Salt Lake City Land Use Appeals Hearing Officer
Appeals Decision
PLNAPP2018-01011
Mitchell McAllister
Administrative Interpretation Appeals
March 11, 2019

This is an appeal by Mitchell McAllister, owner of property at 675 E. 2nd Avenue (the "675 Property") and an adjacent property at 679 E. 2nd Avenue (the "679 Property"), of an administrative interpretation made by the Zoning Administrator regarding whether the parcel of the 675 Property is a legal complying lot.

A hearing on this matter was held before the Appeals Hearing Officer on February 21, 2019. Mr. McAllister ("Appellant") appeared on his own behalf with his daughter, Christine Hales. Appearing on behalf of the City were Kelsey Lindquist, Planner, and Paul Nielsen, Senior City Attorney.

The Administrative Interpretation was dated December 3, 2018, and timely appealed by the Appellant on December 13, 2018.

Standard of Review

The standard of review for an administrative interpretation decision by a zoning administrator is set forth in *Salt Lake City Code*, Section 21A.16.030(E1), as follows:

> The standard of review for an appeal, other than as provided in subsection E2 of this section [which does not apply here], shall be de novo. The appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below.

Discussion

The question at issue here and the interpretive decision requested is to determine whether the 675 Property is a legal complying lot in accordance with the zoning laws of Salt Lake City.

Salt Lake City has recognized the need for a zoning administrator to interpret the Salt Lake City zoning ordinances. The authorizing code states: "The interpretation authority established by this chapter is intended to recognize that the provisions of this title, though detailed and extensive, cannot, as a practical matter, address every specific situation to which these provisions may have to be applied. Many of these situations can be resolved or clarified by interpreting the specific provisions of this title in light of the general and specific purposes for which those provisions were enacted" (21A.12.010). Thus, the task of the appeals hearing officer is to clarify and resolve the question stated above without deference to the previous interpretations provided by the zoning administrator.

History

The Appellant purchased both the 675 Property and the 679 Property in 2005. The Appellant claims that prior to purchasing both properties he spoke with an unnamed Salt Lake City Planner who allegedly confirmed to him that both properties were separate legal lots. The City does not have any record of this having taken place. The only evidence is the Appellant's statement. The City does not refute nor deny this having taken place but does argue that such a conversation should not be relevant as to whether the 675 Property is a legal complying lot. Notwithstanding any alleged statement by a single planner at the City, a separate legal complying lot does not become so because of a single statement by a city official. If the Appellant were to rely on such an important assessment, I would have expected that he would have received such a confirmation in writing from the City. However, this was not done.

The City and the Appellant seem to agree on the general history of the two properties, specifically that the 675 Property and the 679 Property were created as separate lots in 1907, prior to the adoption of the City's first zoning ordinance in 1927. Both properties were owned separately until 1930 when Philip and Alice Fishler purchased both properties. Since 1930, both properties have remained under single ownership.

It appears that the 675 Property has never had a principal structure located on it, but there appear to have been accessory structures located on the 675 Property over the years. Whereas, the 679 Property has long had a principal structure located on the property. The City and the Appellant also agree that the single-family use located on the 679 Property was converted to a multi-family use, with 8 units in 1934-35, by which only the use changed (from single-family to multi-family), while the structure remained the same. The 679 Property has continued since that time as a multi-family use.

Interpretation

The first step in the interpretive decision is to examine the definition of "Lot" in the *Salt Lake City Code* which reads as follows:

> LOT: A piece of land identified on a plat of record or in a deed of record of Salt Lake County and of sufficient area and dimensions to meet district requirements for width, area, use and coverage, and to provide such yards and open space as are required and has been approved as a lot through the subdivision process. *A lot may consist of combinations of adjacent individual lots and/or portions of lots so recorded*; except that no division or combination of any residual lot, portion of lot, or parcel shall be created which does not meet the requirements of this title and the subdivision regulations of the city. (21A.62.040, *emphasis added*)

The Appellant and the City fundamentally disagree on the meaning of the phrase, "A lot may consist of combinations of adjacent individual lots and/or portions of lots so recorded." The Appellant had relied on an understanding that any combination of lots would be reflected in the recorded documents. They argue that the "so recorded" language applies to the entire phrase and thus, the Appellants argue, the "combinations of adjacent individuals lots" is qualified by those combinations "so recorded." The City, on the other hands, argues that the "so recorded" phrase only applies to the second portion of the sentence following the and/or separator, meaning that "combinations of adjacent individual lots" would not necessarily need to be "so recorded" or reflected in the official records of the Salt Lake County Recorder.

The Appellant and the City agree that there are no recorded documents that show that the lots would be combined. This fact is not disputed. However, the City argues that the 679 Property depended upon the 675 Property to meet the lot square footage requirements when the 679 Property was converted to a multifamily use in 1934-35. The challenge for the Appellant is that for the 679 Property to be approved to convert to a multifamily use, it would have required 7,500 square feet of lot size to have met the ordinance requirements for conversion to multifamily. There is no other explanation as to how the conversion to multifamily could have been approved without the City relying upon and making the conversion dependent upon the usage of the lot square footage from the 675 Property added to the square footage of the 679 Property. Thus, the City viewed the 675 Property and the 679 Property as dependent upon each other and not as separate legal lots. The City presented additional evidence from the Sanborn Fire Insurance Maps which appeared to show that the 675 Property and the 679 Property functioned essentially as a single lot. The Appellant pointed out that the Sanborn Fire Insurance Maps are not perfect and cannot be relied upon for an accurate representation of how each lot was configured. The City acknowledged this limitation, but did not rely exclusively on the Sanborn Fire Insurance Maps for its interpretation. I similarly do not give significant weight to the Sanborn Fire Insurance Maps, but they add color to the City's arguments that these two properties seemed to function as a single property.

Furthermore, I cannot help but wonder why a single-family structure was never built on the 675 Property if it were in fact a single separate legal lot. The only logical explanation would be that it was supportive of the use of the 679 Property and thus did not function and was not used as a single legal lot. The City's arguments are persuasive that the 679 Property conversion to multifamily must have relied upon the 675 Property to have been legally approved. The Appellant provided no other explanation or evidence as to how that conversion could have legally taken place without the reliance upon the square footage of the 675 Property. Furthermore, the City provided additional evidence that the City has traditionally viewed the 679 Property as dependent upon the 675 Property through various Board of Adjustment and other city records. The Appellant did not provide any persuasive evidence to the contrary, other than to question the sanity or memory of the owner of both properties as she testified in various City hearings. Barring evidence to the contrary, I have no way of questioning the property owner testimony and memory. Thus, such testimony stands to further bolster the City's arguments.

I note that the Appellant has gone to great lengths to research and provide documentation of what the official record from the County Recorder's Office shows pertaining to both properties. They have shown convincingly, and without argument from the City, that the 675 Property and the 679 Property are each separate parcels of real property, and recognized as such by Salt Lake County. There is no record of any formal combining of lots through the subdivision process or otherwise. The City does not dispute the recorded record provided by the Appellant. However, the City has convincingly shown through multiple sources that the City has viewed the 679 Property as dependent upon the 675 Property and thus the 675 Property could not be considered a legal lot for purposes of constructing a single-family residence thereon. The Appellant essentially wants it both ways, to have the benefit of the multifamily use at the 679 Property which was reliant upon the 675 Property to have been approved as a multifamily property, yet also desires to be able to construct a single-family property on the 675 Property and to have the lot square footage count for both. While it is unfortunate that the Appellant purchased both properties expecting that a single-family residence could be constructed on it, the Appellant should have confirmed that fact with a written statement from the City upon which he could have relied. All of Appellant's efforts to confirm whether the 675 Property was a legal complying lot should have been done prior to purchasing the properties.

Interpretive Ruling – Conclusion

Therefore, based on my review of the Code, and the testimony and materials presented in the appeals hearing, and in a de novo review, I find that the 675 Property is not a legal complying lot, and therefore a single-family residence could not be built thereon.

Matthew T. Wirthlin, Appeals Hearing Officer