

**WEST VALLEY BOARD OF ADJUSTMENT**

**June 6, 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**

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

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman and Karon Jensen

**WEST VALLEY CITY LEGAL DEPARTMENT**

Nicole Cottle

**B-4-2007**

**Value Place Hotel  
1638 West 3500 South  
C-2 Zone**

**REQUEST:**

Kyle Clements, representing Value Place Hotels, has filed a request with the West Valley City Board of Adjustment seeking three variances from Title 11-6-104(2)(e) of the West Valley City Land Use Development and Management Act.

This title requires that the area limitations for signs on the rear and side elevations of a building not exceed 5% of the first story face. The applicant is requesting a rear sign variance of 60.63 square feet, a left side variance of 52.68 square feet and a right side variance of 100.2 square feet for a future hotel.

**BACKGROUND:**

- The application regarding the sign variances is being submitted in preparation of a new hotel to be located at approximately 1638 West 3500 South. The applicant believes that the proposed sign variances are needed to help with the success of the hotel and to ensure visibility along Redwood Road and 3500 South.
- The applicant has submitted a site plan along with an aerial photograph which illustrates the location of the proposed hotel. The aerial photograph shows the hotels location as it will relate to adjacent properties and uses. Although an application for the hotel has yet to be submitted, the Board can review and act on the variance request.
- In order to gain the highest and best visibility for this site, the applicant is proposing to use a cupola as the main focal point for the proposed building signage. In consideration of this building idea, the applicant is not proposing a free standing sign such as a monument sign. The allowable signage on the building itself, is calculated by taking the first floor height (15 feet in this case) and multiplying it by the length and width of the building. In this case, the following sign square footage is allowed for this building. It should be noted that the City does include the cupola in all calculations.

Building Elevation	Allowable Sign Square Footage	Proposed Sign Square Footage	Difference In Square Feet
Front	515.00	232.38	N/A
Rear	171.75	232.38	<b>60.63</b>
Left side	39.75	92.43	<b>52.68</b>
Right side	39.75	139.95	<b>100.2</b>

- The applicant believes that the location of this property and its relation to the sweeping curve along the 3500 South creates a challenge for drivers to see this site from the east and from Redwood Road. Staff explained that the Board would evaluate this claim as it relates to the property condition as part of the variance review.
- The applicant has been traveling and was unable to provide a written letter to the Board. Mr. Clements did inform staff that a letter would be provided prior to the Board meeting.

**ORDINANCE SUMMARY:**

Title 11-6-104(2)(e) of the West Valley City Land Use Development and Management Act reads as follows:

The area limitation for signs on the face of a building or structure shall be 10 percent of the front first (defined as the actual first story height or 15 feet

whichever is less) story face and five percent of any other first story face. Fifteen percent of the front first story face may be allowed, if no pole signs are requested.

The West Valley Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The following information was provided by the applicant:

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.***

A literal enforcement of the zoning ordinances would restrict the legibility and readability of Value Place Hotel's signage. This is a heavily traveled corridor with numerous establishments, many of these establishments block the visibility of the hotel. The placement of these signs ensures that they can be seen at an adequate distance by motorists, who will be unfamiliar with the area, and provide them with safe and affective way finding tools. Because of the size of the building, the signs must be constructed in such a manner as to be legible. Making the signs any smaller would greatly restrict their ability to serve any purpose.

2. ***There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.***

This hotel will cater to those travelers who are unfamiliar with the surrounding area and will therefore need an affective sign program to safely guide them to the site. Other establishments in the area also do not have the same level of site obstructions that this site will have. Also, the curvature of W 3500 South near the site restricts motorists ability to see signage at the location.

3. ***Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.***

In order for Value Place Hotels to establish themselves as a member of the community, it will need to utilize a sign program that will be safe and affective for those in the area. This variance will allow for signage to be read at an adequate distance for motorists to make safe traffic maneuvers to the location. Since most of the hotel's patrons will be from out of town, they will need additional time and assistance to find the establishment. This sign program will allow Value Place the opportunity to be a successful member of the community, just like every other business in the corridor.

4. ***The variance will not substantially affect the general plan and will not be contrary to the public interest.***

The granting of this variance is in the public interest, in order to allow for safe and affective way finding tools throughout the corridor. This will help to ensure safe traffic flow and help prevent unsafe traffic maneuvers. In regards to the affect of the General Plan, as it stands right now, this property would be allowed the use of over 750 square feet under what we are allowed. The reason for this variance is because of the placement of the signs on the walls. We are not looking for a sign program that will litter the area

with unnecessary signage, but rather provide our patrons and the community with a safe and attractive sign package.

5. *The spirit of the zoning ordinance is observed and substantial justice done.*

The spirit of the ordinance is to protect both the rights of the business and the community by providing fair sign programs that will be affective and unobtrusive. This variance request fits the spirit in that it provides adequate visibility for the hotel, safe way finding tools for motorists in the corridor, all while using 250 square feet less of signage than is allowed.

**Kyle Clements**  
**6001 Nimtz Parkway**  
**South Bend, IN**

Mr. Clements is the sign agent for Value Place Hotels and he indicated that they are proposing three variances from Title 11-6-104(2)(e) of the Land Use and Development Act. This ordinance requires that the area limitations for signs on the rear and side elevations of a building not exceed 5% of the first story face. The request is for a rear sign variance of 60.63 feet, a left side variance of 52.68 square feet, and a right side variance of 100.2 square feet for the proposed hotel. The reason for this request is that we want to provide adequate signage and visibility to our patrons who are going to be traveling throughout this corridor and who are unfamiliar with the area. This sign package allows us to establish visibility in the corridor both on Redwood Road and 3500 South so that patrons will have adequate time to see the site, navigate to it in a safe manner given that both roads are heavily traveled and make safe traffic maneuvers into the location.

The applicant indicated that their request is for 70 feet under what is allowed for the total aggregate square footage of the building. Also, we are not proposing a monument south sign at this property because the cupola design will give us the adequate visibility that is needed. This is helpful because it allows us to reduce sign cluttering in the area to ensure an aesthetically pleasing building as well as sign program. The variances are necessary to help ensure the hotel's success and to strengthen visibility along Redwood Road and 3500 South. A cupola is being proposed as the main focal point for the signage in order to attain the highest and best visibility for this site. Mr. Clements explained that the location of this property and its relation to the sweeping curve along 3500 South creates a challenge for drivers to see this site from the east and from Redwood Board.

Mrs. Christensen questioned, is there anyone present who would like to speak either in favor or opposition to this application and there was no response.

**Discussion**

Mr. Lehman mentioned that he had received a call from Check City's property owner expressing interest in the application and basically wanted to understand what was going on. He did not express any concerns. He noted that the lower rear sign by the Wallpaper Warehouse building would not be seen by the public and so staff is recommending that the applicant may wish to remove this from the proposed signage.

Mrs. Christensen noted that she had visited the property and felt that the proposed hotel is a marked improvement from what currently exists on the site. Also, there are no concerns with the signage and after reviewing the hardship criteria provided by the applicant and I believe that we should grant the variances.

Mr. Spendlove stated that he was also in favor of the variance as long as the applicant is willing to drop the lower elevation sign as they suggested they would.

Mrs. Christensen mentioned this is close enough to the Cultural Center that it would be a viable business and will add value to that neighborhood and said she believes the variance should be granted.

Mrs. Naegle stated that the handout that was presented by the applicant provided very good reasons as to why they meet the criteria for a variance.

### **Motion**

Russell Moore stated, I move that we approve the variances for B-4-2007, Value Place Hotel, based on the five criteria presented by the applicant. Mr. Uluakiola seconded the motion.

A roll call was taken.

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

### **Motion carries – all in favor**

Mrs. Christensen stated that she would like to enter into the record that the Board of Adjustment alternate is present and although he participated in the discussion, he was not able to vote on this application. She commented that the next application is a continuation from last month's hearing and said that although she was not present at that hearing, she had read all of the minutes and driven by the property in order to prepare myself to render an informed decision.

**B-2-2007**  
**Grant Andrews – NCU Determination**  
**2650 South Chesterfield Street**  
**A Zone**

*This item was continued from the May 2, 2007 Board of Adjustment meeting. The Board requested that this item be continued so that a West Valley City Code Enforcement Officer could be present to answer questions related to animals being kept on this property.*

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.

Mr. Moore mentioned that he would like to disclose the fact that he knows John Miller and they have business associations.

Mr. Lehman indicated that this case was continued from the May 2<sup>nd</sup> hearing when the Board reviewed this case. It was continued in order for the City to have a representative from the Code Enforcement Division who was involved with the initial case regarding the keeping of animals. The City re-noticed this application in order to make property owners in the area aware that this was once again coming before the Board of Adjustment.

**Grant Harris**  
**2650 S. Chesterfield Street**

Mr. Harris indicated that he had spoken to a few people since the last meeting and noted that it is primarily the mud hole that the pigs have that cause a small amount of odor in

the summer even though there was intense flooding last year. He indicated that he would be replacing that with concrete this year to help reduce the odors associated with that.

Mr. Farnsworth responded that the issue that we are trying to clarify tonight is whether or not you have had in excess of 200 animal points for many years. Do you have any documentation tonight showing you have had in excess of the 200 animal points?

Mr. Harris replied, no, there have never been any examinations or records taken to prove one way or the other.

Mrs. Christensen questioned, is there anyone here who would like to speak either in favor or in opposition of the application?

**John Miller**  
**2621 S. Hempstead**

Mr. Miller indicated that he lives behind the applicant and a little to the north of the property and is in opposition to the application due to the foul odors. The odor is so strong that he has had to shut his windows at night because it makes his whole house smell bad. Mr. Miller stated that he has lived here since 1994 and realizes that previously they have had animals on the property, however he believes that the applicant has more animals than they had previously on the property. They have had 10 to 15 sows on the property and noted that when you put 8 to 15 piglets from each one of those sows on the property it causes a lot of odors. I don't believe the non-conforming use should be granted. I understand that in agricultural areas some of those odors are quite common, however not to the point where it drives people away.

Mrs. Christensen questioned Mr. Beckstead, from West Valley City Animal Control, how the point system works in an agricultural zone. She indicated that she had read through the information which stated that you could have so many sows, and so many piglets and wanted clarification as to how the points are ascribed.

**Nathan Beckstead**  
**WVC Animal Control Services**

Mr. Beckstead responded that there is a point system set up that provides a number of points per animal. The adult pigs, which are from 6 months to 1 year of age, are given 20 points per animal. Large pigs (over 40" in height are given 40 points). In my count, I did account for the piglets, but I did not count them since they do not have any points associated with them. In my actual report I have a list from the March 19<sup>th</sup> visit.

Mr. Uluakiola questioned, so last month you did a count on these?

Mr. Beckstead responded, on March 19<sup>th</sup> I was able to meet with the property owner, walk through the property and take a count of the animals that were there, and see the conditions that they were being kept in.

Mr. Uluakiola questioned, have you made a visit lately?

Mr. Beckstead responded that he had not made a repeat visit since then. On March 19<sup>th</sup> I did administer an administrative warning for livestock limitations, however she believed that the animal points were grandfathered in. Agricultural issues are always sensitive to the owner, the neighbors, and sometimes even people in other cities. This is a very sensitive subject for farmers in general. I gave her the opportunity to provide proof of being grandfathered in, and she decided to go before the Board of Adjustment. So, we gave her an extension on the original time frame of April 20<sup>th</sup> pending the outcome of this meeting.

Mr. Spendlove questioned, so when you visited the property on March 12<sup>th</sup> could you smell odors?

Mr. Beckstead responded, this piece of property is surrounded by not only the Jordan River Walkway, which presents its own odors, but there are adjacent farms to the south, and directly to the west of this property. Mr. Miller is probably the only property that doesn't have some type of agriculture use right in that little area. On both occasions, there were some odors, but considering all of the other properties, I didn't feel the odors were excessive considering the agricultural area nor could I say it was coming from one specific spot on March 12<sup>th</sup>.

Mr. Farnsworth asked for clarification. Steve, you did bring up earlier that the Board is not to consider the ordinances in terms of odors and so forth in our decision. Is the Board's responsibility to just evaluate whether or not the 350 points that they currently have are in excess of the 200 animal points and to determine whether or not that has been grandfathered?

Mr. Lehman replied, yes, that is correct. The issue for Board this evening is the point system. The other affiliated issues with regards to the keeping of animals will be handled by the Board of Health standards. The Board is simply here to evaluate whether or not this property has had more than the 200 animal points subsequent to the City's adoption of the point system. The Andrews have stated that the animals have been in a state of fluctuation, and that they have had 350 points down to 200 points. It is difficult to point out whether that was for an extended period of time. The issue is whether the Andrews had 350 points for a continuous period of time.

Mr. Spendlove said that he would like to place into the record that there could have been a reduction of the number of points and still not affect any of the ancillary issues that

have been brought as the applicant's could have six adult pigs and 48 or 50 piglets running around.

Mr. Lehman responded, yes that is correct.

Mr. Beckstead stated that he was impressed with the maintenance of the animals and with the efforts they had made to keep the odors down. The Andrews had an extreme amount of sawdust laid down underneath the pigs for absorption for both the feces and odors and noted that it would help with any pests, rodents, flies, etc. He explained that it isn't going to solve the problem because it is agriculture. What the City is looking for is to determine whether the Health Department needs to be involved. Is it possible that I was on the property on the right day? I didn't see much, but with two visits, and the first visit being totally unannounced, I believe I would have picked up something that would have indicated an ongoing problem of severity.

Mr. Uluakiola questioned, on your second visit did you talk to the Andrews?

Mr. Beckstead said in my first visit I could only see one pig from the road and that was because of some code violations. I did mention to her that these things needed to be addressed and they were reported to Code Enforcement for follow up. The two of us walked through the property and the focus was on the animals and the conditions that they were being kept in and the number of animals.

Mrs. Christensen said that in 1955 she and her dad had bought a cow from the Andrews. Later, we also bought pigs and chickens from them. That was probably his grandfather. I know that in the 1950's they had a significant number of animals on that property. I don't know about the years in between, but in the 1950's they did.

Mrs. Naegle responded, if all the Board is considering in this case is the number of animals which have not been verified, and we're not considering the odors, etc. I don't see that the Board has a lot of choices in what they can do.

Mrs. Christensen responded, except that we do have letters from some of the neighbors.

Mr. Farnsworth said I will state that they have had animals and this has been verified, but there is nothing to substantiate that they have exceeded 200 animal points for years.

Mrs. Christensen responded, because animal points were not an issue. I do know that they also have lots of chickens.

Mr. Spendlove noted that while we can't substantiate that the points have exceeded 200 points, the Board has not heard anything that states that they have not. I would think that Mr. Andrews has provided verification with the five letters that he submitted to the Board. The first letter indicated during the period between 1976 and 1981 that there were animals. The second letter indicated that for over 29 years they had pigs, chickens and

goats which would all be large animals. The third letter indicated that for over thirty years there were a variety of animals on the property. The fourth letter indicated that for twenty four years they had pigs, lambs, goats, chicken and geese. The final letter indicated that the previous generation that lived there had a variety of animals as well. So, when I look at those letters, I believe that he has carried his burden of proof demonstrating that a large number of animals and a variety of animals that preceded the 1994 Code adoption for points.

Mrs. Christensen substantiated that there have always been a significant number of animals on the property. The question is did they exceed the point value... and not having known what the point value was...I have no way of knowing.

Mr. Uluakiola questioned, so when you stopped by the property tonight did you notice any odors?

Mrs. Christensen responded, no I didn't, however it was a cold, rainy day.

Mrs. Naegle mentioned that she had driven by the property before the first meeting and did not notice any odors.

Mrs. Christensen stated that she has walked along the parkway in the hot summer with cub scouts and with youth groups and in both cases the smell of the parkway far exceeded the pig smell.

Mr. Moore commented that the Board should review the letters that were in the packets that are in opposition. There is a letter from John Miller who asks us to deny based on odor issues. There is a letter from Marta Parsons who said basically the same thing based on odor issues. There is another letter talking about issues with the flies. There are a number of individuals who are in opposition to this application. I believe it is the Board's responsibility to simply uphold the Code as it exists and count on the City to make regular inspections.

Mrs. Christensen disagreed and said that not one of the letters state that the animal points have not been exceeded. In fact, Mr. Miller stated that it is just when the pigs came.

Mr. Spendlove questioned, is the Board in agreement that there has always been animals on the property? In past non-conforming animal cases, we talked about a year lapse and the fact that it is the City's burden to prove that there was an intentional default on the agricultural animals.

Mr. Moore responded that the letters from the neighbors stating the dates and how long they have been there and the personal experience of our Chairman establishes the fact that there have been animals there.

Mr. Spendlove noted that if the Board is in agreement, then I would take it one step further and state that the letters do prove a large number of animals and I believe that is a reasonable burden of proof on the property owner.

Mr. Farnsworth said the Board might also infer that because he is in excess of the number of animals, the applicant hasn't been able to attain the proper level of care for the animals hence the complaints from the neighbors about the odor. So, while the odor in itself is not relevant to our decision tonight, due to the fact of being above the 200 point limit it may not be unreasonable to expect anyone to be able to care for that many animals in that tight of an area.

Mrs. Christensen responded that another issue that the Board should consider is that the officer's report stated that the animals appeared to be well cared for. The applicants have done as much as they could to provide for their animals.

Mr. Moore indicated that the decision that the Board has is to look at the information provided and decide if there has been this volume of animals on the property in previous years. I don't believe that there is sufficient information to determine the count or the points of the animals that have been there. It is very difficult to establish without detailed records which obviously haven't been presented. I believe that the City established the point system and evaluated that. They received input from property owners in agricultural zones and that was very methodically established. I believe that we should simply ask the applicants to stay within those points.

Mrs. Naegle commented that Mr. Andrews does have rights, but his neighbors also have rights and I think that is why the 200 point limit has been placed. You are allowed so many points and then your rights stop because it effects the neighbors and that is one of the reasons I believe that the Board should uphold the 200 points.

Mrs. Christensen responded, but we can't uphold the 200 points if we think that there is a chance that the points have always been higher than 200 points. In other words, we can't uphold today's laws on something that was here before those laws were in place. That is what the non-conforming use is and that is what the Board is here to determine tonight. Were there been more than 200 points worth of animals at the time that the City imposed the 200 points? The Board can't say well it is a good idea, and I don't care how many points you had before, we are going to impose 200 points now. That is against the law.

Mrs. Naegle questioned, may I ask council if that is a correct interpretation?

Mrs. Gillmor, Attorney, responded basically yes. The idea behind the non-conforming use is...the applicant is saying that they have always had a certain number of animal points on the property and they are asking the Board to grant a non-conforming status so that they don't have to reduce the numbers.

Mr. Spendlove responded that it is unrealistic if we are saying that the burden of proof exists on the landowner to show record points prior and after 1994. If that were a common practice....I could see that he should have done his homework, but how many people in agricultural areas can document the number of points that they have?

**Motion**

Scott Spendlove stated, in the case of B-2-2007, I move that we grant the non-conforming use to Grant & Linda Andrews based upon the criteria that they submitted through their neighbors that have established a record, prior to 1994 and after 1994, when the ordinance was adopted for a point system. The applicants have met the burden of proof by establishing that animals have existed and that there has always been a large number and a variety of animals that have existed on the property. Based upon that evidence and lack of evidence contrary the applicant has met their reasonable burden of proof.

Mr. Uluakiola seconded the motion.

A roll call was taken.

Mr. Uluakiola	yes
Mr. Moore	yes
Mr. Spendlove	yes
Ms. Naegle	no
Mrs. Christensen	yes

**Motion carries – majority vote**

**OTHER**

The minutes from April 4<sup>th</sup> and May 2, 2007 **were approved.**

There being no further business the meeting adjourned at 7:25 p.m.

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Karon Jensen, Executive Secretary