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3 PLEASANT GROVE CITY
4 BOARD OF ADJUSTMENT MINUTES
5 April 18, 2013
6

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

9 **PRESENT:** Chair, Steve Phelon, Vice-Chair, Tom Petersen, Stephanie Green, Sterling Wadley, Frank
10 Johnson, James Butterfield, and Gail Christiansen

11 **Excused:** Ken Young, Community Development Director

12 **STAFF:** City Engineer, Degen Lewis and Barbara Johnson, Planning Tech
13

14 City Engineer, Degen Lewis answered questions the Board had concerning lot size averaging on the property in
15 question. The members then had a brief discussion on the variance request.
16

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

19 **PRESENT:** Chair Steve Phelon, Vice-Chair, Tom Petersen, Stephanie Green, Sterling Wadley, Frank Johnson,
20 James Butterfield, and Gail Christiansen

21 **Excused:** Ken Young, Community Development Director

22 **STAFF:** City Engineer, Degen Lewis and Planning Tech, Barbara Johnson
23

24 **Applicant:** Ken Johnson
25

26 Chair Phelon welcomed everyone and then called the meeting to order at 7:01 pm. He asked everyone
27 to silence their cell phones. In accordance with Article II, Paragraph 2.3 of the Board By-laws he
28 indicated that he would preside at this hearing and the meeting was called to order. In addition to Chair
29 Steve Phelon the Board members present were Mrs. Stephanie Green, Mr. Tom Petersen, Mr. Sterling
30 Wadley, Mr. Frank Johnson, and alternate members Mr. James Butterfield and Mr. Gail Christiansen.
31 He asked the Board Secretary, Mrs. Johnson that she record in the minutes of this hearing that we have
32 the required Quorum present and all members here tonight will be voting except the alternates. The
33 official minutes of this hearing will be available for public review, when published. He introduced the
34 city staff Mrs. Barbara Johnson, secretary and Degen Lewis, City Engineer.
35

36 Chair Phelon asked Mrs. Johnson if this meeting and the agenda have been publicly advertised. Mrs.
37 Johnson stated that they have. He also asked the members if they received their staff briefing packets.
38 All members said yes. Have each had ample time to study the packet? All members said yes. Has
39 there been any ex parte contact with the applicant? All members said no. Are there any comments
40 and/or questions regarding the agenda? All members said no.
41

42 **ITEM 1 Public Hearing to consider the request of Bowler Development, L.C. for a variance to Lot**
43 **Size Averaging (City Code Section 10-9B-14-E) for Baylies Bend Plat B Subdivision on property**

1 located at approx. 600 West 2490 North in R1-20 (Single Family Residential) Zone. **NORTHFIELD**
2 **NEIGHBORHOOD**

3
4 Chair Phelon read the agenda. He asked if there were any questions or comments on the agenda. He
5 then turned the time over to staff.

6
7 Mr. Lewis, City Engineer. Mr. Lewis showed an aerial of the property and said the original Baylie's Bend
8 subdivision plat was approved as a 12 lot subdivision with some of the lots being smaller than 20,000
9 sq-ft as permitted by the "lot size averaging" section of the R1 ordinance (10-9B-14- E). Lot size
10 averaging allows for up to 25% of the lots in a subdivision
11 proposal to be reduced in size by area (up to 20% smaller) and width (the next zone down
12 requirement). Averaging is only permitted by ordinance for lots contained within a single subdivision
13 proposal. Phasing of a project or any other subsequent plats may not use lots in a previous phase or
14 plat to meet the requirements for lot size averaging.

15
16 If you look at the original 12-lot plat approved you will see that three of the lots are less than 20,000
17 sq-ft (lots 1, 6, & 8). This was 25% of the total and otherwise met all of the requirements for
18 averaging. The final plat was approved by the City Council on July 3rd, 2007. The original developer
19 installed all of the improvements required with the original plat. Note that street improvements were
20 not required along 2600 North due to the City's plans to widen that street in the future with the
21 understanding that the plans for such work were not prepared and there was a high probability that any
22 improvements installed now would be altered later. Waivers of protest from the owner's fronting 2600
23 North were required as part of that approval to not install 2600 North improvements.

24
25 Subsequently the housing market turned down and the original developer was unable to market the
26 planned lots. Two of the lots (original lots 9 & 10) were sold to be used as a single lot. The original
27 developer proposed phasing the 12 lot plat with combining the two lots for which he had a
28 buyer. Advice from City Staff at the time lead the original developer to believe that phasing the
29 original plat was permitted. The revised plat "A" (first phase) was approved by the Planning
30 Commission (PC-May 28, 2007) and a 3-lot Bailey's Bend plat "A" was recorded.

31
32 Mr. Lewis said a portion of the original subdivision has been foreclosed and a new owner is now
33 proposing to record the second phase. During the review of that proposed plat, the City's reviewer
34 noticed the inconsistency with ordinance relative to the lot size averaging. Staff made an error in
35 advising the developer with regard to the phasing of the original plat in that the lot size averaging
36 rules would no longer allow for three lots but only two lots since the ordinance requires lot size
37 averaging to occur within a single recorded plat. The current 8-lot proposal has three lots less
38 than 20,000 sq-ft which is 38% of the lots and exceeds the 25% limit.

39
40 Mr. Lewis said the situation we are in today is not self-imposed. The action the developer took was
41 based on interpretation of the ordinance and advice given by staff. The erroneous interpretation of
42 code continued to be given over the past few years as potential buyers of the land looked at options.
43 This continued up to the current Applicant who purchased the property with the understanding that the
44 proposed lots met all code requirements.

45
46 Staff's reasoning behind the original approval for phasing was (and still is) that if the original 12-lot
47 subdivision had been recorded the City would have three lots averaged to be less than 20,000 sq-ft in

1 full compliance with the ordinance. The phasing of the plats has not changed that. Since two of the
2 original lots were combined the overall density is less than the original 12-lot approval.

3
4 Discussion with the City Council about the issue resulted in a recommendation to go before
5 the Board of Adjustment for a variance to the limitation to lot size averaging over phases
6 (or multiple plats) of a project. The Council was supportive of allowing the proposal but could not
7 grant a variance to the ordinance requirements. They did approve the proposed subdivision plat
8 conditional upon the variance being granted.

9
10 **ANALYSIS**

11 The need for the variance to the lot size averaging ordinance is due to the incorrect advice (code
12 interpretation) given by City staff to the original developer of the subdivision. Thus, it is neither the
13 original developer nor the current owner who created the need for the variance.

14
15 While there may be different lot arrangements that would meet the requirements of the ordinance,
16 there are none possible due to the various ownerships of land within the proposed subdivision. The
17 Applicant only controls the property proposed to be lots 5-8 in the proposed plat. Those lots do not
18 have “extra” area that might be redistributed to make one more 20,000 sq-ft lot. Lots 1 and 2 are
19 owned by different owners and are lot sizes agreed upon with the original developer when they sold
20 the southern portions of their larger parcels to create the new subdivision. Lots 3 and 4 are owned by
21 yet another party who also only agreed to sell a specific portion of land to the original developer.

22
23 Mr. Lewis said we are still getting 12-lots just in two different plats. The proposal otherwise meets all
24 requirements of the zone.

25
26 Chair Phelon asked if there were any questions for staff.

27
28 Chair Phelon asked who owns lot 1 & 2 of Baylies Bend. The Layton’s responded and said they own
29 lot 2 and the owner of lot 1 lives in St. George and is not here tonight.

30
31 Mr. Butterfield asked Mr. Lewis to refer to the staff report, last sentence in the first paragraph. He
32 then read the sentence and said there is a Plat A and Plat B, two phases of the project so Plat A cannot
33 be used with lot size averaging. Mr. Lewis said that is what the ordinance states, so if it wasn’t for
34 that we wouldn’t be here tonight.

35
36 Mr. Wadley asked why can’t the Applicant go back and record the plats together. Mr. Lewis said he
37 couldn’t explain all the reasons why they couldn’t go back and record the plats back to one. Chair
38 Phelon said they couldn’t record it all at once, once they split plat A and made those two lots into one.
39 The plats have changed, they are not the same today as they were when the plat was approved because
40 they changed Plat A into three lots from four and at that point they caused the problem.

41
42 Mr. Butterfield said since 2007 Plat A of Baylie’s Bend has not been included so why did staff
43 continue to give information to people that Plat A was included with this project and all the
44 requirements were met. Mr. Lewis responded by saying the original developer recorded Plat A
45 because staff told him it was okay to phase the project. He said staff made a mistake. The original
46 developer made a decision based on an incorrect opinion of staff on what the ordinance allows.

1 Mr. Butterfield said we are still dealing with a created hardship whether it was created by a property
2 owner or by staff. Mr. Lewis agreed and said anytime you talk about a variance someone created it,
3 the question is whether it was a self-imposed hardship. Mr. Butterfield said by rules it doesn't matter
4 who created the hardship. Mr. Wadley said staff is the one who imposed the hardship and we are
5 considering the applicant here tonight, not the city.

6
7 Mr. Christiansen said staff made a mistake, but shouldn't it be the owner's responsibility to make it
8 right, maybe got it in writing.

9
10 Mr. Butterfield said he would like to remind the Board that they are prohibited by law to grant a
11 variance that is self-imposed or economic.

12
13 Mr. Frank Johnson said he would like to hear from the applicant.

14
15 Chair Phelon asked the applicant to come forward and state his name.

16
17 Mr. Ken Johnson representing Bowler Development came forward and said he purchased this property
18 after talking with staff and he was told there were no issues with this subdivision. The only time an
19 issue came up was two days before the Planning Commission meeting and he was told the lot size
20 averaging was going to be an issue. He said they are asking for a variance, not because they created
21 the hardship but because the hardship was made by someone else.

22
23 Chair Phelon asked if there were any questions for the applicant.

24
25 Mr. Wadley asked Mr. Johnson if he would consider combining four lots into three lots. Mr. Johnson
26 said their only option would be to re-plat the subdivision. Mr. Butterfield said the applicant only owns
27 four lots so the only option would be to re-plat four lots.

28
29 Chair Phelon opened the meeting to a public hearing.

30
31 Nancy Kirk came forward and said she is interested in buying lot 6 in Baylie's Bend. She said they
32 could not afford a bigger lot and would like the Board to consider leaving the subdivision as it is.

33
34 Chair Phelon closed the public hearing and brought the discussion before the Board.

35
36 Mr. Butterfield said we are dealing with 8 lots, 4 of which are owned by the applicant. Why are the
37 other lots included in this plat? Mr. Lewis said when you divide a piece of property you have to go
38 through the subdivision process. He said the owner of lot 1 used to own a very deep lot and to legally
39 break off a piece of property that was sold the property has to belong to a subdivision at some point in
40 time. Right now lot 1 is an illegal lot because it is not part of a subdivision.

41
42 Mr. Lewis showed an aerial of the property and said this is the proposed plat for Baylie's Bend Plat B
43 subject to a variance on the lot size averaging. Mr. Butterfield responded and said this is a self –
44 imposed hardship, the property can be divided and then the hardship goes away. Mr. Ken Johnson said
45 the hardship is not his fault. Mr. Butterfield said as a Board they cannot grant this variance, it is illegal.
46

1 Mr. Wadley said he agreed with Mr. Butterfield but said this hardship is not the applicants fault and
2 didn't think it was a self-imposed hardship.

3
4 Chair Phelon said the bottom line is what is the city's responsibility in this case?

5
6 Chair Phelon called for a motion.

7
8 **MOTION: Mr. Wadley moved that the Board approve the request of Bowler Development for a**
9 **variance from prohibition against lot size averaging across multiple plat (phases) for the**
10 **proposed Baylie's Bend Plat "B" subdivision based on the following findings:**

- 11 • **The applicant was given wrong information by city staff and in his opinion does not**
12 **include a self-imposed hardship by the applicant.**

13 **Mrs. Green seconded the motion. The motion passed 4 to 1. With Members, Wadley, Peterson,**
14 **Green and Phelon voting "Aye" and Johnson voting "Nay" motion carried.**

15
16 Chair Phelon apologized for not going through the five criteria before making a motion. The Board
17 then went through the five criteria:

18
19 1. Literal enforcement of the City's zoning ordinances would cause an
20 unreasonable hardship for the applicant that is not necessary to carry out the
21 general purpose of such ordinances;

22
23 Mr. Peterson felt the developer should have done their homework before buying this property. Chair
24 Phelon said they did, they talked with city staff and was given wrong information.

25
26 Mr. Butterfield said he got his information by going on the web. Chair Phelon said the average guy
27 doesn't do that. Mrs. Green said city staff should know the code and not miss interpret it, but everyone
28 is human and we make mistakes.

29
30 Mr. Lewis said the point is whether or not this request is unreasonable for the enjoyment that is
31 normally accepted in this zone. He said staff originally approved this subdivision. He said this request
32 is not causing greater density than is normally allowed in this zone. Mr. Lewis said that is why a
33 variance is being requested.

34
35 Chair Phelon called for a vote: Voting "Aye" were Wadley, Green, Petersen, Phelon and Johnson.
36 Voting passed.

37
38 2. There are special circumstances attached to the property that do not generally
39 apply to other properties in the same district;

40
41 Mr. Butterfield asked, what are the special circumstances? Mr. Wadley said the developer was given
42 the wrong information. Mr. Butterfield said the City Council made an error when they allowed
43 Baylie's Bend Plat B to be approved if the Board of Adjustment would grant a variance. Motion
44 passed.

45
46 Chair Phelon called for a vote: Voting "Aye" were Green, Wadley, Johnson, Petersen and Phelon.
47 Voting passed.

1 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other
2 property in the same district;
3

4 Mr. Butterfield said he would be very happy if he was somebody who owned lots that are too small in
5 this zone to take the ruling here tonight if this ruling is in favor and use it against the Board.
6

7 Mr. Wadley said the applicant meets the criteria.
8

9 Mr. Johnson said if the Board does grant this variance and someone comes in and asks for the same
10 request, we are obligated to grant them the same and if not attorneys get involved. Mr. Wadley said
11 the Board is an independent body. Mr. Lewis agreed and said the Board's decision can be appealed at
12 the Fourth District Court.
13

14 Mr. Christiansen said the point is by granting this request it is not harming anyone in the area and no
15 one's property rights have been taken away. The Board is to only consider this request on this
16 property.
17

18 Chair Phelon let the public comment. Mrs. Carma Shelton came forward and said she is trying to buy
19 lots 7 and 8 in Baylie's Bend. She said the Board should grant the variance because staff screwed up
20 and felt variances should be reviewed case by case.
21

22 Chair Phelon called for a vote: Voting "Aye" Green, Wadley, Phelon. Voting "Nay" Johnson and
23 Petersen. Voting passed 3 to 2.
24

25 Mr. Butterfield said although it is nice to be sympathetic the Board of Adjustment is a Board of law
26 not sympathy. The Board is bound to follow the law. The hardship cannot be self-imposed or
27 economic.
28

29 Chair Phelon said these guidelines are tough. He said where does the public get their fair shake from a
30 mistake made by staff. There has to be a place where the public is protected from mistakes made by
31 staff and at that point if the city was wrong they need to make it right. He said this is a tough law but
32 felt the city needs to take responsibility for this mistake and that is why is voted "Aye".
33

34 4. The variance will not substantially affect the general plan and will not be
35 contrary to the public interest; and
36

37 There was no discussion. Chair Phelon called for a vote.

38 Board Members voting "Aye" Green, Petersen, Wadley, Johnson and Phelon. Voting passed.
39

40 5. The spirit of the City's zoning ordinances is observed and substantial justice is done.
41

42 Mr. Butterfield said the spirit of the zoning law has been violated deeply here tonight. Chair Phelon
43 agreed but said a mistake was made by city staff, the applicant should be protected.
44

45 Mr. Christiansen disagreed with Mr. Butterfield. He said initially in the beginning the city thought
46 these lots were okay nothing has been violated.
47

1 Mr. Butterfield asked what the nature of this hardship is, economic. Chair Phelon answered and said
2 economic but the hardship was created by staff. Mr. Butterfield said the Board of Adjustment is
3 prohibited by law to grant a variance that is self-imposed or economic. Mr. Wadley said they
4 wouldn't be here as a Board if that was the case. Chair Phelon said just about every variance has
5 economics attached to it. Mr. Christiansen said the motive is not economics. Mr. Petersen said it is
6 based on economics but the developer's decision to buy this property was based on information from
7 city staff. Chair Phelon commented and said, does the developer take the economic hit for the city's
8 mistake.

9
10 Chair Phelon called for a vote: Voting "Aye" Green, Wadley, Phelon and Petersen. Voting "Nay"
11 Johnson. Voting passed 4 to 1.

12
13 Chair Phelon asked Mr. Wadley to re-state his motion.

14
15 **MOTION: : Mr. Wadley moved that the Board approve the request of Bowler Development for**
16 **a variance from prohibition against lot size averaging across multiple plat (phases) for the**
17 **proposed Baylie's Bend Plat "B" subdivision based on the following findings:**

- 18 • **The applicant was given wrong information by city staff.**
- 19 • **According to the Board's votes the five criteria was met.**

20 **Mrs. Green seconded the motion with Members, Wadley, Peterson, Green voting "Aye" and**
21 **Johnson voting "Nay" Chair Phelon abstained. Motion passed 3 to 1. Motion carried.**

22
23 Review and approve the Minutes from the March 21, 2013 meeting.

24
25 Chair Phelon asked the Board if they had reviewed the Minutes and if they had any comments. He
26 then called for a motion.

27
28 **MOTION: Mr. Petersen moved to approve the Minutes from the March 21, 2013 Training**
29 **Meeting as written. Board Members Wadley, Christiansen, Phelon, and Peterson unanimously voted,**
30 **"Aye" Motion passed.**

31
32 The meeting adjourned at 8:11 pm.

33
34
35
36 _____
37 Steve Phelon
38 Chair, Pleasant Grove City Board of Adjustment

39
40
41 _____
42 Barbara Johnson
43 Secretary

44
45 Date Approved: _____
46
47

