

Salt Lake City Land Use Appeals Hearing Officer

Variance Decision

Cameron Broadbent – 802 W Fayette Avenue

PLNZAD2018-01026

March 6, 2019

This application consists of a request for a variance for a reduced corner side yard setback from 10' to 7.5' for a proposed single-family dwelling at 802 W Fayette Avenue in the City (the "Requested Variance"). The City recommended a reduced corner side yard setback from 10 feet to only 8.5 feet, rather than the 7.5 feet requested by the Applicant.

Variances are decisions made by the Appeals Hearing Officer per ordinance section 21A.18.020 of the Salt Lake City Zoning Ordinance (hereinafter referred to as the "City Code").

A hearing on this matter was held before the Appeals Hearing Officer on February 21, 2019. Mr. Broadbent, the Applicant property owner appeared and testified. Mayara Lima, a planner with the City, appeared and represented the City.

Discussion

Since all of the variance standards set forth in City Code, Section 21A.18.060, must be met for a variance to be granted, I will analyze each of the variance standards based upon the evidence presented at the hearing and provided to the Appeals Hearing Officer to consider by the City and the Applicant. City Code also places the burden of showing that the variances meet all of the standards upon the Applicants (See City Code 21A.18.040).

21A.18.060. Standards for Variances A.1. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title.

Because of the unusual narrowness of the lot, the Requested Variance would allow a home to be constructed. Without the Requested Variance, it would be an unreasonable hardship in that a livable home would not be able to be constructed in a reasonable manner, consistent with the neighborhood.

21A.18.060. Standard for Variances A.2. There are special circumstances attached to the Property that do not generally apply to other properties in the same zoning district.

City Code provides guidance for finding whether special circumstances exist, namely, that (1) "the special circumstances relate to the alleged hardship; and (2) the special circumstances deprive the property of privileges granted to other properties in the same zoning district" (21A.18.060D).

Here the special circumstances (narrow lot) relate to the alleged hardship (inability to build a home on such a narrow lot) and such a narrow lot would deprive the Applicant of

building a home like other properties on their same street and neighborhood. Thus, this variance requirement is met.

21A.18.060. Standard for Variances A.3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.

The granting of the Requested Variance is essential to the Applicant to build the single-family structure on this vacant lot which is a substantial property right in this residential neighborhood and street. By granting the Requested Variance, this lot would be This would bring this lot the same property rights as others in the street and neighborhood.

21A.18.060. Standard for Variances A.4. The variance will not substantially affect the general plan of the city and will not be contrary to the public interest.

The Requested Variances will not substantially affect the general plan of the City and will not be contrary to the public interest. In fact, without this variance the Property would be mostly undevelopable. To have a residence built on the home would improve the neighborhood and it is in the public interest to have homes built on vacant lots like this lot.

21A.18.060. Standard for Variances A.5. The spirit of this title is observed and substantial justice done.

The Applicant has demonstrated that building a single family residence on this lot, although much narrower than other lots, would meet the spirit of the zoning ordinance and would provide substantial justice to be able to enjoy a substantial property right to build a home on this vacant lot, in spite of the narrowness of the lot.

Based on the evidence provided in hearing from the Applicant and the City, the Requested Variance does appear to meet the standards for a Variance set forth in City Code, Section 21A.18.060. However, Section 21A.18.050 requires a threshold analysis for prohibited variances as follows:

21A.18.050 Prohibited Variances: "The appeals hearing officer shall not grant a variance that: A. is intended as a temporary measure only; B. is greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the applicant; and C. authorizes uses not allowed by law."

I find that the Applicant showed that the Requested Variance is not a temporary measure since a permanent single-family structure is planned on being built on the property. The variance would not authorize a use not allowed by law as the use would not change as a result of the Requested Variances. The use will remain a single-family residential use.

The Applicant argues that a 3.5' reduction to a 7.5' setback is the minimum variation necessary to relieve the unnecessary hardship for a single-family residence built on narrow lot. The Applicant provided drawings stating that for fire access with a ladder would require at least

the 7.5' setback. The City countered that the fire department would not need the 7.5' setback for fire access because of its location on the corner lot and that an 8.5' setback would be sufficient. The Applicant further stated that the extra foot (difference between the 7.5' requested by the Applicant and the 8.5' recommended by City staff) in setback would be necessary for ventilation of the attic. I was not persuaded that an entire full foot of setback would be required for ventilation of the attic, but that some additional space could conceivably be required. Thus, I find that the Requested Variance of 7.5' is greater than the minimum variation necessary, but am persuaded and do find that a variance for a setback of 8' would be the minimum necessary to relieve the unnecessary hardship demonstrated by the Applicant. I recognize that the City recommended 8.5' and the Applicant requested 7.5' and I am finding that an 8' setback would be sufficient.

Conclusion and Ruling

Therefore, based on the findings in the Staff Report and the testimony and evidence provided at the hearing, I find that the Applicant has shown that all of the variance standards have been met and I approve a variance of a reduction of the corner side yard setback by 2 feet for a total required corner side yard setback of 8 feet.

Dated this 6th day of March, 2019



Matthew T. Wirthlin, Appeals Hearing Officer