Salt Lake City Land Use Appeals Hearing Officer
Appeals Decision
PLNAPP2023-000109
(Appealing Petition No. PLNZAD2023-00132)
May 22, 2023

This is an appeal by Tanner Clagett, representing the property owner Jin Weishan ("Appellant"), of a notice and order issued by the Civil Enforcement, dated January 24, 2023 (the "Notice and Order"), as well as that Revocation Notice revoking the zoning certificate, dated January 26, 2023 ("Revocation Notice"), for property located at 107 North F Street in Salt Lake City (the "Property").

Ruling. The decision here is to uphold the Notice and Order, and Revocation Notice, that the Property is in violation of the Salt Lake City Zoning Ordinance for operating a hotel/motel without city approval and not providing the required parking associated with the approved rooming/boarding use and deny the Appellant's petition.

A hearing on this matter was held before the Appeals Hearing Officer on Thursday, May 11, 2023. Mr. Todd Weiler appeared on behalf of the Appellant. Appearing on behalf of the City was Katherine Pasker, Attorney for the City.

The appeal was timely filed on February 10, 2023. The Appellant's appeal brief identified three grounds for disputing the claims of the Notice and Order, and Revocation. An extended discussion, including the identification and review of some of the evidence provided, was conducted at the Appeals 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 Code, § 21A.16.030 I.1).

The burden of proof is also on the Appellant here, as well as the duty to marshal the evidence. *Utah Code Ann*. §10-9a-705 and *State v. Nielsen*, 326 P.3d 645 (Utah 2014), and *Hodgson v. Farmington City*, 334 P.3d 484 (Utah Ct. App. 2014). The appeal should identify "the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error." See Code § 21A.16.030.J. It is an appellant's burden to prove that the zoning enforcement action was incorrect. See Code § 21A.16.030.J.

Discussion

The Appellant raises three issues for consideration on appeal, which I will address below:

Issue No. 1: Have multiple inspections and statements by the City estopped them from enforcing its zoning ordinance?

The Appellant goes to great lengths to cite a significant number of inspections the City performed on the Property relating to various alleged code violations over the years. The Appellant's purpose in doing so was to make the argument that the City made multiple inspections at the Property which resulted in each alleged code violation being resolved in which the City determined the Property was "compliant." See Appellant Appeal Brief at 3-4. Based thereon, the Appellant then argues that "the City has always determined the Property to be Compliant with City codes." Ibid, 3. The Appellant then cites correspondence with the City, an internal City report, and language from the business license issued for the Property to argue further that the Property was operating as a hostel as a non-conforming use. Ibid, 4.

Appellant timidly raises a "potential zoning estoppel claim for the Property." Ibid. However, other than citing a statement of the zoning estoppel doctrine from the case of *Checketts v. Providence City*, 2018 UT App 48, ¶21, the Appellent makes no application of the zoning estoppel claim to the Property nor provides any analysis. Neither did Mr. Weiler in the Appeal Hearing further elaborate nor provide any analysis to the application of the zoning estoppel claim.

The City in its appeal brief persuasively argued that the zoning estoppel doctrine does not apply to the Property "because Appellant can neither show a reasonable and good faith reliance on a government act or omission nor a substantial change in position or incursion of extensive obligations." City Appeal Brief, 5. I agree that the "Appellant has failed to allege [or show] any substantial change or expenses he has made with respect to this Property beyond its mere purchase in 1994." Ibid, 6.

Furthermore, the City, without evidence provided to the contrary from the Appellant, has clearly demonstrated that the City has never revoked the conditions set forth in the zoning certificate issued in 1979 ("Original Variance"). Just because the City has not enforced or raised the issue with the Appellant until recently, such delay does not equate with waiving its ability to enforce its requirements for the Property. See City Appeal Brief, 4-6.

Finally, the City demonstrated that the various enforcement actions that resulted in the Property being "compliant" were strictly related to the specific issues raised by the enforcement actions, not every issue potentially related to the Property. If such were not the case, such a simplistic and broad interpretation of enforcement actions by the City would require a comprehensive review of every possible violation related to a property. Other than providing copies of the

various enforcement actions, the Appellant provided no evidence that such enforcement actions were intended to be a comprehensive review of the Property identifying every possible violation. See City Appeal Brief, 6-8.

In conclusion, the Appellant failed to raise any successful legal argument, nor provide evidence, that the City's failure to enforce the conditions of the variance originally granted the Property (as a rooming house, with sufficient (18 stalls) parking would prevent the City from enforcing the terms and conditions of the Original Variance now.

Issue No. 2 – Notice of Conditions of Variance

Appellant further argues that it had no notice of the conditions of the Original Variance and could not be expected to spend the effort to track down the documentation available at the city that contains such details. The City clearly argued and provided evidence that the Appellant was aware of or should have been aware of the conditions of the Original Variance and that they were still in force and effect. See City Appeal Brief, 8-10. The Appellant provided no evidence to the contrary.

Issue No. 3 – Non-conforming Use

Appellant argues that the Property can operate as a hostel because it has always operated as such and it is a non-conforming use, thereby ignoring the Original Variance. The Appellant relies almost exclusively on an "internal city log document prepared in 1998." City Appeal Brief, 10. No evidence nor analysis was offered by the Appellant demonstrating that this "internal city log document" had the force of law to overturn the Original Variance conditions and requirements. The City also points out, again without argument from the Appellant, that the Appellant never went through the established legal process to identify the use of the Property as a non-conforming use. City Appeal Brief, 11.

Conclusion

Despite the long record of the Property being operated as a hostel, the Appellant failed to identify either in its appeal brief, nor in the appeals hearing, that the Notice and Order, and Revocation Notice, were issued in error. The Appellant failed to provide relevant evidence sufficient to sustain its claims and failed to show that the decision violated any law. Therefore, the Notice and Order, and Revocation Notice, must be upheld and enforced accordingly.

Matthew T. Wirthlin, Appeals Hearing Officer