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**PLEASANT GROVE CITY
BOARD OF ADJUSTMENT MINUTES
March 05, 2009**

PRESENT: Chair Frank Johnson, James Butterfield, Sterling Wadley, Milt Fugal, James Malone, Steve Phelon and Laurel Riddle.

EXCUSED:

STAFF: Sean Allen, City Planner and Barbara Johnson, Secretary.

6:30 PM BOARD OF ADJUSTMENT STUDY MEETING

Chair Johnson called the meeting to order and welcomed everyone there. He welcomed the new members to the Board and then had everyone introduce themselves.

The board members then talked about the Alliance Youth appeal that was filed with the court. Chair Johnson read the response from the Private Property Ombudsman relating to the decision made by the court concerning the Alliance Youth appeal.

City Planner, Sean Allen presented the members with some information on the Alpine Care Center. The members then talked about a few issues they had concerns with.

7:00 PM BOARD OF ADJUSTMENT PUBLIC HEARING

PRESENT: Chair Frank Johnson, James Butterfield, Sterling Wadley, Milt Fugal, James Malone, Laurel Riddle and Steve Phelon.

EXCUSED:

STAFF: Sean Allen, City Planner and Barbara Johnson, Secretary.

APPLICANT: Bruce Allison

Chair Johnson called the meeting to order and welcomed everyone there he asked everyone to silence their cell phones. He indicated that he would preside at this hearing. He introduced the members and said the members present constitute a legal quorum and all members would be voting. He introduced the city staff Mrs. Barbara Johnson, secretary and Sean Allen, City Planner.

1 Chair Johnson asked Mrs. Johnson if this meeting and the agenda have been publicly advertised. Mrs.
2 Johnson stated that they have. He also asked if everyone received their packets. All members said yes.

3
4 Chair Johnson asked the members if there had been any ex parte contact with the applicant. All
5 members stated no.

6
7 **MOTION:**

8
9 Mr. Fugal moved that the publicly advertised agenda (Attachment 1) be accepted as the Order of the
10 Day for tonight's meeting. Seconded by Mr. Butterfield. Motion carried.

11
12 ITEM 1 Public Hearing to consider the request of Alpine Care Center (a non-profit organization) for a
13 variance to avoid having to install the sidewalk improvements on the west half of the property, along
14 the Alpine Drive frontage; located at 25 East Alpine Drive, in the C-S (Commercial Sales) zone.

15 **STRING TOWN NEIGHBORHOOD**

16
17 **BACKGROUND:**

18
19 The applicant has discovered that the laundry portion of the Alpine Valley Care facility is out of compliance
20 with State code and Federal guidelines and must comply immediately. They are planning a small addition to
21 the rear of the building to bring the facility into compliance. This minor addition to the building requires the
22 applicant to provide a minor site plan amendment to the City, and must bring the site into compliance with the
23 current City codes.

24
25 After visiting and reviewing the status of the site, City Staff determined that there are several site items out of
26 compliance. The applicant has agreed to comply with all, except one, which is the installation of the portion of
27 the sidewalk along Alpine Drive, between the corner of Geneva Road and their parking in the front of the
28 building. After careful consideration, the applicant has chosen to request a variance for this portion of the
29 sidewalk.

30
31 Mr. Allen thanked the board and began his presentation by showing a power point presentation and then he read
32 from the staff report.

33
34 Mr. Allen said in recent months the applicant has discovered that the facility that they are currently operating
35 from is out of compliance with the state in regards to the laundry facility which is located at the rear of the
36 building. In order to bring the building up to code they must add additional square footage, which requires the
37 applicant to provide a minor site plan.

38
39 Mr. Allen said the intent of the applicant is to bring the building into compliance not only with the state but with
40 the city. The site has to meet city code which requires the street improvements, parking lot, sidewalk and
41 landscaping to be installed.

42
43 Mr. Allen said the applicant will extend the sidewalk, curb and gutter all the way to the east end of the property.
44 What they are having difficulties with is completing the sidewalk on the west side of the property, which is
45 approximately 166 ft. Staff has made them aware that ordinance requires improvements to be installed, and
46 their only option was to come before the Board of Adjustment and ask for a variance based on hardship. The
47 hardship they are claiming is that they are unaware of how to tie into the future UDOT widening project on
48 Geneva Road.

1 Mr. Allen said the applicant could install the sidewalk, but there are slope requirements, ADA requirements and
2 they are not certain how far into the property UDOT will go. So In theory they could extend the sidewalk down
3 to a certain point, but they would prefer a variance be granted up until the time UDOT widens the road .Staff
4 has also added, this needs to be done within one year of the completion of the UDOT widening project, and at
5 that time all improvements will need to be installed. Mr. Allen also mentioned if the variance is granted it
6 needs to be recorded with the county.

7
8 Mr. Wadley asked Mr. Allen to explain the differences between an ADA compliant sidewalk and an ADA non
9 compliant sidewalk. Mr. Allen answered saying it is the slope requirements. Mr. Phelon said the slope can't be
10 more than 2% and not more than 12% going out the sides and the walk is 6' wide.

11
12 Mr. Butterfield said in order for the Care Center to operate correctly it should already have ADA sidewalks in
13 place. Mr. Allen said the facility should provide ADA access from the parking lot to the front entrance of the
14 building. Mr. Phelon said the facility has to provide a certain percentage of ADA parking.

15
16 Mr. Fugal felt the applicant should be installing the improvements on the west side of the property and tie into
17 the sidewalk going north and south.

18
19 Mrs. Riddle said the applicant is spending a lot of money to bring the building into compliance; and felt the city
20 should be willing to work with the applicant on installing the improvements at a later date. Mr. Fugal responded
21 by saying is getting a variance the applicant's only option?

22
23 Mr. Allen said that the city ordinance requires both bonding for and installing improvements on new
24 construction or to bring the existing property into compliance. The applicant is requesting a variance so he does
25 not have to install or bond for the improvements.

26
27 Mr. Phelon said if the applicant has to put up money up for a bond, he might as well install all the
28 improvements required by the city. He also mentioned it would cost approximately \$12,000.00 to install the
29 improvements.

30
31 Mr. Butterfield said the sidewalk was supposed to be in a long time ago and it is still not in. If the sidewalk is
32 installed and UDOT comes down in 1year or 10 years to widen the road it is the states responsibility at that
33 point to tie that sidewalk in. So what is the problem other than the applicant doesn't want to put the sidewalk in
34 at this time. Mr. Allen said between the mayor, city manager, city attorney, city engineer and staff that was
35 never considered because of the length of sidewalk we are talking about. Mr. Allen didn't know if UDOT would
36 put sidewalk in all the way up the street. He also said Geneva Road will be widened, we just don't know when.

37
38 Chair Johnson read section 11-4-1 from the city code. He then asked if the board grants a variance from this
39 ordinance, what grantees us that the improvements will be installed without posting a bond? Mr. Allen
40 responded by saying that is a good question. Mr. Allen said if the variance is granted, the motion needs to be
41 recorded against the property at the Utah County Records Office.

42
43 Mr. Phelon felt this is an economic hardship and the board can't rule on it.

44
45 Mr. Butterfield said it needs to be understood that if a variance is granted, the variance does not reflect the ADA
46 requirements that are required on this property.

47
48 Mrs. Riddle said she feels for the applicant because they have a business and they find out that they are not
49 compliant and it is going to cost them a lot of money to become compliant and in the process they have opened
50 up a can of worms. The city is requiring them to spend a lot of money and felt like the board in some way
51 should help ease the burden but stay within the law.

1 Mr. Butterfield said it is the responsibility of the business owner to stay in compliance; it is not the city's fault.
2
3 Mr. Allen said this business has been around awhile, the city doesn't have a site plan on file. The applicant
4 inherited this mess when he bought the care center and is now trying to comply, which could be a hardship for
5 the applicant.
6
7 Mr. Malone asked Mr. Allen what exactly is the Alpine Care Center facility. Mr. Allen answered, it is a rest
8 home.
9
10 Mr. Bruce Allison, Administrator of the Alpine Care Center for seven years said he appreciates the board
11 hearing his case tonight. He said every year the Care Center has a state inspection, and for the most part the
12 building is in good shape. The state came in this year and said the kitchen needs to be remodeled and the
13 laundry brought up to code.
14
15 Mr. Malone asked if the sidewalk was the only issue in bringing the property up to code. Mr. Allison said there
16 are some concerns with the bearing wall that has to be removed and that could change the slope. Mr. Phelon
17 said the wall wouldn't have to come out to put the sidewalk in.
18
19 Chair Johnson said the city engineer will address the issue, weather or not the retaining wall comes out or not.
20 Mr. Butterfield said the wall is not an issue.
21
22 Mr. Wadley asked if the slope meets the ADA requirements if the sidewalk is installed on the present grade, or
23 would the grade have to be changed.
24
25 Chair Johnson referred back to City Code Section 11-4-1 and said if the variance is denied, does that stop the
26 applicant from moving forward on his addition until a bond is posted. Mr. Allen said yes. The improvements
27 need to be installed or a bond posted.
28
29 Mr. Fugal asked the applicant if the sidewalk is put in, does the retaining wall stay in place. Mr. Allison said
30 that is up to the engineer to determine if the wall stays or comes down.
31
32 Mr. Allison said a lot of money has been spent on this project and he doesn't have the money to put in the
33 improvements at this time. He said the laundry room will cost approximately \$100,000 and then about another
34 \$60,000. for improvements. He said it is his responsibility and he realizes the site needs to be up to code, but
35 can't do it all at once.
36
37 Chair Johnson opened the meeting for public comment.
38
39 Mr. Lewis Cox said he is a neighbor and lives to the east of Alpine Care Center. He wanted clarification on the
40 parking situation. He said he has a concrete retaining wall on his property that is exposed on their side
41 approximately 5 or 6 ft above ground. He uses this piece of property for a storage yard. When the time comes
42 to make any improvements to my property I will have to match the sidewalk of the Alpine Care Center. He said
43 he is in favor of the variance that is being requested, because it is not going to affect the accessibility of a
44 handicap person and it is not going to add to the parking issue.
45
46 Mr. Butterfield said the board needs to keep in mind the ADA accessibility. There are people who walk on the
47 sidewalks and the sidewalk should be there and it is not.
48
49 Mrs. Riddle felt they should help the applicant by letting the improvements go in, in stages.
50
51 Chair Johnson closed the meeting for public comment.

1 BOARD DISCUSSION

2
3 Mr. Wadley read the 5 criteria that are required for a variance. The board then discussed the issues.

4
5 Mr. Butterfield said the applicant knows that the improvements need to go in, he is just avoiding it.

6
7 Mr. Allen said if the applicant didn't have to bring the laundry room up to code to comply with the state; the
8 building would stay as it is. The hardship is the improvements.

9
10 Mr. Fugal read from the book, Planning and Zoning Administration in Utah published by the University of
11 Utah which states; variances: "The board is without authority to grant a request for a variance that is based
12 upon a personal hardship." The hardship must be created by the property, not by a personal problem or need of
13 the owner or user. He felt this is an economical hardship and the board can not grant the variance. He also
14 mentioned that a variance runs with the land.

15
16 Mr. Fugal asked if conditions could be applied if a variance were granted. Mr. Allen said the city attorney has
17 given permission to apply conditions to a variance. He said the state is causing the hardship, making the
18 applicant remodel the laundry room. Mr. Fugal said again, the variance runs with the land.

19
20 Mrs. Riddle agreed with Mr. Allen, that the state is causing the hardship by making the applicant remodel the
21 facility. If the state did not require this, the facility would stay as is and no improvements required. She said
22 the applicant will comply over time. The applicant is trying to run a business lets work with him on requiring
23 the improvements at this time.

24
25 Mr. Phelon said the board should require the sidewalk to be installed in 5 years, whether or not the state puts it
26 in or not.

27
28 Mr. Allen agreed and suggested giving them a time frame that goes along with the state improvements, and that
29 way you are working with a business that is very important to the city. They are doing substantial
30 improvements and meet all the other codes.

31
32 Mr. Fugal asked how staff could track this variance if a time frame of five years was granted. Mr. Allen
33 suggested having the Report of Action recorded with the county recorder office, so if there is a change of hands
34 in the next few years, it says it right on the parcel, sidewalk needs to be installed within 5 years. He also said
35 he can track the variance on the excel program he uses.

36
37 Chair Johnson called for a motion on the 5 criteria requirements in granting a motion.

38
39 MOTION:

40
41 **At the Public Hearing, Mr. Wadley moved to approve the variance for Alpine Care Center to**
42 **avoid having to install the sidewalk improvements on the west half of the property , along the**
43 **Alpine Drive frontage; located at 25 East Alpine Drive with the following conditions:**

- 44 • **Sidewalk is to be installed on the north side of the remaining portion of Alpine Drive to**
45 **the corner of Geneva Road matching the location and specifications of the future UDOT**
46 **sidewalk and meeting ADA standards, within one (1) year of the completion of the**
47 **UDOT widening project.**
- 48 • **That all other Zoning, Building, Engineering and Fire Department regulations are met.**
- 49 • **The Report of Action is recorded with the Utah County Recorder.**
- 50 • **In the event that UDOT doesn't begin the improvements within five (5) years the**

1 **variance will be revoked and the sidewalk will be installed by the applicant.**
2 **Mr. Malone seconded the motion.**

3
4 AYE VOTES: Chair Johnson, Mr. Wadley, Mr. Malone

5 NAY VOTES: Mr. Fugal and Mr. Butterfield

6
7 Motion carried.

8
9 BOARD BUSINESS:

10
11 Mr. Allen said the Report of Action will be recorded with the county.

12
13 Mr. Butterfield suggested at the next training meeting the board have a discussion on whether or not
14 the Board of Adjustment has to have a Public Hearing.

15
16 Chair Johnson thanked everyone for attending the meeting.

17
18 **MOTION:**

19
20 Mr. Fugal made the motion to adjourn.

21
22 Meeting adjourned at 8:06 p.m.

23
24
25
26 Attachments (With file copy only)

27 1. Approved agenda

28
29
30
31 _____
32 Frank Johnson
33 Chair, Pleasant Grove City Board of Adjustment

34
35 _____
36 Barbara Johnson
37 Secretary

38
39 Date Approved: _____