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PLEASANT GROVE CITY
BOARD OF ADJUSTMENT MINUTES
August 20, 2015

7:00 P.M. BOARD OF ADJUSTMENT MEETING

Present: Chair Frank Johnson, Milt Fugal, Stephanie Green, Pat Ellington, Gail Christiansen, Dustin Phillips

Excused: Sterling Wadley

Staff: City Planner Royce Davies, Planning Tech Barbara Johnson, Community Development Director Ken Young, City Engineer Degen Lewis

Chair Frank Johnson welcomed those present and called the meeting to order at 7:00 p.m. He also recognized Planning Commission Chair, Drew Armstrong. He stated that Board Secretary, Barbara Johnson, properly noticed the meeting as required by the Open and Public Meetings Act.

In response to an inquiry about whether there was any ex parte contact between Members of the Board and parties being heard tonight or whether there was a bias formed by any member of the group, Board Member Christensen informed the Board that during a family gathering his son discussed an email outlining a protest where people were asked to wear black on August 20th. When Board Member Christensen realized the content of the email related to a matter before the Board, he stopped all discourse. He stated that the exposure was not enough to recuse himself but he wanted to ensure that the Board was aware that he saw an email. He knew there was some miscommunication around the community about the action before the Board tonight.

Ms. Nicole Sterling (representing Mrs. Sheridan) moved to have Board Member Christiansen recuse himself because he referred to the email as a 'miscommunication'. Board Member Christiansen stated that it was not 'miscommunication' in terms of the contents of the email. Ms. Sterling reiterated that any statement regarding 'miscommunication' showed that Board Member Christiansen perhaps has a bias prior to the Board Meeting. She asked Board Member Christiansen to clarify what he meant by 'miscommunication'. Board Member Christiansen said that he would respond to that when the Board addresses that item on the agenda.

1 **ITEM 1:** Public Hearing to consider the request of Adam Merritt for a side yard variance of
2 approximately 3 feet from the 10-foot requirement in City Code Section 10-9B-7-B to build a two-
3 car garage on property located at 1069 North 850 East in the R1-9 (Single Family Residential) zone.

4 **GROVE CREEK.**

5
6 **Applicant: Adam Merritt**

7
8 City Planner, Royce Davies, presented the staff report and stated that the item was a variance request
9 for a side yard variance at 1069 North 850 East. He presented photographs to show the Board that
10 the home currently does not have a garage on the side and the applicant wishes to build a garage.
11 City Code currently requires that all properties that are R1-8 or larger have a two-car garage that is at
12 least a 20 feet wide on the interior. This would push Mr. Merritt three feet into the side yard. Mr.
13 Merritt is requesting a three-foot variance from the required 10-foot side yard setback in order to
14 build the required two-car garage. City Code requires a 20-foot interior width, which means that the
15 garage itself on the exterior would be wider than that at approximately 22 feet or larger.

16
17 Planner Davies quoted from the Code and stated that single-family dwellings in the R1-8 and larger
18 zones shall be provided with a garage or car parking permitted in the zone, having a minimum
19 interior width of 20 feet. In his report, Planner Davies clarified that garages are permitted in this
20 zone. He also quoted from the Code and stated that all single-family structures shall have two
21 enclosed parking spaces. And states that “parking shall be attached to the residential structure and be
22 of similar material and design.” The applicant has expressed that he intends to comply with the
23 Code. Planner Davies presented additional photos of the home and the existing property line. He
24 also presented the Board with a site plan, provided by the applicant that shows the garage
25 encroachment. The applicant felt that justice would be served by being allowed to build the
26 proposed garage.

27
28 Planner Davies asked the Board if they had any questions.

29
30 Board Member Fugal asked about the drawing and the location of the garage. He asked if the
31 applicant had provided the dimensions from the home to the property line. Planner Davies assumed
32 that since it is proposed as a 22-foot wide garage and is encroaching three feet into the side yard, it
33 will be about 29 feet.

34
35 The applicant, Adam Merritt, gave his address as 1069 North 850 East. He confirmed that they are
36 applying for a two-car garage, similar to other homes in his area, and particularly his neighbourhood.
37 At this time, their home is the only one in the neighbourhood without a garage. Mr. Merritt
38 remarked that it will help property values in the entire neighbourhood if he is allowed to have the
39 requested two-car garage.

40
41 Chair Johnson asked if it was 25 feet from the house to the property. In response to his question,
42 Mr. Merritt replied that it was approximately 28 ½ feet, to the railroad ties. To the property line, he
43 clarified that it is just over 29 feet.

44
45 Board Member Ellington asked if the purpose of a side yard is to get emergency equipment in near
46 the home in case of fire. Board Member Christiansen responded that it would not necessarily be for

1 emergency equipment because some zones only have an eight-foot requirement and 10 feet is
2 standard, which is not sufficient for emergency vehicles. However, in this instance, since it is a
3 corner lot, there are two different sides where there could be two ways to access the rear of the
4 property and only one would be lost for the garage. In response, Board Member Ellington
5 summarized that one of the main purposes of the side yard is to provide distance between the houses
6 and not for emergency services.

7
8 Chair Johnson opened the public hearing.

9
10 Reed Call gave his address as 805 East 1100 North and informed the Board that he is the Merritt's
11 neighbor. He expressed support for the request. He informed the Board that the garage would have
12 a 20-foot interior with a six-foot foundation holding the wall, which provides just over a seven-foot
13 setback from the property line. He explained that the variance was equitable to the neighborhood,
14 and they support it. He added that the Board should drive up 1100 North between 8:00 and 8:30
15 a.m. and 3:00 and 3:30 p.m. It is a major thoroughfare going east and there are many small children
16 in danger. Mr. Call was particularly concerned that there are no sidewalks. He was concerned that
17 children are in danger of being injured as cars speed by too fast. He requested sidewalks be installed
18 for the safety of children.

19
20 Board Member Ellington asked about the proximity to the Merritts. Mr. Call responded that he lives
21 to the north and three houses to the west but confirmed that the Fire Chief lives next door.

22
23 Chair Johnson suggested that Mr. Call speak to Public Works or the City Council because the Board
24 does not have control over sidewalks. In response to his comment, Mr. Call said that though they
25 may lack authority, they certainly have influence.

26
27 Community Development Director, Ken Young, commented that the Board of Adjustment is not the
28 City Council or Planning Commission. They are a quasi-judicial Board that makes determinations
29 based on the other Councils and Commissions. Mr. Call was invited to speak to City staff after the
30 meeting.

31
32 Dave Moore gave his address as 841 East 1100 North and stated that he lives near the Merritts. He
33 spoke in favor of the request. He does not believe there will be any privacy, noise issues or hazards
34 created.

35
36 There were no further public comments. Chair Johnson closed the public hearing.

37
38 Board Member Ellington asked Mr. Merritt about the hardship. Specifically, he wanted to know
39 who created the lots and the lot sizes and whether the hardship is self-imposed.

40
41 The Board discussed the five criteria for granting or denying an application.

- 42
43 1. The Board of Adjustment may grant a variance only if literal enforcement of the zoning
44 ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry
45 out the general purpose of the zoning ordinance.

1 Board Member Christiansen commented that if the ordinance was strictly enforced, it would create
2 an unreasonable hardship because the Merritt's would be the only home without a garage. And new
3 construction is required to have a two-car garage.

4
5 Chair Johnson confirmed that the Board agreed to number 1.

6
7 2. There are special circumstances attached to the property that do not generally apply to other
8 properties in the same district.

9
10 Chair Johnson added that there are garages on the other homes. Board Member Ellington stated that
11 if there were a group of homes with the same problem, the proper venue would be a zoning
12 ordinance change. However, since this is one of a few, he would agree that there are special
13 circumstances.

14
15 Chair Johnson confirmed that the Board all agreed.

16
17 3. Granting the variance is essential to the enjoyment of substantial property rights possessed by
18 other property in the same district.

19
20 Chair Johnson confirmed that that was established.

21
22 4. The variance will not substantially affect the General Plan and will not be contrary to the public
23 interest.

24
25 Board Member Christiansen commented that the fact that the neighbors are present shows that it is
26 not against the public interest. Board Member Ellington added that the General Plan supports two-
27 car garages. In fact, he added, it is now a zoning requirement.

28
29 Chair Johnson confirmed that the Board all agreed.

30
31 5. The spirit of the zoning ordinance is observed and substantial justice is done.

32
33 The Board Members agreed that the application meets the five criteria.

34
35 **MOTION:** Board Member Fugal moved that the Board of Adjustment approve the applicant's
36 request for a side yard variance of approximately 3 feet from the 10-foot requirement in City Code
37 Section 10-9B-7-B to build a two-car garage on property located at 1069 North 850 East in the R1-9
38 (Single-Family Residential) Zone, finding that it meets all five criteria for the granting of a variance.
39 Board Member Green seconded the motion. The motion passed unanimously.

40
41 **ITEM 2:** Public Hearing to consider the request of Michael & Barbara Graf for two variances of
42 properties in the proposed Honeysuckle Subdivision. 1) A variance of approximately 13.5 feet on
43 the lot width on Lot 1 where 95 feet is required, and 2) A variance of approximately 5 feet on the lot
44 width on Lot 2 where 85 feet is required located at approximately 975 Locust Avenue in the R1-9
45 (Single Family Residential) Zone. **SCRATCH GRAVEL.**

1 **Applicant:** Michael & Barbara Graf

2
3 Planner Davies presented the staff report and stated that the applicant is asking for a variance from
4 the Code requirement in order to subdivide the property. He informed the Board that when the
5 applicants bought the property, they were told that the property could be subdivided. When they
6 purchased the property they realized that 1000 South was going to encroach, and it made it so that
7 the original orientation plan would not work. Planner Davies also informed the Board that some of
8 the surrounding properties are historic and are subdivided. One nearby property recently had a
9 variance approved. The applicant has also provided plans showing how a home would sit on the
10 property and how it would be construed to meet the size and footprint of a home that is standard for
11 the area. Based on the fact that the road has to go in, the City Engineer also would like to address
12 some concerns.

13
14 Chair Johnson asked about the shaded area where the street would be widened. He asked if there
15 were structures on the south side of the property line. In response to his question, Planner Davies
16 responded that there are five or six plats on one side of the road. Chair Johnson explained that the
17 other property would be encroached on in order to widen the road. Planner Davies commented that
18 the City Engineer would speak to it, but added that there is a Development Agreement with Lindon
19 to where 1000 South would fall on the side of Pleasant Grove. Board Member Fugal asked if it was
20 a new street. Planner Davies said that it was a new connection, intending to continue on up.

21
22 The applicants, Michael and Barbara Graf, added that the street extension would take away one-fifth
23 of the property. It also takes some area on the west side since it is a corner lot. Ms. Graf confirmed
24 that it meets the criteria in all aspects because the right-of-way the City needs to widen the street is
25 creating the hardship.

26
27 Ms. Graf wanted the Board to note that they made sure that the garage for Lot 1 was side-loaded so
28 that it does not impact the busier intersection. The garage for Lot 2 will be on the southeast corner
29 to provide more space away from traffic. Mr. Graf explained that the lot widths will be consistent
30 with others in the neighborhood and provide sufficient sight lines for both lots. The house design
31 also allows the homes to face south. In response to a question, they clarified the location of the
32 driveway, which has been located to avoid the busy intersection.

33
34 Board Member Christiansen asked about the setbacks from the road. Mr. Graf responded that it was
35 about 90 feet. City Engineer, Degen Lewis, expressed opposition to the request.

36
37 Chair Johnson opened the public hearing.

38
39 Ms. Graf stated that the lots on the opposite side are one-third to one-half-acre lots and another
40 property owner would like two lots the same size as the Graf's lots. The lots would, therefore, be
41 identical.

42
43 Christian Anderson, son of the Graf's indicated that many future homes will be built in the area and
44 will match the new development. The developer was identified as Jared Bishop. Mr. Anderson
45 explained that their request is intended to avoid taking a major loss. He also personally designed the
46 house on the corner to sit on the lot and match the subdivision.

1 Engineer Lewis stated that he had been in contact with the Grafts about the property. He informed
2 the Board that 1000 South and the need of it to extend is not a new issue and has been part of the
3 City's Master Plan for some time. He distributed copies of the Master Plan and informed the Board
4 that the Grafts first contacted him via email with a general layout. He responded that it appeared,
5 generally, that the lot could be subdivided but no one had presented a plan and he was not sure if
6 there were issues. The Grafts discussed the matter before they purchased the property and the road
7 extension has been in the City's Master Plan for a very long time. The Major Street Plan was well-
8 known and published and available for potential buyers. In addition, all properties along 1000 South
9 will be affected. This property is not unique and all developments have been constructed
10 accordingly for the eventual extension. Engineer Lewis explained that there was an opportunity for
11 the Grafts to obtain property from neighbors to help them meet the Code requirements. Currently,
12 however, the Grafts do not face an unreasonable hardship because it is something common to the
13 area. Engineer Lewis confirmed that it does not meet the criteria.

14
15 Chair Johnson asked if the Grafts were granted the variance how it would affect the street. Engineer
16 Lewis explained that it was his opinion that they would be granting a 15½-foot variance, which is a
17 significant change to the lot widths.

18
19 Chair Johnson asked Engineer Lewis what could be done with the house on the corner. Engineer
20 Lewis explained that it is not possible to create a two-lot subdivision without granting the variance.
21 Chair Johnson asked if Engineer Lewis would suggest condos on the corner lot. In response,
22 Engineer Lewis said no and it should remain as one lot.

23
24 Chair Johnson asked if there were any other questions. Ms. Graf asked if she could speak again.
25 She explained that when they were brought into the project, they were shown the property without
26 the home. She emailed Engineer Lewis and asked if it was possible to subdivide. He responded that
27 it was but acknowledged that it would need to go through the process. She was learning more as the
28 process goes on, but performed all of the due diligence she was aware of. She did not know that the
29 road would be extended. And she was never told by anyone that it did not fit the General Plan. It
30 was only when they purchased the property that they discovered that they did not meet the criteria.
31 This was news to her. She asserted that she did not understand what Engineer Lewis was saying
32 when he emailed her. She thought that it would be approved and did not know that a twin home was
33 an option. Ms. Graf was upset because they are being impacted and suffering from the road
34 extension and having to provide the City with a right-of-way. Ms. Graf concluded that they came
35 into the process with pure intent.

36
37 Mr. Graf commented that it was presented to them as two lots and they paid a purchase price of two
38 lots. He also said that they looked at acquiring additional land to the east. Any direction they look
39 at surrounding property would require a variance.

40
41 Mr. Anderson asked to address the Board again. He explained that the street extension would not be
42 affected by the variance. It fits the area and does not hurt the function or appearance.

43
44 Board Member Phillips asked if there would be a stoplight or stop sign at the intersection. Staff
45 responded that they would expect a two-way stop to match the intersection further down. By the

1 time the street is completed, traffic volumes may be higher and there is the potential to switch the
2 stops or change it to a four-way stop. Staff, however, did not foresee a stop light at the intersection.

3
4 There were no further public comments. Chair Johnson closed the public hearing.

5 Board Member Christiansen asked if the variance was granted, what would change in terms of the
6 lot width. Engineer Lewis confirmed that the corner lot would get wider and the other lot appears to
7 be fairly uniform in terms of width up the street. Board Member Christiansen asked for clarification
8 on the exact location of the variance.

9
10 Chair Johnson asked if it was in the Master Plan. Engineer Lewis confirmed that it was. Locust is a
11 70-foot wide collector street and has been a part of the Master Plan for a long time.

12
13 Board Member Ellington clarified that the purpose of the Board is to grant a variance and provide
14 relief to someone who is attempting to make reasonable use of their property. However, a financial
15 loss is not a hardship. Board Member Ellington asked if the Grafts were able to make reasonable use
16 of the property without the variance. Chair Johnson explained that the Graf's would not be able to
17 get a building permit, unless they go to one lot.

18
19 Board Member Fugal asked Engineer Lewis about the potential for a twin home and if it was zoned
20 for a twin home. Engineer Lewis explained that a twin home would be allowed if the lot is at least
21 twice the minimum lot size, although it would require a conditional use permit. Board Member
22 Fugal then asked if the Grafts meet that standard. Engineer Lewis confirmed that they easily meet
23 that minimum standard but width would still be an issue. He added that they would be eligible to
24 request conditional use approval. Board Member Fugal said that a large lot could be considered a
25 hardship.

26
27 Board Member Christiansen asked Engineer Lewis why he was opposed to the variance. In
28 response, Engineer Lewis explained that he reviewed the criteria and the Grafts do not meet them. It
29 is not a unique situation and there are other alternatives. The General Plan has always been clear
30 that the road will go through. 1000 South was always going to go through and all three previous
31 owners knew that it would. Ms. Graf stated that she was not given this information and did not
32 know 1000 South would go through.

33
34 Board Member Ellington again stated that he was unsure how to interpret reasonable use and
35 remarked that economic concerns are not a hardship.

36
37 Board Member Green asked if the lot could be divided to come out onto Locust Avenue. She asked
38 if there was another way to split it. Ms. Graf explained that there were options they were willing to
39 consider. But anyway they divide the property, they are still short.

40
41 Board Member Ellington asked if there are other properties with a similar problem. Engineer Lewis
42 explained that multiple homes will be affected by 1000 South but it was always publicized. It was
43 not a new or sudden requirement. Engineer Lewis presented evidence that this has been
44 contemplated for a very long time.

1 Board Member Christiansen stated that the variance request is not outlandish in terms of what
2 surrounds the property. The zoning and General Plan requires uniformity and these homes will
3 match what exists on both sides of the property. Considering the General Plan and what is
4 occurring, he did not believe the variance was detrimental to the overall General Plan or public
5 safety. Aesthetically, however, he was still not certain.

6 Chair Johnson added that the other lots are 80 and 85 feet wide. He asked if the other owners would
7 need a variance in order to build. It was determined that widths of 85 feet meet the standard. The
8 corner lot, however, would require an additional 10 feet.

9
10 Board Member Ellington stated that if there was a legal way to do it, they should not grant the
11 variance. Board Member Christiansen responded that twin homes, though legal, should not be
12 encouraged.

13
14 Board Member Fugal recommended that the Board deny the application of Michael & Barbara Graf
15 for the following two variances on property in the proposed Honeysuckle Subdivision.

- 16
17 1. A variance of approximately 13.5 feet on the lot width on Lot 1 where 95 feet is required;
18 and
- 19 2. A variance of approximately five feet on the lot width on Lot 2 where 85 feet is required on
20 property located at approximately 975 South Locust Avenue in the R1-9 (Single-Family
21 Residential) Zone.

22
23 Board Member Ellington suggested the Board apply the five criteria. Board Member Christiansen
24 asked if the Board should look at each lot separately. City Planner Royce Davies responded to
25 Board Member Christiansen that to grant a variance on one would not work. In response, Board
26 Member Green added that a variance on one lot would not be beneficial to the Grafts because they
27 require two in order to subdivide the property.

28
29 The Board reviewed the five criteria for granting a variance.

- 30
31 1. The Board of Adjustment may grant a variance only if literal enforcement of the zoning
32 ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry
33 out the general purpose of the zoning ordinance.

34
35 The Board Members discussed what would be unreasonable. Board Member Green added that the
36 Grafts can still build on the property but would require construction of a twin home. She commented
37 that there is a legal way to do it.

- 38
39 2. There are special circumstances attached to the property that do not generally apply to other
40 properties in the same district.

41
42 Board Member Christiansen, Chair Johnson, and Board Member Ellington agreed that the road
43 expansion creates a special expansion. Board Members Fugal and Green disagreed.

- 44
45 3. Granting the variance is essential to the enjoyment of substantial property rights possessed by
46 other property in the same district.

1 The Board agreed that this criterion does not apply with the exception of Board Member
2 Christiansen.

3
4 4. The variance will not substantially affect the General Plan, and will not be contrary to the public
5 interest.

6
7 The Board agreed to this criterion.

8
9 5. The spirit of the zoning ordinance is observed and substantial justice is done.

10
11 Board Member Christiansen supported this criterion. Board Member Ellington did not because there
12 is no hardship to force the variance because they can use the property, though perhaps not the way
13 they would like to. Chair Johnson and Board Members Fugal and Green did not support this
14 criterion.

15
16 Ms. Johnson confirmed that the vote was as follows on the five criteria: (1) 4-to-1 (2) 3-to-2 (3) 4-to-
17 1 (4) 5-to-0 (5) 4-to-1 in favor of denying the application.

18
19 **MOTION:** Board Member Fugal moved that the City deny the application by Michael & Barbara
20 Graf for two variances on property in the proposed Honeysuckle Subdivision. 1) a variance of
21 approximately 13.5 feet on the lot width on Lot 1 where 95 feet is required; and 2) a variance of
22 approximately five feet on the lot width on Lot 2 where 85 feet is required on property located at
23 approximately 975 South Locust Avenue in the R1-9 (Single-Family Residential) Zone. Board
24 Member Christiansen seconded the motion.

25
26 Vote on motion:

27
28 Board Member Christiansen - Nay

29 Board Member Ellington - Aye

30 Chair Johnson - Aye

31 Board Member Fugal - Aye

32 Board Member Green - Aye

33
34 The motion passed 4-to-1.

35
36 *The Board took a 10 minute break.*

37
38 **ITEM 3:** Appeal Hearing for Todd and Shauna Sheridan to request that the Board of Adjustment
39 approve an appeal to deny a conditional use permit issued to Sterling Boren on June 11, 2015, for an
40 accessory building on property located at approximately 30 West 1200 North in the R1-8 (Single
41 Family Residential) zone. **NORTH FIELD**

42
43 **Applicant:** Todd and Shauna Sheridan

44
45 Chair Johnson reported that the Board's responsibility is to determine whether the conditional use
46 permit issued was done properly or determine if an error was made by the Planning Commission in

1 its issuance. In this case, the Board is only to determine if the Planning Commission made an error
2 in granting the conditional use permit. Input from the public would not be allowed. The Board
3 would only hear from staff and the property owner. Chair Johnson invited Planner Davies to make
4 his presentation which would be followed by a presentation from Mr. Sterling Boren. The Chairman
5 of the Planning Commission, Drew Armstrong, would also be allowed to ask questions.
6 Board Member Green recused herself from the vote. Chair Johnson explained that Dustin Phillips
7 would be eligible to vote. Chair Johnson also asked Board Member Christiansen if he felt
8 comfortable participating in the proceedings. In response, Board Member Christiansen indicated
9 that he was comfortable but wanted to verify that he knew there was an email distributed on this
10 issue.

11
12 The Boren's Attorney, Chris Dexter, stated that his clients do not want Board Member Christiansen
13 to recuse himself.
14

15 Planner Davies presented pictures of the property to the Board and informed them that on June 11,
16 2015, a conditional use permit was granted. The original conditional use permit was granted on
17 December 11, 2014; however, a later permit was granted on June 11, 2015, as the result of a
18 violation of the original conditional use permit.
19

20 After the Planning Commission's decision, an appeal application was received on June 29, 2015.
21 There had been concern expressed about the time in which the appeal was received. Planner Davies
22 wanted to make that point, though he stated that it would be discussed in detail at a later time. The
23 directions of the Appeal state that a party may appeal if there is an error in the administration or
24 interpretation of the zoning ordinance. Planner Davies read from the Sheridan's narrative and then
25 provided the City's response.
26

27 The Sheridan's Appeal contained the following five points:
28

- 29 1. The footprint of the structure must be incidental to or smaller than the main dwelling.
30

31 Narrative: The Sheridan's claim that the home's square footage is 2,030. The shed is 1,872 square
32 feet. Planner Davies reported that it was 92% of the house and if you take usable volume above
33 ground, the home, if you use a 10-foot ceiling, is about 20,300 cubic feet. The shed is 35,000 cubic
34 feet.
35

36 Response: City Code also requires that the accessory building cannot cover more than 10% of the
37 minimum lot area of the zone and shall be smaller than the main dwelling. An accessory structure
38 that is larger than 10% of the lot may be approved through issuance of a conditional use permit at a
39 public hearing by the Planning Commission. In addition, the footprint of the structure is still smaller
40 than the main dwelling. The footprint does not have to be incidental to and smaller than, just
41 incidental to or smaller than the main dwelling.
42

- 43 2. For house-sized structures, the setback needs to be 25 feet from the property line.
44

45 Narrative: The Sheridan's claim that since the shed is the size of a house, the allowed setback of 8
46 to 14 feet is not appropriate.

1 Response: Since this is a shed, and not a house, City Code Section 10-9B-7 requiring a 25-foot
2 setback does not apply. It is setback 8'4" on the east side and 14 feet on the north side. Code
3 Section 10-9B-7(F) (2) sets forth a chart showing that the minimum setbacks for a 20-foot high
4 accessory building is an 8-foot setback.

5
6 3. Materials shall match the main dwelling in color and detail.

7
8 Narrative: The industrial building materials are not similar to the main house and it needs to be
9 residential siding, brick, or stucco.

10
11 Response: City Code 10-9B-7(F)(4)(d) states that an accessory building larger than 500 feet shall
12 match the main dwelling with architecturally similar materials, colors and details. The Planning
13 Commission may grant a waiver to deviations with the accessory building matching the main
14 dwelling roofline and masonry, through the use of a conditional use permit, for buildings that are
15 composed of acceptable durable materials and having met the standards set forth in section 10-2-4 of
16 this title. The building is steel, a durable material, and a conditional use permit was granted. The
17 shed does match the color of the house and has the exact same siding.

18
19 4. Structure must be shorter than 25 feet of the house.

20
21 Narrative: The Sheridan's claim that the adornment on the roof should not count toward the height
22 of the house.

23
24 Response: The City Code 10-9B-9 says that "accessory structures in the R-1 zones shall not exceed
25 the height of the dwelling or shall have a maximum height of 25 feet, whichever is more restrictive.
26 The eye/dormer was specifically recommended by Planner Davies and Dave Houston on June 15,
27 2015 as a way to raise the height of the home. Only a 2'7" eyebrow was needed, but a 4'10" one was
28 put in. The shed is shorter than 25 feet and shorter than the house.

29
30 5. An accessory building shall not be more than 10% of the minimum lot area in the zone in
31 which it is located.

32
33 Narrative: The minimum lot size is .25-acre in the zone and, therefore, the structure should only be
34 800 square feet in size. The structure is 1,872 square feet.

35
36 Response: City Code Section 10-9B-7(F)(3) Size Considerations) states that "An accessory structure
37 larger than ten percent (10%) of the minimum lot area [800 square feet] of the zone may be approved
38 through issuance of a conditional use permit, at a public hearing, by the Planning Commission. The
39 footprint of the structure must still be incidental to or smaller than the main dwelling and shall still
40 remain subject to all other restrictions of the zone." City Code Section 10-9B-11: Permissible Lot
41 Coverage states that "In an R-1 zone, all buildings, including accessory buildings and structures,
42 shall not cover more than forty percent (40 %) of the area of the lot of parcel land." The shed is
43 larger than 10 % of the minimum law size and thus the Borens had to obtain a conditional use
44 permit.

45
46 Planner Davies explained that the Board must now consider a few questions:

- 1 (1) What was the error alleged in the appeal?
- 2
- 3 (2) What was the specific part of the zoning ordinance that was allegedly applied in error?
- 4
- 5 (3) What is the applicant's proof that the alleged error occurred?
- 6
- 7 (4) Did this action of the Board waive or modify the terms of the zoning ordinance?
- 8

9 Board Member Ellington asked about the setback of the existing structure and if seven feet complies
10 with the Code. Planner Davies responded that the setback is 8'4" on the east side and 14 feet on the
11 north side and falls within the parameters and complies with Code.

12
13 The Appellant, Nicole Sterling gave her address as 468 West 1800 North and was acting as
14 Ms. Sheridan's representative. She acknowledged, however, that she is not an attorney. Chris
15 Dexter objected to the fact that Ms. Sterling is not a properly licensed attorney.

16
17 Ms. Sterling asked for a continuance because the Utah Open and Public Meeting Act was violated
18 when a closed meeting was held on August 6. Although she believes the meeting was well-
19 intentioned and began as a training meeting on adjudicating an appeal, the meeting slipped into a
20 discussion on the merits of the appeal. Ms. Sterling quoted the Utah Court of Appeals and stated
21 that "historically, some Boards of Adjustment have held a pre-meeting in which Board, staff, and the
22 attorney review the agenda and issues with Board Members, ostensibly so that upcoming meetings
23 run more smoothly. In reality, these meetings often slip into a discussion on the merits of the
24 upcoming issues and for that reason have been condemned by the Utah Court of Appeals." Ms.
25 Sterling commented that that was what happened. She had listened to the audio, and though it began
26 as a training meeting, Planner Davies gave his presentation and began discussing the merits of the
27 appeal. Ms. Sterling argued that this was illegal, and compared it to a jury being able to talk with
28 only the prosecution before the defense can make its case. She asked that the Board grant a
29 continuance and the Council assume jurisdiction. She asked the Board to recuse themselves because
30 there was discussion on the merits of the case prior to tonight's meeting, which is against the law
31 and a Class B misdemeanor. She asked that the City Council hear the appeal. Ms. Sterling then
32 requested a vote and continuance.

33
34 Shauna Sheridan addressed the Board and was discouraged that they had been swayed before she
35 could present her Appeal.

36
37 Ms. Sterling said that the audio also shows that they had already discussed ruling against the
38 Sheridans in violation of the Utah Open Meeting Act. Therefore, she asked the Board to recuse
39 themselves and for a continuance.

40
41 Board Member Christiansen reported that he was not at the training meeting but agreed that they
42 need advice from counsel.

43
44 **MOTION:** Board Member Christiansen moved that the Board of Adjustment continue the matter
45 until the Board has received counsel from the City Attorney and then reconvene at the next regular
46 meeting.

1 Mr. Dexter acknowledged the acrimony regarding this issue, especially on social media. He
2 explained that the Borens have invested dearly in their property and their home and have spent
3 nearly \$100,000 tearing down one shed and working with the City on the new structure. He
4 acknowledged there were some misunderstandings from the original conditional use permit but the
5 new conditional use permit was issued properly and the Planning Commission made sure things
6 were done correctly. Work was done on the home to ensure that the structure was shorter. Mr.
7 Dexter informed the Board that the Borens did not have to do that but were trying to do things right.
8 He also stated that the Borens have been hurt by the opposition.

9
10 Mr. Dexter explained that the motion made by Ms. Sterling was improper because in Utah one
11 cannot speak for another unless they are a duly licensed attorney. In order to speak as a
12 representative, you must be a duly licensed attorney in the state. Mr. Dexter objected to her entire
13 statement and said that it should be stricken. Mr. Dexter explained that the statute is very clear.
14 Pleasant Grove City Code requires that appeals occur in a certain way and the Sheridan's appeal was
15 not done correctly.

16
17 Ms. Sterling objected to Mr. Dexter's comments because he was supposed to speak to the
18 continuance only. Mr. Dexter said that everything was out of order.

19
20 Chair Johnson asked to hear from Mr. Dexter. He explained that the alleged meeting where they
21 were discussing voting against the Sheridans was not true. Ms. Sterling said that she did not say
22 that. Chair Johnson responded that the insinuation was there. The Board wants the facts and only
23 cares about whether the Planning Commission erred in granting the conditional use permit.

24
25 Ms. Sterling again asserted that it was an illegal meeting. She reminded Chair Johnson that at the
26 beginning of the meeting he asked if anyone had ex parte contact or bias. The fact that Utah State
27 Law condemns a pre-meeting where the merits were addressed beforehand makes the current
28 meeting illegal because the Open and Public Meetings Act states that the Board cannot discuss it
29 without all parties present.

30
31 Chair Johnson asked for order and for Mr. Dexter to be able to speak. Board Member Christiansen
32 was concerned that any further discussion without the advice of counsel would be detrimental. Mr.
33 Dexter informed Board Member Christiansen that he wanted to discuss a procedural issue, not the
34 Appeal. He presented Pleasant Grove City Code Sections 2-4-4 and 2-4-6. He argued that the
35 appeal was not timely because City Code mandates that an Appeal shall be filed within ten (10) days
36 of the action or decision appealed from. It was not filed until June 29, 2015, which was eight days
37 past the due date as the Planning Commission's decision was June 11. Mr. Dexter explained that
38 another way the appeal was flawed was because the email was sent to the City Attorney, which does
39 not count. Mr. Dexter also stated that the Appeal did not meet the content requirement of the Code
40 because the appeal must refer to the specific provisions of the code involved and shall exactly set
41 forth the interpretation that is claimed. Mr. Dexter explained that the applicant did not set forth an
42 interpretation of the Code. She merely alluded to the Code and made up what she wished the Code
43 said. Mr. Dexter stated that there must be a form and City Code requires that it be strictly construed.
44 Mr. Dexter referred to Pleasant Grove City Code Section 2-4-6 which states that "The Board of
45 Adjustment shall act in strict accordance with the procedure specified by state law and by the City's
46 zoning ordinance". Mr. Dexter claimed that the objection over the open meeting was essentially a

1 distraction because it does not matter since the Appeal did not meet the Code requirement because it
2 was eight days late.

3
4 Ms. Sterling responded that the Appeal was late because they relied on a statement that the City was
5 going to appeal the ruling. When the Appeal was being formed, Ms. Sterling stated that they asked
6 about a deadline and were given the wrong date. Because they were given the wrong date, City
7 Attorney, Tina Peterson, said that they would push the date back to Monday. The City also
8 recommended Ms. Sheridan hire an attorney and she responded that she could not afford another
9 one. Ms. Sheridan prepared her appeal on her own as quickly as she could. Ms. Sterling again
10 restated that they asked when an appeal was due and the City Attorney was mistaken as to the date
11 the Planning Commission Meeting took place and provided the wrong 10-day period and changed
12 her mind about when it was due. Ms. Sheridan also was told by Planner Davies that as long as it was
13 in before 12:00 noon, it would be accepted. Ms. Sheridan turned it in before that time.

14
15 Ms. Sterling stated that by the City notifying residents of the meeting, the City was recognizing the
16 Appeal and choosing to move on it. She also claimed that she has an audio recording of the City
17 Attorney wanting to move beyond debating the date of the appeal because the City acknowledged
18 that they were moving forward and that Planner Davies was told to not discuss the timeliness of the
19 Appeal on his slide presentation because she made a mistake in telling Ms. Sheridan when it was
20 going to be due.

21
22 Board Member Christiansen commented that the Board was wasting their time until they can speak
23 with Attorney Petersen. Mr. Dexter asked to respond to Ms. Sterling's comments but Board
24 Member Christiansen said that the Board could not move on the matter until they hear from Attorney
25 Petersen. Chair Johnson recognized Mr. Dexter before the vote on the motion.

26
27 Mr. Dexter commented that this situation shows the need for an attorney. If it's 10 days, the
28 Appellant needs to know that it is 10 days, and the Code is very clear. He stated that the Board of
29 Adjustment can count and figure out what 10 days after June 11, 2015 is. He asked for a motion to
30 recognize that 10 days would have been June 21. Procedurally, he said, the Board does not even
31 need to consider the motion.

32
33 Chair Johnson said that the Board needs to sit down with counsel before any motion could proceed
34 to determine who erred in granting more time and whether granting more time was legal. Board
35 Member Christiansen agreed and said time needed to be allotted for counsel to provide guidance to
36 the Board. Board Member Phillips agreed and stated that more time would be allotted because
37 counsel may be able to show what other information the Board should consider. Chair Johnson
38 agreed. He did not want the situation to move forward until hearing from legal counsel.

39
40 Board Member Ellington said that his documents have two different dates, and he was not certain
41 which was correct. He felt, however, that the law had been violated and the Board should refuse to
42 hear the Appeal until they are told to hear it because the law is clear on the 10 days. He commented
43 that it was significantly delayed.

44
45 Board Member Christiansen indicated that a continuance would be better than a complete denial
46 because the Board needs to be advised on how to respond.

1 **MOTION:** Board Member Christiansen moved that the Board of Adjustment continue the matter
2 until the Board has received counsel from the City Attorney and then reconvene at the next regular
3 meeting. He also moved that City staff and the City Attorney receive all information regarding the
4 continuance and the dispute over the date of the Appeal. Board Member Phillips seconded the
5 motion.

6

7 Vote on motion:

8

9 Board Member Ellington - Nay

10 Chair Johnson - Nay

11 Board Member Fugal - Aye

12 Board Member Christiansen - Aye

13 Board Member Phillips - Aye

14

15 The motion passed 3-to-2.

16

17 Review and approval of the Board of Adjustment Minutes from July 16, 2015.

18

19 **MOTION:** Board Member Green moved to approve the minutes from July 16, 2015 as written.

20 Board Member Christiansen seconded the motion. The motion passed unanimously.

21

22 The meeting adjourned at 9:33 p.m.

23

24

25

26 _____
Frank Johnson

27 Chair, Pleasant Grove City Board of Adjustment

28

29

30

31 _____
Barbara Johnson

32 Secretary

33

34 Date Approved: _____