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2
3 PLEASANT GROVE CITY
4 BOARD OF ADJUSTMENT MINUTES
5 January 21, 2016
6

7 **7:00 P.M. BOARD OF ADJUSTMENT MEETING**
8

9 **Present:** Chair Gail Christiansen, Board Members Pat Ellington, Stephanie Green, and Dustin
10 Phillips
11

12 **Staff:** Community Development Director Ken Young, City Planner Royce Davies, and Planning
13 Tech Barbara Johnson
14

15 **Excused:** Member Milt Fugal
16

17 Chair Gail Christiansen welcomed those present and called the meeting to order at 7:00 p.m. It
18 was confirmed that there had been no ex parte contact between Members of the Board and the
19 parties being heard and no bias had been formed by any of the Members.
20

21 **MOTION:** Board Member Ellington moved that the Board of Adjustments APPROVE the agenda
22 as written. Board Member Green seconded the motion. The Board Members unanimously voted
23 “Aye”. The motion carried.
24

25 **ITEM 1 - Public Hearing** to consider the request of Zhipeng Kou for two variances: 1) a variance
26 from City Code Section 11-7 which requires illegally subdivided parcels to be rectified in
27 connection with the creation of a new subdivision, and 2) a variance from Section 10-15-14-A that
28 restricts flag lots from being developed on properties that may otherwise be developed with
29 standard street access on property located at approximately 601 South Apple Grove Lane in the
30 R1-8 (Single Family Residential) Zone. **STRING TOWN NEIGHBORHOOD.**
31

32 **Applicant: Zhipeng Kou**
33

34 City Planner, Royce Davies, presented the staff report and displayed an aerial map of the subject
35 property. He stated that the property was once part of a larger parcel and he identified the area on
36 the map. The previous owner of the property subdivided his land without going through the
37 subdivision procedure with the City and sold this portion to the applicant. This illegal subdivision
38 was discovered when the applicant approached the City to request a two-lot subdivision of his
39 property. The current Code requires that illegal subdivisions be corrected as part of the application
40 process, and this must include other parcels from the original property. Mr. Davies informed the
41 Board that the applicant has approached the neighbouring landowners about including their land

1 in the subdivision but has not received positive responses. In some cases, he was clearly told that
2 the other owners would not participate. As a result, the City Engineer recommended that the
3 applicant seek a variance from this requirement.

4
5 Mr. Davies stated that the applicant was also seeking a variance from the flag lot ordinance in
6 connection with the proposed subdivision. The Code states that a flag lot can be used for lots that
7 cannot be otherwise accessible using residential street standards. Mr. Davies stated that the City
8 Engineer created a potential plan to allow them and surrounding lots to have access using
9 residential street standards. This, however, would require the applicant to obtain the land from the
10 surrounding property owners or have their cooperation. As stated previously, the surrounding
11 property owners are not interested in being included in the subdivision. For this reason, the
12 applicant is seeking the variance to allow one of the lots access via a flag lot stem.

13
14 Board Member Phillips asked if there was any responsibility for the applicant to document the
15 neighbors' unwillingness to participate. Mr. Davies explained that this was not required but the
16 Board could request it if they felt the need. Board Member Phillips believed that granting the
17 requested variances would allow the applicant to develop his property in the manner he desires.

18
19 Board Member Ellington commented on the plan drafted by the engineers and asked if they could
20 recommend this be pursued. Mr. Davies stated that they could recommend it, but they would not
21 be able to require that kind of development.

22
23 The applicant, Zhipeng Kou, thanked staff and the Board for their time and help in the process.
24 He gave a brief history of the property, which he purchased one year ago, and stated that he was
25 unaware of the illegal subdivision. He has been working diligently for the past six months to work
26 with the neighbors to resolve the issue, but has had little success. Mr. Kou would like to build a
27 home for himself and his family on the property.

28
29 Chair Christiansen opened the public hearing.

30
31 Carolyn Moser gave her address as 1513 West 50 North and stated that she did not want to lose
32 the applicant as a neighbor because of this issue. She spoke to the character of the Kou family and
33 expressed a desire to see the variances granted to allow them to build their home.

34
35 Blaine Thatcher, who resides at 120 North 1400 East, had no objection to the variance request but
36 stated that the need for the variance presents a number of questions about how this kind of situation
37 occurs. It seemed to Mr. Thatcher that a flag lot variance was not necessary because the lots should
38 have access onto Apple Grove Lane.

39
40 Chair Christiansen responded to Mr. Thatcher's comment by stating that the recent updates to the
41 Code should help prevent these types of issues in the future. Also, granting variances like the one
42 proposed allows them to rectify damage that has already been done. Community Development
43 Director, Ken Young, added that the illegal subdivision predated anyone currently on staff or the
44 Board.

45
46 There were no further public comments. Chair Christiansen closed the public hearing.

1 The Board Members addressed the following five criteria for approval of a variance:
2

- 3 1. Literal enforcement of a zoning ordinance would cause an unreasonable hardship for the
4 applicant that is not necessary to carry out the general purposes of zoning ordinance.
5

6 Board Member Green believed that the applicant had done his due diligence in trying to involve
7 the other property owners. Board Member Ellington stated that literal enforcement would cause
8 an unreasonable hardship on the applicant. The other Board Members agreed.
9

- 10 2. There are special circumstances attached to the property that do not generally apply to other
11 properties in the same district.
12

13 The Board felt that the same arguments expressed in the previous criteria discussion applied here
14 and that there are special circumstances in this instance.
15

- 16 3. Granting the variance is essential to the enjoyment of a substantial property right possessed
17 by other properties in the same district.
18

19 It was agreed that the applicant should have a right to have a home on his property.
20

- 21 4. The variance will not substantially affect the General Plan and will not be contrary to the
22 public interest.
23

24 Board Member Ellington commented that granting a variance would be in line with the General
25 Plan and that the preference would be to see the property divided into two smaller lots than one
26 large lot in this zone.
27

- 28 5. The spirit of the zoning ordinances observed and substantial justice done.
29

30 All Board Members agreed on this point as well.
31

32 Chair Christiansen chose to entertain a motion for both issues after discussion of the second
33 variance request. Below are the five criteria and discussion regarding the variance on the flag lot
34 ordinance requirements:
35

- 36 1. Literal enforcement of a zoning ordinance would cause an unreasonable hardship for the
37 applicant that is not necessary to carry out the general purposes of zoning ordinance.
38

39 Board Member Green stated that the variance would allow the applicant to build a home on a lot
40 size that is appropriate in the zone and surrounding residences.
41

- 42 2. There are special circumstances attached to the property that do not generally apply to other
43 properties in the same district.
44

45 The Board agreed that the illegal subdivision and the narrow street access qualify as special
46 circumstance.

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

3
4 The Board Members agreed that this was true in this case.

5
6 4. The variance will not substantially affect the General Plan and will not be contrary to the
7 public interest.

8
9 It was suggested that the granting of the variance would help to facilitate the General Plan.

10
11 5. The spirit of the zoning ordinances observed and substantial justice done.

12
13 All Board Members agreed on this point as well.

14
15 **MOTION:** Board Member Phillips moved that the Board of Adjustment APPROVE the
16 applicant’s request for two variances allowing property that was previously subdivided without
17 Pleasant Grove City approval to be added to a new subdivision without including all of the
18 previously subdivided property and allowing a flag lot to be built on the property where the adopted
19 Local Streets Vicinity Plan shows that it may be developed using standard street access on property
20 located at approximately 601 South Apple Grove Lane in the R1-8 (Single Family Residential)
21 zone. (Sections 11-7 and 10-15-14-A). Board Member Green seconded the motion. The Board
22 Members unanimously voted “Aye”. The motion carried.

23
24 **ITEM 2 – Public Hearing to consider the request of Richard Gourley for a legal nonconforming**
25 **determination for an existing duplex on property located at approximately 152 North 1400 East in**
26 **the R1-20 (Single Family Residential) Zone. GROVE CREEK NEIGHBORHOOD.**

27
28 **Applicant: Richard Gourley**

29
30 Mr. Davies presented the staff report regarding the request for a legal nonconforming
31 determination from the Board. He reported that there is an existing duplex on the applicant’s
32 property, which has been used as such since 1982. Currently the Code does not allow duplexes in
33 the R-1 zones unless the lot is twice the minimum size. Mr. Davies stated that the subject property
34 did not meet that requirement. The applicant was seeking determination from the Board to allow
35 the duplex to exist based on the Code requirements that were in place when the building permit
36 was obtained.

37
38 Mr. Davies stated that the applicant supplied the building permit issued on April 19, 1982, and it
39 was included in the staff report. He indicated that the “duplex” box had not been checked on this
40 permit, which makes the purpose of the building permit unclear. The permit states that the owner
41 would be adding two bedrooms, which is consistent with what the applicant has asserted was added
42 to the apartment. Mr. Davies clarified that a two-bedroom apartment had been installed above the
43 garage of an existing five-bedroom home. Mr. Davies also stated that they have obtained utility
44 bills showing that there were two units at this address.

1 The applicant, Richard Gourley, stated that the home was originally built in 1973, and his parents
2 added the apartment in 1982 with the intent of making it a legal duplex. Mr. Gourley was here to
3 ensure that the use could continue as it has since that time.
4

5 Chair Christiansen opened the public hearing.
6

7 Blaine Thatcher gave his address as 120 North 1400 East and stated that he is the neighbor to the
8 south of the subject property. He confirmed that the apartment has been in existence since he has
9 been a resident of the area and he was in favor of the determination. Mr. Thatcher asked about the
10 upcoming Accessory Apartments Ordinance and how that relates to this issue.
11

12 Chair Christiansen stated that an email was received from John Wagoner. Mr. Gourley explained
13 that he has spoken to Mrs. Wagoner and explained his purpose for seeking the determination.
14 Mr. Wagoner's email asked that issues regarding the tenants and enforcement of rules be discussed
15 at tonight's meeting.
16

17 Board Member Phillips asked how long the units have both been rented out. Mr. Gourley
18 explained that his mother moved out of the main dwelling approximately four years ago, and since
19 that time both units have been rented out. Mr. Young added that one of the reasons the application
20 was before the Board was because the Accessory Apartments Ordinance will require homeowner
21 occupancy. Since this is not Mr. Gourley's situation, the duplex would not be allowed by the
22 ordinance. If the determination was made that the duplex use was grandfathered, the use could
23 continue.
24

25 There were no further public comments. Chair Christiansen closed the public hearing.
26

27 There was discussion regarding the terms "duplex" and "accessory apartment" and what term
28 applies to this property. Mr. Davies recommended that the motion include the phrase "two-family
29 dwelling" rather than "duplex" to clarify the use.
30

31 The Board Members agreed that it would be appropriate to grandfather the use that was originally
32 intended for the property.
33

34 **MOTION:** Board Member Ellington moved that the Board of Adjustment APPROVE the
35 applicant's request for a legal non-conforming determination for a two-family dwelling on
36 property located at approximately 152 North 1400 East in the R1-20 (Single Family Residential)
37 zone, based on the following:
38

- 39 1. We find the building and use to be in compliance with the A-1 SD zoning ordinance in
40 observance in 1982, which allowed for two-family dwellings.
41
- 42 2. The use qualifies to be grandfathered into the rights that it had in 1982.
43

44 Board Member Phillips seconded the motion. The Board Members unanimously voted "Aye".
45 The motion carried.
46

1 **Review and approval of the Board of Adjustment Minutes from December 17, 2015.**

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3 **MOTION:** Board Member Green moved to approve the Board of Adjustment Minutes from
4 December 17, 2015. Board Member Ellington seconded the motion. The motion passed
5 unanimously.

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7 The meeting adjourned at 8:09 p.m.
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9

10
11 _____
12 Gail Christiansen
13 Chair, Pleasant Grove City Board of Adjustment
14

15
16 _____
17 Barbara Johnson
18 Secretary
19

20 Date Approved: _____