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3 PLEASANT GROVE CITY  
4 BOARD OF ADJUSTMENT MINUTES  
5 December 17, 2009  
6

7 **PRESENT:** Chair Frank Johnson, Milt Fugal, Sterling Wadley, James Malone, Jim Butterfield, Steve  
8 Phelon and Laurel Backman Riddle.  
9

10 **STAFF:** City Planner, Sean Allen and Barbara Johnson, Secretary and Leisure Services Director,  
11 Deon Giles.  
12

13 **APPLICANTS:** Diane Bjarnson and Joe Gephardt  
14

15 **6:30 PM BOARD OF ADJUSTMENT MEETING**  
16

17 Chair Johnson called the meeting to order at 6:35 pm and welcomed everyone there. Chair Johnson  
18 asked everyone to silence their cell phones. In accordance with Article II, Paragraph 2.3 of the Board By-laws  
19 he indicated that he would preside at this hearing and the meeting is called to order. In addition we have present  
20 Board Members, Mr. Milt Fugal, Mr. Sterling Wadley and Mr. James Butterfield, Mr. James Malone an  
21 alternates Mr. Stephen Phelon and Mrs. Laurel Backman Riddle. The Board Secretary, Mrs. Johnson, is present  
22 and I would request that she record in the minutes of this hearing that we have the required Quorum present and  
23 all five members would be voting. The official minutes of this hearing will be available for public review,  
24 when published. He introduced the city staff Mrs. Barbara Johnson, secretary and Sean Allen, City Planner.  
25

26 Chair Johnson asked Mrs. Johnson if this meeting and the agenda have been publicly advertised. Mrs. Johnson  
27 stated that they have. He also asked the members if they received their staff briefing packets. All members said  
28 yes. Have each had ample time to study the packet? All members said yes. Are there any comments and/or  
29 questions regarding the agenda? All members said no. Are ALL Applicants present? Diane Bjarnson and Joe  
30 Gephardt answered yes.  
31

32 **MOTION:**  
33

34 Mr. Fugal moved that the publicly advertised agenda be accepted as the Order of the Day for tonight's meeting.  
35 Seconded by Mr. Wadley. Motion carried.  
36

37 Chair Johnson said during the hearing, each side shall proceed without interruption by the other. All testimony,  
38 statements and pleadings shall be addressed to the Chair. There shall be no questioning or arguing between  
39 individuals in the audience. Any Member of the Board, the Counsel to the Board, or Board staff, upon  
40 recognition by the Chair, may direct any questions to the applicant, witnesses, or any person speaking  
41 from the audience, to bring out pertinent facts. Chair Johnson asked the members if there have been  
42 any ex parte contacts or issues of bias with the applicant. All members stated no.  
43

1 The Hearing will proceed in this order:

- 2 • The Staff Representative will describe the nature of the case and evidence available to
- 3 the Board.
- 4 • Then the applicant will have a chance to state their case.

5  
6 We will now proceed with that in mind.

7  
8 ITEM 1 Public Hearing for the Board of Adjustment to consider the request of Diane Bjarnson for a  
9 Variance to Section 10-15-30/ Item H, to avoid having to install a minimum 20' x 20' garage or  
10 carport, associated with the existing home, on property located at 1243 East Hillside Drive, in the R1-  
11 20 (Single-Family Residential) Zone.

12 **GROVE CREEK NEIGHBORHOOD**

13  
14 **BACKGROUND**

15 The applicant has indicated that they built their home back when a garage or carport was not required. Several  
16 years back they applied for an addition to the home, which the City approved without requiring the garage or  
17 carport at the time of approval. There was a turnover in the building inspector position during the framing of  
18 the addition, and it was at this time that the new building inspector indicated that a garage or carport was  
19 required, and until they met that requirement, occupancy of the addition would not be granted.

20  
21 The applicant complied by submitting a plan for a carport. It was later determined that the carport the applicant  
22 was proposing was too small, and that the larger carport size are required. When the attempt was made to fit the  
23 correct size carport on the lot, Staff found that it would not meet the required rear or side yard setbacks. This is  
24 why the applicant is proposing to altogether avoid having to build the carport. The applicant believes that the  
25 hardship was created when the City approved the addition several years ago without initially requiring a carport  
26 or garage.

27  
28 Mr. Allen thanked the board and said he would like to read the staff report because it is very important. Mr.  
29 Allen said after talking with the applicant and coming to a full understanding that the city did error through this  
30 process and that it was hard to ignore but at the same time he wanted her to comply.

31  
32 Mr. Allen said he has done some measuring on the property and by looking at the aerial map it is not going to  
33 be accurate, but asked the members to look at the aerial map of the property as he talked about the setbacks. He  
34 said there is not a lot of room left on either side of this property; the rear setback was violated at one point or  
35 another. Mr. Allen said there is nothing he can do about this at this time and you as a board cannot grant more  
36 than one variance for this property. However, the city is at fault for this mistake.

37  
38 Mr. Allen said the applicant has to meet the 10' side yard setback and thought the required minimum 20' x 20'  
39 garage/carport would fit on the side yard.

40  
41 Mr. Allen said this whole situation is unfortunate. He said he couldn't come up with a way to fix all the  
42 mistakes that were made but would like to fix this one situation. He then said the applicant has asked that the  
43 required garage/carport be waived. Mr. Allen said his recommendation would be that the city gets something  
44 out of this, maybe at least one covered parking space, the city is willing to meet half way and settle for one  
45 covered parking structure. Mr. Allen said having a covered parking structure will add value to the home.

46  
47 Mr. Allen then talked about lot coverage. He said when you get to many buildings on a property that violates  
48 another code, and based on my calculations we are still okay we can ask for the full garage/carport and still  
49 meet code.

1 Mr. Butterfield said after reading the staff report it seems there is not enough room on the property for another  
2 structure. Mr. Malone asked if the entrance is at the back of the house. Mrs. Riddle asked if the setback  
3 requirements can be met if a 20' x 20' structure is required. Mr. Allen answered yes based on his calculations.  
4

5 Mr. Phelon was concerned with the geography of this lot. He then asked what the ordinance was on a double  
6 frontage lot. Mr. Allen said the city allows you to have access to a rear or side lot but can't be wider than 20 ft.  
7 wide.  
8

9 Mr. Fugal said he was concerned with the percentage of lot coverage, City Code Section 10-9B-11 states not  
10 more than 40% of the area of the lot or parcel of land can be covered. He said if the applicant is required to  
11 build a covered structure, we are creating more coverage on this property. Mr. Allen said based on the square  
12 footage of the house, addition and the new garage, the applicant has over 2000 sq. ft. left before they hit the  
13 limit of lot coverage. Mr. Allen said based on vision of the property, it's not there but based on numbers and  
14 the building permits and calculations they will not exceed the 40%.  
15

16 Mr. Phelon asked if the city has received complaints form the neighbors concerning this property or is this just  
17 the city's mistake solely. He said he had a problem with the city making the mistake and then going back on  
18 the property owner to fix it and make it right. Mr. Allen said the city is admitting that we are the ones causing  
19 this hardship for the applicant that is why we are here tonight. Mr. Allen said the applicant is willing to build a  
20 parking structure, but agrees with the Board, this is not the applicant's problem; it is the city's mistake.  
21

22 Chair Johnson said the application states that she is asking for a variance because she doesn't want to build a  
23 garage/carport on the property. Mr. Allen said the information you read in the application is based on what the  
24 she was instructed to do by the city. Mr. Allen said Mrs. Bjarnson has been into the office several times trying  
25 to work this out.  
26

27 Mr. Butterfield said if he understands this right, the applicant is asking us to grant the variance so she will not  
28 have to build the garage at all and the city really isn't fighting the variance, they are asking to give the variance  
29 with some conditions.  
30

31 Mr. Fugal asked about off street parking in the front yard. Mr. Allen said there are two parking stalls. Mr.  
32 Butterfield said he looked up the definition of "front yard" on the internet and it states: the part of the property  
33 between the road and the house it doesn't make any difference which direction the house faces." He then said  
34 the front of this property is the half circle.  
35

36 Chair Johnson said he would like to hear from the applicant at this time.  
37

38 Mrs. Bjarnson gave a brief history review about her property. She said she applied for a building permit for an  
39 addition, the plans were stamped and approved by the city and at that time there was nothing mentioned about  
40 building a garage. She said the addition is very tall and looks like it violates the setbacks but it doesn't, it is 10'  
41 from property line. She stated at the framing inspection the Building Inspector told her she would need a  
42 garage/carport built before she could have an occupancy permit she told the inspector that she would build a  
43 (stick) carport to get occupancy, but didn't know how they could afford it at this time.  
44

45 Mrs. Bjarnson said she submitted plans to the city for a (stick) carport. The city approved the plans, but we did  
46 not build the carport immediately because we were broke, although that is not the hardship you as a board are  
47 interested in, but is a hardship for us. Finally, we decided to do something about the carport and had the City  
48 Inspector and Zoning Officer come out to the property and measured to see if the structure would fit. She said  
49 the permit that was approved by the city for the carport didn't meet code at the time. The city code called for a  
50 20' x 20' carport and our plans were approved for an 18' x 20' carport.  
51

1 Mrs. Bjarnson said she will be honest and tell you that an 18' x 20' covered parking structure will fit along the  
2 back of the property but a variance will need to be granted on the back property line. She told the inspector that  
3 eventually they would like to build a nice garage but feels very strongly that this puts a hardship on them at this  
4 time to build a (stick) carport just to comply with code when she has an approved building permit. Mrs.  
5 Bjarnson said in September 2008, she wrote a letter to the City Attorney, Tina Peterson concerning this problem  
6 and has not heard back from her.

7  
8 Mrs. Bjarnson said she just wants to be honest and straight and doesn't feel like she should be pressured into  
9 building the carport, when it wasn't up front in the beginning. She then said it is more than likely that she will  
10 come back to this body in a few years and ask for a variance at that time to build a garage. At this point she just  
11 wants to feel that it is okay not to build a structure and not just ignore it.

12  
13 Mr. Butterfield wanted to know what the time period was between the time the building inspector informed you  
14 about needing a carport to comply with the code and allowed you to continue building. Mrs. Bjarnson said it  
15 was a very slow process because her husband and a friend were building the addition. She thought it was about  
16 a year. Mr. Butterfield asked if she had the paper work that showed that the permit for the carport was  
17 approved she said yes, it is building permit # 395.

18  
19 Chair Johnson asked Mrs. Bjarnson if she had an occupancy permit for the addition. Mrs. Bjarnson said she  
20 received the occupancy permit when she submitted and paid for the carport building permit.

21  
22 Mr. Phelon asked if the Building Inspector had the authority to force the applicant to build a carport. He  
23 thought the inspector goes to a job and enforces what was approved on the plans; he doesn't have the authority  
24 to make that decision that would be the responsibility of the Code Enforcement Officer.

25  
26 Mr. Fugal said when the building permit was issued for the carport it was issued wrongfully; it didn't  
27 meet the current code at the time of issuance. The City Code requires a 20' x 20' covered parking  
28 structure; the permit issued doesn't meet the code. Mr. Wadley said the 20' x 20' is the interior width  
29 measurement, so you would have to add a few more feet to the structure.

### 30 31 BOARD DISCUSSION

32  
33 Mr. Fugal got the impression from Mrs. Bjarnson that she didn't want to build the garage now but will  
34 build a garage or carport at a later time. He then reminder her that only one variance can be granted to  
35 a piece of property, and that the variance runs with the land.

36  
37 Mrs. Bjarnson said a variance has already been granted to this property. She said they developed the  
38 property behind their house and a variance was granted on the properties to build a fence higher than  
39 the city code allowed. Mr. Phelon said the variance was probably granted for the subdivision, not just  
40 the property in question.

41  
42 Mr. Butterfield said there is one more thing that needs to be considered, if the variance is granted now,  
43 not build the carport at this time and the applicant wants to build the carport at a later time, all city  
44 codes will have to be met at that time.

45  
46 Mrs. Bjarnson said the best solution would be for me to walk out of this meeting right now and just  
47 forget all this and just hope that the city doesn't come after me.

48

1 Mr. Allen said if this house should burn down, and they wanted to rebuild it, it is a non conforming  
2 structure and the code does state: that if it is destroyed more than 50% of its replacement value  
3 Planning Commission has to approve the reconstruction of that home, and the home will have to meet  
4 all current zoning and building codes.

5  
6 Mr. Wadley said if the variance is granted tonight we can put conditions with the approval that all  
7 zoning and city codes are to be met. Mr. Phelon said by the looks of this property, he thinks several  
8 variances have already been granted on the property.

9  
10 Mr. Butterfield said he would like the applicant to be able to build a reduced carport or garage  
11 someday on this property.

12  
13 Mr. Butterfield said if at a later date the applicant decides and wants to build a garage she is covered  
14 under Section 10-15-30 L. Deviations: Mr. Butterfield then read the definition.

15  
16 Mr. Phelon said he didn't want to cause a hardship on the applicant because of the city's mistake.

17  
18 **MOTION:**

19 **At the Public Hearing, Mr. Fugal moved to approve the variance to Section 10-15-30/H for**  
20 **Diane Bjarnson to avoid having to install a minimum 20 x 20 garage or carport located at 1243**  
21 **East Hillside Drive. Mr. Butterfield seconded the motion.**

22  
23 AYE VOTES: Chair Johnson, Mr. Wadley, Mr. Malone, Mr. Fugal and Mr. Butterfield

24 NAY VOTES:

25  
26 Motion carried.

27  
28 *The Board took a five minute recess.*

29  
30 ITEM 2 Public Hearing for the Board of Adjustment to consider the request of Joe Gebhardt and  
31 Pleasant Grove City for a Variance to the maximum front yard fence height, found in Section 10-15-  
32 38/ Item A, to allow a solid fence of a minimum six feet (6') tall along the west property line, on  
33 property located at 1160 West 2600 North, in the RR (Rural Residential) Zone.

34 **MANILA NEIGHBORHOOD**

35  
36 **BACKGROUND:**

37  
38 The applicant has purchased the subject property, and is making upgrades to the home and property  
39 itself. He would like to screen his property from the neighbors on the west and north, but this area is  
40 technically considered his front yard, because his front door faces in that direction, which limits his  
41 screening capabilities to a maximum of three feet (3') in height. Typically, and in many cases by law,  
42 your front yard area is based on where the front door or main access to the home is located.

43  
44 Mr. Allen said in a nut shell, what we have here is a situation where we need to define the front; side and rear  
45 yards on this property. He said what sets the standard is the city ordinance, however the city defines the front  
46 yard is what you go by. He stated in Pleasant Grove we go by the lay out of the house and the front door

1 determines where the front yard is located. In this case the front yard is on the west side of the home, making  
2 the side yard front the street.

3  
4 Mr. Allen said the applicant main desire is to have a solid 6' fence in his front yard to shield off his neighbor  
5 who stores quite a lot of things. He then showed a picture of the neighboring property.

6  
7 Mr. Allen said any solid fencing over 3' in the front yard needs a variance and that is why we are here tonight.  
8 He also said city staff feels that the layout of the house and the situation with the neighboring property is a  
9 hardship for the applicant. He said the city is supporting this request to allow the additional height.

10  
11 Mr. Allen said the applicant wants to install a very nice pre-cast concrete wall. He then showed the members a  
12 picture of the wall. He said the applicant needs to come in and get a fence permit and part of the fence permit  
13 approval is to make sure there is clear vision from the driveway.

14  
15 Mr. Butterfield said safety is a concern with having an 8' fence along the driveway. He then read the definition  
16 of a "front yard". Mr. Allen said you have to go by what the City Code states as a "front yard", and the city  
17 goes by the lay out of the house and the front door determines where the front yard is located. In this case the  
18 front yard is on the west side of the home. We have to be consistent, because this is how all the building permits  
19 and commercial projects are approved based on where the front door is located, which establishes the front  
20 yard.

21  
22 Mr. Fugal asked what is proposed on the south side of this home, the side that faces the street. Mr. Allen said  
23 that will be determined by the Planning Commission., the request tonight is for a variance only to the front yard.

24  
25 Mr. Phelon referred to the picture of the property and said the fence needs to meet the required setbacks for  
26 safety purposes.

27  
28 Mr. Butterfield then read PGMC 2.15.030 (2) regarding Appeals. Mr. Allen said this is not an appeal. Mr.  
29 Butterfield said as soon as the Board starts ruling on an eight (8') ft fence we are violating the zoning ordinance.  
30 Mr. Butterfield felt the applicant is appealing the zoning ordinance through a variance.

31  
32 Mrs. Backman Riddle referred to the handout from Mr. Allen stating the definition of a front yard. She said the  
33 definition says nothing about the layout of the house. Mr. Wadley said maybe when a variance is granted the  
34 definition changes to the piece of property.

35  
36 Mr. Allen asked the members to look at the staff report in their packets. He then asked them to turn to the Staff  
37 Recommendation on page 2 and cross out the word **south**. He apologized and said the request tonight is just for  
38 the west and north property lines which are considered the front yard.

39  
40 Mr. Wadley asked why the city can't force the neighbor to clean up his yard. Mr. Allen said the zoning officer  
41 is working with the property owner to clean up his yard, but that doesn't stop Mr. Gephardt from wanting to  
42 construction a wall in front yard.

43  
44 Chair Johnson told Mr. Allen that he could be excused. Mr. Allen had a prior engagement.

45  
46 Chair Johnson welcomed Kimberley Robinson, newly elected city council member to the meeting.

47  
48 Mr. Gephardt said he would like to put everyone's mind at ease. He said he is not planning to build a wall on  
49 the north side of his home, that part of the yard will be landscaped. Mr. Gephardt said he is donating part of his  
50 property back to the city; he then showed the members a picture of his property and explained to them what his  
51 plans were for building the pre-cast concrete wall.

1 Mr. Gephardt said when the new road is completed (2600 North) it will only be 17' from his south property  
2 line. Mr. Phelon said at that time you will need to have a taller wall on the south property line.

3  
4 Mr. Gephardt said he didn't have a problem with moving the fence on the west property line back 30' to have  
5 clear vision by the driveway.

6  
7 Deon Giles said he was representing the city tonight and said one of the reasons the city didn't address the south  
8 property line on 2600 North, was because we are looking to develop the road and take the full width in the  
9 future

10  
11 **BOARD DISCUSSION:**

12  
13 Mr. Butterfield said he had a problem with the side yard that fronts 2600 North; he said the side yard should be  
14 treated as the front yard with 3' height requirements. He also said there is a reason for the 3' height in a front  
15 yard, it is for safety reasons.

16  
17 Mr. Phelon said when the city puts in the new road; they will provide Mr. Gephardt with a wall one way or  
18 another, because when you have a busy road only 17' from a house, you need a noise barrier and some privacy.

19  
20 Mr. Wadley suggested that an actual measurement on the setbacks be met before the 8' fence starts. Mr.  
21 Malone said that measurement could be part of the motion. Mr. Phelon said staff will have to approve the fence  
22 permit and the clear vision area will have to be met at that time of approval.

23  
24 **MOTION:**

25  
26 **At the Public Hearing, Mr. Wadley moved to approve the variance for Joe Gephardt on the front yard**  
27 **/west side of the property which is determined by the city to be the front yard and extend to the north**  
28 **property line according to Section 10-15-38/ Item A to allow a solid fence to the height of eight (8') ft**  
29 **located at 1160 West 2600 North with the following conditions:**

- 30       • **The fence meets all city ordinances.**  
31       • **The fence on the south 25' of west property line may not exceed three (3') ft in height then**  
32       **slope up to eight (8') ft. in height or what City ordinance requires.**

33 **Seconded by Mr. Fugal.**

34  
35 AYE VOTES: Chair Johnson, Mr. Wadley, Mr. Malone and Mr. fugal

36 NAY VOTES: Mr. Butterfield

37  
38 Motion carried.

39  
40 Review and approve the Minutes from the November 19, 2009 meeting.

41  
42 **MOTION:**

43  
44 Mr. Wadley moved to approve the minutes from November 19, 2009 meeting as written. Seconded by Mr.  
45 Malone.

46  
47 Aye Votes: Chair Johnson, Mr. Wadley, Mr. Malone, Mr. Butterfield and Mr. Fugal.

48 Nay Votes: None

49  
50 **Election of Chair and Vice-Chair for the year 2010**

1  
2 Chair Johnson opened the meeting up for nominations for Chair and Vice-Chair for the Board of  
3 Adjustment year 2010.

4  
5 Mr. Wadley nominated Mr. Butterfield to be the Chair for the year 2010. Seconded by Mr. Malone.  
6 Mr. Butterfield said he would accept the position as Chair. Motion carried.

7  
8 Mr. Butterfield reminded the board as they appoint a Vice-Chair that the Vice- Chair will become the  
9 Chair of the Board next year.

10  
11 Chair Johnson nominated Mr. Wadley to be Vice-Chair for the year 2010. Seconded by Mr. Fugal.  
12 Mr. Wadley said he would accept the position as Vice-Chair. Motion carried.

13  
14 Board Business

15  
16 Chair Johnson said the next meeting will be on January 21, 2010. He said there will be some training  
17 by Mr. Butterfield on Section A & B of the Reference Manual.

18  
19 Mr. Fugal said he would be resigning as of December 31, 2009. He said he would like to pursue the  
20 vacant seat on the City Council. The board members thanked him for his service.

21  
22 **MOTION:**

23  
24 Mr. Wadley moved to adjourn.

25  
26 Meeting adjourned at 8:35 pm.

27  
28  
29  
30 \_\_\_\_\_  
31 Frank Johnson  
32 Chair, Pleasant Grove City Board of Adjustment

33  
34 \_\_\_\_\_  
35 Barbara Johnson  
36 Secretary

37  
38 Date Approved: \_\_\_\_\_  
39

40  
41 Attachments (With file copy only)

42 Approved Agenda  
43 Staff Report  
44  
45  
46  
47