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2
3 PLEASANT GROVE CITY
4 BOARD OF ADJUSTMENT MINUTES
5 March 20, 2014

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7 **6:30 PM BOARD OF ADJUSTMENT PRE MEETING**
8

9 **PRESENT:** Chair Tom Petersen, Vice-Chair-Stephanie Green, Frank Johnson, Gail Christiansen,
10 Milt Fugal and Pat Ellington

11 **Excused:** Sterling Wadley
12

13 **STAFF:** Community Development Director Ken Young, Planning Intern Marcus Wager and Planning and
14 Building Technician Barbara Johnson, City Engineer Degan Lewis
15

16 **Applicant:** Mark Greenwood
17

18 Chair Petersen welcomed those present and called the meeting to order at 7:00 p.m. In addition to
19 Chair Tom Petersen, the Board Members present were identified as Mrs. Stephanie Green, Mr. Frank
20 Johnson, Mr. Gail Christiansen, Mr. Milt Fugal, and Mr. Pat Ellington. He asked the Board
21 Secretary, Barbara Johnson, if the agenda had been properly noticed as required by open and public
22 meetings laws. Mrs. Johnson said yes. It was verified that there was no contact between Members of
23 the Board and parties being heard tonight and no bias was formed by any members of the group.
24 Voting members were identified as Mrs. Green, Mr. Johnson, Mr. Christiansen, and Mr. Fugal. Mr.
25 Ellington was acting as the alternate.
26

27 Review and approve the minutes from February 20, 2014, meeting.
28

29 **MOTION: Mr. Christiansen moved to approve the minutes of February 20, 2014, as corrected.**
30 **Mrs. Green seconded the motion. The motion passed unanimously.**
31

32 ITEM 1 Public Hearing to consider the request of the Boyer Company for variances from the
33 Pleasant Grove City Code in 1) Section 11-3-5A, Block Standards: Length, to allow for a cul-de-sac
34 with a length of 1,650 feet having no alley, 2) Sections 10-15-14A and B, to allow for the creation of
35 two flag lots on property that is not an historical deep lot, and 3) Section 10-15-14-H4 to allow for
36 two flag lots on a cul-de-sac, on property located at approximately 400 North between Dalton Drive
37 and 1350 East known as the Walker Ridge Subdivision in the R-1-12 (Single-Family Residential)
38 zone. **GROVE CREEK NEIGHBORHOOD**
39

40 **MOTION: Mr. Christiansen moved to approve the Order of the Day. Mr. Johnson seconded the**
41 **motion. The motion passed unanimously.**
42

1 Community Development Director, Ken Young, presented the staff report and stated that three variances were
2 being requested. Because the plat was presented in a preliminary format, the Planning Commission
3 recommended it be approved based on certain conditions. One was that they provide access to the property.
4 The applicant's response was that some items don't meet City code. One was that the planned access road
5 was difficult to provide. They in turn wanted to eliminate it, which creates a block length longer than the
6 1,350-foot maximum that is permissible by code. The proposed length would be 1,650 feet if the proposed
7 access road is not provided. A planned easement was proposed through a lot that would access the northern
8 portion and creates a flag lot. Potential problems were identified. The first was that the code doesn't allow
9 for flag lots on cul-de-sacs. Another was that the flag lot is being created in this location. The intent of the
10 Flag Lot Code specifies that it is intended for historical feed lots and not for the maximization of
11 development. Director Young explained that it creates the need for another variance.
12

13 City Engineer, Degan Lewis, clarified that the variance request includes a block length with no alley. He
14 noted that a mid-block alley would be necessary at about 800 feet. The Board suggested ways to address
15 geometric issues that arose from the terrain of the property and the location. They were also trying to meet
16 the requirement to extend the improvements to adjacent property owners so that they have the same
17 opportunity. Based on the information provided, it did not appear that they could meet those standards. The
18 only option remaining was to determine whether the request meets the criteria for a variance.
19

20 Access issues were discussed. Engineer Lewis explained that the development needs to provide means
21 whereby the applicant can develop. Buildable lot and grade issues were discussed. Engineer Lewis stated
22 that based on what was provided by the applicant, if the road were to be extended, because of the grade
23 difference, the fill required to support the road would make the top of the slope almost to 1300 East and a
24 portion of the property unbuildable. He believed it would be possible but there would be consequences.
25 Engineer Lewis stated that part of the challenge had to do with the fact that the City has previously approved
26 an arrangement that violates current standards, which is the avoidance of creating double frontage lots.
27

28 Mr. Fugal asked about the engineer's analysis contained in the staff report. He explained that the Board does
29 not consider economic loss or gain on the part of the applicant. He asked Engineer Lewis if that was
30 considered in his review. Engineer Lewis considered it an unreasonable hardship on the part of the applicant.
31 Whether that presents a substantial impact to the applicant's property rights should be determined by the
32 Board.
33

34 Mr. Fugal asked about the grade on 400 North if it were developed to tie into 1350 East. Engineer Lewis'
35 understanding was that the grade that would have to be part of the design would be 17%. He clarified that
36 staff does not duplicate the effort of an applicant. The ordinance requires an applicant hire a licensed
37 engineer to prepare plans. Staff reviews the plans that are prepared and ensures that City standards are met.
38 Staff assumes that the licensed professional is doing appropriate work and providing accurate information.
39

40 Mr. Johnson asked if the City requires an applicant to include grades and elevations on the site plan.
41 Engineer Lewis confirmed that grades and elevations are required and that information is provided in the
42 plans. He explained that the applicant was asked to consider extending the cul-de-sacs up rather than
43 extending 1400 East. The expected grade was 33% on 1400 East, which was not an option.
44

45 The applicant's representative, Mark Greenwood, identified himself as an engineer with ALM Associates, the
46 engineering firm working with the property owner, The Boyer Company. The Boyer Company asked him to
47 represent them at tonight's meeting. Mr. Greenwood gave a history of the project and stated that the property
48 was originally owned by the Walker Family. It was sold to Henry Walker Homes earlier in the year. Henry
49 Walker Homes then contracted with The Boyer Company to develop this piece as well as a lower piece. They
50 finished the work on Walker Ridge Plat A and began work on the design of Walker Ridge Plat B. They
51 attended a meeting with the Planning Commission where they presented their preliminary design, which was

1 described. Mr. Greenwood explained that in an effort to provide access, they first designed a full-size street.
2 He met with the City Attorney and presented that option to her. She initially thought the City could accept a
3 dedication but understood that it would be impractical to actually build the road. A minimum 20-foot
4 easement would be necessary. That was exceeded in the lower portion in an effort to provide as much room
5 as possible should they desire to make a connection. He was not sure that would happen and recognized it
6 would be a very difficult place to develop.

7
8 Mr. Greenwood stated that 10 to 12 years ago Mr. Walker sold off some of the property. His understanding
9 was that at that time he completed the improvements on the property. Their intent was to complete the street,
10 offer a dedication, and make a connection. In the process of designing the road, the profile was set on the
11 natural grade of the road and far exceeded the 10% limit. The grade, in actuality, was closer to 17% to 20%.
12 Other alternatives were pursued but proved to be unsuccessful. He noted that the 17% grade is with no
13 landing at the intersection. Mr. Greenwood stated that typically a landing is required as it approaches the
14 intersection so that cars can stop and see in both directions. Other solutions were sought but not found. The
15 option at that point was to build the road with reasonable grades and vacate one section where they would not
16 be required to install ADA ramps. Mr. Greenwood stated that Boyer has no intent to do anything with the
17 road and will leave it as is. The desire was to leave an easement through the section. In an effort to eliminate
18 a street, the question arose with Fire Marshall, Corey Cluff, about road grades. He recommended one road be
19 eliminated as long as an effort is made to reduce the remaining grade.

20
21 Mr. Johnson asked about sidewalks and ADA requirements. Mr. Greenwood commented on the ADA
22 requirements and commented that he found it interesting that the ADA requires a certain ramp design at
23 intersections but they have no control over anything outside of the ramps. He explained that a ramp can be
24 designed that allows a wheelchair to cross the intersection but it cannot go anyplace else.

25
26 Mr. Ellington asked about the possibility of widening the cul-de-sac to 35 feet to make it compliant with the
27 exception of the problem with the adjacent property. Mr. Greenwood agreed to look at that alternative. He
28 noted that the right-of-way requirement is 25 feet. The intent was to provide a solid edge line for a driveway
29 on the east side. That was something that, based on the contour, might be built as a driveway. The intent was
30 to leave as much room as possible for a driveway.

31
32 Mr. Fugal asked about the length of the stem from the cul-de-sac back to the property. Engineer Lewis
33 estimated it to be 300 to 310 feet. It was noted that over 300 feet requires another variance.

34
35 Mr. Ellington found it odd that the property owners were not present as the applicant. He inquired as to
36 whether The Boyer Company wants to purchase additional property. Mr. Greenwood stated that that was the
37 first thing they tried to do since they thought it would be the easiest to incorporate it into the subdivision.
38 They did not intend to build on it but wanted to include it in this lot. Their initial request to the property
39 owners in Omaha was to purchase additional property, however, they received no response.

40
41 Mr. Ellington asked Mr. Greenwood if he considered the sagebrush knoll to be an appropriate place to build a
42 home in terms of stability. Mr. Greenwood stated that the Walkers originally wanted to pursue development
43 there. They spoke with neighboring property owners in an effort to be homogeneous. To that end, they
44 performed extensive testing and study with respect to slope stability. It was determined that there are several
45 areas that are problematic and would require extraordinary measures to build on. Some areas are stable but
46 many are not.

47
48 Chair Petersen opened the public hearing.

49
50 Mrs. Eileen Strasburg gave her address as 538 Dalton Drive. She expressed opposition to the proposal and
51 expressed concern about stability. She asked how stable the building lots are near the cul-de-sac and if a

1 stability study has been performed to make that determination. Mrs. Strasburg was informed that that issue is
2 not an item for consideration by the Board tonight. Mrs. Strasburg's primary concern was with stability.
3 Mr. Johnson indicated that he has been on the site and worked as a builder for 61 years. He noted that the
4 property to him appears stable. Mrs. Strasburg was concerned that once building takes place, if it is unstable,
5 there will be problems. Her experience was that the ground in the area doesn't remain stable and action needs
6 to be taken to help it remain so.

7
8 Mr. Matt Erickson gave his address as 564 Dalton Drive and stated that with respect to 1350 East, it appears
9 that the grade is part of tonight's discussion. He asked how high it will be brought up along the backside of
10 some properties and if retention walls will be at the level of the current backyards. He expressed concern
11 with the height of the road.

12
13 Mrs. Charlotte Hansen gave her address as 330 North 1300 East. Due to engineering and other problems she
14 hoped fewer homes would be developed with one road. She wondered who would purchase lots with double
15 frontage. She suggested the problem be resolved and larger lots proposed with one road.

16
17 Mr. Greenwood responded to the public comments and recognized concerns with stability. He stated that
18 there are soils 40 feet beneath the surface that could be problematic. A Geotechnical Study was conducted,
19 which identified areas of concern. He felt those issues had been addressed appropriately in terms of the types
20 of structures proposed. Mr. Greenwood explained that Boyer's intent was to develop lots with the front door
21 facing east and walkout basements. They were very comfortable with the stability study but recognize there
22 is an inherent risk anytime construction occurs on a hillside. They addressed those concerns to the best of
23 their ability.

24
25 With regard to the grade of 1350 East, Mr. Greenwood stated that the initial design showed a retaining wall.
26 He indicated that Mrs. Allred takes pleasure in the activities that her family and neighbors have enjoyed on
27 the property and she doesn't want to disrupt that. As a result, effort was made to pull the road back in order
28 to straighten it out and eliminate the retaining wall.

29
30 With respect to the cul-de-sac, Mr. Greenwood stated that this is a challenging site to develop. The cul-de-sac
31 cannot be on a slope since doing so would be dangerous. It must be flattened out, which leaves a resulting
32 steep grade from the back of the cul-de-sac to the street. Safety concerns were expressed.

33
34 Mr. Fugal mentioned the possibility of 400 North being made into a road and the properties deeded to the
35 adjacent landowners. Mr. Greenwood spoke to the Boyers about the matter and stated that they would want
36 to grant the City an easement for the full 56-foot width for the maintenance of utilities. Several possible
37 options were discussed. He noted that a restriction would need to be included that no fences be built in the
38 center because of the utilities easement. As far as title, the Boyers had no preference. Mr. Greenwood stated
39 that with respect to the number of lots, their intent was not to try to gain lots but figure out what is the most
40 practical approach.

41
42 There were no further public comments. The public hearing was closed.

43
44 Mr. Fugal had concerns about eliminating the alley and preferred it be deeded to adjacent property owners.
45 Grade issues were discussed.

46
47 Mr. Ellington suggested the Board review the five criteria, which were read by Chair Petersen and outlined as
48 follows:

- 49
50 1. Literal enforcement of the City's ordinance will cause an unreasonable hardship for the applicant that
51 is not necessary to carry out the general purpose of the zoning ordinance. A determination of

1 reasonable and unreasonable needs to be made. There was some question as to whether the shape or
2 topography of the property creates a hardship. The Board determined that there was no unreasonable
3 hardship.

4
5 2. There are special circumstances attached to the property that do not generally apply to other
6 properties in the same district. It was determined that slope is not a special circumstance.

7
8 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other
9 property in the same zone. The Board determined that the property owner was not being denied any
10 right.

11
12 4. The variance will not substantially affect the General Plan and will not be contrary to the public
13 interest. It was determined that granting the variance would not substantially affect the General Plan
14 or be contrary to the public interest.

15
16 5. The spirit of the zoning ordinance is observed and substantial justice is done. The Board determined
17 that the road was not needed for safety. The purpose of the zoning ordinance is to maximize the
18 utilization of the property and rights to the property owners and protect citizens. It was noted that the
19 applicant cannot maximize the number of lots and keeping the road is not the best alternative for the
20 City.

21
22 Mr. Johnson asked if the Planning Commission could close the road by order. Director Young commented
23 that they could deny a plat based on evidence that there was a safety concern. There was some question as to
24 how the road can go in with the maximum grade of 10% by ordinance. It was noted that the Planning
25 Commission can require a steeper grade when, in the opinion of the City Engineer, the best development of
26 the land is thereby secured. The Fire Marshall, however, had specified the maximum grade he will accept to
27 fight a fire.

28
29 It was reported that the Planning Commission cannot violate the ordinance, which is the reason for coming
30 before the Board of Adjustment. In this case, the general rules do not make sense. In response to a question
31 raised, Mr. Greenwood stated that the grade will be 17% based on there being no landing. That, however,
32 also violates the design code.

33
34 Engineer Lewis gave a demonstration on the curvature of the road and how to get the percentage of grade.
35 The Planning Commission can grant an exception, however, it could be disputed by the Fire Marshall.

36
37 The Board took a short recess.

38
39 Mr. Fugal recommended the Board review the five criteria again.

40
41 1. Literal enforcement of the City's ordinance will cause an unreasonable hardship for the applicant that
42 is not necessary to carry out the general purpose of the zoning ordinance. The Board determined that
43 an unreasonable hardship would be created.

44
45 2. There are special circumstances attached to the property that do not generally apply to other
46 properties in the same district. The Board determined that special circumstances exist. The special
47 circumstances were identified as conflicting ordinances.

48
49 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other
50 property in the same zone. The Board determined that the variance is essential based on the

1 conflicting ordinances. It was noted that without the variance the applicant cannot develop the
2 property.

- 3
4 4. The variance will not substantially affect the General Plan and will not be contrary to the public
5 interest. The Board determined that the above criterion applies and that public safety issues exist.
6
7 5. The spirit of the zoning ordinance is observed and substantial justice is done. The Board determined
8 that criterion number five applies with the overall spirit of the ordinance.
9

10 **MOTION: At the Public Hearing, Mrs. Green moved that the Broad grant variance 1) and eliminate**
11 **the alley requirement on 400 North and lengthen 1350 East to 1,650 feet as requested by the applicant**
12 **subject to the following conditions:**

- 13 1. **Provide blockage of 1350 East and provide access to the Nathan and Sarah Holmes property.**
14 2. **Block off the north side of Dalton.**
15 3. **Prohibit fencing.**

16 **Mr. Fugal seconded the motion. The motion passed unanimously.**

17
18 Part 2 of the variance request was next considered. Engineer Lewis read from Section 11-3-4 of the Street
19 Development standards and from City Code.

20
21 Mr. Christiansen commented that the applicant needs to comply with the code and provide access to adjacent
22 property owners who cannot be landlocked. Engineer Lewis informed the Board that the code requires any
23 development provide access to adjoining property if not already provided. It was determined that the property
24 cannot be accessed from the west or the north. What is proposed was deemed to be the best potential access.
25 It was noted that this can be done legally and comply with the ordinance. Mr. Fugal commented that flag lots
26 do not come of a cul-de-sac and that what is proposed is contrary to the code. It was noted that the Board
27 should not authorize the creation of landlocked property.
28

29 Chair Petersen opened the public hearing.

30
31 Mrs. Hansen expressed concern with there being too many lots.

32
33 The variance request was read and the following five variance criteria were reviewed and discussed:

- 34
35 1. Literal enforcement of the City's ordinance will cause an unreasonable hardship for the applicant that
36 is not necessary to carry out the general purpose of the zoning ordinance. The Board determined that
37 the applicant must provide access to his neighbors' landlocked property.
38
39 2. There are special circumstances attached to the property that do not generally apply to other
40 properties in the same district. The Board determined that special circumstances exist.
41
42 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other
43 property in the same zone. The Board determined that this criterion applies in this case.
44
45 4. The variance will not substantially affect the General Plan and will not be contrary to the public
46 interest. A determination was made that approval of the variance will not affect the General Plan and
47 will create an orderly flow of development.
48
49 5. The spirit of the zoning ordinance is observed and substantial justice is done. It was determined that
50 this criterion would be met.
51

1 **MOTION: At the Public Hearing, Mr. Johnson moved that the Board grant the variance on 1350**
2 **East to the end of the property at the north end of Lot 32 and that it be no longer than 300 feet. Mr.**
3 **Christiansen seconded the motion. The motion passed unanimously.**

4

5 Mr. Greenwood thanked the Board for being so thorough and well prepared.

6

7 Mr. Christiansen moved to adjourn. The meeting adjourned at 9:36 p.m.

8

9

10

11

12 Tom Petersen
13 Vice-Chair, Pleasant Grove City Board of Adjustment

14

15

16

17 Barbara Johnson
18 Secretary

19

20 Date Approved: _____