

**PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
445 MARSAC AVENUE
CITY HALL COUNCIL CHAMBERS
February 27, 2018**



AGENDA

MEETING CALLED TO ORDER - 5:00 PM

ROLL CALL

ADOPTION OF MINUTES OF November 28, 2017

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*

1090 Norfolk Avenue – Applicant is requesting a variance to Section 15-2.2-3 (I)(2) (Side Yard Setback Exceptions) to reduce the side yard setback from 5 feet to 3 feet along a platted un-built right-of-way and Section 15-2.2-3(I)(2) Management Code (LMC) for the purpose of a chimney encroaching into a side yard setback. <i>Possible action.</i>	PL-17-03735 <i>Planner Grahn</i>	17
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ADJOURN

***Parking validations will be provided for Board of Adjustment meeting attendees that park in the China Bridge parking structure.**

A majority of Board of Adjustment members may meet socially after the meeting. If so, the location will be announced by the Chair person. City business will not be conducted.

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the Park City Planning Department at (435) 615-5060 24 hours prior to the meeting.

PARK CITY MUNICIPAL CORPORATION
BOARD OF ADJUSTMENT
MINUTES OF NOVEMBER 28, 2017

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

EX OFFICIO: Planning Director Bruce Erickson, Anya Grahn, Planner; Hannah Tyler, Planner; Polly Samuels McLean, Laura Newberry

ROLL CALL

Chair Gezelius called the meeting to order at 5:00 p.m. and noted that the Board did have a quorum.

ADOPTION OF MINUTES

June 20, 2017

It was noted that Mary Wintzer had questions at the June 20th meeting regarding comments that were made during the May 5, 2017 meeting. To clear up the confusion, she requested that someone re-listen to the recording to verify what was said versus what was written. The person who transcribes the minutes had listened to the recording and provided the verbatim comments from the recording to address the questions. The clarification page was handed out to the Board this evening.

Mary Wintzer stated that it had been so long ago that she could not recall what she had asked and requested that they table approving the Minutes until the end of the meeting to give her time to reconstruct her thoughts.

Chair Gezelius revised the agenda to move Approval of the Minutes to the last item.

PUBLIC COMMUNICATIONS

There were no comments.

STAFF/BOARD MEMBERS COMMUNICATIONS AND DISCLOSURES

Director Erickson introduced Tippe Morlan, who has been in the Planning Department for about six months but she had not had the opportunity to attend a BOA meeting. He also introduced Laura Newberry, one of the two new Planning Technicians in the Planning Department. Chair Gezelius welcomed Tippe and Laura.

REGULAR MEETING – Discussion, Public Hearing and Possible Action

302 McHenry Ave – Applicant is requesting a variance to Section 15-2.1-3(A) Lot Size of the Park City Land Management Code (LMC) for the purpose of expanding the footprint to construct a garage addition with living space above it on a substandard size parcel that does not meet the minimum lot size.

Application PL-17-03694

Planner Tippe Morlan reviewed the request for a variance to the minimum lot size in the zone. The lot size is 3,750 square feet. The applicant would like to do a plat amendment to combine four remnant parcels that exist at this address; portions of Lots 29-32 of Block 59 of the Park City Survey. The parcel created by the plat amendment would be 2,930 square feet.

Planner Morlan reported that when the existing house on the property was built, the minimum property size for a single-family home was 2,812 square feet. It met the size requirement in 1979 and 1980; however, it was not a requirement to have one lot of record.

Planner Morlan reviewed a drawing she had found in her research to explain what would or would not be allowed on this particular parcel. She noted that the drawing was not included in the Staff report because she found it after the reports went out. The drawing was not to scale, but she had estimated the setbacks and all the other requirements of the existing zone to determine what area could potentially be built on if the lot was a smaller size. She had highlighted a triangular portion of the lot that was the only area that would allow for any type of addition. Planner Morlan stated that it is a narrow triangular parcel that is approximately 192 square feet. The existing footprint is approximately 542 square feet. The total possible footprint on this lot was 734 square feet. Planner Morlan explained that even though the lot is smaller than the allowed minimum lot size, the maximum footprint would be 1242 square feet per Code. With the setbacks incorporated, the total possible footprint is 734 square feet.

Planner Morlan reported that this property has a house that was constructed in 1980 built over property lines. There are three interior property lines cut through this property, with one bisecting the house. It was constructed in the HR-1 zone; but in 1983 when the Historic Low Residential Density (HRL) zone was created, this property was changed to the HRL zone. Planner Morlan noted that it meets the current standards of the HRL zone with the exception of lot size and setback. However, if the south side yard setback is not encroached on anymore, then a variance is not needed. Lot size was the only variance the Board of Adjustment was looking at this evening.

The Staff recommended approval of the proposed variance, finding that this allows for a plat amendment that would clean up property lines. Any increase in the size of structure must conform to all standards of the HRL zone, including setback and maximum building footprint.

Planner Morlan stated that the use will remain unchanged and the plat amendment will need to be approved by the City Council. A Historic District Design Review would also be required for the design of any additions or any changes to the structure.

Board Member Wintzer referred to the diagram with the highlighted yellow and understood that it was the amount that could be built on if the variance is granted. Planner Morlan replied that she was correct. Ms. Wintzer stated that when she went out and measured, she thought it was approximately 7 feet from the garage door. Planner Morlan replied that if this plat amendment is not required, the only room for addition would be in the yellow area up to the property line, which is much less than what was shown. Ms. Wintzer understood that if they grant the variance they would be allowing a larger house, given that the house could expand the approximate 7 feet as it stands. Planner Morlan agreed that it could allow for a larger expansion of the house.

The applicant, Mark Pyper, introduced his wife Randi. Mr. Pyper agreed with everything Planner Morlan had presented. He thanked the Board for hearing their application.

Mr. Pyper stated that they purchased the property in hopes of having the option to make it their permanent residence. He did not want to mix the lot variance with the building discussion because they had engaged a local architect to go through the Design Review at the HDDR level as the second phase. Mr. Pyper pointed out that this application was about cleaning up the interior lot lines and making the property compliant. He requested that they only focus on the lot.

Mr. Pyper remarked that they take pride in being good neighbors, and he assured the Board that they would not take full advantage of the space. The intent is to add a front entrance that improves the property and makes it more presentable. He acknowledged that it would bump out beyond the 7 feet but within the confines of the space and in the spirit of the neighborhood.

Mr. Pyper stated that they purchased the property they were told that Park City is all about replatting and turning partial mining lots into one lot. They started the process and engaged with Marshal and Alliance surveying. They also spent a lot of time with Planner Morlan to reach this point. He believed it was the right thing to do because they should not have to own five or six partial lots.

Mr. Pyper emphasized that the focus this evening was to remove the lot lines and to clean up the interior lines and replat it as one lot. They were prepared in a professional and neighborly way to achieve a design through the HDDR process.

Chair Gezelius opened the public hearing.

Morgan Hole, a resident at 310 McHenry, assumed the Board had received a letter his wife had submitted. Regarding the variance, Mr. Hole was torn because he had the same thoughts about other properties on his street. They all bought homes knowing what they bought and knowing what the lot lines were and the setbacks, as well as the rules in Park City. Mr. Hole was not opposed to a variance to combine the lots, but it appears in this situation that the deck extends over the lot line so the deck would have to be changed. There is landscaping behind it that is City property. Mr. Hole was not in favor of the variance if it allows the owner to go beyond the 7 feet. If they go out 10 or 12 feet he and his wife would no longer be able to see Old Town. He did not want to be a bad neighbor but they intend to do a remodel and they have been struggling as well. He believed that everyone should abide by the rules that are in place or they will eventually lose Old Town.

Bruce Erickson noted that the upstairs front door was locked and the Staff was checking to see if any other public was trying to get in. He suggested that the Board continue with their discussion and if people come in later they would have the opportunity to be heard.

Chair Gezelius opened the public hearing subject to re-opening if necessary.

Chair Gezelius called for discussion on the application. She noted that per the Staff report the Staff felt the application met all five criteria necessary to approve the variance.

Board Member Franklin stated that one thing clear in their role as the Board of Adjustment is differentiating the combination of the lot lines, but when they talk about the expansion of the property those are two different issues. The Board of Adjustment is called to discuss only what is cited in the LMC section. She was trying to separate the two pieces of an expansion of a physical property and a structure, and what is conducive with the Historic Guidelines and what they are called to decide as the Board of Adjustment.

Board Member Wintzer disclosed that she lives in this neighborhood, but she has not discussed this with the Pypers.

Ms. Wintzer commented on Criteria 1 - Literal enforcement would cause an unreasonable hardship for the applicant. In looking at this generally, the other three owners who had this house had good existences. She was unsure why no

one else had considered remodeling. Ms. Wintzer noted that one of the garages was turned into living space, but there was still enough parking on the property.

Regarding Criteria 2, Ms. Wintzer acknowledged that it is caught between the two roads, but the road was in place when the lot was created. She did not believe this was a special circumstance because the situation already existed.

Board Member Wintzer referred to Criteria 3 – Granting the variance is essential to the enjoyment of a substantial property right possessed by other property owners. She did not believe that was true because other property owners may have had to purchase larger pieces of property in order to achieve their house size. Ms. Wintzer felt it was inaccurate to make that blanket statement because it is all relative to the size of the lot.

Board Member Wintzer referred to Criteria 4 – The variance will not substantially affect the General Plan and will not be contrary to public interest. Her concern with expanding past the 7 feet is that it puts more shade on the street. McHenry is a substandard street having a building there would choke in the road and limit the amount of snow storage on the property.

Regarding Criteria 5 – Spirit of the LMC is observed and substantial justice is done, Ms. Wintzer stated that when she looks at the purpose statement of the LMC for the HRL District, she could not justify a) reduce density that is acceptable only by substandard streets so these streets are not impacted beyond reasonable capacity, because giving a variance that allows more square footage would intentionally increase the density on a substandard street. Ms. Wintzer stated that b) in the purpose statement is to provide an area of lower density residential use within the old portion of Park City. She understands that the applicant feels the house is low density, but she goes back to the fact that the three previous owners had at least four people living in that house. Ms. Wintzer could not make the purpose statement for points a) and b) fit the spirit of the LMC.

Assistant City Attorney McLean asked Board Member Wintzer if she believed she could treat this application fairly since she does live in the neighborhood. Ms. Wintzer believed she could because in the past other houses have come up in her neighborhood and when she felt she could not be fair for whatever reason she would recuse herself. She felt she could provide a history for the neighborhood. She recalled when this house was built and when the zone was changed. She knows the road and understands the constraints and the danger in the winter. Ms. Wintzer noted that they were being asked to create a variance without knowing what would be there, and it was like making a decision in the dark. The problem is that time and time again they see that after a variance is granted the property changes hands and it does not turn out the way the applicant who obtained the variance intended.

Ms. Wintzer reiterated that she felt confident that she could make a fair judgment based on her knowledge of the neighborhood.

Board Member Fuegi understood the need to talk about lot line adjustments, but the ultimate purpose of the variance is to accommodate the addition. He agreed with Ms. Wintzer that because they do know what the addition will look like, it is difficult to determine whether or not the variance is fair. Mr. Fuegi had problems with finding hardship. It was hard to make an argument that this is truly a hardship because he assumed the owners were aware of the constraints when they purchased the house. He found it difficult to accept the argument that not having the additional 7 feet creates a hardship. Board Member Fuegi stated that he could go either way on the issue of special circumstances. He believed there were special circumstances, but he was unsure whether they were really that unique. Mr. Fuegi emphasized that his biggest problem was finding hardship.

Board Member Wilson had similar concerns. Hardship was an issue for her as well. It is not necessarily a hardship to not have a larger garage when there is sufficient parking per the Code. Ms. Wilson noted that the Staff report indicated that many of the lots in Old Town were built on interior property lines, and she was struggling to determine why this lot was more peculiar than the others. She agreed with Ms. Wintzer that given the constraints of the setbacks, it did not that there would be much developable square footage available if the variance is granted. However, if the property changes ownership and the house is torn down, the new owner could possibly find a way to utilize the maximum square footage.

Chair Gezelius stated that the Staff had looked at the site and tried to assess the application for the variance. She understands how these houses were built over lot lines and over the years the City has tried to clean them up. As properties have changed hands and people are more aware of the procedure, one by one there are far more properties on one single lot than over multiple lot lines. Chair Gezelius understood the request to combine this parcel with the four remnant parcels into one lot of record; and believed it was the wisest thing to do.

Chair Gezelius stated that she feels differently about substandard lots with non-historic homes than she does a lot with a historic home. For a property with a historic home, they try to be more flexible in an effort save the historic home and maintain some heritage. She pointed out that the historic aspect did not apply to this property because the home was built around 1980.

Chair Gezelius understood that the applicant's desire to have more space, and they hear that every time someone comes before them. She realizes that it is a hardship for some people to live in constrained spaces; however, at the same time, expanding this use by even a few additional square feet did not seem to be justified. Chair Gezelius would like to see the property cleaned up to meet the

setbacks to improve the property, but she was not comfortable voting for a variance to increase the amount of construction allowed on this site.

Director Erickson stated that he had checked all the doors and no one was waiting to come inside.

Chair Gezelius stated that the public hearing would not be reopened.

Chair Gezelius assumed from all the comments that there was not consensus to approve the variance as requested. The Board concurred. Chair Gezelius asked if there was consensus to approve the lot combination to clean up this parcel. If there was consensus, she asked if the Staff needed a continuance to prepare for that direction, or whether they could draft something this evening.

Board Member Franklin referred to the statement in the Staff report from Randi Pyper which read, "We were told that Park City prefers old partial lot properties to be replatted into 1 lot". She asked for clarification from Staff.

Assistant City Attorney McLean stated that in general, if someone comes in without a lot of record, the City would not allow them to pull a building permit. She believed that policy was instituted in the 1980s when Ron Ivie was the Chief Building Official. Ms. McLean clarified that currently the Code does not allow someone to pull a building permit to build on property that is not a lot of record. It is also not permitted for several partial lots. Therefore, the City usually removes the lot lines. Ms. McLean remarked that the Planning Commission and the City Council sees a number of plat amendments requests to remove a lot line under an old historic house, or to remove a lot line between two Old Town lots, or similar situations. She stated that because this lot is basically a parcel, the owner cannot expand.

Chair Gezelius noted that the Board of Adjustment typically do not see these applications because they are addressed at the Staff/Planning Commission/City Council levels. She stated that dozens of plat amendments have been done in the last few years.

Board Member Franklin asked how they were able to transfer ownership several times without having a different lot of record. Assistant City Attorney McLean stated that ownership can be transferred because the house was built legally with a building permit. If the lot altogether would have met the minimum lot size, this applicant could have just gone to the Planning Commission and City Council and it probably would have passed. The usual fact about this circumstance is that the property the Pyper's own is smaller than the minimum lot size by the current Code.

Board Member Wintzer understood that the two issues were tied together, and that the BOA could not allow combining the lots if they did not allow the

expansion. Ms. McLean replied that one follows the other, but the application is to allow combining the lots. She explained that the BOA would not be able to combine the lots and then deny the applicant to build anything on it because of certain property rights.

Chair Gezelius clarified that if the BOA approved the lot combination the applicant would be allowed to expand by that 7 feet. Ms. McLean replied that they would have to abide by the setbacks for any expansion, unless they came back to the BOA for another variance. Chair Gezelius asked what the applicant could do if they only approved combining the lots into one parcel. Ms. McLean stated that if the lot combination was approved, the applicant would still go through the plat amendment process to turn it into one lot of record. If the property becomes one lot of record, the allowed buildable area is within the yellow highlighted area that Planner Morlan has presented earlier.

Assistant City Attorney McLean pointed out that this was not a historic home and someone could tear it down; but if someone were to tear it down, they would have to abide by the current setbacks.

Mr. Pyper remarked that they were in Park City and they could all agree that this was not hardship. Hardship was the language provided within the context of the variance. Mr. Pyper stated that they were not seeking to flip this house or to rent it. They wanted to stop the trend of four owners. He wanted it clear that he agreed that it was not hardship.

Mr. Pyper agreed that these were two completely separate issues; and noted that they would have to go through HDDR approvals. He likes and respects Mary Wintzer and Morgan Hole, and he wanted it clear that there was still a design approval process and that no design would block their view of Main Street. He did not dispute that it would limit snow storage for the neighbors, but he believed they could get along and work it out.

Mr. Pyper believed the yellow triangle was much more intrusive compared to what he was trying to do. They were trying to get a lip to put a car under outside their garage, and they were trying to create bump out space above it. He acknowledged that it would go beyond 7 feet to probably 9 or 10 feet, but nothing more. Mr. Pyper believed that issue was part of a separate process.

Board Member Wilson understood that the spirit of the LMC in this case is to have more open space on the lot to keep from covering the hillside with buildings. She believed this project appeared to be unintrusive, but if ten or 15 years from now there is a new owner and they tear down the building, they might be able to utilize the allowed 1242 square feet of building space. In that case there would be very little open space left. The open space could potentially be reduced from approximately 2200 square feet of open space to 1700 square feet. Ms. Wilson questioned whether it was in the spirit of the Land Management Code

to allow a variance that would possibly allow less open space in the neighborhood.

Board Member Wintzer clarified that her previous comment was about the logistics of the City snow plow going through; not snow storage for the neighbors.

Planner Morlan explained that if the variance was approved and the plat amendment was approved, all the encroachments would have to be resolved. Therefore, the deck would be removed and the retaining walls would have to be pulled onto the property.

Director Erickson thought the Board was leaning towards not finding in favor of the variance. If that was correct, the Staff would provide recommendations this evening on changing the findings of fact and conditions of approval for denying the variance. The Staff would make the recommendations and set up the motion for the Board.

Director Erickson stated that the concept of what could be built on the lot was separate from the issue of whether or not there is a hardship on the lot. He clarified that the question was really about a legal, definable hardship.

Assistant City Attorney suggested a five-minute recess to give the Staff time to draft amendments to the findings based on their comments.

Break

Chair Gezelius reconvened the meeting.

Assistant City Attorney McLean stated that based on the comments by the Board, the Staff had amended the Findings of Fact. If the Board members thought additional language should be added that better reflects their discussion, they should speak up. Ms. McLean recommended that the motion include the Findings of Fact, Conclusions of Law and the Order as amended.

Chair Gezelius referred to the consequence of not taking the suggested recommendation as stated in the Staff report, and asked if the word construct was used accurately. Ms. McLean replied that it would not be part of their findings so they would not have to worry about that. They were only looking at the Findings of Fact.

Planner Morlan stated that Findings of Fact 1-32 was the general history of the site and those would be unchanged.

Finding 33 previously said that "the literal enforcement would prevent the applicant from expanding their property". That language was changed to read, "It would not cause unreasonable hardship due to an existing house with adequate

parking on the property”. That means that the existing conditions have not been a problem in the past.

Finding 34 the previous language was removed and replaced with language stating, “The applicant has indicated this is not a true hardship”.

Finding 37 was revised to say, “There are not special circumstances....”
“There is street frontage on all sides along this property, but these circumstances do not constitute a hardship”.

Finding 38. A sentence was added any addition would impact the substandard street in terms of visibility and snow storage.

Board Member Franklin noted that Finding 36 was left as written, and she was concerned about the language regarding the garage area. Chair Gezelius agreed that the Finding should be deleted.

Findings 40 and 41 were deleted since they pertained to an approval.

Planner Morlan noted that the Conclusions of Law were all changed to indicate that the variance was not necessary. The Order was changed from granted to denied, and the remainder of the language was deleted. Order 2 was deleted because it was not applicable to the denial.

Chair Gezelius summarized that the Board of Adjustment was denying the request for the variance, and that the Board found that the five criteria did not justify granting the variance.

Assistant City Attorney noted that Conclusion #5 regarding the General Plan was left in because there was no discussion about the General Plan. She stated that under the legal requirement of a variance, if even one of the five criteria is not met then a variance cannot be granted.

Planner Franklin suggested that they adjust Findings 38 and 39 because they were still alluding to the garage. For example, Finding 39 talks about “the” addition and she thought that should be changed to “an” addition. Planner Morlan revised the language to say, “an addition that meets all other current requirements”. Finding 39 should say “any” addition.

Chair Gezelius expressed her interest in eliminating the lot lines and making this one lot of record. Assistant City Attorney stated that in order to do that, the Board would have to find that the criteria were met.

Mr. Pyper referred to the change to Finding 34 and stated that he was only making light of the fact that they should all agree that they were talking about shades of gray with the word hardship. He did not want to be on record as

saying no hardship exists. Chair Gezelius suggested that they eliminate Finding 34 so they did not quote the applicant on something he did not believe to be true.

MOTION: Mary Wintzer made a motion to DENY the variance for 302 McHenry, subject to the Findings of Facts of Conclusions of Law and the Order, as amended this evening. Hans Fuegi seconded the motion.

VOTE: The motion passed unanimously.

Mr. Hole did not understand why the Board could not approve the lot of record and still deny the variance for setbacks, even though the lot of record would be a good thing and consistent with the town.

Assistant City Attorney McLean explained that there was not an application for a variance to the setbacks. Under the zone the setbacks are currently met, except for the south side. The application was for a variance to allow for a lot that was substandard in size and that variance request was denied. She noted that the house is a legal non-conforming structure, and it can do whatever the Code allows under the non-conforming aspects of the Code; but that was not under the purview of this Board.

Board Member Franklin wanted it on the record that she would have been in favor of combining the lots into one lot of record. Chair Gezelius agreed. Without this variance she encouraged the Staff to pursue the process to make this property one lot of record. Board Member Wintzer assumed that the house would exist as a non-conforming use. It has had a good life since 1979 and it carries on. Assistant City Attorney McLean stated that unless the owner achieves more square footage they would not be able to change it to a lot of record because per Code it is substandard in size. She explained that a variance is the escape valve, but it has to meet the criteria.

Findings of Fact - 302 McHenry

1. The property is located at 302 McHenry Avenue in the Historic Residential-Low Density (HRL) District.
2. The property consists of all of remnant portions of Lots 29, 30, 32, and 32 of Block 59 of the Park City Survey. The applicant owns no other adjacent property to these Lots.
3. The rest of the four Lots have been incorporated into McHenry Avenue right-of-way and into the 321 McHenry Avenue Subdivision.
4. McHenry Avenue right-of-way issues will be resolved with a future plat amendment.
5. On August 10, 2017, the City received a Plat Amendment application for the 302 McHenry which was deemed complete on August 25, 2017.
6. On October 25, 2017, the City received an application for a variance to the minimum lot size of the subject property.

7. On November 14, 2017, the property was posted and notice was mailed to affected property owners within 300 feet.
8. Legal notice was published in the Park Record on November 11, 2017.
9. Adjacent land uses are residential single-family homes.
10. In the HRL zone, a single-family dwelling is an allowed use
11. The existing home was constructed in 1979 and 1980. At the time of construction this property was located in the HR-1 Zoning District.
12. The property line between Lots 31 and 32 bisects the existing structure on the site.
13. The minimum lot size in the HRL zone is 3,750 square feet.
14. The subject site contains a total of 2,930 square feet. The property met the minimum lot size of the 1979 LMC which required a minimum of 2,812 square feet.
15. The maximum building footprint allowed is 1,242.6 square feet.
16. The existing building footprint is 542.2 square feet.
17. Front and rear yard setbacks are 10 feet minimum and 20 feet combined.
18. Side yard setbacks are 10 feet minimum on each side and 24 feet combined.
19. The existing house met standards of the 1979 LMC for the Historic District at the time of construction including a variance on setback requirements reducing the front yard setback from 15 feet to 10 feet granted on August 28, 1979, and there are no documented changes since then.
20. When evaluated against current zoning requirements, the lot size and south side yard setback are out of compliance.
21. The side yard is an existing non-complying setback as long as the applicant does not change the southern footprint of the existing house. Currently no changes are proposed to this side yard setback and all new construction will have to comply with current setbacks.
22. The applicant has indicated a desire to construct an addition to the garage area along the north side of the house which would not impact the existing south side yard setback and would not increase the level of non-compliance for this standard.
23. The subject property is a shallow lot due to its triangular shape, and its depth ranges from 11 feet to 45 feet.
24. The minimum lot width allowed in the HRL zone is 35 feet.
25. The proposed lot width is 100 feet.
26. Parking requirements for a Single Family home are 2 spaces per dwelling unit.
27. The existing house has 2 off-street parking spaces.
28. Built McHenry Avenue exists on the west side of this property, platted McHenry Avenue exists on the east side of this property, and both portions of the street bisect to the north of this property.
29. On the south side of the property, half of the existing deck encroaches onto City property (Platted Third Street). There are also stone retaining walls surrounding the deck encroaching onto City property.

30. Along the east side of the lot, there are large stone retaining walls and landscaping along the original platted portion of McHenry Avenue encroaching onto City property.

31. Staff finds that the size of the property addressed at 302 McHenry Avenue will not change whether or not there are interior property lines.

32. If the property owner had removed the interior lot lines in 1979, which was not a requirement for the development of a house at the time, the variance request would not be necessary and the lot would be deemed legal and non-complying.

33. Literal enforcement of the current minimum lot size standard would not cause unreasonable hardship due to an existing house with adequate parking on the property.

34. The proposed variance in lot size would not change the boundaries of the property addressed at 302 McHenry and would maintain all other existing lot conditions.

35. There are not special circumstances attached to this property. This property is unique in that it has street frontage on all sides. Platted McHenry Avenue and built McHenry Avenue are existing constructed roads, and platted Third Street is not constructed and belongs to the City. These circumstances do not constitute a hardship.

36. Any addition would impact the substandard street in terms of visibility and snow storage.

37. Lots constructed under the 1979 LMC requirements which are under 3,750 square feet in size and do not have interior lot lines would be allowed to construct an addition that meets all other current lot requirements.

38. A Historic District Design Review (HDDR) application must be submitted to approve the design of any addition, and Staff will review the plans to ensure that any addition is compatible and maintains the character, context, and scale of the historic district in line with Objective 15B of the General Plan.

Conclusions of Law – 302 McHenry

1. Literal enforcement of the HRL zoning district requirements for this property does not cause an unreasonable hardship that is not necessary to carry out the general purpose of the zoning ordinance.

2. There are not 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 proposal is consistent with the General Plan.

5. The spirit of the zoning ordinance is not observed by this application.

6. It can be shown that all of the conditions justifying a variance, pursuant to LMC § 15-10-9, have not been met.

Board of Adjustment Meeting
November 28, 2017

Order

A variance to LMC Section 15-2.1-3 (A) that requires a minimum lot size of 3,750 square is hereby denied.

Approval of Minutes

June 20, 2017

Chair Gezelius noted that the Board had approved the Minutes of May 16, 2017 at the June 20, 2017 meeting; however, Board Member Wintzer had questions that she wanted verified with the recording.

Board Member Wintzer clarified that her question was that Herb Armstrong had referred to Mike Constable, but there is no such person. He was either referring to Michael Kaplan or David Constable, and she asked that it be clarified. Ms. Wintzer noted that it should have been Michael Kaplan since they were discussing his lot.

MOTION: Board Member Wintzer moved to APPROVE the Minutes of June 20, 2017 as amended. Hans Fuegi seconded the motion.

VOTE: The motion passed unanimously.

The next meeting was tentatively scheduled for December 19, 2017.

Chair Gezelius adjourned the meeting at 6:15 p.m.

Approved by _____
Ruth Gezelius, Chair
Board of Adjustment