



**PARK CITY MUNICIPAL CORPORATION  
BOARD OF ADJUSTMENT MEETING  
SUMMIT COUNTY, UTAH  
MINUTES OF FEBRUARY 10, 2026**

**BOARD MEMBERS IN ATTENDANCE:** Jennifer Franklin – Chair, Ruth Gezelius, Beth Armstrong, Stefanie Wilson, Ginny Schulman, John Stafsholt (attending virtually)

**STAFF:** Planning Director, Rebecca Ward; Planning Project Manager, Elissa Martin; Planner II, Meredith Covey; Chief Building Official, Dave Thacker

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

Chair Jennifer Franklin called the Board of Adjustment Meeting to order at 5:00 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 January 13, 2026.**

Chair Franklin and Board Member Stefanie Wilson were not present at the January 13, 2026, Board of Adjustment Meeting. As a result, they recused themselves from the vote. It was noted that with those recusals, there is not a quorum present to vote on the Minutes. Board Member Ruth Gezelius moved to continue the item until there is a quorum. Once there was a quorum of the Board of Adjustment, a vote was taken on the Meeting Minutes.

Board Member John Stafsholt and Board Member Ginny Schulman arrived at 5:05 p.m.

**MOTION:** Board Member Gezelius moved to APPROVE the Meeting Minutes of January 13, 2026, as presented. Board Member Armstrong seconded the motion. The motion passed, with Chair Franklin and Board Member Wilson recused from the vote.

**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. 322 and 324 Main Street – Variance – The Applicant Seeks a Variance for the Proposed Red Banjo Plat Amendment for an Exception to the Historic Commercial Business Zoning District Minimum Lot Width Requirement. PL-26-06815.**

Planning Project Manager, Elissa Martin, presented the Staff Report and explained that the application is for a Variance request. 322 Main Street is Red Banjo Pizza and it is a Landmark Historic Site. The variance request also includes 324 Main Street and 325 Swede Alley, which is Park Place. The two properties are located in the Historic Commercial Business (“HCB”) District. She reported that the existing structures cross lot lines and the Landmark Historic Structure at 322 Main Street encroaches onto 324 Main Street. The widths of the historic lots do not meet the minimum lot width of 25 feet that is required in the HCB Zoning District. As a result, a variance has been requested. This would allow for the Red Banjo Plat Amendment, which would create two contiguous lots out of four disparate parcels. In order for the variance to be granted, the Board of Adjustment must find that all five criteria in Land Management Code (“LMC”) 15-10-8(C) are met. The Board of Adjustment may not find an unreasonable hardship if the hardship is self-imposed or economic. Additional requirements may also be imposed.

Manager Martin 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 cause an unreasonable hardship that is not necessary to carry out the general purpose of the LMC:
  - Literal enforcement of the minimum lot width requirement would cause an unreasonable hardship because compliance with the lot width requirement is impossible due to historic site constraints and existing structures;
  - By granting the variance, the lot widths will remain the same, and the hardship is not necessary to carry out the purpose of the LMC.
- There are special circumstances attached to the property that do not generally apply to other properties in the same zone:
  - The lot widths of surrounding HCB lots on Main Street and Swede Alley are 25 feet, whereas the existing lot width of 322 and 324 Main Street are under 25 feet, which demonstrates a special circumstance is attached to the properties that generally does not apply to other properties.
- Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone:
  - Consolidation of Main Street and Swede Alley lots to allow the build out of HCB properties is a substantial property right possessed by other properties

in the HCB Zoning District. Other properties in the HCB Zone have contiguous lots fronting Main Street and backing Swede Alley.

- The variance will not substantially affect the General Plan and will not be contrary to the public interest:
  - The 2025 General Plan calls for the preservation of the Historic Neighborhood Character of Old Town, which is defined by small lots and high-density development;
  - The variance to allow existing lot widths will not cause a change to existing lot density and pattern of development.
- The spirit of the LMC is observed and substantial justice is done:
  - The variance does not allow the lots to expand in width, it would allow the lots to exist as they have for many years, with the same dimensions;
  - The variance would allow for lots reflective of ownership and existing conditions and establish boundaries for future infill development that meets the requirements of the Swede Alley criteria.

Staff recommends the Board of Adjustment review the proposed variance for 322 and 324 Main Street and 325 Swede Alley from the HCB Zone minimum lot width requirement, and consider approving the variance based on the Findings of Fact, Conclusions of Law, and Conditions of Approval outlined in the Draft Final Action Letter. The applicant representatives, Bryan Markkanen and Megan Blosser, are present to answer questions.

Board Member Gezelius wanted to know if approving this variance would allow the property owners to subdivide the ownership and then have separate ownership of the back parcel. Manager Martin did not believe so. The intention is to consolidate the lots. There are four parcels in total and each owner has two parcels. There is a desire to consolidate so Park Place has its consolidated contiguous lot and Red Banjo has its consolidated contiguous lot. There could not be disparate ownership once that was done.

Board Member Gezelius pointed out that the template in Old Town is not standard. Since development took place on Main Street in the 1800s, there are irregular parcels. Board Member Schulman asked if either of these lots could be developed independently of what is in the front. Manager Martin wanted to know if the question is whether there could be an entirely separate building constructed. Board Member Schulman confirmed this. Manager Martin explained that it is currently possible. There could be a separate building built on a separate lot, but the variance would still need to be granted for a Building Permit to be issued. She shared additional information about this potential scenario.

Board Member Schulman believed that in order for the 24-foot lot to be developed separately, the applicant would need to come back to the Board of Adjustment for a variance. The 25-foot lot would meet requirements. Manager Martin confirmed this. In order to build on the back lot with a non-compliant width, the variance would be needed.

Board Member Stafsholt pointed out that it would be easier in the current configuration to develop a separate building on the Swede Alley side rather than do so after the

combination. It was noted that there are currently four lots. Manager Martin explained that if the variance request is approved, this will allow the Red Banjo Plat Amendment to move to the Planning Commission for approval. She informed the Board that the Red Banjo Plat Amendment would create two lots out of the four parcels that currently exist.

Planning Director, Rebecca Ward, clarified that the proposed Plat Amendment would take the four separate parcels and create two lots that reflect current ownership. In the HCB District, there are no setbacks, but these lots are under the lot width and lot depth required for the district. By combining these separate parcels, the required lot depth will be created. Director Ward explained that there will be two separate ownerships. It was reiterated that Park Place will be one lot and Red Banjo will be another lot.

Director Ward clarified that there is no requirement for two lots to be created, but that could be a Condition of Approval that is added. If the proposal were to change, it would need to come back to the Board of Adjustment for consideration. Director Ward explained that Condition of Approval #1 could be amended. The following language was drafted:

- Condition of Approval #1:
  - The Variance is limited to the outlined request and the creation of two contiguous Lots. No other code exceptions are proposed or approved.

Additional discussions were had about the Condition of Approval language proposed. Chair Franklin believed the variance is required in order to move forward with the Plat Amendment, which was confirmed. There cannot be a Plat Amendment prior to approval of the requested variance. There was Board Member support for the condition language.

**MOTION:** Board Member Gezelius moved to APPROVE the Variance for 322 and 324 Main Street and 325 Swede Alley, based on the following:

**Findings of Fact:**

1. 322 Main Street (Red Banjo Pizza) and 324 Main Street/325 Swede Alley (Park Place) are in the Historic Commercial Business (HCB) Zoning District.
2. 322 Main Street is a Landmark Historic Structure on Park City's Historic Sites Inventory.
3. 324 Main Street/325 Swede Alley is a non-Historic site with a Structure built in 1978.
4. The Landmark Historic Structure at 322 Main Street encroaches onto 324 Main Street and the property owners submitted a Plat Amendment to create two Lots that reflect existing conditions and ownership.

5. According to Land Management Code (LMC) § 15-2.6-3 *Lot and Site Requirements*, no Building Permit will be issued for a Lot unless such Lot has the Area, width, and depth as required.
6. The properties do not meet the HCB Zoning District minimum lot width requirement of 25 feet on the Main Street and Swede Alley Frontages and on January 16, 2026, the Applicant applied for a Variance.
7. To grant the requested Variance, the Board of Adjustment must find that all five criteria in LMC § 15-10-8(C) are met. The Applicant bears the burden of proving that all the conditions justifying a Variance have been met.
  - a. Literal enforcement of the Land Management Code would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the Land Management Code.
    - i. Pursuant to LMC § 15-2.2-1, the purpose of the HCB District is to:
      1. Preserve the cultural heritage of the City's original Business, governmental and residential center;
      2. Allow the Use of land for retail, commercial, residential, recreational, and institutional purposes to enhance and foster the economic and cultural vitality of the City;
      3. Facilitate the continuation of the visual character, scale, and Streetscape of the original Park City Historical District;
      4. Encourage the preservation of Historic Buildings and/or Structures within the district;
      5. Encourage pedestrian-oriented, pedestrian-scale Development;
      6. Minimize the impacts of new Development on parking constraints of Old Town;
      7. Minimize the impacts of commercial Uses and business activities including parking, Access, deliveries, service, mechanical equipment, and traffic, on surrounding residential neighborhoods;
      8. Minimize visual impacts of automobiles and parking on Historic Buildings and/or Structures and Streetscapes;
      9. Support Development on Swede Alley which maintains existing parking and service/delivery operations while providing Areas for public plazas and spaces; and
      10. Maintain and enhance the long-term viability of the downtown core as a destination for residents and tourists by ensuring a Business mix that encourages a high level of vitality, public Access, vibrancy, activity, and public/resort- related attractions.

- ii. Without an exception to the minimum Lot width requirement of the HCB Zoning District, future additions to the buildings would be prohibited because additions to existing buildings are not allowed to straddle Lots and therefore a Plat Amendment is required to consolidate the disparate Lots into contiguous Lots; literal enforcement of the minimum Lot width requirement would result in the denial of the Red Banjo Plat Amendment, due to the non-complying Lot width of each Historic Lot.
- b. There are special circumstances attached to the Property that do not generally apply to other properties in the same zone.
  - i. The Lot widths of surrounding HCB Lots on Main Street and Swede Alley are over 25 feet, whereas the existing Lot widths of 322 and 324 Main Street are under 25 feet, which demonstrates a special circumstance is attached to the Properties that generally does not apply to other properties.
  - ii. The existing Lot width of each Lot cannot be expanded along Main Street due to the existing conditions and adjacent Structures and the Lot width along Swede Alley cannot be expanded to meet the minimum 25-foot Lot width due to the same constraints – the combined width of the Lots along Swede Alley is approximately 45 feet, and the combined width of the Lots along Main Street is 41.87 feet. The combined width of the Lots would need to be a minimum of 50 feet to meet the HCB Lot width requirement.
- c. Granting the Variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone.
  - i. The consolidation of Main Street and Swede Alley Lots to allow the build-out of HCB Properties is a substantial Property right possessed by other Properties in the HCB Zoning District.
  - ii. The Variance is necessary to allow the Red Banjo Plat Amendment, which will, in turn, allow the expansion of Red Banjo Pizza to the rear of the property within one contiguous Lot, as well as future build-out of Park Place within one contiguous Lot.
- d. The Variance will not substantially affect the General Plan and will not be contrary to the public interest.
  - i. The 2025 General Plan calls for the preservation of the Historic Neighborhood Character of Old Town. One of the defining characteristics of Old Town is a pattern of small Lots and high-density development.
  - ii. The Variance to allow an exception to the HCB minimum Lot width requirement for 322 and 324 Main Street will not have a negative impact on the Historic character of Old Town

- because it would not cause a change to the existing Lot density and pattern of development along Main Street and will allow for pedestrian- oriented infill along Swede Alley.
- e. The Spirit of the Land Management Code is observed, and substantial justice done.
    - i. The purpose of the HCB District includes preserving the cultural heritage of the City's original Businesses, allowing the use of land for retail and commercial purposes to enhance and foster the economic and cultural vitality of the City, and to facilitate the continuation of the visual character, scale, and Streetscape of the original Park City Historical District. Another purpose is to encourage pedestrian-oriented, pedestrian-scale Development.
    - ii. LMC § 15-2.6-7 Swede Alley Development Criteria requires infill development with pedestrian-scaled entrances with window displays and design features that are compatible with—but subordinate to—Main Street development.
      - 1. The requested Variance establishes Lots reflective of ownership and allows for the creation of two Lots that reflect existing conditions and establish the boundaries for future infill development that meets the requirements of Swede Alley criteria.
    - iii. Allowing an exception to the HCB minimum Lot width requirement does not compromise the spirit of the LMC, specifically the Lot and Site requirements of the HCB Zoning District.
      - 1. The Variance does not allow the Lots to expand in width, it would allow the Lots to exist as they have for many years, with the same dimensions.
      - 2. No change is being made except to allow the build out of the rear portions of the Lots, just as most properties along Main Street have been allowed to do.

**Conclusions of Law:**

- 1. The Applicant proved their request meets the five criteria outlined in Land Management Code § 15-10-8:
  - a. Literal enforcement of the Land Management Code would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the Land Management Code;
  - b. There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone;
  - c. Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone;

- d. The variance will not substantially affect the General Plan and will not be contrary to the public interest; and
- e. The spirit of the Land Management Code is observed and substantial justice done.

**Conditions of Approval:**

1. The Variance is limited to the outlined request and the creation of two contiguous Lots. No other code exceptions are proposed or approved.

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

**B. 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.**

It was noted that two members of the Board of Adjustment will recuse themselves from the discussion due to being absent at the last meeting. Chair Franklin and Board Member Wilson were recused. Chair Franklin asked Board Member Gezelius to handle this item.

Board Member Gezelius clarified that it has been the practice of the Board of Adjustment to have those not present during a previous discussion recuse themselves from further discussion. She noted that there is a quorum present to vote on the variance application.

Planner II, Meredith Covey, presented the Staff Report and explained that this is a continuation of a variance request at 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. There was a previously existing deck and two mature trees, which have since been removed. She shared images that illustrate the previously existing deck and the newly framed deck. The currently framed deck is approximately 25 feet wide and 12 feet deep. The applicant has since proposed to reduce the deck dimensions to 24 feet wide and 12 feet deep. She noted that the applicant is requesting an exemption from the regulations for decks on new infill in the Historic District. LMC 15-13-8(B)(2)(7) states:

- 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 reported that the applicant is also requesting an exception from the front setback regulations. The front setback in this zoning district is 10 feet. Decks not more than 10 feet wide, projecting not more than 3 feet into the front setback, are an allowed setback exception, but this deck is larger than that. The applicant bears the burden of proving the five variance criteria. Planner Covey reviewed the following variance criteria:

- Literal enforcement of the LMC would cause an unreasonable hardship that is not necessary to carry out the general purpose of the LMC;
- There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- The variance will not substantially affect the General Plan and will not be contrary to the public interest;
- The spirit of the LMC is observed and substantial justice is done.

Planner Covey asked the Board to consider whether the applicant has met the burden of proof of the five criteria. Staff recommends the Board of Adjustment review the requested variance and determine whether the updated Draft Final Action Letter reflects the Board's Findings of Fact, Conclusions of Law, and Conditions of Approval. Based on comments made at the last Board of Adjustment Meeting on January 13, 2026, additional information about the context and history of the project was provided in the Staff Report. The applicant is at the meeting and will present information. In addition, Chief Building Official, Dave Thacker, is present at the Board of Adjustment Meeting to answer questions.

Board Member Schulman noted that when the original deck was on the property, there was a side yard deck. She asked if that is still there. The applicant, Rafael Baez, explained that they did not remove the side yard deck, but it was removed prior to the acquisition of the property. It was noted that if the applicant proposes rebuilding a deck in the side yard, there will be a requirement to submit an additional Historic District Design Review ("HDDR") Pre-Application with the Planning Department. That would go through the Waiver Letter process to determine whether it complies with the setbacks. If there is no setback compliance, the applicant will be required to undergo the variance process.

Director Ward added that with side setback exceptions, if it is within a certain distance of grade, there are some allowances there. In this case, what the applicant is asking for with the exception falls within the front setback along Ontario Avenue. Planner Covey shared an image with the Board and explained that the orange section is what is framed currently and is approximately what the applicant is proposing to construct. What is shown is around one foot wider than the dimensions now proposed by the applicant.

Board Member Schulman asked for additional information about the image shown. Planner Covey clarified that the red line represents the property line. The home is approximately 10 feet back from the property line, so the home encroaches slightly into the front setback. Board Member Schulman wanted to know if the deck goes beyond the

property line, which was confirmed. Planner Covey reported that it encroaches into the City right-of-way, which is the reason there was an Encroachment Agreement recorded in the past for the stairs, retaining walls, and the deck that existed there previously.

Board Member Schulman believed there was a stop-work order issued when the structural elements were removed. This was confirmed. Planner Covey explained that there was a stop-work order that was put on the property in October 2025. There was an inspection done where the Building Department determined that there were framing and structural elements outside the scope of what was approved by the Planning Department. Planner Covey shared information about the Conditions of Approval applied to the property.

Board Member Stafsholt noted that the applicant was told that structural elements could not be removed. New plans were submitted, and those plans were stamped by the Building Department. Work was done according to the plans that were stamped, which is normally the last step in the process. The Building Inspector went out two times and approved the work. He is concerned about now telling the applicant that something cannot be built after all of that took place. There was a process issue, which has been admitted to and corrected since this issue occurred. He feels for the applicant, given what has happened.

Mr. Baez shared presentation slides with the Board of Adjustment and explained that he is the owner of 416 Ontario Avenue. He shared some history about the property and the timeline. In 2019, there was an Encroachment Permit established between the prior owners and the City. Part of what the Encroachment Permit requires is that the owner maintain the improvements in a good state of repair at all times. The agreement is in effect until the license is revoked. He noted that the property was acquired in November 2024. He shared an image of the pre-purchase condition with the deck and trees. This shows the trees were causing the decking to buckle. Additional images were provided.

Mr. Baez pointed out that the newly constructed deck would be minimally visually impactful from the street. The retaining wall is 7 feet on one end and 9 feet in height on the other. He next shared a video that shows the condition of the property after the demolition. None of the structural elements were removed until late September, which was after the Building Permit was applied for and there were reviews done. Mr. Baez explained that some of the structural elements were rotted. He next shared details from the application for the initial demolition. The contractor obtained a permit for a deck demolition, advising the City that the deck would be rebuilt in the spring. He explained that the intention was to remove the deck and rebuild a new deck in the spring with traditional wood materials, including redwood, cedar, and pressure-treated materials.

The initial permit for the demolition was shared. Mr. Baez reported that the permit was approved and reviewed. The applicant contractor obtained a permit for a small deck demolition before removing the deck. Building and Planning both approved work with the caveat that HDDR approval would be required before construction and that repair and

remodel would require a separate permit. On April 23, 2025, the contractor emailed drawings of the deck to the Planning Department in support of the applicant's HDDR Pre-Application. There was some correspondence that took place at that time.

After the contractor submittals, the HDDR Pre-Application was granted, subject to the conditions set forth in the May 21, 2025, letter to the contractor. Mr. Baez reported that nowhere in the list of bullet point conditions did it state that the deck could not be demolished. Board Member Schulman stated that there was other correspondence from the Planning Director that stated the deck could not be replaced, but it could be repaired. Mr. Baez clarified that it stated there would need to be another permit process to repair or remodel the deck. There was an original HDDR application in January. Due to the length of time for the permit, the original expired, and another application was submitted.

Director Ward shared clarifying information about the timeline. In January, a Demolition Permit was submitted to the Building Department to demolish the deck. The Demolition Permit was issued and a condition was outlined to state that after demolition, if there is a proposal to rebuild the deck, it needs to comply with the code and go through the Historic District process. However, the applicant did not move forward with that permit. Instead of demolishing the deck, an HDDR Pre-Application was submitted on April 15.

The initial proposal stated that the deck would be removed and rebuilt. There was communication with the applicant representative to inform them that removing the deck would lose the non-complying status. The plan set the applicant is now sharing is what was submitted for the HDDR application in April, even though the structural plans had been completed in February. The Waiver Letter was issued in May. The proposed repair of decking material does not create a new non-compliance or increase the existing non-compliance. If the decking materials are to be removed in the future, the construction of the new deck will be required to comply. Before issuing the Waiver Letter, there was a site visit to determine that the structural components had not been removed. Director Wad explained that there was a Building Permit to demolish that did not move forward. There is documentation that was prepared at different dates. She shared additional timeline information with the Board of Adjustment in order to provide more clarity.

Mr. Baez continued his presentation. He explained that the emails back and forth on April 23, 2025, were in response to the HDDR. In compliance with the HDDR conditions, the contractor applied for a Building Permit on May 23, 2025. This was reviewed and finalized on June 2, 2025. It was to remodel the deck and install new decking and railing. He presented the permit application submitted, which showed the footings as well as the plans and structural calculations. There were inspections for the footings on September 4, 2025. The inspection of the Limits of Disturbance ("LOD") was passed on September 8, 2025. There were no indications during this process that there might be an issue.

The inspection of the rough framing was marked "No Pass" on October 7, 2025, but that was addressed through correspondence with the engineer of record. It was not until

October 7, 2025, that notice was received about the Planning Department submittal requirement. Mr. Baez shared a summary of the City file, which includes the following:

- Encroachment Permit requiring the owner to keep the deck in good repair;
- Application for Demolition Permit referring to the removal of the deck;
- Passed demolition inspection;
- Footings and foundation drawings showing new deck footings;
- Load calculations for new deck support;
- HDDR approval with conditions that did not prohibit removal; and
- Inspections of footings, limits of disturbance, and rough framing.

The Chief Building Official's email on November 5, 2025, claimed that "the deck was completely removed in violation of the Condition of Approval for which the Historic District Waiver Letter and Building Permit were issued." Mr. Baez shared the HDDR conditions and explained that it is possible to reduce the encroachment in a certain section.

Mr. Baez discussed the administrative issue that occurred. For the Building Permit, the submittal was three pages. Pages 4 to 22 were documents from an entirely different project. While those may be in the City file, none of those documents were related to the submittal made for 416 Ontario Avenue. He referenced LMC Section 15-10-8(C) language and outlined the different ways the variance criteria have been met:

- Literal enforcement of the LMC would cause an unreasonable hardship that is not necessary to carry out the general purpose of the LMC:
  - Here, literal enforcement would cause an unreasonable hardship because it would require removal or downsizing of a deck constructed in reasonable reliance on an issued Building Permit, stamped structural plans, and passed inspections, based on conditions peculiar to this property and permitting history, not general neighborhood conditions;
  - The hardship is not aesthetic preference or economic gain;
  - The hardship is being forced to dismantle a structure after:
    - A Building Permit was finalized on June 2, 2025;
    - The footings were inspected and passed on September 4, 2025;
    - Construction proceeded without stop-work for months; and
    - The City later acknowledged internal process failure.
  - Enforcement here does not advance the Code's purpose, but penalizes compliance with the City process.
- There are special circumstances attached to the property that do not generally apply to other properties in the same zone:
  - Here, special circumstances exist because this property uniquely combines:
    - A recorded Encroachment Permit authorizing a front yard deck within the right-of-way;
    - Extreme topography limiting alternative deck locations; and
    - A City permitting record that affirmatively allowed structural reconstruction to proceed.

- No similarly situated HR-1 property is subject to both an active Encroachment License and a City-issued Structural Permit for replacement work.
- Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone:
  - The substantial property right at issue is not merely the existence of a deck, but the continued ability to maintain and safely use a deck that has lawfully occupied this location for decades with City authorization;
  - The prior deck existed long-term and was formally legalized by an Encroachment Agreement;
  - The new deck does not increase overall encroachment and in some respects reduces it;
  - For this lot, there is no functional alternative location that would allow outdoor access comparable to neighboring properties;
  - Enforcement would leave the owner worse off than before despite reliance.
- The variance will not substantially affect the General Plan and will not be contrary to the public interest:
  - Granting the variance will not substantially affect the General Plan or public interest, because the deck is non-historic, largely screened by topography, replaces an existing encroachment, and does not expand the scale of development beyond what has long existed;
  - The Historic District goals focus on new incompatible development, not safety-drive replacement of existing non-historic improvements;
  - The deck is approximately the same square footage as before and improves structural safety;
  - The public right-of-way impact is governed by a revocable license already approved by the City.
- The spirit of the LMC is observed and substantial justice is done:
  - Substantial justice is served by allowing the deck to remain, because the applicant acted in good faith, relied on City approvals, and did not intensify non-conformity;
  - Denying the variance would produce an inequitable result driven by administrative error rather than land use policy;
  - It is unjust to deny a variance where an owner submitted plans, had them approved, and built in conformance with those plans;
  - Granting the variance will prevent further injustice from occurring.

Official Thacker reported that two separate permits are being discussed. One permit that has been brought forward is the Demolition Permit, which was requested to demolish the deck in its entirety. That was approved and it had specific notes. It provides the information that Pre-Application is required before a permit can be issued to construct. It also states that all new construction must comply with zoning requirements, including setbacks. It must not create any new encroachments outside of the property. That was provided to the applicant in January 2025. It indicated that there was a process that needed to be adhered to. As for the deck repair process, the plans that were submitted

did receive a stamp for review of code compliance from the Building Department. There was also a stamp from the Planning Department that indicated it was repair only and it was not for a rebuild or replacement of the deck. Although there are some concerns about the administrative process that occurred, there was appropriate communication.

Board Member Stafsholt pointed out that the Demolition Permit was stamped and approved, the Building Permit was stamped and approved, and there were two positive inspections. There was then a stop-work order. This does not seem to be the fault of the applicant, but instead it appears that there was an administrative issue that occurred.

Board Member Gezelius asked for Board Member feedback about the application. Board Member Beth Armstrong noted that everything she has seen mentioned a remodel and also referenced the replacement of decking and railing. She did not see language to indicate that it was a rebuild or a new build. She agrees with Board Member Stafsholt that there is some confusion in this case, but she believed the Planning Department provided clarity by mentioning a remodel and replacement of the decking and railing.

Board Member Schulman agreed with the comments shared by Board Member Armstrong. During the last Board of Adjustment Meeting, there was a discussion about whether the applicant was willing to compromise somewhat and make the deck smaller. The deck has not been proposed to be significantly smaller. She added that a new deck was not approved. The LMC would allow for a 10-foot-wide and 3-foot-deep deck there.

Board Member Stafsholt reminded Board Members that there are five criteria that need to be reviewed in order to grant the variance. In this case, the application meets all five. It would be an unreasonable hardship for the applicant to tear out a deck and lose what was built with a permit. There are clearly special circumstances in this case, as there is an Encroachment Agreement. He continued to review the criteria and reiterated that all five of the criteria are met with this application. Board Member Gezelius stated that after reviewing the photographic documentation of the condition of the deck, it was clearly a public safety hazard with rotten siding right on a street where pedestrians and vehicles pass. There were errors in interpretation on the part of the applicant and there was confusion on the part of City Staff in terms of the timing and scope of the work. To require this deck to be removed appears to be outside the spirit of the law and the five criteria.

There was additional discussion about the application and the criteria. Board Member Stafsholt reiterated that there was a Staff error. The applicant submitted footings and foundation documents, and there were approved inspections. It does not make sense to rip out what is there currently or request a reduction in size due to a Staff error. He is against applicants who come to the City in bad faith, but that is not happening in this case.

Board Member Armstrong believed that at the last meeting, there was a request for the applicant to come back with an alternate plan. There was only a small change brought forward. Mr. Baez explained that there are a lot of structural elements already in place.

There is a willingness to reduce it where possible, but there are certain structural elements that need to be taken into consideration. Discussions were had about the criteria.

**MOTION:** Board Member Schulman moved to DENY the Variance for 416 Ontario Avenue, finding that the scale of the deck and the proposal does not fit into the historic fabric of the neighborhood. Board Member Armstrong seconded the motion. Vote on Motion: Board Member Schulman-Yes; Board Member Armstrong-Yes; Board Member Stafsholt-No; Board Member Gezelius-No. The motion failed with a vote of 2-to-2.

Director Ward suggested that there be a continuation so the applicant can reconsider reductions to the deck. The applicant could bring forward more detailed information about how the deck could be reduced. The discussion can be continued to a future meeting.

**MOTION:** Board Member Armstrong moved to CONTINUE the Variance Request at 416 Ontario Avenue so additional information can be provided to the Board about a plan to reduce the deck size. Board Member Schulman seconded the motion. Vote on Motion: Board Member Schulman-Yes; Board Member Armstrong-Yes; Board Member Stafsholt-No; Board Member Gezelius-Yes. The motion passed 3-to-1.

## 7. ADJOURN

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

The Board of Adjustment Meeting adjourned at 6:22 p.m.