

WEST VALLEY BOARD OF ADJUSTMENT

January 3, 2007

This meeting was called to order at 6:00 p.m. by Chairperson, Necia Christensen, at 3600 Constitution Boulevard.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Russell Moore, Scott Spendlove, Sandy Naegle and Necia Christensen

Those Absent: Sioeli Uluakiola

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman and Karon Jensen

WEST VALLEY CITY LEGAL DEPARTMENT

Nicole Cottle

B-17-2006

David & Carol Evans – NCU Determination

1659 West Crystal Ave.

R-1-6 Zone

David and Carol Evans, representing the property owner, have filed an application with the West Valley City Board of Adjustment requesting a non-conforming use determination in order to continue keeping livestock on the property noted above.

WEST VALLEY CITY GENERAL PLAN recommends small lot residential land uses.

- The subject property is located on the southwest corner of Crystal Avenue and Lester Street. The property is also known as lots 40-49 of Block 12 in the Chesterfield Plat. The property is approximately .75 acres in size and is bordered on the north, south and west by residential uses.
- This application is being presented to the Board of Adjustment at the request of the Evan's who are interested in purchasing the subject property. In anticipation of this

purchase, the Evan's would like to make sure that the keeping of animals is permitted at this location. The property owner has therefore consented to the Board of Adjustments review of this application.

- The subject property was zoned R-2-10H at the time of West Valley City's incorporation. This zone allowed a two-family dwelling on a 10,000 square foot lot along with animal rights, specifically, horses.
- To help verify the existence of farm animals, the applicant has submitted documentation from individuals who claim that animals have been kept on this property for many years. These letters have been attached to the analysis for your review.
- Generally, the size and condition of the property is a historical indication that agricultural uses could have existed here. The attached aerial photograph shows that the property is large in size and includes many outbuildings which appear to be used for agricultural purposes.

ORDINANCE SUMMARY:

Section 7-18-106(3) of the West Valley City Land Use Development and Management Act reads:

(3) Non-conforming Use of Land. A non-conforming use of land lawfully existing on the effective date of this Chapter may be continued provided such non-conforming use shall not be expanded or extended into any other open land, except as otherwise provided in this Chapter. If the non-conforming use is discontinued for a continuous period of more than one year it shall constitute an abandonment of the use and any future use of such land shall conform to the provisions of the zone in which it is located.

- The applicant is not requesting an expansion of a non-conforming use. They are requesting a determination that the existing use, i.e., the keeping of animals be allowed to continue on this property.

Carol Evans
4805 S. Desert Rose Rd.

Mrs. Evans stated that she and her husband were interested in purchasing the property at 1659 West Crystal Avenue. She indicated that they own the horses on the property and noted that the horses have been there for almost two years. Mr. Williams, the property owner, is here tonight and has given us notice that he is interested in selling the property. We would like to continue to keeping our horses on the property as I have a soft spot in my heart for this area and grew up there. This particular property is not zoned for horses, however the property across the street is zoned to allow for horses.

I have submitted statements to the Board of Adjustment from the neighbors that are bordering the property. Viola Stanley lives kitty-corner, Kerry Torres lives on the corner, Gordon Toby lives directly across the street, Ron Williams was raised in the home, left for a brief time and came back and lived there for 13 more years. Jeff Braithwaite was raised right across the street from the property and they have all made statements that there have been animals on the property for as long as they can remember.

Mrs. Christensen questioned, is there anyone here who would like to speak either in favor or in opposition of the application? [There was no response]

Discussion

Ms. Naegle questioned staff, you said the zoning was R-2-10H and zoned for horses, but has the zoning changed?

Mr. Lehman responded, at a subsequent time after the City's incorporation the City rezoned the property to R-1-6. There are two areas in Chesterfield, the eastern portion, which the applicant mentioned, is zoned agriculture. The western section has the smaller lots and they typically have a 50 foot frontage. When the City incorporated, and I don't know a great deal of that history, many areas of our zoning map were changed simply because the properties matched more closely with the zone that is currently there. In other words, there were more single family homes which are located on fairly small lots. Typically, in Chesterfield, in both this location and the agricultural area, there are numerous lots that have been attached or combined and you do see some properties that have larger lots with animals.

Ms. Naegle questioned, so the applicant does need a legal non-conforming use determination for the property? Mr. Lehman replied, yes that is correct.

Ms. Naegle questioned, and there hasn't been any lapse in the use for the keeping of animals on the property?

Mr. Lehman responded, the ordinance states that if the use is discontinued for a period of one year then that use is no longer valid. I believe these affidavits state that many years before we incorporated, there were horses on the property and that the horses have always been on the property.

Mr. Spendlove noted that it seems to be pretty straightforward. Also, some of the problems that the Board has experienced in the past regarding non-conforming use requests have been after property has been purchased and the property owner says that they were unaware that they did not have animal rights. Mr. and Mrs. Evans have been quite diligent and done their homework.

Motion

Sandy Naegle stated, I move that we grant approval of the non-conforming use for case B-17-2006 based on the fact that it appears that there has been no lapse in the keeping of animals on the property for more than a one year period.

Mr. Spendlove seconded the motion.

A roll call was taken.

Mr. Uluakiola	AB
Mr. Moore	yes
Mr. Spendlove	yes
Ms. Naegle	yes
Mrs. Christensen	yes

Motion carries – all in favor

B-16-2006

Robert Fern

2720 South 6750 West

A-1 Zone

Mr. Robert Fern, has filed an appeal with the West Valley City Board of Adjustment. The request is an appeal of the West Valley City Zoning Administrator's determination that a caretaker or apartment building is not allowed as an accessory use in the agricultural zone. The applicant has requested the approval of a second residence for ranch workers on the subject property.

The West Valley City General Plan recommends agricultural land uses.

Mr. Robert Fern owns real property at 2720 South 6750 West. Current zoning for this property is A-1. The purpose for the A-1 zone is to provide areas in the City for agricultural uses, together with rural or very low density residential development.

In October 2006, Mr. Robert Fern submitted an application to the Community Development Department for an Administrative Determination. This request was made by the applicant in order for the City to determine whether a separate caretaker's residence would be allowed in conjunction with an existing single family dwelling in the agricultural zone.

Mr. Fern believes that the caretaker's residence would exist as a use customarily accessory to the list of permitted uses in the agricultural zone. The purpose for the

caretaker's residence would be to take care of various animals and other responsibilities related to an agricultural lifestyle.

The Zoning Administrator replied that the A-1 Zone is essentially a single family zone which also includes the keeping of farm animals. The Zoning Administrator stated the purpose for this zone as noted above, and clarified that the rural or low density portion of this purpose indicates a density supported only by single family dwellings.

In response to the Zoning Administrator's letter, the applicant has decided to appeal this decision to the Board of Adjustment.

Staff believes the most appropriate way to address this matter is to provide the Board with the following information:

- * Copy of the A Zone.
- * Mr. Fern's Administrative Determination application and supporting documents.
- * West Valley City Zoning Administrator's response.
- * Mr. Ferns appeal application to the Board along with the suggested errors by the Zoning Administrator.

ORDINANCE SUMMARY:

An appeal may be made to the Board of Adjustment by the City, the applicant, or any other person or entity adversely affected by a zoning decision administering or interpreting a zoning ordinance.

Section 7-18-105(4)

After hearing the appeal, the Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer or body from which the appeal is made. The Board also has the ability to continue the application for additional information or return it to the Planning Commission with recommendations.

Section 7-18-105(6) Appeals to the Board of Adjustment

The concurring vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, planning commission or agency or to decide in favor of the appellant.

After reviewing these sections of City ordinance, the Board shall recognize that the person or persons making the application will have the burden of proving that an error was made by the Community Development Department.

ALTERNATIVES:

In regards to B-16-2006, the Board of Adjustment may find the following:

1. If the Board finds that the application does not demonstrate that an error was made, and/or that the applicant has failed to meet the burden of demonstrating such an error and that sections of the zoning ordinance were not incorrectly administered or interpreted by the Zoning Administrator, the Board of Adjustment shall deny the appeal which would affirm the staff's decision to deny a caretaker's residence in the agricultural zone.
2. Should the Board find that the Zoning Administrator erred in the administration or interpretation of the zoning ordinance, the Board should overturn the denial of a caretaker's residence in an agricultural zone.
3. Continue the application in order to allow further consideration or evaluation on any particular matter of the proposal.

Mrs. Christensen indicated that Mr. Fern came to the Board of Adjustment hearing last month and was quite concerned with the fact that he would be required to convince three Board members that he is right. There were only three Board members here last month so he requested that the Board continue the case. Mr. Fern came back in tonight and saw that there were only four Board members and has suggested that we continue the case. So before the case is introduced there are several issues I would like to discuss.

The Board has the option of continuing the case, however we would still need to make a motion and vote to approve the motion. Kevin Hooper, West Valley City Zoning Administrator, is leaving the City at the end of the month and this would be the last opportunity for him to be in attendance and explain the reasons he denied the administrative determination. However, I am sure Mr. Hooper would be glad to leave us a statement or do his best to accommodate us should we decide to continue the case.

Robert Fern
2720 South 6750 West

Mr. Fern said he would like to present his case, but felt that he would be at a disadvantage due to the fact that he would need the approval of three of the five member Board and there are only four members here tonight. I would like to continue and present the case, however I feel I would be under a handicap, therefore, regretfully and with the

understanding of the inconvenience that this causes I respectfully request that my case be continued until such time that I can have a five member Board in attendance.

Motion

Russell Moore made a motion for application B-16-2006, to grant a continuance until the next Board of Adjustment hearing and suggested obtaining a statement from Kevin Hooper, West Valley City Zoning Administrator.

Mr. Spendlove seconded the motion.

A roll call was taken.

Mr. Uluakiola	AB
Mr. Moore	yes
Mr. Spendlove	yes
Ms. Naegle	yes
Mrs. Christensen	yes

Motion carries – all in favor

Mr. Fern asked if he could obtain a copy of the statement from Kevin Hooper prior to the next public hearing and staff responded that they would be provide the statement to him.

Mrs. Cottle suggested posting the hearing next month as an electronic meeting for this application.

OTHER

There being no further business the meeting adjourned at 6:30 p.m.

Karon Jensen, Executive Secretary