

MINUTES
MANTI CITY APPEAL AUTHORITY
JULY 27, 2023
10:00 A.M.
VIA ZOOM

Present: City Manager Kent Barton, City Recorder JoAnn Otten, Electrical Superintendent Blake DeMill and Public Works Director Cory Hatch.

A hearing on the Kelsch Appeal was held this morning at 10 a.m. as scheduled via Zoom Conference. Those attending included Craig Call, Hearing Officer; Kent Barton, Manti City Manager; Rob Patterson, Manti City Attorney; Cory Hatch, Manti City Public Works Director; Blake DeMille, Manti City Electrical Director; and JoAnn Otten, City Recorder.

The hearing was recorded. A copy will be provided to Kenneth and Shauna Kelsch as well as to the City.

At 10 a.m. Mr. Call noted that Mr. Kelsch had not yet joined the Zoom Conference Hearing. The hearing was continued until 10:10, at which time Mr. Call proceeded to explain his first impressions of the matter, which included:

The uncontested facts include that the proposed greenhouse/storage structure is to be located on the property line of the Kelsch property; that the City setback rules do not allow a structure in that location; that there exists a power line along the property line at the proposed location; that the City code does not allow a structure in the proposed location near the power line; that there was an existing structure at the proposed location which was destroyed by a tornado in 2002; and that the destroyed structure was not rebuilt within a year of its destruction.

Mr. Call explained that it is his understanding that where a nonconforming or noncomplying structure is not replaced within a year of its destruction, the right to rebuild it is lost, without regard to the intent of the property owner or any reference to why the structure was not rebuilt. Under Utah law, once the time has run, the nonconforming rights do not exist.

When requesting a variance, the person seeking a variance is required to provide substantial evidence to support several legal findings, including that the variance is necessary to protect a substantial property right. At this point, Mr. Call explained, Mr. Kelsch has provided his explanation of why he would prefer to build the structure in the proposed location and why it makes sense to allow that. Unfortunately, the variance process does not provide the flexibility to accommodate the owner's preferences unless a substantial property right is at issue.

Mr. Call explained that the recording of the ten minute hearing will be provided to Mr. Kelsch as part of the email chain which is part of the record of this matter. He will then be given a chance to respond to the preliminary comments made by Mr. Call before a decision is made.

Once Mr. Kelsch has responded to these comments, Mr. Call will determine whether to reconvene the hearing or to make a decision based on the hearing recording and the email response from Mr. Kelsch.

The City Manager and City Attorney were given the opportunity to respond to Mr. Call's comments and did not object to this method of proceeding. The hearing was adjourned at 10:20 a.m.

Mr. Kelsch, please respond to this email with your comments relating to my preliminary observations on your appeal. I will then decide if I cannot grant the variance/appeal or whether we should reconvene in a live hearing. The email exchange is part of the record of this matter and now officially part of the continuing hearing process.

A link to the recording of today's hearing will be sent to all parties via a separate email.

Thank you for providing the extensive documentation which allowed us to cover this much ground on the review of your appeal in an efficient manner.

The meeting adjourned at 10:20 a.m.

Manti City
Decision of Hearing Officer
Appeal of Land Use Decision – Kenneth D. Kelsh and Shauna L. Kelsh
Property Located at 490 East 200 South, Manti

August 2, 2023

This is a request for a variance from the City's minimum setback requirements for a proposed greenhouse/shed to be located at 490 East 200 South in the City.

RECORD:

The record of this matter includes:

- Application for Zoning Permit dated May 22, 2023, including the application form, a narrative provided by the property owner, an aerial photograph of the location, a highlighted copy of the official plat of the property, and the city receipt for the fee paid for the appeal. Total of seven pages.
- City letter of transmittal to the hearing officer, including attached copy of relevant city ordinance sections. Four pages.
- Power point presentation provided by Mr. Kelsh. Five pages.
- Email exchange between the hearing officer and the parties, commencing June 28, 2023 and continuing until July 31, 2023.
- Audio and video recording of Zoom Conference hearing held July 27, 2023.

PROCEDURE

A hearing on the Kelsch Appeal was held at 10 a.m. on July 27, 2023 as scheduled with notice to and consent of the parties via Zoom Conference. Those participating included Craig Call, Hearing Officer; Kent Barton, Manti City Manager; Rob Patterson, Manti City Attorney; Cory Hatch, Manti City Public Works Director; Blake DeMille, Manti City Electrical Director; and JoAnn Otten, City Recorder. Neither Mr. or Mrs. Kelsh appeared.

The hearing was recorded and video taped. A link to the video recording was provided to Kenneth and Shauna Kelsh as well as to the City later in the day on July 27.

At 10 a.m. Mr. Call noted that Mr. Kelsh had not yet joined the Zoom Conference Hearing. The hearing was continued until 10:10, at which time Mr. Call proceeded to explain his first impressions of the matter, which included:

Mr. Call then outlined on the record the uncontested facts of the matter as explained below in this decision. He also explained that it is his understanding that where a nonconforming or noncomplying structure is not replaced within a year of its destruction, the right to rebuild it is lost, without regard to the intent of the property owner or any reference to why the structure was not rebuilt. Under Utah law, once the time has run, the nonconforming rights do not exist.

Mr. Call also explained that when requesting a variance, the person seeking a variance is required to provide substantial evidence to support several legal findings, including that the variance is necessary to protect a substantial property right. At this point, Mr. Call explained, Mr. Kelsh has provided his explanation of why he would prefer to build the structure in the proposed location and why it makes sense to allow that. Unfortunately, the variance process does not provide the flexibility to accommodate the owners' preferences unless a substantial property right is at issue.

An email exchange was conducted after the hearing, where both Mr. Kelsh and the City Manager provided more information for the record, including a clarification of the facts related to the location of the power line at issue, which is near the Kelsh property, but not on the property line as first stated at the hearing.

FINDINGS OF FACT:

The uncontested facts include that

1. The proposed greenhouse/storage structure is to be located fewer than five feet from the property line of the Kelsch property.
2. There exists a power line within ten feet of the proposed location.
3. There was an existing structure at the proposed location which was destroyed by a tornado in 2002.
4. The destroyed structure was not rebuilt within a year of its destruction.

CONCLUSIONS OF LAW:


1. The proposed greenhouse/shed is allowed as an accessory building under the current land use regulations.
2. A nonconforming structure such as the one destroyed in 2002 may only be reconstructed within a year of its destruction. Manti Ordinances 17.20.050.
3. The required side yard setback for an accessory building in the zoning district where the property is located is five feet. Manti Ordinances 17.40.061
4. The proposed location of the greenhouse/shed violates this setback requirement.
5. The required setback from a primary electrical line in the zoning district where the property is located is ten feet. Manti Ordinances 17.040.061.
6. The proposed location of the greenhouse/shed violates this setback requirement.
7. In order to build the proposed greenhouse/shed in the proposed location, variances would be required from both the side yard and electrical line setback requirements.
8. In order to receive a variance under Manti Code, the applicant must demonstrate:
 - a. That the proposed variance will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this title will result in unnecessary hardship; provided, that the spirit of this title shall be observed and substantial justice done.
 - b. That the variance will not substantially affect the comprehensive plan of zoning in the city and that adherence to the strict letter of this title will cause difficulties and hardships, the imposition of which upon the petitioner is unnecessary in order to carry out the general purpose of the plan.

- c. That special circumstances exist which are associated with to the property covered by the application which do not generally apply to the other property in the same district.
 - d. That because of such special circumstances, property covered by the application is deprived of privileges possessed by other properties in the same district, and that the granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district. Manti Ordinances, 17.12.020(C). See also Utah Code Ann. 10-9a-702(2).
9. The Applicant bears the burden of proving that all the conditions justifying a variance have been met by providing substantial evidence in the record of this matter. Utah Code Ann. 10-9a-702(3).
 10. In this case, the Applicant has not met that burden. More specifically, there has been no identification in the record of any facts which establish that the variance would be essential to the enjoyment of a substantial property right, as identified as such under Utah law.

CONCLUSION

The variance is denied because all the conditions to receive a variance have not been met.

Dated this 2nd day of August, 2023.



Craig M. Call, Appeals Hearing Officer