

Salt Lake City Land Use Appeals Hearing Officer

Variance Decision

Wayne Rossberg – 615 East 7th Avenue

PLNZAD2023-00552

October 19, 2023

This application consists of a request for a variance to allow an accessory building (garage or carport) on a driveway located at 615 East 7th Avenue in Salt Lake City (the “Property”). The specific request for a variance was to allow the accessory building partially behind the home rather than wholly behind the home as required by Salt Lake City Zoning Ordinance, Section 21A (hereinafter referred to as the “City Code”) subsection 36.020.B.3. Variances are decisions made by the Appeals Hearing Officer per City Code section 21A.18.020.

A hearing on this matter was held before the Appeals Hearing Officer on Thursday, October 19, 2023. Mr. Wayne Rossberg, the owner appeared and testified, along with David Richardson and Jodi Bell, architects for Mr. Rossberg. Tervor Ovenden, Associate 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 addition for an accessory building was not a temporary measure, and that they are not requesting more than the minimum variance necessary to relieve the alleged unnecessary hardship of inadequate covering for parking on a lengthy driveway. The variance would not authorize a use not allowed by law as the use would not change because of the variance requested. The Applicant is proposing the minimum variation necessary to accomplish their desires for safer driveway covered parking. Thus, I find that these initial conditions are 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 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 further guidance on how to determine whether the lack of a variance would cause “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 and very lengthy driveway is related to the alleged hardship.

Whether the alleged hardship stems from “circumstances peculiar to the property” and “not from conditions that are general to the neighborhood” is where the Applicant falls short. The City in its staff report provided evidence showing that the topography is similar to many of the south-facing properties in the neighborhood. In other words, 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, the Applicant failed to show that it meets this element of a variance.

Notwithstanding that all elements for a variance must be shown, and the Applicant failed to meet the first element, for sake of completeness, I will continue the analysis for all of the elements.

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 for finding 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 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 five of eight properties surveyed of south facing properties, five have garages. Such examples, however, were provided without context as to how and why such garages were allowed. Thus, such examples are of little use in analyzing whether the Applicant’s variance request meets this or any of the elements required by City Code. Furthermore, the fact that all of the homes did not have garages by itself seems to point to the opposite result – that garages are not a “substantial property right possessed by other property.” Finally, the City pointed out that a garage could in fact be built if it moved it further back on the

property and driveway (See Staff Report, Attachment D). 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 believe that is arguable that the proposed variance will not substantially affect the general plan of the city and will not be contrary to the public interest. The City argues that the garage not completely behind the primary structure creates an impact on the abutting property, but failed to show how. On the contrary, the Applicant persuasively argued that the proposed structure would not be noticeable from the streetscape, would appear similarly situated mostly behind the primary structure, and would only extend approximately one foot (1') above the neighbor's fence line, thus not substantially affecting any views or light, etc. I am persuaded by the Applicant's arguments and find that the Applicant has at least shown that the proposed variance would not "substantially" affect the general plan of the city and will not be contrary to the public interest.

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

Finally, the City argues in a somewhat circular fashion that because the variance does not comply with the variance elements of Cide Code, that the spirit of the City Code is not observed, and makes no mention of whether substantial justice is done. However, given the limited nature of the variance request that would have little effect, if any, on neighboring property owners, it would appear that the variance request would meet the "spirit" of the City Code. Furthermore, given the consistent and lengthy ends to which the Applicant has tried to work in the system to obtain approvals, he seems to be thwarted at every turn. For substantial justice to be done, it would argue in favor of granting the requested variance.

Rebuttal and 1993 Variance

While it is arguably outside the scope of the request and application for a variance, I feel compelled to address the Applicant's arguments that the variance should be granted because of the 1993 already granted for the parking pad, or that a variance is unnecessary given City Code in force in 1993. In fact, the Applicant spends more time arguing his case based on the prior variance granted and the meaning of the 1993 City Code than he does on the elements of a variance in current City Code.

The Applicant is relying heavily on his claim that he was told during the hearings for the 1993 Variance that he would be allowed to build a carport/garage where the parking pad was to be located. Unfortunately, such a claim was not reduced to writing nor reflected in the minutes. But more importantly, such language was not included in the actual written decision of the Zoning Administrator. If such language had been included, the Applicant's attempts at obtaining a variance for the accessory structure would have been unnecessary. The Applicant would have us believe that even though the language of the 1993 Variance reference to a "detached parking

pad” is the equivalent of approving a garage, because the language of the 1993 City Code allowed for a garage already in a side yard. Unfortunately for the Applicant, we are stuck with the plain language found in the written materials which clearly allow for a “detached parking pad” rather than a garage or carport. If such had been the intent of the Zoning Administrator, then he should have said so at the time. Thus, we are unable to grant any remedy to the Applicant based on these arguments. Furthermore, such a determination would be outside the scope of the Appeals Hearing Office given that the matter before us is based on a variance request under Section 21A.18.060 of the City Code.

Conclusion and Ruling

In conclusion, because at a minimum three of the five standards required by City Code to obtain a variance were not met by the Applicant, I have no choice but to **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 at length 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. Based on the evidence submitted orally and in writing, I found that only the 4th and 5th variance standards were met by the Applicant. Because City Code requires that all five requirements be met, the variance request fails and is denied.

Therefore, based on the written materials both from City staff and from the Applicant, as well as testimony in the hearing and discussion of each of the variance standards, I must **deny** the variance to allow an accessory building partially behind the primary structure since all of the required standards for a variance consistent with Code Section 21A.18.060 were not met.

Dated this 27th day of October, 2023



Matthew T. Wirthlin, Appeals Hearing Officer