

**FINDINGS OF FACT, CONCLUSIONS OF LAW, CONDITIONS OF APPROVAL
AND ORDER REGARDING THE APPEAL OF A
CONDITIONAL USE PERMIT FOR 1440 EMPIRE AVENUE
HEARD BY THE CITY COUNCIL ON FEBRUARY 10, 2011**

Appellants: David and Rosemary Olsen, Rick Margolis, and Bill and Dianne Newland, represented by Bruce R Baird PC

Applicant: John Paul DeJoria, represented by Craig Elliott AIA

Findings of Fact

1. The subject property is at 1440 Empire Avenue, Park City, Utah.
2. The subject property was approved as 1440 Empire Avenue Replat by City Council on February 25, 2010, but has yet to be recorded
3. The subject property is 12,882.62 square feet or 0.295 acres.
4. The property is located in the Recreation Commercial (RC) District.
5. A Multi-Unit Dwelling is permitted under a Conditional Use Permit within the RC zone.
6. A Parking Area or Structure with 5 or more spaces is permitted under a Conditional Use Permit within the RC zone.
7. The Planning Commission approved a Conditional Use Permit (CUP) for a Multi-Unit Dwelling and a Parking Area of Structure with 5 or more spaces at this location on December 9, 2009 which contained eight (8) two-bedroom units and two (2) four-bedroom units, with surface parking occurring towards the front of the parcel off of Empire Avenue.
8. The CUP was appealed by adjacent owners David and Rosemary Olsen, Rick Margolis, and Dianne and Bill Newland on December 21, 2009.
9. On February 25, 2010 the City Council heard the appeal. The City Council granted the appeal in part and denied the appeal in part, remanding it back to the Planning Commission for further review of just these two items: (1) The height, scale, mass and bulk of the rear of the building shall be further modified and considered under the standard in LMC 15-1-10(E)(8); and (2) Further design changes with consideration for ensuring that the proposed development transitions to and complements the existing historic structure to the east shall be reviewed and /or further conditioned.
10. On March 4, 2010 the City Council ratified the Remand.
11. On May 12, 2010 the applicant's attended a Work Session with the Planning Commission which proposed changes to the rear façade, modifying roof forms, height, and materials.
12. On September 10, 2010 the applicant submitted modified CUP drawings for a Multi-Unit Dwelling. The drawings were supplemented on September 16, 2010 and with minor detail changes on December 1, 2010. (Hereinafter, December 1, 2010 design).
13. Appellants were notified of the amended design in September and were given a hard copy of the plans on November 24, 2010.

14. On December 8, 2010 the Planning Commission directed staff to come back with an analysis of which CUP criteria were affected from the current project and to provide findings of fact, conclusions of law, and conditions of approval.
15. On December 15, 2010 the Planning Commission found the new project met Council's Remand order of February 25, 2010, and approved the CUP for a Multi-Unit Dwelling and Parking Area of five (5) or more parking spaces according to the findings of fact, conclusions of law, and conditions of approval.
16. The appellant(s) submitted a complete appeal to the City Recorder on December 27, 2010.
17. The December 1, 2010 design has moved the building away from the historic property on Woodside Avenue an additional 20'-6" from the rear setback, locating it closer to Empire Avenue and placing it at the front yard setback.
18. The current design dated December 1, 2010 meets the zone height of 35 feet without utilizing height exceptions for increases in either pitched roofs or mechanical equipment.
19. The current design dated December 1, 2010 meets the February 25, 2010 City Council Remand items 1 and 2 as referenced in Finding of Fact #9, #14 and #15.
20. The site allows a Floor Area Ratio (FAR) of 1.0 totaling 12,882.62 square feet. The proposed project has a FAR of 0.91 and is 11,688 square feet. Underground parking garages are not calculated in the FAR.
21. The Multi-Unit Dwelling contains 4 total stories, 3 stories above ground and a parking garage below grade.
22. The proposed project contains (9) units; (6) two-bedroom units and (3) four-bedroom units.
23. The Multi-Unit Dwelling is required to have twelve (12) parking spaces. All 12 spaces are provided in an underground parking garage. A Parking Area of five (5) or more parking spaces is a Conditional Use in the Recreation Commercial (RC) District.
24. The proposed design has been reviewed against and meets LMC 15-5 Architectural Review. The proposed design is compatible with the variety of architectural styles found in the RC zone.
25. Conditional Use Permit review criteria #1 Size and location of the Site; criteria #2 Traffic considerations; criteria #3 Utility capacity; criteria #6 Internal vehicular and pedestrian circulation system; criteria #9 Usable Open Space; criteria #12 Noise, vibration, odors, steam, or other mechanical factors that might affect people and property off-site; criteria #13 Control of delivery and service vehicles, loading and unloading zones, and Screening of trash pickup Areas; criteria #14 Expected Ownership and management of the project; criteria #15 Environmentally Sensitive Lands, Slope retention, and appropriateness of the structure to the topography of the Site; are unchanged from original approval or cause no measureable change and have no unmitigated impacts.
26. Conditional Use Permit review criteria #4 Emergency vehicle access; is improved by the new design allowing direct access to three sides of the structure. Emergency vehicles will access the site directly from Empire Avenue or through driveway on north and east of proposed building.

27. Conditional Use Permit review criteria #5 Location and amount of off street parking; improved by the new design and mitigated through 12 parking spaces in underground parking garage and driveway to north of property.
28. Conditional Use Permit review criteria #7 Fencing, Screening and landscaping to separate the Use from adjoining Uses has been mitigated by landscaping on all sides of the property, with intensive landscaping at the east parking drive setback adjacent to the historic property and south property side yard setback adjacent to contemporary single family home.
29. Conditional Use Permit review criteria #8 Building mass, bulk, and orientation, and the location of Buildings on the Site; including orientation to Buildings on adjoining Lots has been mitigated with a reduction in height from the previous design in not utilizing height exceptions, reduced building shadowing on adjacent properties, increased landscape buffering, placement of interior and exterior building uses, reduction of decks on south building façade, elimination of exterior storage closets on south building façade decks, building placement tapering side yard setback along south building face.
30. Conditional Use Permit review criteria #10 has no Unmitigated impacts. The new design's of an underground parking garage has eliminated the surface parking area's lighting requirements previously required.
31. Conditional Use Permit review criteria #11 Physical design and Compatibility with surrounding Structures in mass, scale, style, design and architectural detailing; meets LMC 15-5 Architectural Review and is compatible with the variety of structure styles and sizes found in the RC zone.
32. The Findings in the Analysis section of this report are incorporated herein.

Conclusions of Law

1. The application satisfies all Conditional Use Permit review criteria for a Multi-Unit Dwelling and a Parking Area of Structure with five (5) or more spaces as established by the LMC's Conditional Use Review process [Section 15-1-10 (E) (1-15)].
2. The application complies with all requirements of the LMC;
3. The application complies with the Council Remand Order of February 25, 2010.
4. The Use will be Compatible with surrounding Structures in Use, scale, mass and circulation;
5. The Use is consistent with the Park City General Plan, as amended; and
6. The effects of any differences in Use or scale have been mitigated through careful planning.

Conditions of Approval

1. All Standard Project Conditions shall apply.
2. City approval of a construction mitigation plan is a condition precedent to the issuance of any building permits. Measures to protect existing vegetation shall be included in the Construction Mitigation Plan (CMP).
3. A Site Drainage Plan will be submitted prior to building permit issuance for City Engineer Approval. Such Site Drainage Plan will include (1) roof run-off to go to a detention pond that discharges out to Empire Avenue (2) The drive and garage

- drainage will go to a retention basin that does not discharge off site (3) Post discharge will be equal to or less than Pre-development discharge.
4. City Engineer review and approval of all appropriate grading, utility installation, and public improvements for compliance with City standards, to include driveway and parking garage layout is a condition precedent to building permit issuance. A shoring plan is required prior to excavation.
 5. A landscape plan is required with the building permit. Changes to an approved plan must be reviewed and approved prior to landscape installation.
 6. This approval will expire on February 10, 2012 if a building permit has not been issued.
 7. Recordation of 1440 Empire Avenue Replat is required prior to building permit issuance.
 8. Modified 13-D fire sprinkler system will be required.
 9. Any significant modification of approved unit layout as shown on drawings date stamped September 10, 2010, September 19, 2010 and December 1, 2010 which changes bedroom configuration or unit size, requiring modification to required parking, will require amendment to Conditional Use Permit.
 10. If the Multi-Unit Dwelling is used to fulfill a future affordable housing obligation, then the project must meet the deed restriction and requirements of the Affordable Housing Resolution in effect at the time of the obligation.
 11. All driveway lighting must be zero cut-off at property line and shall not exceed the minimum lighting level required by the Building Code. All lighting must meet the Lighting Ordinance and be downward directed and shielded. Light fixture cut sheets shall be reviewed by the Planning Department for approval prior to installation.
 12. Retaining walls in the rear yard setback shall not exceed six feet (6') in height measured from Final Grade per LMC 15-4-2. Applicant shall submit a modified Site Plan sheet CUP-001 reflecting such change prior to building permit issuance.

Order

The appeal is denied in full.

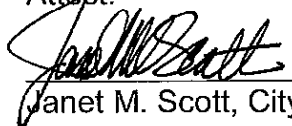
PASSED AND ADOPTED by the City Council this 10th day of February, 2011.

PARK CITY MUNICIPAL CORPORATION



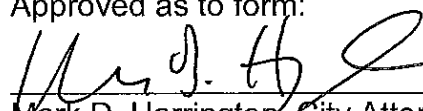
Mayor Dana Williams

Attest:



Janet M. Scott, City Recorder

Approved as to form:



Mark D. Harrington, City Attorney

