Salt Lake City Land Use Appeals Hearing Officer
Appeals Decision
Joseph Wolf
PLNAPP2020-00034
(Appealing Administrative Interpretation)
April 3, 2020

This is an appeal by Joseph Wolf of an administrative interpretation by the Salt Lake City Planning Department regarding how building coverage is measured associated with a proposed accessory building with a second level Accessory Dwelling Unit (ADU) on a parcel of real property located at 1978 S. Windsor Street in Salt Lake City, Utah (the "Property").

Ruling

The decision here is that the administrative decision relating to building coverage is upheld because I find that the City's interpretation of how building coverage is measured to be correct. Consequently, the structure, as proposed, exceeds the allowable building coverage for accessory buildings. I also find that the Appellant's vesting rights do not extend to its design, but only approval of the conditional use.

History and Procedures

The Appellant applied for approval to build an accessory dwelling unit (ADU) on the second level of an accessory building. The Salt Lake City Planning Commission granted the Appellant a Conditional Use Permit for the ADU. On December 23, 2019, Eric Daems, a Principal Planner with the City, made an administrative interpretation that the proposed structure exceeds the allowable building coverage for accessory buildings because the meaning of building coverage "includes the areas of the building that provide coverage over the ground, not just the portion of the building that touches the ground." Because the second story of the building is built with a cantilevered design, the second story overhangs the ground level. The appeal was timely filed on January 14, 2020.

A public hearing on this matter was held before the Appeals Hearing Officer on Wednesday, March 12, 2020 (the "Hearing"). Mr. Brent Bateman, the appellant's attorney, appeared. Appearing on behalf of the City were Amy Thompson, a planner with the City, Joel Patterson, Zoning Administrator, and Paul Nielson, a Senior City Attorney. Members of the public also weighed in on this matter. An extended discussion, including the identification and review of some of the evidence in the record, was conducted at the Hearing.

Standard of Review

Utah law grants to municipalities the authority to designate the standard of review for appeals of land use authority decisions. Utah law provides that "the appeal authority shall determine the

correctness of a decision of the land use authority in its interpretation and application of a land use ordinance." (*Utah Code Annotated* §10-9a-707, (1) and (4)). Salt Lake City ordinance provides that the standard of review for an appeal shall be *de novo*, which means that "[t[he 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." (Salt Lake City Ordinance, Section 21A.16.030 E.)

The Appellant identified essentially two issues as reasons for claiming that the City Planner's interpretation decision was in error, which are addressed as follows:

Issue A: Interpretation of "building coverage" and "building footprint"

At the heart of this appeal is the interpretation of the term, "building coverage" as found in City Code:

> In the FR, R-1, R-2 and SR residential districts the maximum building coverage of all accessory buildings, excluding hoop houses, greenhouses, and cold frames associated solely with growing food and/ or plants, shall not exceed fifty percent (50%) of the building footprint of the principal structure up to a maximum of seven hundred twenty (720) square feet for a single-family dwelling and one thousand (1,000) square feet for a two-family dwelling. (Salt Lake City Code 21.A.40.0S0(B)(2)(a) (emphasis added)).

City Code defines "building coverage" as "[t]hat percentage of the lot covered by principal or accessory buildings" (Salt Lake City Code 21.A.62 - Definitions, "Building Coverage"

The Appellent concedes that this term applies to his application but maintains that the City has misinterpreted the term as applied to his application. The Appellant's counsel very clearly lays out the differing interpretations of this term and what is at issue as follows:

> The City argues that "building coverage" is calculated from "the perimeter of all exterior walls of the building, including the cantilevered portion." Administrative Interpretation, paragraph 2. In other words, the City has calculated building coverage from a direct top down view, without regard to what actually touches the ground. Mr. Wolf argues that the term "building coverage" means everything actually in contact with the ground. In other words, those portions actually covering the ground that eliminate the ability to otherwise use the ground (Appellant's Attorney Appeal Brief, page 2).

Essentially, the City's interpretation of "building coverage" would mean that the Appellant's ADU would exceed the 720 square foot maximum, and the Appellant's interpretation would mean that the Appellant's ADU would be under the 720 square foot maximum.

Both the City and the Appellant rely upon the *Carrier* case which illuminates the applicable Utah statutory language that we are to "apply the plain language" to interpret language in a land use ordinance. Utah Code § 10-9a-306(1). The Utah Supreme Court in the *Carrier* case states very clearly as follows:

> In interpreting the meaning of a statute or ordinance, we begin first by looking to the plain language of the ordinance. *Biddle v. Wash. Terrace City*, 1999 UT 110, ¶ 14, 993 P.2d 875. When examining the plain language, we must assume that each term included in the ordinance was used advisedly. *Carrier v. Salt Lake County*, 2004 UT 98 ¶30.

The Appellant essentially believes that "building coverage" would be the portion of the building that actually touches the ground. The City believes that "building coverage" would mean measuring the exterior walls to the exterior walls, whether the walls actually touch the ground, taking a much broader view of coverage. This is how the City has consistently interpreted "building coverage" over the years. The Appellant and the City both used definitions from modern dictionaries of the words, building and coverage, to argue that their respective interpretation is correct. The Appellant goes further, somewhat persuasively, that the dictionary definitions do not provide sufficient clarity to come up with the plain meaning. I agree.

While the Appellant argues that when definitions are unclear that the "tie goes to the property owner" (Appellant's Counsel in Appeals Hearing), the courts do not jump so quickly to such a resolution. Appellant's "tie goes to the property owner" argument is true only with respect to favoring a proposed use, not in interpreting language in the ordinance. The Carrier case makes this clear:

> If the plain language of the ordinance is ambiguous, we may resort to other modes of construction. *O'Keefe v. Utah State Ret. Bd.*, 956 P.2d 279, 287 (Utah 1998). In so doing, however, we must keep in mind that "[w]hen interpreting a[n ordinance], it is axiomatic that this court's primary goal `is to give effect to the [county's] intent in light of the purpose that the [ordinance] was meant to achieve.'" *Biddle*, 1999 UT 110 at ¶ 14 (quoting *Evans v. Utah*, 963 P.2d 177, 184 (Utah 1998)). Since zoning ordinances are in derogation of a property owner's use of land, we are also cognizant that any ordinance prohibiting a proposed use should be strictly construed in favor of allowing the use. See *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995). *Carrier*, 2004 UT 98 at ¶31.

In another case, the Utah Supreme Court more recently emphasized the importance of following the plain language of the ordinances in context and not isolation when they wrote:

> When interpreting a statute, it is axiomatic that this court's primary goal 'is to give effect to the legislature's intent in light of the purpose that the statute was meant to achieve.' And as we have often noted, ―[t]he best evidence of the legislature's intent is 'the plain language of the statute itself.' ―But we do not interpret the 'plain meaning' of a statutory term in isolation. Our task, instead, is to determine the meaning of the text given the relevant context of the statute (including, particularly, the structure and language of the statutory scheme). (*Monarrez v. Utah DOT,* 2016 UT 10, Paragraph 11).

The Appellant argues that "building coverage" is synonymous with "building footprint." The City clearly intended that these two words would have different applications or they would not have used both words in the ordinance. I am persuaded that these two different terms were "used advisedly." "Building footprint" has been used to describe the actual portion of the building that

touches the ground, whereas building coverage takes on a broader definition of wall to wall coverage whether it touches the ground or not. I cannot interpret these terms in "isolation" but must take in the "relevant context of the statute" which pushes for the City's interpretation. If taken to the extreme, the Appellant's argument would allow an ADU to stretch over a significant portion of a lot as long as it doesn't touch the ground. This interpretation could lead to some absurd results.

Notwithstanding the fact that I have not relied upon the administrative interpretation provided by Mr. Daems, the City provided testimony that it does consistently apply and interpret this statute in the way that is consistent with my ruling. There is some general deference granted to the interpretations given the ordinance by the City. Thus, we "review a local agency's interpretation of ordinances for correctness, but also afford some level of non-binding deference to the interpretation advanced by the local agency." *Carrier,* 2004 UT 98 at P28, 104 P.3d 1208. Furthermore, "in close cases [the agency's] interpretation may be a determinative factor in choosing a particular interpretation over another." *Id.* at P39.

Issue B: Vesting of Design in Conditional Use Approval

The Appellant also claims that its ADU was vested because of the conditional use approval by the Planning Commission. The City agrees that the "use" of the ADU is a vested right, but not the actual designs that were included in the conditional use application.

The Appellant makes its argument that the ADU design was vested in the conditional use permit application because the design was included in the application. The Utah vesting rule states:

> (1)(a)(i) An applicant who has submitted a complete land use application as described in Subsection (1)(c), including the payment of all application fees, is entitled to substantive review of the application under the land use regulations:
>
> (A) in effect on the date that the application is complete; and
>
> (B) applicable to the application or to the information shown on the application. Utah Code § 10-9a-509(1)(a)(i) (emphasis added)

While the City does require plans and elevations showing general design and engineering aspects of a building to be included in a conditional use permit, those items are only included so that the Planning Commission can understand "how the use will be situated on a site, which requires review of a site plan and elevation drawings. This does not imply; however, that the Planning Commission has the authority to reduce minimum standards (such as building setbacks) or approve greater maximum limitations (such as building coverage) through the conditional use process" (City Appeals Staff Report, page 5). The City argues persuasively that the conditional use approval only applied to the ADU use, not its design. The City ordinance on the scope and effect of a conditional use approval is also dispositive:

> 21A.54.110: EFFECT OF APPROVAL OF CONDITIONAL USE:
> The approval of a proposed conditional use by the planning commission, or, in the case of administrative conditional uses, the planning director or designee, shall not authorize the establishment or extension of any use nor the development, construction,

> reconstruction, alteration or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals that may be required by the regulations of the city, including, but not limited to, a building permit, certificate of occupancy and subdivision approval.

The Appellant relies exclusively on Utah statutory language that "any information shown on the application", in this case the cantilevered design of the ADU, would be vested. But the Appellant fails to acknowledge the City's clear ordinance that a conditional use permit approval only approves the use and not anything beyond the use.

Conclusion

Based upon the materials in the City's Staff Report, the materials provided by the Appellant, other materials provided by the City, combined with the testimony presented in the public hearing leads me to the conclusion that the City's interpretation of the definition of building coverage is consistent with City Code and defensible based on Utah case law to be measured from exterior wall to exterior wall whether or not it touches the ground. I also find that the Appellant's vesting claim is inadequate to preserve its rights to build whatever was shown in the conditional use application since the approval provided by the Planning Commission was limited to use, not design.

Matthew T. Wirthlin, Appeals Hearing Officer