

THE
PLEASANT GROVE CITY
BOARD OF ADJUSTMENT

AN OUTLINE OF ITS
RESPONSIBILITIES
AND FUNCTION

THE BOARD OF ADJUSTMENT

No ordinance can be drafted that will anticipate all unusual circumstances.

The only body given authority (by state statute) to make exceptions to the law is the board of adjustment. All others must obey the statutory law and elected officials take an oath to do so.

The Board of Adjustment has a heavy responsibility as the board's decisions affect private property rights, often affecting the individual citizen's home.

The Board of Adjustment's decisions carry a similar weight as a court decision.

The primary function of the Board of Adjustment is to alleviate problems of properties that have physical limitations or abnormalities that cause unique circumstances.

The Board also hears appeals from decisions applying the zoning ordinances and conditional use permits whether by the Planning Commission, City Council, or City Staff.

The Board also considers applications for special exceptions.

VARIANCES

In cases where the zoning ordinance imposes undue hardship or practical difficulties to the property owner in the use of his land, the property owner may apply for a “variation” from the zoning ordinance.

State law (10-9-707) sets the criteria of granting a variance. The Pleasant Grove City Board of Adjustment uses these five requirements to determine if a request will be granted. The property must satisfy all five requirements. If any of the five criteria are found in the negative the property will not qualify for a variance.

- I. LITERAL ENFORCEMENT OF THE ZONING ORDINANCE WOULD CAUSE UNREASONABLE HARDSHIP FOR THE APPLICANT THAT IS NOT NECESSARY TO CARRY OUT THE GENERAL PURPOSE OF THE ZONING ORDINANCE.

“UNREASONABLE HARDSHIP”

Courts have interpreted this phrase to mean that the property owner must demonstrate an inability to make reasonable use of the property because of zoning ordinances.

REASONABLE: (dictionary) sensible, not asking too much.

REASONABLE (Pat) what other properties are being used for in the same area. If some properties are pasture while others are being developed into subdivisions the property's reasonable use should at least be pasture. The city does not ensure all property to be developable.

If all other properties in the area are developed, reasonable use would then suggest development.

HARDSHIP

The hardship must be created by the property, such as unusual topography or shape, not by a personal problem or need of the owner.

The property owner cannot create the hardship. Example: A structure built too close to a property line when the site plan showed a proper setback.

"NOT NECESSARY"

The applicant has the burden to prove that strict adherence to the ordinance is really not necessary to carry out the general purpose of the ordinance.

II. THERE ARE SPECIAL CIRCUMSTANCES ATTACHED TO THE PROPERTY THAT DO NOT GENERALLY APPLY TO OTHER PROPERTIES IN THE SAME DISTRICT.

The hardship must be UNIQUE to this property. If the hardship is common to several other properties, the variance cannot be granted. The solution then would be a zoning ordinance change.

III. GRANTING THE VARIANCE IS ESSENTIAL TO THE ENJOYMENT OF A SUBSTANTIAL PROPERTY RIGHT POSSESSED BY OTHERS IN THE SAME DISTRICT.

A potential for economic loss or something less than the maximum potential economic return to the property user is not considered a hardship.

Pleasant Grove City does not have the responsibility to ensure that every property is developable much less that it is developable to the maximum potential economic return.

IV. THE VARIANCE WILL NOT SUBSTANTIALLY AFFECT THE GENERAL PLAN AND WILL NOT BE CONTRARY TO THE PUBLIC INTEREST.

The proposed modification must not alter the essential character of the area and must not be in conflict with the General Plan.

V. THE SPIRIT OF THE ZONING ORDINANCE IS OBSERVED AND SUBSTANTIAL JUSTICE DONE.

The board should always be guided by the “spirit” of the ordinance.

Substantial justice will have been accomplished if we rescue a deserving citizen from the strict interpretation of the law if the law is unfair to him.

After discussing the five points in the state requirement, the board then considers the question, “Has the applicant met their burden of proving that all the conditions justifying a variance have been met?”

SPECIAL EXCEPTIONS

The responsibility to determine special exceptions must be defined by city ordinances. The term “special exceptions” must also be defined by city ordinance.

If conditional uses are not regarded as special exceptions they may be issued by the Planning Commission, which is the process used in Pleasant Grove.

In every instance involving a special exception the board should cite a specific paragraph of the ordinance from which its authority to grant the request is taken.

APPEALS

The Board of Adjustment is not a court of law but hears appeals of decisions administering or interpreting the zoning ordinances or decisions concerning conditional use permits by:

1. The Planning Commission.
2. The City Council.
3. The Administrative Staff.

APPEALS PROCESS BY THE BOARD

The board does not rehear the case. It acts as an appellate body to determine if an error has been made.

It is the burden of the applicant to convince the board an error has been made.

When considering appeals of interpretation the board should first determine the facts and then apply what it thinks is the proper meaning and intent of the ordinance.

The board must be guided by the intent of the ordinance.

APPEALS FROM THE DECISIONS OF THE BOARD OF ADJUSTMENT

Appeals from the decisions of the Board of Adjustment can only be made to the District Court.

No legislative body (such as the City Council or even the State Legislature) has the authority to overrule decisions of the Board of Adjustment.

According to state law (10-9-708-2) in a court challenge “the plaintiff may only allege that the Board of Adjustment’s decision was arbitrary, capricious, or illegal” so the board must be careful to make correct decisions as the citizen’s ability to prevail in an appeal is very difficult.