

**BEFORE THE APPEAL AUTHORITY
BOUNTIFUL CITY, UTAH**

In the Matter of:

APPEAL FROM APPROVED BUILDING
PERMIT FOR ACCESSORY STRUCTURE
(Detached Garage)

2544 South 150 East
Bountiful, Utah
Owner: James Williams

**FINDINGS, CONCLUSIONS
AND ORDER**

The undersigned Appeal Authority for Bountiful City (“City”) received evidence and heard testimony and argument in the above-captioned matter at the hearing on July 8, 2020 (the “Hearing”). Mr. Timothy R. Pack represented Appellants Emily Christiansen and Ryan Tingey (“Appellants”), appealing the City’s approval of a Building Permit for construction of a detached garage (“Accessory Structure” or “Structure”) on real property located at 2544 South 150 East Bountiful, Utah (the “Property”). The City was represented by Mr. Francisco Astorga, the Planning Director and Administrative Committee Chair. Mr. Clinton Drake, the City Attorney, was also present. Based on the evidence and arguments presented at the Hearing, including the Appeal and supporting materials, and the City’s Appeal Staff Report and supporting materials, the Appeal is hereby sustained in part as follows:

FINDINGS AND CONCLUSIONS

- (1) The Appellants own property located at 2502 South 150 East, Bountiful, Utah.
- (2) The Appellants’ property shares a common boundary line with the Property.

(3) On March 17, 2020, the City issued a Building Permit for an Accessory Structure on the Property.

(4) While it is not entirely clear when construction of the Accessory Structure began, evidence at the Hearing (the proffered testimony of Appellants) supports that on May 7, 2020, the Appellants noticed the walls of the Structure being erected. At that point, Appellants realized how large the structure might be and how close it was to the Appellants' property line.

(5) On May 11 and 12, 2020, Appellants visited Bountiful City to inquire regarding the Structure.

(6) On May 14, 2020, Mr. Francisco Astorga (the City Planning Director) sent an email to Appellants and other concerned land owners in the neighborhood regarding the Structure, addressing their concerns, including regarding set-backs requirements, building height restrictions, and construction materials.

(7) On May 18, 2020, the Appellants visited the City and requested a copy of the Building Permit, which the City provided in part. The copy of the Building Permit which the City provided included only the first page of the Permit. This first page identified that a permit had been issued for a "residential garage" at the Property. It did not provide any information regarding the size or dimensions of the intended Structure or the location of the Structure on the Property.

(8) At that time, the City refused to provide the remaining pages of the Building Permit, which include information regarding the size and dimensions of the intended Structure and the location of the Structure on the Property

(9) On May 20, 2020, the Appellants filed this instant Appeal asserting: (1) that they have standing to bring the Appeal and that the Appeal is timely under City Code § 14-2-108; (2)

that the footprint of the Accessory Structure violates City Code § 14-4-105(J)(1)(a), in that it exceeds 10% of the entire lot or parcel area; (3) that the Structure violates the setback requirement of City Code § 14-4-105(J)(1)(b), in that the Structure is not located behind the rear building line of the primary structure; and (4) that the Structure may violate other City ordinances.

(10) Arguing that the Planning Director's May 14, 2020, email constitutes a land use authority's written decision, Appellants request that the Appeal Authority reverse that decision and order the City to strictly enforce the requirements of City Code §§ 14-4-105(J)(1)(a) and 14-4-105(J)(1)(b).

(11) The City concedes that the Appellants have standing to bring this Appeal.

(12) Regarding timeliness, City Code § 14-2-108 provides in part that "any person adversely affected by a Land Use Authority's decision administering or interpreting a land use ordinance ... may, within fourteen calendar days of the written decision, appeal that decision to the Appeal Authority."

(13) The Building Permit constitutes the Land Use Authority's decision in this case, not Mr. Astorga's May 17, 2020, email. *See Fox v. Park City*, 200 P.3d 182, 186 (Utah 2008).

(14) Per *Fox*, the triggering event that commences the 14-day period is when the aggrieved party has actual or constructive knowledge of the issuance of the Building Permit. *Id.* at 187.

(15) Here, on May 7, 2020, the Appellants noticed the walls of the Structure being erected. At that point, they had constructive knowledge of the issuance of the Permit, triggering the 14-day period of City Code § 14-2-108.

(16) The Appeal was filed on May 20, 2020 and, therefore, within the 14-day period of § 14-2-108.

(17) Appellants argue that the Accessory Structure violates City Code § 14-4-105(J)(1)(a).

(18) City Code § 14-4-105(J)(1) provides in part:

Accessory Structure, Permitted Use – An accessory structure allowed as a permitted use shall meet all of the following:

- a. The total footprint of any and all accessory structures shall not exceed ten percent (10%) of the entire lot or parcel area
- b. An accessory structure shall meet all of the setbacks of a primary structure, or it shall be located behind the rear building line of the primary structure, and shall be setback at least three (3) feet from a rear or interior side property line, and at least twenty (20) feet from a street side yard property line.

(19) According to the applicable recorded subdivision plat, the Property is 23,717 square feet in size. Ten percent of that area is 2,371.7 square feet.

(20) Per the Foundation Plan attached to the Building Permit, the total footprint of the Accessory Structure is 2,400 square feet (80' by 30').

(21) Given the foregoing, the City concedes that the Structure's footprint exceeds the 10% Code limitation by .119% (28.3 square feet), but argues that the footprint of the Structure is in "substantial compliance" with the ordinance. Based on this minuscule deviation, the City has indicated that it "will not seek to rectify the discrepancy."

(22) Utah Code § 10-9a-509(2) provides: "A municipality is bound by the terms and standards of applicable land use regulations and shall comply with mandatory provisions of those regulations."

(23) Here, the repeated use of the term "shall" indicates that the ordinance is mandatory.

(24) The City's substantial compliance argument does not apply to an ordinance that is mandatory in nature. *See Springville Citizens for a Better Community v. City of Springville*, 979 P.2d 332, 337 (Utah 1999) (“[t]he district court's use of the substantial compliance doctrine in the face of ordinances that are expressly mandatory was erroneous”).

(25) Accordingly, the City's approval of the Building Permit, to the extent that it approved the Structure in violation of the mandatory 10% footprint requirement of City Code § 14-4-105(J)(1)(a), was contrary to law and, therefore, illegal. *See Utah Code* § 10-9a-801(c)(ii) (“[a] decision is illegal if the decision is [] based on an incorrect interpretation of a land use regulation; or [] contrary to law”).

(26) Appellants next argue that the Accessory Structure violates the setback requirements of City Code § 14-4-105(J)(1)(b).

(27) As set out above, City Code § 14-4-105(J)(1)(b) provides:

An accessory structure shall meet all of the setbacks of a primary structure, or it shall be located behind the rear building line of the primary structure, and shall be setback at least three (3) feet from a rear or interior side property line, and at least twenty (20) feet from a street side yard property line.

(28) The Structure does not meet all the setbacks of the primary structure. Accordingly, the focus is on the alternative requirement of the ordinance.

(29) Specifically, Appellants argue that the Building Permit erroneously permitted the Accessory Structure to be “located behind the rear building line of the primary structure.”

(30) While the term “rear building line” in the ordinance is not defined in the City Code, the City agreed at the Hearing that the primary structure must be setback a minimum of 20 feet from the rear property line (*see* City Code § 14-4-105(H)) and, therefore, that the rear building line is a line 20 feet forward of the rear Property line.

(31) The City further did not dispute that, pursuant to the Site Plan, a large portion of the Accessory Structure is located forward of the rear building line, that is, forward of the 20-foot rear yard setback line.

(32) At the Hearing, Mr. Astorga, the City Planner, stated that given the odd shape of the Property, the City interpreted § 14-4-105(J)(1)(b) to require that only “a portion” of the Accessory Structure be located behind the rear building line in order to comply with the ordinance.

(33) The plain meaning of § 14-4-105(J)(1)(b) does not permit such an interpretation. As applicable here, the section unambiguously provides that an “accessory structure ... shall be located behind the rear building line of the primary structure.” The section is mandatory in nature and does not provide that only a portion of the structure may be located behind the rear building line.

(34) Accordingly, the City’s approval of the Building Permit, to the extent that it approved the Structure in violation of the setback requirements of City Code § 14-4-105(J)(1)(b), was based on an incorrect interpretation of that section and, therefore, illegal.

(35) Finally, Appellants argue that they “suspect” that the Accessory Structure may be in violation of other provisions of the City Code. No evidence was submitted regarding any other alleged violations and no other violation was alleged.

(36) Appellants request the following relief: (1) that the Appeal Authority rule that issuance of the Building Permit was contrary to the City’s ordinances and, therefore, illegal; and (2) that the Appeal Authority order the City to enforce strict compliance with its ordinances, namely, that the Appeal Authority require the City to require that the Accessory Structure meet the 10% footprint limitation and the rear building line setback requirements cited above.


(37) While the Building Permit was, as concluded above, issued in violation of mandatory City Code provisions (*i.e.*, the 10% footprint limitation and the rear building line setback requirements) and was therefore illegal, no authority has been provided suggesting that the Appeal Authority can order the City to take any action to enforce such Code provisions.

ORDER

After hearing and considering the Appellants' and the City's arguments, submissions, evidence, and testimony in the above-captioned matter, and consistent with the above findings and conclusions, the Appeal is sustained in part: (1) the City's approved the Building Permit in violation of the mandatory 10% footprint requirement of City Code § 14-4-105(J)(1)(a); (2) the City's approved the Building Permit in violation of the setback requirements of City Code § 14-4-105(J)(1)(b); and (3) the City's approval of Building Permit was illegal.

DATED this 17th day of July, 2020.

BOUNTIFUL CITY APPEAL AUTHORITY


Glenn R. Bronson

The record in this Appeal is comprised of:

- The Appeal, dated May 20, 2020
- The Appeal Staff Report, undated
- Bountiful City Land Use Ordinances, including the provisions identified as Exhibit A, introduced at the Hearing
- Google View of the Property, no date, identified as Exhibit B, provided in anticipation of the Hearing but not introduced
- A recording of the Hearing