

**WEST VALLEY BOARD OF ADJUSTMENT**

**July 1, 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**

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

**Those Absent:**

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman, Jody Knapp, Hannah Thiel, Ron Weibel and Karon Jensen

**WEST VALLEY CITY LEGAL DEPARTMENT**

Claire Gillmor

**AUDIENCE:**

Approximately eight (8) 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.

**BACKGROUND:**

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

- The subject property is known as Parcel Number 15-29-327-014 and is zoned R-1-8.
- According to Salt Lake County records, the single family dwelling was constructed in 1978.
- The applicants were recently notified that the location of the shed on the north side of the property is in violation of City setback standards. Staff informed the applicants that the location of this structure not only presented zoning concerns but building code concerns as well. After discussing these concerns and outlining the variance procedure, the applicants determined that they would request a variance for the shed.
- The property in question is not in a formal subdivision but it is reflective of a typical residential lot. The frontage is approximately 82 feet in width and 118 feet in depth. Although the property does not represent very unusual characteristics in comparison with other properties in the area, it is adjacent to a pedestrian overpass for Bangerter Highway. The overpass is not covered directly adjacent to the home so on several occasions people have thrown things from the overpass damaging the Smith's home. Therefore, the shed has been installed as a barrier between the edge of the property and the home.
- Photographs of the shed and the pedestrian overpass have been included in the packet for your review.
- Staff will work with the applicant to address the variance criteria in preparation of the hearing.

**ORDINANCE SUMMARY:**

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires the side yard setback to be 10 feet on the garage side.

Jody Knapp presented the application.

**Applicant:**

**Theral and Helen Smith  
3130 S. 3690 W.**

Mr. Smith stated that he had been to a Board of Adjustment hearing about two months ago requesting a variance for a carport which the Board approved. The applicant distributed pictures of the shed and the pedestrian overpass for the Board to review. He explained that his property is adjacent to a pedestrian overpass for Bangerter Highway. The overpass is not covered and I have had problems with people throwing things from the overpass and damaging my home. The applicant explained that originally he was told by staff that he needed to move the shed to another location and noted that would be a hardship.

Mr. Smith said he had spoken with Ed Domian, from Building Inspection, and Jody Knapp, from Planning, and asked them to come over and look at his shed. Mr. Domian said that he had not been in the back yard of my home and I told him that it would be helpful and informative to have him view my shed and my backyard. Ed commented his opinion was that there is nothing to burn on the skywalk side. Previously, Mr. Domian had suggested that I would need to install a firewall on the north side of the home and the south side of the shed.

Mr. Smith distributed a photo showing the area between the house and the shed and explained that is where the firewall had been suggested. After Mr. Domian came to my house, he decided that there was no need for the firewall because there was nothing on the north side of the shed. So, I would like to request a variance of 8 feet in order to allow me to keep the existing shed where it is currently located. The applicant said that that he had spoken to a contractor about installing vinyl siding on the shed to make it more visually pleasing and to provide low maintenance on the shed, if the variance request is approved.

Mr. Smith addressed the variance criteria:

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

- The variance is on my property.
  - The shed has been in place for more than fifteen years and when the air conditioning unit was added to the home it was installed along the most sheltered side of the home so it would be protected, which puts it directly behind the shed. Therefore, in order to move the shed into the rear of the home the air conditioning unit would need to be relocated.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
- After our home was built the Bangerter Highway was constructed and a pedestrian overpass was added on the lot directly north of our home. The overpass is not covered adjacent to our home so our home has been vandalized several times from people throwing rocks as they go across the overpass above our home. Therefore, the shed provides a barrier between our home and the overpass and protects the side of our home from objects that are thrown from the overpass.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
- Granting this variance is essential because without the variance, we would not be able to protect the side of our home from being vandalized from objects being thrown from the adjacent pedestrian overpass.
  - Other neighbors in this area have accessory buildings to more safely and securely store residential items.
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 this structure has been there for fifteen years and to the best of our knowledge no one from the neighborhood has complained.
  - This variance will not alter the essential character of the subdivision and will not be contrary to the public interest because the structure in question was built with quality materials that will not deteriorate with weather and I will need to obtain a building permit. Through the permitting process, I will make the necessary adjustments to meet the building codes and retain any runoff water on my own property.
  - Furthermore, there will never be a home on the lot adjacent to my property due to the overpass so this will not affect any neighbors or other residential dwellings.
5. The spirit of the zoning ordinance is observed and substantial justice done.
- This variance will not set an unacceptable precedent for future applicants, because each lot will have different circumstances, which may not qualify for a variance.

- The spirit of the zoning ordinance is observed because this accessory building has been in place for more than fifteen years and substantial justice would be done by allowing this structure to remain.

Mrs. Christensen asked if the Board had any further questions of the applicant. [There were no further questions.]

The Board of Adjustment reviewed the variance criteria.

**Board's 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 said the unreasonable hardship is that without the variance the applicant would be more likely to have vandalism occur at his home again.

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

Mrs. Christensen indicated that the special circumstance is the skywalk.

Mr. Farnsworth stated that there is also a special circumstance due to the fact that there is no home located to the north of the applicant's property...it is just the overpass. The applicant would not be encroaching on the rights of his neighboring property owner in the same way as if there were another home located there.

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

The Board of Adjustment agreed that they did not have any issues with this criteria.

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

Mrs. Christensen indicated that through the permitting process, the applicant will make any necessary adjustments to meet building codes and retain any runoff water on the property. In addition, there will never be a neighbor located to the north of his property so it will not affect any neighbors.

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

The Board of Adjustment agreed that the applicant meets this criteria.

**Discussion:**

Mr. Spendlove indicated that the Board is familiar with this application as Mr. Smith previously attended a hearing for a variance request a few months ago and noted that he did not have any concerns with his request. He added that the applicant has done a good job in addressing the five variance criteria.

Mrs. Christensen questioned if there was anyone present, who would like to speak in favor or in opposition to this application. [There was no response.]

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

**Motion**

Mr. Farnsworth stated I move that we grant the variance as requested.

Mr. Moore seconded the motion.

A roll call was taken.

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

**Motion carries – all in favor**

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

**B-7-2009**

**Maria De Los Angeles Avila  
2951 South Dunsmoore Way**

Staff indicated that this application has been withdrawn by the applicant.

**B-8-2009**

**Tuong Dang – Variance Request**

**4854 West Wake Point Drive**

**REQUEST:**

Tuong Dang has 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 rear yard setback be 20 feet in the R-1-7 Zone. The applicant is requesting a variance of 11 feet in order to allow a previously constructed carport/patio cover to remain attached to the existing dwelling.

**BACKGROUND:**

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

- The subject property is known as Parcel Number 14-25-280-030. It is also lot 232 in Lakeview Farms Phase 2. This subdivision was recorded with the West Valley City Recorder's Office in 1996.
- According to Salt Lake County records, the single family dwelling was constructed in 1996. The original building permit for this home did not include the existing addition which is the topic of this application and is presently in violation of City code as it extends into the rear setback.
- The applicant was notified that the location of the carport/patio cover is in violation of City setback standards. Staff informed the applicant that the location of the addition presented zoning concerns. After discussing these concerns and outlining the variance procedure, the applicant determined that she would request a variance.
- The applicant would like to be granted a variance for 20 feet in the rear yard setback. The patio cover does not extend the full depth of the setback, however, the applicant has not submitted any exact measurements for the patio cover and distance to the property line.
- Photographs are included in the packet showing the patio cover, from the street. The property in question is 0.21 acres. The parcel has a frontage of 100 feet in width in the front, and a depth of 90 feet on the west side of the property. Although the property does not represent very unusual characteristics in comparison with other properties in the area, it is a corner lot.
- The applicant has not submitted a letter to the Board explaining the reasons why the patio cover is needed, and the variance criteria has not been addressed. Staff will work with the applicant to better address the variance criteria in preparation of the hearing.

Mrs. Thiel presented the application.

**ORDINANCE SUMMARY:**

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires the rear yard setback to be 20 feet.

**Applicant:**

**Tuong Dang – Variance Request  
4854 West Wake Point Drive**

Mr. Dang stated that his home and backyard is very hot in the summertime and that he decided to build a patio to help cool it down. I asked the contractor for the patio about obtaining a building permit and he assured me and told me not to worry about it. I did not intend to break any ordinances and I did not understand. Mr. Dang indicated that he had received a violation notice from West Valley City stating that the carport/patio cover was in violation. I am requesting the Board of Adjustment allow me to keep the carport/patio cover.

Mrs. Christensen questioned if the applicant had prepared any written statement to help the Board of Adjustment understand why this application would meet the variance criteria.

The applicant distributed a handout for the Board's review addressing 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.
  - a. The Variance is on my property. I am requesting a variance of 11 feet into my 20 foot rear yard setback for a covered patio.
  - b. My hardship is that my home sits on a corner lot. Much of the lot is occupied with the corner side setback, limiting the space in my back yard. As the rear setback is measured from the rear of the home ('rear' defined as the opposite side of the home as the front door), there is not enough room to have a covered patio that meets the ordinance requirements on the north side, or 'rear', of my home.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district. They are as follows:
  - a. The front of my home is oriented towards the south. This is beneficial to keep ice off my driveway. However, because my backyard faces north, plants do not survive in the shadow of my home. I have had to concrete my backyard to keep the space neat, weed free, and my home dirt free. As the backyard has a significant amount of concrete, the backyard gets too hot to enjoy in the summer. A patio cover is needed in the backyard to



- keep the heat at a tolerable level. I also have a six foot solid wall around my property which prevents wind to cool my backyard.
- b. I cannot place a covered patio area on either side of my home, as there is no access to the sides of my home to the yard and there is not sufficient room to meet the current setback standards.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
- a. My home is in an area that is zoned for single family homes. The patio cover is used to extend my limited living space, on the first floor, outdoors without weather restrictions. The back of my home is not very aesthetically pleasing without an awning. The awning is considered a relief treatment in the West Valley City ordinances and I would like to increase the aesthetics of my home and property with the use of this type of relief treatment on the back of my home.
  - b. Neighbors have obtained building permits for detached gazebos and trellises for the enjoyment of their backyard. These detached structures are closer to the property line than my patio cover and are used for the same purpose.

Mrs. Naegle questioned staff regarding the relief treatment as reflected in the Code. This states that the awning is considered a relief treatment in the West Valley City ordinances and would increase the aesthetics. I do not know exactly what a relief treatment is.

Mrs. Thiel responded that new homes in the City have relief treatments and design standards and there are a couple of options. One option is to have 35% masonry on a home plus a 30" wainscot that goes all the way around and the second option deals with a point system. Relief treatments are things that will help make the home more aesthetically pleasing and which would allot more points. West Valley City requires a minimum number of points and so an awning could be considered one of those relief treatments.

Mrs. Naegle questioned so that isn't a requirement for an existing home?

Mrs. Thiel replied no it is a new standard for the City. In 1996, the City did not have the same standards.

Mr. Farnsworth stated and that is to give some leeway in situations like this...correct?

Mrs. Thiel responded yes for situations like this and for new homes in general. This type of relief treatment is referring to our current code, whereas in 1996 that was not a requirement, but it might be considered a step towards meeting our current code.

Mrs. Christensen questioned so what you are saying is that had he built his home today with the awning, it might have been considered a relief treatment.

Mrs. Thiel replied that it could have been. There is a point system which would allot different points for different relief treatments. Currently, homes still have to meet the minimum setbacks, but it could be considered something that is also aesthetically pleasing.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
  - a. The General Plan classifies my property as Low Density Residential. I would simply like an opportunity to use my property to the full extent as the single family residential use and use my yard during summer months.
  - b. In the event of this variance request being granted, I will obtain a building permit for the addition.

Mrs. Christensen reiterated, “so you are stating that residents whose homes do not face that direction could have the awning, however it would not be an issue on a deeper lot. Essentially, the distance between you and your neighbor would have been the same except you have a fence in between.”

Mr. Farnsworth questioned am I understanding that if there is any type of distance between the awning and his home it would be considered a detached structure and he would be able to keep it?

Mrs. Thiel responded if it is six feet away, and he obtained a building permit. If the structure is less than 120 square feet, he wouldn't need a building permit and he would be required to meet the setbacks. Since the applicant is on a corner lot, he would need 20 feet from the corner side and 1 foot from side and rear property lines and 6 feet from the house.

5. The spirit of the zoning ordinance is observed and substantial justice done.
  - a. The spirit of the zoning ordinance is observed as I am only asking for a patio cover onto my existing single family home in a residential single family zone.

Mrs. Christensen indicated that the applicant is stating that his hardship is the way the house is situated on the lot.

Mr. Spendlove stated that the applicant has a substantial distance between his fence and the patio and noted that his back faces the front side yard and his neighbor. The variance request is only for 11 feet not 20 feet and the structure would not be looking right into someone's house.

Mrs. Christensen questioned if the applicant built his home today, this structure could have been considered a relief treatment.

Mrs. Thiel replied possibly as it could be considered aesthetically pleasing.

Mrs. Christensen questioned staff are you stating that if he had a deeper lot....?

Mrs. Thiel responded yes if there was 6 feet and he obtained a building permit... then he would just need to meet the setbacks The applicant's home is located on a corner lot

Mrs. Christensen questioned if there was anyone present who would like to speak in favor or in opposition to this application. [There was no response]

**Discussion:**

Mrs. Naegle expressed concern in regards to the special circumstances and the property rights. When you look at the map showing the dimensions of their lot, and the lot that is directly south of their property, the square footage and the rear and side yards are exactly the same. I would like to be convinced that due to the fact that the front of one home faces north and the other faces south that it would address the criteria for a special circumstance. I have visited the property and agree that it is very attractive. However, I don't feel completely convinced regarding this criteria. I have a north facing home and hate the fact that I get ice on my driveway that doesn't melt, but is that a special circumstance?

Mrs. Christensen responded the special circumstance that I see is that if this house was detached and 6' away, he could have the patio cover. It is the way the home is facing in the subdivision. It is facing the opposite way of the home that would be most impacted by this variance. If the applicant's home faced the other way, this would not be an issue.

Mrs. Christensen indicated that a special circumstance is when all of the criteria would be met, except for the fact that the home is facing the wrong way in the neighborhood. The home is located on a corner lot with a smaller rear yard and it meets the front yard setback. His home is facing the opposite of the neighbors and it is on a corner with a shallower lot. I believe his special circumstance is the shallower lot.

Mr. Farnsworth responded that is one of the questions that I had raised earlier....whether his lot was substantially smaller than the neighboring lots.

Mr. Spendlove noted that in addition, the applicant was told by the contractor that built the addition that they had done this for twenty years and knew what they were doing and told him that he didn't need to obtain a building permit.

Mr. Moore stated that if you look at Shoreline Drive and the corner of 2920, there is a home that has basically the same situation as the applicant. If you look behind the home, there is a large patio that encroaches on the neighbor. However, there are many homes in the area with patios in the backyard that don't encroach. The special circumstance is that he has a substantially smaller rear yard than the other lots in the subdivision. So it is more the positioning of the home on the corner lot.

Mrs. Christensen indicated that it has to be further back because it is a corner lot and it has to be further back on the side yard also. Therefore, there really is not a lot of room on the north side to have what he needs.

Mr. Moore stated having a background in construction, typically the homes that are placed on corner lots have a square type floor plan and homes that are placed on the lots along the streets are more elongated. It is just a way to be able to position a home on a lot and meet the setbacks. The corner lot has a substantially shorter rear yard.

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

**Motion**

Mr. Spendlove stated in the case of B-8-2009, Tuong Dang, requesting a variance of 11 feet, I move that we grant the variance based on the information submitted by the applicant and on the Board's discussion. I have looked at the property and the home blends in well and the awning is not very noticeable unless you were looking for the violation.

Mr. Moore seconded the motion.

A roll call was taken.

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

**Motion carries – all in favor**

\_\_\_\_\_ - B-8-2009- \_\_\_\_\_

**B-10-2009**

**West Valley Crown LLC - Variance  
2550-2571 West Evening Dove Circle**

**REQUEST:**

Larry Forkner, representing Utah Housing Corporation, and acting as an approved agent for West Valley Crown LLC, is requesting a variance from Section 7-6-305(1) of the West Valley City Code. This section requires that the lot frontage in an R-1-4 zone be 50 feet. The applicant

is seeking 7 frontage variances ranging in size from .07 to 14.7 feet. These variances are being requested in anticipation of a future subdivision.

**BACKGROUND:**

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

- The subject property was approved as a single family detached housing development in 1998. Although housing units are separate from each other, they were approved as a single project having one owner.
- As owner of the housing units, West Valley Crown LLC would like to subdivide the property in order to create individual lots. When this project was initiated, it was part of a 15 year lease-to-own housing program. In order to provide the ownership options associated with this program, the property would need to be divided prior to the 15 year mark.
- As staff reviewed West Valley Crown's request, there were two things that needed to be done. The first is a rezone from the R-2-6.5 zone to the R-1-4 zone. That application was reviewed and approved by the Planning Commission during the June 24, 2009 meeting. The second item would be variances from the Board of Adjustment regarding lot frontage.
- The R-1-4 zone requires an area requirement of 4,000 square feet with a minimum frontage of 50 feet at the setback line. According to the submitted plat, all future lots would meet the area requirement of 4,000 square feet. However, a number of lots would not have sufficient frontage to meet the 50 foot requirement.
- According to the submitted plat, lots 2, 3, 5, and 7-10 would need frontage variances. These widths vary between .07 and 14.7 feet. The attached plat map will be made an exhibit to the analysis which illustrates the lot number and variance needed. The lot and variance needed are as follows:

Lot 2	14.7 feet
Lot 3	.07 feet
Lot 5	13.8 feet
Lot 7	6.06 feet
Lot 8	10.9 feet
Lot 9	10.38 feet
Lot 10	6.58 feet

- The applicant has submitted a letter outlining their request. It also provides some information regarding the lease-to-own program. Staff did receive two calls regarding this request, but they were both in support of the variance request.

**ORDINANCE SUMMARY:**

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires the frontage in an R-1-4 zone to be 50 feet.

Mr. Lehman presented the application.

**Applicant:**

**Larry Forkner**

**Utah Housing Corporation**

**2479 S. Lake Park Blvd.**

Mr. Forkner indicated that he works for the Utah Housing Corporation and explained that these homes are part of an affordable housing program, the Crown Program, and is designed as a lease to own program. Over a fifteen year period, the tenants rent the home and are educated on how to become a homeowner, managing their money, and other things that will aid them in becoming a successful homeowner after they reach the 15 year threshold. In addition, they will have a substantial amount of equity in the home at that time. We are planning to convert these units to single family home ownership in about 1.5 years.

Mr. Lehman explained that the Board will need to look at the entire project as a whole as opposed to individual lots since they currently do not exist.

Mr. Forkner indicated that the primary concern is providing affordable housing to low and moderate income families and in particular for the people who have been living there for many years. Utah Housing Corporation is looking forward to this opportunity and we appreciate the Board's consideration in this matter.

Mr. Forkner addressed the variance criteria.

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
  - a. The variance is located on my property.
  - b. The variance will allow us to carry out the general purpose of the zoning ordinance because the general health, safety and welfare of this community will remain intact. In addition, we are able to sell the dwellings as opposed to rentals which would improve the quality of the property.

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

Prior to the existing development, property on the east and west was already platted leaving a fairly narrow property for development. The original developer also needed to dedicate the bulb portion of Evening Dove Circle thus eliminating more property from what could be developed.

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

The majority of dwellings in this area are not rental units. Granting the variance will allow these units to be sold and thereby increase the property values of surrounding properties.

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

The property is zoned for medium density land uses. Surrounding land uses are single family. By granting the variance, the property will be more conforming to the surrounding area. This will be a positive aspect to the community because it will promote home ownership in an area mostly zoned for single family dwellings.

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

The spirit of the zoning ordinance is observed because the variance is relatively minor. The square footage of the property is met and all other zoning requirements are satisfied.

Mrs. Christensen questioned staff if the special circumstance is related to the R-1-4 zoning?

Mr. Lehman responded that the special circumstance would be related to the R-1-4 or in anticipation of that being the zoning of the property once the City Council approves the zone change.

Mrs. Naegle remarked that the variances are fairly minimal on most of the lots. This is a laudable project for low income housing.

### **Discussion:**

Mr. Moore questioned if it was anticipated that these units would eventually be sold as single family dwellings, why was it not held to the same setback and lot standards?

Mr. Lehman responded originally it was suggested that the property be subdivided. As the process continued, staff felt that the project could come back at a later time as an extension of the planned community. Although they wouldn't have any affiliation with Westcove, it would be a small lot, single family subdivision which allows the flexibility of maintaining PUD standards and reducing the frontage requirements. All of the area requirements are met and they all have their own private yard spaces. The only issue that prevented staff from going that direction is that they don't have the common open space that is shared in a planned community. So staff felt that rather than go the planned community route it would be more suitable to petition the Board of Adjustment for the frontage variance.

Mrs. Christensen questioned staff are we going to get similar cases regarding lot sizes and properties having accessory buildings, etc because this is not a planned community?

Mr. Lehman responded these lots are quite deep. The units fronting 3360 are 112 feet deep. The cul-de-sac lots are pretty substantial in size in comparison to the home size. Once they change to single family ownership, residents that would like to construct a detached structure could say "well due to the size of my lot". The issue I would counter is that the property would be zoned R-1-4, therefore, they know that the lot exists at 4,000 square feet. All of these lots are greater than 4,000 square feet. So they wouldn't necessarily have a hardship because the size of the lot is consistent with the R-1-4 Zone.

Mrs. Christensen questioned are all of the current residents renting?

Mr. Lehman replied I think most of the units are currently being rented. All of the dwellings are fronting onto a dedicated street. I believe part of Mr. Forkner's presentation to the Board will be that when this project was approved, the bulb of the cul-de-sac on Evening Dove Circle was not dedicated at that time. We have done a dedication plat for the bulb of that circle which actually takes out more property from the original piece. The properties will be subdivided to create individual lots and all of the setbacks are satisfied. The only thing that is lacking is the width across the front of the property. The numbers that we have illustrated in the staff report are actually the distances that they are lacking in order to meet that 50 feet requirement.

Mrs. Christensen said I noticed there were two people who have contacted staff regarding this application.

Mr. Lehman responded there were a couple of phone calls from residents living in the area and mostly interested in what was happening. They didn't express any concerns about the proposed variance.

Ms. Naegle said I believe that this project is a very positive move and that the write ups were well done. Also, the variances are fairly minimal in most cases.

Mr. Farnsworth indicated that he had driven by and looked at the houses from an outside



perspective, and I believe you would think the units were single family lots anyway.

Mr. Moore agreed that the units don't look like rentals, hence is the intent.

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

**Motion**

Mr. Farnsworth stated in the matter of B-10-2009, West Valley Crown LLC, I move that we grant the variance on lot 2, 3, 5, 7, 8, 9, and 10 based on the applicant's presentation of the variance criteria and per the Board's discussion and in keeping with the original intent of the ordinance and pursuant to the rezoning to R-1-4. I recommend that we place a condition on the approval pursuant to zoning the property R-1-4.

Ms. Naegle seconded the motion.

A roll call was taken.

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

**Motion carries – all in favor**

\_\_\_\_\_ - B-10-2009- \_\_\_\_\_

**B-9-2006**

**Omar Gonzales – NCU Determination**

**1603 Warnock Ave.**

**R-1-6 Zone**

Omar Gonzales, 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 small lot residential land uses.

**BACKGROUND:**

- ❑ The subject property is known as lots 51-55 of Block 14 Chesterfield Subdivision. The property is also known as Parcel Numbers 15-22-404-015 and 15-22-404-014. The property is approximately .38 acres in size and is bordered by other residential dwellings in the subdivision.
- ❑ This application is being presented to the Board of Adjustment at the request of the property owner. The request is being made in order to satisfy some concerns of the West Valley City Code Enforcement. During a past visit to this property, the ordinance officer recommended that the property owner seek out non conforming status to help eliminate potential problems in the future.
- ❑ The subject property was zoned R-2-10H at the time of West Valley City's incorporation. This zone allowed a two-family dwelling on a 10,000 square foot lot along with animal rights, specifically, horses. Although the City changed the R-2-10H zone to the R-1-6 zone, many properties in this area have continued to house animals.
- ❑ To help verify the existence of farm animals, the applicant has submitted documentation from individuals who claim that animals have been kept on this property for many years. These letters have been attached to the analysis for your review.
- ❑ Generally, the size and condition of the property is a historical indication that agricultural uses could have existed here. The attached aerial photograph shows that the property is large in size and includes various outbuildings.

**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 presented the application and indicated that the applicant has provided an affidavit with signatures of many neighbors attesting to the fact that this parcel has had animals located on the property since about 1960.

**Applicant:**

**Omar Gonzales**

**1603 Warnock Ave.**

Mr. Gonzales stated that he owns the two lots and would like his horses to be able to remain on the property.

Mrs. Christensen commented you have provided a list of your neighbors who all acknowledge from about 1960 on you have had horses and other animals on the property.

Mr. Moore questioned how long have you owned the property?

Mr. Gonzales replied four years.

Ms. Naegle questioned are the affidavits sufficient evidence...

Mr. Lehman responded that is the BOA's decision. That is one of the strong points that the applicant can demonstrate because there is a historical value there. In non-conforming cases it is quite useful for applicants to submit evidence from residents attesting to the fact that animals have been on the property for that many years.

Mr. Moore questioned how many horses do you currently have on the property?

Mr. Gonzales replied usually between three and five. I have another property with four acres and I bring them over here to graze and when they are in good shape I take them back over there.

Mr. Moore questioned staff how many horses can the applicant keep on the property with the point system?

Mr. Lehman responded that is one of the issues that Mr. Gonzales has been working with Code Enforcement on.

Ms. Naegle questioned that is not the Board's decision is it?

Mr. Lehman responded no the Board's responsibility is to determine that animals have been kept on the property for that many years. If the number of horses exceeds the allotment, Code Enforcement would work with the applicant on those issues.

Mr. Moore indicated that his point in raising that issue is to ensure that the applicant is very aware of the point system and the maximum animals that he can have on the property.

Mr. Farnsworth noted that the applicant discussed the fact that sometimes he brings horses on this property to graze and then takes them back over to Murray.

Mr. Moore questioned are there significant periods of time that the horses are not kept on the property.

Mr. Gonzales replied we keep two horses on the property most of the time and then just rotate them.

Mr. Lehman indicated that doing the calculations the property would allow for two horses to be kept on .38 acres.

Ms. Naegle questioned would he be allowed more horses?

Mr. Lehman responded no and that would be an issue that Mr. Gonzales would have to resolve with Code, if more than two horses are kept on the property. If there are two horses on the property, that would not be a problem.

Mrs. Christensen acknowledged and they don't have to be the same two horses so the applicant can rotate the horses.

### **Discussion:**

Mr. Farnsworth questioned what are the requirements for approving a non-conforming use?

Mrs. Christensen responded the Board would determine that animals have always been on the property without a lapse in time of more than one year...they have never abandoned the use since the City rezoned the property from R-2-10H to the current zoning.

Mr. Moore stated given the history of this area and the animal uses I believe we should grant the non-conforming use determination.

Mr. Spendlove indicated that the property is well kept and it is apparent that their have been horses maintained.

Mr. Farnsworth remarked that the neighbors have acknowledged a history of animals on the property.

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

**Motion**

Ms. Naegle stated I move that we approve the request for a non-conforming use determination for application B-9-2009 based on the testimony we have received and the letters we have received from neighbors stating that their has been a consistent animal population on the property since 1960.

Mr. Moore seconded the motion.

A roll call was taken.

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

**Motion carries – all in favor**

\_\_\_\_\_ - B-9-2009- \_\_\_\_\_

**B-11-2009**

**Verizon Wireless**

**5114 West 2400 South**

**M Zone**

The applicant is requesting an expansion of a non-conforming use to locate additional antennas on an existing telecommunications monopole located at 5114 West and 2400 South in a manufacturing (M) zone. The existing monopole was legal when it was built, but due to changes in the ordinance it is now non-conforming due to height and type of antenna arrays currently on the pole.

The revisions to Chapter 7-23 require all antennas to be mounted flush on the tower, that all cables shall be run internally, and that towers shall be no higher than sixty (60) feet. This tower has one existing antenna array mounted on a tri-array support structure well away from the pole and the tower is approximately one hundred (100) feet high. These factors make the tower a

nonconforming use. The new antennas would be mounted on the same type of array as already exists on the tower. Therefore the applicant is asking for an expansion of a nonconforming use.

The equipment that Verizon Wireless is proposing to mount on the monopole is to provide enhanced capacity and coverage for their wireless telecommunication service. They are proposing to add two antennas to each of the three sectors for a total of six (6) antennas, and would like to have approval for a total of three antennas per sector for a total of nine (9) antennas to allow for future expansion to accommodate changes in technology and capacity. The antennas would measure from four (4) to six (6) feet tall, and approximately eighteen (18) inches wide, depending on the required function of the antenna. All ground equipment will be installed in the existing fenced lease area. All equipment on the monopole will be installed at a height of ninety (90) feet. The other carrier currently on the monopole is at 100'. A co-location on an existing tower will eliminate the need to build an additional tower or structure to accommodate this expanded service.

Chapter 7-18-106, relating to nonconforming uses, reads:

(4) Nonconforming Use of Buildings and Structures. The nonconforming use of a building or structure lawfully existing on the effective date of this Chapter may be continued and may be expanded or extended throughout such building or structure provided no structural alterations, except those permitted by law, are proposed or made for the purpose of extension. The addition of a solar energy device to a building shall not be considered a structural alteration. If such nonconforming use is discontinued for continuous period of more than one year it shall constitute an abandonment of the use and any future use of the building or structure shall conform to the provision of the zone in which it is located.

(6) Alterations of 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 provided 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 the land located in the vicinity. Reasonable conditions may be attached to the approval in order to assure neighborhood compatibility.

**STAFF ALTERNATIVES:**

1. The Board may approve the request for expansion of the nonconforming use based on the information the applicant has submitted.
2. The Board may continue the application in order to receive new information based on testimony and/or questions presented in the public hearing.

3. The Board may deny the applicant's request for expansion of the nonconforming use if it finds that the applicant has not met the criteria outlined for such approval.

Ron Weibel presented the application.

Ms. Naegle questioned staff so they are not proposing placing anything on the top hat area and they are proposing to place them at the 90 foot area.

Mr. Weibel responded that the applicant is proposing to place one additional set of arrays at 90 feet. The existing array is at 100 feet.

Mr. Weibel said that when this tower was built, the ordinance allowed a 100' monopole and those kinds of antennas were permitted. However, through the course of the expansion of the telecommunications industry, and with so many applications coming in that didn't seem to work very well together. The City modified the ordinance and put some restrictions to try to accommodate the telecommunications providers and also accommodate the needs of the City and minimize the aesthetic effect of these poles.

Mr. Farnsworth questioned is there any reason why the applicant can't flush mount even on this pole?

Mr. Weibel responded no, however it would limit the ability for this location to implement what they want. If they can bring in antennas off of the pole and add more antennas, it gives them a greater ability to expand the capacity and also meet the requirements of the newest technology.

It is possible that they could get some use out of this by flush mounting the antennas, but they could not get the number of antennas or the capacity and coverage that they need. Staff has looked at these cases as a reasonable way to accommodate the industry and provide telecommunication facilities that the citizens of West Valley City need without adding any more poles. It certainly adds more bulk if you add another sets of arrays and the City has some poles that have as many as three sets of arrays on them. The request is a reasonable solution from staff's perspective.

Ms. Naegle questioned and what makes this non-conforming?

Mr. Weibel replied that this pole is non-conforming because it is 100 feet tall and the maximum the City allows is 60 feet. It has a tri-array or top hat array and the antennas are mounted on a support structure well away from the pole. Currently, the ordinance requires the antennas to be flush mounted and the definition in the ordinance is that the antennas be no more than 12" away from the pole. Another provision that makes this site attractive is that we also have a restriction in our ordinance that there can be no standard

monopole within half of a mile radius of an existing monopole. That does not include anything that is built under the stealth definition.

This is a modification of a non-conforming use and the request for the expansion is because Verizon Wireless would like to place another set of antennas on a non-conforming pole. The Board would also need to grant the modification that they would be using...the tri- array system instead of having the antennas flush mounted. There are actually two different issues for this application.

Mr. Weibel said the pole is already above 60 feet so the request includes a modification of a non-conforming use to allow Verizon Wireless to place a tri-array on a non-conforming pole at a 90 foot height. However, the applicants won't be increasing the height of the existing pole at all.

Mr. Moore questioned is it conceivable that could they come back later and ask for an additional tri-array on this pole?

Mr. Weibel replied yes it is certainly possible that another carrier could make that request and that has been done. There are quite a few poles in the City that have three different carriers on them. The majority are owned by companies and leased out.

**Applicant:**

**Connie Misket**

**9764 South 1700 East**

Ms. Misket stated she is representing Verizon Wireless for the non-conforming request. To answer a couple of your questions, the tower owner is SBA which is a company that manages towers. If we flush mount the antennas it does limit the effectiveness and if we can get them further apart, they basically work better. Having the tower the way it is presently where it already has a top hat and has separation between the antennas and we believe has a less minimal impact to add more below it. We would have to place two levels and it limits the coverage and utilizes a lot more of the pole. This property is in an M zone located in a lot for a trucking firm. I don't believe there is any residential close by the property and it should not be much of a visual distraction from what is in that area.

**Discussion**

Mr. Moore commented I believe the Board should grant the non-conforming use determination simply because it enhances the ability of the residents in the community to communicate. Also, I don't think that there is anyone that will even notice that the array on the pole is there.

Mr. Farnsworth said there are several things that the City is very keen on and one is business development because of the tax base it brings to the City. It brings residents



who want those services and want to buy property raising property values. It would only minimally affect visual clarity because they are using an existing monopole for that purpose.

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

**Motion**

Mr. Spendlove stated in the case of B-11-2009 I move that we grant the modification of a non-conforming use as described by staff.

Mr. Moore seconded the motion.

A roll call was taken.

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

**Motion carries – all in favor**

\_\_\_\_\_ - B-11-2009- \_\_\_\_\_

**OTHER**

The minutes from **June 3, 2009** were **approved**.

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

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Karon Jensen, Administrative Assistant