

SALT LAKE CITY LAND USE APPEALS HEARING OFFICER
DECISION ON REQUEST FOR VARIANCE
PETITION NO. PLNZAD2021-00205
2829 E. GLEN OAKS DRIVE
PUBLIC HEARING HELD MAY 13, 2021
DECISION ISSUED MAY 28, 2021

On May 13, 2021, Stephen Miller and Sneha Parikh came before the Salt Lake Appeals Hearing Officer with a request for a variance to build an addition to their house at 2829 E. Glen Oaks Drive. The proposed addition encroaches on the rear setback. As set forth herein, the variance is denied.

The request in this case is for a variance that would allow construction of an addition that would intrude 6.5 feet into the required 35 yard rear yard setback, creating a reduced setback of just over 26 feet. Appellants request the setback on the grounds that their house was built on an irregularly shaped lot preventing them from adding to the rear of their home, given the setback rules. They produced evidence that within their neighborhood, the oddly shaped backyard is unusual. Thus, they argue that they are deprived of a substantial property right available to other property owners in their surrounding area. Also undisputed however, is that the front and side yard setbacks provide sufficient space to add on to their house.

The hearing and this decision are governed by Salt Lake City ordinance allowing for building in contravention of building envelope rules, where certain conditions are met. The ordinance, Section 21A.18.060(A) of the Salt Lake City zoning code follows State law on the same subject and requires that each of several elements be shown in order for a variance to be approved:

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;
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district;
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;
4. The variance will not substantially affect the general plan of the city and will not be contrary to the public interest; and
5. The spirit of this title is observed and substantial justice done.

Appellants assert that they are unable to expand their home into the rear setback, which is the most aesthetically appropriate place to build as well as being most respectful of the natural environment around the home. While this may be true, it does not create the hardship or special circumstances necessary to warrant a variance from the City's zoning rules.

During the hearing and in their written submissions, Appellants presented proof that there are special circumstances attached to their property that do not generally apply to other properties in their neighborhood in that the lot has a small backyard setback. They also made a

showing that the variance would not be contrary to the public interest, have a negative impact on the general plan and that the spirit of the zoning ordinance would be observed. They have not, however, shown either substantial hardship or that the special circumstances of their oddly shaped lot deprive their property of privileges granted to other properties in the same zoning district.” Section 21A.18.060(D)(2).

Appellants admitted during the hearing that they are not prevented from improving or developing their property. Rather, they testified that they prefer to build in the rear setback for aesthetic reasons; in order to maintain the design consistency of their home and preserve the natural environment existing on their lot, including mature oak trees. While these are laudable and perhaps even beneficial goals, they are not sufficient to support a variance from the City’s zoning rules. Appellants are not prevented from making their desired improvements; they are only deprived of expanding the home in their preferred manner. The right to act on that preference is not protected by the variance process. In this case, literal enforcement of the setback requirement does not cause an unreasonable hardship nor does it deprive them of a substantial property right. Finally, there is no evidence of a substantial property right to expand a house beyond its existing livable size. The application fails to meet each subsection of Section 21A.18.060.

The request for a variance to build within the rear yard setback as requested is denied.

Dated this 28th day of May, 2021.

/s/Mary J. Woodhead

Mary J. Woodhead, Appeals Hearing Officer