

**WEST VALLEY BOARD OF ADJUSTMENT**

**June 3, 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, and Necia Christensen

**Those Absent:** Sioeli Uluakiola and Mark Farnsworth

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman and Karon Jensen

**WEST VALLEY CITY LEGAL DEPARTMENT**

Claire Gillmor

**AUDIENCE:**

Approximately four (4) people were in the audience.

**B-5-2009**  
**Theral and Helen Smith – Variance Request**  
**3130 S. 3690 W.**

**REQUEST:**

Mr. and Mrs. Smith, have filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305 of the West Valley City Land Use Development and Management Act. This section requires that the minimum side yard setback adjacent to the home be 8 feet in the R-1-8 Zone. The applicant is requesting a variance of 8 feet in order to allow a previously constructed shed to remain attached to the existing dwelling.

Mr. Lehman indicated that staff had spoken with the applicant and indicated that there were only three Board members who would be present for the Board of Adjustment hearing. Staff suggested a continuance for this case to allow for an opportunity to have more Board members present at the hearing and Mr. Theral agreed that would be a better option for him also.

**Motion**

Mr. Moore stated, I move that we continue the application, B-5-2009, for Theral Smith, to a future meeting to allow the applicant an opportunity to have more Board of Adjustment members present at the hearing.

Mr. Spendlove seconded the motion.

**Motion carries – all in favor**

\_\_\_\_ - B-5-2009- \_\_\_\_

**B-6-2009**  
**Teresa Heath – NCU Determination**  
**3981 South 6000 West**  
**R-1-8 Zone**

Teresa Heath, has filed an application with the West Valley City Board of Adjustment requesting a non-conforming use determination in order to continue keeping livestock on the property noted above.

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

**BACKGROUND:**

- The subject property is known as Parcel Number 14-35-451-004. The property is located on the east side of 6000 West and 3981 South. The property is approximately 29,490 square feet in size and is presently zoned R-1-8. It is bordered on the north and south by existing residential uses.
- The subject property, as well as surrounding properties, was zoned for agricultural uses when West Valley City incorporated in 1980. The property retained this zoning designation until a couple of years ago. At that time, the applicant was approached by a developer to rezone her property for a future single family subdivision.
- In March 2007, the City Council approved a rezone request from William Bustos to rezone multiple properties in this area from the A Zone to the R-1-8 zone. The applicant's property was one of those included in the rezone. This request modified the land uses on the applicant's property from agricultural uses to single family zoning. As such, the keeping of animals would no longer be permitted.
- Due to market conditions, and other development obstacles, Mr. Bustos has stopped processing the subdivision application. The application being presented to the Board of Adjustment is to allow this property to continue housing animals. The property owner has contemplated selling the property and would like to market the land as horse property.
- As staff began to evaluate this request, there were two alternatives. The first was to rezone the property back to agriculture. The second was a non-conforming use application to the Board of Adjustment. Given the likelihood that this property could once again be included in a subdivision design, staff felt that the non-conforming approach was the most appropriate for this situation.
- To help verify the existence of farm animals, the applicant has submitted documentation from individuals who are familiar with this property. These letters state that animals have been, and are still located on this property. City ordinance states that if the use is discontinued for a continuous period of more than one year it shall constitute an abandonment of the use. According to these letters, animals have been kept on this property prior to, and subsequent to the rezone in March 2007.
- Generally, the size and condition of the property is a historical indication that agricultural uses existed here. During the meeting staff will present an aerial photograph that shows the properties configuration including outbuildings which appear to be used for agricultural purposes.

**ORDINANCE SUMMARY:**

Section 7-18-106(3) of the West Valley City Land Use Development and Management Act reads:

(3) Non-conforming Use of Land. A non-conforming use of land lawfully existing on the effective date of this Chapter may be continued provided such non-conforming use shall not be expanded or extended into any other open land, except as otherwise provided in this Chapter. If the non-conforming use is discontinued for a continuous period of more than one year it shall constitute an abandonment of the use and any future use of such land shall conform to the provisions of the zone in which it is located.

- The applicant is not requesting an expansion of a non-conforming use. They are requesting a determination that the existing use, i.e., the keeping of animals be allowed to continue on this property.

Mr. Lehman indicated that he had received one phone call from a neighbor who was concerned with the nuisances regarding odors, debris and clutter associated with the property. He had explained that these issues are not addressed by the Board of Adjustment and this was simply a request for legal non-conforming determination to allow animals to remain on the property and that those type of issues would need to be addressed by Code Enforcement and other divisions.

**Applicant:**

**Teresa Heath  
3981 South 6000West**

**Representative**

**John Johnston  
for (Teresa Heath)**

Mr. John Johnston explained that he is the applicant's ex-husband and co-owner on the property deed. Teresa is not available as she had to work tonight and requested I fill in as her representative regarding this application. He further indicated that the property and surrounding properties were zoned for agricultural uses since before the City was incorporated and said that there have always been horses on the property. A few years ago, we were approached by Mr. Bustos, a developer, who wanted to buy a section of property to rezone R-1-8 and create a single family subdivision. However, due to the slow economy Mr. Bustos has withdrawn his proposal to develop the property at the present time. Teresa and I would like to request a non-conforming use determination to maintain the animal rights that have always existed on this property.

Mr. Moore questioned if there were currently horses on the property.

Mr. Johnston responded that the horses were removed from the property temporarily about a week ago, but the horses will be returned to the property very soon.

### **Charles DeBry**

Mr. DeBry stated that he is a neighbor of the property owner and moved into his home before the City incorporated when it was under Salt Lake County's jurisdiction. He indicated that there have always been animals on the property since that time. The issues that are relevant today will be the same issues that are relevant in the future. Mr. DeBry expressed several concerns regarding the Heath property relating to the care and custody of the animals and the property which is approximately 130 feet wide x 140 feet deep. Due to the size of the applicant's property, the ordinance would allow for two horses. The property owner has three horses leading to health and nuisance issues associated with noise, odors, and the horses being confined to such a small parcel.

There are several health hazards and a lack of property management and I am unable to use my backyard due to these problems. In the past, I have had to deal with the stench of manure which was kept close to my property. The owner has never established a proper fence and the odor is unbearable and I am unable to utilize our swamp cooler. The problems remain primarily due to the fact that the property owners do not reside on the property and keep the manure and other issues under control. There are weeds, piles of garbage and trailers littering the property.

I have respiration difficulties and am currently on oxygen. The neighbor to the left of me is also affected and these problems are an irritant to my health. The vacant property owner creates many problems and the owners have not resolved the fencing problems. Animal control has been out several times to gather loose animals due to the fence being down. The vacant property owners and the lack of supervision causes great risk...out of sight...out of mind. This will also increase problems with accessibility. Junk and litter is strewn across property and forces driving over the irrigation easement and there is a 10' gap. There is no regard for the community and if it is utilized with animals, it creates a detriment to the neighborhood. If a non conforming use is allowed on the applicant's lot, it would be the only property with these issues. I would like to ask the Board to deny the non-conforming use determination for this property. Mr. DeBry distributed photos and relevant information for the Board to review.

Mrs. Christensen questioned the applicant if his property is zoned agriculture.

Mr. DeBry responded that his home was but not all of his property. He asked the Board to read the papers from Animal Control regarding nuisance, storage of agricultural waste, and odors. He noted that the photo he passed out shows the gap.

Mr. Spendlove asked legal staff what information received from Mr. Debry was relevant to the non-conforming use determination.

Mrs. Gillmor, West Valley City Attorney, responded that the issue is if the animals were on the property prior to the zone change and have not left the property for more than a year at a time. Nothing else is relevant to this request for a non-conforming use determination.

Mr. Spendlove questioned staff in regards to the point system for animals.

Mr. Lehman responded that the applicant has 134 points for his property and a large animal is 40 points. The applicant would be allowed to have three horses, if the Board determines the animals can remain on the property.

### **Richard Magera**

Mr. Magera stated that he also noticed the odors coming into Mr. Debry's property when he visits with him. He explained that the odors are very evident on his patio which denies him the right to enjoy his patio.

### **John Johnston**

Mr. Johnston stated my request is for a non-conforming determination to allow me to keep the horses as they have been there since this property was zoned under the County. He further explained that there has always been access because of the irrigation company. I do not want to insult Bud, although I feel very insulted by his remarks tonight. I am simply requesting to keep the horses on the land until the property can be developed.

Mr. Moore questioned why the applicant was not present tonight.

Mr. Johnston responded that she was unable to leave work and explained that he is Teresa Heath's ex husband, John Johnston, and would be representing the application for her tonight.

Mr. Moore questioned staff if Mr. Johnston could represent the property owner in regards to this application.

Mr. Lehman replied that he could represent the application and indicated that Teresa had asked Mr. Johnston to be here tonight as a representative for the application and he has agent authorization.

**Discussion:**

Mr. Moore stated that the Board has received several letters of support regarding this request for a non-conforming use determination. There is a letter from Janet Kinder indicating she has had horses on the property in the past and Jeff Taylor who also boarded horses on the Heath property and verified that there have been horses on this parcel.

Mrs. Christensen commented the property was previously zoned agriculture and there have been horses on his property up until May 2009. Fencing and other issues that were brought up at the hearing should be handled by the Code Enforcement Department.

Mr. Lehman explained that the property line concern is not a City issue. There are alternatives to resolve the problems and to work with Code Enforcement.

Mr. Moore remarked that the property has had animal uses continually to date. I have concerns about the neighbors and the issues they are experiencing with the current conditions of the property and with odors and nuisance. Currently, the parcel is zoned R-1-8 and was moving towards development of a new subdivision. However, the proposed development has been put on hold for now. Eventually, the agricultural use will be abandoned and the property will be used for residential uses at some point in the future.

Mrs. Christensen indicated that she also feels empathy for the neighbors and all the animosity, however the Board is unable to deal with those issues.

Mr. Moore stated that he was in favor of approving the application.

Mrs. Christensen agreed due to the fact that the animals have been on the property continuously.

Mr. Spendlove questioned staff if the Board could place conditions on the non-conforming use.

Mr. Lehman responded that conditions could be added, if the non-conforming use was modified. However the main question in regards to the case before the Board tonight is "should animals be allowed to remain on the property?" This case would not allow for the Board implementing conditions on the non-conforming use determination. However, the Board could make a recommendation with the motion.

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

**Motion**

Mr. Spendlove stated, I move that we approve application, B-6-2009, based on the Board's legal direction and the fact that there has been a history of animals and agricultural uses continuously on the property. I would also recommend that Code Enforcement visit the property on a monthly basis to help mitigate the nuisance and odor issues associated with this property.

Mr. Moore seconded the motion.

A roll call was taken.

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

**Motion carries – all in favor**

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**OTHER**

The minutes from **May 6, 2009** were **approved**.

There being no further business the meeting adjourned at 7:20 p.m.

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Karon Jensen, Administrative Assistant