

WEST VALLEY BOARD OF ADJUSTMENT

June 4, 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, Mark Farnsworth and Necia Christensen

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman, Jody Knapp, Hannah Thiel and Karon Jensen

WEST VALLEY CITY LEGAL DEPARTMENT

Nicole Cottle

AUDIENCE:

Approximately five (5) people were in the audience.

B-10-2008
Smith's Food and Drug – Variance Request
4643 South 4000 West

REQUEST:

Mr. Roger Gough, representing Smith's Food and Drug, has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 11-6-104(2)(e) of the West Valley City Land Use Development and Management Act. This section requires that the area limitation for signs on the face of a building or structure be a maximum of 10% of the primary façade and a maximum of 5% of any other side. This variance request is for wall signs located on a gas canopy. The definition of a gas canopy is as follows, "**11-1-104. DEFINITIONS. (23) Sign, Gasoline Pump Island Canopy** means a permanent sign attached or made part of the vertical edge of the canopy not exceeding the height of four feet or twice the height of the canopy edge, whichever is lesser." The applicant is requesting a variance of 0.45 square feet on the south elevation and 12.55 square feet on the north elevation in order to allow previously constructed signs to remain on the gas canopy.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends General Commercial or Medium to High Density Residential land uses.

- The subject property is known as Parcel Number 2105351027. There is no platted subdivision for this property.
- According to Salt Lake County records, the Grocery building was constructed in 1987. Recently, a building permit was applied for new wall signs. The plans for the wall signs were too large. The signs were installed with out approval from Planning and Zoning or Building Inspections, and without a permit.
- The applicant was recently notified that the sign sizes are in violation of City sign standards. After discussing these concerns and outlining the variance procedure, the applicant determined that he would request a variance.
- The applicant has submitted a letter to the Board explaining the reasons why the sign sizes need to be as large as they are, and the variance criteria has been addressed.
- The applicant has provided elevations of the gas canopy which are included in the packet. Staff has attached an illustration showing the approximate size the signs would need to be to meet City Code. The subject property is located in the C-2 (General Commercial) Zone.

ORDINANCE SUMMARY:

Section 11-6-104(2)(e) of the West Valley City Land Use Development and Management Act requires that the area limitation for signs on the face of a building or structure be a maximum of 10% of the primary façade and a maximum of 5% of any other side.

Ms. Naegle questioned staff if the two variance sign requests from Smiths could be heard jointly or if they should be heard separately. – Mrs. Thiel responded that the two elevations could be done together, but this location does have to be separate from the next application because it is a different location with different possibilities for variance criteria.

Applicant:

**Roger Gough
1550 S. Redwood Rd,**

Mr. Gough indicated that he is the Construction Manager for Smith's Food & Drug and noted that the following hardship criteria is very similar to the application from a previous Board hearing and to the following application requesting a variance which will also be heard tonight. Mr. Gough reviewed the variance criteria with 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.
 - **The variance is on my property.**
 - **The peculiar circumstance is that, my fuel center on the west side is screened by neighboring retail building and on the east side by the mature trees and the Pepper Tree multi-level apartments. The fuel center is located at mid block rather than on a hard corner as most other fuel centers.**
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
 - **This gas station is on the same site as Smith's Food & Drug. As there is a pole sign on site, the maximum coverage for a front elevation is 10% instead of 15% coverage for the front face which is allowed for properties with no pole sign and just a monument sign. Other gas stations in the C-2 zone have more signage in the form of their own maximum 100 square foot monument sign and more wall signage.**
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

- **Neighbors in the same zone have more visibility for their signs than the Smith's gas station. This Smith's has street trees that block the south and east view and a business with a shorter setback from the street that blocks the north view to the gas canopy. The speed limit on 5600 West is 45 miles per hour and by the time a driver passes the building, they have only a moment to see the sign; requiring the sign to be large enough to allow a driver to see that gas is sold at a fair price at that location. Smith's gas has a property right in the C-2 zone to have a business and to advertise that business.**
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
- **The General Plan classifies my property as general commercial or medium to high density residential. As this property is and will continue to be surrounded by businesses, a larger sign would not be detrimental to any neighbor's property rights or interest.**
5. The spirit of the zoning ordinance is observed and substantial justice done.
- **The spirit of the zoning ordinance is observed as I am only asking for a slightly larger sign to improve my business operations and be a successful player in West Valley City's tax base.**

Necia questioned: Is there anyone present who is in favor or against the variance request? [There was no response.]

Discussion:

Mrs. Christensen indicated that when she had went to get gas she noticed that there is a Wal-Mart on one side and its sign is clearly visible and I could see what the price of gas was. However, as I drove up 4000 west I could not read the sign to see the price of the gas. I don't believe this is an unreasonable request.

Mr. Farnsworth questioned, is this only regarding the logo and the name Smith's on it or is this also in reference to the size of the price signs?

Mrs. Thiel responded it is just for the size of any of the wall signs. With this one they just have Smith's and the logo, but they could reduce either or any of the signs. They could take off the price logo or the logo itself or the Smith's portion.

Mr. Farnsworth commented that in last month's hearing regarding the application for the Smith's on 4100 S. Redwood Rd. the wall display showed a reduction in the logo, but also a reduction in the size of the gas signs so that is what I was trying to clarify.

Mrs. Thiel responded it would be the combination of all of the signage on that elevation. It's not specific if it is the logo or Smith's or gas...it doesn't matter which ones of those he reduces or uses. It is just the total square footage or percentage of that elevation.

Russ said in looking this over I don't see that the request is unreasonable. The signage is not obtrusive and doesn't look out of place. It makes sense to me to have the sign size and the gas pricing the way they have put it together. I believe the applicant has some excellent points and based on the criteria that the applicant has submitted I am in favor of the variance.

Sioeli agreed and indicated that he was also in favor of the variance.

Motion

Mr. Spendlove stated that in regards to variance request, B-10-2008, for Smith's Food and Drug Store #137 I would move that we approve the variance as requested as per the criteria that was submitted by the applicant.

Mr. Moore seconded the motion.

A roll call was taken.

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

Motion carries – all in favor

B-11-2008 Smith's Food and Drug – Variance Request 5620 West 4100 South

REQUEST:

Mr. Roger Gough, representing Smith's Food and Drug, has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 11-6-104(2)(e) of the West Valley City Land Use Development and Management Act. This section requires that the area limitation for signs on the face of a building or structure be a maximum of 10% of the primary façade and a maximum of 5% of any other side. This variance request is for wall signs located on a gas canopy. The definition of a gas canopy is as follows, "**11-1-104. DEFINITIONS. ...(23) Sign,**

Gasoline Pump Island Canopy means a permanent sign attached or made part of the vertical edge of the canopy not exceeding the height of four feet or twice the height of the canopy edge, whichever is lesser.” The applicant is requesting a variance of 0.45 square feet on the east and west elevation and 18.5 square feet on the north elevation in order to allow the new Smith’s logo at the proposed size on the gas canopy.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends General Commercial land uses.

- The subject property is known as Parcel Numbers 1435478041, 1435478036, 1435478037, 1435478034, and 1435478033. There is no platted subdivision for this property.
- According to Salt Lake County records, the Grocery building was constructed in 2000. Recently, a building permit was applied for new wall signs. The plans for the wall signs were too large.
- The applicant was recently notified that the sign sizes are in violation of City sign standards. After discussing these concerns and outlining the variance procedure, the applicant determined that he would request a variance.
- The applicant has submitted a letter to the Board explaining the reasons why the sign sizes need to be as large as they are, and the variance criteria has been addressed.
- The applicant has provided elevations of the gas canopy which are included in the packet. Staff has attached an illustration showing the approximate size the signs would need to be to meet City Code. The subject property is located in the C-2 (General Commercial) Zone.

ORDINANCE SUMMARY:

Section 11-6-104(2)(e) of the West Valley City Land Use Development and Management Act requires that the area limitation for signs on the face of a building or structure be a maximum of 10% of the primary façade and a maximum of 5% of any other side.

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

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.

- **The variance is on my property.**
 - **The peculiar circumstance is that my fuel center on the south and east side is screened by street trees and landscape berms, and screened on the north side by a retail shop building that has a shorter front setback than the gas station/canopy. The fuel center is located at mid block, rather than on a hard corner as most other fuel centers.**
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
 - **This gas station is on the same site as Smith's Food & Drug. As there is a pole sign on site, the maximum coverage for a front elevation is 10% instead of 15% coverage for the front face which is allowed for properties with no pole sign and just a monument sign. Other gas stations in the C-2 zone have more signage in the form of their own maximum 100 square foot monument sign and more wall signage.**
 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
 - **Neighbors in the same zone have more visibility for their signs than the Smith's gas station. This Smith's has street trees that block the south and east view and a business with a shorter setback from the street that blocks the north view to the gas canopy. The speed limit on 5600 West is 45 miles per hour and by the time a driver passes the building, they have only a moment to see the sign; requiring the sign to be large enough to allow a driver to see that gas is sold at a fair price at that location. Smith's gas has a property right in the C-2 zone to have a business and to advertise that business.**
 4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
 - **The General Plan classifies my property as general commercial or medium to high density residential. As this property is and will continue to be surrounded by businesses, a larger sign would not be detrimental to any neighbor's property rights or interest.**
 5. The spirit of the zoning ordinance is observed and substantial justice done.
 - **The spirit of the zoning ordinance is observed as I am only asking for a slightly larger sign to improve my business operations and be a successful player in West Valley City's tax base.**

Applicant
Roger Gough
1550 S. Redwood Rd.

Mr. Gough indicated that this signage request has very similar circumstances to the previous application. This is a mid-block property and on this particular one on the north I have a retail shop that actually sits closer to the street so it blocks that direction. Along the front there are a lot of trees and berms. The trees are growing larger and making it harder to see the fuel center. That is one of our concerns as far as getting the signs up there so that they're visible. Again, the fuel center is a separate item even though it is still a part of the department with the store so we're just trying to get the additional signage for that. This particular application has the same zoning issues with commercial businesses around me. I don't see a lot of differences from the last application. About the only thing I could say on the last two applications is that they are basically identical.

Mrs. Christensen questioned is there a monument sign anywhere on this property that shows the gas prices?

Mr. Gough responded that there is a small monument sign on 5600 West right behind the tree.

Mrs. Christensen questioned and does it show the gas prices? That is the one I drove by looking for today and didn't see it.

Mr. Gough responded that it's there, but it is not an easy one to spot.

Discussion:

Mr. Moore stated that he doesn't believe that the applicant's request is unreasonable and that he has excellent reasoning in meeting the five criteria. I also feel like we should be glad that Smith's wants to be in our City. I can't see that it is obtrusive and I believe that it will provide a service to the public and am in favor of the variance request.

Mrs. Christensen commented I think as the City requires berms and trees we have to be aware that this issue may come more and more before the Board. Maybe that's something that we need to ask the Council to look at as they are asking for placement of trees. I think this is an ongoing problem that the Board will see repeatedly.

Mr. Farnsworth said I also support West Valley because on one side they are trying to make the City so it is not so visually cluttered. They are trying to move away from pole signs to monument signs to make the City more aesthetically pleasing and I have seen a big difference in the time that I have lived in West Valley. I believe they need to be

addressed on a case by case basis. If we just ask the Council to make an adjustment then the problem is that check and balance may go away and get harder to control.

Motion

Mr. Uluakiola stated, I move that we grant the variance on B-11-2008 based on the five criteria that was presented by the applicant and the Board's discussion.

Mr. Moore seconded the motion.

A roll call was taken.

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

Motion carries – all in favor

B-12-2008

**Lyndon MacKay – Variance Request
3495 South Sunshade Drive**

REQUEST:

Dr. Lyndon MacKay, has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-1306(1)(3) of the West Valley City Land Use Development and Management Act. This section requires that the front and rear setbacks be 25 and 20 feet respectively. Mr. Mackay is requesting a 25-foot front setback and a 10-foot rear setback in order to construct a new dental office.

BACKGROUND:

WEST VALLEY CITY GENERAL PLAN recommends low density land uses.

- The subject property is located on the northeast corner of Sunshade Drive and 3500 South. The property presently consists of two parcels. The west parcel is vacant, while the east parcel is occupied with an older single family dwelling. Side setback 15' 10'

- In June 2007, the property owner petitioned the Planning Commission and City Council to change the General Plan and zoning from low density residential uses to a residential business zone. Zoning at the time was R-1-7 (single family residential) and C-2 (general commercial). Based on the properties relationship with 3500 South, and the relatively low impact for a dental office, the General Plan was changed. The property is now zoned RB (residential business) which would allow the dental office being proposed.
- During the general plan and rezone hearings, an informal site plan was presented that illustrated how a building could be positioned on the property. Although very informal, the building was situated such that variances would not be needed. However, as the applicant began the process of formalizing their site plan, they learned that UDOT would require an additional 13 feet of dedication for the future widening of 3500 South.
- According to a letter submitted by the applicant, the building was repositioned to accommodate UDOT's requirements. The applicant believes that to have a successful practice, including the addition of a board certified orthodontist, the building footprint is about as limited as it can be.
- According to the proposed site plan, the front of the building will face Sunshade Drive with the rear of the building facing the C-2 zone to the east. Therefore, the front setback adjacent to Sunshade Drive would need to be 25 feet, while the rear setback along the east property line would need to be 20 feet. The building is being proposed with a front and rear setback of 20 and 10 feet respectively. Thus, variance requests of 5 feet and 10 feet.
- The setbacks in the RB zone are more restrictive than general commercial zones. The reason being is that uses in the RB zone are typically located next to residential housing. The ordinance requires a greater setback here to provide a buffer between uses. Although residential housing exists to the north, there are no setback problems along this boundary. The front setback in the commercial zone is 20 feet. However, if located across the street from residential housing, it increases to 25 feet. There is no rear setback in the commercial zone.
- Staff believes that it is important to understand that the variance requests will not impact the residential uses to the north. The front setback, although located across the street from residential housing is still 20 feet from the right-of-way and the rear setback of 10 feet is greater than what would be required in the commercial zone to the east.
- The applicant has submitted a proposed site plan which staff has included for the Boards review. In addition, a letter has been provided that explains some of the history associated with these properties.

Applicant
Lyndon MacKay
3550 S. 4800 W.?

Mr. MacKay indicated that there will be four dentists in the building and one board certified orthodontist. Originally, it was closer to the residential property but then we found out about the hardship of widening 3500 South and so we got the architect to shorten the building. Our biggest concern is with the OSHA requirements as each cubicle has to be a certain size. So we shortened the building and placed it towards the street which provides a better buffer to the residential properties. Granting this variance request will not change the general plan, and RB zoning is designed to help protect homes in this area. The property to the east is commercial which allows them to build right to the property line and so this variance will not have any impacts on the commercial property. I have been a dentist in West Valley for 36 years and I don't believe that this variance request is as much in our own interest as it is in West Valley City's interest. I also believe that this proposal is a benefit for the residents who live in the neighborhood.

The property consists of two pieces that will be combined to create one large parcel. The corner lot (lot 201) was originally zoned residential, however we were able to get a zone change and the adjacent property is zoned C-2 and has an existing older home.

The residents behind the two lots to the north have indicated that they were happy about the rezoning because our intended use would be far less of an impact to their residential homes.

Mr. Mackay noted that they have designed a site plan for the dental building. Originally, the building was to be up against the commercial property to the east. However, we found out that we couldn't run in that direction because UDOT wanted 13 more feet on 3500 South to allow another lane of traffic. Without the lost 13 feet we could have positioned the building to fit without the need for any variances.

The building was then repositioned and it was shortened to run from east to west. As you can see on our plot plan, we have 33 feet between the building and 3500 South. By taking this property from our site, we are left with a challenge. There will be four dentists (three general practices and one orthodontist) going into that building and we have drawn up floor plans every way we could. Our problem is that all the cabinetry between cubicles has to be wheelchair accessible, along with all the equipment inside the cubicle and our architect has tried everything he could think of. The variance should have no impact on the neighbors because the setbacks on the north side meet with the RB zone.

Since the property to the east is commercial and they can build to the property line, this variance should have no effect on them. The footage of 33 feet along 3500 South will allow us to have the required 20 feet once the road is widened.

The house on the property will have to be torn down. The vacant lot which is not a very good residential building due to the traffic and noise of 3500 South will be better utilized by our low impact dental office.

Currently, there is not a board certified orthodontist in West Valley City. The orthodontists we had have all moved south and east of West Valley City. I believe that by having an orthodontist commit to West Valley City and building a permanent practice here is an asset to our community. I have practiced in West Valley City for 36 years and constructing a dental building has always been a dream since the day I opened with Dr. Knowles M.D. on 6000 west.

Discussion

Mrs. Christensen suggested the Board of Adjustment review 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.

Mr. Farnsworth mentioned that the hardship is presented because this is not a factor that the applicant can control. It is a result of widening 3500 south to make room for additional traffic needs.

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

Ms. Naegle remarked that she believes there is also a hardship related to the curve on 3500 & Sunshade. She noted that it is not a regular straight corner between 3500 S. & Sunshade which causes problems on the southwest corner and believes that is an unusual circumstance.

Mr. Farnsworth said that his personal opinion is that the applicant has gone to great lengths to try to satisfy OSHA and West Valley City and to be a good neighbor in making this development work within the constraints that he has.

Mrs. Christensen indicated that there isn't anyone present tonight in opposition and there haven't been any phone calls regarding this request. The Board has identified a circumstance which would be the curvature of the road and the widening of 3500 south and I believe that also causes the unreasonable hardship. I think it is fair to suggest that the requirements by OSHA are also a special circumstance that an ordinary business would not have.

Mr. Farnsworth said that this variance request is unique due to the OSHA requirements regarding ADA compliance in terms of getting a handicapped client in and out and also evacuation.

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

Mrs. Christensen indicated that the adjacent commercial property is not in the same zoning district and can build right up to the property line. Although, it is not the same zoning district it is in the same location.

Ms. Naegle felt that it is a very friendly type of business to have located in this area.

Mrs. Christensen commented I think that others in the same zoning district would have the substantial property right of building a dental office complying with the OSHA requirements if UDOT wasn't taking a portion of the property to widen the road.

Mr. Moore said I believe that this would be a substantial upgrade and a wonderful addition to the community to have that type of facility available.

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

Mr. Moore stated I think this proposal meets with the general plan in that zone and noted we just need to make some adjustments so that this can work for him.

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

Mr. Spendlove indicated that he believes that the widening of 3500 South is one of the overriding circumstances due to the fact that he is going to be required to give up 13 ft. of property to the public domain and I believe this request does meet with the spirit of the zoning ordinance.

Mr. Farnsworth said the property as it sits now is rather blighted so this proposal will be a huge improvement not only to West Valley City but to all of the property in and around that and will help improve real estate values.

Motion

Mr. Spendlove stated I move that we grant the variance request for, B-12-2008, based on the five variance criteria that have been addressed, the Board's discussion and the letter that was presented by the applicant.

Mr. Sioeli seconded the motion.

A roll call was taken.

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

Motion carries – all in favor

NON-CONFORMING USE

B-7-2008

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

REQUEST:

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 which 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.

- ❑ 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”. Furthermore, pole signs are not allowed on properties with less than 10 acres and they are reviewed as a Conditional Use (11-6-104(2)(f)).
- ❑ A monument may be placed on site and located along the west edge of the property. The monument sign can be up to 10’ tall with a 10’ setback. There is sufficient room to place this sign in the landscaped area that UDOT is providing along the west side of the site. However, due to the location of the building on site the applicant feels that the sign would not be visible to westbound traffic so they would like to relocate the pole sign to comply with the required setback, which is 10-feet for a 15-foot tall sign. 25 ft
- ❑ 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. Staff also feels that the landscape island that UDOT is providing along the west edge of the property is more than sufficient room to accommodate a monument sign. There are 3 wall signs located on the face of the building that would be located closer to the road than the pole sign. Therefore, staff feels the pole sign would not be as visible as the existing wall signs or a monument sign that would be permitted 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 **11-7-101** 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.

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.

Mrs. Cottle reviewed the requirements for non-conforming status with the Board of Adjustment. When a change is made to the use it needs to be brought into compliance. This request is for a modification of a non conforming structure.

Mrs. Knapp presented the analysis. –

Mr. Moore questioned in looking at the photograph there are also other signs down the road. 7-11 apparently is going to have to move and so is the Bob's Keys and several others beyond that. Have those also been addressed?

Mrs. Knapp responded yes.

The Board questioned if the City approached the business owner or Planning staff.

Mrs. Knapp responded that it was UDOT and then they came to staff to discuss the issue.

Mrs. Christensen indicated that she knows how much the properties are related to this development, but noted that she does not believe she has any conflict of interest and that it would not have any affect on her decision.

Applicant

Brad Lyle
330 E. Alan Street
Bldg. B, 2nd Floor

Mr. Lyle reviewed background information regarding this application and noted that the building was constructed in 1971...about 37 years ago and noted that the sign has been in place since this time. It is my understanding that the current City Sign Ordinance would require us to have a monument sign on the property instead of a pole sign which is what the tenant has always had. A monument sign would have to be placed on the west side of the building. The building is currently leased on a long term basis to Papa John's Pizza. We are now being forced by UDOT to remove and relocate our sign because of the State's condemnation and widening of 3500 South. The City has suggested that we come before the Board to get a determination as to how our sign should be dealt with.

Mr. Lyle remarked my understanding is that the current City Sign Ordinance would require us to have a monument sign on our property instead of the pole sign that we have always had. The taking line is the front wall of our building and the easterly border of the property is the east side of our building. A monument sign would have to be placed on the west side of our building and therefore, would not be visible to westbound traffic which is the direction of travel in front of our building.

Question:

The current West Valley City Sign Ordinance, Title 11, Revised 1/7/08, defines on page 2, Section 11-1-104 Subsection (13) a Non-conforming sign or sign structure means "a sign or sign structure [that]...lawfully existed at the time this Title became effective, which does not conform to the height, area, yard regulations or other requirements of this Title as prescribed in the zone in which it is located."

The West Valley City Planning Department has quoted us Section 11-7-101, page 18 which states in part; "a non-conforming sign shall not be altered, reconstructed, raised, moved, placed, extended, or enlarged unless said sign is changed so as to conform to all the provisions of this Title.

The Sign Ordinance makes no distinction between voluntary acts taken by a property owner opposed to an involuntary act forced upon a property owner by a governing body such as UDOT. I don't know if you can tell by the legislative intent of that regulation whether or not they intended to say "we have no grandfather provisions". Furthermore, the current Sign Ordinance does not address any "grandfather" provisions as to how this should be dealt with.

The Planning Department recommended the Board of Adjustments hear our request. However, the Planning Department has three different applications that we could utilize to bring our problem before you for consideration.

We were asked to file a variance application or a conditional use application, but neither of those address the "grandfather" issue. It is our position that we should file a non-conforming use application because in the introduction to that application the text states in part; "A non-conforming use is a use or structure which lawfully existed prior to the adoption of an ordinance that prohibits the use or structure. In more common terms, the non-conforming use or structure has been "grandfathered" in because of the length of time it has existed. 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."

Since there is no "imminent health or safety concern" here, but merely an aesthetic preference, I believe we should be able to move our pole sign back to comply with the setback requirements and return it to service our tenant business.

It is unfortunate the existing Sign Ordinance does not anticipate a taking and make a distinction between voluntary acts of moving and changing a sign as opposed to an involuntary moving necessitated by the public good. It is also unfortunate that UDOT didn't take the time to meet with the City about this issue before the widening and condemnation commenced. However, we are already being burdened by the taking and should not have to forfeit our signage rights.

Mr. Lyle stated that there is an aesthetic concern as you are trying to declutter the City and we own three buildings in the City. However, please understand that we have a long term tenant located there and they rely on their lease. I am not making an economic argument...I am making a fairness argument.

Jody called me twice, but I have been out of town so I was unable to answer her questions. The building height is about 18 feet tall and the easterly property line is the building which has a zero setback. The front property line is on the front of the property. With the proposed improvements from UDOT the front property line will be the front wall of the building.

Mr. Moore questioned, so you are saying that the property line is directly on the east wall of the building...and it is a zero setback?

Mr. Lyle replied, yes.

Mr. Moore noted that with the improvement UDOT is going to make the front property line will be the front wall of the building.

Mr. Lyle responded that they were more than willing to let UDOT buy the property, but they did not want to buy it. UDOT did not approach us about the sign and did not raise the issue at all. They gave us an appraisal of the property and told us what they thought it would cost to remodel the building, if they didn't take the building. The taking of the land is miniscule. So, we went to the City and asked about the sign and they were quite vague. So we sent a letter to the City to see if this could issue could be dealt with administratively. They suggested that we should go before the Board and so that is how we are proceeding with this.

He explained that the properties are losing parking as it is. The sign would not be visible and to get a sign above that building it would have to be moved back even further. The pole sign ordinance states that you can have 200 square feet and our proposal is to replace the sign with a like size sign a (5 x 10) which would be 50 square feet. The request includes moving the pole sign back as far as necessary so that it can be seen above the roof. The continuation of a non-conforming use is based on the general principle that zoning laws cannot be applied retroactively unless there is some imminent health or safety concern and I don't see the imminent health or safety concern. Mr. Lyle asked if there were any questions.

Mrs. Cottle asked for clarification. Are you stating that UDOT did not approach you to purchase the sign?

Mr. Lyle said no that in fact they had approached UDOT about the sign and inquired if they had spoken to the City regarding this issue. UDOT responded that they were not getting along very well with the City. The variance provision states that if the ordinance changes and you wish to move the sign, economics is not an argument and we are not making an economic argument. Our argument is based on the grandfathering provisions of fairness and the provisions call for health and safety.

The tenant is very concerned about the sign and said that his phone number is displayed on the sign and noting that his business is not a sit down pizza parlor. He explained that prospective customers see his sign going to work and coming home from work and noted this is the primary reason his business is located on that side of the street. If you look at 3500 South that is the going home side of the street and the way retail works. Starbucks is on the "going to work side" and you're going to find the pizza guys on the "going home side."

Mrs. Knapp asked for clarification from Nicole concerning the site plan. This is the access for the center and it functions as a commercial center with this property. So, they

would be able to put a sign here, but I don't know if that would be considered off premise. So would they be able to put a sign up?

Mrs. Cottle responded that they do not access from the west ever.

Mr. Lyle explained that the reason these two properties work is H& R Block operates four months of the year and there are reciprocal cross easements with that parcel. However, there was a question when we decided to move the door. The door into the front of the building is now on the left side and it's going to move to the right on that wall. Mr. Lyle indicated that they had went to the City and asked if they needed to build a ramp along the east side of the building from where the yellow line is along the side of the building. The City responded that if you do, there won't be enough room for the cars to back up and your parking will have to change 45 degrees next door. The engineer recommended demolishing the front of the entrance to the building and the ramp would be built inside the building. So there really isn't any room there.

Mrs. Knapp explained that she was talking about the plans that were submitted showing a new landscaped area.

Mr. Lyle replied that's not what is leased to Papa Johns...that is not their property. They are separate tax parcels.

Mrs. Knapp commented that she believe this functions as a commercial center because of the location of access. It was my impression that you would be able to locate a sign there under our commercial complex provision.

Mrs. Cottle commented that they don't access from the west ever.

Mrs. Christensen questioned, so you are putting your sign to the west rather than to the east?

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Mr. Lyle responded the exit will be to the east and noted that they would still have reciprocal cross easements across the property to provide circulation. The issue is whether there is an existing right grandfathered in. This problem has been brought to our doorstep and we're bringing it before the Board. I agree with the clutter issue, but that's not relevant. We're talking about a fairness issue and there is not an imminent health and safety concern.

Mr. Farnsworth said we are talking about cross easements and the side of the property, but that's not germane to this discussion. The issue is whether or not we're going to allow the applicant a non-conforming use to move the sign.

Mr. Spendlove inquired, would the non-conforming use stay with Millstream Properties or with Papa Johns, if it is granted?

Mrs. Cottle responded a non-conforming use runs with the land. Under the ordinance when you want to change the sign face, you have to bring it into compliance which is then a separate issue from the one we're discussing tonight.

Necia questioned, the original recommendation of staff was to place the monument sign on property that they do not own. UDOT wants to take away the landscaping and therefore their ability to place a monument sign on property that they own. Where is staff recommending the applicant place the monument sign?

Mrs. Knapp replied that it functions as a commercial complex and staff believes that the applicants could place the sign in the landscaped area that UDOT would be adding. If the property owner does not permit that, then staff feels like this signage would be adequate even without the monument sign. The grandfather clause keeps being brought up. The Sign Ordinance addresses the issues of being altered or moved which would address cases like this.

Mr. Lyle said that doesn't address if it is a forced issue or a voluntary issue when the State comes in and takes your property.

Russ noted that with the front of the building being the property line that the monument sign would not be visible except from the west.

Mrs. Cottle stated for the record I believe that it is significant for the Board and the applicant to understand that when the road is widened UDOT will clearly be taking that sign. For UDOT to not have proactively approached this property owner and requested a purchase of that sign in order to make them whole on this matter causes me as a City Attorney great concern. From my perspective as a member of staff, I would like to hear UDOT's response and would like to contact them regarding this issue and have them answer to us as a City. I agree with the applicant on that point and believe it is inappropriate when a government entity is forcing a change for that person not to be compensated and/or made whole for that. I think it is inappropriate in this case and would like to state that for the record and would request that the Board give staff the opportunity to get to the bottom of that before you render a decision.

Mrs. Christensen inquired, so what you are asking for is a continuance?

Mrs. Cottle responded yes.

Mrs. Christensen said which probably would benefit the applicant as well.

Mr. Lyle responded, yes...UDOT has been saying that they would like to start work and to hurry up and sign. The agreement with them stated that based on the resolution of the sign issue that there would be a cost involved in relocating or doing something with the sign. There is no dollar amount of remuneration one way or the other and it is just a relocation issue as far as they're concerned.

Mrs. Knapp commented I believe their point is they are hoping that they do not have to pay for it because they should move it and reuse it. Staff is saying that we would like them to comply with our ordinances.

Mrs. Cottle stated for the record that she thinks it is an unfortunate situation that this property owner has been put in because of the activities that have occurred here. I can sympathize with his timeframe and I can also sympathize with UDOT's timeframe. The City has every intention of cooperating with UDOT to make sure that things are handled appropriately on this street. What the City will not do is stand by while UDOT fails to take responsibility for something that they are actively involved in. It is unfair for me to represent what UDOT says or doesn't say because I don't know and they are not here to represent themselves tonight. As a Board, I believe you should make that decision. Clearly timing is of the essence right here and it may not feel appropriate for you for a continuance. Based on what the staff knows and what the applicant has suggested to us if you feel that is an adequate understanding of where UDOT is at, then feel free to make that decision.

Mrs. Cottle responded that from a legal standpoint our ordinances are clear on this issue. As a Board, you could decide that based on the non-conforming status and based on the action of a government entity that it is reasonable to allow the modification of this non-conforming use. That is well within your bounds and that is the legal analysis of this.

Mrs. Knapp stated I believe what we're saying is that it was just the whole compensation issue. Staff is saying that we would like them to comply with our ordinances so they cannot reuse the sign so they should be compensated.

Mr. Lyle responded that from our standpoint it is not a compensation issue.

Mrs. Knapp said we were just concerned with the negotiations.

Mr. Lyle responded my tenant is the one stating that the sign is part of his lease. They don't want compensation. In fact, if there is compensation, we would get a portion of it and they get a portion of it and nobody is happy about that either.

Mrs. Cottle said thank you for bringing that up which is to reiterate what Jody said is exactly the issue here. The fact of the matter is that on a vast majority of the buildings and signs up and down this street, UDOT should have taken the whole thing. The problem I see that we have as a City is the fact that by saying to the City please allow them to not comply with your ordinances because we do not want to compensate them and therein giving an applicant some light to believe that they don't need to be compensated but rather could move the sign. They have volleyed the ball back into our court to make a very difficult decision in an area where we have had a very difficult problem with pole signs for many years. That is exactly what is happening in this

situation. The front of the building is on the property line and the Board is being asked to make a difficult decision where there is not a good decision to be made.

Mrs. Christensen remarked that UDOT is purchasing this property so the road can be widened. UDOT is not UTA's agency, however UDOT is being paid to acquire this property. As Nicole has said this is an inappropriate way of UDOT to get what they want by bullying. I feel it might be appropriate to continue this application.

Mr. Uluakiola agreed and noted so that they can do some more research about the property.

Mrs. Cottle said I would like to invite UDOT to come and speak to this issue. I can't represent what UDOT would say on this. I can only represent what I know on it and I would love to have them here to provide that information.

Mr. Spendlove indicated that he did not have a problem if the Board initiates a continuance because there seems to be not only legal questions that we need clarification on, but also issues due to the lack of communication between the applicant and staff. There were some concerns over the strip of land and the cross usage of the parking that we could get some clarification on. I think there are several issues that a continuation could address.

Discussion:

Mr. Moore said in reading the ordinance as it is written, I think it was by design that the City did not distinguish between voluntary and involuntary acts. The City by design is trying to declutter the skyline along this street. My feeling is that we need to ask the property owners to conform and they need to address the issues with UDOT. However, I do not have a problem with a continuance on this application.

Motion

Mr. Spendlove stated, I move for a continuance in the case of B-7-2008, Millstream Properties, based upon the factors that were brought up during discussion. There are legal issues and lack of representation by UDOT that we need some clarification on and also some of the small land signage strategic issues that might be presented after speaking with the applicant. I would also like to recommend that we subpoena UDOT to attend the next Board meeting to clarify these issues.

Mr. Uluakiola seconded the motion.

A roll call was taken.

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

Motion carries – majority vote

OTHER

The minutes from **May 7, 2008** were approved.

There being no further business the meeting adjourned at 7:40 p.m.

Karon Jensen, Administrative Assistant