawings to build a new structure, because the old structure was not viable once the trees were removed. The contractor hired a Structural Engineer who designed the deck, and that was submitted in the plans. They were under the impression that the deck design was approved.

Mr. Baez explained that he does not have the exact submittal dates because the work was being done through a contractor. He shared a copy of the Building Permit with the Board of Adjustment, which was issued on June 4, 2025. That is when the construction of the deck began. He shared the drawings that were submitted by the Structural Engineer. Mr. Baez reported that the permit was approved, which denoted six new footings and the framing that would take place. There were also inspections conducted along the way. The footings were reviewed and passed. It is the framing that seemed to trigger the current process, which is the reason they are now before the Board.

As for the deck itself, the perimeter fencing is still intact. Mr. Baez explained that the intention was to consider the Encroachment Agreement. It states that the owner is responsible for maintaining and repairing the deck, which is what they were trying to do. There is a desire to ensure that the deck is safe, enjoyable, and usable. It sounds like

there was an error in communication. Part of the hardship that they have experienced is that the proper steps were followed for approval, and in his view, approval was granted when the permit was issued on June 4, 2025. The special circumstance in this case has to do with the two trees that were part of the deck. Mr. Baez also pointed out that this is the only area of the house that allows for the use of outdoor space. He does not believe the character of the neighborhood has been changed in any way.

Mr. Baez requested that the Board honor the non-compliance language. In this case, the variance will still exist because the perimeter of the deck is still there, and the encroachment will still exist. The reason for this meeting is an administrative error. Mr. Baez offered to answer Board Member questions about the request.

Board Member Ginny Schulman asked about the red print on the plans. She asked if that was something added later on. Planner Covey reported that those are the Conditions of Approval that were added to the submitted permit. Those plans were submitted by the contractor for 416 Ontario Avenue as part of the application package. The structural plans were uploaded later without going through the required modification or HDDR Pre-Application process that was outlined in the HDDR Waiver Letter. Board Member Schulman noted that the plans show there was going to be something structural done to the deck. Mr. Baez confirmed that there were footings and a decking structure shown. Planner Covey reiterated that those pages were uploaded after Planning had reviewed and stamped plans, with the requirement that only a repair of the decking material was allowed.

Board Member Schulman can understand why there was confusion on the part of the applicant, because these plans were stamped. Planning Director, Rebecca Ward, reported that any work in the Historic District first goes through the HDDR with Conditions of Approval. That document is then provided to the applicant's representative and those Conditions of Approval are uploaded with the permit. There is a multi-department review, so each department is required to review and sign the plans before a modification is approved. Board Member John Stafsholt pointed out that the applicant mentioned issues with the administration process. It seems the applicants believed there was a stamped set of plans from the Planning and Building Department showing a demolition, but there was nothing like that in the Meeting Materials Packet. He asked for some clarification.

Chief Building Official, Dave Thacker, reported that the plans received originally are the Peak Restoration plans that were uploaded with this permit. That is where the conditions were originally provided. After that, the engineered plans were received, which are the Mountain Valley Engineering plans shown by the applicant. Those plans were reviewed for Building Code compliance and did not receive a formal review from the Planning Department. There was one portion of the review conducted, but not the second. Official Thacker explained that the issue is that the material was uploaded and went through a review process without the HDDR process first. The plans should have been held at that point. There is some ownership on the Building Department for getting ahead in the

review process. However, the review was for Building Code compliance, not an LMC review.

Board Member Stafsholt asked if the Building Department stamped approval on the structural plans, which was confirmed. Official Thacker clarified that there should have been an HDDR review first. Board Member Stafsholt noted that there is some merit to the applicant's argument that there was a lack of proper administration in this case.

Board Member Armstrong asked about the Peak Restoration document that was stamped. She wanted to understand the insured names that are listed and the address. There was uncertainty about this. Official Thacker reported that through the software program, all plans that are uploaded are uploaded either by the applicant or the applicant's representative. Those were uploaded and went through the process. It appears the contractor uploaded this information. Board Member Armstrong pointed out that this document appears to be irrelevant to anything related to the 416 Ontario Avenue address.

Mr. Baez reported that they spoke to the contractor about this, and there was confusion about where the Peak Restoration document came from. The address on those particular documents is not 416 Ontario Avenue and has nothing to do with this property. Temporary Chair Gezelius asked who Peak Restoration is in relation to the work on the applicant property. Mr. Baez clarified that he does not know who Peak Restoration is and is unaware of Peak Restoration having any involvement in the work done. Director Ward suggested that the issued Building Permit and Conditions of Approval be shared.

Board Member Stafsholt asked if the Building Department approved the submittal with the removal of the deck. Official Thacker reported that the Building Department reviewed the structural plans that were submitted and stamped them as approved. Planner Covey shared the Conditions of Approval and comments that were sent as part of the Building Permit process to the applicant. On May 29, 2025, it was stated that this was for the repair of the decking material only, and there are no changes to the structural elements or footprint of the deck. It also stated that if any changes were made or proposed, there would need to be compliance with the current zoning requirements. Additionally, it stated that the Conditions of Approval from the HDDR Waiver Letter would apply.

Board Member Stafsholt asked why the uploaded plans did not go through the HDDR prior to the Building Department. Planner Covey explained that if an applicant is submitting an HDDR, they need to come to the Planning Department and fill out an application form with all of the information so it can be assigned to a planner. The applicant or their representative did not do that before the plans were uploaded for the Building Permit. Board Member Stafsholt noted that it was unlikely the applicant would be aware of that process. Planner Covey explained that this was mentioned in the HDDR Waiver Letter that was issued to their representative. The property owner can allow someone to act as their authorized representative, so there is communication with the representative. In this case, the Waiver Letter was sent to the applicant representative.

Board Member Stafsholt mentioned the information included in the Staff Report. His initial assumption was that this work was done in bad faith, but the plans stamped by the Building Department were not included in the Staff Report. It was during the applicant presentation that he heard about the administrative issue. It does not appear anyone worked in bad faith in this instance, but it appears there was a miscommunication.

Temporary Chair Gezelius was confused by the June 2 date and the October 8 date in relation to the inspection. She asked what went into the final inspection and asked why there was a five-month period where no action was noted. Official Thacker reported that the inspections that take place on a project like this would be related to the footings, foundation, and then framing. Based on the documents, it appears the inspector assigned to this project did a footings and column inspection and approved this based on compliance with the set of plans that they were looking at. When they were called back for a framing inspection later on, it was discovered that the HDDR process had not been followed. There was a meeting with the contractor on site to explain these concerns, and a Stop Work Order was issued so there could be an investigation into this matter.

Board Member Stafsholt pointed out that if there was no Building Department stamp, there would be no inspector visiting the site. Official Thacker reported that the permit had been issued, so an inspector could visit the site. Board Member Stafsholt noted that there was clear confusion in the process. It appears there is an issue here with the process.

Board Member Schulman noted that the Staff Report repeated that there should be no structural demolition or changes made to the deck. She feels for the applicant, because it appears that there was a misunderstanding about the process, and the misunderstanding seems to be related to the stamped approval. Temporary Chair Gezelius explained that the Board of Adjustment focuses on enforcing the rules and not granting exceptions for mistakes or errors. Whether it was intentional or inadvertent, the result is that there could be something incompatible in the Historic District. This is a difficult situation and she asked for procedural input from the Senior City Attorney.

Senior City Attorney, Mark Harrington, stated that the Board of Adjustment should focus on the five criteria. All findings should be considered in the context of the criteria. It is not enough for there to be an unfair result. The Board has to find that the unfair result amounts to a special circumstance, as defined. He suggested that the Board review each of the criteria to ensure the findings make sense within that context. Temporary Chair Gezelius concurred with the Staff findings and their recommendation for denial.

Board Member Stafsholt believed the applicant acted in good faith. Having stamped plans from the Building Department is generally the last step in the process. If there are stamped plans, it would make sense to move forward with the work, especially if an inspector conducted the first inspection without issue. It is unreasonable at this point to enforce the LMC because if it is enforced, there will be a smaller deck than there was before when the stamped plans were received. There would be undue hardship caused

by administrative error. He wants to support Staff, but in this case, the stamp from the Building Department was received and the construction work moved forward in good faith.

Board Member Stafsholt asked how the current deck compares to the old deck in terms of dimensions. Mr. Baez reported that there is approximately two feet less of an encroachment into the right-of-way. The width is approximately two to three feet wider. Overall, it is approximately the same square footage as it was before. Attorney Harrington asked if it would be possible to reduce the width without functionally changing what has already been approved. It was noted that it could possibly be reduced on the side of the stairs. Mr. Baez reiterated that the encroachment is being reduced overall.

Board Member Stafsholt asked if there is some sort of process improvement that could be made to ensure this does not happen to someone else. Official Thacker reported that there were some software challenges experienced with the permitting software. There has been work done with the vendor to correct those challenges. There will also be additional checks to ensure this kind of issue does not occur in the future.

Board Member Stafsholt thanked Staff for the efforts that have been made. He noted that there is evidence that the applicant was working in good faith. The encroachment does not exceed what the original encroachment allowed. As a result, he moved to grant the variance for 416 Ontario Avenue and allow the non-conformance, as long as the total square footage does not exceed the original total square footage of the deck.

Temporary Chair Gezelius noted that to approve the variance, Staff would need to be directed to make new Findings of Fact to support the decision made. There is currently a recommendation from Staff for denial. In order to approve the variance, this item would likely need to be continued so Staff can prepare a Draft Final Action Letter for approval.

Attorney Harrington explained that there can be a hybrid. Board Member Stafsholt can make a motion to approve the variance, with direction provided to Staff to prepare findings consistent with the comments made about the trees, Building Permit history, the good faith of the applicant, and the fact that there is no increase in square footage. It is possible to vote to approve or vote to continue the item with direction that the findings come back to the Board of Adjustment. The Board can then review the prepared findings and vote.

Board Member Stafsholt does not want to slow down the applicant. He would like them to be able to move forward. There could be a motion to approve, subject to a ratification of the updated findings. Alternatively, the Board could see the findings and vote at a future meeting. Discussions were had about an appropriate motion. Director Ward stated that if a motion is made for continuance, a date uncertain is recommended.

Board Member Schulman would have liked to see the approved plans included in the Meeting Materials Packet. Director Ward stated that if a decision is made to continue the item, there can be an outline included with the full process framework. This can provide

additional clarity about the information provided, what was submitted, and the timeline. It is possible to build out the timeline for the Board with accurate exhibits.

Attorney Harrington noted that Board Member Stafsholt previously made a motion. The motion was not withdrawn, but it was not seconded. The motion died for lack of a second. Temporary Chair Gezelius entertained a second motion on 416 Ontario Avenue.

MOTION: Board Member Schulman moved to CONTINUE the Variance Request at 416 Ontario Avenue so additional information can be provided to the Board, with documentation that outlines the process history. Staff is asked to provide alternative findings for possible approval of the variance and schedule another meeting as soon as possible. Board Member Armstrong seconded the motion. Vote on Motion: Board Member Schulman-Yes; Board Member Armstrong-Yes; Board Member Stafsholt-No; Temporary Chair Gezelius-Yes. The motion passed with a vote of 3-to-1.

7. **ADJOURN**

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

The Board of Adjustment Meeting adjourned at 5:58 p.m.