

Salt Lake City Land Use Appeals Hearing Officer

Variance Decision

Tiffany Rowe representing the owner – 1707 & 1709 S. Windsor Street

PLNZAD2022-01204

March 3, 2023

This application consists of a request for a variance in order to provide a second story inline addition to the home located on the property at issue. The request is for a variance to construct a vertical inline addition into the required ten (10) foot side yard setback. Variances are decisions made by the Appeals Hearing Officer per ordinance section 21A.18.020.

A hearing on this matter was held before the Appeals Hearing Officer on Thursday, February 16, 2023. Mr. Rowe, on behalf of the property owner, appeared and testified. Krissy Gilmore, Senior Planner, represented the City.

Ruling: The variance request is *denied* because the standards required by City Code to grant a variance were not met by the Applicant. The documentation in the twenty-four (24) page Staff Report, including the Application and other materials provided by the Applicant in this matter, along with testimony and discussion at the hearing, provide substantial evidence to support the conclusion reached and are incorporated herein by this reference. Each of the required variance standards set forth in the *Salt Lake City Code* Section 21A.18.060 were reviewed and it was determined that not all of the standards were met. The Applicant bears the burden of showing that all of the variance standards set forth in City Code are met. That burden was not met.

Discussion

Before the statutory variance requirements can be analyzed, the Salt Lake City Zoning Ordinance, Section 21A (hereinafter referred to as the “City Code”), provides a threshold analysis that is required where variances are prohibited:

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 found that the Applicant showed clearly that the proposed addition for the second story addition was not a temporary measure. However, I did find that the proposed inline addition is in fact greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the Applicant. Other options do exist, including adding a second story that does comply with the setback requirements. Furthermore, I could not find a hardship that could not be met by following existing standards. Thus, this preliminary condition was not met.

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.

The City Code provides further guidance on how to determine whether the lack of a variance would cause unreasonable hardship. The Code states that “the appeals hearing officer may not find an unreasonable hardship unless: 1. The alleged hardship is related to the size, shape or topography of the property for which the variance is sought; and 2. The alleged hardship comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.” (City Code 21A.18.060 B.1-2). The Applicant did not show nor was any evidence presented that showed an unreasonable hardship. There is nothing unusual about the size, shape or topography of the property, nor any circumstances peculiar to the property. Thus, the Applicant was unsuccessful in showing that the alleged hardship was an unreasonable hardship as required by the City Code.

Since all of the variance standards need to be met, there is no need to provide additional analysis for the remaining standards. Notwithstanding, it was found that the other variance standards were also not met. This is not to say that the request was ill-advised. This attempt at a variance is understandable and would be a positive improvement to the property in question. However, I am beholden to the requirements set forth in the city ordinances which require that all of the standards are met to request a variance. Variances, in my experience, are rarely granted because of the high standards set forth in the ordinance. I regret that my decision here is not what necessarily makes sense, but it is required by law.

Conclusion

Therefore, based on the written materials both from City staff and from the Applicant, as well as testimony in the hearing and review of the variance standards, I have determined to **deny** the variance to reduce the required side yard setback since all of the required standards for a variance consistent with Code Section 21A.18.060 were not met.

Dated this 3rd day of March, 2023



Matthew T. Wirthlin, Appeals Hearing Officer