

CITY OF NORTH SALT LAKE  
LAND USE APPEAL AUTHORITY  
ANCHOR LOCATION: CITY HALL  
10 EAST CENTER STREET, NORTH SALT LAKE  
OCTOBER 18, 2023

**FINAL**

Glenn Bronson called the meeting to order at 5:15 p.m.

STAFF PRESENT: Sherrie Pace, Community Development Director; Glenn Bronson, Appeal Authority/Hearing Officer; Mackenzie Johnson, Planner; Cameron Wright, Building Official; Rocky Crisp, Code Enforcement Specialist.

OTHERS PRESENT: Tom Stuart, Romm Jackson, Tom Stuart Construction.

1. ADMINISTRATIVE DECISION APPEAL: TOM STUART CONSTRUCTION IS APPEALING THE ADMINISTRATIVE DECISION BY THE CITY BUILDING OFFICIAL IN DENIAL OF FINAL OCCUPANCY RELATED TO COMPLIANCE WITH ADA BUILDING CODE REGULATIONS FOR A TENANT FINISH REMODEL AT 259 SOUTH RIVERBEND WAY UNIT 18B

Glenn Bronson disclosed that he represented Tom Stuart Construction in a transaction many years ago and knew Tom Stuart personally. Sherrie Pace replied that the City had no objection to Mr. Bronson hearing the appeal.

Cameron Wright presented that the appellant had obtained a building permit for a Tennant Improvement (TI) at 259 South Riverbend Way, Unit 18B. He said that the final inspection failed because of multiple ADA issues. This included the requirement that an ADA restroom have a minimum of five feet of clearance from the wall adjacent the toilet to any fixtures or obstructions, as per ANSI 604.3. Mr. Wright said this was the adopted standard for the State of Utah and a national standard. The second item was that ADA grab bars must be installed in the restroom as per the requirements of the 2009 ANSI 117.1. The third item was that shower cannot have a threshold and grab bars must be installed. Per 2009 ANSI 117.1 section 608.6 “thresholds in roll-in type shower compartments shall be ½” maximum in height”.

Glenn Bronson commented that regardless of what the architectural plans called for, the clearance was not compliant with specific code, the grab bars were nonexistent, and the threshold was taller than ½” and was not compliant with specific code. Cameron Wright was in agreement and said the City was requesting these three items be corrected or brought into compliance. Specifically, the ADA bathroom and ADA shower must be brought into compliance with ADA standards. This was a requirement by the State of Utah and the architectural plans.

Glenn Bronson questioned if the City was asking for any penalties or fines. Cameron Wright replied that the City was not seeking penalties or fines at the time of the hearing.

Tom Stuart, Tom Stuart Construction, spoke on building a personal gym in the building during COVID and how it had evolved into offering the use of the gym to his employees. He said it was originally designed and built for his personal use and was never intended for public use. Mr. Stuart said he encouraged his employees to bring their disabled children to the office and said they have several ADA compliant bathrooms and showers in the building.

Staff provided a floorplan of the office building at 259 South Riverbend Way. Tom Stuart showed the location of the bathroom in question and the personal gym as well as the locations of the existing ADA compliant bathrooms and shower. He also showed how to access the gym which was down a hallway and through a conference room or through an exterior door.

Tom Stuart spoke on how employees did not keep the gym and bathroom area as clean as he would like and was not against closing the gym to employees. He said if the bathroom/gym became his own personal space again that it would not be required to be ADA compliant. Glenn Bronson replied that the City had raised three issues of the handrails, the threshold, and the clearance. He said if the code applied to the space that there was no dispute it was not in compliance. The question was whether the code applied to this space or not.

Glenn Bronson asked for the argument that the code did not apply. Tom Stuart replied that the code did not apply if this was his own personal space/office. He showed Romm Jackson's office on the floor plan and said the bathroom in that office was not ADA compliant as it was a personal space. Mr. Stuart said because that bathroom was only usable and accessible for Romm Jackson that it did not need to be ADA compliant.

Tom Stuart said he did not have a problem installing the grab bars but did have a problem with the threshold in the shower as it prevented water from running over into the main area.

Glenn Bronson clarified that Mr. Stuart felt this was personal space and the ADA code did not apply. He also clarified that employees had been using the space. Tom Stuart replied affirmatively.

Cameron Wright summarized that Mr. Stuart was alleging that they did not need to improve the restroom to ADA compliance because there were additional restrooms in the office that met ADA standards and because the restroom in question was a personal space. Mr. Wright said there was an exception "where toilet rooms or bathing rooms accessed only through a private office, not for common or public use and intended for the use by a single occupant, shall be permitted to comply with the specific exceptions in the 2018 IBC, Chapter 11, Section 1110.2, Exception #1. He clarified that if the bathroom in question was for a private office it did not necessarily need to meet ADA standards but would have to be accessed through a private office. In this

situation he did not think this exception would apply because it was a common or public space and used by other employees.

Glenn Bronson read through the exception to the ADA requirements. He said this may address the root problem but asked if there should be an exception as there were other ADA compliant facilities on the same floor. Cameron Wright replied that the goal of ADA was that everyone was treated equally and having bathrooms outside of the same vicinity would not apply. He explained that this would apply to a cluster of bathrooms and a certain percentage of those would need to be ADA compliant but not all.

Romm Jackson, Tom Stuart Construction, said he hoped to continue to use the gym and spoke on the intent of the code. He spoke on the fact that there were multiple showers in the building, meeting the 50% requirement, and the most stringent interpretation of the code.

Tom Stuart clarified that exception number three clarified that if there were more than 50% ADA accessible in a clustered area that a single restroom did not need to be compliant.

Glenn Bronson asked staff to provide a printed copy of the exceptions for review. He said there may be another exception that the bathroom could qualify for. Romm Jackson said he also submitted a letter from an architect that stated the bathroom did not affect commerce and was not designed to be accessed by the public or work area. He argued for the interpretation to give the most benefit to the most people.

Tom Stuart commented that it was equidistant from the workout area to the ADA restroom that was already approved and compliant to the bathroom in question.

Cameron Wright stated that if the conference room was in use it would cause a hardship for someone using the gym as the bathroom would be less accessible. He said this was the reason for the code requiring that all restrooms be ADA compliant. Mr. Wright said there was also a need to plan for future use if the building was sold to another entity.

Tom Stuart commented that he was in agreement and said that there was an accessible ADA restroom in close proximity. He was willing to sign a letter that if the building was sold or used by another tenant that he would make the bathroom compliant at that time. Glenn Bronson commented that this was a deal that could be made later. He said he had the responsibility of being the decision maker and not a mediator.

Glenn Bronson spoke on an email dated October 11, 2023 from the appellant that spoke on the exception for not meeting ADA accessibility requirements. Romm Jackson asked for a brief recess to discuss the letter of compliance with the City.

Glenn Bronson agreed to a brief recess and commented that if the violation could be resolved and the City withdrew its notice of violation the issue would be moot.

**There was a short recess from 5:54 p.m. to 6:12 p.m.**

Glenn Bronson commented that the two parties had conferred with the idea to resolve the issue without input from the Land Use Authority.

Sherrie Pace commented that a resolution had not been met. She said the exceptions that were allowed for a private bathroom were not a waiver of all the ADA requirements. The only item that would have been waived was the installation of the grab bars and not the threshold in the bathroom or the clearance of the countertop and toilet. The crux of the argument was if the two other ADA compliant bathrooms be considered clustered with the other bathroom facility in question. She said if the bathrooms were considered clustered then it would meet the standard.

Cameron Wright commented on future uses of the building and said the gym and garage were originally a separate tenant space and then combined into the current space. He said a new tenant could separate those again and the bathroom and shower would need to be ADA compliant. Mr. Wright also spoke on the issue of the conference room in use and someone in a wheelchair having to go through that room to access the ADA compliant bathroom.

Romm Jackson spoke on the hypotheticals and future uses and said the gym was a separate room and someone would have to leave to use the bathroom regardless. He said if the code required every bathroom to be ADA accessible then there would not be the 50% requirement for clustered bathrooms.

Tom Stuart said he had encountered this issue multiple times in his building career. He said if there was an ADA accessible facility in the vicinity that all the bathrooms did not need to be accessible. Romm Jackson commented that his private bathroom was further away from the accessible restroom than the one in question.

Glenn Bronson commented that he read through the information provided by the City and the appellant, including the email from the architect Nick Brady and the exceptions. He said he was not without sympathy for Mr. Stuart's position but did not have a tremendous amount of discretion. He had to apply the code as written with reasonable interpretation and objective determination.

**Glenn Bronson determined that per code each toilet room and bathing room shall be accessible. The statute was that if this was accessible and ADA applies this room was not in compliance. Exceptions were 1) toilet rooms or bathing rooms accessed only through a private office, not for common or public use, and intended for use by a single occupant shall be permitted to comply with specific exemptions. He said the question on the**

exception was if this was a toilet or bathing room accessible only through a private office. A reasonable interpretation of the construction plan and testimony provided was that the two facilities were accessible through a room that was not designated as a private office and the testimony was that employees do use those particular facilities. He said he did not have the discretion under exception one that this qualified as a private office and intended for use by a single occupant. He determined that it did not qualify for exception one. In regard to exception three “where multiple single user toilet rooms or bathrooms were clustered in a single location at least 50 percent but not less than one room per each use at each cluster shall be accessible.” He determined that there were not multiple bathrooms clustered at a single location. There were three other bathrooms on the same floor but were not clustered together. Mr. Bronson said while it was not the statute, he would write that he did not have the discretion to go beyond a reasonable interpretation of the statute. Glenn Bronson determined that this was not a private office as it had an outside door and opened into a gym with a load occupancy of 25-30 and available to other employees in a corporate setting.

Sherrie Pace asked if staff could confer with the appellant privately.

There was a short recess from 6:27 p.m. to 6:31 p.m.

Glenn Bronson clarified that he sustained the violation as written and as the City had not asked for any penalties or fines he awarded none. He ordered the tenant, owner/occupant, Verona Investments LLC/Tom Stuart Construction, to make the facilities ADA compliant and left the matter open if the City was not satisfied that the remedy was applied within a reasonable period of time the City could come back to ask for a time period.

The parties waived a written opinion as the opinion would be the transcript of this hearing.

2. ADJOURN

Glenn Bronson adjourned the meeting at 6:34 p.m.

Approved as directed and reviewed by Administrative Law Judge, Glenn Bronson.

  
Wendy Page, City Recorder

