

SALT LAKE CITY LAND USE APPEALS HEARING OFFICER
DECISION ON REQUEST FOR VARIANCE
PETITION NO. PLNZAD2023-00519
5995 AMELIA EARHART DRIVE
PUBLIC HEARING HELD SEPTEMBER 21, 2023
DECISION OCTOBER 6, 2023

Jason Boal, Snell & Wilmer, representing Albany International Corporation, filed an application directed to the Salt Lake City Land Use Appeals Hearing Officer requesting a variance to allow a 6 foot fence between the front property line and primary façade of a light manufacturing facility at 5995 Amelia Earhart Drive where Salt Lake City ordinance limits the height to 4 feet. The applicant asserts that crime in the neighborhood and topography related to a large corner lot and a sloping irrigation ditch necessitate 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 September 21, 2023, a public hearing on this matter was held and appearances were made by Ben Welch and Jason Boal of Snell & Wilmer on behalf of the property owner and Diana Martinez 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. Martinez asserted that denial was appropriate. Based on the evidence in the record including testimony at the hearing and the staff report, and follow up submissions by the parties in relation to the irrigation ditch, the variance is denied.

Although the applicant submitted persuasive evidence supporting the benefits of the fence, those submissions are not sufficient to meet the standards set forth in Salt Lake City Code. 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 variance process is not an equitable review of the facts but rather a consideration of whether the circumstances comply with the strict conditions set forth in the ordinance. 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.” 21A.18.060 (B). The applicant asserts two hardships related to this provision, first; that the location on a corner lot makes the property more susceptible to crime and second; that the irrigation swale puts the fence height at a level where a six foot fence will appear to be the same as the permitted four foot fence. Both of these arguments fail.

As to the Applicant’s initial argument, development on a larger corner lot is not a function of size, shape or topography. Every block in Salt Lake City includes corner properties, some with larger than usual lot sizes. This configuration is not unusual or a special characteristic of applicant’s property. The size of the relevant frontage is not unusual. The corner lot positioning is a function of location which is not a factor set forth in the City’s ordinance. Thus, this argument is not sufficient to invoke the right to a variance.

Second, the existence of the irrigation swale between the parking lot and public street does not create a topographic condition sufficient to require a variance. Salt Lake City ordinance provides a method for measuring fence height which takes into account the grade of the property: “The height of a fence, wall, or hedge shall be measured from the finished grade of the site as defined in section [21A.62.040](#) of this title. In instances of an abrupt grade change at the property line, the height for fences that are located on top of a retaining wall shall be measured from the top of the retaining wall.” Salt Lake City Code 21A.40.120 (E)(6). Thus, the possibility of a lower grade has been taken into account in the ordinance. Moreover, the applicant has not provided a survey showing the elevation difference between the proposed site of the fence placement and the street. Thus, applicant’s assertion that the fence will be at four feet as a result of swale is speculative. Finally as the City notes, the swale is a man-made and the result of site planning by the property owner. All of these factors support a finding that the swale does not provide a topographic basis for the variance requested in this case.

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.” In that regard, the applicant argues that a number of other businesses in the same district have been allowed to build six foot fences. But the evidence indicates that most of those higher fences were built when the City was operating under a different statutory scheme governing fence heights and special exceptions. The decision by the City to do away with the special exception process is a policy decision that the Appeals Hearing Officer cannot set aside simply because properties building fences before the zoning change were allowed to build higher. The ordinance change represents a specific policy decision by the City rather than a discriminatory grant of privilege to some property owners.

The applicant is also required to show that literal enforcement of the rule would cause not just hardship, but unreasonable hardship. Similarly, the applicant must show that the hardship comes from “circumstances peculiar to the property, not from conditions that are general to the neighborhood.” The existence of some crime is a condition general to the neighborhood, not specific to the property. And while the nature of the applicant’s work may make crime more concerning, that factor is not a condition peculiar to the property.

While the application does support some elements of the ordinance, for example “the variance will not substantially affect the general plan of the city and will not be contrary to the public interest,” the ordinance requires compliance with all standards.

Based on the evidence in the record, described above and because the request fails to comply with all standards set forth by the City for the granting of variances, the application 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 6th day of October, 2023.

/s/ Mary J. Woodhead

Mary J. Woodhead, Appeals Hearing Officer