

WEST VALLEY BOARD OF ADJUSTMENT

May 2, 2007

This meeting was called to order at 6:00 p.m. by Acting Chairperson Russell Moore, at 3600 Constitution Boulevard.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

Sioeli Uluakiola, Russell Moore, Scott Spendlove, Sandy Naegle, and Mark Farnsworth

ABSENT:

Necia Christensen

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman, Ron Weibel and Lori Cannon

WEST VALLEY CITY LEGAL DEPARTMENT

Claire Gilmore, Asst. City Atty.

VARIANCES:

B-2-2007

**Grant Andrews – NCU Determination
2650 South Chesterfield Street
A Zone**

Steve Lehman presented the application.

REQUEST:

Grant and Linda Andrews have filed an application with the West Valley City Board of Adjustment requesting a non-conforming use determination to validate the keeping of livestock on their property which currently exceeds the allowable points for agricultural animals in the A zone.

WEST VALLEY CITY GENERAL PLAN recommends rural residential land uses.

BACKGROUND:

- The subject property is located at 2650 South Chesterfield Street. The property is also known as lot 19 and the north 90 feet of lot 20 Block 8 of the Chesterfield Plat A Subdivision. The property is approximately one acre in size and according to the applicant, has been used to house agricultural animals for many years.
- This application is being requested by the Andrews who were recently notified that the numbers of animals presently located on the property exceeds the allowable animal points in the A zone. For each acre of property in the A zone, residents are allowed 200 points. According to the City's Code Enforcement Officer, the Andrews presently have 350 animal points. The property has been in the Andrews family for many years and has been passed along through generations. According to Salt Lake County records, the dwelling was constructed in the 1950's.
- To help the Board understand the purported zoning violations, and how the applicants have attempted to resolve these issues, staff will attach the inspection summary for your review. Staff believes that it is important to note that the reviewing officer does not believe the property to be a problem and found that it is well cared for regarding the keeping of agricultural animals.
- The subject property was zoned A-1 at the time of West Valley City's incorporation. This zone allowed residential housing along with animal rights. After researching Salt Lake County Ordinances, staff has determined that points for agricultural animals did not

exist as they do presently in City ordinance. The point system used currently, came into existence with an ordinance approved by the West Valley City Council in 1994.

- ❑ To help verify the existence of farm animals, the applicant has submitted documentation from individuals who know the Andrews family, and state that animals have been kept on this property for many years. These letters have been included as part of the Boards packet.
- ❑ Generally, the size and condition of the property is a historical indication that agricultural uses have existed. The difficulty in this case is the determination that the number of animals has been roughly the same since West Valley City's incorporation. Should the Board grant non conforming status, the number of animals will not be permitted to increase beyond what has been approved as part of this application.

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 and the points associated with these animals be allowed to continue on this property.

Applicant:
Grant Andrews
2650 South Chesterfield Street

Concerned
Marta Parsons
2574 S. Hempstead

DISCUSSION: Acting Chairman Moore asked if Salt Lake County currently has an ordinance that limits the points on properties. Steve Lehman stated he did not know about Salt Lake County. Mr. Farnsworth asked if West Valley City unique with their point system. Steve was not sure. He believed it would be best for communities that have agriculture zones of one-half acre to have a point system. Steve gave a description of West Valley's point system

requirements. Mr. Spendlove asked if residents a factor in the Board's determination. Steve answered no, stating people can own a property and rent their home out. He said there is a concern regarding this application and the possibility of the Andrews selling to others, which is not allowed in the agriculture zone. Steve noted there is a conditional use which allows individuals to commercially raise animals, but this must be reviewed and approved by the Planning Commission. Ms. Naegle verified that selling is not allowed in this zone, and was told that is correct.

Mr. Grant Andrews told the Board that he raises animals for food for his family. He informed that if the City reviewed the number of animals he has now, he should be in compliance with the number of restricted animals. Mr. Andrews explained they raise animals to helping his mother and brothers who live outside of the neighborhood. He assured animals have been on this property since the early 1950's, and they have never been restricted. Mr. Andrews stated the animals are taken care of and they have never had problems. He explained that twice per year when the bedding for the animals is replaced, neighbors have complained about the smell, but those neighbors live farther away then the adjacent neighbors.

Mr. Uluakiola asked the applicant if any animals were being sold. Mr. Andrews answered no. Acting Chairman Moore reminded that the case report states that when a sow has piglets, they are sold in April for Easter. Mr. Andrews acknowledged that the baby pigs are sold, but not the older pigs. He raises the larger pigs for his family, who pay him for the food, and then he raises the animals. Mr. Spendlove asked if a number of the pigs were removed from the property. Mr. Andrews answered yes, over half of the large pigs have been relocated to another other property, although there is still the same amount of piglets on this property. Acting Chairman Moore asked how many animals would need to be removed to be within the allowed 200 points. Mr. Andrews replied two or three more, but once the piglets are over six months, they are under the ordinance. Acting Chairman Moore confirmed that there is a cycle, with baby animals in the spring increasing the number of animals, but the number decreases during the summer months. Mr. Farnsworth suggested this may be a seasonal problem. Acting Chairman Moore believes it's a space and point problem. Mr. Andrews informed that the cleaning season is in the spring. He explained bedding sod dust from furniture companies is placed in the animal pens in the spring and fall. The pens load up during the summer and winter, and the waste is removed in the spring and fall. During the time the pens are cleaned and sod dust is removed, the smell worsens. Mr. Spendlove noted that one Enforcement Officer who went to the property could not determine if the smell was coming from this property or not due to the fence being closed. Steve Lehman commented that Ms. Andrews stated there are other residents in the area that raise animals, creating smells. Mr. Farnsworth asked Mr. Andrews asked if there was a period of time when there were no animals on the property. Mr. Andrews informed that when part of the property was rented out, there were still two animals in the back corner of the property, away from the front portion of the property. Mr. Farnsworth asked if there was a time when there were no pigs on the property. Mr. Andrews answered yes, there may have been a few months without pigs. Mr. Andrews submitted letters from neighbors stating animals have been on the property for the past 50-years. He said most of the letters are in support of having animals on the property.

Ms. Marta Parsons lives near the applicant and said the problem is the number of animals. She informed that she was part of West Valley City when the City's point system was created. Ms. Parsons noted pigs are allowed although their smell is more offensive than other animals. She believes the applicant can raise enough to eat. Ms. Parsons mentioned residents fought to keep the point system and because of it, the area is better. She acknowledged that occasionally more horses are asked for, but what this applicant is asking for is double the allowed points. Ms. Parsons asked that the animal waste and pens be cleaned more regularly. She assured she is not against the applicant having the animals, but said this is impacting the neighbors and neighborhood.

Acting Chairman Moore closed the Public Hearing to public input at 6:27 p.m.

Mr. Uluakiola informed that he is aware of people who have purchased pigs from this property in the past. He also understands the concerns from neighbors. Acting Chairman Moore explained the point system was created to achieve a balance between residential and the desire to keep animals. He believes the 200-point system should remain on this property. This will still allow the applicant to do much of what they do, but they will not allow it to become an odor, use or sales issue. Ms. Naegle asked if it is presumed that with fewer animals, there will be less odor. Mr. Farnsworth commented there will not be as much waste with less animals. He acknowledged the City's Code is to balance residents and agriculture, and to help keep property value. Acting Chairman Moore noted that most of the animals that are kept on this property are not grazing animals, but grazing could still be an issue. He stated if the applicant wanted to have additional animals, adjacent property could be leased. Mr. Spendlove suggested it is the burden of the City to prove that the points have not been exceeded prior to 1994. He reminded the City adopted this ordinance in 1994, and it is difficult to prove that the applicant did not have 200 points at that time, and that they have only been in violation since that time. Ms. Naegle commented that many other issues have been grandfathered in. She asked what rights the applicant has with the changes the City has made. Steve Lehman answered this is the challenge of non-conforming use determinations. Applicants are told that the only way the Board can make a reasonable decision is based on information provided by those that have lived in the area. He noted there are letters supporting this application, and letters contrary to the application. Steve said the majority of letters that have been submitted state that animals have been kept on the property. The letters do not list the number of animals, but assure that there have been animals on the property. Some letters state the property has not supported this many animals in the past. Mr. Spendlove believed the Board must decide and be in agreement that the animals have always been there, although the number is in question, but they have not forfeited the right for the non-conforming use. It has not been over a year of no animals on the property. He did not see the applicant needs criteria for the non-conforming use other than they want a clarification. Issues such as waste are separate issues, where if the applicant is in violation, it would be a separate zoning enforcement area. Mr. Spendlove said if it comes down to points, could the Board attach some stipulations, such as allow 300 or 275 points. This may help with odor issues, but still allow some flexibility on the part of the landowners. Steve spoke to the City Attorney's office, and stated it would be within the Board's ability to grant

whatever points have been on the property. He does not know how this can be determined with the submitted letters, but the numbers should be either 200 or 350 points. Mr. Farnsworth asked if the increase of points would set precedence for other similar parcels. Steve replied no, the non-conforming determination is based on the specific property and circumstance. Mr. Spendlove appreciates the concerns mentioned by Marta Parsons, but he reminded this is not the only property with odors. If pigs are being sold for profit, that is a separate issue which could be addressed as a violation. Steve acknowledged that selling pigs for a profit is allowed in the agriculture zone, but would require conditional use approval by the Planning Commission. He mentioned the Board of Health would most likely need to inspect such a use. Steve said the City does not want agriculture areas to become commercial area, so conditions would be set, which would probably limit the sales. Mr. Spendlove wondered if the points could be granted by the Board, and other issues be reviewed through the conditional use process. Steve explained that if the owner of the property is selling, it is beyond the Board's review and authority. Staff would initiate this issue and tell the applicant if that is going to continue, an application must be made to the Planning Commission. Steve said the Planning Commission will review the property to make sure that whatever use is occurring is happening in an orderly fashion. It should not exceed or be too intense for the neighborhood. Acting Chairman Moore suggested this discussion should be continued. Mr. Uluakiola asked if this application could be postponed until a determination has been made from the Planning Commission. Steve noted that facet plays into the Boards decision at this hearing. The Board is simply to make a determination as to whether the applicant had 350 animal points prior to 1994. Acting Chairman Moore did not believe there would be anyway to determine the amount of animals on the property at that point. He stated the Board is here to determine if the applicant should conform to the ordinance as written, or if an extension of points should be granted. Acting Chairman Moore believes the Board should hold to the City's point system, and the cap that has been determined. Mr. Spendlove noted the submitted letters list a variety of animals throughout the years, and pigs are not new to the property. Acting Chairman Moore noted pigs create additional odor, and possibly a two to three month extension is needed when the sows are having piglets. Ron Weibel mentioned pigs are considered a medium animal, and when the piglets are under the age of one year, they do not have a point value. The one year time limit allows the owner to get rid of the piglets. Mr. Spendlove asked if the 350 points were all animals over the age of one. Steve Lehman did not know the answer to this. He read the comments from the Code Enforcement Officer, stating the types of pigs that were found included 11 piglets, as well as lambs, goats, and fowl, which total 350 points. Steve suggested a discussion be made with the Enforcement Officer to determine if the babies were included in the calculation. Ms. Naegle wanted a motion that included the attendance of the Enforcement Office so that specific questions could be asked. Ron Weibel reminded that the point system is accumulative, and includes all the applicant's animals, such as sheep, goats, chickens, and horses. He explained that larger animals count as 40-points, medium animals count as 20-points, and small animals such as chickens are one point each.

MOTION: Ms. Naegle made a motion to continue this application for one-month, requesting the Ordinance Enforcement Officer attend the public hearing to answer questions by

the Board of Adjustment. A copy of the City's ordinance regarding the point system is also requested.

Mr. Spendlove seconded the motion.

A roll call was taken.

Mr. Uluakiola	Yes
Mr. Spendlove	Yes
Ms. Naegle	Yes
Mr. Farnsworth	Yes
Acting Chairperson Moore	Yes

Unanimous – B-2-2007 – motion carries to continue the application

B-3-2007
Arellano Variance
4478 South Orleans Way

Steve Lehman presented the application.

REQUEST:

Margarita Arellano has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305 of the West Valley City Land Use Development and Management Act. This section requires that the side yard setback on the garage side of the dwelling be a minimum of 10 feet from the property line. The applicant is requesting a variance of 6 feet in order to construct a second story above a proposed garage addition.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends low density residential land uses.

- The subject property is known as lot 21 of the Meadow Heights Phase 11 Subdivision. This subdivision was recorded with the Salt Lake County Recorder's Office in December 1973. The existing dwelling was constructed in 1975.
- As the Board knows, many homes constructed during the mid 1970's were not built with

two car garages, and some without carports. The applicant approached the City about the possibility of building a detached garage in the rear yard. After reviewing the subdivision plat, a 25-foot easement exists along the western boundary in favor of the Jordan Aqueduct. Due to the location of this easement, a detached garage was not possible.

- Staff did inform the applicant that one option would be to convert the existing carport into a two car garage. Staff explained that a provision in the ordinance would allow the side yard setback to be reduced to 4 feet. The applicant inquired about the possibility of adding a second story above the proposed garage. Staff informed the applicant that this type of request would need a variance from the Board of Adjustment as the required setback for the living space would need to be 10 feet. Because the applicant believes the addition above the garage would be a benefit to their living space, they have decided to request a variance.
- As a reminder for the Board, residents whose homes were constructed prior to April 18, 1990 with a carport can convert and enclose the carport into a two car garage. The setback requirement for such a conversion can be reduced from the required 10 feet to 4 feet. This will allow owner's of property to more safely park vehicles and store objects that would otherwise be left outside.
- The ordinance however does not make exceptions for second story additions. The ordinance specifically states that the side yard setback adjacent to a "one story" garage may be reduced provided that a 4-foot side yard is maintained. Second story additions would still need to meet the minimum setback of 10 feet. The relief in the setback requirement was applied so owners could build a garage not an addition.
- The owner explained that being able to add a second story above the future garage would provide additional living space for their family. The addition would add value to the dwelling and much needed living space.
- In a previous case similar to this request, staff learned that building codes require the second story to be constructed over a bearing wall. If the second story was setback 6 feet from the outside wall of the garage addition, a large beam or other costly floor joists would be needed to support the upper floor. This problem could be mitigated if the second story was built over the outside walls of the garage addition.
- Staff explained that part of the reason for the greater setback on the second story is aesthetics. Taller structures built close to the property line do not create the separation that is typically found in single family neighborhoods. While discussing that with the applicant, they responded that their neighbor to the south is approximately 16.5 feet from the property line which should help resolve the aesthetics concern.

ORDINANCE SUMMARY:

Section 7-6-305 of the West Valley City Land Use Development and Management Act requires that the side yard setback on the garage side of the dwelling be 10 feet.

Section 7-6-305(2) of the West Valley Land Use Development and Management Act allows the side yard setback for a “one story garage” to be within 4 feet if the dwelling was constructed prior to April 18, 1990.

Section 7-18-107 of the West Valley Land Use Development and Management Act outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, “Criteria for the Validity of Variances”, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board’s decision to grant a variance would be illegal if the required statutory findings were not made.

Applicant:
Margarita Arellano
4478 S. Orleans Way

Favored:
Gary Smith
4486 Orleans Way

Discussion: Ms. Margarita Arellano distributed documents to the Board. She explained the subdivision was approved by Salt Lake County, and she wants to increase size and value of

the home. Ms. Arellano described where an easement was located on her property, resulting in an insufficient amount of room for a garage. She informed that other neighbors have second story units, and a variance would not affect City's General Plan. Ms. Arellano displayed pictures of other homes in the area with a second story unit placed over the garage. She indicated she had neighbor that were in attendance at this meeting to show their support. Mr. Uluakiola asked how many people there were in her family. Ms. Arellano replied three, but they would like to have more children.

Mr. Gary Smith, a neighbor of the applicant, said he was in support of this application. He explained his own property would be the most affected by this application. Mr. Farnsworth reminded Mr. Smith that the encroachment may or may not have an impact on the resale of his property. Mr. Smith did not believe it would make a negative impact, as he does not plan to build onto the north side of his property. He assured if he wishes to expand, he would build straight back off of his house.

Acting Chairman Moore closed the hearing at 7:05 p.m. to public input.

Acting Chairman Moore acknowledged that the Board had reviewed similar applications in the past. The issues that arose included concerns regarding easements, fire codes, etc. He felt satisfied that this application would not have issues with the fire code.

MOTION: Mr. Uluakiola made a motion to grant a variance from section 7-6-305 of West Valley City for application B-3-2007, applicant Margarita Arellano. The variance should be reduced from 10-feet to 4-feet, for the construction of a second story on the garage. This is based on staff's five criteria.

Mr. Naegle seconded the motion.

A roll call was taken.

Mr. Uluakiola	Yes
Mr. Spendlove	Yes
Ms. Naegle	Yes
Mr. Farnsworth	Yes
Acting Chairperson Moore	Yes

Unanimous – B-3-2007 - approved

**A motion for a five minute break was made by Ms. Naegle at 7:11 p.m.
A motion to reconvene the Board of Adjustment Meeting was made at 7:15 p.m. by
Acting Chairman Moore.**

APPEAL:

B-16-2006

Robert Fern

2720 South 6750 West

A-1 Zone

Steve Lehman presented the application.

REQUEST:

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.

BACKGROUND:

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.

Applicant:
Robert Fern
2720 South 6750 West

Concerned:
Marta Parsons
2574 S. Hempstead

Discussion: Mr. Spendlove asked why this case was handled with an Administrative Determination. Steve Lehman explained that a Zoning Administrator can make determinations on certain cases that are not necessary for the Board of Adjustment to review. He assured this is part of the Zoning Administrator's job duty and is performed daily. Steve reminded this meeting is to determine if the Zoning Administrator made an error in his decision by saying in his letter that we do not allow, as a City, caretaker's residents on a lot where there is already a single family dwelling. The Board is not to determine code violations or if a citizen did not receive a permit.

Mr. Robert Fern reported that when he purchased the property just over two years ago, on May 13, 2005, there was a residence and an outbuilding on the property. He believes the outbuilding may have been a garage at one time, but it has been converted such that living space is now in the outbuilding. Mr. Fern indicated there are two separate apartments in the building, and this is the way it was when he purchased the building. No one told him that this may be a zoning problem with the fact that this second building is being used as a dwelling. He informed there is a single family, as defined by the City's code, which he also became an informal part of. There are eight siblings as part of the family, although not all siblings are living there. Mr. Fern said two sisters, two children, and one unrelated person are living there. He mentioned there is also a brother, his wife, and a child living in the outbuilding. Mr. Fern assured these are all family members, brothers and sisters, children, and a couple of unrelated adults. He explained the family loves animals, especially horses, and they are fond of rodeo work. There is also one brother who is a professional bull rider who is interested in working and training with bulls in a small bull pen. Mr. Fern said the brother brings two to three dozen people in at least once per week in the summer time to practice bull riding. The participants all pitch in for expenses, such

as feed for the bulls. There are two bulls on the property and a couple more bulls are brought in for the practicing. The children ride horses, performing barrel and pole racing, as well as being trained to ride by one of the sisters. The family has many horses, although most of the livestock is kept on 87 acres of rented property in Magna most of the time. A few horses and bulls are brought onto the ranch for training and raising by the family. Mr. Fern said this is exactly what is permitted under the City Code. He read from the Code, stating “specifically one of the permitted uses is non-commercial raising, training, and grazing of animals”. Mr. Fern added that another permitted use is “uses customarily accessory to the listed permitted uses”. He said that when he moved in, being part of an observer and part of the animal activity, it was clear to him that the family was helping to take care of the property, the animals, maintaining fences, and the things you do with this kind of situation. One of the brothers, Shilo, does much of the heavy work, including mending fences. Mr. Fern explained he did not know there was anything wrong with the situation, until the City came to him a year after he moved in, telling Mr. Fern that a second dwelling was not allowed. He believes that “uses customarily accessory to non-commercial raising, training and grazing of animals” is a permitted use and should be allowed. The City told him no, it was not allowed, and that the City’s Zoning Administrator must decide if this really is a use customarily accessory to listed permitted uses. Mr. Fern noted the question is what the meaning of “customarily accessory” is. He believes it is customary for people to need to take care of animals and maintain the property. Acting Chairman Moore told the Board they could familiarize themselves with this information in their packet, under Permitted Uses, 7-6-202. Mr. Fern commented there are no page numbers for the information, but he explained the agricultural zone’s permitted uses was the fifth page of the Board’s packet. He stated one of the questions asked of him was why is this a different procedure. Mr. Fern explained this is not like a variance request, or a conditional use request, but is to determine if this is a permitted use. He believes this is a permitted use and he does not need anyone’s permission to use it as a permitted use. The Zoning Administrator decides whether or not it does fit the definition, and it hinges on the meaning of the phrase “uses customarily accessory to listed permitted uses”. When his application was denied, and the Zoning Administrator addressed the question of is it customary or not customary to have an accessory dwelling for the working staff. Mr. Fern asked the Board to look at the letter of denial in their packet. He noted the letter is a two-page description of what had happened up to that point. Mr. Fern asked the Board to go to the second page of Zoning Administrator’s determination. He noted the Zoning Administrator said it is not a typical accessory use found in the agricultural ‘A-1’ zone. Mr. Fern did not believe the letter explained why the Zoning Administrator felt it was not a typical accessory use, however, he did give additional information. The Zoning Administrator discussed the purpose of the agricultural zones, aside from agricultural uses, to support rural or very low density residential development. The letter goes on to say “density supported only by single family dwellings”. It seemed to Mr. Fern that what the Zoning Administrator was trying to say is that the City does not want multiple families, but want single families. He said this is exactly what he has, a single family, but they do not fit into one building. Mr. Fern noted one of the brothers who work with the bulls is now living in Nephi, Utah, traveling a long distance between this property and Nephi. He supplied the Board with a letter from Pete Poulson who is the brother that lives in Nephi. The letter had Mr. Poulson’s address as well as some of the background work that Mr. Poulson has performed. Mr. Fern commented that the letter from Mr. Poulson mentioned ranch hands are provided

separate living quarters. He said this is an example of what is customary. Acting Chairman Moore noted the letter does not address the size of acreage for the ranches, as well as not including a time frame of when Mr. Poulson worked the ranches. Mr. Fern did not have this information. He had one strong point about Mr. Hooper's denial letter. The letter said the purpose is low density, single family, and Mr. Fern explained that this is a single family. He has no intention to expand to higher ranch hands or bring in any other family. If approved, Mr. Pete Poulson will move back into the apartment, and Shilo would also be able to move into the other apartment. The total amount of people who will be there will then be two brothers, two sisters, two children, and two unrelated adults. This is one single family, showing that Mr. Hooper made an error in his letter. Mr. Fern said Mr. Hooper clearly interpreted this situation as an attempt to expand it beyond single family. He explained Mr. Hooper did not take into consideration that this is a single family. Mr. Fern addressed the middle paragraph on the first page of the letter, stating Mr. Hooper attempted to deal with the question of how to define uses customarily accessory to listed permitted uses. He concluded, in the first paragraph on the second page, that he knows of no other legal accessory building being used for caretaker residential facility for animal care in West Valley City. This was based on all the letters and Mr. Hooper's knowledge, so he disallowed it. Mr. Fern said Mr. Hooper did not know of any others places that have a separate caretaker's building in West Valley, suggesting this is one of the main reasons for this decision. Mr. Fern pointed out that what the zoning ordinance requires is not that the use be found in West Valley or customary in West Valley, or the Zoning Administrator knows of anything in West Valley, but whether its customary accessory to raising, training and grazing of animals. Maybe no one has made an application of this type in West Valley before, and this may be why there are none in West Valley. This would not be a fair basis to deny it, because no one has ever done it before. Or maybe that others have applied, but been denied for whatever reason. Mr. Fern felt it was an error for Mr. Hooper to base his decision on the fact that there are none in West Valley City. This is not what the ordinance says, it says it's alright if it is customarily accessory to animal raising and training. Mr. Fern had additional letters from others supporting his opinion that this is customary. He discussed a letter from Colleen Hodson from the Dude Ranchers Association stating living quarters for ranch workers is typical. He quoted her as stating the living quarters are far enough from the main lodge so you did not know the quarters were not even there. Mr. Fern indicated Ms. Hodson's letter actually states "they are usually far enough away", suggesting they are not always far enough away. He explained Mr. Hooper left out the word "usually" in his letter of denial, making another error by leaving out that word and giving a different impression. Mr. Fern addressed another letter which was submitted from Dale W. Cameron who is a real estate appraiser in Vernal, Utah. He was consulted due to his experience with properties and uses of this type. Mr. Cameron gave much information on whether it is customary or not to have an accessory building for workers. Mr. Fern stated Mr. Hooper took one piece out of the three page letter, and quoted it as a basis for his denial. He said "farms larger than 250 acres were found to be the most likely to have additional living units, based upon animal numbers and irrigated acreage". Mr. Fern commented the letter from Mr. Cameron states "from my observations, the more labor intensive the enterprise, the more likely additional living quarters are present with these operations". It continues to say that where the livestock are concentrated and labor intensive, that the additional labor required was found to be a contributing factor for additional living units, irrespective of the land size of the operation. Mr.

Fern indicated if daily work is needed, it does not matter how big the ranch is. It is customary to have the additional living quarters, but Mr. Hooper left this out of his letter, which is another error. Mr. Cameron's letter stated "it seems to be very common for more than one residence or living unit to be present on agricultural operations. He said Mr. Hooper asked for additional documentation which indicates that in the Salt Lake Valley, a caretaker or separate living facility is customary on similar properties of approximately one-acre. Mr. Fern told the Board he gave Mr. Hooper two other letters, but Mr. Hooper did not refer to them in his letter of denial. He informed that the first letter is from John C. Hickey who was here at the first scheduled Board Meeting, but has since moved away to Kentucky. Mr. Hickey described that in Taylorsville, he lived in a former storage building, converted to a house. The letter noted this was customary on horse farms, and he worked on a ranch of 2.9 acres. There was an additional letter from one of the Poulsen brothers, which Mr. Hooper also ignored. Another letter from one of the Poulsen brothers described working for a man in Magna. His job was to clean the stalls, and haul the hay. Mr. Poulsen lived in the man's barn in Magna for approximately 3-years. The barn had an apartment with electricity, running water, and plumbing living. The property size was not mentioned, but it is located on Parkway Blvd., and certainly less than ten-acres. This letter is very significant, but also ignored by Mr. Hooper, which is an error. Mr. Fern gave a description of surrounding properties, noting the distance between his neighbor's house, Mr. Fern's house and the adjoining building is 300-feet. He said most of the property behind his neighbor's house is an empty field. The lane at 6750 West is not a public street, but is an unpaved dead end access road. This is not a residential area, there is a lot of open space and neighbors are not impacted. Mr. Fern passed out another letter from Mr. Hickey which gave more detail about his experience, the properties he's worked on, the sizes and locations of the properties. He explained this letter shows more light on the meaning of customarily accessory to raising and training horses. Mr. Fern reminded of a two-page petition signed by neighbors, noting the first page had a statement in which the neighbors did not have objection to. He did not know if anyone has called in voicing objection. Mr. Steve Lehman indicated the original meeting was noticed to adjacent residents within 300-feet. No one came out to that hearing, and subsequently, the City has not noticed for the continued hearings at the direction of the City's Attorney's office since no one showed up for the first hearing. Mr. Fern distributed drawings of how the property is laid out and two alternatives. Ms. Naegle informed that she was not able to locate this property. Mr. Fern gave directions to his property. He explained that if this is not approved he could connect the two buildings to make one large building. The Building Inspection's Division has assured this could be approved. Mr. Farnsworth asked if this is correct. Steve Lehman replied it could be possible, but there are building codes and it must function as a single family dwelling with hallways, openings, etc. He indicated that if the two homes were connected, and all setbacks were met, it could very well be considered one large home. Mr. Fern said another alternative would be to not connect the two buildings, but to add an extension onto the existing home. Steve Lehman acknowledged these options are possible, but said the Board of Adjustment is not here to factor the cost or remedies. He reminded the Board is to make a determination of whether the City's Zoning Administrator made an error. Mr. Lehman said how the applicant remedies this is something he will have to decide based on the Board's decision.

Mr. Fern summarized that what he is proposing does not have a negative impact on the surroundings. No one has complained, and the alternatives would result in the same operations if the building was extended. The same number of people in this single family would live there. Whether its one big building or two buildings, side-by-side, doesn't make too much difference. The letter of the ordinance is being dealt with at this time, which requires only one building. He asked ultimately, what would be the impact. If done a different way, the results would essentially be the same except for the building would be larger. Mr. Fern asked if this is something that should be denied. He asked if it is customary to have an additional caretakers building. Mr. Fern believes that he has made a case that this is customary based on his evidence. He mentioned the many errors made in Mr. Hooper's letter of denial, in which he did not consider that this is in fact a single family. The evidence was not utilized but statements were picked and chosen to defend Mr. Hooper's case for denial, making the situation look very different than what it actually is. Mr. Fern believes he presented evidence to prove that it is customary for a property of approximately this size to have an outbuilding for the maintenance of the property.

Mr. Scott Spendlove asked what the people living on this property do for a living. Mr. Fern replied one of the unrelated adults has a 9-5 job. He informed that he is retired, and the two sisters are disabled and live off of their disability payments. Mr. Spendlove wanted to verify that the raising and training of the animals is only a hobby, and no income is received. Mr. Fern assured no income is derived. Mr. Spendlove noted that with conditional uses permitting the commercial raising, rental, stabling, training, grazing, equestrians, and horse use of that property. Mr. Fern stated the horse training is done for the kids to ride in rodeos, and the bull riding is done by bull riders. The riders chip in to pay the expenses such as maintenance and feeding, but there is no commercial aspect of this. No one is being charged admission, although the participants must pay to enter and ride in a rodeo. He considers this a hobby, but assured no income is derived from these activities. Mr. Spendlove commented regarding customary or accessory uses for a property, cemeteries could be used as an example. He mentioned the sextant's houses is on the property for care. What if two sextant houses were required due to high business demands? Would both houses be required to meet the City's building codes? Steve Lehman answered yes, they would. Mr. Spendlove confirmed that if people are living in the unit, then it must meet the City's requirement for a housing situation. Mr. Uluakiola asked what the applicant considers a family. Mr. Fern replied that the definition in the code says any number of people related by blood or marriage living together, and up to three unrelated adults. Ms. Claire Gilmore reminded that in the context of zoning, that when single family dwellings are discussed, it does not bare any relationship to if they are related by blood or married. It's more about the idea of people living together in a particular space. It's a term to describe a certain type of residence that the zoning is trying to achieve. Mr. Uluakiola asked how many occupants live in the single family dwelling. Mr. Fern answered that there are two related adults, two unrelated adults, and two children for a total of six all together in the main house. He added that eventually, if this is approved or they expand the house, the two other brothers will also move in, as they bring in the work for the house. Mr. Spendlove asked about the minimum size of homes required in the agricultural zone. Steve Lehman gave the minimum requirements, but explained there is no maximum size, as someone could build as large a house as they desire as long as it

meets the City's ordinances and setbacks. Acting Chairman Moore asked if this property would be considered irrigated crop land or grazing pasture. Mr. Fern answered no, stating a few of the horses are on the neighbor's property to the west. The animals on this property, which include two bulls and a couple of ponies, are watered from a hose from the house's water. Acting Chairman Moore asked when the conversion was performed on the garage. Steve Lehman was not aware of this date, stating for the purpose of this application, this was not researched. Mr. Farnsworth asked when the property was purchased. Mr. Fern replied May, 2005, and he closed on May 13, 2005. Mr. Farnsworth confirmed that when the property was purchased, that the south building had already been converted. Mr. Fern said yes, this was correct. Mr. Farnsworth asked if the property was reviewed by a building inspector to make sure all the present codes were being met for the City. Mr. Fern answered no, but a title search was performed. He thought the title search would find anything that was not alright. Since the title search went through, Mr. Fern did not question anything. Mr. Farnsworth noted title searches are performed for liens on the property, as well as easements and right-of-ways on the property. Mr. Fern assumed that when he borrowed the money, the bank's lending officer would have researched all the legal work. Mr. Spendlove reminded this is not the issue of tonight's meeting. This meeting is to determine if the Zoning Administrator made a mistake with the denial letter. Mr. Fern clarified that he is not asking for a variation or conditional, as he believes this is a permitted use and a use customarily accessory to animal raising. If it is a customary use, then it is permitted. Mr. Farnsworth asked if the Board could look at customary uses outside of West Valley City. Steve Lehman directed the Board to base this application on this location and this zone. He mentioned some of the ranches that Mr. Fern has referred to are substantial in size, hundreds of thousands of acres. Steve acknowledged the few letters that refer to two and three acre locations. He said it should be based on the location here in our City. Steve read the definition section of the code regarding accessory use. He summarized that the intent of the code regarding accessory uses in the City is that they should be less than what the primary use is. The primary use on a lot is a single family dwelling. A subordinate is something that is less than that use. Mr. Fern mentioned the outbuilding is considerably smaller than the main building, and does not dominate the main building. Steve Lehman explained it is not just subordinate in area, but must be a less use than what is taking place in the primary building. He said the outbuilding is being used as housing residential use. Ms. Claire Gilmore stated the threshold determination today is not to grant or permit Mr. Fern to do or not do something, but to determine if the Zoning Administrator made an error in this determination. She pointed out that the Board is not taking in to account potential remedies if the applicant did error, no need to address construction, no need to address who lives there. This is only a threshold determination of whether or not the Zoning Administrator made an error when stating "based on my review of this information, based on all that has been submitted, based on Mr. Fern's lot size, based on the number animals kept on the property and the activity, that the caretaker or apartment building is not a typical accessory use." She quoted the ordinance stating "the purpose of the zones is to provide area in the City for agricultural uses, together with rural or very low density residential development". Permitted uses include agriculture, community uses, fruit and vegetable stands, home occupations, and all the way down to uses customarily accessory to the listed permitted used above. Mr. Fern said he tried to articulate the errors. He believes the determination was based on a number of things

which were mistakes, including selectively taking information from submitted letters and in thinking that this is not a single family.

Acting Chairman Moore closed the Public Hearing to public input at 8:26 p.m.

Mr. Spendlove said if this is a non-commercial venture, then it would fall under permitted uses of raising, training and grazing of animals. He did not believe a ranch-house or ranch-hand house would not be necessary for a non-commercial use. Acting Chairman Moore agreed that if it is non commercial, being more of a hobby or for enjoyment, an accessory house would not be required. Mr. Farnsworth thought it was a mute point to consider properties outside the City of West Valley. He stated other cities may have different ordinances that pertain to caretaker property, as well as other counties. Acting Chairman Moore stated the examples Mr. Fern referred to in his letters from outside of the valley were commercial ventures, but non-commercial ranches. He acknowledged there are a few in the valley that Mr. Fern mentioned in letters that are smaller, similar to this property, that are non-commercial ranches. Ms. Naegle suggested the Board go through the applicant's error points to verify what the Board agrees or disagrees with regarding errors. She started on the top of page 2 titled errors. Acting Chairman Moore read the first paragraph and asked if there was an error. Ms. Naegle said she thought there is a difference between a single family and single family dwelling. She agreed with Kevin's statement that it is not the single family, but the dwelling, and there are two dwellings instead of one dwelling. Acting Chairman Moore confirmed that in Kevin Hooper's letter, he did not error, but believes there is two separate dwellings on the property, instead of the single family dwelling as permitted. Steve Lehman read the definition section of the ordinance regarding dwellings - single family, stating it says a building arranged or designed to have one dwelling unit for occupancy by one family on one lot.

Acting Chairman Moore read the second paragraph. Ms. Naegle stated this still goes back to the definition of a single family dwelling. Mr. Farnsworth agreed that the family fits the criteria defined by West Valley City as being a single family, but the question is if there is a single family dwelling. The board found no error.

Acting Chairman Moore read the third paragraph. Ms. Naegle noted that Mr. Hooper's letter did not say that they were not a family. She did not believe this paragraph was pointing out an error. Mr. Spendlove perceived the number of animals gave a perspective that it is a commercial venture. Ms. Naegle indicated that this paragraph and the last paragraph are helpful in telling alternatives of what could be done. But the point of insufficient lot area on a second separate dwelling does not have anything to do with the lot area, but involves whether or not two dwellings are allowed. The board found no error.

Acting Chairman Moore read the first paragraph on page three. He said this does should not sway or bear with the Board's decision. The Board found no error.

Acting Chairman Moore read the second paragraph on the third page. Mr. Fern told the Board that there was a typo on the last sentence of this paragraph. He said the word 'not' should appear

after the word 'determination'. Ms. Naegle stated it is true that there is enough lot area for a second separate lot. Acting Chairman Moore agreed that there is not enough room to subdivide. The Board found no error.

Mr. Spendlove discussed statements in the following paragraphs. He said that suggesting the decision was erroneous because it was based on the presumed nonexistence of such accessory uses in West Valley City is the wrong criteria. Mr. Spendlove explained the correct criteria is whether the proposed use is customary accessory to the limited permitted uses. He noted the bottom paragraph talks about a commercial use, which the applicant is basing his argument on. Mr. Spendlove reminded this is not a commercial venture, so many of the arguments are unfounded. He does not see that a mistake was made by the Zoning Administrator. Ms. Naegle pointed out that most of the comparisons are outside of the Valley. The few in the Valley were over larger than an acre. Acting Chairman Moore acknowledged the Board does not want to deny the applicant a property right, but there are no other property owners in West Valley that have the right that the applicant is trying to apply for. Ms. Naegle asked Claire Gilmore who has the burden of proof with this case. Ms. Gilmore said the Board of Adjustment is to affirm Mr. Hooper's decision or to reverse it, wholly or in part by the ordinance. Ms. Naegle asked if it was the City's requirement to find another such use in West Valley City. Ms. Gilmore replied it is absolutely advisable to go over the submitted evidence by the applicant, and to draw distinctions and similarities based on those examples. Acting Chairman Moore did not believe the Board could draw a similarity between this property and a dude ranch. Mr. Farnsworth noted he has been responsible for proof with his personal property issues. Steve Lehman mentioned that the zoning ordinance says that when someone makes an appeal, that the burden is upon them to demonstrate why or where the error was made.

Mr. Spendlove summarized the extension of page 3 and page 4's middle paragraph. He believes the applicant is focusing that the arguments are based on a commercial venture, as apposed to a hobby or recreational venture.

Acting Chairman Moore discussed page 5, which focuses on a neighboring city. It was determined that the examples should be from West Valley. He mentioned there are not enough animals to justify full-time caretakers. Mr. Farnsworth agreed there is not enough concentration of animals to qualify a full-time caretaker.

MOTION: Mr. Spendlove moved that in the appeal of B-16-2006, that the Zoning Administrator correctly determined his decision. That the Board upholds the decision of the Zoning Administrator. There was not substantial error made by the Zoning Administrator, based on the review of the information that the Board established in the record by going page by page over the different documents. There are two distinct and separate living dwellings upon the property.

Mr. Farnsworth seconded the motion.

A roll call was taken.

Mr. Uluakiola	<u>Yes</u> _____
Mr. Spendlove	<u>Yes</u> _____
Ms. Naegle	<u>Yes</u> _____
Mr. Farnsworth	<u>Yes</u> _____
Acting Chairperson Moore	<u>Yes</u> _____

Unanimous – B-16-2006 - Motion carries to deny the applicant’s request

There being no further business the meeting adjourned at 8:50 p.m.

Lori Cannon, Asst. City Recorder