

## Salt Lake City Land Use Appeals Hearing Officer

Variance Decision

Mark Ibrahim – 22 E Churchill

PLNZAD2023-00522

October 19, 2023

This application consists of a request for a variance to increase the allowable fence and gate height in a front yard to six (6') feet from the allowable forty-two (42") inches located at 22 E Churchill in Salt Lake City (the "Property"). Variances are decisions made by the Appeals Hearing Officer per Salt Lake City Zoning Ordinance, Section 21A (hereinafter referred to as the "City Code") section 21A.18.020.

A hearing on this matter was held before the Appeals Hearing Officer on Thursday, October 19, 2023. Mr. Mark Ibrahim (the "Applicant"), the owner appeared and testified. Meagan Booth, Principal Planner for the City, appeared and represented the City.

### Discussion

City Code provides a threshold analysis that is required before variances can be considered, stating 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 find that the Applicant showed that the proposed fence and gate was not a temporary measure. However, because the Applicant could construct a fence and gate at 42" inches to relieve the unnecessary hardship of securing the Property, I find that the requested variance is "greater than the minimum variation necessary to relieve the unnecessary hardship." The Applicant did not provide any evidence or testimony refuted this threshold issue. He only was able to lay out his arguments of how much better a six-foot fence would be to provide even greater security to the Property. The variance would not authorize a use not allowed by law as the use would not change because of the variance requested. However, because subsection B of the above elements are not met, and the request for a variance fails.

However, in order to provide a thorough analysis of the variance request, I will analyze each of the additional variance elements set forth in City Code, Section 21A.18.060, all of which 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 upon the Applicant the burden of showing that the variances meet all of the standards for a variance (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.*

City Code provides guidance on how to interpret an “unreasonable hardship.” City 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). There is no question that the first condition is met as the topography with a significant grade change from one end of the Property to the other is significant and is related to the alleged hardship.

But in reviewing whether the alleged hardship stems from “circumstances peculiar to the property” and “not from conditions that are general to the neighborhood”, this is where the Applicant’s arguments fail to measure up to the standards. The City in its staff report and testimony provided evidence showing that the topography is similar to all of the properties in the neighborhood with significant grade changes being located on a slope. Essentially, the topography is “general to the neighborhood.” The Applicant failed to refute the City claims, and failed to provide its own evidence of unreasonable hardship. Thus, this element of a variance is not met.

*21A.18.060. Standard for Variances A.2. There are special circumstances attached to the Property that do not generally apply to other properties in the same zoning district.*

City Code provides guidance on how to determine whether special circumstances exist, namely, that (1) “the special circumstances relate to the alleged hardship; and (2) the special circumstances deprive the property of privileges granted to other properties in the same zoning district” (21A.18.060D).

The City has shown that the sloping topography is found on many properties in the neighborhood. The Applicant’s only argument is that the driveway is located below the street level, while all other driveways are located above the street level. The problem with this argument is that this is a self-imposed hardship since the driveway was constructed below the driveway by the property owner, albeit not the Applicant, which theoretically, could have been constructed elsewhere or not at all. City Code states that if the conditions are self-imposed, the Appeals Hearing Office may not find an unreasonable hardship. See Section 21A.18.060.C. The Applicant failed to provide any evidence to the contrary. Thus, the Applicant has failed to show that it meets this second variance standard.

*21A.18.060. Standard for Variances A.3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.*

The Applicant did not show that granting the requested variance is “essential to the enjoyment of a substantial property right possessed by other property in the same district.” The Applicant seemed to suggest that since many if not most of the surrounding properties in the

neighborhood had six (6') foot fences in front yards, that somehow is equivalent to a “substantial property right.” However, the City surmised that other higher fences could have been allowed under previous versions of the Code or under the previous special exception process which was removed from current City Code. Without more information about the circumstances surrounding the higher fences in surrounding properties, I am unable to properly evaluate how that might affect the Applicant’s arguments. Thus, the Applicant failed to show compliance with this variance element.

*21A.18.060. Standard for Variances A.4. The variance will not substantially affect the general plan of the city and will not be contrary to the public interest.*

I am not persuaded that the proposed variance if granted would substantially affect the general plan of the city or would be contrary to the public interest. The City worries about the “precedent” it would set, yet the Applicant already showed that six foot fences are the norm in the neighborhood. Thus, the City’s arguments are unpersuasive and the Applicant successfully meets this fourth element.

*21A.18.060. Standard for Variances A.5. The spirit of this title is observed and substantial justice done.*

Finally, the City uses the same precedent argument that the proposed variance would violate the “spirit of this title” and “substantial justice” would not be done. But a simple statement does not make the argument valid. But because the Applicant failed to actually make this argument and prove that this element is made, I cannot make the argument for the Applicant. Thus, the Applicant failed to meet this element for lack of evidence.

## **Conclusion and Ruling**

In conclusion, because at least three of the five standards required by City Code to obtain a variance were not met by the Applicant, I reluctantly must **deny** the variance request. My findings herein are based on the documentation in the lengthy Staff Report, including the Application and other materials provided by the Applicant in this matter, along with testimony and discussion at the hearing. These items collectively 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 discussed by the City in the Staff Report and were not adequately refuted by the Applicant. The Applicant also responded in writing to the City, with some oral testimony at the hearing, but failed to bear the burden in showing that the elements were met. While I am sympathetic to the Applicant’s concerns, I must follow the law. Based on the evidence submitted orally and in writing, I find that all of the elements for a variance were not met, and because all are required, the variance request fails and is denied.

**Dated this 27th day of October, 2023**

A handwritten signature in blue ink, appearing to read "Matthew T. Wirthlin". The signature is written in a cursive style with some overlapping letters.

Matthew T. Wirthlin, Appeals Hearing Officer