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2
3 PLEASANT GROVE CITY
4 BOARD OF ADJUSTMENT MINUTES
5 August 18, 2011
6

7 **PRESENT:** Chair Sterling Wadley, Vice-Chair James Malone, Stephanie Green, James Butterfield,
8 Frank Johnson and Steve Phelon.

9 **Excused:** Tom Petersen.

10 **Absent:**

11
12 **STAFF:** Ken Young, Community Development Director, Degen Lewis, City Engineer and Barbara
13 Johnson, Secretary
14

15 **Applicants:** Kari Dye, representing Mr. Preston Gerber and Nick Newbold.
16

17 **7:00 PM BOARD OF ADJUSTMENT MEETING**
18

19 Chair Wadley welcomed everyone to the meeting and called the meeting to order at 7:00 pm. He
20 asked everyone to silence their cell phones. In accordance with Article II, Paragraph 2.3 of the Board
21 By-laws he indicated that he would preside at this hearing and the meeting is called to order. In
22 addition to myself the Board members present tonight are Vice-Chair James Malone, Mr. James
23 Butterfield, Mrs. Stephanie Green, Mr. Stephen Phelon and alternate member Mr. Frank Johnson. The
24 Board Secretary, Mrs. Johnson, is present and I would request that she record in the minutes of this
25 hearing that we have the required Quorum present and all members here tonight will be voting. The
26 official minutes of this hearing will be available for public review, when published. He introduced the
27 city staff Mrs. Barbara Johnson, secretary and Ken Young, Comm. Dev. Director.
28

29 Chair Wadley asked Mrs. Johnson if this meeting and the agenda have been publicly advertised. Mrs.
30 Johnson stated that they have. He also asked the members if they received their staff briefing packets.
31 All members said yes. Have each had ample time to study the packet? All members said yes. Has
32 there been any ex parte contact with the applicant? All members said no. Are there any comments
33 and/or questions regarding the agenda? All members said no.
34

35 Chair Wadley stated for the record: This Board is concerned ONLY with the REQUEST, AS
36 STATED, of the applicant(s) - We have no jurisdiction or authority to try to propose other solutions or
37 in any sense solve the problem presented before us.
38

39 Chair Wadley then read the agenda. He asked if there were any questions or comments on the agenda.
40 He then called for a motion to make the agenda the order of the day.
41

1 **MOTION:**

2
3 Vice-Chair Malone moved that the publicly advertised agenda be accepted as the Order of the Day for
4 tonight's meeting. Mr. Johnson seconded the motion, and all members voted "Aye" Motion carried.
5 (See attachment #1)
6

7 ITEM 1 Public Hearing to consider the request of Preston Gerber for a determination of the existence of a
8 Nonconforming Use per Section 2-4-5-I specifically with regards to lot width for property located at
9 approximately 681 East 100 South in Pleasant Grove. **SCRATCH GRAVEL NEIGHBORHOOD**

10
11 Chair Wadley read Item 1 and then turned the time over to Mr. Ken Young.

12
13 Mr. Young showed an aerial of the property and then read Section 2-4-5-I Nonconforming Uses: The Board of
14 Adjustment may make determinations regarding the existence, expansion or modification of nonconforming
15 uses.
16

17 Mr. Young said the subject property was illegally subdivided (by deed, without a final plat approved
18 and recorded) around 1996, *by a previous owner*. Although not done through city processes, the lot
19 has been recognized as a separate parcel of land with its own tax ID number.
20

21 Mr. Young said had the City's subdivision process occurred when the lot was divided and sold, it
22 would have been approvable and able to be considered legal in its current size and width. The lot has
23 8,580 square feet, which exceeds the minimum 7,000 square feet in the R1-7 zone. The lot width is 65
24 feet, which is less than the current requirement of 70 feet. However, *at the time the lot was divided*
25 *and sold, the City Code requirements allowed for a minimum lot width of 65 feet.*
26

27 Mr. Lewis said he was contacted a number of months ago with a request to find out what the zoning
28 was and what could be built on this property. As he looked at this property, it became clear that it did
29 not meet the lot width requirement for the zone, which is 70' it was too narrow. As he researched this
30 property, he found that the parcel was created by meets and bounds deed description and didn't go
31 through the subdivision process, had it gone through the subdivision process we would have a
32 recorded lot and this issue would not be an issue.
33

34 Mr. Lewis said the issue of this parcel not meeting the zone requirements was noted and a notice of
35 nonconforming was recorded against the property with a statement saying, "If you want to build on
36 this parcel you will have to increase the lot width 5 ft."
37

38 Mr. Lewis said at the time this parcel was created, the ordinance did allow for the 65' of lot width.
39 When the meets and bounds description was recorded, this lot did conform to the requirements of the
40 R1-7 zone. This parcel appears to be a good candidate for granting a nonconforming use because it
41 did conform at the time it was created and the city has since changed the ordinance.
42

43 Mr. Butterfield asked Mr. Lewis how long has this parcel of land been recognized as a separate parcel
44 of land with own tax ID. Mr. Lewis responded and said 1996. Mr. Butterfield asked if the taxes have
45 been paid to both the city and the county. Mr. Lewis said yes, but paying the taxes is not enough to
46 create legal status.
47

1 Mr. Young said since the County has assigned the parcel separate taxation status, and there exists no
2 opportunity to widen the lot to meet current requirements, there is no point for creating, approving or
3 recording a final plat. It has already achieved the necessary status that the County recording would
4 achieve. It is possible that a variance could be sought from the lot width requirement, but a final plat
5 would still need to be approved and recorded. Since this would achieve nothing not already existing,
6 the final plat requirement was deemed the best code section for seeking a variance.

7
8 Mr. Phelon asked what lot this parcel was broke off from. Mr. Lewis answered and said the middle
9 parcel (lot 28) used to have lots 30 and 32 attached to it. Through a series of transactions these three
10 lots were created. Mr. Phelon then asked if this lot will have to come into compliance with current
11 standards as far as improvements. Mr. Lewis said yes. If the nonconforming use is granted, the
12 applicant will have to come in and pull a building permit for the site. One of the requirements for
13 building on an empty lot without complete street improvements is that all improvements will be
14 completed as a condition of issuing a building permit.

15
16 Mr. Malone said this lot was in compliance at one time with the 65' lot width and then the city
17 changed the lot width to 70', why did the city change the zone? Director Young said currently the side
18 yard set backs are 8' and thought it was adjusted to accommodate better building.

19
20 Mr. Johnson said the lot across the street only has 55' of lot width and does not meet the current lot
21 width requirement of the zone.

22
23 Applicant: Kari Dye came forward and said she is a real estate agent representing Mr. Gerber. She
24 handed out a packet to the board members that included a few pictures of the property. (Attachment 1)
25 This property was purchased in 1986 and she said Mr. Gerber would like to sell this property. She said
26 this property has been listed on the market but did not get must interest because it is not a build able
27 lot. She said to build a house on this lot would be a great improvement in this neighborhood.

28
29 Chair Wadley said this is a public hearing and opened it up to the public. There were no comments.
30 He then closed the public hearing and brought the discussion up to the board.

31
32 Chair Wadley said in order to grant a variance all five criteria has to be met. He then started to go
33 through the five criteria. Mr. Lewis interrupted and said the applicant is requesting a nonconforming
34 use not a variance. Mr. Young said to grant a nonconforming use, you just need to make finding to
35 support your decision.

36
37 **MOTION: At the Public Hearing, Mr. Malone moved that the Board approve the request of**
38 **Preston Gerber for determination of the existence of a Nonconforming Use per Section 2-4-5-**
39 **I with regards to lot width for property located at 681 East 100 South with the following**
40 **findings:**

- 41 • **This is a hardship that was not brought on by the present property owner.**

42 Discussion:

43 Mr. Butterfield said before he votes on this motion, he wanted to know why they are requesting a
44 nonconforming use instead of a variance. Mr. Young said it was recommended from the city attorney
45 that a variance was not necessary because there are code provisions for determining a nonconforming
46 use.

1 Mr. Lewis responded and said this property did conform at the time it was created, but the subsequent
2 change of the ordinance makes it necessary for a nonconforming use.

3
4 Mr. Young said the board could go either way, they could grant a variance or a nonconforming use.

5
6 Mr. Phelon commented and said all zoning changes over time.

7
8 Mr. Butterfield said this lot was not created legally to begin with.

9
10 Chair Wadley asked Mr. Malone to repeat his motion.

11
12 **MOTION: At the Public Hearing, Mr. Malone moved that the Board approve the request of**
13 **Preston Gerber for determination of the existence of a Nonconforming Use per Section 2-4-5-**
14 **I with regards to lot width for property located at 681 East 100 South with the following**
15 **findings:**

16 **Mrs. Green seconded the motion, and the Board unanimously voted, “Aye”**

17
18 **Motion carried.**

19
20 ITEM 2 Public Hearing for the Board of Adjustment to consider the request of Nick Newbold for a
21 variance to the provisions of Pleasant Grove City Code Section 11-7-1, regarding the required approval and
22 recording of a final plat and issuance of building permits, for property located at approximately 492 South 250
23 West in Pleasant Grove. **SAM WHITE’S LANE NEIGHBORHOOD**

24
25 Chair Wadley read Item 2 and then asked if the applicant was present. Mr. Nick Newbold came
26 forward and wanted to clarify that this is a joint application. He said he represents the Small Business
27 Administration (SBA) who is the legal title owner and they have under contract to sell to Mr. Pete
28 Hunziker, owner of ProFab Welding.

29
30 Mr. Young read Section 11-7-1 from the city code. He then showed an aerial of the property and
31 explained that in 2005 the original undivided parcel of land (exhibit “A”) was owned by Reddekopp
32 Investment LC. On May 16, 2005, a warranty deed was recorded which transferred a portion of the
33 original parcel to Joseph Spencer and Les Southam, splitting the land into two parcels (exhibit “B”).
34 This deed created an illegal subdivision of the original parcel in that the original parcel was now two
35 parcels of land (i.e. a subdivision) and this subdivision did not go through the process required by
36 Pleasant Grove City.

37
38 Mr. Lewis said in this case we have a division of property that occurred by a meets and bounds
39 description by deed recorded at the county recorder’s office. The recorder is required by law to record
40 any document that is brought before them that is in the format by law and is signed by owner of
41 record. In the process of recording the deed in 2005, a little piece in the southwest corner was broken
42 off from the larger piece and the county assigned it a new tax ID numbers to these parcels.

43
44 Mr. Lewis can’t remember when this issue came to the city’s attention, but was aware that the property
45 had been divided into two parcels and the one parcel was landed locked. It wasn’t until later that he
46 realized how the parcels came into existence and there was a problem. Subsequently, the parties that
47 subdivided the property are no longer involved.

1 Mr. Lewis said the southwest parcel does not have any street frontage and is quite far from the street in
2 any direction and would be very expensive to bring a street to it in its current configuration and
3 location.

4
5 Mr. Lewis said when an illegal subdivision is noted, one solution to the problem is always to restore
6 the parcel as it was originally. In this particular case the parties involved have been unable to reach an
7 agreement that would allow that to happen. Mr. Lewis said the second option would be to go through
8 the formal subdivision process and do all the requirements, one requirement would be to provide street
9 frontage for both lots.

10
11 Mr. Lewis said the city has worked with the parties involved trying to find a way to resolve this
12 problem but has been unsuccessful. The applicant asked if they could move forward and request a
13 variance so they can get a building permit to expand the existing building on the larger parcel for the
14 business operation that are purposed. Mr. Lewis said one of the conditions the city places on an illegal
15 divided parcel is that the property owner cannot exercise those property rights that come with the land,
16 one being a building permit. Currently there isn't a way for the proposed buyer of the SBA's parcel to
17 get a building permit to do the expansion, so they are here tonight to request a variance to that
18 requirement in order that something can happen with this property and they can move forward.

19
20 Mr. Lewis said if the board grants a variance from the requirement that a building permit be issued
21 only on property that is legally subdivided then a building permit can be issued by the city and they
22 can move forward. The illegal subdivision will remain the same until the parties involved get it
23 resolved.

24
25 Mr. Johnson said the Title Company should have known about this parcel.

26
27 Mr. Butterfield said if the board grants a variance on this piece of property, they are creating another
28 problem, because the owner of the other parcel may want a building permit. Mr. Young said there are
29 some requirements that need to be met before issuing a building permit, one being you have to have
30 street frontage.

31
32 Applicant: Mr. Nick Newbold came forward and said he would like to explain his reason for asking
33 for a variance. He said the SBA gets title insurance and then insures loans made by other parties. This
34 loan was made in 2007 and at that time they had no idea that there was an illegal subdivision, the SBA
35 never took part in it nor did Mr. Hunziker all innocence victims of what happened.

36
37 Mr. Newbold said the SBA has failed in all negotiation efforts to purchase an adjoining parcel to cure
38 the subdivision issue. A standard subdivision plat describing the two parcels as currently divided is
39 also not possible as one of the two parcels (the one not owned by the SBA) would have no frontage on
40 a public street.

41
42 Mr. Newbold said he talked with Mr. Lewis, the city engineer and with Mrs. Tina Peterson, city
43 attorney to see what their options were in resolving this issue. Mr. Newbold told them that the SBA
44 cannot force the people to do anything, they cannot file suit against them. He said the only regret they
45 have is that Mr. Hunziker is unable to pull a building permit to expand the existing building so he can
46 continue working.

1 Mr. Johnson asked if Mr. Hunziker bought this property to expand his business. Mr. Newbold
2 answered yes.

3
4 Chair Wadley said this is a public hearing and opened it up to the public

5
6 Mr. Pete Hunziker came forward and said he had his business behind Rocky Mountain Welding for
7 23 years. He said he moved his business last year to the current nine acre location with the intent of
8 expanding his business. He said he has spent over \$340,000. to clean up the property and had no idea
9 that this property was illegally subdivided.

10
11 Mr. Hunziker said he builds water treatment equipment and roller coasters and needs more room to
12 expand his business. He is concerned that he will not get to expand this year because of the property
13 being illegally subdivided. He said he needs this variance so he can continue to work.

14
15 Mr. Nathan Jones came forward and said he didn't have an opinion one way or another on this issue.
16 He said in July of 2008 he bought this property and it came with a warranty deed that guaranteed a
17 permanent access and has been recorded at the Utah County Recorder office. He said he bought the
18 property from Les Southam and Joe Spencer.

19
20 Mr. Jones said he is working with the title company and has a claim in with the title company, but
21 they are very slow in responding and quite slow to answer any of their questions. He did say that
22 both Mr. Newbold and Mr. Hunziker have been great to work with. They have been very open to
23 purchasing the property; the purchasing price they have offered is way below what he currently has
24 debts on and he is waiting for the title company to come up with their portion to make the
25 transaction happen.

26
27 Mr. Jones said there is a lawsuit filed against Mr. Les Southam and Mr. Joe Spencer pushing them to
28 provide the access that they promised in their warranty deed that was filed and signed by both of
29 them.

30
31 Mr. Jones felt that both Mr. Newbold and Mr. Hunziker knew about the problems with this property
32 before they went into the agreement and bought the property.

33
34 Mr. Jones said he didn't want to hold up Mr. Hunziker's business and what he wants to do. He just
35 wants access to his property or for the title company to come up with a conclusion on how they are
36 going to resolve this issue, which is providing access to the property or paying for the damages that
37 they have caused.

38
39 Mr. Phelon said it is not unusual for more than one business to share an access.

40
41 Mr. Newbold said the SBA title policy said in 2007 there was a temporary easement for access and
42 then in 2008 after SBA's trust deed was recorded was when Mr. Jones received his deed from Mr.
43 Southam and Mr. Spencer that said the easement was permanent. When the foreclosure took place in
44 2010, it closed out the permanent access. Mr. Newbold said they are trying to negotiate something to
45 put these parcels back together.

1 Chair Wadley closed the public hearing and brought the discussion up to the board.

2
3 Mr. Butterfield said he is uncomfortable with granting a variance on a piece of property that is not
4 legally subdivided. Mr. Malone agreed.

5
6 Mr. Phelon said the variance request is on the legal piece of property. Mr. Jones has the illegal parcel.

7
8 Mr. Hunziker commented and said he wants nothing better than the property to go back to its original
9 state, but his hands are tied. He said he has made a good offer on the property to help get this resolved
10 and the SBA has also chipped in, it is now up to the title company.

11
12 Mr. Butterfield asked Mr. Jones if he agreed with the offer. Mr. Jones said their offer is very
13 reasonable.

14
15 Chair Wadley then read the five criteria and the board discussed each one.

16
17 **The Board of Adjustment may grant a variance only if:**

- 18 (i) **literal enforcement of the zoning ordinance would cause an unreasonable hardship**
19 **for the applicant that is not necessary to carry out the general purpose of the**
20 **zoning ordinance:** Mr. Malone said this is an unreasonable hardship for the property
21 owner. All members agreed and voted yes.
- 22 (ii) **there are special circumstances attached to the property that do not generally**
23 **apply to other properties in the same district:** Mr. Malone said there are special
24 circumstances attached to the property. All members agreed and voted yes.
- 25 (iii) **granting the variance is essential to the enjoyment of a substantial property right**
26 **possessed by other property in the same district:** All members voted yes.
- 27 (iv) **the variance will not substantially affect the general plan and will not be contrary**
28 **to the public interest:** All members voted yes.
- 29 (v) **the spirit of the zoning ordinance is observed and substantial justice done.** All
30 members voted yes.

31
32 Chair Wadley then called for a motion.

33
34 **MOTION: At the Public Hearing, Mr. Butterfield moved that the Board approve the request**
35 **of Nick Newbold for a variance to Section 11-7-1 regarding the requirement for the approval**
36 **and recording of a final plat for property located at 492 South 250 West, based on the**
37 **following findings:**

- 38 • **The vote (in favor of) was unanimously on all of the five criteria.**

39 **Mrs. Green seconded the motion, and the Board unanimously voted, “Aye” Motion carried.**

40
41 Review and approve the minutes from the April 21, 2011 meeting.

42
43 **MOTION: Mr. Malone moved to approve the minutes from the April 21, 2011 meeting as**
44 **corrected. Mr. Butterfield seconded the motion, and the Board unanimously voted, “Aye”**

45
46 **MOTION:**

47 Mr. Johnson made a motion to adjourn the meeting. Mrs. Green seconded the motion.

1 Meeting adjourned at 8:15 pm

2

3

4

5

6 _____
Sterling Wadley

7 Chair, Pleasant Grove City Board of Adjustment

8

9

10

11 _____
Barbara Johnson

12 Secretary

13

14 Date Approved: _____

15

16

17

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