



DEVELOPMENT SERVICES

Board of Adjustment Appeal Staff Report

Hearing Date: September 18, 2023

ITEM #1 Roger and Virginia Galland request an Appeal to the Board of Adjustment of a staff interpretation of accessory use in a R1 (One Family Residential) Zone (Section 14.10.020(5)), related to the denial of a building permit on a residential lot, located at 2958 N Iroquois Circle. Rock Canyon Neighborhood. Dustin Wright (801) 852-6414 dwright@provo.org PLABA20230212

Applicant: Roger and Virginia Galland

Staff Coordinator: Dustin Wright

Property Owner: GALLAND, RODGER D & VIRGINIA R (ET AL)

Parcel ID#: 51:704:0001

Current Zone: Residential (R1.10)

Number of Properties: 1

ALTERNATIVE ACTIONS

Section 14.05.040(8) of the Provo City Code states:

In exercising its powers, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order requirement, decisions, or determination as ought to be made, and to that end shall have all of the powers of the officer from whom the appeal is taken. The concurring vote of three (3) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or agency or to decide in favor of the appellant on any matter upon which it is required to pass under any such section of the Provo City Code, or to affect any variation in such section of the Provo City Code.

Current Legal Use: The recognized legal use of the property is a one-family dwelling.

Relevant History: In 2023, a new accessory building permit was submitted (PRAB202301017) for a lookout tower. Staff reviewed the permit application and determined that a lookout tower was not an approved accessory structure, and the permit was denied. 14.10.020(5)
The applicant is appealing this determination by staff.

Neighborhood Issues: A neighboring property owner expressed concerns with the proposed height and use of the proposed structure.

Summary of Key Issues:

- Staff determined that a lookout tower was not an approved accessory structure per 14.10.020(5) of the Provo City code.
- The applicant is appealing staff's decision and is claiming that the use does qualify as an accessory structure because it is secondary and incidental in size to the proportions of the other buildings on the property, and it doesn't alter the principal structure.
- The Board of Adjustment needs to determine if staff erred in the determination that a lookout tower is not an approved accessory structure.

Staff Recommendation:

Based on the findings of this report, Staff recommends that the Board of Adjustment **affirm the decision of staff** that a lookout tower is not an approved accessory structure in the R1 zone.

BACKGROUND

The City received a building permit application for a lookout tower accessory structure. Staff determined that a lookout tower did not comply with the ordinance in 14.10.020(5) of the Provo City code regulating accessory structures. Staff determined that it was not similar to garages, carports, bath houses, greenhouses, gardening sheds, or recreation rooms, and is not customarily used in conjunction with the principal use. Garages, sheds, carports are customarily used in conjunction with residential homes, but a lookout tower has not been something that has been approved in a residential zone. Therefore, staff denied the building permit request.

The applicant has submitted this appeal of the staff's determination and is claiming that the use does qualify as an accessory structure.

The Board of Adjustment needs to determine if staff erred in the determination that a lookout tower is not an approved accessory structure customarily used in conjunction with residential homes.

If the Board of Adjustment determines that lookout towers are permitted accessory structures, then staff would have to also allow them on other residential lots in the City and not just on this property.

FINDINGS OF FACT

1. The building permit that was submitted for approval was denied.
2. Accessory structures are subject to Provo City Code 14.10.020(5)

STAFF ANALYSIS

Upon review of the submitted building permit, staff made the determination that a watchtower was not a permitted accessory structure. This type of structure is not customarily used in conjunction with a residential home. Staff have not received a building permit for a residential watchtower and for that reason, doesn't believe that they fit the criteria for an accessory structure.

The applicant believes that there should be leeway for this type of structure because the code reads:

“Such permitted accessory uses and structures include, but are not limited to, the following: (a) Accessory buildings such as garages, carports, bath houses, greenhouses, gardening sheds, recreation rooms, and similar structures which are customarily used in conjunction with, and incidental to, a principal use or structure.”

Staff does not agree that the code provides leeway for any structure simply because it says, “but not limited to”. The code clarifies that it would need to be a similar structure that is “customarily used in conjunction with” the principal structure.

Staff recommended that the applicant apply for an amendment to the City Code to have this structure type added. This would give the City Council the opportunity to decide as the legislative body if this is a good use to allow in residential zones in the City.

CONCLUSIONS

Staff has reviewed the material provided by the applicant for the appeal and does not believe that an error was made in interpretation of the code and in denying the building permit. Staff does not find that a watchtower meets the criteria for an accessory structure.

JUDICIAL APPEAL OF BOARD OF ADJUSTMENT ACTION

Chapter 14.05 provides a process for appeal of a determination by the Board of Adjustment (quoted in part):

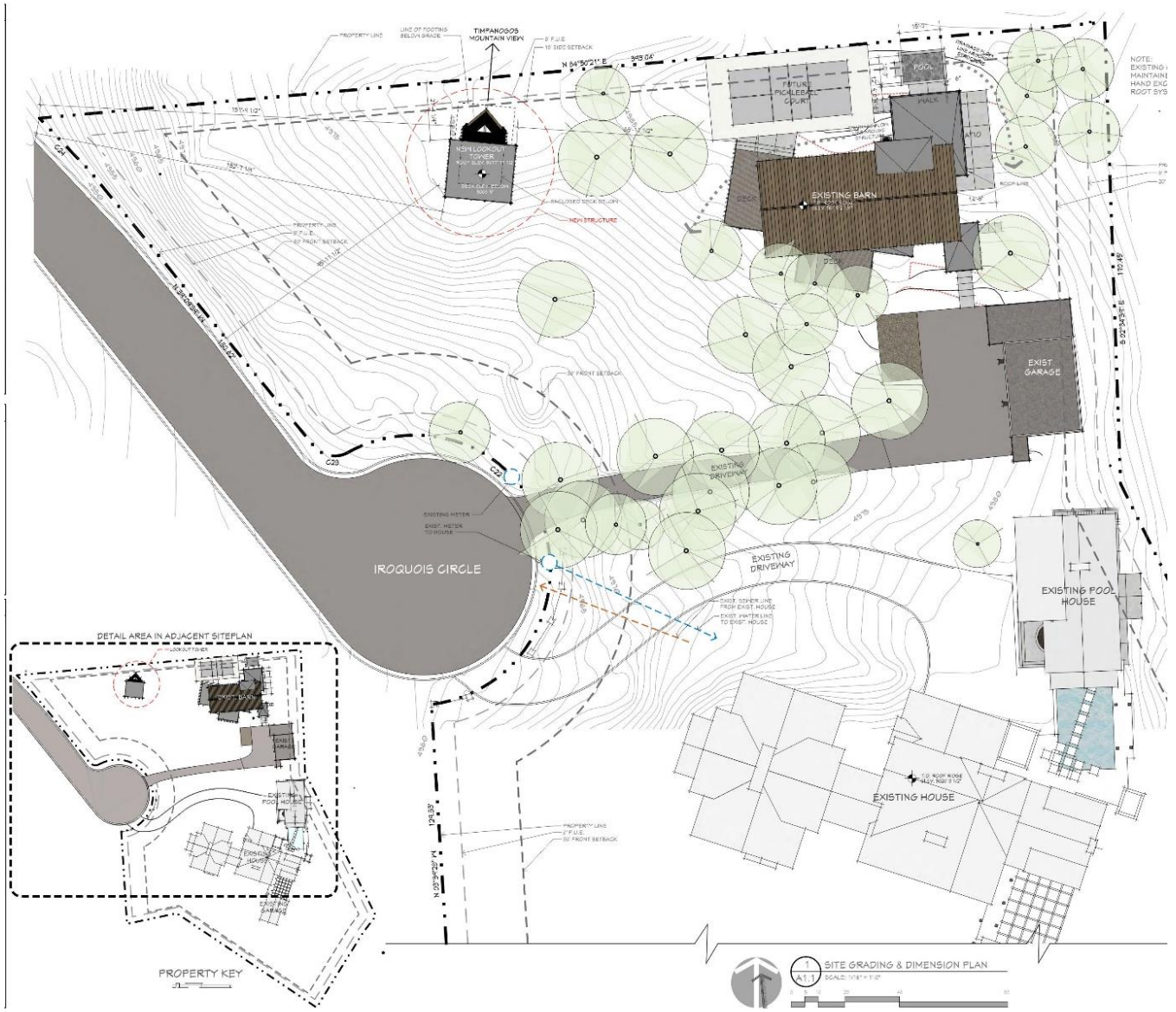
04.05.050. Judicial Appeal.

(i) Any person aggrieved by or affected by any decision of the Board of Adjustment may have and maintain a plenary action for relief from the District Court of competent jurisdiction, provided petition for such relief is presented to the court within thirty (30) days after the filing of such decision in the office of the Board of Adjustment or with the City Recorder.

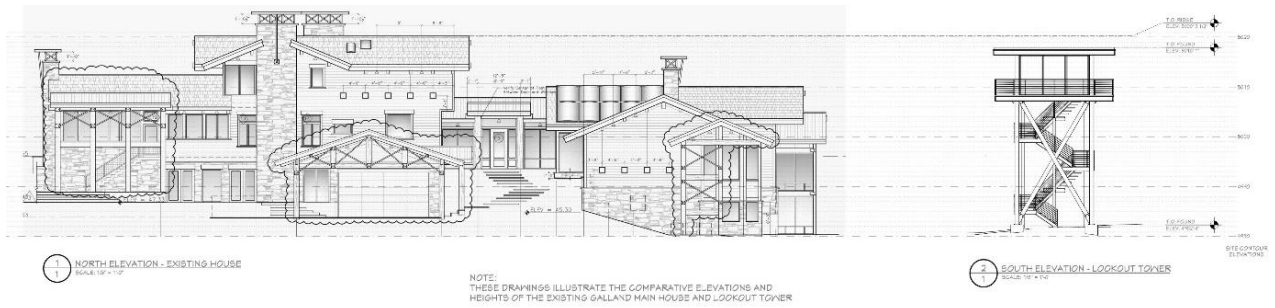
ATTACHMENTS

1. Applicant Appeal Submittal Items

ATTACHMENT 1 – Applicant Appeal Submittal Items



If the design, plans and specifications contained in these construction documents are used at a location not indicated in the project address of the sheet, the user, reproducer or publisher in any method or in part is prohibited, unless authorized by CID Design Group.

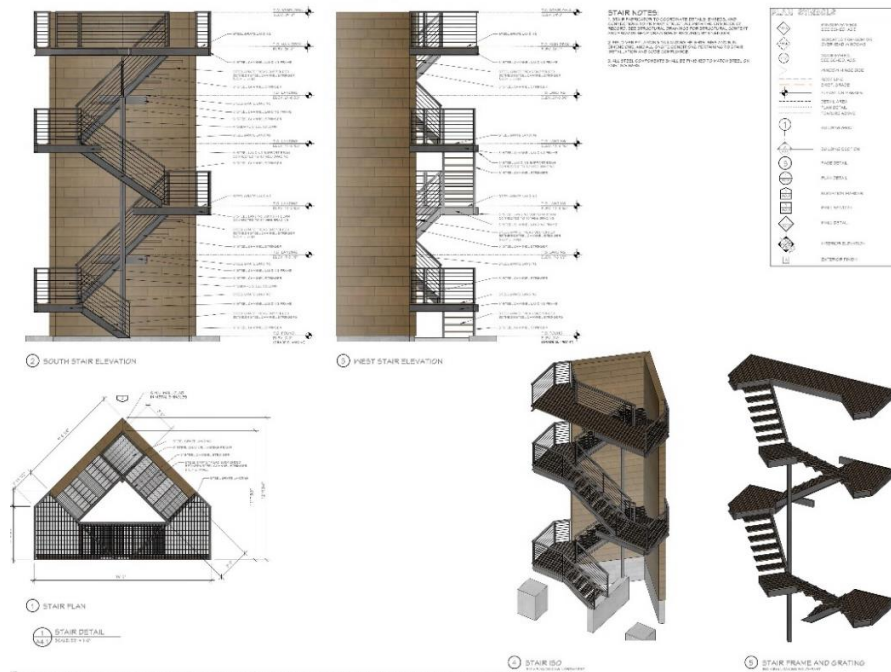


GALLAND LOOKOUT TOWER

CM dESIGN gROUP / VECTOR ENGINEERING / ROBISON HOME BUILDERS



GALLAND . 2953 IROQUOIS CIRCLE . PROVO, UTAH 84604



Letter from the applicant –

“About 3 months ago we came into Provo City offices and spoke with Javin Wever about this project. We told him our intentions and he mentioned that according to how he read the code he didn’t see an issue with it. We would not have proceeded with the project had Provo City not indicated its viability. The Provo City planner who I spoke with (Javin), about our pre-design concerns, referenced 14.10.020 to support his opinion that the project would be acceptable. There seems to be enough room in the language of 14.10.020(5) to allow our project to continue. For example:

Accessory uses and structures are permitted in the R1 zone provided they are incidental to, and do not substantially alter the character of, the permitted principal use or structure. The Galland lookout tower is secondary and incidental in size to the proportions of the other buildings on the property, and it doesn't alter the principal structure in any way.

Such permitted accessory uses and structures include, but are not limited to, the following: (a) Accessory buildings such as garages, carports, bath houses, greenhouses, gardening sheds, recreation rooms, and similar structures which are customarily used in conjunction with, and incidental to, a principal use or structure; The statement "includes, but are not limited to" would seem to indicate some leeway in the description of an accessory structure.

I would add that the lookout tower usage is recreational and it's small relative to the expanse of the property and the principal structure. I hope that you can reconsider our project or let us know if there is a specific issue that we can address to proceed.”