

**WEST VALLEY BOARD OF ADJUSTMENT**

**July 2, 2008**

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

**WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS**

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

**Those Absent:** Mark Farnsworth

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman, Jody Knapp and Karon Jensen

**WEST VALLEY CITY LEGAL DEPARTMENT**

Nicole Cottle

**AUDIENCE:**

Approximately 3 (three) people were in the audience.

**B-13-2008**  
**Intermountain Lift Truck**  
**2475 South 2570 West**  
**M Zone**

**REQUEST:**

Mr. Mark Williams, representing Intermountain Lift Truck, is requesting a variance from Title 11-6-106(2)(f) of the West Valley City Code. This title excludes pole signs on properties less than 10 acres in size. The applicant is requesting a pole sign on property approximately 4.4 acres in size. This equates to an area variance of 5.6 acres.

**BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends light manufacturing land uses.

- Mr. Williams has inquired about the possibility of locating a pole sign on property located at 2475 South 2570 West. The property is located in the manufacturing zone with frontage along both the I-215 corridor and 2570 West. Mr. Williams believes that the addition of a pole sign would provide greater visibility to his business.
- Staff responded that a pole sign would not be allowed because of insufficient acreage. The City's zoning ordinance requires a minimum area of 10 acres for a pole sign. The property in question is approximately 4.4 acres. Staff did explain however, that a monument sign could be located on the property with a maximum height of 13 feet.
- The property does sit below the elevation of the I-215 freeway approximately 10 feet. However, this circumstance is not necessarily unique to this property. All parcels on the west side of I-215 from the 201 interchange to the 3100 south overpass have similar characteristics in regards to their property elevations.
- Businesses along the I-215 corridor do have signage on their buildings, including Intermountain Lift Truck. However, with the exception of the Kenworth Trucking business, no other business along the I-215 corridor has a pole sign. Properties in this area range in size from 1.6 acres to 30 acres. The only property that qualifies for a pole sign is the Kenworth Trucking business.
- While discussing the variance application, staff learned that the applicant has already entered into a contract to purchase the pole sign. Staff explained that unfortunately, the Board of Adjustment cannot entertain economics as a hardship.

- An illustration of the proposed pole sign has been submitted for the Boards review. The applicant did provide to staff a number of photos regarding various pole signs in the City. Staff did not include these photos for the Boards review as many of these signs were approved under Salt Lake County's jurisdiction. In addition, many of these signs are legal and may remain as long as they are not altered or modified in any way. Staff did include the photos relevant to this application which shows the elevation difference between I-215 and the subject property. The applicant has also provided a letter addressing each of the variance criteria. Staff has included this letter along with the analysis.

**ORDINANCE SUMMARY:**

Title 11-6-106(2)(f) of the West Valley City Code reads as follows:

All pole signs except billboards, shall be processed as Conditional Uses and shall only be allowed on properties encompassing at least 10 acres.....

**Applicant:**

**Mark Williams**

**2475 S. 2570 W.**

Mr. Williams stated that he is representing Intermountain Lift Truck and believes that the addition of the pole sign would provide greater visibility to his business. The reason for applying for the variance is that our property has special circumstances. Our property is the fourth business down and abuts the I-215 freeway. Concerns were expressed that the business does not have any visibility from the street. He explained that the pole sign has been removed as requested by the City and there is no way to advertise our business at that location without a pole sign. A monument sign is not tall enough to provide visibility and if the variance is granted, the pole sign will provide 15' of visibility. Mr. Williams remarked that his neighbors would not have a problem, if we are granted the variance for a pole sign. The primary hardship is that without the pole sign our business would not have the same ability as others in the City to advertise our business.

Mr. Williams addressed the five criteria and distributed copies to the Board of Adjustment.

- 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 current zoning ordinances allowing only monument signs on properties encompassing less than 10 acres would cause unreasonable hardship for Intermountain Lift Truck as our property sits 10' below grade and would seriously impede a monument sign's ability to communicate with passerby and the opportunity to connect with potential customers would be negated since visibility is limited with a monument sign and would thereby destroy much of our sites economic utility.

Mrs. Christensen and Ms. Naegle commented that there was a hardship in that the property is facing the freeway.

Mr. Spendlove indicated that the hardship could apply to several of the properties as the whole area is a "hodge-podge" and by nature could mandate a hardship case for a business.

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

This property has special circumstances as it is the only one in this district that faces Interstate 215 and also sits 10 feet below grade thereby rendering a monument sign impractical and completely ineffective for the usual and customary purpose of advertising signage, leaving us at a disadvantage to others competing close by and in the same area. It will severely restrict and limit our ability to compete on a level playing field.

Mr. Moore commented that virtually all of the businesses except for a few don't qualify for a pole sign regardless of the elevation.

Mr. Spendlove stated that he felt that a monument sign would be more dangerous than a pole sign.

Mrs. Christensen mentioned that the applicant's business is the only one that faces I-215 and he does not have any way of advertising which creates a hardship.

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

By not granting the variance to Intermountain Lift Truck, Inc. we would be denied the right to advertise our business in the same manner as other properties in our zoning district thereby causing Intermountain Life Truck, Inc. great cost and undue economic hardship, limiting our potential and/or stunting our ability to grow especially during these difficult economic times.

Ms. Naegle noted that she believes viability is a property right.

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

By granting this variance, in most cases, the benefits conferred on the community by a business able to maximize street visibility outweigh the costs to the community if the code is not strictly enforced. Generally, restrictive sign codes are enacted under the umbrella of "improving community aesthetics. Seldom do these codes take into consideration the benefits that flow from a local business that is economically viable because its sign catches the attention of a mobile consumer who may have either a present or future need of the business' products and/or services. The benefits flowing from a successful business minimally include enhancement of local tax bases and employment opportunities. Additional benefits include preservation of a healthy business zone in lieu of deterioration when business' fail and leave to locate further out.

Mr. Moore said that he understands the consequence of not being visible and the fact that you need to let perspective customers know that your business is there in order for the business to grow. I can see that there is the circumstance of the elevations and that elevation did not exist when some of those buildings were constructed along there. The pole sign that was on the property conformed with the ordinance, when the City was formed in the early "eighties." That property was 10 acres and that is why they had a pole sign. However, I cannot see that he is addressing all of the criteria, especially the fourth and the fifth. I believe that this goes directly against the Sign Ordinance which was well thought out and well designed.

Ms. Naegle commented I believe that advertising is a property right. I think due to the issues with I-215 that it meets these criteria.

Mrs. Christensen remarked that there are two major freeways in our City and the laws are specific to businesses, but I don't think the laws were specific to freeway businesses and that is why we have the opportunity to grant variances. I feel like this variance will not go against the General Plan and will give this business visibility and the right to safely display his business is a right that others have.

Ms. Naegle said the property is in an "M" zone, but it doesn't allow him the rights that other businesses in the same zoning district have.

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

By guaranteeing Intermountain Lift Truck, Inc. this sign variance the spirit of the zoning ordinance is observed and substantial justice will be done.

Mrs. Christensen indicated that the spirit is observed and it is not a big deal because it is fronting I-215.

Mr. Moore expressed concern that if the variance is approved, other businesses in the area would have a right to do this also and we would be opening ourselves to changing our ordinances which I believe is a disservice to the City.

Mrs. Naegle questioned what type of business do you have out there?

Mr. Williams responded that it is a forklift company and equipment for sales or service.

Mrs. Naegle questioned how long have you leased the property?

Mr. Williams responded that they have been leasing for about 2 ½ years.

Mr. Uluakiola questioned what have you been using to advertise your business?

Mr. Williams responded that they have been using the name displayed on the building. He also noted that the business faces the freeway and is the fourth business down.

Mrs. Christensen asked if there were anyone present who would like to speak in favor or in opposition to the application. (There was no response)

Mr. Moore asked if the applicants are proposing a sound wall.

Mr. Lehman responded that they are not.

Ms. Christensen noted that the center dividing barrier looks taller than 3 feet.

Mr. Lehman indicated that there was an abatement order on this property. The property owner did not want to comply with that and that is why it was abandoned. Also, there were violations on the property. The sign has to come into conformance.

### **Discussion:**

Mrs. Christensen indicated that she had drove out to the property and noted that the hardship is that when citizens drive northbound on I-215, they would not be able to see a 3' sign on this property.

Mr. Spendlove said there is no signage to indicate that a business is located there. I believe that due to the location this request is reasonable to allow potential customers to see the sign.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

**Motion**

Ms. Naegle stated that after considering the five variance criteria and the Board's discussion, I move that we grant approval of application, B-13-2008. as the applicant has met all of the five variance criteria.

Mr. Spendlove seconded the motion.

A roll call was taken.

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

**Motion carries –majority vote**

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**B-7-2008**

**Millstream Properties – Non Conforming Use Modification  
3060 West 3500 South**

**REQUEST:**

The following application was continued from the June 4, 2008 hearing to allow time for staff to research the construction proposal from the Utah Department of Transportation (UDOT).

Mr. Brad Lyle of Millstream Properties, representing Papa Johns, has filed a request with the West Valley City Board of Adjustment seeking a modification to an existing non-conforming use.

**BACKGROUND:**

WEST VALLEY CITY GENERAL PLAN recommends commercial and mixed use. The property is zoned C-2, General Commercial.

- Mr. Brad Lyle is requesting a non-conforming use modification to re-locate the existing pole sign at the Papa Johns restaurant located at 3060 West 3500 South.
- The applicant, as well as the Salt Lake County Polaris records, indicated that the building was constructed in 1971. Therefore, presumably the sign was constructed at the same time.
- UDOT is planning a road-widening project that will impact this site. The new sidewalk will be located directly in front of the building and the existing pole sign will be located within the new right-of-way and must be relocated.
- The building does have wall signage on three sides of the building adjacent to the street. Section 11-4-102 of the West Valley City Code states that “nonconforming buildings closer than 10’ to the public right-of-way shall only be allowed to have wall signs.”
- Per section 11-7-101 of the West Valley City Code, “non-conforming signs shall not be altered, reconstructed, raised, moved, placed, extended or enlarged unless said sign is changed so as to conform to all provisions of the Title” and a distinction is not made in the Ordinance for alterations between voluntary and involuntary acts by the property owner.
- Pole signs are only allowed on properties with more than 10 acres as a Conditional Use (11-6-104(2)(f)).
- The applicant is requesting to relocate the existing pole sign to the west side of the site. The sign would meet the current setback standards for the height of the sign, which is “10 feet for signs less than or equal to 15 feet in height. Signs exceeding 15 feet in height shall be set back one additional foot for each foot of height over 15 feet up to the maximum height allowed in the zone”, which is 25’ (11-6-104(2)(b)). At this time the applicant has not submitted the current or proposed height of the sign. Furthermore, the sign will not be located with in a landscaped area as required by Ordinance due to the location of the drive aisle along the west side of the site.
- The Board may allow a modification to an existing non-conforming use provided that the change is in harmony with the surrounding neighborhood. Staff believes that the applicant’s request to modify the existing non-conforming use by relocating the old pole sign would not be an improvement to this property because the new setback for the pole sign would place it back in the parking lot projecting above the building roof line. The building does have wall signage on three sides of the building adjacent to the street. Staff feels this signage is sufficient, particularly after the widening project, because the building will be located directly adjacent to the right-of-way with a setback much less than a monument sign or pole sign would be permitted to be located at and the modification would not be justified.



**ORDINANCE SUMMARY:**

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.

Section **11-4-102** of the West Valley City Land Use Development and Management Act reads:

Signs shall be allowed to project from buildings or structures in conformance with the following provision:

Wall Signs attached to the face of a nonconforming building, located on or near the property line, with no copy visible from the sides may be allowed to extend two feet into the public right-of-way where no vehicular interference is anticipated. Nonconforming buildings closer than 10' to the public right-of-way shall only be allowed to have wall signs.

Section **11-6-104(2)(b)** of the West Valley City Land Use Development and Management Act reads:

The minimum front yard setback for pole signs shall be 10 feet for signs less than or equal to 15 feet in height. Signs exceeding 15 feet in height shall be set back one additional foot for each foot of height over 15 feet up to the maximum height allowed in the zone. The sign setback shall be measured from the future right-of-way line (see Major Street Plan). In situations where inadequate front yard setbacks exist due to existing building location, and a property owner wishes to place a new sign in the future right-of-way, the property/sign owner must sign a recorded statement or delay agreement for voluntary relocation at their expense, when the road is widened. Separation between pole signs and any other signs shall follow the standards for monument signs described in Subsection 11-5-103(3). Pole signs shall be limited to one sign per frontage. However, free-way oriented pole signs may have more than one sign per frontage.

Section **11-6-104(2)(f)** of the West Valley City Land Use Development and Management Act reads:

All pole signs, except billboards, shall be processed as Conditional Uses and shall only be allowed on properties encompassing at least 10 acres. Interior lots may have one pole sign and one billboard subject to the provisions of this Ordinance. Corner or double-

frontage lots / commercial complexes may choose two on-premise signs (one per frontage) and one off-premise sign, if so desired.

Section **11-7-101** of the West Valley City Land Use Development and Management Act reads:

A nonconforming sign shall not be altered, reconstructed, raised, moved, placed, extended, or enlarged, unless said sign is changed so as to conform to all provisions of this Title. All alterations shall require conformance to the provisions of this Ordinance including any physical changes to the sign panel or the sign cabinet itself. Face changes in multi-tenant signs, normal maintenance/repair, and copy changes in signs previously approved by the City with a changeable copy feature are excluded. Further exclusions include any architectural enhancements to existing multi-tenant pole signs in conjunction with a building façade remodel. The building façade remodel must be at least 25% of the front façade of the building. Overall height, size, and shape of the sign shall not be increased. Any sign that is located within or projects into the existing public right-of-way shall be made conforming when an alteration occurs.

**Mrs. Naegle:** didn't we have a request for additional information from UDOT?

**Mrs. Knapp:** you did...and I think Nicole can address that.

**Mrs. Cottle:** I made the request myself. I sat with the Region 2 Director two days after our meeting. So, it was a Friday morning and I asked him the question. Was the request made to purchase the signage and or the property? The response I got back from him was yes. He then additionally sent over documents for me to look at and also said that they would be willing to still buy the sign, but that the property owner was not interested in doing that. So, the information I received back from the Region 2 Director at UDOT was that "yes" they had approached the property owner and "yes" they had offered to buy, in several different scenarios, various parts of the property, the business, and the sign.

**Mr. Spendlove:** so that would be in conflict with what we were told?

**Mrs. Cottle:** it would.

**Mrs. Christensen:** I have another question. The last sentence you said was "staff feels signage is sufficient" and it is much less than a monument or a pole sign. So they wouldn't even be offered a monument sign?

**Mrs. Knapp:** First off...we had talked about them possibly locating a sign over here in the landscape area that UDOT is providing, but these properties are under joint ownership, and there are different tenants. So, that spot wouldn't really work. Per the Code, it says "non-conforming buildings closer than 10 feet to the public right-of-way shall only be allowed to have wall signs." The property line is here...so they will have sidewalk and no landscaping here...and a driveway. So there wouldn't be room to put a monument sign anyway, even if this section were not in the Code. So, what I was trying

to say is that in any other situation, if they did have room for a monument sign, it would need to be setback the maximum which would be 10 feet from the property line. The minimum would be 5 feet. In addition, I went over the pole sign setbacks. So here...there is no setback because the sign is on the property line. (Jody was using the pointer)

**Mrs. Christensen:** I have another question and then I will let everyone else ask their questions. The existing pole sign...does it conform with the current property line as a non-conforming use?

**Mrs. Cottle:** is your question...is the sign a non-conforming use? Or is it as it relates to the setback?

**Mrs. Christensen:** as it relates to the setback. Is it non-conforming now or is it conforming?

**Mrs. Knapp:** it is non-conforming.

**Mr. Spendlove:** because of the closeness to the road?

**Mrs. Knapp:** I have no information on the existing sign.

**Mr. Uluakiola:** so you don't know the height of the sign now?

**Mrs. Knapp:** no, but the applicant may. I am sorry...it doesn't look like it.

**Mrs. Christensen:** do you want to step up? Because I think we are going to ask you lots of questions.

**Applicant:**

**Brad Lyle**

**330 East Alan Street**

**Bldg. B, 2<sup>nd</sup> Floor**

**Mr. Lyle:** I appreciate all of the people that take their time and come down and serve on Boards like this and I appreciate hearing your deliberation on the last case and how hard you struggled to try and do what's right. I think the spirit of this ordinance... and I am going to read from the letter again...speaks to that. I am willing to live with whatever you people decide. I am a little upset because...I may be taking this wrong, but I am under the impression that you are stating that the Region 2 Director said they were willing to buy our building or buy our sign and I can appreciate that he may have said that. I think I may have met the Region Director maybe once at the site, when we delivered to them all

of the leases on the properties and everything that they requested prior to them doing anything. After that, I don't think I ever met with him again.

I met with, Maureen Bachman, who represents UDOT as a real estate agent and who does right-of-ways and she was a terrific lady. She was nice to deal with, but the fact of the matter is they never made us an offer to buy the building and never made us an offer to buy the sign. The contract reads...which has been signed and it is a done deal...the contract reads that they would be willing to pay for the relocation of the sign. We signed the contract so that they could go ahead and that is the verbiage that is in there.

I don't want to continue this any longer, but one of the things that I said at the last meeting was that when I went to the counter, the City had not been consulted by UDOT. UDOT didn't come to them and say "hey look we are contemplating this right-of-way expansion and its great for the City and its good for health and the safety of the population and it is going to move traffic." It's a good idea. But they didn't come to the City ahead of time and say, "let's figure out how we are going to deal with these issues." They just moved forward....and that's what I was told at the counter. That may be wrong, but that's what I was told.

There was a couple of ways that we could have filed this, and we were very careful when we filed it as a non-conforming use. We didn't file it as a variance...I know that you have a checklist for your variances. I saw how hard you work with that and I appreciate it. We have a lot of buildings. We probably have thirty commercial buildings. Three of them in West Valley City.

West Valley City is not an easy place to have a building today. I have been in front of court because someone tagged our building and our construction guys painted over it, but didn't follow the bold print on it and file something. The next thing I know I was in court and my building was on probation and I thought they were going to take it to Juve. We have another building that just got tagged last week. We have a lot of problems with our buildings. I can appreciate the City is trying to clean and improve itself and do things that make it look better and more presentable and also make it a better economically viable community. I appreciate that.

I think the spirit of this ordinance....any sign ordinance in any community gets tougher and tougher and tougher for the people that are in business. And while you're trying to clean up the community and make it look better...there is a balancing act that takes place. And when they draft these ordinances, they don't cover every contingency. It's not like you have a Supreme Court decision on it and you can go see the descending argument and you can say "yeah, they really did contemplate this when they did it". So, because that was contemplated...we're going to do that.

Our position is that when they did this Sign Ordinance, they did it for aesthetics and they want the town to look less junky. They didn't contemplate the property owner that is forced to move his sign. That is completely different than if I came in and said, "hey,

you know what... we want to move the sign and we want to do this and that. That's a completely different kettle of fish in my mind. I read from your non-conforming use application, "a non-conforming use is a use or structure which lawfully existed prior to the adoption of the ordinance that prohibits the use or structure". In more common terms, the non-conforming use or structure has been "grandfathered" because of the length of time it has existed.

We have had this sign 37 years. The continuation of a non-conforming use is based on the general principal that zoning laws cannot be applied retroactively unless there is an imminent health or safety concern. There is no imminent health or safety concern. It is an aesthetic concern. I think you have a concern with opening "Pandora's box" because there may be other people, but this ordinance was drafted and that language for fairness. Those are not arguments that apply. The question is, are we asking to move this sign because we want to move it? And the answer is no. I don't know how we get past that. I call UDOT and they come down there and say "I've decided I want to leave my sign there...and they say no you can't do that. You can either move it or lose it." That does not seem to be like a very fair thing for a business. So, I think our argument is pretty straightforward.

When I talked to the attorney the last time she said, "even if you moved it and you moved it back into compliance, you can't raise it and you can't change it in any way." We can live with that. We will move it back...whatever the setback is...straight back from where it is and put it right back in the ground and we won't change it one bit. We will just move it right on the property line where it is and it won't bother anybody and it will be below a whole ton of signs that are already out there.

We have a tenant that doesn't care about the City's aesthetics. He signed a long term lease on this building....he just re-upped and he says the sign has value to him and that's why I am here. I think the spirit of the ordinance and that language makes it clear that unless there is an imminent health and safety concern, it doesn't matter about "Pandora's box and it doesn't matter about anything else. It's just really what is fair. I can appreciate staff saying, "well they have signage already." That's great...you know...that is very subjective and I don't think that is the way this ordinance was drafted...and what if it is in the cracks and we don't have it spelled out?...Then staff gets to make the call on what they think is fair. I have businesses that are saying "you know what... we leased this space. The sign is there and we aren't moving it. We should be entitled to keep it...and I am not getting paid for it.

I would be more than willing to answer any questions. I don't know how else to say it...you have been very kind to give me this much time and I don't know what else I can say.

**Mrs. Christensen:** questions?

**Mrs. Naegle:** you are the owner of the land not the owner of the Papa John Restaurant?

**Mr. Lyle:** right...I am a principal in Millstream. You know one of the things that made me uncomfortable when I left last time, was Millstream owns this property and the property next to it. This property here is Millstream and this property here is Millstream. (He used the pointer to spotlight properties for the Board). They are different parcels. Council last time talked about bundles of rights. I understand bundles of rights. I have been in commercial real estate for thirty years. I went to law school for a couple of years till I figured out I didn't want to be a lawyer. I apologize. My oldest son is an attorney and my youngest son and his wife are both in law school at the "U". So we have a lot of lawyers in the family.

This building and this lot runs all of the way through to this cul-de-sac which is an absolute nightmare for us. (Using the pointer during discussion) This is under a long term lease to H & R Block and we can't tell them what to do with that property. They have a long term lease...they have been there a long time and just because you own the land doesn't mean that you can go in and tell your tenant "hey, you gotta do this". They tell you "hey, shove off...its our property"...or it is their bundle of rights. Am I stating that right? H & R Block is not going for a sign. We have already talked to them. This piece right here is also owned by Millstream, but it is under a long term lease to Papa Johns. That's why we have reciprocal easements. It was real easy to get them because at one time we owned them all. I think I told you that a monument is not going to work because you would have to turn this parking, and there is really no place for it, and H & R Block has a big sign right here...and they are really happy with it. You can almost see it from the space shuttle. I mean it is a big sign. It has been there since 1971.

Papa Johns is saying "hey, get your fanny down there and argue for our sign. We haven't done anything...it is UDOT." UDOT ought to be in here making the application. We thought we did the right thing by not fighting. My testimony, and I will swear to it if you want, we never got an offer to buy our building and we never got an offer to buy our sign. We did get an offer in the last contract because I requested it that they would pay the expense to move our sign. There was no contemplation that we would lose the sign. So, I hope I have answered your questions.

**Mrs. Christensen:** any further questions?

**Mr. Uluakiola:** so I guess he is willing to move the sign back at whatever height?

**Mrs. Cottle:** he is asking this Board to allow him to move the sign back. I would like to clarify a statement he made. He said that when he spoke to me, that I said "even if you moved your sign back, you would have to keep it at the same height." What I said was, if I agreed with his legal analysis that allowed him to move the sign back and that the Board didn't have to allow him to go any higher. The truth is that his request to the Board tonight is, as a non-conforming use, can I alter or expand that use? That is the legal question you have to answer tonight.

**Mr. Lyle:** may I speak to that just for a second? I am not sure I understood, but what I am saying is, if my application is something different,... that we want to move it back far enough to be seen over the building... then I would want to amend it. We will move it back 10 feet and we will not change the face, the can, or anything else. We will just move it back 10 feet.

**Mrs. Cottle:** I think your application is unclear. We never got the understanding of where you wanted to move it, nor how high you wanted it to be. So I think your request is "can I move it?"

**Mr. Lyle:** then I would like to place on the record that I would like to move it back to comply if it is a 10 foot setback or a 15 foot.... that's where I want to move it and I won't raise it an inch and I won't do anything different.

**Mrs. Knapp:** the setback is based on the height. I think in your letter you indicated that you would move it back per City ordinance.

**Mr. Lyle:** that's fine. We did this in March. So, it's even getting old for me.

**Mrs. Christensen:** any other questions? He read a statement about "grandfathering"...I don't find anything about grandfathering except in our minutes, when he mentioned it.

**Mrs. Cottle:** it is on our application and it is a piece of information to provide people that aren't clear on what non-conforming use means...to help them understand.

**Mrs. Christensen:** So, it is to help them understand. Okay. And is that any part of our Code?

**Mrs. Cottle:** no, it is not part of our Code. This was written in order for people to understand the general principal of a non-conforming use. What is in our Code is in the Board's packet and are listed as the ordinances that apply.

**Mrs. Christensen:** so even though it is on the application, we don't have any "grandfathering" provisions? I understand that involuntary and voluntary movement are exactly the same, but we have no "grandfathering" provisions for a sign that was erected and conforming in 1971?

**Mrs. Cottle:** they are non-conforming. If you are asking, do we have a provision that would say if it is involuntary, that would mean they get to keep their status? No, we do not.

**Mrs. Christensen:** I guess what I am asking is, if it was erected as conforming, and it becomes non-conforming because of City issues....?

**Mrs. Cottle:** the only reason this sign is non-conforming is because of the change in ordinance. So we recognize as staff that this sign is non-conforming. The reason it is non-conforming is because we don't allow pole signs on anything smaller than 10 acres. It has nothing to do with the quote, unquote "government action." The non-conformity occurred at that point. Does that make sense? So that is where your question came about the setback...right? That is what you thought shifted it to a non-conforming status. It was not. It was the change in ordinance that took pole signs out of our ordinance.

**Mrs. Christensen:** okay now...what he has presented to us...I am sorry, but that is kind of what our application process says.

**Mrs. Knapp:** I can clarify that. I think what we are saying is that we are not disputing, as Nicole was saying, that it is a non-conforming use. It clearly is a non-conforming use. But what we are going off of is that there are two sections in the Sign Code that specifically address non-conforming signs. They state that non-conforming buildings, closer than 10 feet to the public right-of-way, should only be allowed to have wall signs. The second point is that non-conforming signs shall not be altered unless they conform to all provisions of this title". So, we are agreeing that it is a non-conforming sign, but the ordinance does address if you alter a non-conforming sign. It is silent on whether it is voluntary or involuntary.

**Mrs. Cottle:** in other words, we are not retroactively applying this.

**Mrs. Christensen:** what I am asking is...if it was conforming at the time the ordinance was changed.....?

**Mrs. Knapp:** it was not.

**Mrs. Christensen:** if it was built in 1971, and conformed to the County codes in 1971,...the City changed the ordinance and therefore, it went from conforming to non-conforming. I guess I don't understand why it wouldn't be retroactive.

**Mr. Spendlove:** yes, why wouldn't it be retroactive?

**Mrs. Cottle:** this retroactivity that we are talking about now is that they get the right to continue. In other words....what you are questioning is....at the point at which we put into place the 10 acres or larger for the pole sign. Applying this new ordinance retroactively and kicking in this health and safety issue would have been at that point. In other words, had we said that, you can't have a pole sign on smaller than ten acres, and then we knocked on his door and said you have to take down your pole sign. That would have been the point at which we would not be able to retroactively apply this. It has got its non-conforming status.



**Mrs. Knapp:** the only reason we are applying it now is because, per ordinance, if they alter it in any way, they lose their non-conforming status and need to meet the current standards.

**Mr. Lyle:** I am not going to argue with any of those things they said. Can I just make two little points? One is the “grandfather” language. You won’t find anything in your ordinance that addresses “grandfathering.” Nothing...you won’t find the word “grandfathering” in your ordinance.

**Mrs. Cottle:** that’s right. It is called non-conforming.

**Mr. Lyle:** yeah, it’s not in there. It doesn’t deal with what is fair and equitable to the property owner. It is not in there. It is silent. The other distinction that isn’t in your Code is where there is a voluntary involuntary move. I can appreciate...and I am not arguing with council...to them it makes no difference who moves the sign...it is that the sign is getting moved. I am saying you know the intent of this and the spirit is to do what is fair. That is the spirit of it. Your ordinance doesn’t address it.

**Mrs. Cottle:** I will agree with that with the exception of one thing. The term of art, “grandfather”. The legal term is non-conforming use. So when you search our ordinance for the word “grandfather”, it is not in there because that is a term of art. It’s slang for non-conforming use. That is a good way to put it....it’s slang for non-conforming use. If you search our code for “grandfathering” you won’t find it. If you search our code for non-conforming use, you will find it, and that non-conforming status is the same status granted by State law and by our ordinance and it means “grandfathered”.

**Mr. Lyle:** and where in the ordinance....what provision in the ordinance would state that based on fairness, or what is right, or the fact that it was pre-existing that they should be allowed to continue? You won’t find that in your ordinance. So, really what name you put on it doesn’t change the spirit of that. That’s just my point.

**Mrs. Cottle:** actually you do find that in our ordinance. You find it in the non-conforming section and that is the reason that the sign is still there today, even after the change we made in 2001, because we recognize non-conforming status. The question before you tonight is....we have a non-conforming sign, so are you as a Board going to allow it to be moved and expanded and/or altered?

**Mrs. Naegle:** and what I would like to address on the fairness issue is that the fairness comes from this Board. If you say the Code doesn’t say it’s fair, they have set up a mechanism for you to approach someone to determine what is fair. Is that not basically our role as the Board of Adjustments?

**Mrs. Cottle:** yes. With regards to non-conforming uses, West Valley City recognizes that non-conforming status as a part of the “bundle of the stick.”. What we don’t recognize automatically by ordinance, is a person’s right to change that non-conforming

status. We will allow them to keep that, but the reason that non-conforming uses were developed by law is because when a change is made, we wanted to continue to recognize that, but not to allow people to necessarily change or alter it except in strict circumstances that you would allow because non-conforming uses are purportedly going to go away at some point because they don't conform to the rules. That is why a request such as this would come before your Board because that would be outside the status of what non-conforming use provides you as a property owner. That "stick" doesn't automatically mean that you get to make a move or a change or an alteration.

**Mrs. Christensen:** so what you're saying Sandy...and what Nicole is saying is that we as citizens of the City, have the right to....under the request for a non-conforming use expansion or consideration of expansion have the right to say, "go ahead and do it?"

**Mrs. Cottle:** right. Okay let me find this section for you and read it. It is on page 8. "Alterations or modifications to non-conforming use" A use which has been declared non-conforming shall not be enlarged or moved except as provided in this section. The Board, after a public hearing, may allow an enlargement or modification provided the change is.....and here are the standards for you....provided that 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."

**Mrs. Christensen:** thank you.

**Mr. Spendlove:** I have a question. When we issue a subpoena, doesn't that mean that they need to appear as opposed to staff contacting that person and they say, "well, yes I did or no I didn't?"

**Mrs. Cottle:** yes, and I took the liberty of not following through with that. I am sorry to the Board....and you can instruct me to do that one more time if you would like. As I discussed that with the Administration, they felt uncomfortable with following through with that and directed me to go ahead and do the phone calls. Frankly, the applicant is correct here...you can take or leave what I say to you. And frankly, the fact that occurred or didn't occur really truly has nothing to do with your decision tonight from a legal perspective.

**Mr. Spendlove:** from a "pro forum" I wanted to know normally they would have to show up right?

**Mrs. Cottle:** normally you could issue it, and I don't know what we would do if they didn't show up, because I have never had that happen before. I have never formally issued one frankly. So, you do have the power as a Board to formally issue one. What happens if they don't show? The remedy for that I honestly don't know what would

happen. The other issue was we weren't quite sure who exactly to subpoena to be honest with you.

**Mrs. Christensen:** so what I am seeing is...the change in harmony with the surrounding neighborhood, and it is in keeping with the intent of the General Plan and this ordinance. We have to decide... again, is it in harmony with the surrounding neighborhood? To be quite honest, it is totally in harmony with the surrounding neighborhood as it exists now.

**Mr. Moore:** there is going to be disharmony in that neighborhood for about a year.

**Mrs. Christensen:** and the question...is it in keeping with the intent of the General Plan and this ordinance? I think the answer, and I hate to say this because I think it would be nice to let these people have their sign and their non-conforming use continue, but it is not in harmony with the Plan. We have to decide if we want to overrule the Plan, and allow them because of the circumstances. That is our job. The sign was built in 1971.

We haven't closed the public portion. Would you like to close it to the public?  
Okay...go ahead Scott.

## Discussion

**Mr. Spendlove:** in a different situation, we talked about the non-conforming use for, ...say transmitter poles. We talked about increasing the array or that the wires are going to be on the interior or the exterior. If you use that criteria, who is to say if that is part of the General Plan or in harmony, if we grant more arrays or not?

**Mrs. Christensen:** I guess that is for us to say. This is my thought...even though it was made non-conforming, which Nicole says is slang for "grandfathered", when the Sign Ordinance in the City changed or when the City was formed essentially.

**Mrs. Cottle:** the Sign Ordinance was changed in 2001.

**Mrs. Christensen:** I have to look at how long the sign has been there. This is what concerns me....how long the sign has been there, the fact that the sign was there before the Sign Ordinance was created, and that it is involuntary. Those are my three considerations as I look at what is our responsibility.

Is it in harmony with the surrounding neighborhood? It has been since 1971. Is it in keeping with the intent of the General Plan? Well reality is from 1971 until 2001 it was in keeping with the General Plan.

**Mr. Moore:** So for thirty years it was okay. Now for seven years it has been not okay. It has been a non-conforming use. The expectation, as Nicole stated, is that eventually a non-conforming use will be abated or disappears. I think that was the intent of the City

when they passed the ordinance...I think it was that whether it is voluntary or involuntary...when that opportunity comes, that non-conforming use evaporates or disappears.

**Mrs. Christensen:** my only concern is that it is so involuntary. Does the ordinance say specifically "involuntary"?

**Mrs. Cottle:** intentionally it doesn't say that.

**Mr. Spendlove:** when we talk about the reasonable conditions that may be attached to the approval, would that be if we were able to say, same sign, same everything. It's just moved back. Is that a condition that we could place?

**Mrs. Christensen:** I think that is a reasonable condition that it conform with all other signage ordinances except the fact that it is a pole sign.

**Mr. Spendlove:** you wouldn't want to increase the size.

**Mrs. Christensen:** you could also impose a condition that should go with the current lease holder, when he is no longer leasing that property. The current leaseholder.... not the current company, Papa Johns...

**Mr. Moore:** doesn't it run with the property and not with the lease?

**Mrs. Cottle:** non-conforming status runs with the land. It is a property right.

**Mrs. Christensen:** could we attach a provision that should the leaseholder change, the sign goes away?

**Mrs. Knapp:** if the leaseholder changes, the same thing may happen because they would be altering the sign for a new tenant. So, the same thing would come up again.

**Mrs. Cottle:** automatically...our ordinance requires that automatically.

**Mrs. Christensen:** and it could automatically state that it goes away as part of the condition, if we were to approve it?

**Mrs. Cottle:** you could, but you don't have to because it is already covered by ordinance.

**Mr. Moore:** why wait?

**Mrs. Christensen:** because the leaseholder leased the sign with the building.

**Mr. Moore:** that's correct. He probably did not anticipate this involuntary problem.

**Mr. Spendlove:** does anyone think it is odd that the Papa John's proprietor is not here to speak in favor of his own application?

**Mr. Moore:** he has an owner that he leases from to speak for him.

**Mr. Spendlove:** I just find it strange...we talk about business ownership and signage and how critical it is that in addition to people representing you...you could also speak in favor of your own business.

**Mrs. Christensen:** are we ready to entertain a motion or do we want to think about it longer?

**Mr. Uluakiola:** he just mentioned that the City wanted him to remove the sign and leave it as it is. Is that the recommendation on his application tonight?

**Mrs. Knapp:** just in the letter that was submitted.

**Mrs. Christensen:** modification to relocate an existing pole sign. The modification of the non-conforming use would be to relocate the existing pole sign.

**Mr. Uluakiola:** no alterations?

**Mrs. Knapp:** the letter with the application says, "we believe we should be able to move our pole sign back to comply with the setback required."

**Mr. Spendlove:** unless we specify they could move it anywhere they wanted to as long as it conforms with the setbacks. They talked about moving it back 10 feet from where it is now, but that doesn't mean that it has to be.

**Mrs. Cottle:** that depends on how you make your motion. If you make your motion that they can modify it by moving it back or change it by moving back, then the issue becomes if they move it back 10 feet, they don't raise the height. But if they move it back further...as you go back further from that then the height increases...and correct me if I am wrong, Jody, because she is the expert on the Sign Ordinance. So one foot back...one foot up...so if your intent as a Board is to allow that, then go ahead and make the motion that way. If your intent as a Board would be to allow it just back to the 10 foot setback, I don't think you raise it at all at the 10 foot. However, we don't know how high it is.

**Mrs. Christensen:** if it is 18 feet high, is 10 feet the appropriate setback?

**Mrs. Knapp:** no, it would be 13 feet because it is a 10 foot setback for signs less than or equal to 15 feet in height. Then anything that exceeds that it is an additional foot up to the maximum of 25 feet.

**Mrs. Christensen:** so if we were to make a motion to allow him to move it directly back, then I guess we would have to say directly north of where it exists now. It would have to conform to City standards for height as the sign exists now. Is that correct?

**Mrs. Cottle:** I think that is correct...and again, correct me if I am wrong, is it right where it could go directly?

**Mrs. Knapp:** that is what I was just looking at.

**Mr. Spendlove:** there is a berm with a tree and you have some curbing and stuff... it would be kind of right smack....

**Mrs. Knapp:** that is the other property...so his property does not have landscaping and it would just be right in the driveway. So, per ordinance he wouldn't be putting the landscaping in either.

**Mrs. Christensen:** do you want to float a motion and see what happens?

**Mr. Moore:** if we just boil it right down to allowing them to move the sign, we're just taking the sign clutter then moving it back.

**Mr. Spendlove:** that's what it looks like to me.... is take the large pole signs that are cluttered there and just push them back off of the road...but they're still there. If you would like, I'll make a motion.

## **Motion**

Mr. Moore stated, in the matter of, B-7-2008, Millstream Properties non-conforming use modification, I would move that we not allow the expansion of the non-conforming use based on the fact that it is not in harmony with the surrounding neighborhood and that it would be contrary to the General Plan and to the City Ordinances.

Mr. Spendlove seconded the motion.

A roll call was taken.

Board of Adjustment

July 2, 2008

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

\_\_\_\_\_ - B-7-2008 - \_\_\_\_\_

**Motion carried – majority vote**

**OTHER**

The minutes from **June 4, 2008** were approved.

There being no further business the meeting adjourned at 8:00 p.m.

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Karon Jensen, Administrative Assistant