

SALT LAKE CITY LAND USE APPEALS HEARING OFFICER
DECISION ON REQUEST FOR VARIANCE
PETITION NO. PLNZAD2020-00490
1977 SOUTH SCENIC DRIVE
PUBLIC HEARING HELD OCTOBER 28, 2020
DECISION ISSUED NOVEMBER 3, 2020

On October 28, 2020, Tim and Cathy Chambless came before the Salt Lake Hearing Officer with a request for a variance to build an accessory dwelling unit (ADU) as an addition to their house at 1977 South Scenic Drive. The public hearing on this issue was combined with a public hearing before the Salt Lake Planning Commission, which was tasked with considering whether to grant a conditional use permit for the same project. The Conditional Use was granted. As set forth herein, the variance is granted as well.

The proposed ADU is an addition to the existing house with setbacks smaller than those required by the applicable zoning code; FR-3/12,000, which requires a rear-yard setback of 35 feet. The applicants design, configured to reflect the particular characteristics of the property proposes a 13 foot, 10 inch set back in the northeast corner and a 15 yard setback in the southeast corner. This reduction in the required setback is the reason for the variance request.

In Salt Lake City, a property owner is entitled to a variance from the strict terms of the zoning code where literal enforcement would cause an unreasonable hardship not necessary to carrying out the purposes of the code. The hardship should arise out of special characteristics related to the property that do not generally apply to other properties in the same zoning district, making the need for the variance exceptional. In particular, the alleged hardship should relate to the size, shape or topography of the property at issue. The Chambless property meets this standard by virtue of its placement on the slope of the east bench foothills where portions of the H-rock outcrop impact the ability to site an ADU consistent with the setback requirements.

In the application for the variance and in the presentation during the public hearing, the property owners testified that the rear yard of the property, and the house itself, are impacted by large boulders and rocks, making excavation and building without the variance extremely difficult if not impossible. This testimony was confirmed in a written submission in support of the Chambless application from Jerry Bergosh, a neighbor and a professional geologist who noted the impact of bedrock on excavation of the Chambless lot. Testimony and submissions before the Hearing Officer further evidenced that this issue is particularly severe on the Chambless property because the existing house (constructed by a previous owner) is built further back toward the foothills, bringing the impact of the bedrock and boulders more directly into the allowed building area. Because of these geologic particularities; the applicant has shown that literal enforcement of the setback rules would cause an unreasonable hardship. Furthermore, there are special circumstances attached to the Chambless that do not generally apply to other homes in the FR-3/12,000 zoning district. And because the house was constructed by a previous owner, the hardship is neither self-imposed; neither is it economic.

The Chambless application meets the other standards of the Salt Lake City zoning code. Granting the variance is essential of the enjoyment of a property right available to other homeowners in the Foothills district; the addition of an ADU. And because ADUs are permitted

as a conditional use, and the Chambless project is consistent with the code other than with regard to the setbacks, it is not contrary to the public interest and is consistent with the goals of the City's general plan. Granting the Chambless variance furthers the spirit of the zoning code and assures the application of justice.

Based on the substantial evidence in the record, described above, the variance is granted. The record demonstrates that the applicant's ability to build an ADU on the rocky, steep lot would result in a hardship not of their own making. The evidence is undisputed that the application for a variance meets the standards set forth in Utah Code Section 10-9-702 and Salt Lake City Zoning Ordinance, Section 21A.18.060 in that the hardship is related to specific characteristics of the property. Furthermore, literal enforcement of the set-back requirement would cause an unreasonable hardship not necessary to carry out the purposes of the zoning ordinance. The application meets each subsection of Section 21A.18.060, and is not in conflict with any other provision of Salt Lake City ordinance.

The request for a variance to reduce the rear yard setback as requested is granted.

Dated this 5th day of November, 2020.

/s/Mary J. Woodhead

Mary J. Woodhead, Appeals Hearing Officer