

**Pleasant Grove City
Board of Adjustment Meeting Minutes
January 19, 2017
7:00 p.m.**

PRESENT:

Board Members: Milt Fugal, Chair
Dustin Phillips, Vice Chair
Stephanie Green
Gail Christiansen
Jeremy Reitzel

Staff Present: Daniel Cardenas, City Planner
Barbara Johnson, Building Tech

Excused: Frank Mills, Board Member
Ken Young, Community Development Director

The Board of Adjustment and Staff met in the City Council Chambers at 86 East 100 South, Pleasant Grove, Utah.

1) Call to Order.

Chair Milt Fugal called the meeting to order and identified those who were present or excused. All Board Members present were to act as voting members throughout the meeting. Chair Fugal asked if there had been any correspondence between the Board Members and the affected parties of the items to be discussed. The Board responded in the negative.

2) Approval of the Agenda.

MOTION: Board Member Christiansen moved to approve the agenda as written. Board Member Green seconded the motion. The motion passed with the unanimous consent of the Board.

3) Public Hearing: Nonconforming Status Determination – City Code Section 10-17-3: Nonconforming Buildings (Mud Hole Neighborhood).

Public Hearing to consider the request of David Holland to obtain a legal nonconforming status for an accessory building located in the rear yard/interior side yard of the property. The aforementioned building does not conform with provision 10-9B-7F1, which requires all accessory buildings to be located no closer than three feet (3') 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) Zones.

City Planner, Daniel Cardenas, reported that the above application is not for a variance and explained that the applicant is seeking a legal non-conforming status for an accessory structure to be built in the backyard on the property line. He explained that the terms “pre-existing” and “grandfathered” are synonymous. An aerial map of the subject property, as well photos of the structure were displayed. Mr. Cardenas reported that the applicant originally applied for a variance but his request was denied. The Board of Adjustment reviewed the matter at their last meeting, which was held on December 15, 2016. At that time, they recommended the applicant come before the Board again to obtain a non-conforming status for the structure in question.

Mr. Cardenas stated that he and City Attorney, Tina Petersen, reviewed the ordinance language regarding the definition of non-conforming uses. Mr. Cardenas described the elements necessary for the Board to grant the non-conforming use. He explained that the ordinance required a three-foot setback that should have been established after the structure was built. Irrefutable evidence was needed to prove that the structures were legal before the ordinance was passed. Mr. Cardenas stated that the ordinance in question was passed in December 2005. According to Google images from September 2004, the structure existed prior to adoption of the ordinance. In addition, according to the City ordinance, prior to December 2005 structures could be built on property lines.

Mr. Cardenas mentioned that a wooden addition was built onto the original structure within the last year. He presented an image of the structure taken the previous week. Per the current ordinance, a non-conforming structure may be allowed provided no structural alterations or enlargements are made unless otherwise approved by the Board of Adjustment.

Board Member Christiansen asked what would happen if the door on the structure rotted, or a window is broken and needs to be replaced. He asked if these types of situations were considered structural changes and are illegal under the specifications of City ordinance. Mr. Cardenas explained that such matters can be handled by the applicant after obtaining a conditional use permit.

Board Member Phillips did not feel that a broken window or rotted door would qualify as a significant structural alteration or enlargement. Mr. Cardenas clarified that basic replacements do not qualify as structural alterations; however, modifications that enlarge the building in any way are prohibited by City ordinance. He explained that a conditional use permit would be a different application altogether and would be approved by the Planning Commission rather than the Board of Adjustment. Mr. Cardenas stated that at this point, the structure in question is illegal and needs a non-conforming status in order to be legal.

The applicant, David Holland, stated that he followed the advice given to him by the Board at the last meeting. He identified the images presented of the structure from the prior week and stated that he lowered the roof. Mr. Holland stated that the accessory building existed when he purchased the home. He simply tried to fix the areas that were becoming dilapidated.

Chair Fugal asked Mr. Holland if he had discussed the matter with his neighbor, as previously recommended. Mr. Holland stated that he had not. He stated that the biggest problems were the height and the three-foot setback. He noted that he has since lowered the roof by three feet. Chair

Fugal explained that there was lengthy discussion at the last meeting about the roof needing to be flat in order for it to be conforming. Mr. Holland's recollection differed from Chair Fugal's. He recalled that the building was illegal and could not exist at all.

Board Member Phillips stated that Mr. Holland was correct in that the structure was illegal and will have to be razed. That was, however, with the understanding that there are additional options available to Mr. Holland, such as seeking a non-conforming status. Board Member Phillips stated that communication is key and it appeared that Mr. Holland took it upon himself to lower the roof height by three feet, which he was not specifically advised to do by staff. It was noted that the Board of Adjustment will make a decision based on the bounds and restrictions of the law.

Chair Fugal opened the public hearing.

Zach Daley, Mr. Holland's neighbor, stated that he made several attempts to visit with Mr. Holland, but he was told to take his concerns directly to the City. Mr. Daley stated that he submitted a complaint after Mr. Holland was found sawing on his shed at the early hours of the morning. The sawing was so loud that it woke up his entire family. It was also Mr. Daley's understanding that the roof had to be flat. Mr. Daley was still willing to work with Mr. Holland to reach a resolution.

Board Member Christiansen commented that the City cannot turn a blind eye to this issue, as the structure needs to come into compliance.

Anganel Palmer lives to the southeast of the Holland property and reported that the shed existed when she moved into her home in 2013 and it has never been an issue. She commented that the roof creates more privacy between the two yards, which she likes.

Donna Smith stated that the shed is adjacent to her backyard. She agreed with Ms. Palmer's comments and stated that the shed does not interfere with her property. She was concerned that removing the shed will require the fence on her property to be torn down as well, which she was not in favor of.

There were no further public comments. Chair Fugal closed the public hearing.

Board Member Christiansen asked Mr. Holland how he plans to finish the structure. Mr. Holland responded that the shed will either have siding or stucco.

Board Member Phillips was pleased to get feedback from the neighbors and stated that the State Statute is clear that the Board has the right to issue the legal, non-conforming status with the condition that the building meets the height requirements. Chair Fugal agreed. Board Member Christiansen suggested the Board give Mr. Holland six months to bring the roof into compliance. In response to a question from Board Member Green, Board Member Christiansen explained that the Planning Commission cannot give Mr. Holland a conditional use permit on an illegal structure. Board Member Phillips stated that the request is beyond the Board's purview. Mr. Cardenas recommended a specific timeframe not be included in the motion.

MOTION: Board Member Christiansen moved to approve David Holland's request for a legal non-conforming status on an accessory building located in the rear yard/interior side yard of his property located at approximately 1201 West 930 North in the R1-8 (Single-Family Residential) Zones, as long as any recent additions or alterations are removed and the building is adjusted to the same height presented in 2005. Board Member Green seconded the motion. The motion passed with the unanimous consent of the Board.

4) Review and Approve the Minutes from the December 15, 2016 Meeting.

The minutes were reviewed and modified.

MOTION: Board Member Christiansen moved to approve the minutes of the December 15, 2016 Meeting, as amended. Board Member Phillips seconded the motion. The motion passed with the unanimous consent of the Board.

5) Adjourn.

The meeting adjourned at 7:47 p.m.

Milt Fugal
Chair, Pleasant Grove City Board of Adjustment

Barbara Johnson
Secretary

Date Approved: _____