

SALT LAKE CITY LAND USE APPEALS HEARING OFFICER
DECISION ON REQUEST FOR VARIANCE
PETITION NO. PLNZAD2023-00132
714 & 760 NORTH 900 WEST
PUBLIC HEARING HELD APRIL 27, 2023
DECISION ISSUED MAY 5, 2023

Caleb Corbridge representing the property owner filed an application directed to the Salt Lake City Land Use Appeals Hearing Officer requesting a variance to allow a 6 foot fence in the front of an apartment complex at approximately 714 & 760 North 900 West where Salt Lake City ordinance limits the height to 4 feet. The applicant asserts that high crime in the neighborhood necessitates the higher fence. Pursuant to Salt Lake City ordinance 21A.18.020; variances are determined by the Appeals Hearing Officer following a public hearing.

On January April 27, 2023, a public hearing on this matter was held and appearances were made by Mr. Corbridge and Brian Whalen on behalf of the property owner and Cassie Younger for Salt Lake City. No testimony was offered when the hearing was opened for public comment. The property owner argued in favor of the variance. The Salt Lake City staff report and Ms. Younger asserted that denial was appropriate. Based on the evidence in the record including testimony at the hearing and the staff report, the variance is denied.

The applicant is proposing a variance to allow construction of a 6 foot fence on the street facing frontage of a multi-family apartment complex. All access to the property is on 9th West. Salt Lake City code section 21A.40.120.E(1)(a)(1) limits fence heights in front yards in applicant's zoning district to 4 feet. The applicant did not present any evidence relating to the size, shape or topography of the site but rather asserted that substantial crime both in the neighborhood and at the apartment complex necessitates the higher fence. The applicant presented substantial evidence of a significant crime problem in the neighborhood and at the address.

Despite this undisputed evidence of criminal activity at the address, the application does not meet Salt Lake City's standards for the grant of a variance. While these concerns appear to be legitimate, they are not sufficient to qualify for a variance. Utah Code and Salt Lake City ordinance require an applicant to comply with each factual predicate listed in Code sections 21A.18.050 and 21A.18.060. "The applicant shall bear the burden of proving that all of the conditions justifying a variance have been met" Utah Code §10-9-702(3). The application fails in this regard.

The code requires that before a variance may be granted, the applicant must show that the hardship prompting the request is "related to the size, shape or topography of the subject property." It is undisputed that no evidence was presented and no argument made that the physical characteristics of the property necessitated the variance.

Even if the property met the hardship requirement set forth in 21A.18.050, the application does not meet the related standards set forth in 21A.18.060. For example, an applicant is required to show that the "special circumstances;" deprive "the property of privileges granted to other properties in the same zoning district." The applicant did not present evidence indicating that other properties in the zoning district have been granted approval for above height fences in front

yards. While the applicant cited to some above-height fences in the District, there was no evidence that such fences had been approved by the City. The presence of some unlawful structures does not create a privilege “granted” to other property owners.

Based on the evidence in the record, described above, the variance is denied. The evidence is undisputed that the application for a variance does not meet the standards set forth in Utah Code Section 10-9-707 and Salt Lake City Zoning Ordinance, Section 21A.18.060 in that the hardship is not related to specific characteristics or hardship tied to the property.

Dated this 5th day of May, 2023.

/s/ Mary J. Woodhead

Mary J. Woodhead, Appeals Hearing Officer