

SALT LAKE CITY LAND USE APPEALS HEARING OFFICER
DECISION ON REQUEST FOR VARIANCE
PETITION NO. PLNZAD2023-00837
639 SOUTH 300 EAST, SALT LAKE CITY
PUBLIC HEARING HELD DECEMBER 21, 2023
DECISION FEBRUARY 13, 2024

George Gardner, represented by attorney Bruce Baird, filed an application directed to the Salt Lake City Land Use Appeals Hearing Officer requesting a variance to reduce front and side yard setbacks in order to increase the size of a non-complying structure located at 639 South 300 East. Pursuant to Salt Lake City ordinance 21A.18.020; variances are determined by the Appeals Hearing Officer following a public hearing.

On December 21, 2023, a public hearing on this matter was held and appearances were made by Bruce Baird of Bruce R. Baird PLLC on behalf of the property owner and Olivia Cvetko, Principal Planner for Salt Lake City. No testimony was offered when the hearing was opened for public comment. As a result of argument made by applicant's attorney regarding the correct standard for assessing this variance, the record remained open through February 5, 2024 for the parties to provide supplementary information regarding the status of Utah law with regard to the relevant legal issues. The matter is now closed following supplemental submissions by the applicant and Salt Lake City. The property owner argued in favor of the variance. The Salt Lake City staff report and Ms. Cvetko 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, the variance is denied.

The property in question is a small single family home on a landlocked, noncomplying parcel. The property is accessed via private drive easement. The house was built in 1910 on a 3712 square foot lot. At the time the lot was formally recognized, the City required a minimum lot size of 3000 square feet. The house, at 706 square feet, is the smallest in the RMF-35 zone where it resides. Most of the other houses in the surrounding blocks are significantly larger.

The question raised by this variance request is not whether the applicant should be allowed to expand the size of their house. Rather, the variance request is to expand the size of the house contrary to the set-back requirements set forth in the zoning rules where the expansion could occur without a variance but a different design.

The allowed front yard setback for the property is 20 feet, and the existing setback for the conforming property is 8 feet. For the rear, the required set back is between 20 and 25 percent. The existing setback is 11 feet and the applicants are proposing a plan with a 2 foot setback. The proposed plan will increase the nonconformity on two sides of the property.

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 “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.” 21A.18.060. There is no dispute that the alleged hardship prompting the request is “related to the size, shape or topography of the subject property.” Salt Lake City Code § 21A.18.060 (B).

In this case, the size of the property may limit expansion of the structure in two directions but a larger renovation remains feasible. This is also undisputed. Thus, the size of the property does not create a hardship preventing the applicant from enlarging the house.

However, even if the property met the hardship requirement set forth in Salt Lake City Code § 21A.18.050, the application does not meet the related prerequisite for a variance set forth in Salt Lake City Code § 21A.18.060. Contrary to argument set forth by applicant in the supplemental briefing, the grant of this variance is not “essential to the enjoyment of a substantial property right possessed by other property in the same district.” Utah Code § 10-9a-702(a)(iii).

During the hearing, the applicant argued that the right to renovate a house to the same or a similar size as properties in the same zoning district is a substantial right as defined by city ordinance and State law. However, supplemental briefing by the applicant failed to identify any legal support for the theory that the existence of larger houses makes residing in small 1-bedroom, 1-bathroom house a “special circumstance” implicating a denial of a substantial property right. Moreover, the applicant admits that while less practical, the homeowner can build higher or add on to the existing front of the home. As Salt Lake City stated in its response to the supplemental letter; the applicant can prevail only with a finding that a substantial property right exists in “building a side and rear addition of a certain size.” There is no legal support in the record or Utah case law for the existence of such a right.

Based on the evidence in the record, described above and because the request fails to comply with the prerequisite 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 §10-9a-702 and Salt Lake City Zoning Ordinance, §21A.18.060, in that there is no hardship implicating a substantial property right.

Dated this 13th day of February, 2024.

/s/ Mary J. Woodhead
Mary J. Woodhead, Appeals Hearing Officer