
BEFORE THE APPEAL AUTHORITY
TOWN OF SPRINGDALE, UTAH

Application for Variance re Parcel S-22,
Joe Pitti, Applicant

RULING ON VARIANCE APPLICATION

This matter is before the Administrative Hearing Officer (“AHO”) on an application for variance under Springdale Ordinance Section 10-6-5. The variance seeks relief from Section 10-11A-6 of the Springdale Town Ordinances, which imposes minimum setback requirements for buildings in the Central Commercial (“CC”) zone. The variance is requested to permit the applicant to build a structure containing a garage and employee housing on the property. In connection with that construction, the applicant also seeks to address an existing drainage issue on the Property.

A hearing on the application was held on May 24, 2022. Applicant Joe Pitti represented himself at the hearing. Also appearing on the applicant’s behalf was Mark Chambers. The AHO has considered the statements and presentation at the hearing, and reviewed and considered the application, the documents submitted with the application, and the report and accompanying attachments from the Town’s Director of Community Development (the “Report”).¹ Based thereon, the AHO makes the following findings and ruling.

FACTUAL BACKGROUND

At issue is parcel S-22, with a property address of 980 Zion Park Blvd (the “Property”). The Property owner is Arch Angel LLC. The applicant is Joe Pitti, on behalf of Arch Angel (“Applicant”). The Property is zoned Central Commercial (“CC”) and is located in the core of the Town’s downtown area. It is used as a bed and breakfast (called “Under the Eaves”), and also contains the owners’ residence. Arch Angel has owned the Property for about 13 years during which time the Applicant has been continuously running the bed and breakfast business.

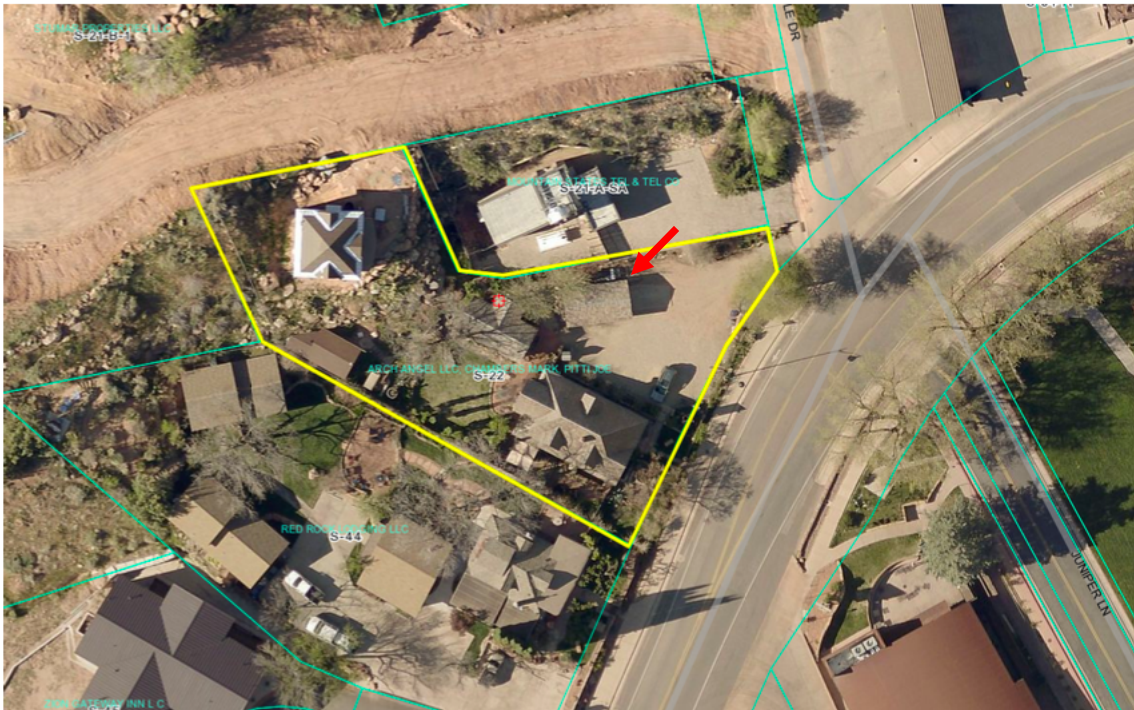
The Property is next to another lodging facility on the south, an employee housing property on the northwest, and a communications utility building on the northeast. The west side is adjacent to State Route 9. The Property has an odd and irregular shaped geometry. The rear of the Property is a steep hillside. Most of the development on the Property lies below this steep hillside.

The Property is currently developed with a single-family residential style structure which is used as a bed and breakfast. This home is one of the oldest structures in the Town and is the only

¹ The Report is dated May 19, 2022.

structure in the Town listed on the National Register of Historic Places. Along with the historic home, the Property has two small outbuildings (one of which is a historic cabin relocated from Zion National Park) which are used in connection with the bed and breakfast business. An owners' residence is located at the rear of the Property at the top of the steep slope. This structure was built in late 2020.

In addition to these structures, the Property contains a detached garage. This existing garage is non-compliant with the side setback requirement. The side setback requirement in a CC zone is a minimum of 10 feet. *See* Springdale Town Code § 10-11A-6(3). The existing detached garage is seven feet from the side Property line at its closest point. It is unknown how this detached garage was constructed within the setback in violation of the setback requirement. The existing detached garage is identified with the red arrow below:



The Applicant proposes to remove this garage and replace it with a new structure which contains a garage, check-in lobby, upstairs employee housing unit, and a storage basement. The Applicant proposes to place the new foundation and lower level of the new building four feet from the side property line. The upper level is proposed to cantilever over the ground and would extend all the way to the side property line. This does not comply with the required ten-foot side setback in the CC zone. The Applicant is thus requesting relief from the side setback requirement in 10-11A-6(A)(3). The Applicant requests that the setback be reduced from ten feet to zero feet.

There is also a drainage component to the Applicant's proposed plans and variance application. There is a normally dry wash with its head in the foothills above the Property which flows down to the north of the Property. At that point the wash enters a large culvert and runs

underground for approximately 235 feet through the adjacent property and a portion of the Property. The culvert ends on the Property near the lot line with the communications utility property to the north. At that point the wash runs in a small open channel paralleling the Property line. Runoff from the wash can be significant during extreme storm events. If the variance is granted, the Applicant intends to address the drainage issue as part of the construction activities.

LEGAL STANDARD

Utah Code § 10-9a-702(2)(a) sets forth the five standards that an applicant must meet to obtain a variance:

- (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;
- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and
- (v) the spirit of the land use ordinance is observed and substantial justice done.

Utah Code § 10-9a-702(2)(a)(i)-(v). *See also* Springdale Ord. § 10-6-5(B). The burden is on the applicant to meet all five standards. *See* Springdale Ord. § 10-6-5(C). “Unless an applicant proves all of these elements, a variance may not be approved.” *Krejci v. City of Saratoga Springs*, 2013 UT 74, ¶ 36, 322 P.3d 662. Each element is addressed below.

ANALYSIS

I. Literal Enforcement Causing an Unreasonable Hardship.

The first standard requires the Applicant to show that “[l]iteral 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.” Utah Code § 10-9a-702(2)(a)(i). In addition, this hardship must be “located on or associated with the property for which the variance is sought;” and “come[] from circumstances peculiar to the property, not from conditions that are general to the neighborhood.” *Id.* § 10-9a-702(b)(i). Moreover, the hardship cannot be self-imposed or purely economic. *See id.* § 10-9a-702(b)(ii).

In seeking a variance from the setback, the Applicant identifies the hardship as the ability to provide an employee housing unit on the Property. The need for the employee housing stems from the Applicant’s desire to hire a full-time employee to assist with the workload and allow the Applicant (both Mr. Pitti and Mr. Chambers) to transition into “semi-retirement.” The nature of the hotel business is such that it requires 24-hour attention. The variance application explains,

“Employees are difficult to come by because of our small population and affordable living options are difficult to find as an alternative in the Town of Springdale.”

Given the odd shape of the Property and the location of the existing structures, the only practical location to construct employee housing is the location of the existing detached garage, within the setback. While other locations are possible, it would require removing other structures, including potentially the historic home used as the bed and breakfast.

The AHO is sympathetic to this difficult situation. However, the problem with finding an unreasonable hardship under these circumstances is that the AHO is constrained by the statutory requirements. To start, as explained above, the hardship must “come[] from circumstances peculiar to the property, not from conditions that are general to the neighborhood.” Utah Code § 10-9a-702(b)(i). The identified hardship which has created the need for onsite employee housing is not the Property itself but the economic circumstances and general difficulty finding employees to work in the Town. These are circumstances which affect businesses throughout the Town generally and are thus not unique to the Property itself. If economic circumstances were enough to set aside application of zoning ordinances, then variances would be given out routinely.

In addition, the hardship cannot be purely economic or self-imposed. *See id.* § 10-9a-702(b)(ii). Here, the Applicant has owned the Property and run the bed and breakfast business for about 13 years. During that time an additional structure was built at the back of the Property, which suggests that employee housing could have been safely constructed at the Property at some point, without the need for a variance. In addition, as explained in the application and at the hearing, the desire to construct employee housing resulting in the variance application arises from the Applicant’s personal needs and preferences related to the business operation—mainly to shift the workload to someone else. Again, the AHO is not unsympathetic to this need, but is constrained to follow the statute.

And while the statute does not define the scope of what constitutes a self-imposed hardship, a survey of caselaw addressing the issue explains that hardships stemming from burdens on the landowner personally rather than the property, are considered self-imposed and thus disqualifying. *See Sprague v. City of Phx. Bd. of Adjustment*, No. 1 CA-CV 15-0282, at *5 (Ariz. Ct. App. Dec. 22, 2016) (explaining that “[h]ardship is ... assessed based on the particular property's characteristics, not on ... the applicant's personal preferences or needs”); *Brown v. City of Wilmington*, C.A. No. 06A-10-005 JRS, at *15 n.40 (Del. Super. Ct. July 21, 2008) (“It has also been suggested that self-imposed hardships ‘are those which arise from difficulties uniquely personal to the owner, rather than intrinsically related to the property itself’”) (quoting *Dexter v. New Castle Bd. of Adjustment*, 1996 WL 658861, *6 (Del. Super. Sept 17, 1996); 131 Am. Jur. Proof of Facts 3d 253, Proof of Hardship Necessary for Zoning Variance § 16 (Westlaw 2013) (“The “uniqueness” test focuses on hardship that burdens the land itself and not the landowner personally.”)

In short, while the current Property configuration requires a variance to construct employee housing within the setback, the hardship causing the need for that housing arises from difficulties

personal to the owner, rather than the condition of the Property itself. As a result, the hardship is self-imposed and disqualifying.

A more compelling argument exists with respect to the drainage issue. The Applicant explained that with each passing heavy rain storm the garage and Property are flooded with mud and debris. It is uncontested that this drainage problem which results from the existing culvert is peculiar to the Property. As shown on the plans submitted with the variance application, the proposed fix to the issue requires a variance from the setback. But fixing the drainage issue appears secondary to the primary purpose for the variance application, which is to construct employee housing. And nothing in the applicable Ordinance appears to give the AHO the ability to consider a variance application in a piecemeal fashion. *See* Springdale Town Ord. § 10-6-5(3).

The AHO therefore finds the first variance standard is not met.²

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Given this conclusion, it is unnecessary to address the remaining standards. But because the Applicant has appeal as well as reconsideration rights, this decision proceeds to address the remaining variance standards.

II. Special Circumstances Applicable to the Property.

Under the second standard, the applicant must show that “[t]here are special circumstances attached to the property that do not generally apply to other properties in the same zone.” Utah Code § 10-9a-702(2)(a)(ii). Special circumstances may exist only if they “(i) relate to the hardship complained of; and (ii) deprive the property of privileges granted to other properties in the same zone.” Utah Code § 10-9a-702(2)(c).

On this standard, “[i]t is not enough to show that the property for which the variance is requested is different in some way from the property surrounding it. Each piece of property is unique.” *Xanthos v. Bd. of Adjustment of Salt Lake City*, 685 P.2d 1032, 1036 (Utah 1984). Instead, “[w]hat must be shown by the applicant for the variance is that the property itself contains some special circumstance that relates to the hardship complained of and that granting a variance to take this into account would not substantially affect the zoning plan.” *Id.*

The Applicant identified the special circumstances as the irregular shape of the Property coupled with the historic structures on the Property. These circumstances, the Applicant asserts, deprives him from obtaining the onsite employee housing that other property owners currently have in within the CC zone. Based on the evidence at the hearing, the AHO agrees. The

² As explained in the Background, the existing garage structure currently violates the setback ordinance. No one could clarify at the hearing when that garage was constructed or how (or if) it was approved. Nor is it clear how, if at all, the existing setback violation might impact on this analysis where the Applicant is seeking to replace one offending structure with another. As a result, the AHO has not been presented with sufficient information to consider and evaluate the substantive impact of this issue in this ruling.

Property does have a unique and irregular shape as compared to other properties in the CC zone. It also has the only registered historic building in the Town, and it appears undisputed that other property owners in the CC zone, including adjacent to the Property, possess onsite employee housing.

On top of these facts, the lot adjacent to the Property where the setback variance is sought is not occupied but is instead used as a utility station for maintenance purposes only. Thus, not surprisingly, no objection to the variance was lodged by this adjacent property owner. What's more, the Town's CC zone encourages the establishment of affordable employee housing within the CC zone. *See* Springdale Town Ord. § 10-11A-1. Because of this, granting a variance to allow construction of the employee housing would align with the zoning plan.

The special circumstances also include the drainage issue existing on the Property. Those circumstances are also unique because they present a problem not faced by other properties in the CC zone. There is also nothing in the general plan that would suggest a property suffer through flooding issues with every passing thunderstorm.

The second standard is met.

III. Granting the Variance as Essential to the Enjoyment of a Property Right.

The third standard, like the first, presents a tougher question. It requires a showing that “[g]ranting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.” Utah Code § 10-9a-702(2)(a)(iii).

The applicant describes the substantial property right as the right to have onsite employee housing, something that other properties in the CC zone currently enjoy. What constitutes a “substantial property right” is not defined in Title 10, Chapter 9a of the Utah Code, or in the Springdale Town Ordinances. One court pulled together the ordinary definitions of “property right” and “substantial” to define a substantial property right “as the right or privilege to possess, use, and enjoy the aspects of one’s land that are of considerable value and importance.” *Risko v. Grand Haven Zoning Bd.*, 773 N.W.2d 730, 736 (Mich. Ct. App. 2009).

Using this definition, the Applicant is now possessing, using, and enjoying the Property in a manner consistent with the CC zone. This is not a situation in which a zoning ordinance is adversely impacting or restricting the primary use of, reasonable access to, or the ability to develop the Property.³ Rather, the Property is being used in the same manner as other properties in the CC zone.

The Property has been used as a bed and breakfast for at least 13 years. There is no evidence that this use has been hindered by the setback ordinance. In fact, if the variance is not granted, nothing would change with respect to operation of the business. While other properties

³ For example, the setback ordinance is not depriving the Property of necessary utilities that are available to other properties in the CC zone. *See, e.g., Specht v. Big Water Town*, 2017 UT App 75, ¶ 39, 397 P.3d 802 (affirming grant of variance from setback for a septic tank as a special circumstance).

may have the benefit of onsite employee housing, the right and ability to operate a business from one's property is a substantial property right whereas the ability to operate that business in a particular or more convenient way is not. As a result, the third standard is not met.

IV. Impact on the general plan and protection of the public interest.

The fourth standard requires a showing that the "variance will not substantially affect the general plan and will not be contrary to the public interest." Utah Code § 10-9a-702(2)(a)(iv).

There is no evidence that granting the variance will substantially affect the general plan.

As to the public interest component, setback requirements are generally used "to control the density of land use, reduce traffic congestion, maintain the aesthetics of the neighborhood, and promote health and safety." *Specht*, 2017 UT App 75, ¶ 42. The AHO was not presented with evidence that would suggest that granting the variance would adversely impact these interests.

In addition, seeking a variance to construct employee housing is consistent with the public interest as expressed in the Town's CC zone which encourages affordable employee housing within the CC zone. *See* Springdale Town Ord. § 10-11A-1 ("The CC zone should make provisions for affordable and employee housing, especially as second story dwelling units over commercial uses. The front of buildings and lots as seen from SR-9 should be inviting, accommodate pedestrian travel, and should be landscaped with appropriate drought tolerant vegetation.").

The Applicant explained that if the variance were not approved, he might be forced to construct employee housing elsewhere on the Property or sell the Property, which might put the historic structure on the Property in jeopardy. It is surely in the public interest to preserve this historic structure.

For these reasons, granting the variance would not substantially affect the general plan or go against the public interest.

V. Preserving the spirit of the ordinance and doing substantial justice.

The final standard requires that "the spirit of the land use ordinance is observed and substantial justice done." Utah Code § 10-9a-702(v). Granting the variance would permit what the Springdale Ordinances encourage within the CC zone by providing affordable onsite employee housing. It would also address a longstanding drainage issue which adversely affects the Property. The final variance standard is thus satisfied.

RULING

For the reasons stated above, the variance application is denied for failure to meet the first and third standards. This denial is without prejudice, consistent with the Springdale Town Ordinances.

DATED: June 9, 2022.

Town of Springdale Appeal Authority



By: Bryan Pattison
Administrative Hearing Officer