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PLEASANT GROVE CITY  
BOARD OF ADJUSTMENT MINUTES  
June 26, 2014

**5:00 PM BOARD OF ADJUSTMENT MEETING**

**Present:** Vice-Chair-Stephanie Green, Frank Johnson, Pat Ellington, Gail Christiansen and Milt Fugal

**Excused:** Chair Tom Petersen, Sterling Wadley

**Staff:** Community Development Director Ken Young, Planning Intern Marcus Wager, and Planning and Building Technician Barbara Johnson

Vice Chair, Stephanie Green, welcomed those present and called the meeting to order at 5:00 p.m. In addition to Vice Chair Stephanie Green, the Board Members present were identified as Mr. Frank Johnson, Mr. Gail Christiansen, Mr. Milt Fugal, and Mr. Pat Ellington. She stated that Board Secretary, Barbara Johnson, properly noticed the meeting as required by the Open and Public Meetings laws. It was verified that there was no ex parte contact between Members of the Board and parties being heard tonight and no bias was formed by any members of the group. Voting members were identified as Mrs. Green, Mr. Johnson, Mr. Christiansen, Mr. Fugal, and Mr. Ellington.

**ITEM 1:** Public Hearing to consider the request of Andrea Bishop for a variance to City Code Section 10-9A-3, minimum lot area of the RR zone on property located at approximately 359 West 2900 North in the RR (Rural Residential) zone. **MANILA NEIGHBORHOOD**

**Applicant:** Andrea Bishop

**MOTION:** Mr. Christiansen moved to approve the agenda. Mr. Johnson seconded the motion. The motion passed unanimously.

Community Development Director, Ken Young, indicated that there have been several requests pertaining to this piece of property. He reported that the Bishops have owned this property for many years in the RR Zone. The property was identified on an aerial map displayed. Mr. Young stated that the property was approved as part of the Canyon Brook Subdivision approved over 10 years ago. The original intent was for the property to become a separate parcel, however, it was approved as part of Lot 7. The applicant claims that the engineer made an error and in designing the area there was a shortage in terms of square footage of 256 square feet.

1 Mr. Young stated that the applicant is seeking ways to subdivide the property and develop a home on  
2 it as was the intent to begin with. Due to the lack of having the correct minimum lot size the City  
3 could not issue a building permit for this property. The applicant has come before the City Council  
4 and Planning Commission on a number of occasions to request a zone change that would allow a  
5 piece of the property to be rezoned R1-20 which requires 20,000 square feet and would allow them  
6 to obtain a building permit and build a home on it. The City Council has been hesitant to approve  
7 the zone change because all of the surrounding properties are zoned RR and the change would  
8 constitute spot zoning. The City Council requested that the applicant find other method to solve  
9 their problem.

10  
11 Mr. Young stated that there is a provision in City Code that allows for lot size averaging. If there are  
12 sufficient properties in the subdivision that have more than one-half acre and they can average it out  
13 so that less than 25% of the acreage has less than one-half acre it can be approved. If this property  
14 had been approved this way when the plat was initially approved it would have qualified for lot size  
15 averaging. It could still qualify if the plat was reapproved. Amending the plat would require 100%  
16 approval of the property owners in the subdivision and there has been a significant amount of  
17 neighbors that do not want to approve that. The applicants have made an effort to obtain approval  
18 from neighbors but were not able to.

19  
20 The applicants went back to the City Council after the neighbors did not want to approve lot size  
21 averaging and asked again for a zone change. The City Council again denied their request and asked  
22 that they go to the Board of Adjustment to see if there was some way to approve a variance. The  
23 applicants were claiming that their non-self-imposed hardship was that the error was made by the  
24 engineer. They intended and understood that their property would qualify and found out after it was  
25 approved that it did not so they do not know how to develop the property.

26  
27 Mr. Young stated that some of the issues that came up with the City Council and Planning  
28 Commission were that some of the neighbors did not think the property was buildable because there  
29 is an existing easement listed on the plat as a temporary easement to allow emergency vehicle access  
30 through the area. The Fire Department determined that it is not a usable or desirable easement for  
31 them and they are willing to give it up. The neighbor to the north of the property uses the easement  
32 to access their property. Because of the slope on Canyon Road it is difficult to access the property  
33 from the front. The Bishop's indicated that they are willing to let that neighbor continue to use the  
34 easement. Mr. Young stated that there is sufficient room for a 4,000 square-foot home with or  
35 without the easement so there is not a concern regarding buildable area.

36  
37 Mr. Johnson stated that if there is enough buildable area with the easement it should not matter if the  
38 easement remains. He asked if the State owns Canyon Road up to the property. Mr. Young  
39 explained that the State owned the road so the property owners could not purchase additional land.

40  
41 Mr. Fugal asked if spot zoning is illegal. Mr. Young said it is not illegal but can be considered  
42 undesirable. The planning principal that was considered in this case is the vision for the area and the  
43 City Council did not want to create something that does not fit the vision for the area. The Rural  
44 Residential Zoning requires a minimum of a one-half acre lot but it also allows for larger animal  
45 rights. The R1-20 Zone does not. This type of zone change could create issues among neighbors.  
46 The neighbors were not interested in making changes to their zone or neighborhood.

1 The applicant, Andrea Bishop, gave her address as 2904 North 1230 West and stated that when the  
2 builder purchased Lot 7, which is the front portion of the lot, he did not want the back piece. They  
3 hired a surveyor and engineer to give the legal description and boundary that would subdivide the  
4 property. A few years later when they approached the City to see what needed to be done to develop  
5 the property they were notified that the lot was short 256 square feet.

6  
7 Mr. Johnson asked if the developer has built on the Lot yet. Mrs. Bishop explained that he has  
8 already built a home on Lot 7. They tried contacting neighbors and requested to purchase the  
9 number of feet needed but have not found someone interested in selling. Mr. Johnson asked if the  
10 developer has any extra property. Mr. Young stated that there was some property but the owners  
11 were not willing to sell any to the Bishops.

12  
13 The applicant, Jared Bishop, gave his address as 2904 North 1230 West and stated that the engineer  
14 was Fred Clark and the surveyor was David Thomas with Aztec Engineering. They owned Lot 7  
15 and originally intended to build a home on the property which is why they left it together. They later  
16 found another lot so they sold the property to a builder. They gave the builder the option of  
17 purchasing the entire thing or just the front portion of the property. At the time they subdivided the  
18 property they did not realize they were creating a problem. They knew they would have to go  
19 through the City process in the future which is why they hired the engineer and surveyor.

20  
21 Mr. Bishop stated that he understands that they subdivided the property which could look like a self  
22 imposed hardship, but he countered that they hired two professionals to avoid the situation they are  
23 currently in. He felt that was the reason it is not self imposed. Over the past 10 years the applicants  
24 have tried to purchase ground and searched for many other solutions and people have either been  
25 unwilling or unable to sell their property. He felt that this is the best solution for the City, the  
26 applicant and the neighbors. It allows the property to stay in the RR Zone and does not cause the  
27 conflict that the neighbors were concerned about especially regarding animal rights. The lot is  
28 currently sitting vacant and is unusable for any other use or development.

29  
30 Mr. Bishop stated that it has been 10 years since the lot was split and they have been working on  
31 resolving this issue since then. The lot touches four other properties and all have enough excess land  
32 to allow them to purchase it but they either do not want to or cannot sell any of the property.

33  
34 Mr. Christiansen asked if the applicants were trying to build a home for themselves or to sell.  
35 Mr. Bishop said they would either sell the lot to someone who wants to build a home or build their  
36 own to sell. They are happy to comply with all existing covenants with the neighborhood as it is  
37 now. He stated that the Committee would likely hear more about the easement but their intention at  
38 the time the subdivision went in was to allow the property owners to have that easement. The same  
39 engineer made a mistake on that as well. They plan on putting a permanent easement in place once  
40 they get improvements or approval as was always intended. The easement creates a safer entrance  
41 onto Canyon Road for both properties. Mr. Bishop showed the easement on the map and explained  
42 how they plan to enhance it.

43  
44 Mrs. Green asked for public comments.

45

1 Ken Card gave his address as 2899 North Canyon Road and identified himself as the neighbor to the  
2 north that currently uses the easement being discussed. His main concern was being able to continue  
3 to access the easement on the Bishops' property. Now that the Fire Department has chosen not to  
4 continue to use it as a safety easement they would like to make it a permanent easement for their  
5 home. They fear that the new property owners could put a fence up which would then cut off their  
6 access to Canyon Road. They are happy to move forward with the Bishop's plan and requested that  
7 the agreement regarding a permanent easement be put in writing.  
8

9 Karen Card gave her address as 2899 North Canyon Road and stated that they have neighbors to the  
10 south who have concerns that the permanent easement and property development could potentially  
11 cause something to block the flow of the Murdock Canal and could cause a flood. She wanted the  
12 Board of Adjustment to be aware of that concern. She reiterated the importance of putting the  
13 promise of a permanent easement in the plat. She added that they are happy to share the driveway if  
14 everything is set in stone.  
15

16 Mr. Johnson said the Card's would likely have to work out those details with the Bishops and  
17 whoever purchases the property because the Board of Adjustment would not have anything to do  
18 with that. He said their request would be in the minutes.  
19

20 Mr. Young said these are items that would be addressed in the subdivision plat which would be  
21 required to be completed before any home could be built.  
22

23 Mr. Christiansen asked where the Bishops planned to access Canyon Road from their property.  
24 Mr. Bishop stated that the emergency access portion of the easement would be removed and the  
25 remainder of the easement configured to work as a driveway for both the Card and Bishop  
26 properties. He showed the access on the map.  
27

28 Mrs. Green closed the public hearing.  
29

30 Mr. Fugal stated that it appeared that there were some properties that were under the one-half acre  
31 requirement. Mr. Young stated that lot size averaging has already occurred but there is room for an  
32 additional lot to be added to that. The applicants were not able to obtain 100% agreement from all of  
33 the property owners in the subdivision. Mr. Young said that the neighbors likely did not approve the  
34 lot size averaging because it can alter the financing for current lots and would require people to work  
35 with their banks.  
36

37 Mr. Bishop said the biggest issue was that there would actually be a new subdivision and description  
38 and everyone would have to go to their mortgage companies and would have to go through a  
39 potentially lengthy and expensive process to make the changes. It did not logistically make sense.  
40 The engineer who did the plat and later subdivided the second plat is the same engineer. He has  
41 worked with Fred Clark, the engineer, many times and has never had a problem with him before.  
42

43 Mr. Christiansen said that the main question is if this issue is self imposed. He felt that the applicant  
44 made a good faith effort. If he hired an engineer who came back with a report and numbers it would  
45 be hard to know if the report was incorrect. That is why you hire a professional.  
46

1 Mrs. Green said there are five criteria that need to be discussed. The criteria were as follows.

- 2  
3 1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the  
4 applicant that is not necessary to carry out the general purpose of the zoning ordinance.  
5 Mr. Fugal felt that literal enforcement of the ordinance would create an unreasonable  
6 hardship for the applicant. The applicant has tried to correct the mistake in ways that are  
7 reasonable and has not been successful. To deny use of the property over 256 square feet did  
8 not seem reasonable.

9  
10 Mr. Ellington agreed with Mr. Fugal and stated that if anyone put themselves in the shoes of  
11 the Bishops they would ask themselves if they did their due diligence and made sure they did  
12 everything possible. Mr. Ellington felt the Bishops had done everything they could to  
13 resolve the issue until finally ending up before the Board of Adjustment. He did not see any  
14 self-imposition. They hired professionals that made mistakes.

15  
16 All of the Board Members expressed their support.

- 17  
18 2. There are special circumstances attached to the property that do not generally apply to other  
19 properties in the same district. Mr. Ellington said that 256 square feet is a special  
20 circumstance. There was a great deal of subdividing on the property and this is the only error  
21 that has been made. He believes that everyone involved truly thought that everything was in  
22 good order and was correct.

23  
24 All of the Board Members expressed their support.

- 25  
26 3. Granting the variance is essential to the enjoyment of a substantial property right possessed  
27 by other property in the same district. The Board said if this property is not developed it will  
28 remain an empty lot full of weeds, which could ultimately be a fire danger. Mr. Ellington  
29 said if they grant the variance it will give the applicant exactly the same property rights as  
30 everyone else in the area which is good for the City plan.

31  
32 All of the Board Members expressed their support.

- 33  
34 4. The variance will not substantially affect the general plan and will not be contrary to public  
35 interest. All Board Members were in favor.

- 36  
37 5. The spirit of the zoning ordinance is observed and substantial justice is done. Mr. Fugal said  
38 this is such a minor shift to the property line. The applicants have taken over 10 years to try  
39 and correct this error. Approving this will avoid unnecessary and undesired spot zoning.  
40 Pleasant Grove will not have Rural Residential in very many areas for long and the Board felt  
41 it was important to protect the few areas that still are RR Zone.

42  
43 All of the Board Members expressed their support.

44  
45 **MOTION: Mr. Ellington moved to approve the request of the Bishops for a variance of 256**  
46 **square feet from Pleasant Grove Municipal Code 10-9A3 that requires a building lot size of at**

1 least 21,780 square feet to allow them to obtain a building permit to build a home on the  
2 existing lot size of 21,524 square feet and added to the motion the granting of the right of way  
3 to the property owners to the north to allow for permanent property access. Mr. Fugal  
4 seconded the motion. The motion passed unanimously.

5  
6 ITEM 2: Approve Board of Adjustment Minutes from May 15, 2014.

7  
8 **MOTION:** Mrs. Green moved to continue approval of the minutes to the next meeting. Mr.  
9 Ellington seconded the motion. The motion passed unanimously.

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11 Mr. Christiansen moved to adjourn. Mr. Fugal seconded the motion. The meeting adjourned at  
12 5:53 p.m.

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16 \_\_\_\_\_  
17 Stephanie Green  
18 Vice-Chair, Pleasant Grove City Board of Adjustment

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21 \_\_\_\_\_  
22 Barbara Johnson  
23 Secretary

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25 Date Approved: \_\_\_\_\_