

SALT LAKE CITY LAND USE APPEALS HEARING DECISION

Case No. PLNAPP2020-00910

Appeal of a Special Exception, Appellant Scott Jaffa

1400 East Federal Way

January 26, 2021

On January 14, 2021, this matter came before the Salt Lake City Land Use Appeals Authority. A hearing was held, over WebEx, a video conferencing platform which allowed for the participation of all parties. Scott Jaffa, the appellant was present and represented by counsel; Salt Lake City was present, also represented by counsel, and the property owner; Jeffrey Tice, was also present. Members of the public were present and able to conference in to view and listen to the proceedings.

The appeal arises out of a decision by the Salt Lake Planning Commission on October 28, 2020 to approve a special exception allowing additional height as part of the construction of a modern home with a flat roof on 1400 E. Federal Way. The approved proposal involved demolishing the existing home and constructing a new home using the original foundation. Mr. Jaffa, a neighbor appeals. He asserts that the Planning Commission had the right and should have imposed additional conditions on the project because of its alleged adverse impacts on the neighboring properties.

On appeal, Mr. Jaffa carries the burden of proving, based on the record below, that the decision of the Planning Commission was incorrect while marshalling all evidence on the record which might support that disputed decision. In order to prevail, the appellant must show that the decision below is not supported by substantial evidence or was the result of an error of law arising out of a statute or ordinance in effect at the time the decision was made. Based upon the record, including the video of the Planning Commission meeting, and following arguments and submissions by the parties, the decision below is upheld.

A special exception to the zoning code, including additional height, is authorized when an applicant can show that the proposal meets standards set forth in Salt Lake City ordinance 21A.52.060. At issue in this appeal is subsection (D), which provides that the request be “Compatible with Surrounding Development: The proposed special exception will be constructed, arranged and operated so as to be compatible with the use and development of neighboring property in accordance with the applicable district regulations.” Appellant argues that this provision allowed the Planning Commission to impose conditions unrelated to the height exception in order to make the entire project more compatible with the existing residences in close proximity to the proposed project.

In making this argument, Appellant cites the language authorizing the Planning Commission to impose conditions associated with special exceptions: “Conditions and limitations necessary or appropriate to prevent or minimize adverse effects upon other property and investments in the vicinity of the special exception . . . may be imposed.” Salt Lake City ordinance 21A.52.070. The ordinance goes on to cite a wide range of possible conditions.

“A ‘special exception’ is an activity or use incidental to or in addition to the principal use(s) permitted in a zoning district or an adjustment to a fixed dimension standard permitted as exceptions to the requirements of this title of less potential impact than a conditional use but which requires a careful review of such factors as location, design, configuration and/or impacts to determine the desirability of authorizing its establishment on any given site.” Salt Lake City ordinance 21A.52.020. The ordinance goes on to state that “No application for a special exception shall be approved unless the planning commission, historic landmark commission, or the planning director determines that the proposed special exception is appropriate in the location proposed based upon its consideration of the general standards set forth below and, where applicable, the specific conditions for certain special exceptions.” And the section cited by Appellants is titled; “Conditions on Special Exceptions.”

The language of the code is clear that the review of the special exception and any conditions attached thereto should be tied to the impact of the exception itself. The definitional language in 21A.52.020 sets the function of the Planning Commission review to the impact of the exception on the project, site and location. Nothing in the code supports Appellant’s view that the Planning Commission had or has the authority to impose conditions beyond those specifically related to the impact of the height request on the project and consequently on the surrounding neighborhood.

Concerns about the Tice project were not associated with the request for additional height at the rear of the home. Appellant’s brief focuses on the perception that “the proposed design deviated widely from the neighborhood aesthetic.” All of the proposed conditions or reasons put forward to reject the special exception request were related to other design features, including the lack of street facing windows on the ground floor and the design of the entryway. While the many members of the Commission expressed hesitation with the design of the house, that hesitation was not tied to the additional height request.

Based on the record, and the language of the ordinance, the Commission did not err in finding that the proposal met the conditions for a Special Exception. Nor did the Commission err in not attaching conditions to the proposal, where the extra height was not associated with any adverse effects as identified by the Commission or evidenced by the record. Nothing in the Special Exception process or the zoning code gave or gives the Commission the authority to redesign the house as part of its review of the request for additional height.

Given that the Appellant has failed to identify any error of law and the record below supports the finding of the Planning Commission that the request for additional height met the standards for granting a Special Exception, the decision below is upheld.

DATED this 26th day of January, 2021.

/Mary J. Woodhead/
MARY J. WOODHEAD
Appeals Hearing Officer