

**WEST VALLEY BOARD OF ADJUSTMENT**

**March 4, 2009**

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

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman and Karon Jensen

**AUDIENCE:**

Approximately two (2) people were in the audience.

**B-1-2009**  
**Reyes Variance**  
**6315 West Basin Ridge Drive**

**REQUEST:**

Mr. Sergio Reyes, 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-1-10 zone be 20 feet. The applicant is requesting a variance of 18 feet in order to keep an existing patio cover.

**BACKGROUND:**

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

- The subject property is known as lot 506 of the Valley Fields No. 5 Subdivision. This subdivision was recorded with the Salt Lake County Recorder's Office in September 2006. A building permit for a single family dwelling was issued in May 2007 with a completion date of September 2007.
- Prior to the issuance of the building permit, a plot plan was reviewed by the Planning and Zoning Division. The plot plan did not indicate that the patio cover in question would be built as part of the dwelling.
- The applicant was recently notified by the Building Division, that the covered patio exceeded setback standards. The applicant was instructed to either remove the cover, or seek approval from the Board of Adjustment.
- The applicant met with staff to discuss the Board of Adjustment option. Staff explained the variance process and suggested that the required variance criteria would be difficult to establish. Staff explained that although this lot is a corner lot with differing dimensions, the property does not really have any characteristics that could be used to substantiate a variance request. After evaluating this information, and the fact that the covered patio was already constructed, the applicant decided to pursue a variance.
- The property in question is a corner lot and does have one unique characteristic. The property's depth off of Basin Ridge Drive is 100.00 feet. In comparison, the property to the west is 111.50 feet and the property to the east has a depth from front to back of 113.45 feet. Although the greater depths are not large enough to accommodate the patio cover in question, a greater lot depth consistent with others in the area would have at least allowed a small area for a covered patio.

- The applicant believes that the covered patio will not negatively affect the adjacent resident to the south because this lot has yet to be built on. Once a prospective owner decides to build here, they would already know of the covered patio.
- Staff has included a colored copy of the aerial photograph illustrating the lot depth. In addition, a colored photograph of the covered patio has been provided.

**Applicant:**

**Sergio Reyes**

**6315 W. Basin Ridge Dr.**

The applicant, Sergio Reyes, distributed copies to the Board of Adjustment addressing the five variance criteria. Mr. Reyes explained that he has worked very hard to construct a sturdy, attractive fence and requested that the Board allow him to keep his existing fence.

Mrs. Reyes addressed the Board noting that she has a six year old son and an eight year old daughter who enjoy playing outdoors in the summer. She explained that they do not have much shade in their backyard and need the patio cover for shade and comfort. The main reason we wanted to have a patio cover is to allow our children to play in the backyard as we feel that it is dangerous for the children to play in the front yard. Also, I can watch the children play from our kitchen window. I would be very sad to have to take the patio cover off and my children would not have shade to play in the back yard. My husband has worked very hard to build the patio cover and I would like to ask that you consider granting the variance.

Mr. Reyes addressed the 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 variance is on my property.**
  - **The peculiar circumstance is that my lot is 11 feet shorter than the lot next door and 13 feet shorter than the lot across the street to the east. This prevents me from having any type of covering on our south side.**
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
  - **This property is a corner lot. There are 11 other corner lots in this phase that are zoned R-1-10. My lot is the smallest of these lots thus limiting my ability to have a covered patio.**

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
  - **Other owners in Valley Fields have covered patios. Because the back of our home faces to the south, it would be nice to have some covering for my family. Even if the 18 foot variance is not granted, I would like some consideration to have a cover for my patio.**
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
  - **The granting of the variance will not affect the general plan because the lot where my future next door neighbor will live and would be the one most impacted by this cover is not even built on yet. They would know that the cover is there before they even buy their home.**
5. The spirit of the zoning ordinance is observed and substantial justice done.
  - **The spirit of the zoning ordinance is observed because I would have a cover for my family that is out of the sun.**

Mrs. Christensen said Mr. Reyes indicated that the special circumstance is that his lot is the smallest out of the 11 properties which makes his lot peculiar. He stated that his back neighbors will not be bothered by the patio cover. Also, Mrs. Reyes has expressed that she was very concerned about her children's safety.

Mr. Lehman explained that prior to issuance of the building permit for the home, the plot plan that was submitted did not show a covered patio. Due to the fact that the back of the home faces south, Mr. Reyes wanted to have a covered patio for protection from the sun. Not being aware that a building permit was required for such an addition to the home, Mr. Reyes went ahead and constructed the patio cover. Because this area is continuing to build, the Building Division was driving by and noticed the covered patio and as a result sent Mr. Reyes a notice that the building setback was not being met.

Mr. Reyes was informed that he could either remove the patio cover from the home or petition the Board of Adjustment for a variance. I clarified that it might be challenging for the Board because the home is new and a covered patio that extends to property line would be difficult. I explained the variance criteria to the applicant and he decided that since the structure was already built, he would pursue a variance with the Board of Adjustment. The only hardship that staff could see is that this lot is peculiar from others in the subdivision and that the depth from Basin Ridge to the rear is 100 feet and the lot next door is 111 feet. The lot across the way from front to back is 113 feet.

Generally, corner lots in subdivisions are bigger lots and have a larger setback. Mr. Reye's lot would be required to have at least a 20 foot setback. This is the smallest corner lot in all of Valley Fields Phase 5. That is the only characteristic that makes this lot a little different. Mr. Reyes believes that having the covered patio wouldn't negatively affect his neighbors. The lot next door is yet to be built so if someone builds a home there they would know about the covered patio. There is a City park to the Northwest that will be open. However, there are a couple of homes that would have some visual impacts. Copies of photographs have been included in your packets for your review.

Mr. Lehman explained that although it would be difficult for the Board to approve a variance right to property line, if through the course of the Board's discussion, they find there is something peculiar about the property and that Mr. Reyes is being denied a right that others in the neighborhood have the Board may grant a variance with possibly an 8 or 10 foot setback. Just like the case we had about two months ago, concerning the applicant who had a disability and was in a wheelchair. His patio cover extended out well beyond what he needed and the Board allowed the patio cover to encroach the setback, although it wasn't the same distance that Mr. Reyes is requesting, the Board of Adjustment does have that ability.

### **Discussion:**

Mrs. Christensen said I would like to grant the variance request and noted that whoever buys the vacant lot is going to realize the patio is there. My only concern is literal enforcement would cause an unreasonable hardship. The only unreasonable hardship is their lack of shade and the potential for traffic in the front yard where the children would be forced to play which is a safety issue.

Mr. Farnsworth expressed concern that the future property sale of the adjoining lot could be adversely affected because it is so close which could create problems in selling the lot. The applicant has alternatives and could have an awning with a curtain for shade from the sun.

Mr. Moore stated that he did not have a problem with the applicant having a patio awning, but felt the Board should require them to build the awning per Code.

Mrs. Christensen questioned, if we request they build it per the Codes, how wide would that need to be?

Mr. Lehman responded, I didn't physically measure, but the awning extends out from the home and is within 2 feet of the fence. I believe the distance is about 24 feet from the home....and Mr. Reyes might be able to answer that question. I believe they would probably be allowed to have a 4 foot awning per Code, if their home is 24 feet. The City doesn't include overhangs so that would be allowed by Code without requesting a variance.

Mrs. Christensen noted that she would be willing to consider a variance of 10 feet from the property line which would be a 14 foot awning.

Mr. Lehman responded that's assuming it is 24 feet. However, I believe measuring from the property line would be the best thing to do.

Mr. Moore explained if it is 24 feet, the applicant's would be asking for an 18 foot variance. They are 2 feet from the property line and 4 feet would be allowed...so that's 24 feet. I would be willing to entertain a motion to cut the patio cover back to 10 feet from the property line and they would actually only lose 8 feet.

Mr. Spendlove mentioned that the front of the applicant's home faces north. The other homes in the cul-de-sac that have yet to be built would be facing towards the cul-de-sac.

Mr. Moore responded that the two lots on the south would face directly north. The home on the east and the west would face opposite. So basically one home would face east and one would face west.

Mr. Spendlove remarked what I am understanding is that their backyard would actually be the adjacent lot's side yard in the future.

Mr. Moore indicated that the lot to the east of them across the cul-de-sac faces west and looks directly on the side of the Reye's home and their awning.

Mrs. Christensen remarked that there is a 10 foot setback required for the home across the way because it is a side yard. I believe the Board would be easily justified in asking for 10 feet because the awning is not going to be any further than the home across the street and is closer from the house to the property line.

Mr. Spendlove questioned, is it relevant for a home that's will probably have a spacious front yard next to their rear yard? What would we be trying to accomplish, if we were to enforce the Code?

Mr. Moore responded that if we were to enforce the Code, it would leave the applicant with a 4 foot awning. Basically, the Board is stating let's treat this like a side yard and give the applicant 10 feet because it is a side yard to the neighbor.

Mrs. Christensen said I would be willing to grant them a variance of 10 ft. from property line (14 ft. awning). I went to see the patio cover and it appears to be very well constructed.

Mr. Moore replied for consistency I believe that treating this as though it were a side yard is quite practical and that granting a 10 foot variance is very reasonable.

**BOA CRITERIA DISCUSSION:**

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

Mrs. Christensen indicated the special circumstance is the corner lot and the size. The unreasonable hardship is the ability to have shade and safety issues for the applicant's children as there is already significant traffic on this street

Mrs. Spendlove questioned, Mr. Reyes, are you original owner and did you build this patio cover yourself?

Mr. Reyes responded, yes I did build the awning myself. I did not know that we needed a building permit to construct the patio cover.

Mrs. Reyes noted we took out a building permit to finish the basement, but were not aware a permit was required for the patio cover.

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

Mrs. Christensen said the special circumstance is the size of their lot and the fact that the setback is narrower than other corner lots.

Mr. Moore responded I believe they meet the criteria of having a special circumstance with the lot size. As far as a substantial property right...the applicants have a right to have an awning, but they do not have a right to encroach on the property line. I do not believe they meet with the third criteria.

**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 remarked this is a through street and will be highly travelled. I believe that this street is kind of like a collector street. I visited the site and had significant difficulty getting out of the cul-de-sac onto the street because there were so many cars coming. I believe there is a safety issue for the applicant's children and I can understand why Mrs. Reyes would want her children to play in the backyard and not in the front yard. That is a safety issue and an unreasonable hardship because of the significant traffic on this street. Other homes in the area did appear to have awnings. I drove around a lot of the streets in the neighborhood and viewed their backyards and found that many patios and several patios with awnings.

Mr. Moore said as far as the substantial property right...the applicant has a right to an awning, but not to encroach on the property line. So I do not think they meet with the

third criteria and I do not believe they meet with the fifth criteria....because it is a new subdivision and does not meet the zoning ordinances. I do not have a problem with them having an awning. However the Board needs to ask that the patio cover meets with the Codes.

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

Mrs. Christensen said that the having a patio cover would not be contrary to the public interest and noted the only person that would be affected by this variance is the future neighbor.

Mr. Farnsworth questioned, Mr. Lehman, if the Board grants the variance on the patio cover... would the applicant still be accountable for water runoff and other adversities that come from having an awning?

Mr. Lehman responded, correct...they would need to take out a building permit and demonstrate to the Building Division that the construction that has already been done (and/or if a portion of this were required to be removed) meets the Building Code as far as being structurally sound

Mr. Reyes remarked I don't think my patio cover will bother my back neighbor because when he builds the house it will be fronting the street and he won't be looking at the awning from a right angle from his home.

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

The Board agreed that this variance request meets the spirit of the zoning ordinance.

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

**Motion**

Mr. Moore stated, in the matter of B-1-2009, Sergio Reyes, I move that we approve a variance which allows Mr. Reyes to encroach with his awning 10 feet from the south property line based on our discussion and the criteria submitted by the applicant.

Mr. Farnsworth seconded the motion.

A roll call was taken.



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

**Motion carries – all in favor**

\_\_\_\_\_ - **B-1-2009** - \_\_\_\_\_

Mrs. Christensen explained to the applicant that the Board is asking you to take the awning back 10 feet from the property line allowing you to have an overhang of up to 18 inches from the posts which are supporting your awning permitting a little bit of shade from beyond the posts of about 1.5 feet. This allows you to act as if it were a side yard and have the 10 feet clearance that your neighbor's across the street have.

**OTHER**

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

There being no further business the meeting adjourned at 6:45 p.m.

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Karon Jensen, Administrative Assistant