

**WEST VALLEY BOARD OF ADJUSTMENT**

**October 1, 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**

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

**Those Absent:** Sioeli Uluakiola

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman, Hannah Thiel and Karon Jensen

**WEST VALLEY CITY LEGAL DEPARTMENT**

Claire Gillmor

**AUDIENCE:**

Approximately five (5) people were in the audience.

**B-15-2008**

**Goran Cvetkovic – Variance Request**

**4178 West 4490 South**

**REQUEST:**

Mr. Goran Cvetkovic has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305 of the West Valley City Land Use Development and Management Act. This section requires that the minimum rear yard setback (for homes built prior to 1986) be 15 feet in the R-1-8 Zone. The applicant is requesting a variance of 3 feet in order to allow a partially constructed addition to remain attached to the existing dwelling.

**BACKGROUND:**

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

- The subject property is known as Parcel Number 20-06-406-019. It is also lot 15 in Benview Subdivision Plat 9. This subdivision was recorded with the Salt Lake County Recorder's Office in 1964 while under Salt Lake County's jurisdiction.
- According to Salt Lake County records, the single family dwelling was constructed in 1973. The original building permit for this home did not include the existing addition which is the topic of this application and is presently in violation of City code.
- The applicant was notified that the location of the awning is in violation of City setback standards. Staff informed the applicant that the location of the addition presented zoning concerns. After discussing these concerns and outlining the variance procedure, the applicant determined that he would request a variance.
- The applicant has begun building his addition to his home in the rear yard setback to allow three additional feet for his dining room area as he can not fit a big enough table in his current dining room.
- Photographs are included in the packet showing the building addition, partially finished, from the street. If the variance is granted, the applicant will finish the addition with materials that are compatible with the existing home. The applicant will also meet all building codes in the construction of the addition. The property in question is 0.21 acres. The parcel has a frontage of 141.89 feet in width in the front, but the depth of the property is only 70 feet. Although the property does not represent very unusual characteristics in comparison with other properties in the area, it does have less lot depth than most properties in the area, which may be somewhat prohibitive. In addition, the existing home was built to the minimum 15 foot setback at the time of its construction. Today, the R-1-8 zone requires a minimum of a 20 foot rear yard setback.
- The applicant has submitted a letter to the Board explaining the reasons why the setback in the rear yard needs to be as close as proposed.

**ORDINANCE SUMMARY:**

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires the rear yard setback to be 20 feet unless the home was built prior to 1986 and has a two car garage, where the minimum rear setback must be 15 feet.

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

**Applicant:**  
**Goran Cvetkovic**  
**4178 West 4490 South**

**Opposed**  
**Ken Bird**  
**4480 S. 4180 W**

**Opposed**  
**Penell Powell**  
**4465 S. 4170 W.**

**Goran Cvetkovic**  
**4178 West 4490 South**

Mr. Cvetkovick indicated that he has begun building an addition to his home in the rear yard setback to allow three additional feet for a dining room area.

Mrs. Christensen explained that the applicant, Mr. Cvetkovic, has a partially constructed dining room addition in the kitchen and is requesting the variance to give him more space so he can have a big enough table for his family to be seated.

Mr. Moore questioned if he had obtained a building permit and the applicant responded that he had not.

Mr. Cvetkovick asked the Board to review his responses addressing the five variance criteria.

**CRITERIA DISCUSSION:**

- 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. The variance is on my property. I am requesting a four foot variance into my 15' rear yard setback.
  - b. My hardship is that the depth of my property is too short to allow an addition onto my home, meeting the minimum setbacks of the City Ordinances.
  
- 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**
  - a. One circumstance is that I have a shorter lot depth than homes in my neighborhood that have enough room for dining rooms that fit their dining room tables in their homes.

Because of this shorter lot depth, I do not have enough room on my property to add any living space on any side that would work with the existing floor plan of my home and meet the minimum setbacks.

- b. Another circumstance is that my home is located on a corner lot, where more stringent setbacks are required as I have frontage on two streets. My home was originally placed to meet the setbacks required along the two frontages.

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

- a. Neighbors have added onto their homes and have a deeper lot which allows them to conform to the City Ordinances.
- b. Neighbors also have enough room in their dining rooms for a dining room table that can fit with their family. I simply want to fit my family around my dining table in one room.

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

- a. Neighbors have added onto their homes and have a deeper lot which allows them to conform to the City Ordinances.
- b. Neighbors also have enough room in their dining rooms for a dining room table that can fit their family. I simply want to fit my family around my dining table in one room.

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

- a. The General Plan classifies my property as Low Density Residential. As a dining room is a use that is important to single family residences. I would like to use my property to the full extent in the single family residential use.
- b. In the event of this variance request being granted, I will obtain a building permit for the addition.
- c. Where the back of my property meets the other side of my Northern neighbor's property, the variance would allow me to maintain a setback that is similar to a side yard setback for homes that are not on a corner, thus reducing any detrimental effects on my neighbor.

**Ken Bird:**

Mr. Bird said that he has submitted a letter in opposition to the variance request submitted by Mr. Cvetkovick and that his concerns are as follows:

- A house extension encroaching upon our property line violates our privacy.
- An overly large window in the addition overlooks our backyard invading our privacy.
- A deck which is built higher than the 30" oversees every area of our patio and backyard eliminating all privacy.

- Noise generated by continual activity and parties on this deck exceed a normal level in a residential area due to the close proximity. The extension will pose the same problem.
- Backyard water runoff floods our patio constantly.
  - ✓ Property fence is rotting on the bottom due to water runoff.
  - ✓ Flower beds exceed the retaining wall height.
  - ✓ Rain gutters on the closeness of the addition will add to the water runoff and flooding.
- Fire and safety issues are present due to the close proximity of the dwellings (included is a 10' x 20' shed recently installed).
- Brightness of the pole light remains on throughout the night and shines into our home.

Mr. Bird stated that the laws have been knowingly violated and this extension has become a personal violation of our property rights. There have been so many additions crammed into the neighbor's small backyard that it presents a fire hazard. He explained that the home in question was originally built with limited side and rear setbacks and we feel that the homeowner should accept these limitations.

**Penell Powell:**

Mr. Powell stated that having been a neighbor for several years, I have resided next to neighbors who have had violations. I have lived in my home for 42 years now and believe that Mr. Bird's explanation of the problem is sufficient and am requesting that the Board deny his variance application.

Mrs. Christensen disclosed that she knows Mr. Powell, but assured that it would not influence her decision tonight.

**Discussion:**

Mr. Spendlove inquired if there were any complaints to the police or Code Enforcement in reference to this application.

Mrs. Thiel responded that the only complaints have been from the neighbors in attendance tonight.

Mrs. Christensen commented that this property is positioned higher than property to the north. Therefore, neighbors could see over it and it is not a fixable problem.

Mrs. Gillmor remarked that the criteria that the Board is considering is appropriate. It is important to keep the entire context within the 5 variance criteria when discussing other issues such as privacy, etc.

Mr. Moore indicated that he did not see the fact of the applicant's need for a bigger table as an issue and noted that it does not have anything to do with the hardship criteria for a variance.

The Board discussed the variance 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.

Mrs. Christensen said this is a corner lot and I believe the depth of the lot is a hardship.

Mr. Moore disagreed and noted that there are many corner lots & their homes are similar so I don't see that this is a special circumstance.

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

Mr. Moore commented I don't see this criteria being met.

Mrs. Christensen responded that the problem is the builder and the way he positioned the home on the lot. His lot is 70' deep and there are only two other lots in the area that are 70' (lot #15 & #22) however the rest are all different.

Mr. Moore said that lots, 16-19, are a similar width.

Mrs. Christensen responded the width, but not the depth. If Mr. Cvetkovic had an extra five feet that his neighbor has he would be in good shape.

Ms. Naegle commented that the depth on this home is north & south. Lot #19 is going east and west so it has sufficient depth.

Mrs. Christensen noted that the only lots that are comparable are lots #20 & #22. Lot #22 has been added to and they have 75 feet not 70 feet.

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

Mr. Farnsworth stated that in regards to the way the house is turned, I don't see any examples of that.

Mrs. Naegle questioned is privacy not a property right? Also I think that this property right is for both parties involved.

Mr. Farnsworth mentioned that Mr. Bird could also say that if he extends to the fence, then he should be able to build to the fence. Does that affect the neighbor's yard? I believe that it does affect the property right.

Mrs. Naegle responded then he would have to apply for a variance.

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

Mrs. Christensen noted that there is a lot of animosity from Mr. Bird that are not under the Board's privy. I understand the privacy issue; however this issue is not addressed by the Board as well as most of the other issues he discussed. They are valid issues, however not valid criteria for the Board of Adjustment. Most of the issues brought up by Mr. Bird do not address the five variance criteria.

Mr. Moore stated that approving the variance request would affect the general plan and – encroaches on the neighbor's property more than his neighbor would like.

Mrs. Gillmor indicated that the General Plan identifies uses in zones.

Mrs. Christensen responded that doesn't change the general plan (low density housing is called for in this zone).

Mrs. Naegle questioned it has to meet all five of the variance criteria?

Mrs. Gillmor replied that yes it would.

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

Mr. Moore noted that the spirit of the zoning ordinance would not be observed nor would substantial justice be done by granting the variance.

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

### **Motion**

Mark Farnsworth stated, I move that we deny the variance based on the applicant not meeting the five variance criteria. He noted that especially the second variance hardship criteria was not met.

Mr. Moore seconded the motion.

A roll call was taken.

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

**Motion carries – all in favor**

\_\_\_\_\_ - B-15-2008- \_\_\_\_\_

**B-16-2008**

**Patel Variance**

**2516 South Winton Street**

**A Zone**

**REQUEST:**

Mr. Jonathan Rupp, representing the property owner, has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-204 of the West Valley City Code. This section requires that the minimum lot size in the Agricultural zone be 21,780 square feet or one-half acre in size. The applicant is requesting an area variance of 567 feet for lots 1 and 14 of Block 19 Chesterfield Plat A Subdivision. This request is being made in order to accommodate right-of-way needs for UTA's light rail project.

**BACKGROUND:**

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

- The subject properties are known as lots 1 and 14 of Block 19 Chesterfield Subdivision Plat A. The property is zoned agriculture which requires a minimum lot size of 21,780 square feet or one-half acre. At the present time, both lots are one-half acre in size.
- Earlier this year, the property owners were made aware that the alignment for the West Valley City Trax line would virtually eliminate access to lot 1 from Winton Street. In addition, the alignment would also affect the southeast corner of their property.
- Although access could be gained from the street to the south, it has never been improved. The applicants believe that access from Winton is still the most appropriate, convenient and cost effective option. Although formal improvements such as curb and gutter do not exist, access to each of these lots does.
- In order to ensure that the existing lots maintain their development potential, and to facilitate the acquisition of their property by UTA, the owners are proposing to modify the property lines. Doing so however, will result in the area of each lot being less than what is required by the agricultural zone.
- The property owners have submitted a lot line adjustment application as well as the variance request. The lot line adjustment will allow existing property lines to be modified in order to ensure that access to lot 1 can still be gained from Winton Street. By



virtue of moving the lot lines, lot 14 will also be deficient of the necessary area requirement.

- The properties in question are typical of what has been platted throughout the Chesterfield Subdivision. The majority of lots in the subdivision have a minimum frontage of 90 feet and a depth of 242 feet. The requested variance will affect the southeast corner of each lot.
- Over the years, many properties have become nonconforming as a result of governmental action. Because of this concern, section 7-18 of the City code was modified to include the following language:

Buildings that become nonconforming as to setbacks due to a governmental action such as a roadway widening can be fully restored at the original setback.

Although this section is contained within the nonconforming portion of that code, it does provide insight into the City's consideration of such cases where governmental actions impact properties that otherwise would not need relief.

- At the present time, lots 1 and 14 are contained in one legal description. The lot line adjustment and variance request (if granted) will be applied once the properties have been re-divided into their original configurations.

**ORDINANCE SUMMARY:**

Section 7-6-204(1) of the West Valley City Land Use Development and Management Act requires that the minimum lot area shall be one-half acre in the A zone.

**Applicant:**

**Patel Variance**

**2516 South Winton Street**

**Jonathan Rupp**

**2516 South Winton Street**

Mr. Rupp stated that he is an attorney with Scalley, Reading, Bates & Rasmussen and is representing Ghulam and Lauri Patel, the property owners. He clarified that UTA does own the property now, and apologized for the mistake as UTA did not condemn the property and the property owner is working with UTA to avoid this issue.

Earlier this year, the owners learned that UTA intended to condemn a portion of Lot 1, to be used for the West Valley Trax line. As a result of the Trax line, the owners will no longer have legal access to Lot 1 from Winton Street. Therefore, they intend to quitclaim deed a triangle of property from Lot 14 to Lot 1. By moving the triangle from Lot 14 to Lot 1, both lots will have adequate access to Winton Street, with all setback requirements

for ingress and egress to both lots being met. However, as a result of UTA'S condemnation and the transfer of the triangle to Lot 14, both Lot 1 and Lot 14 will be smaller than the 0.50 acre required for lots zoned rural-residential. Specifically, the resulting Lot 1 will be 0.487 acres. A legal description of resulting lots 1 and 14 are attached hereto as Exhibits "D" and "E" respectively.

Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the owner that is not necessary to carry out the general purpose of the zoning ordinance. Furthermore, granting the variance will not substantially affect the general plan and will not be contrary to the public interest. If the requests set forth herein are not granted, the Owners will be deprived of the benefit of Lot 1 because, due to the UTA condemnation, it will not have adequate access for ingress and egress and will, therefore, not be able to be developed. The Owners purchased the parcel with the intent of one day selling two lots for development. As a result of UTA's condemnation action one of the lots will be worthless, unless the relief sought herein is granted. Substantial justice requires that these requests be granted.

There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district. The Owners are uniquely situated because the necessity of the variance was not a result of the Owner's actions; rather it is a result of UTA's required 0.50 acres. The resulting lots will, for the most part, remain the same size and shape as already approved and will not affect any property owned by any third parties.

Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning districts. The approvals requested herein would not be necessary were it not for the condemnation action of UTA. Currently, neither lot has an existing structure, so the changes proposed herein will not affect any setback requirements. It is anticipated that if and when homes are constructed on the lots that the setback requirements will be met.

Granting the relief requested herein will ensure that the spirit of the zoning ordinance is observed and substantial justice is done. The Owners respectfully request that the resulting lots 1 and 14 be allowed to vary from the required 0.50 acre requirement and that approval be granted for the lot line adjustment.

**Discussion:**

Mrs. Christensen stated that she would like to disclose the fact that she is on the UTA Trustee Board but said that it would not affect her decision regarding this request.

Mr. Moore said that he is in favor of the variance request.

Mr. Lehman indicated that he thought that UTA would probably have bought the entire lot, but that the property would have just sat vacant. The property owner is requesting the

assurance about the property before they proceed. Elba Street is dedicated and I believe that the most reasonable request for this parcel is the variance route.

**CRITERIA DISCUSSION:**

**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 ordinance would mean that access to lot 1 would need to be gained from an unimproved street.

A finding of unreasonable hardship is proper because:

- i. The variance request is for property that is owned by the applicants, which property will not have adequate access unless the variance is granted.
- ii. The construction of the TRAX line has taken the frontage to lot one, which is a special circumstance, not general to the neighborhood
- iii. The conditions necessitating the variance are not self-imposed by the applicants or economic; the conditions are the result of the TRAX line which restricts access to the property.

**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 a governmental action is taking away frontage that presently exists along a dedicated street. Although, Winton Street is not fully improved, it does offer a more convenient access than the southern street. Other properties in the same area have not had the frontage taken by government action.

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

The ability to develop their property as others have done in this area is a substantial property right of the applicants that is threatened if the variance is not granted. In addition, if the dwelling fronted the south street, the required setbacks (30 foot front and 30 foot rear) would make this lot very difficult to build on.

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

The general plan will not be affected because the City allows flag lots. In addition, the reduction of 567 feet is negligible when evaluating a one-half acre lot.

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

The spirit of the zoning ordinance is observed because the property owners are requesting a variance that will essentially allow them to develop their property as it was originally intended.

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

**Motion**

Sandy Naegle stated that after reviewing the five hardship criteria, I move that we approve the variance request for application B-16-2008.

Mr. Farnsworth seconded the motion.

A roll call was taken.

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

**Motion carries – all in favor**

\_\_\_\_\_ - B-16-2008- \_\_\_\_\_

**OTHER**

The minutes from **September 3, 2008** were approved.

There being no further business the meeting adjourned at 7:35 p.m.

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Karon Jensen, Administrative Assistant