

WEST VALLEY BOARD OF ADJUSTMENT

December 3, 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, Mark Farnsworth and Necia Christensen

Those Absent: Sioeli Uluakiola and Sandy Naegle

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman, Jody Knapp and Karon Jensen

WEST VALLEY CITY LEGAL DEPARTMENT

Nicole Cottle

AUDIENCE:

Approximately 2 (two) people were in the audience.

B-19-2008
Santiago Variance
3892 West Sugar Beet Drive

REQUEST:

Zenon Santiago, has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305(1) of the West Valley City Land Use Development and Management Act. This section requires that the minimum rear yard setback in the R-1-8 Zone be 20 feet. The applicant is seeking a variance of fourteen-feet in order to allow for a previously constructed deck, measuring 10' wide x 18' deep, to remain on the property.

BACKGROUND:

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

- The subject property is known as lot 111 of the Bridlevale Farms Phase 1 Subdivision. This subdivision was recorded with the Salt Lake County Recorder's Office in January of 1995. The existing dwelling was constructed in 1995 and the addition in question has recently been added to the dwelling.
- The subject property is located in an R-1-8 zone which requires a 20' rear yard setback. The applicant has approximately 24' from the back of the house to the rear property line.
- Mr. Santiago constructed a 10' wide x 18' deep deck that is 6' from the rear property line. Initially, the applicant did not have a building permit and was issued a citation by the West Valley City Building Division and was then made aware of the setback violation.
- On June 20, 2007 Mr. Santiago applied for a building permit for the deck showing a 6' rear yard setback so Planning and Zoning was unable to issue the permit as submitted.
- No further action was taken by Mr. Santiago to amend the site plan or reduce the size of the structure so a Notice of Violation (NOV) was issued by the Chief Building Official (CBO), Ed Domian, on January 29, 2008.
- The building permit was issued on March 26, 2008, which specified that Mr. Santiago must reduce the size of the deck to meet the rear setback requirements.
- The applicant failed to comply with the requirements of the NOV and the building permit so an ACE Hearing was heard before Judge Brown on August 7, 2008.
- Mr. Santiago has Parkinson 's disease, which affects his mobility so he uses an electric scooter. During the Court hearing, the CBO suggested that the structure be altered so it

could be used for an ADA compliant handicap ramp, as there is currently not an accessible entry to the home. Therefore, requiring a variance before the Board. Judge Brown then ordered Mr. Santiago to bring the deck in to compliance or petition the Board for a variance. Therefore Mr. Santiago submitted the request for the variance that is currently under review.

- The CBO, has indicated that the Building code requires 5' by 5' landing for ADA compliant handicap accessible maneuvering areas.
- Please also note that section 7-18-107(2)(h) reads:
 - In granting a variance, the Board may impose additional requirements on the applicant that will:
 - (i) Mitigate any harmful affects of the variance, and;
 - (ii) Serve the same or similar purpose of the standard or requirement that is waived or modified.
- Therefore staff feels that per the Building Code requirements, the applicant would not need the entire deck area for maneuvering an electric scooter and to mitigate the affects the deck area should be reduced back to the first support post so only the existing covered portion remains, which is approximately 10' wide by 10' deep. The remaining setback would then be approximately 14', requiring only a 6' variance.
- Staff would also like to add that if the rear deck area is to have an ADA accessible ramp that there must be a hard surfaced access provided to the front driveway of the home as well.
- Should the Board of Adjustment approve the variance, the applicant will be required to obtain the necessary building permits from the Building Division.

ORDINANCE SUMMARY:

Section 7-6-305 of the West Valley City Land Use Development and Management Act requires a 20-foot setback on the rear of the home in an R-1-8 zone.

Section 7-18-107(2)(h) of the West Valley City Land Use Development and Management reads:

In granting a variance, the Board may impose additional requirements on the applicant that will:

- (i) Mitigate any harmful affects of the variance, and;
- (ii) Serve the same or similar purpose of the standard or requirement that is waived or modified.

Mr. Lehman indicated that Mr. Domian, West Valley City Chief Building Official, submitted a letter which is in the Board's packet stating that he had issued a citation to the applicant to reduce the size of the deck in order to meet the rear setback standards.

Mr. Domian felt that some of Mr. Santiago's deck could remain, if an ADA compliant ramp was installed. The ramp and a concrete walk would provide accessibility from the driveway to the rear patio deck entrance.

Applicant:

**Zenon Santiago
3892 W. Sugar Beet Drive**

Mr. Santiago stated that he is requesting a variance from the Board of Adjustment because his deck is too close to the rear property line. He noted that his deck was constructed without a building permit and explained that he has Parkinson's disease and that his home is not wheelchair accessible.

The applicant commented that there are no houses directly behind the deck and proposes to install a fire sprinkler system. Mr. Santiago remarked that the deck is very well constructed and that granting the variance would increase the value of his home and the surrounding properties. Mr. Santiago addressed the five 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.

This deck was constructed for the main purpose of providing access to the house for my electric scooter. I have Parkinson's disease and it greatly affects my physical mobility. I have to use an electric scooter to move around and to get into and out of my home. That is why the deck has a wheelchair ramp. In addition to allowing me to enter and exit my home on my scooter, the deck also serves as just that—a deck for my backyard.

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

By constructing the deck/ramp in my backyard, I have avoided the un-aesthetical look of having a ramp built into the front of the house. In addition to not being pleasing to the eye, a ramp built into the front of the house would make it more difficult to move furniture into and out of the house.

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

My deck/ramp in the backyard needs to be as big as it is because I need that deck space to be able to maneuver my scooter. My scooter requires a certain amount of space to turn around and negotiate corners. My deck/ramp needs to be as big as it is because I need that space to be able to use the ramp and also to be able to use and enjoy the deck.

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

I understand that the City ordinances were created for the purpose of having orderly and uniform development of the properties in the City. However, in this particular case, a literal enforcement of this zoning ordinance related to setbacks would cause me extreme hardship and expense, whereas a grant of a variance in my case would greatly add to my mobility and my quality of life.

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

Several pieces of my property have been taken by various entities. For example:

- 1) In the Northeast corner of my property, the telephone company installed distribution lines/cables;
- 2) In the Northwest corner, the cable company installed a distribution point;
- 3) In the Southeast corner of my property, the U.S. Postal Service installed a bank of mailboxes for the neighborhood; and
- 4) In the Southwest corner of my property, the City installed a street sign. See Exhibit "A" (photos of the four corners of my property located at 3892 W. Sugar Beet Dr.) Because of these incursions, I have been deprived the full use of my property and the actual size of my property has been reduced.

Discussion:

Mrs. Christensen commented that the applicant has an unusual shaped lot and physical challenges. She explained if Mr. Santiago met the minimum setback required for the rear yard, he would only be able to have a 4 foot wide porch on the back. The Board of Adjustment 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.

The Board indicated that the applicant's physical challenges could be considered an unreasonable hardship.

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

The Board agreed that the applicant meets the second criteria. Mr. Farnsworth remarked that the property is unique because it is setback further than other homes in this area and unique due to the property that it is abutted to. The special circumstance is his immobility and the placement of the house on the lot.

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

The Board felt that independent access to the home is a substantial property right that other property owners possess in the neighborhood.

Mr. Moore said that having a deck and a handicapped ramp in the back yard would allow the applicant to enter and exit his home with ease, and noted that he believes the size of the deck the applicant is proposing is too large. According to the Chief Building Official, 5 feet is sufficient to comply with the handicapped requirements. If Mr. Santiago were to cut off half of the deck, he would still have 10 feet which is sufficient for egress from his property.

Mr. Farnsworth stated that the issue is if the applicant has the right to have a deck.

Mr. Moore responded the applicant indicated that he needs the deck space to be able to maneuver the scooter. The minimum handicapped requirement is 5 feet to maneuver a scooter.

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

The Board of Adjustment agreed that there would not be any negative impacts by granting the variance request.

Mr. Farnsworth said that granting the variance would be in favor of the public interest because the alternative is to place a handicap accessible ramp in the front of the home which be less attractive and lack the continuity of the neighborhood by placing it in the front versus in the back.

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

The Board acknowledged that the spirit of the zoning ordinance designates low density and includes safety and aesthetics. The Board of Adjustment agreed that the applicant meets this criteria.

Discussion

Mr. Moore said that he did not feel that it would be a hardship to allow the applicant to have a 10' x 10' deck. I believe that the deck size the applicant is requesting is too large. According to the City's Chief Building Official, the applicant could cut off half of the deck and he would have 10 feet which is sufficient for egress on the property. If the Board goes strictly by the Code, then he would have room for a 4 foot deck. However, that would not meet with the City's handicap requirement.

Mrs. Christensen remarked I understand what you are saying, however I believe that the property owner's ability to construct a deck is a substantial property right enjoyed by residents in most zoning districts in our City. I believe the issue is should the deck have been built straight out or should it have been constructed off to the side.

Mr. Farnsworth said I don't believe that the issue regarding the deck size should be answered by criteria number three. The question here is whether or not he has a right to a deck.

Mr. Moore responded that the applicant stated that he needs the deck space to be able to maneuver the scooter. The minimum setback is 5 feet to comply with the handicapped requirements to maneuver a scooter.

Mrs. Christensen noted that if the purpose of the 10' x 10' deck was for a porch, I would agree that it is not an unreasonable hardship. As the Board discusses the General Plan, my concern is that others enjoy the substantial property right of a deck.

Mr. Moore responded but not within that same proximity to their property line.

Mrs. Christensen commented that is not the issue. Without a variance others enjoy the property right of a deck. Mr. Santiago is requesting a variance so he can enjoy that same property right.

Mr. Farnsworth stated that the applicant is requesting a variance so he can have a larger deck. So it is not necessarily the issue of having a deck, but the fact that he wants a larger deck. I don't think there is any question that the applicant needs access to his home and some space to make it handicap accessible.

Mr. Moore stated my suggestion is that we follow the recommendation made by the Chief Building Official and grant him a 6 foot variance which allows him to keep the 10 foot x 10 foot portion. This would allow for a handicapped ramp and space for turning and access from the ramp into the house. What it does not allow Mr. Santiago is the space to have enough room for a party on his deck. If he would like a deck for those purposes, he could place it to the west of the covered area. The applicant has alternatives my feeling is that the Board should not set this property up for future problems.

Mrs. Christensen commented the first criteria states that literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant. It does not state it is for the property....it states an unreasonable hardship for the applicant. Mrs. Christensen questioned the City Attorney if the applicant's physical challenges could be interpreted as an unreasonable hardship.

Mrs. Cottle affirmed that it could.

Mr. Moore added that the variance runs with the property.

The Board suggested asking the applicant to include a hard surfaced access to the front driveway of the home, if the variance request is granted.

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

Motion #1

Mr. Spendlove stated in the case of B-19-2008, I move that we grant the variance request of 14 feet as submitted by Mr. Santiago based upon his interpretation of the five variance criteria and the Board's discussions. Mr. Spendlove outlined the criteria in the motion.

1. In regards to the literal enforcement of the zoning ordinance it would be my perspective that it is the applicant's physical challenges that would be impacted by literal enforcement of the ordinances.
2. The special circumstances include the type of lot that he has. I believe the applicant has a unique property because of the property that it is abutted to.
3. That granting a variance is a substantial property right which is the egress and access to his property.
4. That by granting the variance it would not substantially affect the General Plan in a negative way.
5. The spirit of the zoning ordinance would be observed by granting the variance. The zoning ordinance indicates low density housing in this area and includes safety and aesthetics which I believe have been met by the applicant.

I would also like to recommend attaching a condition of constructing an access ramp and installing a hard surfaced area to the access ramp.

Motion dies –lack of second

Motion #2

Mark Farnsworth stated in the matter of application B-19-2008, I move that we grant a 6 foot variance along the rear of the home allowing a 10 foot x 10 foot deck based upon the applicant meeting the five variance criteria. Also, I would like to recommend adding a condition that the applicant meets with the requirements of West Valley City in terms of providing hard surfacing for access to the deck.

Mr. Spendlove requested to re-open the discussion to allow for questions directed to the applicant. The Board of Adjustment voted in favor of re-opening the discussion.

Mr. Spendlove indicated he would like to make a clarification and confirmed that the applicant's request is for a variance of 14 feet. The Board is proposing to grant a

variance of 6 feet which means that you would need to modify the size of your deck and questioned is that something that you would be open to?

Mr. Santiago responded that he would abide by what the Board decides is best. The reason he requested the larger size deck was to have space to allow for a table and chairs on his deck.

Mr. Spendlove explained that if the Board approves the modified version of the variance the applicant could reconfigure the direction of the deck or build parallel to the house to allow for a larger deck.

Mrs. Knapp acknowledged that the proposed request would be for a 6 foot variance along the rear of the property and the applicant would be required to meet the side setbacks. In addition, Mr. Santiago would need access to the home from the driveway.

Mr. Santiago stated that he was fine with the Board's proposal to modify his original request and allow for a 6 foot variance.

Mr. Moore seconded the motion.

A roll call was taken.

Mr. Moore	yes
Mr. Spendlove	yes
Mr. Farnsworth	yes
Mrs. Christensen	yes

Motion carries – all in favor

B-20-2008
Amber Petersen
4654 West Dunsmoore Way

Amber Petersen has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-9-104 of the West Valley City Land Use Development and Management Act. This section requires that off-street parking be located outside of the minimum required front yard setback.

BACKGROUND:

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

- The subject property is known as lots 74 and 74A of the Fox Shadow Phase 1 Plat B Subdivision. This subdivision was recorded with the Salt Lake County Recorder's Office in September 1980. The subdivision was approved as a planned unit development with differing standards than a typical subdivision.
- According to Salt Lake County records, the single family dwelling was constructed in 1983. According to a letter from the applicant, the single family dwelling was purchased in 1996 with the garage already enclosed.
- A few months back, the applicant was notified that the enclosed garage would require a building permit. As the applicant began to work with staff to remedy this matter, it was determined that a variance could also be needed as it related to off-street parking. While discussing this issue with the City Attorney, staff was advised to evaluate the following issues as it related to the enclosed garage.
 1. What year did the City adopt the ordinance requiring all single family dwellings to have a two car garage.
 2. When did the City adopt the minimum off-street parking ordinance requiring all vehicles to be located outside of the front yard setback.

Staff was able to find ordinances that relate to both of these issues. Findings are as follows:

- The ordinance requiring all single family dwellings to have a two car garage was adopted in 1998. According to the applicant, when the home was purchased in 1996, the garage had already been enclosed.
- The ordinance that governs parking out of the front setback was adopted in 1988. This ordinance would prohibit the applicant from using the area in front of the garage to meet the minimum off-street parking requirements.
- Since the two car garage requirement was adopted after the garage had already been enclosed, the applicant does not need to provide a two car garage. However, because the ordinance governing off-street parking was likely adopted prior to the garage conversion, the applicant is unable to park vehicles in the front yard setback. The applicant was unable to find any information at the County Assessor's Office regarding a date when the enclosure would have occurred.

- ❑ Attached to the staff report, the Board will find a letter from the applicant as well as answers to the variance criteria. The applicant has also provided letters from various residents living nearby who support the applicant's variance request.
- ❑ The property is located in the Fox Shadow Subdivision. This development was approved as a planned community under Salt Lake County's jurisdiction, but recorded shortly after West Valley City's incorporation. Lot sizes and configurations within this development require many residents to park in the front yard setback. There are a number of dwellings in this community that have limited parking other than what is deemed the minimum front yard setback.

ORDINANCE SUMMARY:

Section 7-9-104 of the West Valley City Land Use Development and Management Act requires that off-street parking be located outside of the front setback area.

Steve Lehman presented the application. As staff began to review the issue at hand, which was a building permit for an enclosed garage, we spoke with the City Attorney at length regarding this issue. Since it was a new issue and we had not reviewed this type of a case, Nicole advised us to evaluate two issues.

Staff researched those two issues and found that the ordinance requiring all single family dwellings to have a two car garage was adopted in 1998. The applicant purchased her home in 1996 and the garage was already enclosed.

The next finding was that the ordinance requiring parking outside of the front setback was adopted in 1988. This is the main issue because there is no parking outside of the front setback and thus, the reason the applicant is requesting a variance from the Board of Adjustment.

The applicant, Amber Peterson, went to various neighbors in the subdivision and they have submitted letters stating that they did not have any problems with the proposed variance request. Staff received three phone calls regarding this application, however none of property owners which were in opposition to the requested variance. Most of the neighbors were simply inquiring as to the meaning of the variance request.

Mr. Spendlove inquired regarding the minimum setback requirements for parking.

Mr. Lehman responded most of the garage setbacks in this subdivision are 20 feet and the applicant meets this setback. They have a paved street and a rolled gutter system. In this development, lot 74-A references a piece of property that crosses the front of this lot and it was to be parking easement. The distance between the rolled curb and the front of that dwelling which is lot 74 is quite unique.

Mrs. Christensen acknowledged that the applicant meets the garage setback requirement and the issue relates to parking outside of the front setback.

Mr. Lehman responded that the variance is needed because they are parking in the front setback. The minimum off-street parking is outside of that 20 foot area and since the garage was enclosed they can't meet that requirement. The only other option, and we do not advocate this from a planning perspective, would be to pave the area to the south of the existing driveway. Staff recommends the variance from an aesthetic perspective and that multiple dwellings in this subdivision don't have any other alternative other than to park in the front setback. Staff felt that there was a good case for the applicant to request a variance from the Board of Adjustment.

Mr. Farnsworth noted that he has seen property owners choose the alternative and it doesn't work well.

Mr. Moore said there are several things I noticed about this subdivision and that is the streets are very narrow and there are no sidewalks.

Mr. Farnsworth acknowledged this is part of the problem and this subdivision was approved by Salt Lake County before West Valley City was incorporated. Currently, PUD communities are given requirements for sidewalk, curb and gutter. However, Salt Lake County didn't have these requirements and so West Valley City kind of inherited Fox Shadows.

Applicant:

Amber Petersen

4654 W. Dunsmoore Way

The property owner, Mrs. Petersen, said that she is currently parking her vehicles on the existing cement driveway in front of a former garage. The garage was converted into a living space prior to my purchase of the property. She indicated that parking personal vehicles on the driveway has been this way prior to her purchase of the property in 1996. Due to the conversion of the garage, parking on the existing cement driveway is now considered within the minimum front setback of the property and a variance is needed to allow parking on the existing cement driveway.

Mrs. Petersen stated my lot is rather odd shaped, and as Steve mentioned, the only alternative that would comply would be by moving the driveway to the middle of my front yard which aesthetically would look very bad. The Board reviewed 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.**

Literal enforcement of the zoning ordinance would prevent the property owner from parking personal vehicles on the existing driveway in front of the home. Other homes in the same neighborhood park vehicles on the driveway in front of the garage. Single family dwellings are entitled to a minimum of two off-street parking spaces per unit, not to be located within the minimum required front yard setback. The existing driveway became the minimum required setback when the garage was converted to a living space prior to the owner's purchase of the property.

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

This property was platted as part of a planned community. Properties in this subdivision are all different as it relates to width, depth and configuration. While the property is typical of this area, the enclosed living space took place prior to the purchase of the property. The owner did not have any knowledge that the enclosure would have violated any zoning ordinances related to off-street parking.

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

Granting the variance is essential to continue to allow off-street parking spaces to be located on the existing driveway. Other property owners in the area possess the same property right to park their personal vehicles on their driveways.

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

Granting the variance will not affect the General Plan as the location of the existing driveway. It appears to be uniform with the other properties in the neighborhood. Granting the variance will not be contrary to the public interest and is supported by surrounding neighbors.

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

The spirit of the zoning ordinance is observed because this dwelling modification has been in place for over twelve years and the off-street parking has been 'as is' since the time of the owner's purchase. Substantial justice would be done by granting this variance.

Mrs. Christensen asked if there was anyone present who would like to speak in favor or in opposition to the application. [There was no response from the audience]

Discussion:

Mr. Farnsworth indicated that he had lived in a PUD/HOA in West Valley City for eighteen years and did not live far from Fox Shadows PUD. There are several things that are unique about this property such as the close proximity of the properties and the smaller lot sizes. The streets are smaller and there is a lack of curb and gutter. This is a really tight nested development.

Mr. Moore said I feel like this is a claustrophobic subdivision....it is very small.

Mr. Lehman indicated that Ms. Peterson will work closely with the Building Official to remedy any building code issues. I spoke with Mr. Domian, the City's Chief Building Official, and he said there were not a lot of structural issues because it was structurally built for a garage and that they will check for clearances, electrical, and do some spot inspections.

Mr. Spendlove questioned if this violation was reported by a Building Inspector.

Mr. Lehman replied that he believes this is part of the City's active enforcement and that this was just a random drive-by and was noticed that way.

Mrs. Christensen stated that she did not have any issues with granting the variance and noted that the applicant has clearly listed the criteria.

Mr. Moore commented I think this is one of the most unique subdivisions I have ever run across.

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

Motion

Mr. Farnsworth stated I move that on application B-20-2008, Amber Peterson, 4654 West Dunsmoore Way, that we grant the variance as listed based upon the five criteria and also the various letters of support from the applicant's neighbors.

Mr. Spendlove seconded the motion.

A roll call was taken.

Mr. Moore	yes
Mr. Spendlove	yes
Mr. Farnsworth	yes
Chairperson Christensen	yes

Motion carries –all in favor

_____ - **B-20-2008** - _____

OTHER

The minutes from **November 5, 2008** were approved.

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

Karon Jensen, Administrative Assistant