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PLEASANT GROVE CITY
BOARD OF ADJUSTMENT MINUTES
December 15, 2016

7:00 P.M. BOARD OF ADJUSTMENT MEETING

Present: Chair Gail Christiansen, Vice Chair Milt Fugal, Board Members Dustin Phillips, Frank Mills

Staff: Community Development Director Ken Young, City Planner Daniel Cardenas, and Planning Tech Barbara Johnson, City Engineer Marty Beaumont

Excused: Board Members Stephanie Green and Jeremy Reutzel

Chair Christiansen welcomed those present and called the meeting to order at 7:00 p.m. It was confirmed that there had been no ex parte contact between Members of the Board and the parties being heard and no bias had been formed by any of the Members. Chair Christiansen took a moment to recognize the passing of former Board Member Pat Ellington.

MOTION: Board Member Fugal moved that the Board of Adjustments APPROVE the agenda, as written. Board Member Phillips seconded the motion. The Board Members unanimously voted “Aye”. The motion carried.

ITEM 1 - Public Hearing to Consider the Request of David and Marcey Holland for a Variance from City Code Section 10-9B-7 F1 which Requires All Accessory Buildings Located in the Rear Yard/Interior Side Yard to be Located No Closer than Three (3) Feet from the Rear Yard or Interior Side Yard Property Line. The Property is Located at Approximately 1201 West 930 North in the R1-8 (Single Family Residential) Zone. MUD HOLE NEIGHBORHOOD

Applicant: David and Marcey Holland

City Planner, Daniel Cardenas, presented a zoning map of the subject property. He explained that staff had been asked to visit the subject property to examine an existing accessory structure and determine if it was in compliance with the Code. The building is a concrete structure built into the concrete fence. Mr. Cardenas explained that the current ordinance requires a setback of three feet from the side and rear property lines. The structure in question did not comply with that requirement.

1 Board Member Mills asked when the main dwelling, fence, and accessory structure were
2 constructed. He also wished to know the year that the surrounding homes were built. He was
3 concerned that building inspectors who may have visited the properties did not observe or report
4 the Code violation.

5
6 Community Development Director, Ken Young, was not sure when the accessory structure was
7 built. He reported that the original structure was constructed with a flat roof, which may be the
8 reason it had gone unnoticed until now.

9
10 Board Member Mills asked if it would be permissible for the owner to move the structure to an
11 acceptable location and replace the fencing with simple chain. Mr. Young responded that the type
12 of fencing used to replace the walls would need to be discussed with the neighbors.

13
14 The applicant, David Holland, reported that he purchased the home the previous year and the fence
15 and attached accessory structure were already in place. The shed had a flat roof at the time of the
16 purchase; however, he soon discovered an excessive amount of black mold in the roof and had to
17 remove it. After some research, he determined that the best way to avoid leakage and black mold
18 in the future was to install a pitched roof. The roof he installed was at the minimum pitch allowed
19 and it sloped toward his property to avoid runoff into the neighbors' yards. Mr. Holland was
20 unaware that the structure was in violation of the Code when he purchased the property. He also
21 commented that even if the structure were moved, the neighbors would still be able to see the
22 newly installed roof.

23
24 Board Member Fugal commented that flat roofs are still used frequently in the community and
25 throughout the State. It was possible to simply replace the flat roof rather than install the pitched
26 roof.

27
28 Board Member Phillips asked Mr. Holland if he had had the home inspected prior to purchasing
29 it. Mr. Holland stated that the home had been inspected but the shed had not. He did not discover
30 the leak and black mold until several months afterward.

31
32 Chair Christiansen reminded the Board Members that the slope of the roof was not in question
33 tonight but rather the three-foot setback.

34
35 Chair Christiansen opened the public hearing.

36
37 Kylee Dalley gave her address as 1206 West 880 North, directly behind the subject property. She
38 discovered the new roof on the accessory structure in June and immediately started reviewing City
39 Code to see if the improvements were allowed. Mrs. Dalley also attempted to contact the property
40 owners with regard to the structure but she only received one message from them stating that they
41 would pay for removal of the structure if it was not in compliance with City Code. The property
42 owners asked Mrs. Dalley not to contact them again. Mrs. Dalley stated that construction
43 continued even after the applicant had received notification from the City regarding the Code
44 violation. Not only were the setback requirements not met, but the additional height to the structure
45 violated the fencing code. Mrs. Dalley read the language from the fencing ordinance limiting

1 fence height to six feet. Upon further questioning, Mrs. Dalley reported that she and her family
2 had lived in their home since 2012.

3
4 Board Member Mills asked if she had an issue with the structure in general or just the roof.
5 Mrs. Dalley stated that they did not mind the structure with the flat roof, but the height of the
6 current roof was unacceptable.

7
8 Mrs. Dalley restated the timeline of when she discovered the structure and her subsequent actions.
9 She also stated that it took time for the City to send officials out to the property to inspect the
10 structure. She had been in communication with Linda Hales and David Houston.

11
12 Zackary Dalley, who resides at 1206 West 880 North, presented information he had researched
13 regarding flat and pitched roofs and offered to share it with the applicant.

14
15 The Board reminded Mr. Dalley that the application before them was for a variance on the setback
16 requirements, not the roof.

17
18 Mr. Holland noted that the entire roof structure was put up in a single day and was shingled after
19 they received notification from the City. He assured the Board that he had researched other
20 avenues and the sloped roof seemed to be the best option.

21
22 There were no further public comments. Chair Christiansen closed the public hearing.

23
24 Board Member Phillips commented that although the variance request was based on the setback,
25 the heart of the issue was the height of the roof. He asked if the Board could simply allow the two
26 parties to come to an agreement on the issue. Mr. Young stated that the Board could deny the
27 request or continue it indefinitely in the hope that the parties could come to an agreement.
28 However, the City was now aware that there was a non-compliant structure on the property and
29 action would have to be taken.

30
31 Board Member Mills brought up his concern regarding building inspectors. Board Member Fugal
32 asked why this was such a concern as it did not seem to have much bearing on their decision on
33 the item. Board Member Mills questioned whether the City should take responsibility in this issue.

34
35 Chair Christiansen stated that the Board did not have the authority to have the structure torn down.
36 Mr. Cardenas added that the City simply does not have the manpower to police every building in
37 the City in terms of Code compliance. The burden of proving the legality of the structure was on
38 the property owner.

39
40 The Board Members then addressed the following five criteria for approval of a variance.

- 41
42 1. Literal enforcement of a zoning ordinance would cause an unreasonable hardship for the
43 applicant that is not necessary to carry out the general purposes of zoning ordinance.

44
45 Board Member Phillips and Chair Christiansen did not feel that enforcing the zoning ordinance
46 would cause an unreasonable hardship for the applicant. It was noted that the Board could not

1 consider economic hardship when determining a variance. Board Members Fugal and Mills
2 disagreed and felt there would be an unreasonable hardship imposed to require relocation of the
3 structure.

- 4
5 2. There are special circumstances attached to the property that do not generally apply to other
6 properties in the same district.

7
8 All of the Board Members felt that this criterion was not met.

- 9
10 3. Granting the variance is essential to the enjoyment of a substantial property right possessed
11 by other properties in the same district.

12
13 The Board Members, with the exception of Board Member Fugal, felt that this criterion was not
14 met

- 15
16 4. The variance will not substantially affect the general plan and will not be contrary to the
17 public interest.

18
19 The Board Members did not come to a unanimous conclusion regarding this criterion.

- 20
21 5. The spirit of the zoning ordinances observed and substantial justice done.

22
23 Board Member Mills felt that the spirit of the ordinance could be met with the variance, but he
24 admitted that the real issue was with the roof rather than the setback requirements. Board Member
25 Phillips believed that the neighbors could work the issue out between them.

26
27 Chair Christiansen asked if it would be appropriate to continue the item until more Board Members
28 were present as it was likely that the motion would fail due to a split vote. There was some
29 discussion regarding possible motions and conditions that could be attached. Mr. Young explained
30 that the applicant had the option of coming back before the Board of Adjustments to request a
31 determination of a legal non-conforming situation with the accessory structure. He stated that the
32 five criteria are not used when making this determination. At that time, if it was decided that the
33 shed was legal non-conforming, the Board could recommend a lower roof height or attach similar
34 conditions to mitigate the height issue.

35
36 **MOTION:** Board Member Mills moved that the Board of Adjustments TABLE the applicant's
37 request for a variance for 60 days, based on the following:

- 38
39 1. It was recommended that the applicant and adjacent neighbor work together to reach a
40 solution regarding the roof height and pitch. If a resolution is made, the item can be brought
41 back before the Board of Adjustments at that time.

42
43 Prior to taking a vote, Mr. Young commented that continuing the item would help them move
44 towards a resolution, but it would not solve the issue completely. He stated that denial of the
45 request would allow the applicant to come back more quickly with a request for a legal non-
46 conforming determination.

1 The Board Members discussed amending the motion to include language stating that the Board of
2 Adjustment would either grant the variance or consider the legal non-conforming determination
3 upon the applicant's return.

4
5 **AMENDED MOTION:** Board Member Mills moved that the Board of Adjustments TABLE the
6 applicant's request for a variance for 60 days, based on the following:

- 7
8 1. It was recommended that the applicant and adjacent neighbor work together to reach a
9 solution regarding the roof height and pitch. If a resolution is made, the item can be brought
10 back before the Board of Adjustments at that time.
- 11
12 2. Upon return, the Board of Adjustment would either grant the requested variance or consider
13 making a legal non-conforming determination regarding the accessory structure.

14
15 Board Member Fugal seconded the motion. Vote on motion: Board Member Mills – Aye; Board
16 Member Fugal – Aye; Board Member Phillips – Nay; Chair Christiansen – Nay. The motion failed
17 with a tie vote, 2-to-2.

18
19 **MOTION:** Board Member Phillips moved that the Board of Adjustment DENY the applicant's
20 request for a variance, reducing the three-foot rear yard setback and allowing a 12-foot tall
21 accessory building to be located along the property line, on property located at approximately 1201
22 West 930 North, in the R1-8 (Single-Family Residential) Zone, based on the following findings:

- 23
24 1. The applicant has the ability to return to the Board of Adjustments seeking a legal non-
25 conforming determination of the subject accessory structure.

26
27 Board Member Fugal seconded the motion. Vote on motion: Board Member Mills – Nay; Board
28 Member Fugal – Aye; Board Member Phillips – Aye; Chair Christiansen – Aye. The motion
29 carried, 3-to-1.

30
31 **ITEM 2 – Public Hearing to Consider a Request from POD Development for a Variance from**
32 **City Code 10-9A-3 which Requires Each Lot or Parcel of Land in the R-R (Rural Residential)**
33 **Zone to be at least One-Half (1/2) Acre in Size. The Property is Located at Approximately 3100**
34 **North 900 West in the R-R (Rural Residential) Zone. GROVE CREEK NEIGHBORHOOD.**

35
36 Mr. Cardenas presented the information above and the language from Code Section 10-9A-3. He
37 briefly explained that the variance request would only affect the nine lots along the northern
38 property line.

39
40 Public Works Director, Marty Beaumont, presented the staff report and gave a brief history of the
41 subject property. He explained that the Alpine School District originally owned the 43 acres to
42 the south of the City pond. In the past, there were plans to build a park, an elementary school, and
43 a middle school on the property. The City purchased the property designated for the park and pond
44 and there was discussion between them and the School District about the need for easements on
45 the school property. Mr. Beaumont identified the necessary easements on an aerial photograph.

1 Unfortunately, only two of the required easements were recorded on the plat. They included the
2 interlocal agreement and a temporary easement for the pressure irrigation line.

3
4 Mr. Beaumont stated that the School District sold the property to three developers six month ago,
5 and the applicant, Ron Peck, acquired 20 acres. Mr. Peck has chosen to close the interlocal
6 agreement, as permissible by a clause contained in the agreement. The site plan submitted by the
7 applicant complies with all of the zoning ordinance requirements regarding lot size; however, the
8 City requested that some of Mr. Peck's property be dedicated as easements to complete the park
9 improvements started years earlier. Mr. Beaumont explained that Mr. Peck could meet all of the
10 zoning requirements if he were to use all of the property but he would not if the City took some of
11 the property for the easement. The purpose of the variance request was to allow Mr. Peck to have
12 a few lots that are smaller than the required one-half acre so that he would be able to develop as
13 many lots as he would with all of his land. Mr. Beaumont stressed that this was not a self-imposed
14 hardship for the applicant but something that the City was imposing upon him.

15
16 Board Member Fugal asked if the City was imposing this requirement on the applicant or if they
17 were simply proposing to take the property at this time. Mr. Beaumont explained that the City
18 was trying to work with Mr. Peck to resolve the issue. They would like to allow him to develop
19 his property while still allowing the City to make the necessary improvements for the public space.
20 Mr. Beaumont stated that the City Attorney was consulted and was in favor of granting a variance.

21
22 Mr. Beaumont further explained that the requested lot size minimum of 17,424 square feet was
23 consistent with the calculations for lot size averaging in the R-R zone.

24
25 Board Member Mills asked if the interlocal agreement contains language regarding the sale and
26 subsequent use change of the property. Mr. Beaumont stated that the agreement was very specific
27 in terms of use but there was a termination clause that Mr. Peck had chosen to use.

28
29 Upon request, Mr. Beaumont identified the necessary easements on the aerial map. There was
30 discussion regarding park access in relation to the easements.

31
32 Board Member Mills asked who was responsible for recording the easements. Mr. Beaumont
33 stated that it was the City's responsibility. The interlocal agreement was signed by the Alpine
34 School District on February 6, 2008, but they did not deliver the document to the County for
35 recording. The City has documentation of their discussions with the Alpine School District
36 regarding the other easements.

37
38 Board Member Mills questioned the minimum lot size of 17,424 square feet and feared that this
39 would allow the applicant to put an additional lot along the northern property line. Mr. Young
40 explained that the applicant intends to utilize as much of the property as possible and identified
41 the proposed lots on the site plan. Mr. Beaumont added that the applicant would not be able to put
42 an additional lot there because of the lot frontage requirements of the R-R zone.

43
44 The applicant, Ron Peck, explained that the easements were not shown on the title report, so he
45 was unaware of them until he was approached by the City. The interlocal agreement was presented
46 to him just a few days before closing on the property and he had chosen to terminate that

1 agreement. Mr. Peck stated that he paid a great deal for the property and it would not be profitable
2 for him to develop with fewer lots than he could at full buildout. The solution presented by the
3 City seemed to satisfy all parties. Mr. Peck noted that the smaller lots would be placed next to
4 each other in the development.

5
6 Chair Christiansen opened the public hearing.

7
8 Christy Gardner asked if the reduction in lot size would also lower the minimum square footage
9 requirement for the homes. Mr. Young answered in the negative.

10
11 There was brief discussion about animal rights. Mr. Young stated that large animals are only
12 allowed on lots of one-half acre or larger. The smaller lots would not be able to house large animals
13 but the rest of the lots in the development would.

14
15 Tim Aguilar, a representative of the Creekside Homeowner's Association, listed three concerns.
16 The first was the potential for other lots in the community to be affected by the higher density
17 allowed with these lots. The second was loss of farming community and potential common open
18 space. Mr. Aguilar's final concern was the higher density near the City pond and the lack of
19 walking trails.

20
21 Board Member Phillips asked Mr. Aguilar for his definition of "high density". Mr. Aguilar
22 explained that there was a lack of roads and access points for the development and this would only
23 add to the traffic in the area, which was already hazardous because of the school. Board Member
24 Phillips explained that "high density" was normally associated with multi-family structures or very
25 small lots. This development could not be considered a "high density" development with most of
26 the lots being a one-half acre.

27
28 Chair Christiansen stated that the variance request would only affect the nine lots on the northern
29 property line and not the entire subdivision. He suggested that Mr. Aguilar express his concerns
30 regarding density to the Planning Commission when they hear the subdivision application.

31
32 Mr. Peck noted that the density would not be altered because of the smaller lots. If the variance
33 were granted, he would be developing the same number of lots as he would if he were able to
34 develop his entire property.

35
36 Doug Gardner asked if it was possible for the City to purchase the property for the easements and
37 for Mr. Peck to simply develop one less lot in his development.

38
39 There were no further public comments. Chair Christiansen closed the public hearing.

40
41 The Board Members then addressed the five criteria for approval of a variance. Below are the five
42 criteria and discussion regarding the variance request.

- 43
44 1. Literal enforcement of a zoning ordinance would cause an unreasonable hardship for the
45 applicant that is not necessary to carry out the general purposes of zoning ordinance.
46

1 All Board Members agreed.

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

5
6 All Board Members agreed.

- 7
8 3. Granting the variance is essential to the enjoyment of a substantial property right possessed
9 by other properties in the same district.

10
11 All Board Members agreed.

- 12
13 4. The variance will not substantially affect the general plan and will not be contrary to the
14 public interest.

15
16 All Board Members agreed.

- 17
18 5. The spirit of the zoning ordinances observed and substantial justice done.

19
20 All Board Members agreed.

21
22 **MOTION:** Board Member Fugal moved that the Board of Adjustments APPROVE the
23 applicant's request for a variance from City Code 10-9A-3 which requires each lot or parcel of
24 land in the R-R (Rural Residential) Zone to be at least one-half (1/2) acre in size, allowing the lots
25 located along the north boundary of the proposed subdivision Manila Creek Estates to present a
26 reduced square footage, on property located at approximately 3100 North 900 West in the R-R
27 (Rural Residential) Zone. Board Member Phillips seconded the motion. The Board Members
28 unanimously voted "Aye". The motion carried.

29
30 **ITEM 3** – Review and Approval of the minutes from the March 17, 2016 Board of Adjustment
31 meeting.

32
33 **MOTION:** Board Member Phillips moved to approve the Board of Adjustment Minutes from
34 March 17, 2016. Board Member Fugal seconded the motion. The motion passed unanimously.

35
36 **ITEM 4** – Election of a Chair and Vice-Chair for the year 2017.

37
38 **MOTION:** Board Member Phillips nominated Milt Fugal as Board of Adjustment Chair for 2017.
39 Board Member Mills seconded the motion. The motion passed unanimously.

40
41 **MOTION:** Board Member Fugal nominated Dustin Phillips for Board of Adjustment Vice Chair
42 for 2017. Board Member Mills seconded the motion. The motion passed unanimously.

43
44 The meeting adjourned at 9:18 p.m.

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Gail Christiansen
Chair, Pleasant Grove City Board of Adjustment

Barbara Johnson
Secretary

Date Approved: _____