

Decision of the West Haven Hearing Officer
Variance Request – 4170 South 3500 West, West Haven
May 17, 2021

This matter is reviewed in response to an application for a Variance submitted by Scott Toone (the “applicant”), on or about May 6, 2021. The property at issue is located at 4170 South 3500 West in West Haven City.

A hearing regarding the application was held on Monday, May 17, 2021. Participating were Scott Toone; Steve Anderson, West Haven City Planner/Engineer; and Emily Green, West Haven City Recorder. The hearing was broadcast as a Zoom meeting and was also the subject of an audio recording. The Zoom recording, audio recording, and email exchanges between the City, the Hearing Officer, and Mr. Toone are also part of the record of this decision. Also included in the record is a letter from Mr. Toone to Craig Call dated May 11, 2021 and attached documents totaling 12 pages.

Notice of the request and the public hearing date and time was published by the West Haven City Recorder as provided by ordinance. No comments were received from the public, either in person or in the zoom conference.

In order to qualify for a variance, certain criteria must be met under Utah Code Ann. 10-9a-702(2)(a). Each one of the criteria is cited below, along with the findings of fact and conclusions of law supporting the decision that this request meets the criteria.

- (i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;

The ordinance requires a ten foot side yard setback in the A-2 Zone. A strict application of the ten foot setback is unreasonable in this instance because 1) while the subject property is indeed in the A-2 zone, the property is surrounded by other lands designated as part of the Mixed Use zone; 2) the abutting properties in the Mixed Use zone have no setback requirements; 3) along the North side of the subject property, where the side yard setback variance is requested, is a street, 4150 South Street, the pavement of which is located some distance from the property and buffered by extensive landscaping, a sidewalk, and curb and gutter; 4) also along the North side of the property is a six foot tall fence, which runs the entire length of the property along that property line; 5) the property was not created as a corner lot. The street along the North property line was platted and developed after the subject property had already been improved for residential uses. The property was not originally created as a corner lot; 6) the existing landscaping includes features such as mature trees that it is in the interest of the community to preserve and which would otherwise be lost without the requested variance. The combination of these factors, inherent in the land and not the use of the land, imposes an unreasonable hardship on the property owner.

- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;

As stated above in item (i), there are at least six characteristics of the property which are unique to the property and not typical of other properties in the A-2 zone.

- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

Without the variance, use of the property would be unreasonable restricted without any identified public interest in those restrictions. As stated in the Municipal Land Use, Development, and Management Act, (MLUDMA) found at Utah Code Ann. 10-9a-102(1)(i), the purpose of land use regulations includes “fundamental fairness in land use regulation”. This applies in the application of a land use regulation to an individual property. While an ordinance will be upheld under almost all circumstances so long as it is “reasonably debatable” that the ordinance advances the general welfare of the community and the purposes of MLUDMA, the ordinance here does not advance the general welfare or purposes of MLUDMA “as applied” to the unique circumstances of this property. There is no evidence in the record supporting the conclusion that the setback imposed here advances any public interest. No such argument was presented by any City representative or anyone else. There is other evidence, provided by the applicant and supported by the City representative, that the land use regulation unfairly limits the use of the subject property as applied in this narrow situation. The substantial property right at issue here is sometimes known as “substantive due process”, which is the right is to own and use real property free from a regulation that is applied in an arbitrary, capricious or unreasonable manner as is the ordinance in this instance.

- (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest;

Because a fence lies along the property line at issue here, members of the public will likely be unaware that the proposed structure exists inside the yard area. There is no evidence in the record that any interest of the public will be affected by granting the variance, with the exception of the goal we all share that the administration of the land use regulations be pursued with fundamental fairness and not in a manner that violates substantive due process.

- (v) the spirit of the land use ordinance is observed and substantial justice done.

The land use regulations advance the goal of allowing practical use of parcels of land, preserving property values, providing for orderly growth, and protecting the interests of property owners. The interests of the owners of other properties in the neighborhood and of the public at large are advanced by granting this narrow variance and respecting the duty that the regulations be applied with fundamental fairness and not in an unreasonable manner.

It is further found that the requirements of the West Haven City Ordinances for issuance of a variance are also met. The parcel here involves exceptional situations or conditions as outlined above. Granting the variance does not impose substantial detriment to the public good nor impairment of the intent and purpose of the master plan or the ordinance. The hardship is not economic nor is it self-imposed, as it relates to the configuration of this unique parcel of land including external factors which were imposed by the land use regulations and the abutting property uses.

The criteria for a variance having been met, a narrow and specific variance reducing the minimum side yard setback, as defined in the local land use regulations, along the north property line of the property located at 4170 South 3500 West from a minimum of 10 feet to a minimum of 5 feet is approved.

Dated this 17th day of May, 2021.

/s/Craig M Call
West Haven Administrative Hearing Officer