

**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
COUNCIL CHAMBERS, CITY HALL
June 21, 2016**



AGENDA

MEETING CALLED TO ORDER - 5:00 PM

ROLL CALL

ADOPTION OF MINUTES OF May 24, 2016

PUBLIC COMMUNICATIONS – *Items not scheduled on the regular agenda*

STAFF AND BOARD COMMUNICATIONS/DISCLOSURES

REGULAR AGENDA – *Discussion, possible public hearing, and possible action as outlined below*

2389 Doc Holiday Drive – Applicant is requesting a variance to Land Management Code Section 15-2.11-3 (I) (2) to construct an addition to connect a single-family dwelling to a detached garage. If connected, the entire structure would no longer meet required side and rear yard setbacks of ten feet (10').

PL-16-03106 13
*Planner
Scarff*

Quasi-Judicial hearing

422 Ontario Avenue – Applicant is requesting a variance to Section 15-2.2-3 (E) (Front Yard Setbacks), Section 15-2.2-3(H) (Side Yard Setbacks), and Section 15-2.2-5 (A) Building Height of the Park City Land Management Code (LMC) for the purpose of constructing a basement garage addition and new above grade addition to a “Significant” historic house.

PL-16-03138 41
Planner Grahn

Quasi-Judicial hearing

ADJOURN

PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF MAY 24, 2016

BOARD MEMBERS IN ATTENDANCE: Ruth Gezelius – Chair; Hans Fuegi, Jennifer Franklin, David Robinson, Mary Wintzer

EX OFFICIO: Planning Director Bruce Erickson, Hannah Turpen, Planner; Polly Samuels McLean, Louis Rodriguez

ROLL CALL

Chair Gezelius called the meeting to order at 5:01 p.m. and noted that the Board did have a quorum.

ADOPTION OF MINUTES OF JULY 21, 2015.

Hans Fuegi referred to page 7 of the Staff report, fourth paragraph, and changed people would occasionally part to correctly read, **people would occasionally park...**

MOTION: Board Member Hans Fuegi moved to APPROVE the minutes of July 21, 2015 as amended. Board Member David Robinson seconded the motion.

VOTE: The motion passed. Mary Wintzer and Jennifer Franklin abstained since they were absent from the July 21st meeting.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

There were no reports or comments.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

569 Park Avenue – Appeal of Historic Preservation Board determination that the structure should be designated as “Significant” on the City’s Historic Sites Inventory (HSI). (Application PL-16-03120)

Planner Hannah Turpen reported that this item was an appeal of the March 2, 2016 Historic Preservation Board action to designate the property at 569 Park Avenue as Significant on the Historic Sites Inventory. Planner Turpen noted that the Staff was aware of the Appellant’s request to continue this item; however,

before the Board decides to take that action the Staff wanted to address the questions raised by Board Member Franklin via email.

Planner Turpen stated that the first item was regarding a 2009 email exchange between former Planning Director Eddington, the Historic Preservation Consultant, Dina Blaes, and Sandra Morrison, Executive Director of the Park City Museum and Historical Society. She explained that Sandra Morrison had provides public comment in the form of a letter dated April 6, 2015 where she referenced that email from 2009. Planner Turpen clarified that the Staff did not have a copy of that email and a copy was not provided by the Executive Director of the Museum. The 2009 email was a communication between the three parties discussing whether or not the property at 569 Park Avenue should be delisted.

Chair Gezelius asked if there was an implication for the application based on the 2009 email. Board Member Franklin clarified that her question actually related to communication from August 21, 2009 that Ms. Morrison alluded to in one of the follow-up letters. Ms. Franklin clarified that she was asking to see the language on how the interpretation came about for the request to delist this property. Planner Turpen reiterated that because the Staff did not have a copy of the email they were not able to comment on the language or know whether or not it has an impact on the application.

Planner Turpen stated that the second item Ms. Franklin asked about related to the Minutes and Public Notice for the April 7, 2010 Historic Preservation Board Meeting. She clarified that the Staff did not have a copy of the Public Notice for the April 7th meeting or a copy of the approved Minutes in the files. The copy of the minutes provided in the Staff report was the Draft copy.

The Staff requested that the Appellant have the opportunity to speak on this item. Assistant City Attorney noted that the Appellant was requesting a continuance and the Board had the purview to decide whether or not to grant that continuance. That decision should be the first order of business.

Graham Gilbert, representing the owners of 569 Park Avenue, stated that the basis for requesting a continuance is that initially one of the owners, Bill Kershaw, had a court hearing in California that prevented him from attending this meeting. They notified the City as soon as possible, which was early in May, and communicated with Assistant City Attorney McLean and Louis Rodriguez regarding process. He was told that the appropriate forum was to attend the Board of Adjustment meeting and request a continuance rather than continuing the appeal prior to the meeting, which he had tried to do.

Mr. Gilbert stated that in addition to requesting the continuance so Mr. Kershaw could attend, his colleague, Wade Budge, had a family commitment that prevented him from attending this meeting as well. The Appellant preferred that Wade Budge be present for the appeal hearing.

Mr. Gilbert noted that a third reason for requesting the continuance is that a Request for Advisory Opinion from the Utah Property Ombudsman was filed on behalf of 569 Park Avenue. He explained that the Ombudsman is created by Statute. He is a neutral arbiter of land use disputes. When a request is filed the Ombudsman's office considers the request and issues a non-binding opinion. Mr. Gilbert stated that the Board of Adjustment is not obligated by law to continue to allow the Ombudsman to issue his decision; however, it can be helpful because the Appeal Hearing before the Board of Adjustment is the last word the City has on this application before the time to seek Judicial Review starts to run. In many circumstances they find it productive to wait for the opinion from the Ombudsman and consider that opinion in their deliberations.

Chair Gezelius asked if Mr. Gilbert had an estimate on when they would receive the opinion from the Ombudsman. Mr. Gilbert stated that he was told it would be approximately four months based on their current workload.

Chair Gezelius asked Assistant City Attorney McLean to address the issue of a continuance. Ms. McLean stated that it was ultimately the Board's decision. The Staff had already sent out the notice to the newspaper prior to the Appellant's request for a continuance. She noted that tonight's date, May 24th, was agreed to with the consent of the Appellant, and the Appellant had asked for this date specifically. However, Ms. McLean thought it would be a good idea to wait until the Ombudsman made a ruling and to have the benefit of that input.

Chair Gezelius remarked that even though it is not legally required for an applicant to be present, the Board normally proceeds with the applicant present.

Assistant City Attorney McLean asked that the questions submitted by Board Member Franklin and answered earlier in the meeting be made part of the record so everyone has the ability to see the questions. Ms. McLean stated that regardless of how the BOA decides to proceed, they should still hold a public hearing this evening.

Chair Gezelius questioned whether they should have a public hearing without a presentation by the Staff or the applicant. Ms. McLean replied that they could hold a public hearing but it should be limited. However, if someone came this evening to speak and they may not be able to come back for the next meeting they should have the opportunity to make their comments.

Board Member Robinson thought it would be in the best interest of the Appellant and the public to wait for the Ombudsman's opinion because it would be helpful for this Board and for the process moving forward.

Board Member Fuegi asked that if they decided to continue whether the Staff could provide requested additional information such as the missing email from

Sandra Morrison. There also appeared to be noticing issues and he was looking for clarity prior to the next meeting. Director Erickson stated that if the Board had specific questions for the Staff they would be able to respond in a new packet for the next meeting. The Board would be able to see the evidence de novo, or new. Director Erickson thought they would be able to track the email from the Director of the Museum. However, the Public Noticing and the approved Minutes from April 7, 2010 were missing from the file and could not be found anywhere in the Municipal system.

Mr. Gilbert understood that this review would be on the record and; therefore, documents not in the record were not available. Assistant City Attorney McLean explained that the review by the Board of Adjustment is de novo as was pointed out in the appeal. Mr. Gilbert thought that was incorrect. He stated that 15-11-10(B)(4) says that the hearing is limited to the record. Ms. McLean replied that the Land Management Code had changed within the last six to eight months. She noted that 15-1-18 has clarified that the Board of Adjustment review is de novo and the legal is the normal standard of review. Mr. Gilbert agreed that there was a general Board of Adjustment standard of review in Section 15-1-18, but in that section there was a specific standard for Determinations of Significance which states, "Appeals shall be considered only on the record made before the HPB".

Planner Turpen believed de novo was only on a Determination of Insignificance. Assistant City Attorney McLean noted that 15-10-7 - Appeals, which is the Board of Adjustment chapter, also states, "The Board of Adjustment shall review factual matters de novo", which means anew, "and it shall determine the correctness of the decision of the Land Use Authority". Ms. McLean pointed out that it was adopted by Ordinance 15-34 in 2015. She agreed that historically the Board of Adjustment has reviewed appeals on the record, but at the time there were two levels of review that the Court remanded and said it was not legal per State Code to have two levels. For that reason the standard of review was changed to match the standards of other appeals within the City.

Mr. Gilbert disagreed. He stated that where there are two appeal standards; one general for the Board of Adjustment and one specific to determination of significance, he would adhere to the Determination of Significance standard. He remarked that unless the Code online was not updated, that standard has not changed. Mr. Gilbert clarified that he was referring to the last sentence in Section 15-11-10(B)(4).

Assistant City Attorney McLean stated that they could agree to disagree, but she believed the intended standard of review for all appeals by the Board of Adjustment is be de novo. She noted that the lawyers could have that discussion if this is appeal is continued.

Board Member Franklin stated that if it falls under de novo, her questions of clarification related to the noticing and the minutes. When she looked for a number of items on Document Central, she was looking to see whether they had followed proper procedures in the April 7, 2010 review, because so many letters from the public said they did not know about the meeting. Ms. Franklin did not believe the procedure for removal from the HSI was accurately followed. She thought that was reflected on page 68 of the Staff report in the LMC language for Removal of a Site from the Historic Inventory. Ms. Franklin was concerned that without the HPB meeting minutes they had no idea how many HPB members were present at the hearing or how the hearing was noticed to the public. She suggested that perhaps the Determination of Significance should be rescinded and possibly re-evaluated. In that process it is possible that the pre-application that the applicant has brought forward might have a different context and different content if the 2010 meeting was nullified because of a procedural error. Ms. Franklin stated that in looking at City Council meeting minutes of August 6th Justin Keyes raised that issue, but the minutes did not reflect the reaction.

Board Member Franklin favored a continuance based on evaluation of the 2010 HPB meeting, whether or not that content would be included in the presentation, and guidance for the applicant from Legal Counsel and the Planning Department as to whether it becomes a pre-application process or whether it goes back in front of the Historic Preservation Board. Ms. Franklin thought it should be treated like a new application.

Board Member Wintzer stated that in fairness to the Appellant she was comfortable continuing this appeal.

Chair Gezelius understood from the comments that there was general consensus among the Board to consider a continuance to a date uncertain pending receipt of the non-binding opinion issued by the Ombudsman, as well as additional information regarding the procedures outlined in the Staff report.

Assistant City Attorney McLean further clarified the question regarding the standard of review. She explained that a clean-up ordinance that was passed on March 24, 2016 deleted the Sub 4 appeal section from LMC Chapter 15-11-10; however, the online Code had not been updated to reflect that ordinance. She noted that the adopted ordinance was published in the paper.

M. Gilbert stated that since he did not have the opportunity to look at the ordinance and he prepared for this meeting with the understanding that it would be on the record. He understood that the Board would be taking public comment, but he stated for the record his objection that it was not appropriate to consider new material until he has had the opportunity to review the ordinance.

Chair Gezelius opened the public hearing.

Andy Byrne, a 33 year resident of Old Town, commented on the number of times the public has attended City Council, Planning Commission, and HPB meetings only to have this pushed off. They were now before the Board of Adjustment and they were talking about a continuance. He pointed out that the public was in attendance and the Board members were present. The only one missing was the applicant who requested this meeting. Mr. Byrne was not in favor of a continuance.

Sandra Morrison, Executive Director of the Park City Historical Society and Museum stated that she had the email from 2009 and the packet from the 2010 meeting. She also had the minutes that were transcribed from the recorder, as well as the notice that was in the Park Record three days prior to the meeting. She had done all the research and would make the materials available if the Staff needed it. Ms. Morrison asked if there would be another public hearing if this appeal was continued this evening.

Ms. Gezelius replied that there would be another opportunity for public comment and it would be a publicly noticed meeting.

Chair Gezelius closed the public hearing.

Ms. Gezelius noted that members of the public were welcome to submit written comments to the Planning Department and they would be included in the Staff report and become part of the record. She stated that the Board Members do make an effort to read all comments submitted.

MOTION: Board Member Wintzer moved to CONTINUE to a date uncertain the Appeal of the Historic Preservation Board's Determination of Significance regarding 569 Park Avenue only for the purpose of obtaining the written, non-binding opinion of the Ombudsman regarding the HPB determination in order to make the clearest and fairest decision. Board Member Robinson seconded the motion.

Board Member Franklin requested that the motion be amended to also include the additional materials that Sandra Morrison has available.

Board Member Wintzer accepted the amendment to the motion. Board Member Robinson seconded the amended motion.

VOTE: The motion passed unanimously.

Chair Gezelius commented on the difficulty of arranging this meeting due to conflicting schedules. She would appreciate cooperation from the Appellant to be present at the next scheduled and publicly noticed hearing, since the City has been extremely accommodating to the applicant.

WORK SESSION

Open and Public Meetings Act Training

Assistant City Attorney had emailed the Board members a copy of the power point presentation. She noted that this was a State mandated training. The Board has been through the training before but it is a good annual reminder about the importance of allowing the public to participate in the public process, and having transparency in government. The State has always required that governments acts on the side of transparency. The City is careful not to make decisions via email and have group discussion via email. If a Board member has a question they should email the Staff directly instead of emailing the entire Board. The Staff can either answer the question directly or address it in front of the entire Board at a meeting.

Chair Gezelius believed it was the same process that applies to verbal communication when people attempt to talk to them about a pending application or a decision that was made. Not engaging in outside conversations communicates fairness and people should be encouraged to attend a meeting and make their comments to the entire Board. Chair Gezelius thought it was unwise to trust in electronic communication.

Assistant city Attorney stated that a quorum constitutes a meeting and the meeting needs to take place in one location. The rules allow for one on one conversations between two Board members, but it goes against the spirit of the law and the spirit of the open meeting.

Assistant City Attorney noted that a quorum for the Board of Adjustment is three members. This is the only Board that is unusual and they emphasize having a full board because it is never a simple majority. Three members must vote for an action to take place. Ms. McLean stated that the Open public Meetings Act requires certain noticing and noticing requirements have changed over the years. The State requires posting all meeting agendas on the Utah Public Notice website. Park City has more stringent noticing for applications. Meetings are posted on the City website as well as posting the location and publishing it in the Park Record. Ms. McLean remarked that all the meetings are recorded and minutes are taken for each meeting. Because the BOA does not meet regularly, if a meeting is not scheduled for the next month she suggested holding a short meeting only to approve the minutes of the previous meeting to avoid waiting months to approve minutes.

Board Member Fuegi commented on the number of times people have claimed they were not noticed properly on a specific item. He asked if it was a legal issue if the Planning Staff is responsible for proper noticing. Assistant City Attorney Mclean replied that generally the Planning Staff is responsible for noticing;

however, she makes sure the notices are written in a legally adequate manner. She believed the Staff did their best to notice properly. Ms. McLean explained that it is difficult in Park City because people have second homes and do not live in Park City. For that reason the City requires a longer noticing period than the State. The State typically requires 24 hour noticing. Park City requires a week for appeals and one to two weeks for other applications. Ms. McLean pointed out that many times people attend a meeting saying that they were not noticed, but somehow they managed to hear about it and were able to attend.

Chair Gezelius remarked that one problem is that some people do not pick up their mail or go through and read it. She thought the problem went beyond second homeowners. Board Member Fuegi thought that was a different issue because in that circumstance there is documentation that the notice was sent. His concern is with inadequate posting or lack of noticing because those issues could have an impact on whether or not a meeting is legal. Ms. McLean clarified that the Staff continues to improve the noticing process and she believed it was getting better. She noted that it is very unusual that minutes are not approved and are only in draft form, but mistakes do happen.

Board Member Franklin thought it was helpful to have everything posted on Document Central. She understood that posted means a sign is physically posted on the property. A courtesy mailing is US Postal Service. Published is in the Park Record, but not on the website or the Utah Public Notice website. Assistant City Attorney McLean stated that the Notice Matrix does not address the Utah Public Notice Website. She explained the previous noticing requirements prior to a more electronic and internet world. They abide by the State Code but it is not reflected in the notice Matrix. Therefore, any action is published on the Utah Public Notice website. Board Member Franklin remarked that if people do their due diligence and research the materials found in Document Central before they come to a meeting it leads to more efficient conversations about topics.

Board Member Wintzer stated that the Board has heard opinions from the Ombudsman and on one particular item they did not side with the Ombudsman. She asked if an item goes to court, whether the Ombudsman's opinion would have more weight than the Board of Adjustment. Assistant City Attorney McLean remarked that the Ombudsman is more like a quasi-judge. The Ombudsman is a lawyer and their staff are lawyers who write the opinion. The role of the City Attorney's Office is to advise the Board of Adjustment on what might happen and whether or not they agree or disagree with the opinion. She noted that the District Court does not see the Ombudsman opinion. It only sees the administrative appeal process within the City and the judge decides it on the record provided. New information cannot be added in front of the District Court. If the judge makes a decision and the Ombudsman was correct, and the BOA decided against the Ombudsman's opinion, the City has the exposure for attorney fees. If the Board follows the Ombudsman's opinion but the Appellant

disagrees, they can take it to the District Court. If the Court sides with the Ombudsman the Appellant would have the exposure for attorney fees. Ms. McLean stated that the Ombudsman helps the public access a decision in a less expensive and less formal way than a District Court. It is a non-binding opinion and the Board can give it whatever weight they want to.

Board Member Robinson noted that he is an alternate Board member and he did not believe the question related to alternate voting has ever been clarified. It was not an issue this evening because the Board had a quorum and the vote was unanimous. Ms. McLean stated that the alternate has a full vote when sitting on the Board. If all five members are present and the alternate is the sixth person, the alternate does not sit on the dais and does not vote. Another rule is that the alternate cannot make a quorum. If only two of the five members are available, the alternate cannot complete the quorum. The alternate is the fourth or fifth person on the Board, which is important because it is not good to only have three members present.

Chair Gezelius asked when they get the Ombudsman's opinion if Ms. McLean could include a "cheat sheet" with an explanation.

Director Erickson noted that the Ombudsman opinion could take as long as four to six months, which means this appeal could be scheduled out that far. He noted that the Board would be meeting sooner to discuss two pending variance applications. Louis Rodriguez noted that the next meeting was already scheduled for June 21st. Ms. McLean asked the Board members to tentatively reserve the third Tuesday of each month so they are available if a meeting is scheduled. They should let the Planning Department know if they will be out-of-town and could miss a potential meeting.

Chair Gezelius adjourned the meeting at 6:05 p.m.

Approved by _____
Ruth Gezelius, Chair
Board of Adjustment

Board of Adjustment Staff Report



PLANNING DEPARTMENT

Application #: PL-16-03106
Subject: 2389 Doc Holiday Drive
Author: Ashley Scarff, Planning Technician
Date: June 21, 2016
Type of Item: Variance

Summary Recommendations

Staff recommends that the Board of Adjustment review the proposed variance, conduct a public hearing, and consider denying a variance requested by the applicant at 2389 Doc Holiday Drive to reduce the minimum rear yard setback of ten feet (10') to 9.25 feet (9.25') and the minimum side yard setback of ten feet (10') to 5.25 feet (5.25') to connect a single-family dwelling to a detached accessory building. Staff's recommendation is based on the Findings of Facts and Conclusions of Law as outlined in this report.

Description

Applicant: Sandra Bergland
Location: 2389 Doc Holiday Drive
Zoning: Single Family (SF) District
Adjacent Land Uses: Residential Single-Family Dwellings
Reason for Review: Variances require Board of Adjustment Approval

Proposal

The property owner requests to reduce the required minimum rear and side yard setbacks of ten feet (10') each to 9.25 feet (9.25') and 5.25 feet (5.25'), respectively, to construct an addition to connect the main single-family dwelling to the garage, which is currently detached. See Exhibit A – Applicant's Narrative and Exhibit D – Proposed Site Plan.

Purpose

The purpose of the Single Family (SF) District is to:

- A. maintain existing predominately Single Family detached residential neighborhoods,
- B. allow for Single Family Development Compatible with existing Developments,
- C. maintain the character of mountain resort neighborhoods with Compatible residential design; and
- D. require Streetscape design that minimizes impacts on existing residents and reduces architectural impacts of the automobile.

Background

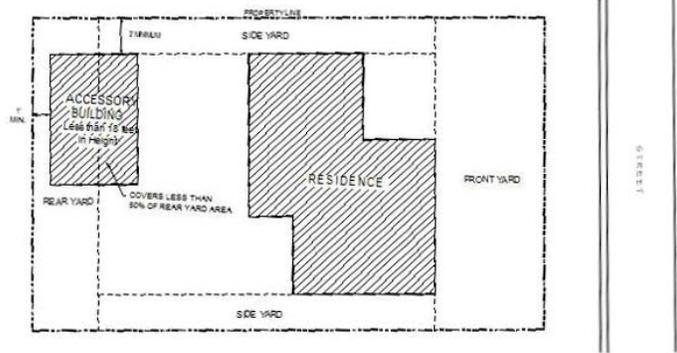
This property is Lot 16 of Prospector Park Subdivision Phase 1. See Exhibit B – Prospector Park Subdivision Phase 1. The lot currently contains the applicant’s single-family dwelling and detached garage, which the Summit County Recorder’s Office indicates were built in 1978. Both the main dwelling and garage currently meet minimum rear and side yard setback requirements as outlined in the Land Management Code (LMC) for main and detached accessory structures within the SF District, with exceptions provided for those in Prospector Park Subdivision Phase 1:

§15-2.11-3. LOT AND SITE REQUIREMENTS.

(B) FRONT, REAR, AND SIDE YARDS. All Development activity must comply with the following minimum Yards. See Section 15-2.11-3(l) for Yard exceptions for Thaynes Canyon Subdivision I and II, Prospector Village Subdivision, and Prospector Park Subdivision I, 2, and 3.

(F) REAR YARD EXCEPTIONS. The Rear Yard must be open and free of any Structure except: (...)

(6) Detached Accessory Buildings not more than eighteen feet (18') in height and maintaining a minimum Rear Yard Setback of five feet (5'). Such Structure must not cover over fifty percent (50%) of the Rear Yard. See the following illustration:



(G) SIDE YARD.

(1) The minimum Side Yard is twelve feet (12').

(H) SIDE YARD EXCEPTIONS. The Side Yard must be open and free of any Structure except: (...)

(9) Detached Accessory Buildings not more than eighteen feet (18') in height, located a minimum of five feet (5') behind the front façade of the Main Building, and maintaining a minimum Side Yard Setback of five feet (5').

(1) OTHER EXCEPTIONS.

(2) In Prospector Park Subdivisions 1, 2, and 3, minimum required Yards are as follows:
 (...)

(b) SIDE YARD. The minimum Side Yard is ten feet (10').

(c) REAR YARD. The minimum Rear Yard is ten feet (10').

The applicant requests to construct an addition to connect the main single-family dwelling to the detached garage. Outlined above, the minimum rear and side yard setbacks for a detached garage are five feet (5') each. The existing garage is approximately 9.25 feet (9.25') from the rear property line and approximately 5.25 feet (5.25') from the side property line. The minimum rear and side yard setbacks for a single-family dwelling are ten feet (10') each. The existing single-family dwelling (main structure) meets minimum rear and side yard setbacks. If the detached garage is to be combined with the single-family dwelling, the entire combined/connected structure would no longer meet required rear and side yard setbacks of ten feet (10') each. The table below highlights the difference between the required rear and side yard setbacks for single-family dwellings and the existing rear and side yard setbacks of the detached accessory structure:

	Required	Existing	Difference
Rear Yard Setback	10 feet (10')	9.25 feet (9.25')	0.75 feet (0.75')
Side Yard Setback(s)	10 feet (10')	5.25 feet (5.25')	4.75 feet (4.75')

Analysis

The property is located in the SF District and is subject to LMC §15-2.11-3 Lot and Site Requirements, subsections B – H regarding rear and side yard setback areas. In addition, because the property is located within the Prospector Park Subdivision Phase 1, it is also subject to §15-2.11-3(I), which outlines rear and side yard setback exceptions specific to listed subdivisions.

The applicant indicated the following in their variance request:

The side and rear yard setback in the Prospector Square Subdivision 1 is 10 feet as measured from the property line. The applicant proposes to place additional living space directly behind the home connecting the detached accessory garage with the home on the north side of the property. Once the home is attached to the garage, the garage is no longer a detached accessory building. Thus, the side and rear yard setback of 10 feet (LMC 15-2.11-3(I)) must now be applied instead of the side and rear yard setback exception of 5 feet (LMC 15-2.11-3(H)(9)). Therefore the applicant requests a variance of the 10 foot side and rear yard setback in the Prospector Square Subdivision 1 (LMC 15-2.11-3(I)).

In order to grant the requested variance to the aforementioned code sections, the Board of Adjustment must find that all five (5) criteria located in LMC §15-10-8(C) are met. The Applicant bears the burden of proving that all of the conditions justifying a variance have been met.

Criteria 1. Literal enforcement of the LMC would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the LMC. In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship, the BOA may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood. In determining whether or not the enforcement of the LMC would cause unreasonable hardship, the BOA may not find an unreasonable hardship if the hardship is self-imposed or economic.

The applicant wrote:

The Prospector Square Subdivision 1 requirement for side and rear yard setback requirements of 10 feet causes an unreasonable hardship for the applicant. The nature of the hardship is caused by the detached garage on the north side of the property. In the winter, the path to the garage is shaded and snow and ice accumulate on the walkway. The snow and ice never melt because the walkway is on the north side of home. This causes treacherous icy conditions that the applicant cannot correct with salt and shovels. There is a dangerous life-safety issue related to an uncovered walkway to the garage in the winter. Connecting the garage to the existing home is a necessity.

Staff does not agree that the variance request meets Criteria 1. While the request comes from literal enforcement of the LMC, the hardship identified by the applicant is a result of the way that the site was developed, i.e. a detached garage on the north side of the property with an access path that accumulates with snow and ice in the winter months due to the sun's natural rotation pattern. Staff feels that these conditions are general to the neighborhood. Of the six (6) properties platted with similar configurations on the northern side of Doc Holiday Drive, all have detached garages to the north of, and behind, the main single-family structures. Because of the similar circumstances of all six (6) sites, it is highly likely that they experience similar conditions as those cited by the applicant in this variance request. In addition, it is likely that other lots within the larger Prospector Park Subdivision configured in a similar manner (on the northern side of an east-west right-of-way) face similar issues.

Criteria 2. There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone. In determining whether or not there are special circumstances attached to the Property, the BOA may find that special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the Property of privileges granted other Properties in the same zone.

The applicant wrote:

There are special circumstances attached to the property that do not generally apply to other properties in the same district. The alleged hardship comes from circumstances peculiar/special to the property. The majority of houses in Prospector Square Subdivision 1 have connected garages. There are 52 lots in Prospector Square Subdivision 1. 41 lots in Prospector Square Subdivision 1 have attached garages. The detached accessory garage at 2389 Doc Holiday Dr. is peculiar/special to this subdivision. The walkway to the garage is also peculiar/special because it is on the north side of the home, which is shaded during the winter months.

Staff does not agree that the variance request meets Criteria 2. As mentioned above, six (6) adjacent properties on the northern side of Doc Holiday Drive (including the subject property) were platted and subsequently developed with similar configurations, i.e. a detached garage to the north of, and behind, the main single-family structure. The hardship cited by the applicant could apply to any property within the Prospector Park Subdivision on the northern side of an east-west right-of-way developed with a detached garage behind the main structure.

Criteria 3. Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone.

The applicant wrote:

Granting the variance is essential to the enjoyment of substantial property rights possessed by other property owners in the same district. 2389 Doc Holiday is one of the last homes to be remodeled in the Prospector Square Subdivision 1. The neighbors will benefit from an updated remodeled home in the neighborhood. The value of the home will increase and the home will be brought up to neighborhood standards. Variances have been granted to at least 4 other homes on Doc Holiday Dr. to connect their accessory buildings.

Staff does not find that the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zone. Staff finds that the essential property right possessed by others in the same zone can be accommodated by constructing an addition to the main dwelling that reduces the distance between the single-family home and the detached garage. Nearby properties with similar site conditions and detached accessory structures appear to have lesser degrees of separation between the main and accessory structures, thus, the connecting pathways would have more cover and protection from the elements in winter months. Staff does not agree that the variance is necessary for the applicant to update or remodel their home.

Criteria 4. The variance will not substantially affect the General Plan and will not be contrary to the public interest.

The applicant wrote:

The proposal is consistent with the General Plan and will not be contrary to public interest. The addition will be built in the style of the current home keeping the "cape cod" look to the home.

Staff does not find the variance would substantially affect the General Plan; however, it would be contrary to the public interest in setting a precedent for reduced side and rear yard setbacks, which are enforced in the name of the public interest. As iterated above, Staff does not agree that the variance is necessary for the applicant to update or remodel their home.

Criteria 5. The spirit of the Land Management Code is observed and substantial justice done.

The applicant wrote:

Connecting the house to the garage meets the spirit of the zoning ordinance and/or is consistent to the general plan. By building a simple addition that stays within the Prospector Park Subdivision 1 aesthetics, the spirit of the zoning ordinance will be observed by this application.

The existing location of the garage and the home on the property can be mitigated with a variance of the rear and side setbacks to connect the home to the garage.

Staff does find that the spirit of the LMC would be observed with the addition as proposed by the applicant in this variance application. Setback requirements are included in the LMC for purposes such as providing separation for sufficient light, ventilation, and neighbor relations, to name a few. Accessory structures, with limits on height and use, have exceptions to the full setback requirements because it is believed that they can be located closer to adjacent properties and their impacts still mitigated. Staff finds that the proposed addition to connect the main structure to the detached garage would not increase the negative impacts that the LMC intends to mitigate with setback requirements, *as long as the current use of the garage structure is maintained.*

In order for the BOA to grant a variance all five (5) criteria must be met. Staff does not find that specific variance criteria are met and therefore recommends that the BOA does not grant the variance.

Process

If the variance request is not approved, the applicant will not be able to move forward with plans to connect the main single-family structure to the detached garage. The denial of a variance request by the Board of Adjustment constitutes Final Action that may be appealed following the procedures found in LMC §15-10-12.

Department Review

This application has gone through an interdepartmental review. No further issues were brought up at the time.

Significant Impacts

There are no significant fiscal or environmental impacts from this application.

Consequences of not taking the Suggested Recommendation

If the Board of Adjustment decides to grant the requested variance, it will allow for nonconformity within the Prospector Park Subdivision Phase 1, and set a precedent for reduced rear and side yard setback requirements within the district.

Alternatives

- The Board of Adjustment may deny the variance request according to the findings of fact and conclusions of law drafted below and/or as amended; or
- The Board of Adjustment may grant the variance request and direct staff to make findings of fact to support this decision; or
- The Board of Adjustment may continue the discussion and request additional information on specific items.

Recommendation

Staff recommends that the Board of Adjustment review the proposed variance, conduct a public hearing, and consider denying a variance requested by the applicant at 2389 Doc Holiday Drive to reduce the minimum rear yard setback of ten feet (10') to 9.25 feet (9.25') and the minimum side yard setback of ten feet (10') to 5.25 feet (5.25') to connect a single-family dwelling to a detached accessory building. Staff's recommendation is based on the Findings of Facts and Conclusions of Law as outlined in this report.

Findings of Fact

1. The site is located at 2389 Doc Holiday Drive.
2. This property is Lot 16 of Prospector Park Subdivision Phase 1.
3. The property is located in the Single Family (SF) District and is subject to Land Management Code §15-2.11-3 Lot and Site Requirements, subsections B – I, which convey the following:
 - a. Rear Yard Exceptions: Detached Accessory Buildings not more than eighteen feet (18') in height must maintain a minimum Rear Yard Setback of five feet (5').

- b. Side Yard Exceptions: Detached Accessory Buildings not more than eighteen feet (18') in height must maintain a minimum Side Yard Setback of five feet (5').
 - c. Side Yard: The minimum Side Yard is ten feet (10').
 - d. Rear Yard: The minimum Rear Yard is ten feet (10').
4. The lot currently contains one (1) single-family dwelling and one (1) detached garage, which both meet minimum rear and side yard setback requirements for main and detached accessory structures.
 5. The applicant desires to construct an addition to connect the main single-family dwelling to the detached garage.
 6. If the main structure is to be combined with the detached accessory building, the entire structure would no longer meet required rear and side yard setbacks of ten feet (10') each.
 7. The applicant requests to reduce the required minimum rear and side yard setbacks of ten feet (10') each to 9.25 feet (9.25') and 5.25 feet (5.25'), respectively.
 8. In order to grant the requested variance, the Board of Adjustment must find that all five (5) criteria located in LMC §15-10-8(C) are met. The Applicant bears the burden of proving that all of the conditions justifying a variance have been met.
 9. The nature of the request comes from literal enforcement of the LMC, but stems from conditions that are general to the neighborhood, or any properties with similar configuration.
 10. The applicant has the ability to build an addition onto the main single-family structure in a manner that decreases the distance between the main and accessory structures, thus, providing the connecting walkway with more cover from the elements in winter months.
 11. The variance is not necessary for the property owner to update or remodel their home.
 12. The variance would not substantially affect the General Plan, but would be contrary to public interest by setting a precedent for reduced rear and side yard setbacks, which are enforced in the name of the public interest.
 13. The spirit and intent of the LMC would not be observed with the addition, as long as the current use of the garage structure is maintained.

Conclusions of Law

1. Literal enforcement of the Land Management Code for this property would not cause an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are no special circumstances attached to the property that do not generally apply to other properties in the same district.
3. Granting the variance is not essential to the enjoyment of substantial property right possessed by other property owners in the same district.
4. The variance will not substantially affect the General Plan but will be contrary to the public interest.
5. The spirit of the Land Management Code will be observed.

Order

1. The variance to LMC §15-2.11-3(I) reducing the minimum rear yard setback of ten feet (10') to 9.25 feet (9.25') and the minimum side yard setback of ten feet (10') to 5.25 feet (5.25') to connect a single-family dwelling to a detached accessory building--is hereby denied.

Exhibits

- Exhibit A – Applicant’s Narrative
- Exhibit B – Prospector Park Subdivision Phase 1
- Exhibit C – Survey of Existing Conditions
- Exhibit D – Proposed Site & Building Plans
- Exhibit E – Vicinity Map
- Exhibit F – Photos

#2

Application

S. Bergland
2389 Doc Holiday
Park City, UT 84060



Park City Municipal Corporation
Planning Department
445 Marsac Ave
Po Box 1480
Park City, UT
84060

To whom it may concern,

I, Sandra Bergland, own 2389 Doc Holiday Dr., Park City, UT 84060. I am Requesting a variance to Land Management code (LMC) for Single Family (SF) District section 15-2.11-3(I) in Prospector Park Subdivision 1 at 2389 Doc Holiday Dr.

PROPERTY FACTS

1. The property is located in the Single Family (SF) District of Prospector Square Subdivision Phase 1. There are 52 lots in this subdivision.
2. The house is located on lot 16. The lot is 81 feet wide and 111.12 feet deep.
3. The detached garage is an accessory building. The east and north side of the garage (accessory building) legally encroaches on the side and rear setback of 10 feet because of the Side and Rear Yard Setback exceptions in LMC 15-2.11-3(H)(9) for accessory buildings.

VARIANCE REQUEST

The Side and Rear Yard Setback in the Prospector Square Subdivision 1 is 10 feet as measured from the property line. The applicant proposes to place additional living space directly behind the home connecting the detached accessory garage with the home on the north side of the property. Once the home is attached to the garage, the garage is no longer a detached accessory building. Thus, the Side and Rear Yard Setback of 10 feet (LMC 15-2.11-3(I)) must now be applied instead of the Side and Rear Yard Setback exception of 5 feet (LMC 15-2.11-3 (H)(9)). Therefore the applicant requests a variance of the 10 foot Side and Rear Yard Setback in the Prospector Square Subdivision 1 (LMC 15-2.11-3(I)).

VARIANCE CRITERIA

This variance is justified because all five (5) of the criteria needed to allow for a variance for each request, pursuant to LMC section 15-10-8, are met.

1. HARDSHIP: The Prospector Square Subdivision 1 requirement for a Side and Rear yard setback requirements of 10 feet causes an unreasonable hardship for the applicant. The nature of the hardship is caused by the detached garage on the north side of the property. In the winter, the path to the garage is shaded and snow and ice accumulate on the walkway. The snow and ice never melt because the walkway is on the north side of home. This causes treacherous icy conditions that the applicant cannot correct with salt and shovels. There is a dangerous life-safety issue related to an uncovered walkway to the garage in the winter. Connecting the garage to the existing home is a necessity.

2. SPECIAL CIRCUMSTANCES: There are special circumstances attached to the property that do not generally apply to other properties in the same district. The alleged hardship comes from circumstances peculiar/special to the property. The majority of houses in Prospector Square Subdivision 1 have connected garages. There are 52 lots in Prospector Square Subdivision 1. 41 Lots in Prospector Square Subdivision 1 have attached garages. The detached accessory garage at 2389 Doc Holiday Dr. is peculiar/special to this subdivision. The walkway to the garage is also peculiar/special because it is on the North Side of the home, which is shaded during the winter months.

3. PROPERTY OWNERS Granting the variance is essential to the enjoyment of substantial property rights possessed by other property owners in the same district. 2389 Doc Holiday is one of the last homes to be remodeled in the Prospector Square Subdivision 1. The neighbors will benefit from an updated remodeled home in the neighborhood. The value of the home will increase and the home will

be brought up to neighborhood standards. Variances have been granted to at least 4 other homes on Doc Holiday Dr. to connect their accessory buildings.

4. GENERAL PLAN: The proposal is consistent with the General Plan and will not be contrary to public interest. The addition will be built in the style of the current home keeping the "cape cod" look to the home.

5.SPIRIT: Connecting the house to the garage meets the spirit of the zoning ordinance and/or is consistent to the general plan. By building a simple addition that stays within the Prospector Park Subdivision 1 aesthetics, the spirit of the zoning ordinance will be observed by this application.

The existing location of the garage and the home on the property can be mitigated with a variance of the Rear and Side setbacks to connect the home to the garage.

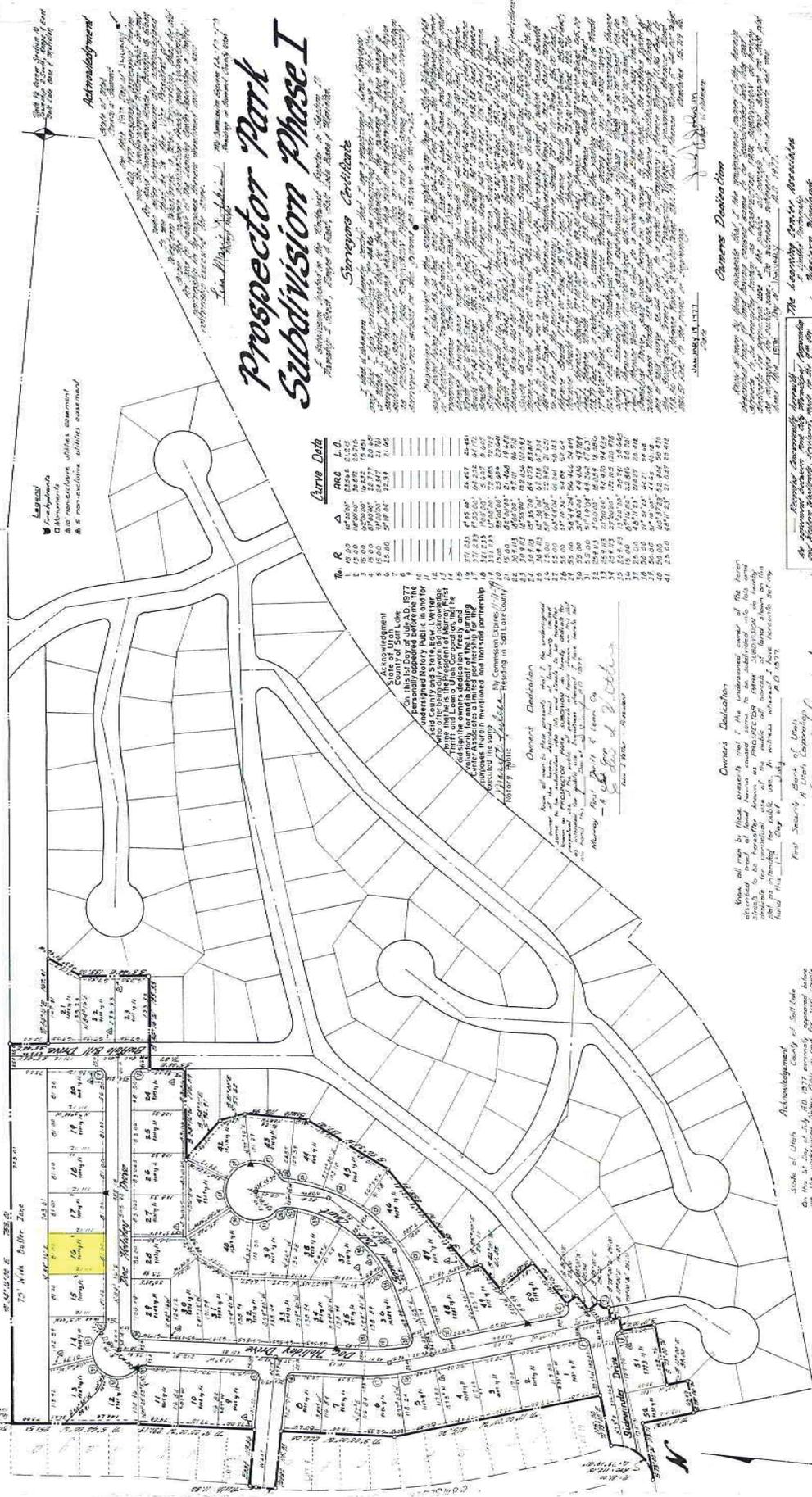
Thank you for your consideration.

Sandra Bergland
2389 Doc Holiday Dr
Park City, UT 84060

617-320-9972

State Hwy. 2 210

Board of Adjustment Packet June 21, 2016



Acknowledgment
 I, the undersigned, do hereby acknowledge that I have read and understand the contents of the foregoing plat and the same is a true and correct copy of the same as the same appears on the original plat on file in the office of the County Clerk of the County of San Diego, California.

Surveyors Certificate
 I, the undersigned, do hereby certify that I am a duly licensed and qualified surveyor and that I have personally surveyed and laid out the above described subdivision and that the same is a true and correct copy of the same as the same appears on the original plat on file in the office of the County Clerk of the County of San Diego, California.

Prospector Park Subdivision Phase I

Owners Declaration
 We, the undersigned, do hereby declare that we are the owners of the above described property and that we have read and understand the contents of the foregoing plat and the same is a true and correct copy of the same as the same appears on the original plat on file in the office of the County Clerk of the County of San Diego, California.

Area Data

Tract	Area (Ac.)	Area (Sq. Ft.)
1	0.00	0.00
2	0.00	0.00
3	0.00	0.00
4	0.00	0.00
5	0.00	0.00
6	0.00	0.00
7	0.00	0.00
8	0.00	0.00
9	0.00	0.00
10	0.00	0.00
11	0.00	0.00
12	0.00	0.00
13	0.00	0.00
14	0.00	0.00
15	0.00	0.00
16	0.00	0.00
17	0.00	0.00
18	0.00	0.00
19	0.00	0.00
20	0.00	0.00
21	0.00	0.00
22	0.00	0.00
23	0.00	0.00
24	0.00	0.00
25	0.00	0.00
26	0.00	0.00
27	0.00	0.00
28	0.00	0.00
29	0.00	0.00
30	0.00	0.00
31	0.00	0.00
32	0.00	0.00
33	0.00	0.00
34	0.00	0.00
35	0.00	0.00
36	0.00	0.00
37	0.00	0.00
38	0.00	0.00
39	0.00	0.00
40	0.00	0.00
41	0.00	0.00

City Planning Commission
 Approved by the City Planning Commission on this 15th day of July, 2015.

City Engineer
 Approved by the City Engineer on this 15th day of July, 2015.

City Attorney
 Approved by the City Attorney on this 15th day of July, 2015.

County Clerk
 Approved by the County Clerk on this 15th day of July, 2015.

Notary Public
 I, the undersigned, do hereby certify that I am a duly licensed and qualified notary public and that I have personally witnessed the signing of the foregoing plat and the same is a true and correct copy of the same as the same appears on the original plat on file in the office of the County Clerk of the County of San Diego, California.

City Planning Commission
 Approved by the City Planning Commission on this 15th day of July, 2015.

City Engineer
 Approved by the City Engineer on this 15th day of July, 2015.

City Attorney
 Approved by the City Attorney on this 15th day of July, 2015.

County Clerk
 Approved by the County Clerk on this 15th day of July, 2015.

Recorded
 JULY 6 1971 4:15 AM
 COUNTY CLERK'S OFFICE

Prospector Park Subdivision Phase I

City Planning Commission
 Approved by the City Planning Commission on this 15th day of July, 2015.

City Engineer
 Approved by the City Engineer on this 15th day of July, 2015.

City Attorney
 Approved by the City Attorney on this 15th day of July, 2015.

County Clerk
 Approved by the County Clerk on this 15th day of July, 2015.

Notary Public
 I, the undersigned, do hereby certify that I am a duly licensed and qualified notary public and that I have personally witnessed the signing of the foregoing plat and the same is a true and correct copy of the same as the same appears on the original plat on file in the office of the County Clerk of the County of San Diego, California.

City Planning Commission
 Approved by the City Planning Commission on this 15th day of July, 2015.

City Engineer
 Approved by the City Engineer on this 15th day of July, 2015.

City Attorney
 Approved by the City Attorney on this 15th day of July, 2015.

County Clerk
 Approved by the County Clerk on this 15th day of July, 2015.

Notary Public
 I, the undersigned, do hereby certify that I am a duly licensed and qualified notary public and that I have personally witnessed the signing of the foregoing plat and the same is a true and correct copy of the same as the same appears on the original plat on file in the office of the County Clerk of the County of San Diego, California.



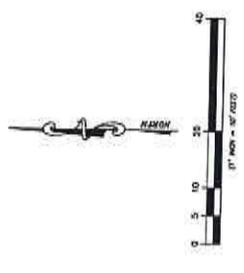
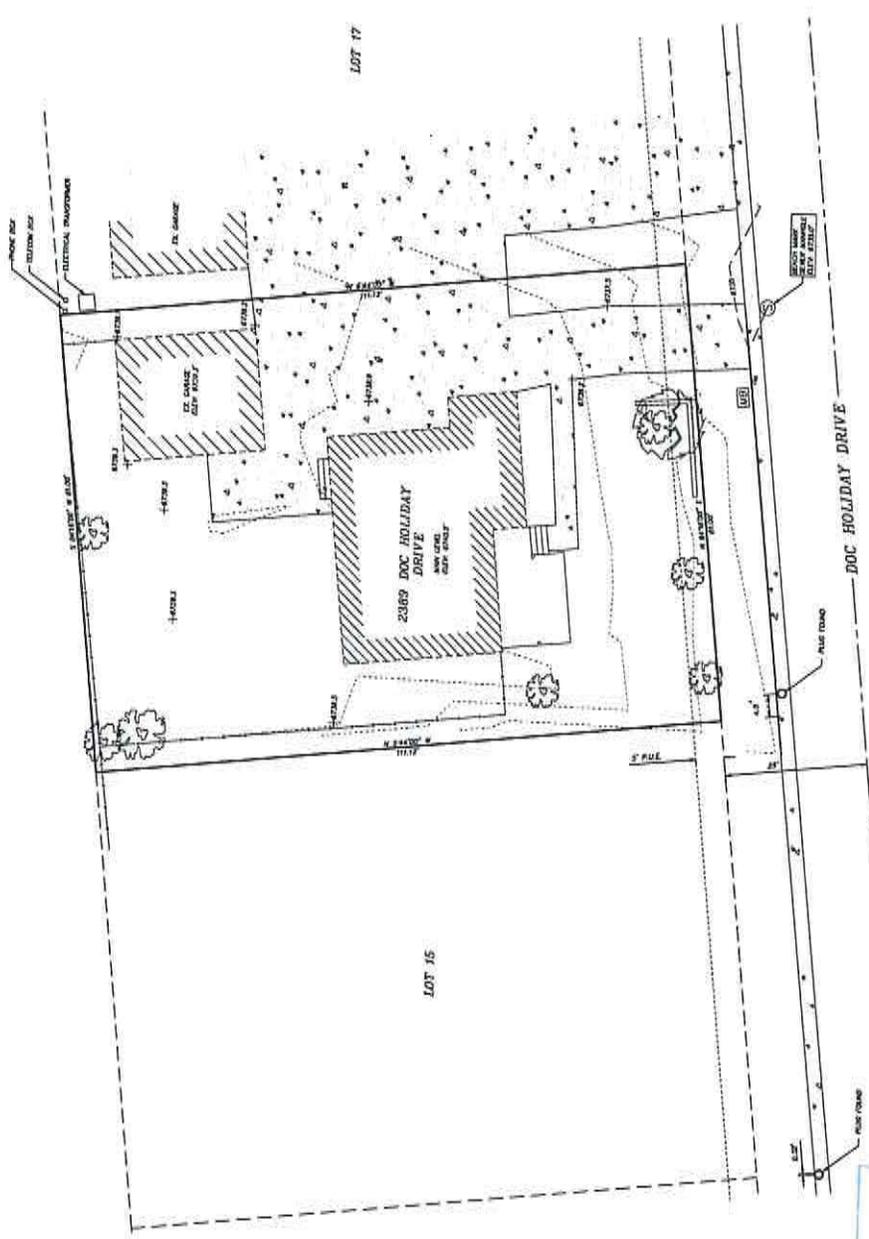
T&M MASONIC
LAND SURVEYING & DESIGN, INC.
1100 SOUTH 1000 WEST, SUITE 100
SALT LAKE CITY, UTAH 84143
(801) 488-9500

SURVEY PREPARED
FOR
ANDRA BERGLAND
PROSPECTOR PARK SUBDIVISION PHASE 1
SUMMIT COUNTY, UTAH
LOT 16

FOR
ANDRA BERGLAND
PROSPECTOR PARK SUBDIVISION PHASE 1
SUMMIT COUNTY, UTAH
LOT 16

PROJECT NO.	1
DATE	06/28/16

EXISTING CONDITIONS MAP
LOT 16
PROSPECTOR PARK SUBDIVISION, PHASE 1
SUMMIT COUNTY, UTAH



NOTICE:
THE APPROXIMATE LOCATION OF THE CENTER LINE OF THE HIGHWAY IS SHOWN BY A DASHED LINE. THE LOCATION OF THE CENTER LINE OF THE HIGHWAY IS SUBJECT TO CHANGE WITHOUT NOTICE. THE LOCATION OF THE CENTER LINE OF THE HIGHWAY IS SUBJECT TO CHANGE WITHOUT NOTICE. THE LOCATION OF THE CENTER LINE OF THE HIGHWAY IS SUBJECT TO CHANGE WITHOUT NOTICE.

LITING WITHIN THE NORTHWEST QUARTER OF SECTION 10,
TOWNSHIP 2 SOUTH, RANGE 4 EAST,
SALMON CREEK MERIDIAN,
SUMMIT COUNTY, UTAH

LEGEND

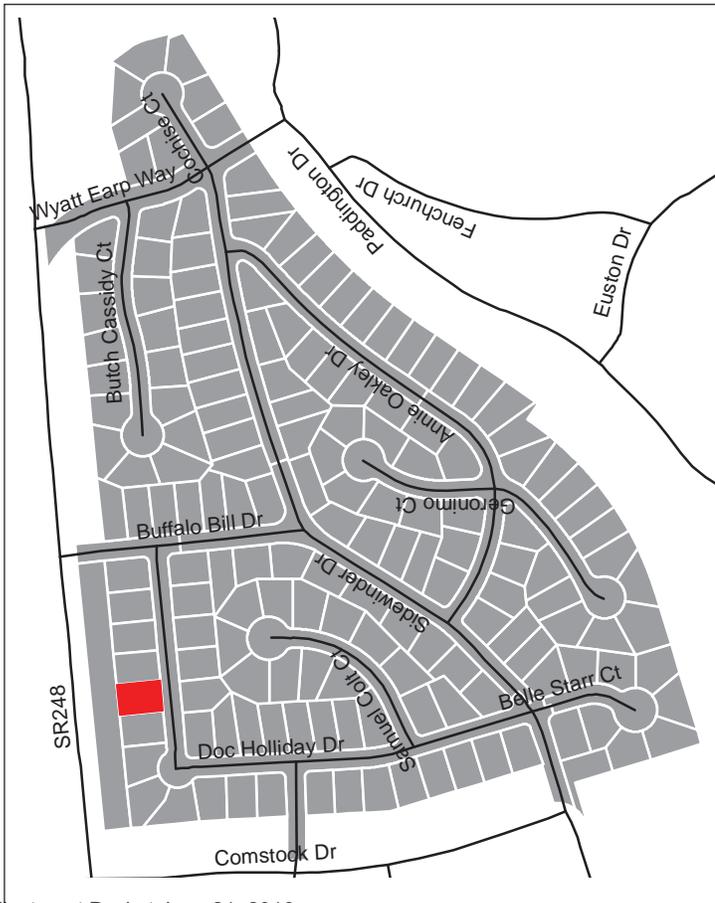
PROPERTY OWNER	ANDRA BERGLAND
PROPERTY ADDRESS	2389 DOC HOLIDAY DRIVE
PROPERTY COUNTY	SUMMIT COUNTY, UTAH
PROPERTY TOWN	SALMON CREEK MERIDIAN
PROPERTY RANGE	RANGE 4 EAST
PROPERTY SECTION	SECTION 10
PROPERTY QUARTER	NORTHWEST QUARTER
PROPERTY AREA	0.16 ACRES
PROPERTY PERMITS	None
PROPERTY RECORDS	None
PROPERTY TAXES	None
PROPERTY EASEMENTS	None
PROPERTY ENCUMBRANCES	None
PROPERTY LIENS	None
PROPERTY MORTGAGES	None
PROPERTY DEEDS	None
PROPERTY RECORDS	None
PROPERTY TAXES	None
PROPERTY EASEMENTS	None
PROPERTY ENCUMBRANCES	None
PROPERTY LIENS	None
PROPERTY MORTGAGES	None
PROPERTY DEEDS	None

RECEIVED
FEB 26 2016

2389 Doc Holiday Drive Site Vicinity Map

Legend

- Streets
- 2389 Doc Holiday Drive
- Prospector Park Subdivision



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community















Board of Adjustment Staff Report

Application #: PL-16-03138
Subject: 422 Ontario Avenue
Author: Anya Grahn, Historic Preservation Planner
Date: June 21, 2016
Type of Item: Variance

Summary Recommendations

Staff recommends that the Board of Adjustment review, conduct a public hearing, and grant the applicants' request for a three (3) variances to: (1) Section 15-2.2-3 (E) (Front Yard Setbacks), (2) Section 15-2.2-3(H) (Side Yard Setbacks), and (3) Section 15-2.2-5 (A) Building Height of the Park City Land Management Code (LMC) as described in this report for the purpose of constructing a new single-car garage with living space and decks above.

Description

Applicant: Hamilton and Barbara Easter, represented by Architect William Mammen
Location: 422 Ontario Avenue
Zoning: Historic Residential (HR-1) District
Adjacent Land Uses: Residential single family homes
Reason for Review: Variances require Board of Adjustment approval

Proposal

The applicants propose to construct a new single-car garage that will replace an existing 14 foot tall retaining wall along Ontario Avenue; the front elevation, or façade, of the garage will serve as a retaining wall for the hillside above. The purpose of this variance is to reduce the front yard setback requirement for the proposed addition so that the garage may replace the existing wall. Further, the applicant also seeks a variance to the required maximum interior height of 35 feet measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists and rafters.

Variances requested:

- A variance to LMC Section 15-2.2-3 (E) to the required twelve foot (12') front yard setback exception to allow for a two-car tandem garage to be constructed behind an existing retaining wall.
- A variance to LMC Section 15-2.2-3(H) to the required five foot (5') side yard setback along the north property line to allow for construction of the garage.
- A variance to LMC Section 15-2.2-5 (A) to the required maximum height of 35 feet measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters.

The applicants believe that unique conditions exist with the property to warrant granting

of a variance to the required front yard setback and required maximum interior height.

Purpose

The purpose of the Historic Residential (HR-1) District is to:

- (A) Preserve present land Uses and character of the Historic residential Areas of Park City,
- (B) Encourage the preservation of Historic Structures,
- (C) Encourage construction of Historically Compatible Structures that contribute to the character and scale of the Historic District and maintain existing residential neighborhoods,
- (D) Encourage single family Development on combinations of 25' x 75' Historic Lots,
- (E) Define Development parameters that are consistent with the General Plan policies for the Historic core, and
- (F) Establish Development review criteria for new Development on Steep Slopes which mitigate impacts to mass and scale and the environment.

Background

On April 11, 2016, the Planning Department received an application for a variance request to the minimum front and side yard setbacks as well as the maximum interior height of the building. The application was deemed complete on April 19, 2016.

The property is located at 422 Ontario Avenue. At this location, Ontario Avenue is a narrow and steeply sloped street with limited parking. The purpose of the variance is to allow reduced front and side yard setbacks as well as an increase to the maximum interior height for construction of a proposed addition to the existing historic house, including a new two-car tandem garage at the basement-level with living space and decks above it.

There is an existing boulder and concrete retaining wall that runs parallel to Ontario Avenue. The applicants believe this wall was constructed by the City as part of the Ontario Avenue street improvements that occurred in the late-1990s; however, staff has since found recorded documents (Exhibit F) showing that the wall was constructed c. 2008 when the previous owner, Ella Sorensen entered into an Agreement and Notice of Interest with her neighbors to the north, Elevator Properties, LLC. Elevator Properties constructed the wall at 422 Ontario, arranging for all the necessary approvals and permits; the wall was not constructed by the City. The poured concrete and boulder retaining wall replaced an existing railroad tie retaining wall that was failing. The Planning Department approved the new wall to have a 0 foot front yard setback as it replaced the existing railroad tie retaining wall and the work was considered minor routine maintenance and construction.

The existing 837.25 square foot historic house is designated as "Significant" on the City's Historic Sites Inventory (HSI). The historic house currently does not have a driveway or garage from Ontario Avenue. The owner currently parks in an asphalt parking pad parallel to Ontario Avenue and accesses the house via stairs and paths (Exhibit C). This space is not approved private parking for 422 Ontario Avenue, but is in the City right-of-way and is public parking. The owner proposes to construct a new

garage in order to provide a driveway and off-street parking for two (2) vehicles in tandem configuration; the façade of the new garage will also serve as a retaining wall for the site. The proposed garage will eliminate the public parking available on this site in order to create a driveway into the new garage.

The LMC requires a 12 foot front yard setback to the property line and the applicant is requesting a 0 foot setback to accommodate the garage, allowing the front wall of the garage to maintain the location of the existing concrete and boulder retaining wall. The retaining wall is located 13 to 16 feet from the edge of paved Ontario Avenue, and 5 to 0 feet from the right-of-way. The east edge of Ontario Avenue is constructed approximately 11 feet west of the east edge of paved Ontario Avenue.

Any new construction above the garage will comply with the required 12 foot front yard setback. Similarly, the applicant is also requesting a variance to the required side yard setback, reducing it from 5 feet to 3 feet in order to accommodate the new garage; any new construction above the garage will comply with the required 5 foot side yard setback.

The applicant is proposing to construct two (2) additional levels above the proposed garage. These levels will comply with the required front and side yard setbacks. From the garage, these levels will be accessible from the interior through an elevator and staircase. The second level of the new addition will be above ground and at the same floor level as the one-story historic house. Similarly, the LMC requires a maximum height of 35 feet measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters. The applicant is also requesting a variance to this LMC provision as the current proposal has an interior height of 41 feet from the lowest finished floor plane to the point of the highest wall top plate of the proposed new addition.

The existing house is setback from the front property line by 9 to 10 feet and setback from the edge of asphalt on Ontario by 21 to 22 feet. The house is located between 13.9 and 19.9 feet above the elevation of the street, which steadily increases from north to south. The existing retaining wall along Ontario Avenue varies in height from about 14 feet to about 5 feet from north to south as the grade on Ontario rises uphill; the wall is setback from the edge of asphalt on Ontario Avenue between 13 and 16 feet, increasing from south to north.

On June 16, 2015, the Planning Department received a Historic District Design Review Pre-Application (Pre-app) for the proposed renovation of the historic house and construction of a new addition at 422 Ontario Avenue; no Historic District Design Review (HDDR) application has yet been submitted for the proposed work. Any development of the site will require compliance with the Design Guidelines for Historic Districts and Historic Sites. The removal of any materials or additions on the historic house will also require a Material Deconstruction Review by the Historic Preservation Board (HPB). As the applicant is also proposing to construct more than 200 square feet on a slope of 30% or greater, a Steep Slope Conditional Use Permit (CUP) application reviewed by the Planning Commission will also be required. The applicant has chosen

to move forward with the variance request prior submitting the HDDR or Steep Slope CUP applications.

Analysis

The property is located within the HR-1 District and consists of the north one-half of Lot 5, all of Lot 6, the south one-half (approx.) of Lot 7, and a portion of Lots 26, 27, and 28, Block 58 of the Park City Survey. On December 3, 2015, City Council approved a plat amendment at this location to create the Sorensen Plat Amendment; this plat amendment has not yet been recorded. The site is currently occupied by a historic house and historic shed. The current footprint on the lot is 823.5 square feet and based on the size of the lot, the applicant is permitted to construct a maximum footprint of 1,736 square feet.

This site is listed on Park City's Historic Sites Inventory (HSI) and is designated as historically Significant. The property was built circa 1904 during the Mature Mining Historic Era (1894-1930). The historic structure was built over two (2) property lines.

Currently, the house is accessible from a stairway off of Ontario Avenue. The house historically had an unapproved vehicular access from Rossi Hill Drive, which was unimproved but located immediately east of the property. The applicant claims that the Sorensens, who previously owned this property for 50 years, parked their car without permission above the house on the east side, or rear yard, and accessed the house from the backyard. There was no prescriptive right to this access as a prescriptive right could not be achieved as the unapproved road crossed railroad-owned property. The current owners met with the owner/developer of the Echo Spur Subdivision to obtain an easement for vehicular access from the new Echo Spur Road; however, the new owner was not interested in permitting vehicular access to this property through his.

The applicant is proposing to construct an attached two (2)-car tandem garage that would have vehicular access from Ontario Avenue at the property line. The applicant will replace the c.2008 boulder retaining wall with a new garage; the façade of the garage will serve as a retaining wall for the hillside above. The proposed garage will have a 0 foot front yard setback along platted Ontario Avenue, a twelve foot (12') setback from paved Ontario Avenue, and a three foot (3') side yard setback to the north. The applicant argues that if the garage were to be moved further to the south, in order to meet the required 5 foot side yard setback, it would change the location of the garage door. If the north garage wall were to comply with setbacks, there would only be 8 inches of clearance within the garage on the north side, not providing sufficient space for the driver to exit the vehicle. The requested reduced side yard setback provides additional space for maneuvering within the garage. Burying the garage within the hillside reduces its mass and bulk, as seen in the proposed plans (Exhibit D).

Because of the significant grade change from Ontario Avenue to the location of the existing historic house, the applicant is also requesting an exception to LMC 15-2.2-5(A) which states that a structure shall have a maximum height of 35 feet measured from the lowest finish floor plane to the point of the highest wall top that supports the ceiling joists or roof rafters. As currently designed, the applicant's proposal requires 41 feet of

interior height in order to accommodate an addition that is two (2) stories above existing grade on the flat, uphill portion of the lot. (The basement addition will be one (1) story in height and contain the tandem two-car garage and interior circulation space.)

The following are the minimum lot, site, and height requirements per Land Management Code Section 15-2.2-3 for development within the HR-1 zoning district for a lot of this size, 1,736 square feet:

	LMC Requirement	Proposed
Setbacks		
Front/Rear Yard	12 feet/25 feet total	0 ft. front yard/12 ft. rear yard
Side Yard	5 feet	5 feet
Minimum Lot Size	1,875 sf. Minimum	4,464 sf.
Building Footprint	1,736 sf. Maximum	1,431.2 sf.
Building (Zone) Height	27 ft. maximum	Average of 18' above grade
Lowest Finished Floor Plane to Highest Wall Top Plate	35 ft. maximum measured from the lowest finished floor plane to the point of the highest wall top plate	41 ft.

LMC Review Criteria for a Variance

In order to grant the requested variances to the aforementioned code sections, the Board of Adjustment must find that all five (5) criteria located in LMC § 15-10-9 are met. The applicant bears the burden of proving that all of the conditions justifying a variance have been met (see Exhibit D).

Criteria 1. Literal enforcement of the LMC would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the LMC. *In determining whether or not enforcement of the zoning ordinance would cause unreasonable hardship under Subsection 15-10-9(C)(1), the BOA may not find an unreasonable hardship unless the alleged hardship is located on or associated with the Property for which the variance is sought and comes from circumstances peculiar to the Property, not from conditions that are general to the neighborhood. In determining whether or not the enforcement of the LMC would cause unreasonable hardship the BOA may not find an unreasonable hardship if the hardship is self-imposed or economic.*

The applicant argues that the site is steeply sloped uphill from Ontario Avenue. In order to construct a garage that meets the required side and front yard setbacks, the garage would need to be a detached building. By doing so, it would be carved into the hill deeper than the proposed garage and require greater excavation to accommodate an uphill driveway. The applicant argues that this would have a greater negative impact on the neighborhood, detract from the look and feel of the street, and also be less serviceable to the applicant than the proposed attached, basement-level garage.

The applicant maintains that the garage, as proposed, is more in keeping with the Design Guidelines for Historic Sites. By burying the bulk and mass below grade, the

garage is less visible from the street and mitigates negative impacts on the neighborhood. To accommodate a garage that will replace the existing retaining wall, the applicant is requesting a reduced front yard setback from 12 feet to 0 feet and reduced side yard setback from 5 feet to 3 feet. As proposed, the new front wall of the garage will be setback twelve feet (12') from the paved edge of Ontario Avenue. The applicant argues that the reduced side yard setback is necessary in order to place the single-car garage door at a point in the wall where it will create sufficient interior height while also allowing a small amount of maneuvering around the car when it is parked in the garage.

The applicant argues that the attached garage is necessary. By locating it directly below the residence, there is little impact to existing grade along Ontario Avenue. The connection of the garage to the house benefits the owner as it will be accessible to living areas via the proposed stairway and elevator. In addition to removing parking from an already congested street, the attached garage will permit pedestrian access between the garage and the house, which is a safer alternative to pedestrians exiting the garage into the right-of-way.

Because of the significant grade change from Ontario Avenue to the location of the existing historic house, the applicant is also requesting an exception to LMC 15-2.2-5(A). As currently designed, the applicant's proposal requires 41 feet of height from the lowest finished floor plane to the point of the highest wall top plate; LMC 15-2.2-5(A) currently requires 35 feet. As proposed, the majority of the project has a roof elevation significantly lower than the allowed 27 feet above existing grade, averaging about 18 feet above existing grade; the uphill portion (rear elevation) of the new addition is only 10 feet above existing grade.

The applicant argues that granting the variance will allow the new addition to have a lower roof elevation than if the variance were not granted. If the variance is not granted, the applicant could construct the addition at the top of the hill to as much as 27 feet in height above existing grade. The applicant argues that the addition would then appear much more massive in volume and scale than as currently proposed because of its location on the hill, looming over Ontario Avenue.

Staff finds that literal enforcement of the LMC would cause an unreasonable hardship for the Applicant that is not necessary to carry out the general purpose of the LMC. There are circumstances peculiar to this property that are unique and are not conditions that are general to the neighborhood, such as the existing setbacks of the existing concrete and boulder retaining wall, steepness and topography of the slope along Ontario Avenue, and the distance of the front property line from paved Ontario Avenue. Staff finds that literal enforcement of the required 12 foot front yard setback is not necessary to carry out the general purpose of the Land Management Code, as the proposed garage will be setback from the existing edge of curb by a distance of twelve feet (12') due to the distance between the property line and the street. By reducing the required side yard setback from five feet (5') to three feet (3'), the applicant is able to construct a tandem two-car garage that will be largely buried below the existing grade and be visually minimized on the street.

Criteria 2. There are special circumstances attached to the Property that do not generally apply to other Properties in the same zone. *In determining whether or not there are special circumstances attached to the Property the BOA may find that special circumstances exist only if the special circumstances relate to the hardship complained of and deprive the Property of privileges granted other Properties in the same zone.*

The applicant argues that there are special circumstances attached to this property that do not apply to other properties in the same zone. The applicant argues that this property is one of only a few actual historic residences left in this section of Ontario (Staff has found that there are currently thirteen (13) houses listed on the City's Historic Sites Inventory (HSI) that are accessible from Ontario Avenue.) The majority of these structures are located to the south of 422 Ontario on the section of the road that flattens out and several are located on the downhill side of Ontario Avenue, allowing for a rear addition that directly accesses Ontario Avenue.

The applicant contests that this is one of the few properties along Ontario Avenue that have preserved its original historic grade and relationship to the street. The applicant finds this is substantiated by the existing evergreen tree in front of the house which testifies to the longevity and historic nature of the existing hillside. The existing hillside staircase, while new, is in the same location as the original stairs to the house and further depicts the original grade of the site. Moreover, there is photographic evidence that demonstrates how the majority of the grade on the neighborhood's block has been altered from its historic grade and has lost its relationship with the edge of road.

As previously mentioned, the garage will have to be pushed further into the hill if the variance is not granted, thus (1) increasing the height and unsightliness of retaining walls, (2) increasing the amount of excavated materials, and (3) increasing the length of the driveway. Other properties do not have the same increased distance between the edge of curb and property line because Ontario Avenue is located closer to the platted ROW in those cases.

The applicant argues that this property was also historically accessed by vehicles from the uphill side of the lot. The creation of Echo Spur Subdivision relocated the existing road and eliminated access to this property from the uphill side of the property. As previously noted, there was no prescriptive right to this access; a prescriptive right could not be achieved as the unapproved road crossed railroad-owned property.

Staff finds that there are special circumstances attached to this property that do not generally apply to other properties in the same zone. The parcel of land in questions has characteristics and features that result in conditions that are not general to the neighborhood, but are unique to this property due to the location of paved Ontario Avenue and steepness of the slope in the front yard area. The steepness of the lot, conservation of its original grading, and the location of Ontario Avenue relative to the platted ROW create special circumstances attached to this property that do not generally apply to other properties in the area. This section of paved Ontario Avenue is characterized by its steepness and limited width. (It is difficult for two cars to pass on

this steep street and any parked cars cause safety issues.) Granting the variance to permit garage construction would be beneficial to the street as a whole as it would allow other vehicles to pass without the obstruction of cars in the roadway as well as provide a safe alternative for off-street parking.

Criteria 3. Granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone.

LMC 15-2.2-4 states that Historic Structures that do not comply with Building Setbacks, Off-Street parking, and driveway location standards are valid Complying Structures. Additions to Historic Structures are exempt from Off-Street parking requirements provided the addition does not create a Lockout Unit or an Accessory Apartment.

The applicant argues that most of the houses on Ontario and within the HR-1 zone have a garage and off-street parking. The applicant believes most of these homes were constructed within the last 30 years, prior to adoption of LMC 15-2.2-5 (A), which requires that a Structure have a maximum height of thirty five feet (35') measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters. (This change was adopted in 2013.) Garages are necessary along Ontario Avenue to alleviate parking and prevent parked cars on a steep and narrow road. Due to the fact that there is little to no on-street parking nearby this property, parking within the garage will be utilized for the associated single-family home. Parking during the winter months on Ontario Avenue is difficult due to snow accumulation at the street's end and resident/guest parking.

Staff finds that granting the variance is essential to the enjoyment of a substantial Property right possessed by other Property in the same zone. Granting the variance will allow a garage at the street front where it and the addition above will have a lesser impact on the existing topography; this honors the intent of the LMC and allows for a better design of the proposed addition. The basement garage will also create an interior connection to the house and provide off-street parking. This would be a benefit to the street as a whole as it would alleviate on-street parking demands and limit pedestrians from entering the Ontario Avenue right-of-way.

Criteria 4. The variance will not substantially affect the General Plan and will not be contrary to the public interest.

The applicant finds that the variance will not substantially affect the General Plan and will not be contrary to public interest. The applicant argues that it is within the public interest to eliminate congestion on Ontario Avenue, which is a narrow and steep street and, at times, difficult to navigate in passing another vehicle. Parked cars are a safety hazard to other cars, delivery vehicles, emergency vehicles, pedestrians, and cyclists utilizing Ontario. The applicant also ascertains that the attached garage will eliminate unnecessary pedestrian traffic along the street, which, according to the applicant, causes additional safety concerns. Finally, the applicant finds that by allowing the new

garage addition to have a 0 foot front yard setback, the front wall of the garage will replicate that of the existing retaining wall; the new garage will maintain the existing historic character of the street. Further, the perceived front yard setback would be consistent with the requirements of the LMC—twelve (12) feet.

Staff also finds that the variance will not substantially affect the General Plan. One of the goals identified in the current General Plan is to ensure that the character of new construction is architecturally-compatible to the existing historic character of Park City. The variance allows a design with an internal connection that meets the Historic District Design Guidelines. Granting the variance will also improve off-street parking opportunities for the existing historic house and adjacent neighborhood. As previously noted, eliminating off-street parking areas will reduce traffic congestion on this narrow and steep section of Ontario Avenue while improving safety. While it is not in the interest of the public to eliminate public parking in Old Town, staff finds that there is greater benefit of eliminating this public parking space in order to create improved off-street parking for two (2) vehicles.

Criteria 5. The spirit of the Land Management Code is observed and substantial justice done.

The applicant finds that the variance to the front and side yard setbacks as well as the interior height will allow the garage to be buried below grade. They argue that this has been allowed on other projects in the HR-1 zone, with similar circumstances. The applicant also finds that by granting the variance, the BOA is achieving the greater goal of preserving the historic character of the street by maintaining the hillside and reducing the overall height of the addition.

Again, the applicant argues that their proposed design of burying the garage below grade will reduce the overall bulk and mass of the new addition as well as its height above grade. A detached garage addition would have a greater impact on the street than the design as proposed. The applicant finds that substantial justice is achieved by approving this variance as it will allow the house, and specifically the garage addition, to be accessible. The applicant finds that the variance will improve the overall character and nature of the project rather than compromise the intentions of the regulations.

Staff finds that the spirit of the Land Management Code is observed and substantial justice is done. Granting the variance will allow the applicant to construct a garage for the historic house that will be setback from the edge of curb by twelve feet (12'), consistent with the required front yard setback outlined in 15-2.2-3 (E). The variance permits the owner to increase off-street parking in the neighborhood while reducing the impact of a long driveway, higher retaining walls, and greater excavation of the existing hillside. All other LMC related site and lot criteria, including the other setbacks, height, footprint, parking, design, uses, etc. will be met.

Future Process

Approval of these variances by the Board of Adjustment constitutes Final Action that may be appealed following the procedures found in LMC § 15-10-13. Approval of a

Historic District Design Review (HDDR) for the design of the garage structure and addition is necessary prior to the issuance of a building permit.

Standards for new construction as listed within the Historic District Design Guidelines will apply. HDDR's are an administrative approval and are processed by the Planning Staff. Because this site is designated as Significant on the Historic Sites Inventory, the proposal also requires a Material Deconstruction Review by the Historic Preservation Board for any removal of historic material. A steep slope Conditional Use Permit, issued by the Planning Commission, is required because the new addition will exceed 200 square feet in area on an area with a slope of greater than 30%.

Department Review

This project has gone through an interdepartmental review. No further issues were brought up at that time.

Notice

On June 7, 2015, the property was posted and notice of the variance request was mailed to property owners within 300 feet of the property in accordance with requirements of the Land Management Code. Legal notice was published in the Park Record on June 4, 2015, according to requirements of the Code.

Public Input

No public input was received at the time of writing this report.

Alternatives

- The Board of Adjustment may grant the variance request according to the findings of fact, conclusions of law and conditions of approval drafted below and/or as amended; or
- The Board of Adjustment may deny the variance request and direct staff to make findings of fact to support this decision; or
- The Board of Adjustment may continue the discussion and request additional information on specific items.

Significant Impacts

There are no significant fiscal or environmental impacts from this application.

Consequences of not taking the Suggested Recommendation

The property would remain as is and no construction of the proposed garage addition could take place. Should the BOA not grant a variance to reduce the front yard setback from 12 feet to 0 feet and the side yard setback from 5 feet to 3 feet, the applicant will not be permitted to construct a garage as proposed. The existing retaining walls and public parking space would remain along Ontario Avenue. Should the BOA not grant the variance to the required height from the lowest finish floor plane to the point of the highest wall plat from 35 feet to 41 feet, the applicant will have to reduce the overall height of the addition above existing grade.

Recommendation

Staff recommends that the Board of Adjustment review the proposed variance requests:

- A variance to LMC Section 15-2.2-3 (E) to the required twelve foot (12') front yard setback exception to allow for a two-car tandem garage to be constructed behind an existing retaining wall.
- A variance to LMC Section 15-2.2-3(H) to the required five foot (5') side yard setback along the north property line to allow for construction of the garage.
- A variance to LMC Section 15-2.2-5 (A) to the required maximum height of 35 feet measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters.

The BOA should conduct a public hearing and consider granting the variances based on the following findings of facts and conclusion of law.

Findings of Fact (for Approval)

1. The property is located at 422 Ontario Avenue in the Historic Residential (HR-1) District.
2. The HR-1 zone is characterized by historic and contemporary homes on one (1) to two (2) lot combinations.
3. The property consists of all of Lot 5, all of Lot 6, the south one-half (approx.) of Lot 7, and a portion of Lots 26, 27, and 28, Block 58 of the Park City Survey. On December 3, 2016, City Council approved a plat amendment at this location to create the Sorensen Plat Amendment; this plat amendment has not yet been recorded.
4. There is an existing 837.25 square foot historic house on the property. It is designated as Significant on the City's Historic Sites Inventory.
5. The existing historic house is setback from the front property line by 9 to 10 feet. It is setback from the edge of asphalt on Ontario Avenue by 21 to 22 feet, decreasing in setback from north to south.
6. There is an existing retaining wall along the front property line that varies in height from about 14 feet to about 15 feet from north to south as the grade on Ontario rises uphill. The retaining wall has a length of about 26 feet.
7. The owner currently parks in an asphalt parking pad parallel to Ontario Avenue and accesses the house via stairs and paths. This space is not an approved private parking for 422 Ontario Avenue, but, rather, it is in the City right-of-way and is public parking.
8. The City approved construction of the existing concrete and boulder retaining wall in 2008.
9. The applicant is requesting a variance to LMC Section 15-2.2-3(E) to reduce the required twelve foot (12') front yard setback to 0 feet to allow for a two-car tandem garage to be constructed behind an existing retaining wall.
10. The applicant is requesting a variance to LMC Section 15-2.2-3(H) to reduce the required five foot (5') side yard setback to three feet (3') along the north property line to allow for construction of the proposed garage.
11. The applicant is requesting a variance to LMC Section 15-2.2-5(A) to the required maximum height of 35 feet measured from the lowest finished floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters; the applicant requests a variance to allow an interior height of 41 feet.

12. The applicant is requesting the variances in order to construct a new two-car tandem garage behind the existing retaining wall.
13. Literal enforcement of the LMC would make it impossible to make the garage accessible from the street given the required setbacks, interior building height requirements, and steep slope of the lot. The steepness of the lot and the distance of the front property line from paved Ontario Avenue are unique to this property. Staff finds that literal enforcement of the required 12 foot front yard setback is not necessary to carry out the general purpose of the Land Management Code, as the proposed garage will be setback from the existing edge of curb by a distance of twelve feet (12') due to the distance between the property line and the street.
14. There are special circumstances attached to this property that do not generally apply to other Properties in the same zone. This house is one of the few properties along Ontario Avenue that have preserved its original grade; only along the retaining wall has grade been altered to accommodate the right-of-way. This property is also unique in that paved Ontario Avenue is about 12 feet to the west of the front property line and is one of the steepest sloped streets in this part of town. This section of paved Ontario Avenue is characterized by its steepness and limited width. Finally, this site was historically accessed by vehicles from the east or rear property line and that access is no longer an option.
15. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone. Granting the variance allows the property owner to construct an attached garage at the street level without severely impacting existing grade, while also alleviating congestion and safety concerns on Ontario Avenue by providing off-street parking.
16. The variance will not substantially affect the General Plan and will not be contrary to public interest. It is within the public interest to reduce vehicle conflicts on Ontario Avenue. Parked cars are a safety hazard to other cars, delivery vehicles, emergency vehicles, pedestrians, and cyclists utilizing Ontario Avenue. A reduction to the front and side yard setbacks will allow the façade of the garage to maintain the appearance of a retaining wall and have limited impacts to existing grade. One of the goals of the General Plan is to ensure that the character of new construction is architecturally-compatible to the existing historic character of Park City and this variance will permit a design that largely masks the mass and bulk of the addition by burying it underground. While it is not in the interest of the public to eliminate public parking in Old Town, there is a greater benefit of eliminating this single public parking space in order to create two (2) off-street parking spaces.
17. In order to construct a garage that meets the required side and front yard setbacks, the garage would need to be a detached building. By doing so, it would be carved into the hill deeper than the proposed garage and require greater excavation to accommodate an uphill driveway. If the garage were constructed to comply with the LMC, it would not meet the intent of the General Plan.
18. The spirit of the Land Management Code is observed and substantial justice is done. The variance will preserve the historic character of the street by maintaining the hillside and reducing the overall height of the addition. It will create an accessible attached garage and alleviate parking congestion along Ontario Avenue.
19. All other LMC related site and lot criteria, including the other setbacks, height, footprint, parking, design, uses, etc. will be met.

Conclusion of Law (for approval)

1. Literal enforcement of the HR-1 District requirements for this property causes an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.
3. Granting the variance is essential to the enjoyment of substantial property right possessed by other property owners in the same district.
4. The proposal is consistent with the General Plan.
5. The spirit of the zoning ordinance is observed by this application.
6. It can be shown that all of the conditions justifying a variance, pursuant to LMC § 15-10-9, have been met.

Order (for approval)

1. A variance to LMC Section 15-2.2-3 (E), to the required twelve foot (12') side yard setbacks to allow a zero foot (0') setback to the front property line, is hereby granted.
2. A variance to LMC Section 15-2.2-3 (H), to the required five foot (5') side yard setbacks to allow a three foot (3') setback to the north property lines, is hereby granted.
3. A variance to LMC Section 15-2.2-5 (A) to the required maximum height of thirty five feet (35') to allow a maximum height of forty-one feet (41') measured from the lowest finish floor plane to the point of the highest wall top plate that supports the ceiling joists or roof rafters is hereby granted.
4. The variances run with the land.

Conditions of Approval

1. The variances are granted for the construction of an underground basement garage, as indicated on the plans submitted with this application.
2. No portion of the garage shall be used for additional living space.
3. The garage interior shall be used for parking. Limited storage is permitted to the extent that it does not preclude parking of a vehicle. Trash and recycling bins may be stored in the garages.
4. Recordation of the plat amendment is required prior to issuance of a building permit for the new construction.

Exhibits

Exhibit A – Applicant's statement

Exhibit B – Proposed site plan

Exhibit C – Existing Conditions Survey

Exhibit D – Proposed plans

Exhibit E – Current photographs of the site

Exhibit F – 2008 Agreement and Notice of Interest and Planning Department approvals

422 Ontario Variance Request

Written Statement of Hardship:

The LMC states that variances shall only be granted if all of the following five conditions are met:

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

We, the applicant are requesting 2 variances that are related to each other:

- a. Locate the garage within the front yard setback
- b. Locate the garage lower than 35 ft below the highest roof wall plate.

Both these issues are discussed in relation to the 5 conditions above.

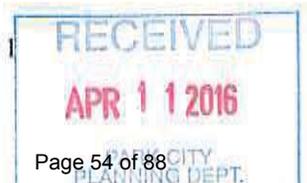
1. The design of the project at 422 Ontario meets the intention of the Land Management Code. Literal enforcement of the following provisions would cause an unreasonable hardship for the Applicant and the result would either have no visible effect on the project except to create a hardship on the Applicant:

- a. We are requesting that the garage entrance be located so that that garage would be located within the required front yard setback.

Hardship: The site is steeply sloped uphill from Ontario Ave. To set the garage back the required distance would not only change the feel of the street, it would mean that the only way the house could meet the requirements of the Steep Slope Conditions would be to have a detached garage. In other words literal enforcement of the LMC would force the Applicant to create a project that has more negative impact on the neighborhood and would also be less serviceable to the Applicant.

Proposed Solution: The applicant would like to install the garage entrance in the existing retaining wall at the property line. The garage would be buried completely to maintain the existing hillside. Further the Applicant proposes to add stone veneer that fits the historic feel of Park City to cover the existing concrete retaining wall that was installed by the city as part of the Ontario Ave street improvements a few years ago. The garage structure below grade would

Page 1



actually also be less than 5 feet from the sideyard setback but this is allowed in the LMC. The variance request is for the below grade setback to be in the front yard setback as well as within 3 ft of the side yard.

b. We are requesting a variance from the 35 ft maximum elevation between the lowest floor level and the highest wall plate as required by the LMC in a Steep Slope Conditional Use Permit.

Hardship: If we have a detached garage then the lowest floor level of the garage would not be counted in the floor to plate height calculation of the residential structure. The applicant wants to make the house universally accessible so the garage is attached to the residence above with a stair and elevator structure that is totally buried under the residence and out of sight. Literal enforcement of the LMC would make it impossible to make the structure accessible from the street.

Proposed Solution: The garage is located below the new residence. There is proposed a stairway and elevator that serves all floor levels of the house making it completely accessible. Because the garage is directly below the residence there is no impact to the street. The garage benefits the neighborhood by taking congestion off the street. The connection of the garage to the house benefits the owner of course but also has benefits to the neighborhood as it removes pedestrian traffic on a street that is very dangerous for pedestrians. The granting of a variance will actually allow the house to have a lower roof elevation than if a variance were not granted.

The LMC allows the house to be a maximum of 27 ft above the undisturbed natural grade. The proposed project has the roof elevation for almost the entire project significantly lower than 27 ft. The uphill portion of the new structure is only 10 ft above existing grade. The average roof height is about 18 ft above natural grade. If the variance were not granted the garage would have to be dug back into the site and the addition would have to be taller as it would have to be located even farther up the hill.

2. This property has special circumstances attached to it that do not generally apply to other properties in the neighborhood.

a. The residence on the property is one of only a few actual historic residences left on Rossi Hill. The applicant intends to fully restore the original residence to its original exterior condition.

b. The hillside site is one of a few that have the original historic grade and relationship to the street. This is evidenced by the existence of an evergreen tree that is as old as the house. The tree in front of the house is within the street right of way and not on the applicants property but it testifies to the longevity and historic nature of the existing hillside. The photos show clearly how most of the rest of the block has been greatly altered from the historic nature of the street.

Page 2



c. The property was historically accessed by vehicles from the uphill side of the lot. The creation of the Echo Spur Subdivision, approved by the city, actually relocated the existing road and eliminated access from the uphill side of the property.

d. There are existing stairs from the street to the historic home within the street right of way. While the existing stairs were installed just a few years ago, they are in the historic location of stairs that have been in the exact same location for over 100 years. The applicant would like to maintain this historic connection of the house to the street.

3. Granting these variances is essential to the enjoyment of substantial property rights possessed by other property in the same zone and in the immediate vicinity of the applicant.

a. Almost every house within the zone has a garage.

b. Most of the homes constructed within the last 30 years were able to be built without any concern of floor to top wall plate height. This has created a design concern in that new construction does not look or feel like the historic hillside development. Literal enforcement of the LMC in this case would create similar disturbance to the hillside. The variance will help the hillside be preserved which is the original intent of the regulations.

c. Granting these variances actually honor the intent of the LMC and help encourage improved the design quality of future homes within the zone.

4. The variances requested will not substantially affect the General Plan and will not be contrary to the public interest.

a. It is totally within the public interest to get parking congestion off of Ontario Ave. The street is narrow and steep. Cars parked along the street are a safety hazard to other cars, pedestrians and cyclists.

b. Having the garage attached further promotes the public interest by eliminating unnecessary pedestrian traffic along the street.

c. Allowing the front door of the garage to be located in the existing retaining wall location is within the public interest as it tends to maintain the historic character of the street and helps preserve the established existing large tree.

5. The spirit of the Land Management Code is observed and substantial justice will be done by approving this request.

a. The variance to locate the garage buried below grade within the front and side yard setbacks is something that has been allowed on many projects within and outside of the HR-1 zone. It is something that can be approved with no need for a variance if it is a joint neighbor project. By allowing it in this circumstance the greater goal of preserving the historic quality of the street will be achieved. The overall height of the project will be lowered.

b. The variance in the 35 ft steep slope height would not be an issue if the garage were not attached. We propose to make the garage appear to be

Page 3



detached. The only attachment would be below grade and invisible to the street. We want to totally honor the intention of the 35 ft height restriction but to actually meet it would create more impact on the street than allowing the garage floor level to match the existing grading of the street. The justice in this approval is that because the goal is to make the house universally accessible, a rare opportunity to provide justice to a segment of society that is excluded from most of the historic district is achieved. The applicant does not mind having the variance approved on condition that the elevator be included. The overall height of the project will be lower if the variance is granted.

c. The applicant wants this project to be an example of what can be achieved when the intent of the LMC and the General Plan is followed. This includes the Historic District Design Guidelines and the Steep Slope Conditional Use Permit. The variances we request help the applicant to improve the overall character and nature of the project rather than compromise the intentions of the regulations.



Page 4



DRAWING TITLE
RECORD OF SURVEY
WILLIAM MAMMEN
 1-435-649-8868

PROPERTY DESCRIPTION
 A PARCEL OF LAND LYING WITHIN THE
 SOUTHEAST 1/4 OF SECTION 16, TOWNSHIP 2
 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND
 MERIDIAN

PARCEL 1: The parcel of land...
PARCEL 2: The parcel of land...
PARCEL 3: The parcel of land...
PARCEL 4: The parcel of land...
PARCEL 5: The parcel of land...

SURVEYOR'S NARRATIVE
 This survey was performed at the request of William Mammen, for the purpose of...
 The lines of bearing were obtained from the final survey instrument...
 The bearings were obtained from the final survey instrument...
 The bearings were obtained from the final survey instrument...

NOTE:
 1. Surveyor has made an investigation of independent sources for existence of record...
 2. The surveyor has made an investigation of independent sources for existence of record...
 3. The surveyor has made an investigation of independent sources for existence of record...

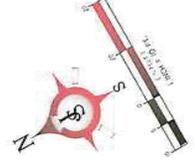
SURVEYOR'S CERTIFICATE
 I, the undersigned, do hereby certify that I am a Professional Land Surveyor...
 I have made a personal inspection of the land shown on this plat and that this survey...
 I have made a personal inspection of the land shown on this plat and that this survey...

JOHANSON SURVEYING
 SURVEYING · SEPTIC · PLANNING
 1615 42nd Street, Suite 100
 Park City, UT 84302
 Phone: 435-649-8868
 Fax: 435-649-8869
 Email: johan@johanson-surveying.com
 Website: www.johanson-surveying.com

RECEIVED
APR 11 2016
 PARK CITY
 PLANNING DEPT.

PROFESSIONAL LAND SURVEYOR
 STATE OF UTAH
 No. 12345
 JOHANSON SURVEYING

- LEGEND**
- SECTIONAL CORNER
 - STREET BOUNDARY MARKER
 - SET BEARING AND DISTANCE
 - REPRESENTS PROPERTY LINE
 - SURVEY CONTROL POINT
 - EXISTING FIRE HYDRANT
 - EXISTING WATER METER
 - EXISTING SWEET MASHALE
 - EXISTING GAS METER
 - PHONE UTILITY SERVICE
 - ELECTRIC METER
 - EXISTING UTILITY POLE



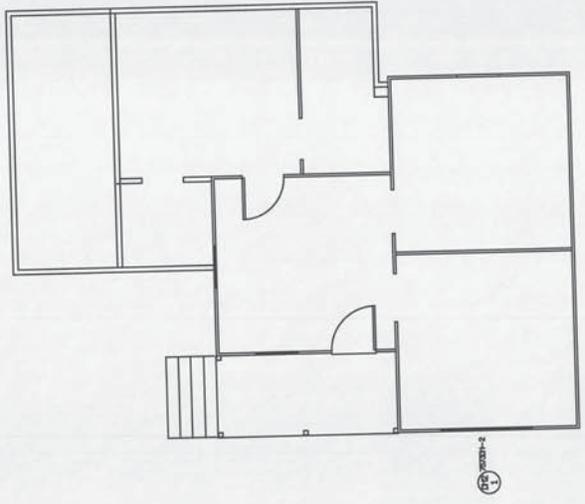
100% Land Use
Map (LUM)
Data provided
for the
purpose of
determining
the
applicability
of
zoning
regulations
to
the
proposed
development

DATE: 02-12-16 DRAWN BY: MTH JOB NO: 10-00-15-03	X1.1
DATE: 02-12-16 DRAWN BY: MTH JOB NO: 10-00-15-03	

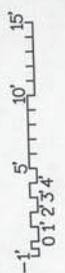
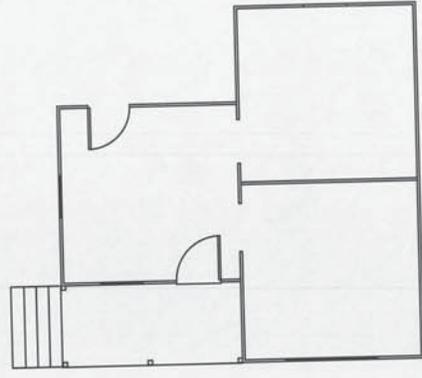
RECEIVED
JAN 11 2016
PLANNING DEPT.

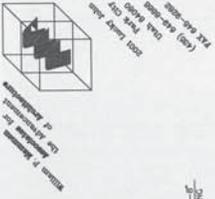


1 EXISTING FLOOR PLAN
X1.1 SCALE: 1/4" = 1'-0"



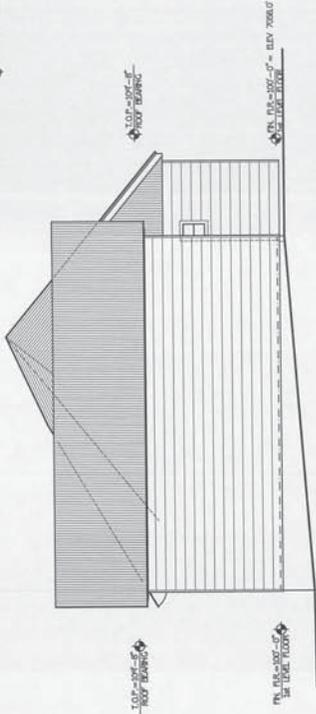
2 HISTORIC FLOOR PLAN
X1.1 SCALE: 1/4" = 1'-0"





EASTER RESIDENCE TWO
 EXISTING ELEVATIONS
 DRAWN BY: JWA
 CHECKED BY: JWA
 DATE: 08-15-15
 JOB NO.: 10-10-10-03

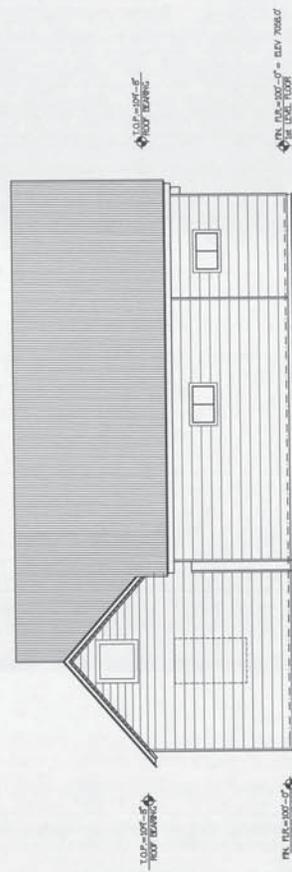
X2.1



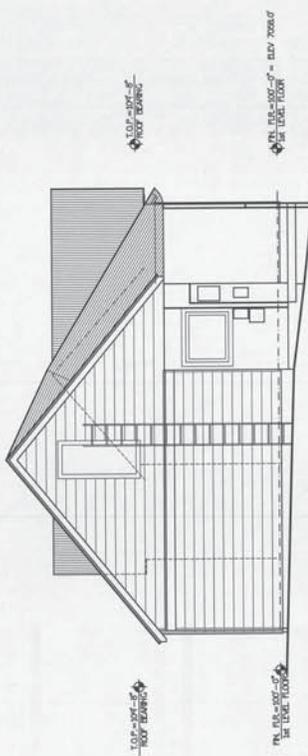
1 SOUTH ELEVATION
A2.1 SCALE 1/8" = 1'-0"



2 WEST ELEVATION
A2.1 SCALE 1/8" = 1'-0"



2 EAST ELEVATION
A2.2 SCALE 1/8" = 1'-0"



1 NORTH ELEVATION
A2.2 SCALE 1/8" = 1'-0"

RECEIVED
 JAN 11 2016
 10:00 AM

2001 Liberty Ave
 (416) 464-1000
 1000 Lakeshore Blvd. E.
 Scarborough, ON M1V 1Y1
 www.pinnacle.ca

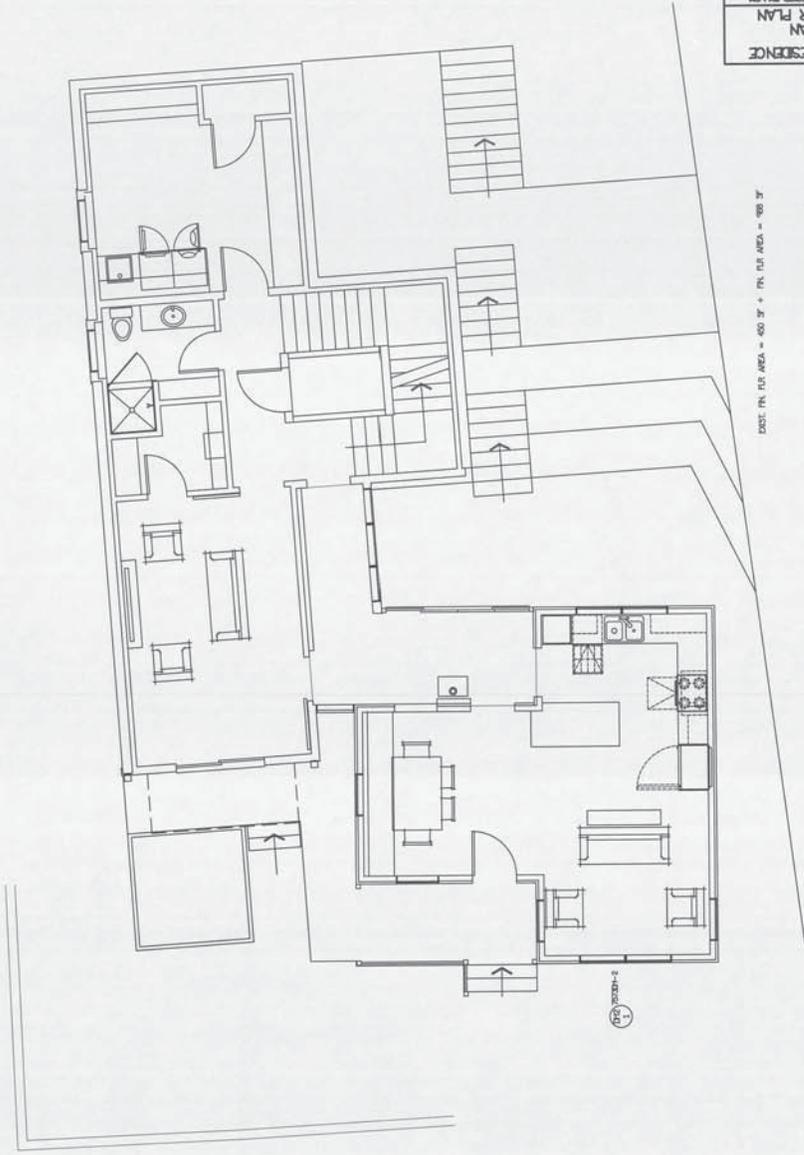
422 ONTARIO RESIDENCE
 PRELIMINARY PLAN
 1st LEVEL FLOOR PLAN
 DRAWN BY: WHT
 DATE: 08-13-15
 CHECKED BY: WHT
 JOB NO.: 08-15-03

PR2

RECEIVED
 JAN 11 2016
 11:00 AM



1st LEVEL FLOOR PLAN
 PR2 SCALE: 1/8" = 1'-0"



DIST. FIN. FLOOR AREA = 400 SF + FIN. FLOOR AREA = 980 SF





1x12 4x8-12
1500' 1500' 1500'
1500' 1500' 1500'



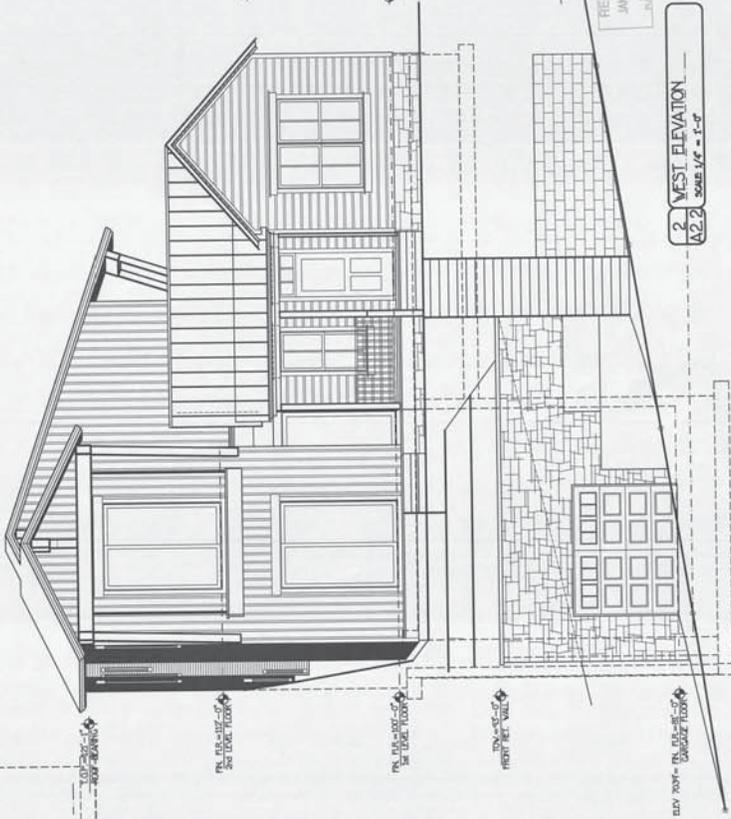
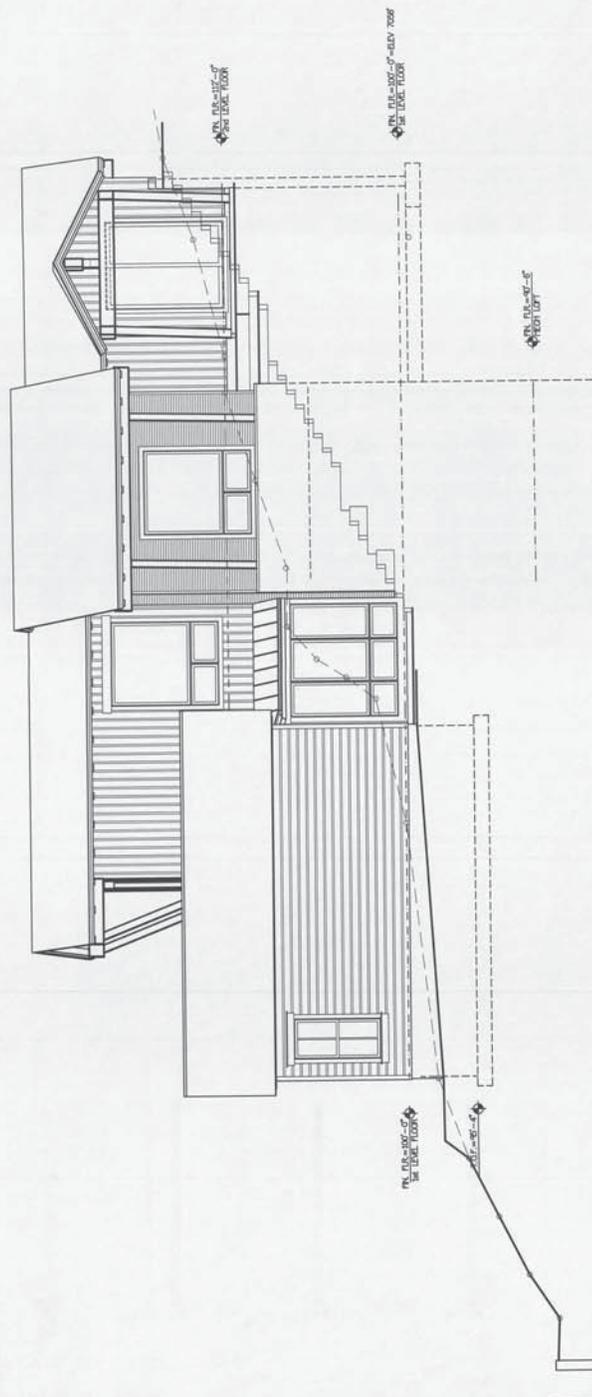
DATE: 02-13-15
DRAWN BY: WHT
CHECKED BY: WHT
JOB NO.: 02-13-15

A2.2

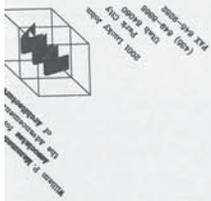
EASTER RESIDENCE TWO
NEW EXTERIOR ELEVATIONS
WEST & SOUTH

RECEIVED
JAN 11 2016
PLANNING DEPARTMENT

2 WEST ELEVATION
A2.2 SCALE: 1/4" = 1'-0"

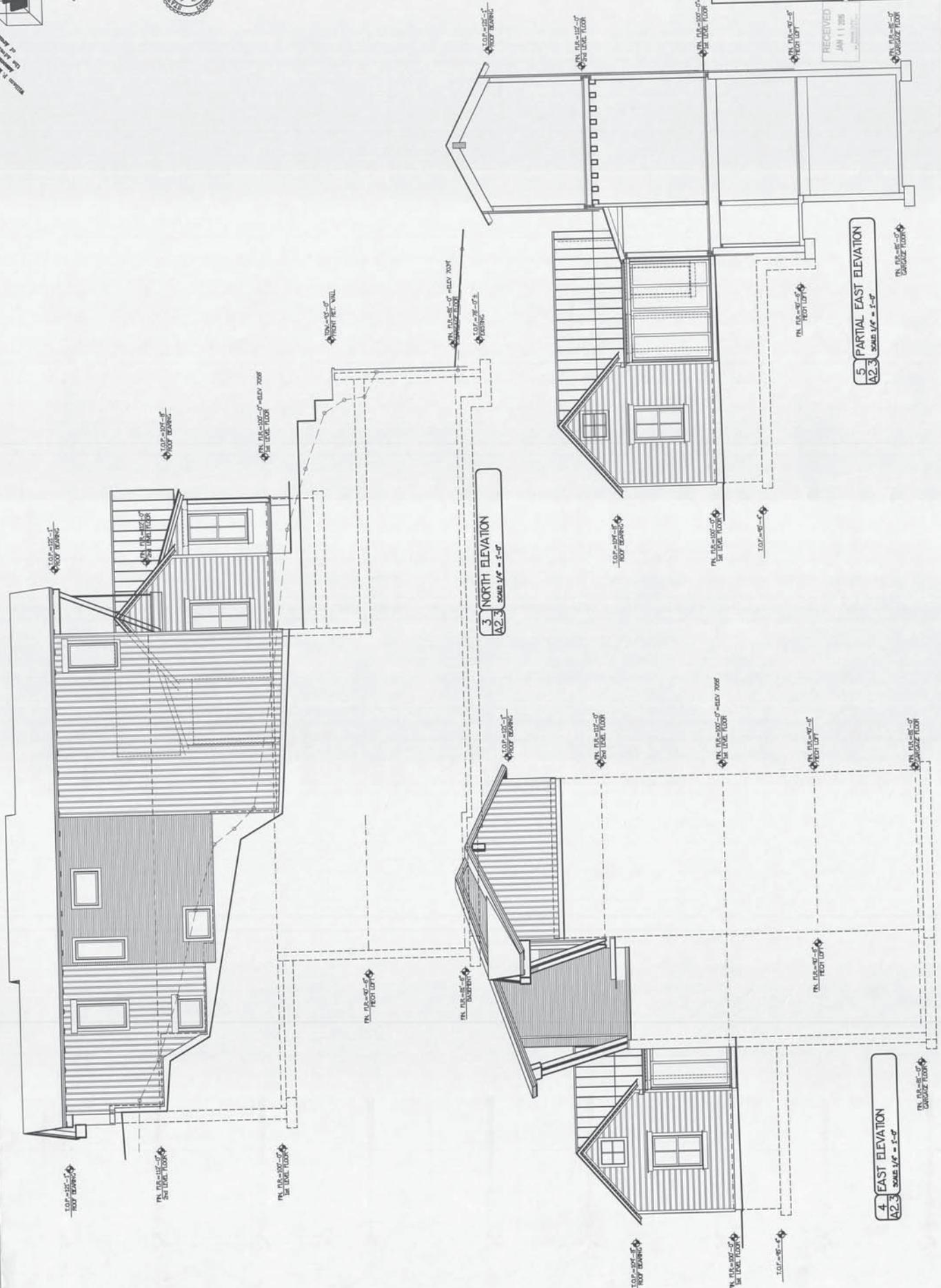


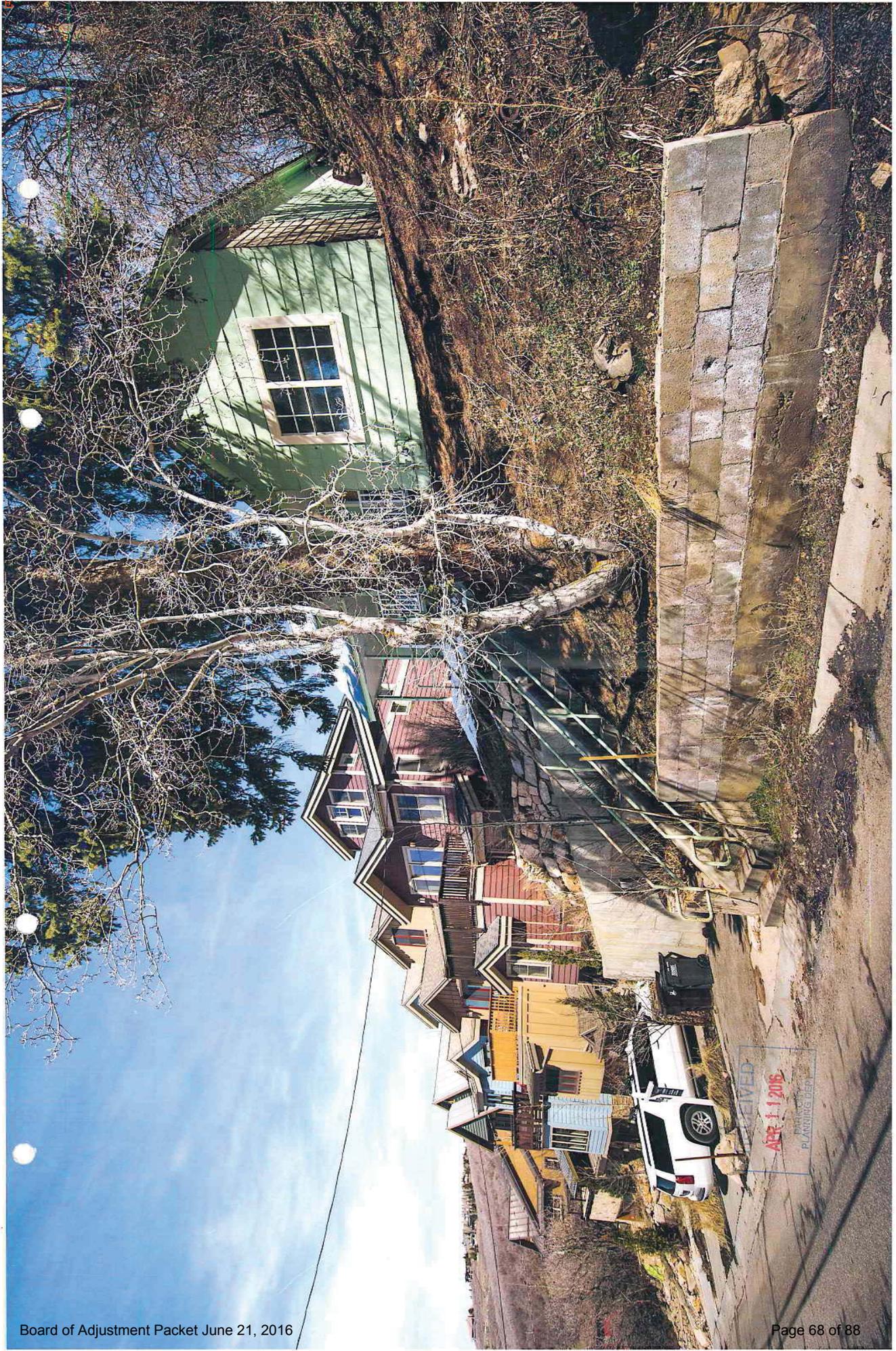
1 SOUTH ELEVATION
A2.2 SCALE: 1/4" = 1'-0"



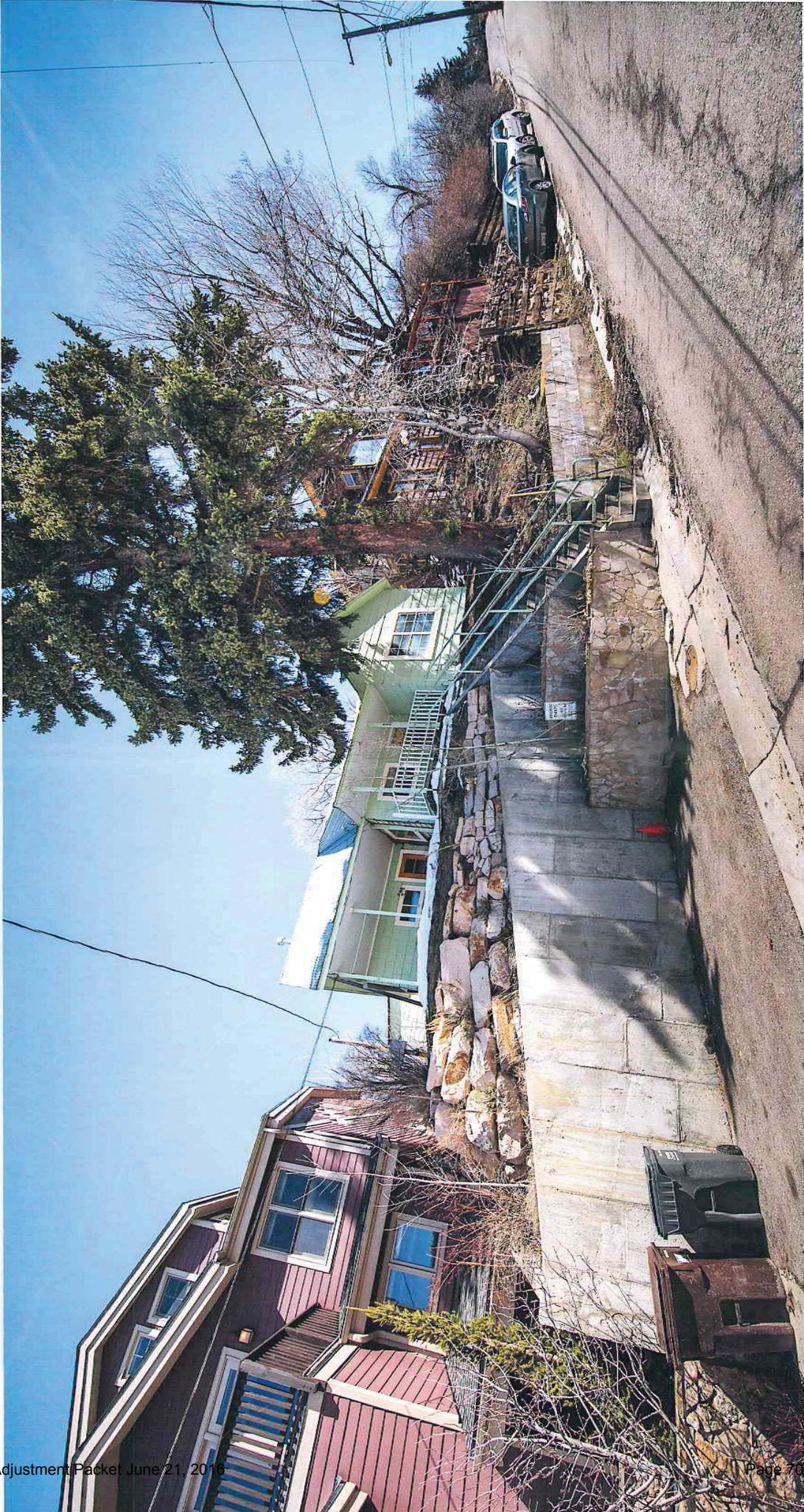
RECEIVED
 JAN 11 2016
 EASTERN RESIDENCE TWO
 NEW EXTERIOR ELEVATIONS
 NORTH & EAST
 JOB NO. 10-09-03
 DATE: 01-11-16
 DRAWN BY: JMT

A2.3

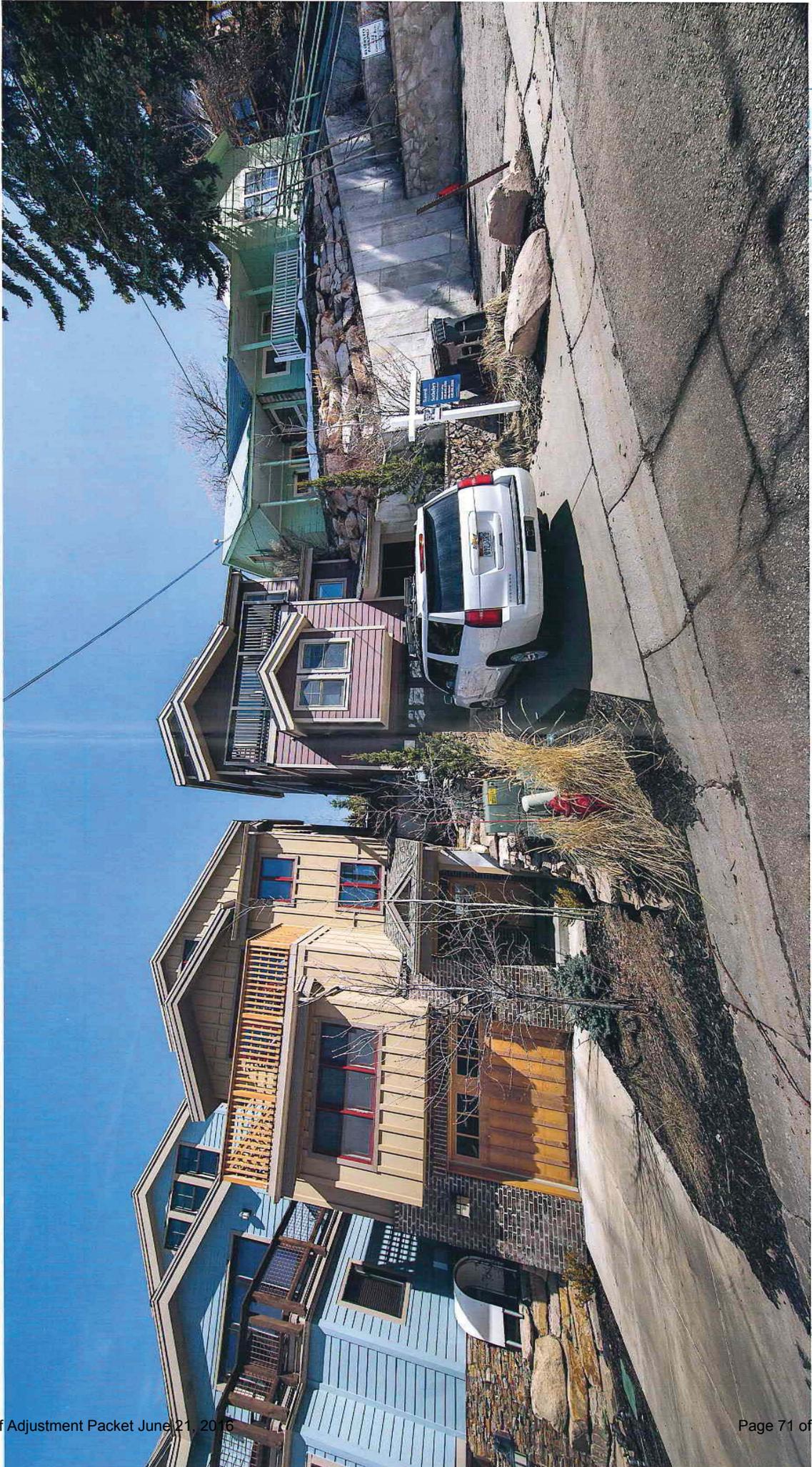


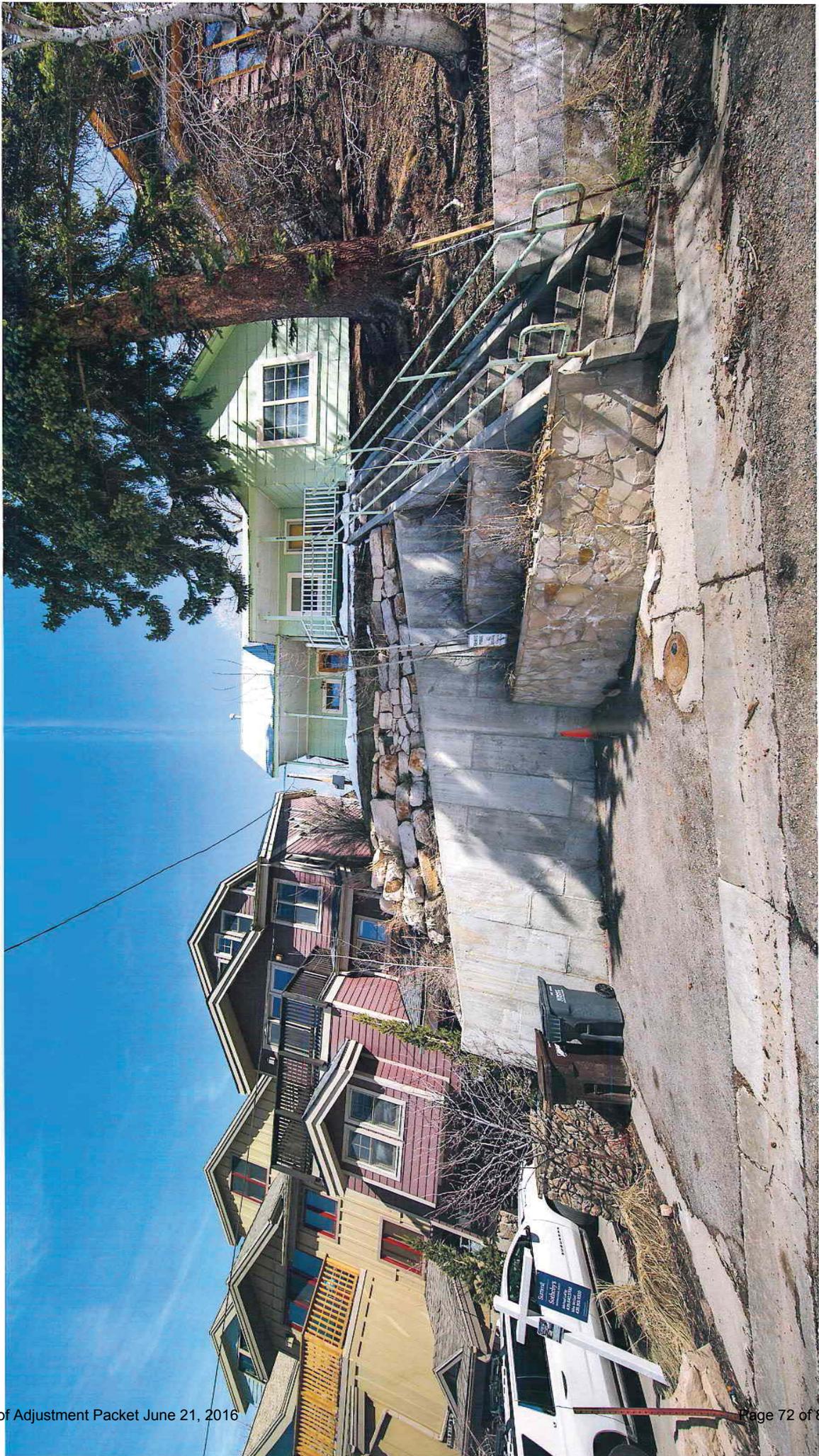


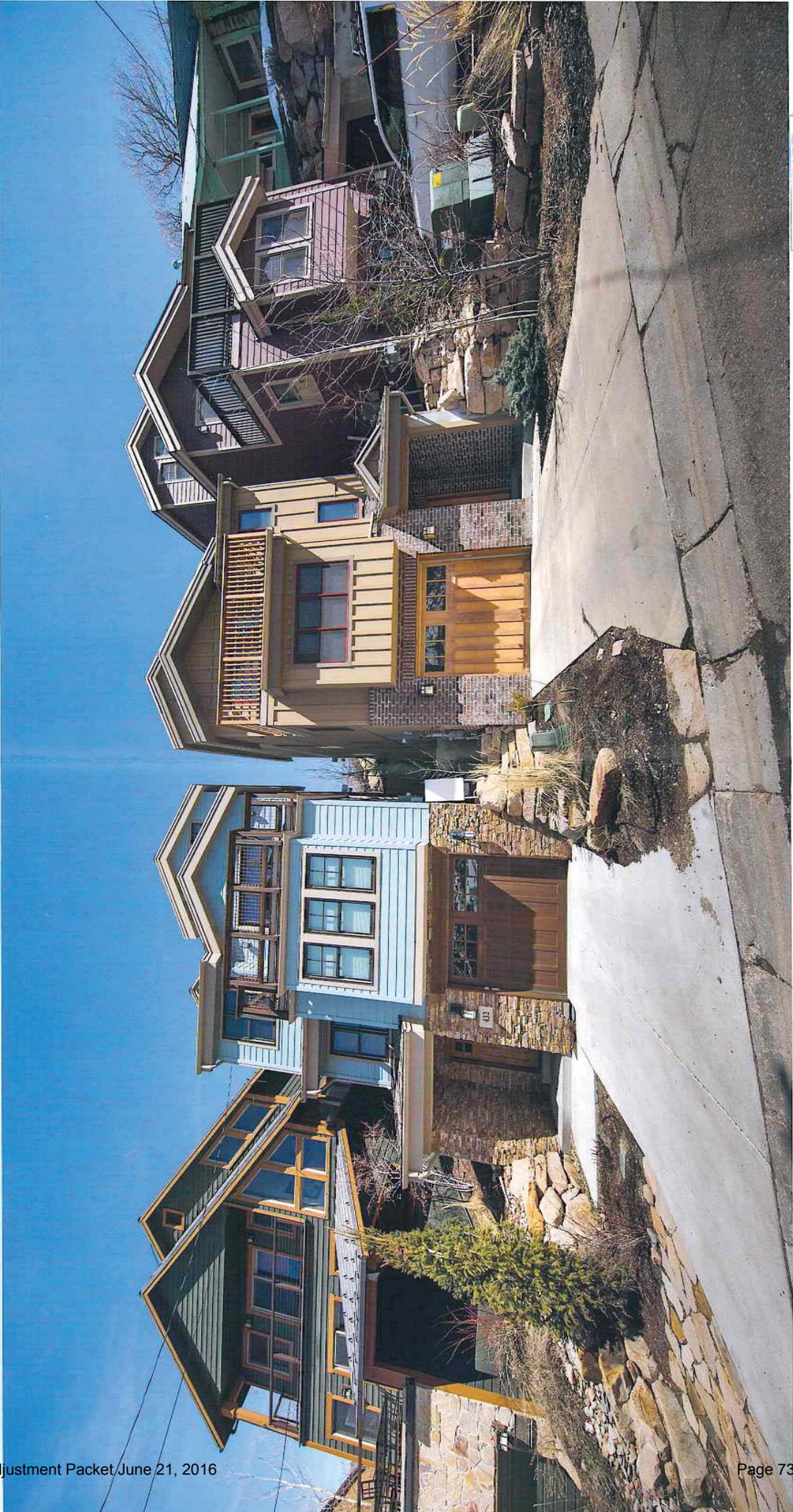




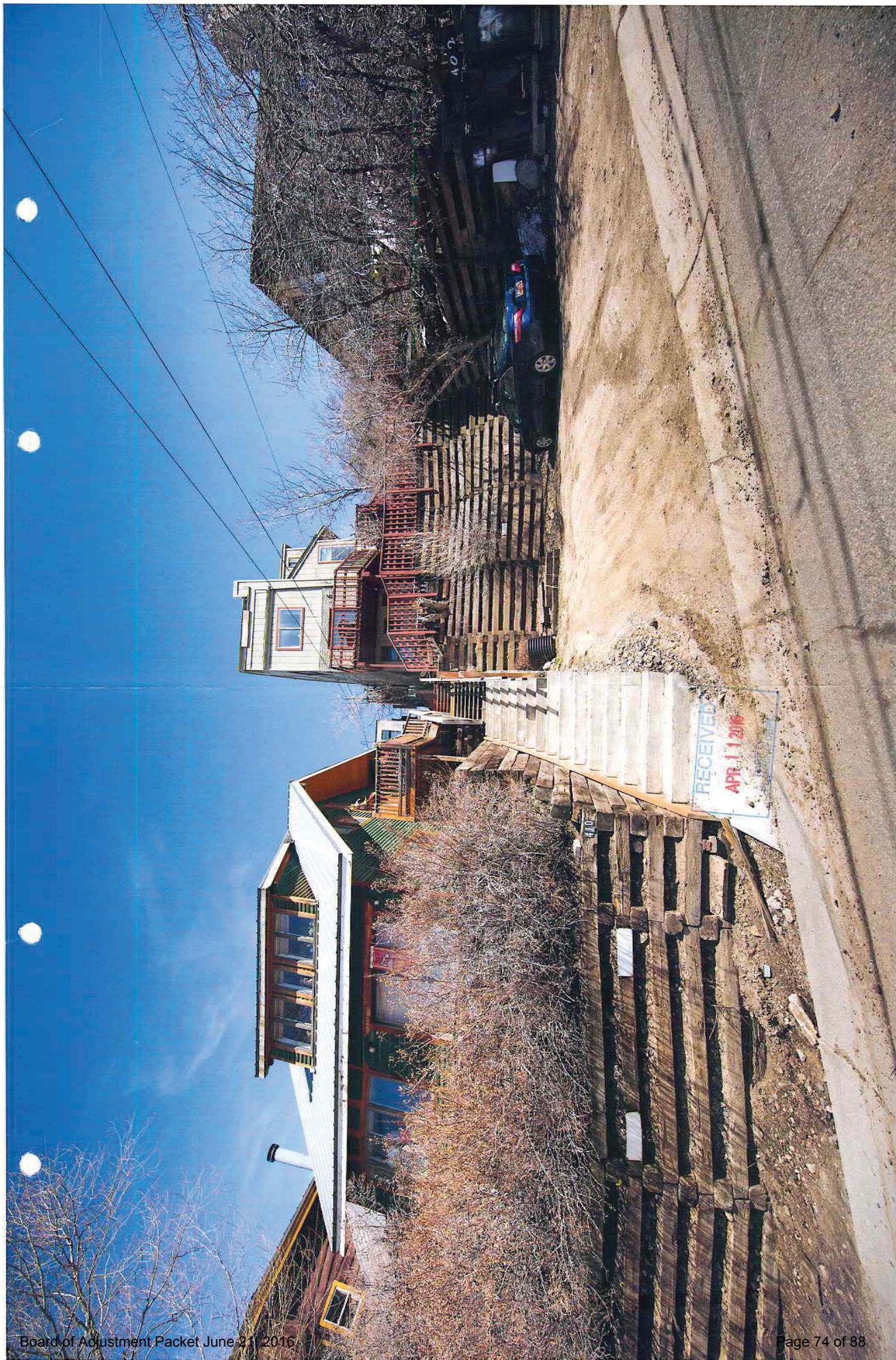
RECEIVED
APR 1 12016
PARK CITY
PLANNING DEPT.







RECEIVED
APR 1 1 2016
PARK CITY
PLANNING DEPARTMENT



After Recording, mail to:
Wrona Law Offices, P.C.
Paul D. Colton
1816 Prospector Ave., Ste. 100
Park City, UT 84060
(435) 649-2525

ENTRY NO. 00827464

10/09/2007 03:44:08 PM B: 1893 P: 0796

Agreement PAGE 1/8

ALAN SPRIGGS, SUMMIT COUNTY RECORDER

FEE 26.00 BY WRONA LAW OFFICES PC



AGREEMENT AND NOTICE OF INTEREST

THIS AGREEMENT AND NOTICE OF INTEREST (the "Agreement") is entered into on this 6 day of ~~September~~ 2007 by and among the Ella P. Sorensen Trust ("Sorensen"); Ella P. Sorensen, individually; and Elevator Properties, L.L.C., a Utah limited liability company (the "Elevator").

RECITALS

- A. Sorensen owns the property located at 422 Ontario Ave., Park City, Utah (the "Sorensen Property"), more particularly described as:

Beginning at the northwest corner of Lot 6, Block 58, Park City Survey thence running north 23 degrees 38 minutes 00 seconds west, 12.50 feet; thence north 68 degrees 16 minutes 33 seconds east, 75.04 feet; thence south 23 degrees 38 minutes 00 seconds east, 10.00 feet to the northeast corner of said Lot 6, Block 58, west along the northerly line of said Lot 6, Block 58, Park City Survey, 75.00 feet to the point of beginning.

Tax ID No.: PC-485-1.

- B. Elevator owns the property located at 428 Ontario Ave., Park City, Utah (the "Elevator Property"), more particularly described as:

Lot A, Elevator Subdivision, A replat of Lots 8, 9 & 10 and a Portion of Lot 7, Block 58, Park City Survey according to the official plat thereof recorded in the records of the Summit County Recorder.

Tax ID No.: ELEV-A.

- C. On August 30, 2006 the owners of the Sorensen Property and the owners of the Elevator Property entered into a Settlement Agreement affecting the Elevator Property wherein, among other things, the parties agreed that: "Until the death of Ella P. Sorensen or until she moves and leaves or rents the home on Lot 6 to another party, whichever first occurs, Ella P. Sorensen shall have a non-exclusive easement personal to her (not transferable), to occupy the property generally north of the new boundary line and generally south of the existing fence for the purpose of any noncommercial lawful activity. Hospital or nursing visits do not act to terminate this easement. However, Ella

P. Sorensen may not allow any structure to be built in this easement and will not interfere with any construction activities within this easement during any temporary construction on Lot 7 generally north of the new boundary line. Ella P. Sorensen further agrees to accept the easement area "AS IS" and to hold Hallmark, and any of its successors harmless, defend it, and to indemnify it for any damage or injury to herself or to any of the invitees by virtue of their use of the easement property." (the "Easement").

- D. The parties wish to relinquish and release the Easement in favor Ella P. Sorensen in exchange for certain site work and improvements to be performed by Elevator as set forth herein below.

AGREEMENT

NOW THEREFORE, for TEN DOLLARS (\$10.00), the mutual promises and covenants contained herein and other good and valuable consideration, the adequacy and sufficiency of which the parties do hereby acknowledge, the parties do hereby covenant as follows:

1. The Recitals above and all Exhibits hereto are hereby incorporated into this Agreement by this reference.
2. Sorensen and Ella P. Sorensen individually, hereby release the Easement as it affects the Elevator Property, subject to and strictly conditioned upon the full and faithful performance by Elevator of the Site Work (defined below) to the reasonable satisfaction of Sorensen, as evidenced by a written and recorded acknowledgement to be signed by Sorensen and recorded immediately upon Elevator's full completion of the Site Work set forth below, which signed acknowledgement shall not be unreasonably withheld by Sorensen.
3. In consideration for the release by Sorensen and Ella P. Sorensen of the Easement, Elevator hereby covenants and agrees to fully and faithfully perform the site work, improvements and related obligations described below to benefit the Sorensen Property (the "Site Work"). Such Site Work shall be completed no later than April 1st, 2008 (the "Completion Date"), and shall be completed in accordance with all applicable laws, rules and ordinances, in a professional and workmanlike manner to the reasonable satisfaction of Sorensen.

Site Work to Be Performed by Elevator:

- a) Remove/Construct the retaining walls and improvements as depicted on the Stoker Architecture, Inc. plans, attached hereto as **EXHIBIT A** and incorporated herein by this reference.
- b) Escrow, prior to the commencement of any work described herein, an amount equal to 125% of the cost of completing all site work and improvements with an escrow agent approved by Sorensen, with instructions to such escrow agent to release the money to Elevator as work is completed and only with the written approval of Jack Fenton, as Sorensen's representative, for each partial release of funds. In the event the work is not completed as required herein by the Completion Date, the escrow agent is hereby authorized, without any further authorization necessary, to release any remaining funds

- to Sorensen, and Sorensen may use such funds to complete the work described herein.
- c) All permits and plans required by Park City Municipal Corporation shall be the responsibility of Elevator.
 - d) All inspections of any such work shall be the responsibility of Elevator.
 - e) Elevator shall minimize delays in a commercially reasonable manner.
 - f) All retaining walls, planter boxes, plumbing and water line work shall be completed in April 1, 2008 (excluding decorative rock work, which decorative rock work shall be completed in connection with the decorative rock work done on Elevator's properties under construction, but in no case later than the Completion Date).
 - g) The retaining wall constructed shall be approximately ~~20 to 40~~ feet tall and located along the west edge of the Sorensen Property boundary. **7 to 11** ~~ft~~
 - h) The new retaining wall shall tie in with the retaining wall for the home directly north of the Sorensen Property
 - i) The area behind the new retaining wall shall be backfilled, a nine-inch layer of top soil placed and new sod placed on top of that. The new sod is to be placed in the Spring or Summer of 2008).
 - j) The planting terraces shall be filled with top soil.
 - k) The Sorensen Property shall not be without running water or sewer service for a period of more than 48 hours.
 - l) The parking surface in front of the Sorensen Property from the back of the existing curb to the retaining wall shall be filled in with decorative landscaping gravel/rock.
 - m) Elevator shall perform all such work at its own cost and expense.
 - n) Elevator and its subcontractors shall warranty all materials and integrity of the new retaining wall (excluding plants) for a period of three years from completion of the retaining wall.
 - o) The retaining wall shall be of the same quality and workmanship as the retaining wall being built by Elevator that will separate the Sorensen Property from the southern most home of the Elevator project.
 - p) No liens shall be placed or caused or allowed by Elevator to be placed upon the Sorensen Property by any suppliers, tradesmen or others in connection with such work, and Elevator agrees to indemnify, defend and hold Sorensen harmless from any liens, claims, damages or liabilities of any kind whatsoever (including without limitation attorneys' fees and costs) incurred by Sorensen or Ella P. Sorensen which in any way relate to the work and obligations described herein.

4. This Agreement and the covenants contained herein are covenants running with the land and shall be binding upon the parties hereto, their heirs, designees, representatives, successors and assigns.

5. This Agreement may only be amended by a writing executed and recorded by the parties, their respective heirs, successors or assigns, or the duly appointed and authorized agent or representative of any of the preceding.

6. This Agreement shall be governed by and interpreted pursuant to the laws of the State of Utah.

7. Any waiver by a party hereto of any breach of any kind or character whatsoever by the another party, whether such waiver be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement on the part of the other party.

State of Utah)
 : ss
County of Summit)

On the _____ day of _____, 2007, personally appeared before me Ella P. Sorensen, party to the foregoing instrument, who duly acknowledge to me that she executed the same.

Notary Public
Residing at: _____
My Commission Expires: _____

State of Utah)
 : ss
County of Summit)

The foregoing instrument was acknowledged before me on the _____ day of _____, 2007, by _____, as the duly authorized and empowered _____ of Elevator Properties, L.L.C.

Notary Public
Residing at: _____
My Commission Expires: _____

EXHIBIT A

Stoker Architecture, Inc. Plans

State of Utah)
 : ss
County of Summit)

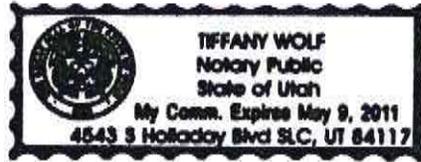
On the _____ day of _____, 2007, personally appeared before me Ella P. Sorensen, party to the foregoing instrument, who duly acknowledge to me that she executed the same.

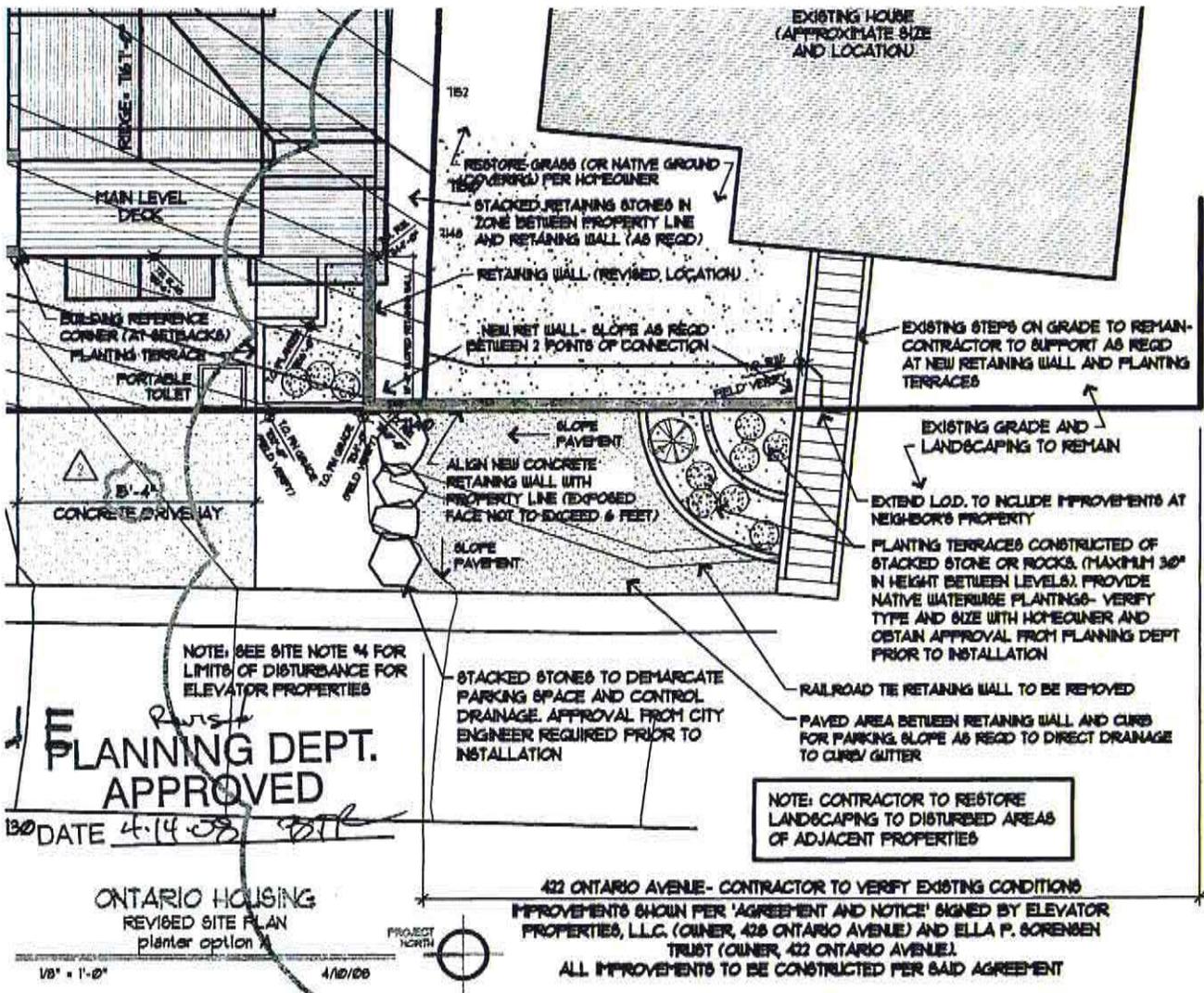
Notary Public
Residing at: _____
My Commission Expires: _____

State of Utah)
 : ss
County of Summit)

The foregoing instrument was acknowledged before me on the 12 day of Sept, 2007, by George FRIOWL, as the duly authorized and empowered MANAGER of Elevator Properties, L.L.C.

Tiffany Wolf
Notary Public
Residing at: Salt Lake County
My Commission Expires: 05/09/11





NOTE: SEE SITE NOTE #4 FOR LIMITS OF DISTURBANCE FOR ELEVATOR PROPERTIES

PLANNING DEPT. APPROVED

DATE 4-14-08

NOTE: CONTRACTOR TO RESTORE LANDSCAPING TO DISTURBED AREAS OF ADJACENT PROPERTIES

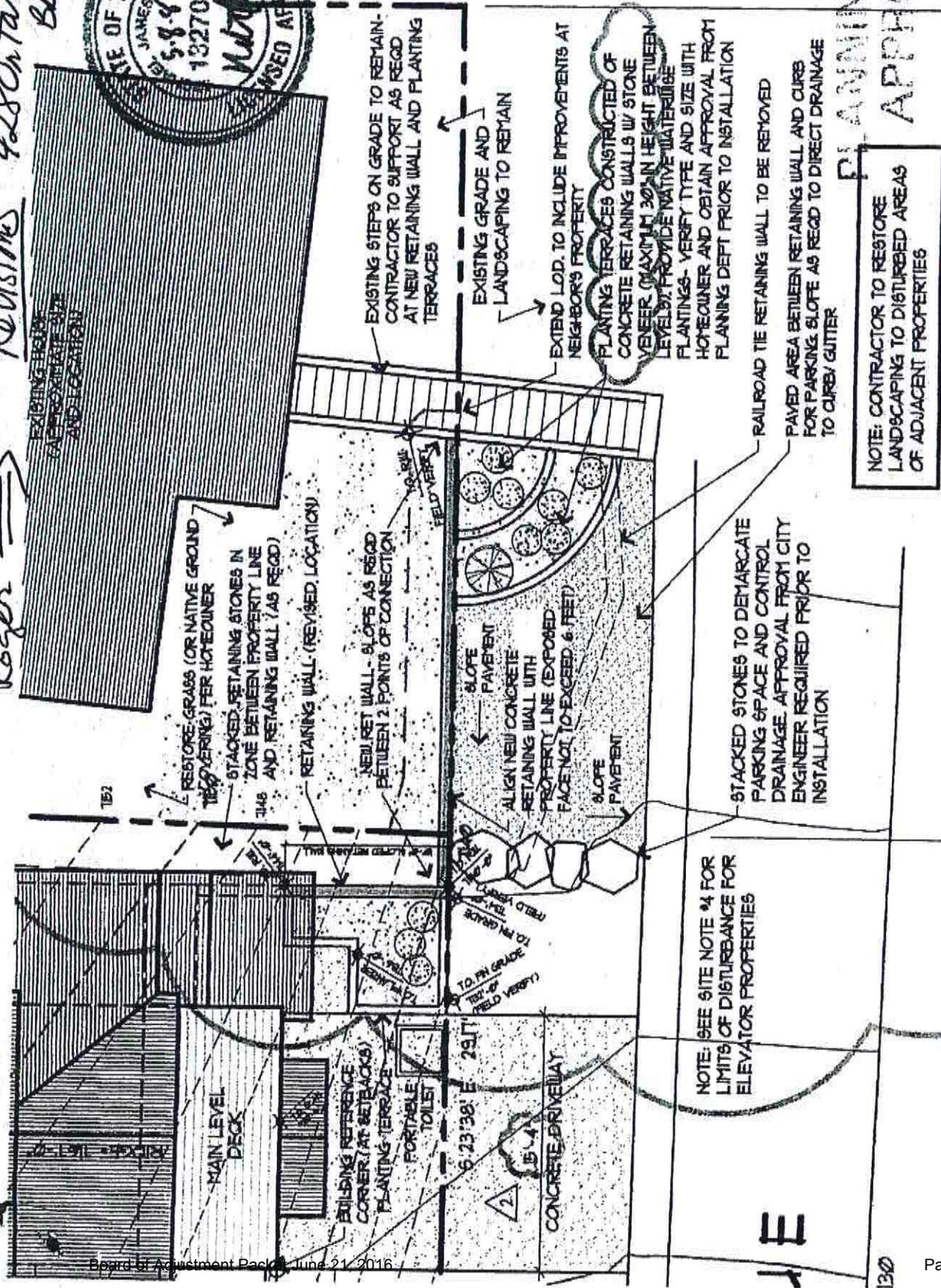
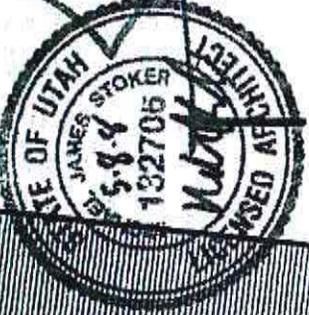
422 ONTARIO AVENUE- CONTRACTOR TO VERIFY EXISTING CONDITIONS
 IMPROVEMENTS SHOWN PER 'AGREEMENT AND NOTICE' SIGNED BY ELEVATOR PROPERTIES, LLC (OWNER, 428 ONTARIO AVENUE) AND ELLA P. SORENSEN TRUST (OWNER, 422 ONTARIO AVENUE).
 ALL IMPROVEMENTS TO BE CONSTRUCTED PER SAID AGREEMENT

ONTARIO HOUSING
 REVISED SITE PLAN
 planter option



1/8" = 1'-0" 4/10/08

Roger → Revisions 4280 Ontario 80-08-13595



PLANNING DEPT.
APPROVED

NOTE: CONTRACTOR TO RESTORE LANDSCAPING TO DISTURBED AREAS OF ADJACENT PROPERTIES

422 ONTARIO AVENUE - CONTRACTOR TO VERIFY EXISTING CONDITIONS
IMPROVEMENTS SHOWN PER AGREEMENT AND NOTICE SIGNED BY
ELEVATOR PROPERTIES, L.L.C. (OWNER, 428 ONTARIO AVENUE) AND ELLA P.
SORKENISEN TRUST (OWNER, 422 ONTARIO AVENUE).
ALL IMPROVEMENTS TO BE CONSTRUCTED PER SAID AGREEMENT

NOTE: SEE SITE NOTE #4 FOR LIMITS OF DISTURBANCE FOR ELEVATOR PROPERTIES

STACKED STONES TO DEMARCATÉ PARKING SPACE AND CONTROL DRAINAGE. APPROVAL FROM CITY ENGINEER REQUIRED PRIOR TO INSTALLATION



ONTARIO HOUSING
REVISED SITE PLAN
planter option A

revision 2: 5/18/08

1/8" = 1'-0"
revision 1: 4/10/08

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is entered into on this 17th day of MAY 2008 by and among Lisa Zindel and Pat Whitworth, individually, and Elevator Properties L.L.C., a Utah limited liability company (the "Elevator").

RECITALS

- A. Zindel/Whitworth owns the property located at 438 Ontario Ave., Park City, Utah (the "Zindel/Whitworth Property"). *Legal description attached hereto as Exhibit B.*
- B. Elevator owns the property located at 432 Ontario Ave., Park City, Utah (the "Elevator Property"). *Legal description attached hereto as Exhibit C.*
- C. In order to construct a mutually beneficial retaining foundation wall along the South line of Zindel/Whitworth Property, Elevator will need to install Helical Tiebacks and shoring panels along South-East boundary, which tiebacks will protrude into the Zindel/Whitworth Property. The tiebacks are needed only temporarily for shoring during the construction of the reinforced concrete retaining wall. The shoring system is designed to stay in place permanently, however, if Zindel/Whitworth needs to cut or remove the soil screws the retaining system is designed so if removed there will be no settling or movement.
- D. Zindel/Whitworth desires to grant to Elevator and its contractors a license to enter onto the Zindel/Whitworth Property to install the tiebacks and shoring panels and to leave them in place following construction of the retaining wall along the South-East boundary of the Zindel/Whitworth Property.

AGREEMENT

- 1. Zindel/Whitworth individually, hereby grant to Elevator a license to enter onto Southern boundary of the Zindel/Whitworth Property as reasonably necessary in order to install and leave in place Helical Tiebacks and shoring panels in connection with the construction of a reinforced concrete retaining wall at the sole effort and expense of Elevator. The tiebacks and shoring panels shall be the type depicted on the International Marketing & Research, Inc. schematic drawing attached hereto as Exhibit A.
- 2. This Agreement shall automatically expire upon the completion of the installation of the tieback and shoring panels and associated backfilling and replanting obligations of Elevator. Upon the expiration of this Agreement, the parties agree that the tiebacks and shoring panels may be left in place and acknowledge that once the reinforced concrete retaining wall has been constructed that in the future it would be acceptable and would not compromise the integrity of the retaining wall if the owner of the Zindel/Whitworth Property were to ever cut or remove any of the helical tiebacks.
- 3. Elevator shall obtain all permits and plans required by Park City Municipal Corporation and shall perform all work in accordance with such permits and plans and in accordance with all applicable laws, rules, ordinances and building codes.

4. Elevator shall be responsible to have all such work inspected and passed off by Park City Municipal Corporation.

5. Zindel/Whitworth understands that there will be excavation between the property line. Elevator will restore the landscaping between the houses as outlined by landscaping drawing that has been approved by Zindel/Whitworth prior to commencement of construction.

6. Elevator shall use its best efforts to minimize any delays in the construction of the foundation wall.

7. Elevator agrees to indemnify, defend and hold Zindel/Whitworth harmless from any liens, claims, damages or liabilities of any kind whatsoever (including without limitation attorney's fees and costs) incurred by Zindel/Whitworth which in any way relate to the work and obligations described herein. This indemnification provision shall expressly survive the expiration or termination of this Agreement.

8. This Agreement and the covenants contained herein shall be binding upon the parties hereto, their heirs, designees, representatives, successors and assigns.

9. This Agreement may only be amended by a writing executed and recorded by the parties, their respective heirs, successors or assigns, or the duly appointed and authorized agent or representative of any of the preceding.

10. This Agreement shall be governed by and interpreted pursuant to the laws of the State of Utah.

11. In the event any action or proceeding is brought by any party against any other party hereto to enforce this Agreement, the prevailing party shall be entitled to recover attorney's fees in such amount as the court may adjudge reasonable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the first date written above.

Lisa Zindel
Lisa Zindel individually
Paul Whitworth
Paul Whitworth, individually

Elevating Properties, L.L.C.
By: *Christy Hensley*
Esc. *Hensley*

ONTARIO HOUSING

REVESED SITE PLAN

planter option

1st - 1st
revisions 4, 4/10/08



PROJECT NORTH

422 ONTARIO AVENUE. CONTRACTOR TO VERIFY EXISTING CONDITIONS
 IMPROVEMENTS SHOWN PER AGREEMENT AND NOTICE SIGNED BY
 ELEVATOR PROPERTIES, L.L.C. (OWNER 408 ONTARIO AVENUE) AND ELLA P.
 SCHEWEN TRUST (OWNER 422 ONTARIO AVENUE).
 ALL IMPROVEMENTS TO BE CONSTRUCTED PER SAID AGREEMENT

NOTE: SEE SITE NOTE #4 FOR
 LIMITS OF DISTURBANCE FOR
 ELEVATOR PROPERTIES

STACKED STONES TO DEMARCAT
 PARKING SPACE AND CONTROL
 DRAINAGE. APPROVAL FROM CITY
 ENGINEER REQUIRED PRIOR TO
 INSTALLATION

NOTE CONTRACTOR TO RESTORE
 LANDSCAPING TO DISTURBED AREAS
 OF ADJACENT PROPERTIES

RAILROAD TIE RETAINING WALL TO BE REMOVED
 PAVED AREA BETWEEN RETAINING WALL AND CURB
 FOR PARKING. SLOPE AS READ TO DIRECT DRAINAGE
 TO CURB/GUTTER

EXISTED LOD. TO INCLUDE IMPROVEMENTS AT
 NEIGHBORS PROPERTY
 PLANTING TERRACES CONSTRUCTED OF
 CONCRETE RETAINING WALLS W/ STONE
 VENEER. MAXIMUM 90" IN HEIGHT BETWEEN
 LEVELS. PROVIDE NATIVE WILDLIFE
 PLANTINGS- VERIFY TYPE AND SIZE WITH
 HOMEOWNER AND OBTAIN APPROVAL FROM
 PLANNING DEPT PRIOR TO INSTALLATION

EXISTING STEPS ON GRADE TO RETAIN.
 CONTRACTOR TO SUPPORT AS READ
 AT NEW RETAINING WALL AND PLANTING
 TERRACES

EXISTING GRADE (OR NATIVE GROUND
 CONTOURS) PER HOMEOWNER
 STACKED RETAINING STONES IN
 ZONE BETWEEN PROPERTY LINE
 AND REMAINING WALL (AS READ)
 RETAINING WALL (REVISED LOCATION)

NEULSET WALL - SLOPE AS READ
 BETWEEN 2 POINTS OF CONNECTION

← SLOPE
 ALIGNED/NEW CONCRETE
 RETAINING WALL WITH
 PROPERTY LINE (EXPANDED
 FROM NOT TO EXCEED 4 FEET)
 SLOPE
 PAVEMENT

CONCRETE DRIVEWAY

BUILDING REFERENCE
CORNER AT SETBACKS
PLANTING TERRACE
POST-HOLE
TOILET

MAIN LEVEL
DECK

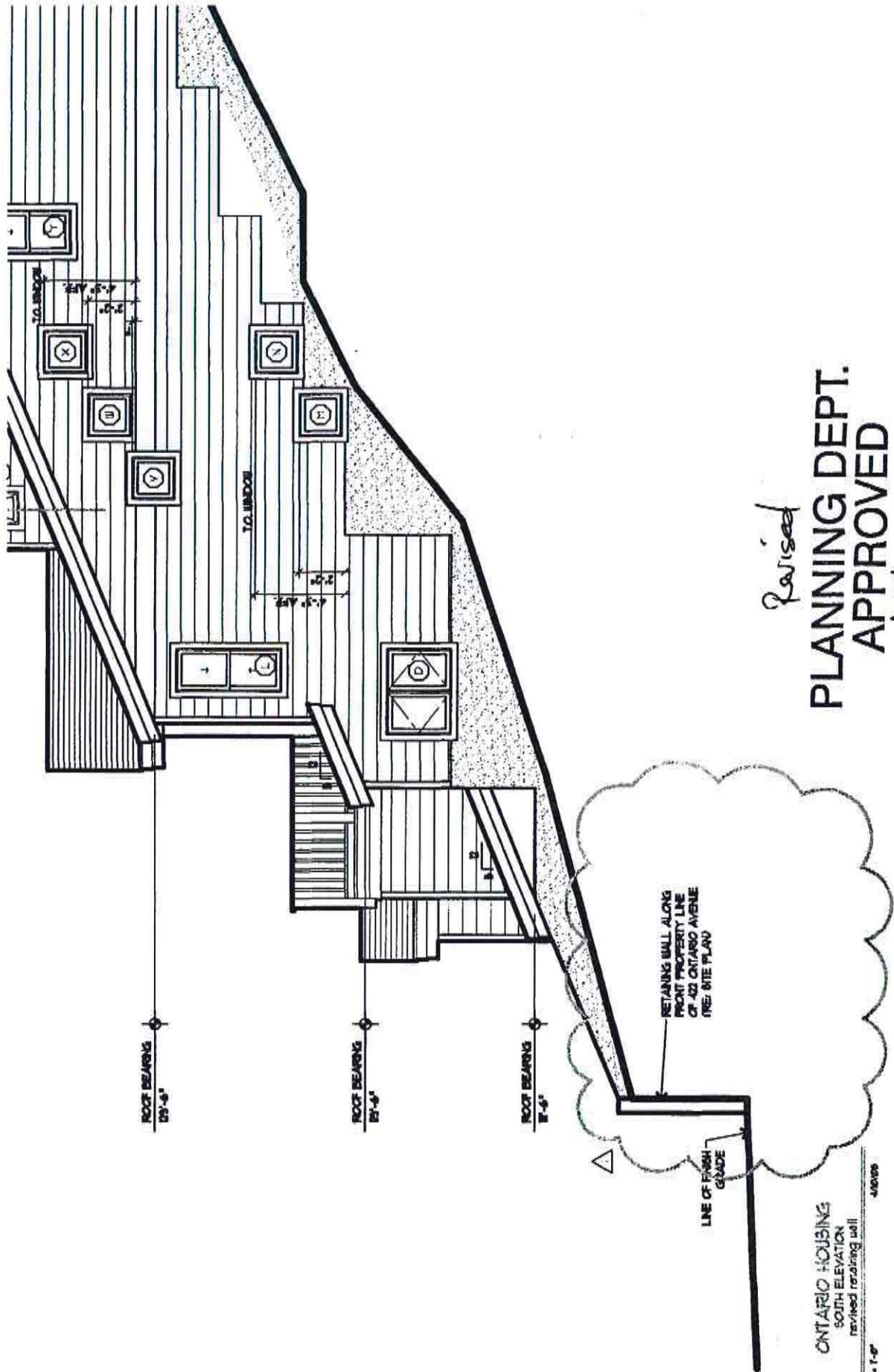
EXISTING GRADE
CONTOURS (PER HOMEOWNER
AND AGREEMENT)



MAY 20 2008
BUILDING DEPT

PLANNING DEPT APPROVED

DATE 5.23.08 KAW



Revised
PLANNING DEPT.
APPROVED
 DATE 4.14.08 *JMR*

ONTARIO HOUSING
 SOUTH ELEVATION
 revised retaining wall

1/4" = 1'-0"
 4/10/08