

WEST VALLEY BOARD OF ADJUSTMENT

September 3, 2008

This meeting was called to order at 6:01 p.m. by Chairperson, Necia Christensen, at 3600 Constitution Boulevard, West Valley City, Utah.

WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS

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

Those Absent: Sioeli Uluakiola

WEST VALLEY CITY PLANNING DIVISION STAFF

Steve Lehman and Nichole Camac

WEST VALLEY CITY LEGAL DEPARTMENT

Nicole Cottle

AUDIENCE:

Approximately 3 (three) people were in the audience.

B-14-2008
Anthony Variance
2923 South 3145 West

REQUEST:

Mr. Don Anthony, 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 side yard setback in the R-1-6 zone be 6 feet. The applicant is requesting a variance of 4 feet in order to allow a previously constructed addition to remain attached to the existing single family dwelling.

BACKGROUND:

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

- The subject property is known as lot 6 of the Clinton Downs Phase 1 Subdivision. This subdivision was recorded with the Salt Lake County Recorder's Office in March 1965. The property is currently zoned R-1-6.
- The applicant was recently notified that an addition on the north side of the dwelling is in violation of the City setback standards. The applicant visited with City staff and explained that the purpose for the addition was to cover pool equipment that was installed nearly 30 years ago.
- The applicant explained that permits for the pool were issued by Salt Lake County. It was their understanding that the electrical equipment and storage components were part of what the permit would have covered. The applicant was unaware of any problems until being notified of the setback question.
- According to Salt Lake County records, the single family dwelling was constructed in 1972. As part of the variance process, staff directed the applicant to search building permits with the Salt Lake County Archives. According to the applicant, Salt Lake County does not have a record of any permits related to the pool. In a letter to the Board, the applicant explained that the County searched from 1970 to 1987.
- The variance request is related to the north side of the lot. The minimum setback in the R-1-6 zone is 6 feet. The addition to the home comes within 2 feet of the property. Thus a variance request of 4 feet.
- The property in question is typical of other lots in this subdivision. The property has a frontage of 75 feet and a depth of 110 feet. A 10-foot utility easement is located on the north side of the property as well. Should the Board grant this variance, the applicant

will need to obtain approval letters from each of the utility companies regarding the encroachment of this easement.

ORDINANCE SUMMARY:

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires the side setback in the R-1-6 zone to be 6 feet.

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

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, "Criteria for the Validity of Variances", pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

Applicant:

Don Anthony
2923 S. 3145 W.
West Valley City, UT

Steve Lehman presented the application. Sandy Naegle questioned if the applicant will have to go back and get a building permit. Steve Lehman replied that since the citation was given by the building division, a building permit must be issued. Inspectors will want to ensure that the building is structurally sound before issuing the permit. Ms. Naegle stated that her understanding regarding easements was that no permit is required because

any structure on an easement is at risk. Mr. Lehman replied that if someone wants to come in and build over a utility easement, a courtesy letter is usually sent to the utility company. He added that it is at their own risk but explained that there are no running utilities in this particular easement and in this case, utility companies normally do not have a problem. The applicant, Don Anthony, questioned what exactly a utility easement is. Steve Lehman explained that it is a designated 10 foot space on the recorded plat that is used so that utility company's can run power, phone lines, etc. Nicole Cottle added that the easement also allows utility companies to access the easement as well and gives them the ability to walk on the property.

Mr. Anthony distributed letters from various neighbors. He explained that Rocky Mountain Pools put in the pool 31 years ago and a discussion was held at that time where the pool and its equipment would go. Mr. Anthony explained that he upgraded and expanded the shed for safety purposes by incorporating leak protection, shingles, concrete foundation, etc. Mr. Anthony stated that he matched the colors as closely as he could to the house and the structure has been there for 20 years now with no problems. He explained that he went to Salt Lake County and searched the archives for a building permit but could not find a record. Mr. Anthony stated that he did not put the pool in by himself and the shed is needed to keep everything working properly and safely.

Mr. Anthony addressed the variance criteria with the following:

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 located on the applicant's property and the dwelling was built in 1972 prior to West Valley City's incorporation. The equipment storage attached to the applicant's home was also built prior to West Valley City and should have been part of the building permit for the pool.

Mrs. Christensen agreed that because the structure was built prior to incorporation, it is an unreasonable hardship on the applicant.

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

The home was built under Salt Lake County jurisdiction. The frontage of this property is 75 feet. It is consistent with other properties in the subdivision. While the property is typical of this area, the home was located toward the south side of the lot limiting the location of where the pool storage could be constructed.

Mrs. Christensen stated that she appreciates Mr. Anthony bringing up this point. Mr. Anthony re-iterated why the pool had to be placed at this location and added that the backyard isn't the same elevation.

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

The equipment storage will allow the applicant to continue to enjoy their property. When the pool permit was issued by the County, the storage location was part of that permit. Electrical equipment etc. needed to be covered and the north side of the dwelling was the most logical location. By having this storage here, the property can be enjoyed to its potential.

Mrs. Christensen stated that the shed seems to be in the safest location.

Mr. Farnsworth questioned whether the shelter could have been accomplished with chain-link. He stated that the main issue is not so much the equipment but that the equipment is being sheltered by a shed that does not have a building permit. He questioned whether the applicant should have to meet the new standards and stated that there likely isn't a pool within a 5 mile radius to compare it to.

Mr. Moore stated that there are likely several pools within 5 miles of this property.

Mr. Farnsworth stated that he is simply trying to separate the main issue. The pool isn't the issue, the shed is.

Mr. Anthony stated that he did all that he could to protect kids and other residents in the area.

Mr. Spendlove stated that the pool is part of this because it involves the enjoyment of the property to the applicant and can be compared to a trampoline or a BBQ.

Ms. Naegle agreed.

Mr. Anthony added that a pool is more costly and more permanent.

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

The applicant has tried to match the building materials with the rest of the home. Although the structure is visible from the street, it does not appear to be out of harmony or scale with the dwelling and adjacent property. In addition, the neighbors do not have an issue with this request.

Mrs. Christensen stated that the letters from the neighbors distributed by the applicant are proof that there is no conflict with public interest. She added that she is anxious that all codes are met but this will be done through the building permit process. She stated that the house is beautiful and well taken care of.

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

The spirit of the zoning ordinance is observed because this addition has been in place for more than 30 years. Substantial justice would be done by allowing this addition to remain.

Mrs. Christensen stated that sheds are clearly visible in the aerial photo provided before the incorporation of the City and they appear to be as close to the property line as the current shed is.

Mr. Farnsworth questioned if the equipment, concrete, and foundation has been there 30 years.

Mrs. Christensen clarified that a different structure was there but the new shed hasn't been an issue for 20 years.

Mr. Farnsworth stated that sheds built without a building permit has been a problem for the City.

Open Discussion:

Valerie Swinehart, a neighbor, stated that she wasn't aware that the addition was classified as a shed because she thought it was a part of the house. She explained that everything matches perfectly and all equipment is kept in the shed to ensure safety. She stated that it looks to be a part of the house, even from the backyard, and she doesn't have a problem at all. Ms. Swinehart indicated where she lives on a map and added that she does water aerobics in the Anthony's pool and is very appreciative of the facility in the neighborhood.

Mr. Anthony stated that he understands what the City is trying to do by cleaning up poor looking homes and removing unappealing structures. He stated that he has called Code Enforcement several times on lots around his home but his house is attractive and the shed isn't an issue for anyone that lives near him.

Discussion:

Mr. Spendlove stated that he feels there is sufficient evidence presented by Mr. Anthony and all the required criteria has been met. He added that a shed keeps noise down so it seems to be the best option as opposed to anything else.

Mr. Moore stated that Mr. Anthony has been in construction for years and he has a hard time understanding that he didn't know a building permit was required. He stated that he is grappling with the fact that the structure was built attached to the house without a building permit, has gone against zoning, and has gone over an easement. These issues

should have been addressed when the shed was originally built. However, there is enough evidence for the five criteria that the variance should be permitted.

Mr. Spendlove stated that a permit was taped to the wall so that applicant assumed everything was in order.

Ms. Naegle questioned whether the building permit is part of this approval.

Mr. Spendlove stated that the applicant will still need to bring everything into compliance.

Nicole Cottle stated that is a hard question but her legal answer is that the building permit doesn't matter because it is not part of the 5 criteria required by State law.

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

Motion

Mr. Spendlove stated that after considering the five variance criteria and the Board's discussion, I move that we grant approval of application, B-14-2008. as the applicant has met all of the five variance criteria.

Ms. Naegle seconded the motion.

A roll call was taken.

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

Motion carries –majority vote

Majority- B-14-2008 – Approved

There being no further business the meeting adjourned at 6:50 p.m.

Nichole Camac, Administrative Assistant