

WEST VALLEY BOARD OF ADJUSTMENT

October 3, 2007

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

WESTVALLEY 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

WEST VALLEY CITY LEGAL DEPARTMENT

Nicole Cottle

WEST VALLEY CITY ADMINISTRATION STAFF

Sheri McKendrick

B-15-2007
Non Conforming Use & Variance Request
3913 South 3200 West

REQUEST:

Jeff Lyon, is requesting a non conforming use determination, non conforming use modification and variance request for property located at 3913 South 3200 West. The property is approximately .24 acres in size and is known as lot 5 of the Bennion Subdivision. The applicant is requesting that the Board determine the non conforming use of the existing lot, a potential modification to the existing lot and variance requests regarding frontage, area and building setbacks.

BACKGROUND:

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

- The subject property is located at 3913 South 3200 West and is presently zoned R-1-8. The property in question is approximately .24 acres in size and contains two existing single family dwellings. The property was not part of a formal subdivision when the existing dwellings were constructed. However, this property became a lot in the Bennion Subdivision which recorded in February 2006.
- The applicant has inquired about the possibility of dividing lot 5 into two separate lots so that each dwelling would sit on its own recorded lot. In order to subdivide this property, the Board of Adjustment will need to determine the properties non conforming status and will need to evaluate a number of variance requests.
- In order to assist the Board, staff would like to address the non conforming issue first and the variance requests second.

Non Conforming Issues:

- According to Salt Lake County records, the single family dwellings were constructed in 1954. The construction of these homes would have been done at a time when formal zoning did not exist in this area.
- An aerial photograph taken in April 1964 indicates that these dwellings existed as they do today.

- When comparing the 1964 photograph with a current photograph, it does not appear that the dwelling footprint on either building has been changed.

Variance Requests:

- The R-1-8 zone requires a minimum frontage of 80 feet for each lot. The current width of the lot as presently configured is 109.62 feet. The applicant would like to divide the property as equally as possible. However, the location of the existing dwellings will determine the width of each lot. In this case, lot widths will be approximately 51.62 and 58.00 feet, thus requiring two frontage variances of 28.38 and 22 feet respectively.
- The R-1-8 zone requires a minimum lot area of 8,000 square feet. One lot would contain 4,720.13 square feet while the other lot would comprise 5,303.52 square feet. Area variances of 3,279.07 and 2,696.48 square feet would be needed in this case.
- The R-1-8 zone requires that the side yard building setbacks be 10 feet on the garage or carport side and 8 feet on the dwelling side. In this case, there will be two setback variances needed. The proposed setback distance adjacent to the existing carport will be 4.12 feet requiring a variance of 5.88 feet. The proposed setback distance to the existing dwelling will be 5.58 feet thus requiring a variance of 2.42 feet.

To summarize, the applicant's proposal before the Board of Adjustment is to evaluate the following:

1. Determine non conforming use of the existing property.
2. Allow a modification to the non conforming use by way of a future subdivision plat.
3. Evaluate the following variance requests:
 - a. Frontage variances of 28.38 and 22 feet.
 - b. Area variances of 3,279.07 and 2,696.48 square feet.
 - c. Side yard setback variances of 5.88 feet and 2.42 feet.

ORDINANCE SUMMARY:

Section 7-18-106(1) of the West Valley City code reads:

All matters regarding the non conforming use of building and land shall be determined by the Board. Upon application, after public hearing on the matter, the Board shall determine if the use or

building is non conforming with respect to current provisions of this Chapter.

Section 7-18-106(6) of the West Valley City Land Use Development and Management Act reads:

Alterations or Modifications to Nonconforming Use. A use which has been declared nonconforming shall not be enlarged or moved except as provided in this Section. The Board, after a public hearing, may allow an enlargement or modification provide the change is in harmony with the surrounding neighborhood and in keeping with the intent of the General Plan and this ordinance. The proposed change shall not impose any unreasonable impact or burden upon land located in the vicinity. Reasonable conditions may be attached to the approval in order to assure neighborhood compatibility.

The West Valley City Land Use Development and Management Act Section 7-18-107 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.

B-15-2007
Jeff Lyon
3913 S. 3200 W.

Mr. Lehman stated the applicant is not in attendance, however, he understood Mr. Lyon was planning to attend the hearing.

Mrs. Christensen responded that the applicant has given info in the letter and there are neighbors in attendance that should be heard.

Mr. Lehman stated that if the applicant does not come, then the Board can continue the matter to next month to give the applicant an opportunity to answer questions.

Mrs. Christensen explains that the hearing was scheduled as a result of the applicant's request to have a non-conforming use for property located at 3913 S. 3200 W. Since the applicant is not here, we'll hear your concerns. She introduced all staff members in attendance. She explained that process to be followed during the hearing which is the staff present, applicant presents case, then the neighbors give opinions or ask questions, applicant has a final say, the public hearing will close. The Board will then discuss the case and render their decision.

Mr. Lehman presented and reviewed the application and request before the board. He also explained some concerns that the staff had been presented such as setbacks and existing access. However, if Lyon is successful with this application than he would still have to go through the PC process. Lyon also has other issues to solve w/GHID regarding separation requirements which could affect subdividing the property.

Mr. Spendlove requested clarification regarding what was before the board.

Nicole Cottle, West Valley City Attorney, reviewed the legal requirements for consideration of the requested non-conforming use and variance.

Mrs. Christensen opened the public hearing and gave the applicant, who is now present, an opportunity to state his case.

Jeff Lyon
11373 S Applegrove Lane
South Jordan UT

Mr. Lyon explained that their original intent was to split properties and sell them, but after meeting with Granger Hunter Improvement District there may be some

restrictions in getting water and sewer to the two homes because they share the same water and sewer line. If he does get the variance he will have to do an amended subdivision plat to split the lot which will take until January. They really feel for the people who live at the end of the private lane. It's a mud hole and a rotten mess, so he thought he would finish this process and help Mr. Moreno clean up the road and get the asphalt put in. They will meet with all the neighbors tomorrow night to see if they'll assist in purchasing asphalt for the road before the snow flies. He will pursue putting in utilities and finishing the rest of the process in the spring as to not create enemies in the neighborhood. Upon completion of the subdivision process, his hope is to ultimately sell the homes and take them out of the rental market. He believes that the neighbors would rather see home owners than renters.

Mrs. Christensen indicated for the record that in the letter Mr. Lyon answered some of the five questions in the variance request.

Mr. Lehman suggested that the homes were built in 1964.

Mr. Lyon responds that the homes were built in 1954, they were pre-manufactured homes that have been rental homes. He gave background regarding the previous owner.

Mr. Farnsworth inquired regarding Section D in Mr. Lyon's letter. He asked if anything substantiated those claims.

Mr. Lyon responded that he just assumed the area was for single-family dwellings and not rental units.

Mr. Farnsworth questioned if you subdivide the property and sell what would prevent the future owner from renting out again?

Mr. Lyon replied that it was his intention to sell it to someone who was planning on living there.

Mr. Farnsworth indicated a concern that each lot will be small and it would not increase tax base.

Mr. Lyon responded that he will be remodeling and cleaning up the house to the west which will increase the value.

Mr. Farnsworth refers to the first paragraph and the hardship to current residents, upkeep and maintenance, and ordinance standards.

Mr. Lyon explained that the previous tenant in the house to the west had a lot of garbage and took over 30 days to get it out of there. The previous owner had battled this problem for a long time, and the neighbors are happy to see it getting cleaned up. When this happens it becomes a situation for enforcement, city standard and neighbor's standard is usually exceeded. He owns properties in other places in the valley, and renters don't typically take care of property like the owner will. He has no statistics to show this just his own experience.

Nicole Cottle, West Valley City Attorney, explains that this has no relevance. The issues being discussed are not legally a concern of the board.

Mrs. Christensen raised the issue that it is an unreasonable hardship if the renters are not taking care of the property.

Nicole Cottle responded that hardships would be strange lot size, built under different zones, not suggestion in disrepair.

Mrs. Christensen explained that she would like Mr. Lyon to tell what the hardship is and how it was created.

Mr. Lyon explains that his first intention to split and sell off and make a profit but not be landlord he gave options. It is hard to find a home for under \$200,000, but here is an opportunity to create two homes that would provide housing for a young family. That was his goal he is also in it to make money.

Nicole Cottle indicated the need to describe what the hardship is and give examples, but the board cannot consider economic issues.

Mr. Lyon explains that the hardship is having two separate homes on one lot that were built before the ordinances existed, that step was missed in the subdivision.

Mr. Spendlove indicates that you need to consider the flag lot.

Mr. Lehman states that by default he doesn't have frontage.

Mrs. Christensen explains that if there are any other questions of anything more to say there will be another opportunity. We would like to hear from the neighbors that have come.

Margie McLaughlan
3927 S 2300 W

Mrs. McLaughlan explains that her fence line is the line directly behind these two little houses so it affects me directly.

Mr. Uluakiola leaves at 6:37 P.M.

Mrs. McLaughlan continues to explain that there are two little private streets. One is the subject and the other is the one she lives on. Her biggest concern is the two little houses. One is a pretty good size and she could see it being sold as a home that someone would want to buy. Has small basement with backdoor entrance, not a bad little house. The other house would be a good garage. It has no basement, very small with nothing there. That is her biggest concern, and she can't imagine any family wanting to buy it.

Mr. Farnsworth questioned which house.

Mrs. McLaughlan responds the one to the east has been a rental. She has lived in her house for the last 32 years. She was thinking this through this last week and if they add on the those two little houses it would have to be on the back which would make it very close to her fence and be a fire hazard. She only has ten feet to the fence line which means if there is a fire it would affect the bedroom window and the back door of her home. She loves living here and they have really good neighbors, no bad renters. There are garbage trees in the backyard and the trees were trimmed two years ago. If there is a fire she would be in big trouble. Can see the spilt or sale for one home but not anyone buying the other home. Feels bad that Mr. Lyon even bought the property. She knew the former owners forever.

Mrs. Naegle asked what she wanted to see happen.

Mrs. McLaughlan states that if it was her property the one very little home should be torn down and the bigger home into a single family dwelling.

Joanne Amneteg

Joanne Amneteg owns the home on the very end of the lane which she pointed out on the board map. As far as those two properties being either lived in by owner or renter she felt the landlord has more say about how the yard was kept up. Low income people may not take care of yards because they will be the owners. Issue regarding the construction with Moreno constantly blocking the driveway and lane, tore up a mud hole that is especially bad in the winter. If there is going to be construction they need to have the holes up to city code even though not part of the city, so they have access and fire engine could never make it down that lane so they would have to hook up to hydrant on 3200 W. She has no problem with dividing the houses but during construction she would like the neighbors and emergency vehicles to be taken into consideration. She was not aware of the meeting that was scheduled with the neighbors that Mr. Lyon mentioned. During the construction she would like the construction to be cleaned up and kept off the

lane. Another thing if the driveways were blocked such as with cement trucks she would like 24 hours written notice so they could make accommodations.

Mr. Farnsworth questioned Joanne Amneteg how many years she had lived in her home.

Joanne Amneteg replied seven years.

Mr. Farnsworth asked if she was in favor or against subdividing the property.

Joanne Amneteg stated that Mr. Lyon would have more control if he was the landlord over the yard maintenance as opposed to have low income families move in.

Mrs. Christensen turned the time over to Mr. Lyon to speak again. She explained that the five questions would be asked regarding the variances. He needs to go through them to see if they meet the board's requirements.

Mr. Lyon said that he would like to answer the issues that had been brought up. He explained that he didn't think you could judge how somebody would keep a property up based on income. The neighbor to the south was concerned about the small home, but the current tenants had expressed some interest in buying the home. The tenant, husband and wife, both work at the Salvation Army and they take good care of the two bedroom home. It answers the question if it is a good home for a couple that won't have children. The other home has a basement but it is not much bigger. The trees in the backyard have been trimmed that were a concern. They would not be expanding to the back. Paul, the tenant, has said he has no desire to expand. He is very sympathetic to the neighbor to the east, and will do everything in his power to take her into consideration during the construction period. They currently have a trailer in the carport of the house to the west, and will make sure that it is tarped so no debris is showing.

Mrs. Christensen reminds him of the need to go through the five criteria for variance granting before closing the Public Hearing.

Mr. Lyon explains that there are two houses on a small lot, there are no foresight setbacks, too close to the private land and adjoining lots, same water and sewer line, difficult to rent out or do anything, and it is a hardship for the landlord.

Mrs. Christensen asks what number 3 is.

Mr. Lyon responds that he was been familiar with this property for some time. It used to be an orchard where Moreno is. With additional houses coming in there is more traffic going on. Moreno received a variance so that lane is a busier place

and so that's a criteria. It does need to be maintained and cared for by the homeowners and it currently is not.

Mrs. Christensen asks what number 4 is.

Mr. Lyon replies that this will benefit everyone to have home ownership there.

Mrs. Christensen explains that you can't talk about ownership.

Mr. Lyon states that the buildings have not changed, and the setbacks have not changed.

Mrs. Christensen asks what number 5 is.

Mr. Spendlove responds that the zoning is for single family dwellings. Justifying or making legal what has been there since 1954 is not good or bad. It reinforces the zoning ordinance if it is subdivided they will have to bring it up to code and into compliance.

Margie McLaughlan states that during the hearing she has been listening and trying to understand how it will be divided and make two separate properties. Maybe they can have one line for water and sewer and maybe between the piping could they be divided after the fact?

Mrs. Christensen states that the PC issue is not something that this board can consider.

Mr. Farnsworth explains that is would also be an issue for Granger Hunter Improvement District.

Mrs. McLaughlan questions if it will affect water pressure for everyone in this area? The home that is being built there is it going to tower over anything else in the area? We want to make sure it is okay that these homes can be built up to get more square footage, and would they then be able to see into her yard?

Mr. Lehman explains that they could actually expand right now.

Joann indicates that there should be a correction made regarding Mr. Lyon's comment about the orchard. It was actually asphalt before Moreno started construction.

Mrs. Christensen closes the public hearing.

Discussion

Mrs. Naegle says that the variance issue was talked about most of the time, but we need to talk about the non-conforming issue. Was it legal at the time that they built the two houses on one lot?

Motion 1

Mark Farnsworth made the motion to recognize to the non-conforming use. The motion was seconded by Sandra Naegle.

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

Motion carries- majority vote.

Motion 2

Mr. Spendlove made the motion to consolidate the variances. The motion was seconded by Mark Farnsworth.

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

Motion carries- majority vote

Motion 3

Mr. Farnsworth made the motion to deny the variance request because the request did not meet the 5 criteria. Mr. Moore seconded the motion.

Mr. Uluakiola	AB
Mr. Moore	yes

Board of Adjustment

October 3, 2007

Page #12

Mr. Spendlove	no
Mrs. Naegle	yes
Mr. Farnsworth	yes
Mrs. Christensen	no

Motion carries- majority vote

OTHER

There being no further business the meeting adjourned at 7:15 p.m.

Sheri McKendrick, City Recorder