

**WEST VALLEY CITY  
BOARD OF ADJUSTMENT  
MINUTES**

**May 4, 2016**

The meeting was called to order at 6:00 p.m. by Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

**WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS**

Necia Christensen, Russell Moore, Scott Spendlove, and William Whetstone

**ABSENT**

Sandy Naegle

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman and Brenda Turnblom

**AUDIENCE**

Approximately four (4) people were in the audience.

**VARIANCE**

**B-3-2016**

**Collings Variance**

**2991 West 3835 South**

**R-1-8 Zone**

**REQUEST:**

Jared Collings is requesting a variance from Section 7-6-305(1) of the West Valley City Code. This section requires that the frontage of a lot in the R-1-8 zone be 80 feet. The applicant is requesting a frontage variance of 14 feet in order to subdivide the property to create an additional building lot.

**BACKGROUND:**

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

- The subject property is known as lot 5 in the Bangerter Phase 1 Subdivision. This subdivision was recorded with the Salt Lake County Recorder in 1952. When the subdivision was approved, zoning did not yet exist in this part of Salt Lake County. When West Valley City incorporated in 1980, the property was zoned R-1-8.
- At the present time, there is a single family dwelling that fronts 3835 South and a couple of out buildings to the south. Salt lake County records indicate that the existing dwelling was constructed in 1952. The property is approximately .46 acres and is a double frontage lot having access on both 3835 South and 3875 South.
- The applicant approached staff about the possibility of subdividing the property to create a new buildable lot. Staff explained that the property was zoned R-1-8 and required an 80-foot frontage. Since the property is only 66 feet wide, a variance would be needed from the Board of Adjustment. Staff did explain that over the years similar variance requests have been submitted for virtually the same request, but that each case is based on its own merits.
- The property has a width of 66 feet and a depth of approximately 305 feet. As mentioned earlier, the property has an existing single family dwelling that fronts 3835 South with a detached garage. The property also has two existing out buildings that are located toward the middle of the lot. If the new subdivision line was established on the north side of these two out buildings, the north lot with the single family dwelling would be approximately 9,240 square feet. The new lot, if the variance is granted would be approximately 10,800 square feet.

**B-3-2016 – Collings Variance – Page 2**

- Should the Board of Adjustment approve the variance, the applicant will be required to submit a minor subdivision application. The new single family dwelling would be required to meet all provisions of the City’s existing housing standards.

**ORDINANCE SUMMARY:**

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires that the minimum frontage of a lot in the R-1-8 zone be 80 feet.

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.

Scott Spendlove asked when the second frontage road, 3835 South, came into existence. Russell Moore answered 1966. The Bangerter Subdivision started in 1952. Steve Lehman said he knows of two property owners, the Phillips and the Becks, who petitioned the BOA in the late 90's for frontage variances that were granted. Other properties were also granted variances prior to Steve Lehman coming in to the City.

**Applicants:**

Phillip Harvey	Jared Collings
9485 South 2740 West	8373 Pal Avenue
South Jordan, Utah	Magna, Utah

Phillip Harvey is Jared Collings' business partner. He would like a variance granted for the property so that a second single family home may be built. Necia Christensen discussed five criteria that must be met before a variance can be approved and Phillip Harvey read his response to each of these criteria:

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.

Literal enforcement of the zoning ordinance would prohibit us from dividing this property when every lot platted in the Bangerter Subdivision has been allowed to divide without the necessary frontage. There is a hardship in that the property is approximately 305 feet in depth. It is difficult to maintain so we would like to

carry out the general purposes of the zoning ordinance by improving the back half of the lot with a new single family dwelling.

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

The special circumstance is that this property has frontage along both 3835 South and 3875 South and is 305 feet deep. The subdivision was platted this way because at the time of the subdivision, 3875 South did not exist.

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

This variance would allow us to place a new home on property that is very consistent with other properties in this area. Although the frontage will be less than the required 800 feet, the size of the lot is very comparable to other lots in the same zoning district. The property is still of sufficient size and width to place a new single family dwelling.

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

The property is zoned for low density land uses. We don't desire to put anything here but a single family dwelling. This lot is one of three lots out of 17 total lots that have double frontage.

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

The spirit of the zoning ordinance is observed because the variance is relatively minor. The request is not out of character with other properties in this general area.

Jared Collings stated that because other lots on the street have already been subdivided and houses built, this is a perfect lot to also subdivide and built a new single family home. Having another new, nice home on the street should increase property values.

Russell Moore asked Jared Collings if he has purchased the 1' easement that runs along 3875 South that was allowed to be placed there by the developer of the Rolling Meadows Subdivision. Mr. Collings said he has not. Russell Moore said that Jared Collings does not really have any frontage on that street then. Jared Collings said that is something he will have to look in to.

Scott Spendlove asked if either Jared Collings or Phillip Harvey are living in the home existing on the property. Phillip Harvey answered that the home is currently vacant, they just purchased the property about a month ago. Phillip Harvey asked if the other lots that

were previously subdivided were required to purchase the 1' easement. Russell Moore answered yes. Phillip Harvey asked how to find the owner of that easement. Russell Moore said the property owner can be found through a search of the County records. The 1' easement is an unusual circumstance: The County allowed the developer to retain a 1' easement in order to recoup the cost of putting in curb, gutter, and street. That is not allowed any more. Russell Moore indicated that he lives at the end of the street and had to purchase the 1' easement. Phillip Harvey asked how much the easement cost. Russell Moore said at the time he purchased the easement, it cost about \$3,000.

Dane Rushton said his property borders 2991 on the West side. He does not mind having another single family dwelling built on the property, but he does not want to see a four- or six-plex going up. To him that drops property values.

Steve Lehman said the 1' easement is called a protection strip. The County did allow the protection strip so the developer could recoup costs associated with the construction of 3875 South. We usually explore those things when we do a title report at the subdivision stage.

William Whetstone disclosed that he knows Jared Collings, they were previously neighbors.

**Motion:** William Whetstone moved to approve B-3-2016. The motion failed for lack of a second.

**Motion:** Scott Spendlove motioned to deny B-3-2016 because the variance request does not meet the established criteria. Russell Moore seconded the motion. The motion was cancelled due to a subsequent motion to continue.

**Discussion:** Scott Spendlove does not feel there is a hardship. If a homeowner had lived on the property for 30 years and all other neighbors were allowed to have another house on their properties, he would go with it. However, this is an investment property. The investors knew about dual frontage prior to purchasing the property. Russell Moore agrees and said the owners don't have legal frontage on 3875 South.

William Whetstone said he doesn't know the circumstances of the other lots that were previously granted variances, but we know they have been granted. He feels that subdividing the property will be an improvement to the neighborhood. He feels the five criteria have been met. In his opinion, not being a homeowner is not a factor in the decision.

Necia Christensen feels the long, narrow shape of the property creates the hardship. She is willing to vote to allow the variance. Otherwise, the property will stay the way it is with noxious weeds. Steve Lehman agrees that the hardship is associated with the land and not those who own the property. Frontage on two sides of a lot is very rare. His opinion is that this it is not a self-imposed hardship. The hardship was created when the

subdivision was platted. The new owners are not the ones that platted the property. They are now asking for relief to subdivide the property.

Scott Spendlove said he would like to postpone a vote for one month to mull it over. Steve Lehman suggested we postpone the meeting until all five members of the board are present, perhaps in two weeks, otherwise it will be a 2 to 2 split vote again, which is a no vote.

Steve Lehman explained that frontage is not calculated at the sidewalk, but 25' back. The property owners do have the right to request the frontage variance because they own the property. The 1' issue would only come up with further vetting of the subdivision application.

**Motion:** Scott Spendlove moved to continue this application until we have a full quorum to consider the variance.

Russell Moore seconded the motion.

A roll call vote was taken:

Necia Christensen	Yes
Russell Moore	Yes
Scott Spendlove	Yes
William Whetstone	Yes

**Motion Carries - B-1-2016 Continued – Unanimous Vote**

**OTHER**

Approval of April 6, 2016 Minutes – **Continued**

There being no further business the meeting adjourned at 5:42 p.m.

---

Brenda Turnblom, Administrative Assistant