



**PLEASANT GROVE CITY
APPEAL AUTHORITY MEETING MINUTES
CITY HALL CONFERENCE ROOM
70 SOUTH 100 EAST
PLEASANT GROVE, UTAH
WEDNESDAY, MAY 22, 2024**

PRESENT: Craig Call, Esq., Hearing Officer
Sean Cho, Staff Engineer
Jacob Hawkins, City Planner
Christina Gregory, Planning & Zoning Assistant
Daniel Cardenas, Community Development Director
Ralph van der Beek, Applicant for Item #1
Charles Keeler (neighboring property owner) for Item #1
Spencer Maxfield (neighboring property owner) for Item #1
Joel Tobey, Applicant for Item #2
Jennifer Tobey, Applicant for Item #2

Hearing Officer, Craig Call, called the meeting to order at 12:00 p.m. and announced that the hearing was being recorded.

1. Public Meeting: Variance from City Code Section 8-4A-19: Policy Regarding Service Laterals.

(Big Spring Neighborhood)

Public Meeting to Consider a Request of Ralph van der Beek for a Variance from City Code Section 8-4A-19: Policy Regarding Service Laterals, which requires a separate service lateral for each dwelling unit for one-and two-family structures. The property is located at 1330 North 100 East in the R-R (Rural Residential) Zone.

Hearing Officer Call reported that he reviewed the packet that was prepared by staff. He asked that those present identify themselves by name. Initially, he asked for clarification about a detail on the Exhibit, which appeared to be a connection line for the new lots, which was labeled as both a "sewer main" and "sewer lateral." If it is a sewer main, then a variance may not be necessary. Ultimately, Staff Engineer, Sean Cho, explained that the subject line designates the easement area where a private sewer main would be located. He stated that the road typically contains a public sewer main with connections to the lots. In this case, however, the subject sewer main is considered private as it is not located under a public road. The significance of the private sewer main label is that the City does not maintain it and individual property owners who connect to a private sewer main are responsible for maintenance and upkeep. Because City Code does not allow the connection of a lateral line to a private sewer main and because there is no place to put in a new sewer main, the request was to connect *via* a sewer main easement between the neighboring lots identified as Lots 1 and 2. The easement impacts only Lot 2, which is owned by

1 Charles Keeler. The amended plat was still being worked on. He explained that the home owned
2 by Charles Keeler is connected to a public sewer main and will not use the private sewer main.

3
4 Hearing Officer Call reported that sewer main pipes are usually eight inches in diameter while a
5 single lateral line is usually a six-inch pipe. If the larger pipe were installed, the area would need
6 to be dug only once, should there be future development. There was discussion regarding what
7 might occur should there be future development with multiple lots. Efforts were being made to
8 figure out a way to bypass having to ask for a lateral connection on every lot that is developed.

9
10 Mr. Keeler raised the following questions which were addressed:

- 11
- 12 • He understood that the future possibility exists that some of the applicant's property will
13 be subdivided for residential or income property and asked who would be responsible for
14 the system as they subdivide. A separate Service Agreement was being prepared that was
15 not a part of this hearing that will address maintenance responsibilities and issues
16 pertaining to future sales. Hearing Officer Call commented that there could be disputes
17 between those using the line (i.e., vandalism to the line) that would be between the property
18 owners who share the line. Mr. Keeler expressed concern that if something happens in the
19 easement area on his property, he has to deal with people he does not know.
 - 20 • Mr. Keeler wanted assurance that someone else could not put another line in the easement
21 area. ~~He was informed that that would be between him and his neighbors and the City~~
22 would not be involved. Engineer Cho explained that the Service Agreement is to be
23 recorded with the County and will run with the land. It should specify that the owners of
24 each dwelling are jointly and severally responsible for any necessary maintenance,
25 cleaning, repair, or replacement of the joint lateral that connects to the City's main at 1280
26 North. Hearing Officer Call added that imposing such a condition gives protection as it
27 requires anyone using the line to be responsible for maintenance. It would be up to
28 Mr. Keeler to provide the easement, which is a matter of private negotiation between the
29 parties. Mr. Keeler clarified that just because they have an easement they cannot use it for
30 additional sewer lines. Hearing Officer Call stated that the limitations come from what the
31 terms of the easement provide and he would not provide legal advice in that regard. He
32 noted that it is an eight-inch pipe that is adequately sized. The property is in a residential
33 zone that allows only a certain number of residences in a given area of square footage.
 - 34 • Mr. Keeler asked about the effect of adding more restrictions on the value of his property.
35 The Hearing Officer did not render an opinion in that regard but noted that buyers usually
36 do not care about Public Utility Easements ("PUE"). When lots are platted, each lot comes
37 with a 10-foot PUE around the boundaries of the lot that are used for a variety of utilities.
38 There was discussion about PUEs and Engineer Cho stated that any new Sewer Easement
39 will have to be recorded with Utah County even if it is private or within a PUE.
- 40

41 Hearing Officer Call saw no reason to not grant the variance request. The decision to grant the
42 easement, however, remained with Mr. Keeler.

43
44 Mr. Keeler had additional questions that were addressed as follows:
45

- 1 • He asked why the applicants should not be made to go to 100 East to connect. Engineer
2 Cho stated that there is a sewer main on 100 East but it is tied to 1280 North and would
3 require digging up the a substantial part of 100 East to make the connection. There is
4 currently no sewer main on 100 East between 1280 North and 1500 North. If the applicant
5 wanted to bear the cost to connect to the City's public sewer main on 100 East, they could
6 do so. Engineer Cho further stated that it is better to connect at 1280 North rather than 100
7 East, as 100 East is a County Road.
- 8 • Mr. Keeler understood that additional property was being considered for future
9 development. The original discussion was because the Bigelows had to remove their septic
10 system and they agreed to give up an easement under that condition. The issue now
11 includes investment properties. To date, they have been great neighbors who help each
12 other. He would not be supportive if what is proposed adversely impacts his property.

13
14 Hearing Officer Call asked Mr. Keeler if he was opposed to the variance that would allow the
15 applicant to go through his property with a lateral or a private sewer main. Mr. Keeler stated that
16 if the variance specifies that the easement can only be placed on his property, he may be opposed
17 as there are other possible options. There was brief discussion regarding various possible
18 approaches, limiting users, and whether PUEs include sewers. It was noted that Mr. Keeler is in
19 control of whether he grants an easement and the terms. Hearing Officer Call stated that he too
20 could delay the matter and make no ruling.

21
22 Mr. Keeler commented that the proposed easement goes through his property at a point that would
23 require the removal of a very large tree that sits on the border between his property and his
24 neighbor's. The applicant would need permission from his neighbor, Spencer Maxfield, to remove
25 the tree as well. The applicant has indicated that he would take care of the tree. Hearing Officer
26 Call stated that the tree removal issue was not before him today.

27
28 Mr. Keeler asked where he could turn to have his questions answered. He was advised to contact
29 the City directly. Mr. Keeler was also informed that he does not have to sign anything until all of
30 his questions are answered. The applicant, Ralph van der Beek, reported that if Mr. Keeler was
31 not comfortable with what was proposed they could stick with the original plan involving two
32 small lateral pipes for his mother. The other property was an afterthought but separate lateral pipes
33 for each of the two homes would be acceptable. It was noted that a Service Agreement would be
34 required. Mr. Keeler wanted to ensure that all of the issues were addressed.

35
36 Hearing Officer Call reported that the hearing would be continued. When the applicant is ready
37 to proceed, he should contact Community Development Director, Daniel Cardenas. They can then
38 reconvene online for a decision. If a variance is not needed, there would be no reason to reconvene.

39
40 A recess for the meeting took place from 12:27 p.m. to 12:31 p.m.

1 **2. Public Meeting: Special Exception from City Code Section 10-15-38: Fencing**
2 **Standards.**
3 **(Battle Creek Neighborhood)**

4 Public Meeting to Consider a Request of Joel and Jennifer Tobey for a Special Exception
5 from City Code Section 10-15-38: Fencing Standards, which limits a sight obscuring fence
6 to a maximum height of three feet (3') in any required front yard setback, and non-sight
7 obscuring to a maximum height of four feet (4'). The property is located at 414 South 1210
8 East in the R1-9 (Single-Family Residential) Zone.
9

10 Hearing Officer Call reported that the above item was a request for a Special Exception for a fence.
11 He was provided with information from the City and noted that the exception is supported by the
12 City. There were no objections expressed for the exception. Hearing Officer Call reported that he
13 received a request that the record be protected if the proceedings refer to an individual with
14 disabilities. Hearing Officer Call stated that he would not oppose that request except that it is not
15 needed. The bottom line for him was that he may not need to hear anything else. Without
16 objection, he announced that he was ready to grant the exception.
17

18 Director Cardenas reported that the following conditions should be imposed that differ from what
19 was published:
20

- 21 1. The exception does not run with the land and will need to be removed once the
22 identified person no longer lives in the home.
23
24 2. This is not considered a Conditional Use but a Reasonable Accommodation.
25
26 3. No annual update will be required and it is the resident's responsibility to notify the
27 City that the property has been sold within a reasonable time.
28

29 The applicant, Joel Tobey, asked if the City would be paying for any changes they make. The co-
30 applicant, Jennifer Tobey, reported that others were prepared to speak but because this is a public
31 hearing they thought it was inappropriate for this type of accommodation. Director Cardenas
32 reported that this is not a public hearing but a public meeting, which is very different. Hearing
33 Officer Call explained that this meeting allows only the applicants to speak and is not a public
34 hearing where others will be allowed to speak. He saw no need for anything other than what was
35 in the record to be offered.
36

37 Hearing Officer Call asked if the applicants wanted the application to be protected. Mrs. Tobey
38 stated that they did. Hearing Officer Call stated that this would normally occur under the State's
39 Government Records Access and Management Act ("GRAMA") rules. If the document includes
40 confidential information, it would be protected. The City would simply continue that. At this
41 point, he did not see that there would be anything related to the hearing that is unique and would
42 also need to be protected. He based his decision only on the written materials provided and the
43 comments made by Director Cardenas about the conditions of granting the exception.
44

45 Mr. Tobey was aware of the conditions, was eager to get a fence, and wanted to move forward but
46 they objected to the conditions as they cause undue mental stress burden. Hearing Officer Call

1 asked if the objection was that they want the exception to be permanent on the property regardless
2 of who lives there. Mrs. Tobey stated that the Federal Housing Administration ("FHA") requires
3 that. She stated that this hearing does not involve a land use issue but is a request for reasonable
4 accommodation and modification.

5
6 Hearing Officer Call asked if Mrs. Tobey was asserting that he did not have jurisdiction in this
7 matter. She did not know but that was one of the questions she had when this process began.
8 Hearing Officer Call asked if the City has handled reasonable accommodation issues before.
9 Director Cardenas stated that they have not had one like this. The City considers this a land use
10 situation because what is being requested goes against the Land Use Code of which the fencing
11 restrictions are part. The City supported reasonable accommodations be granted for the request
12 for a special exception.

13
14 Hearing Officer Call stated that based on his experience as a City Attorney, as the Property Rights
15 Ombudsman for 10 years, and as the author of the State's Land Use Handbook, if the fencing
16 ordinance is in the land use ordinances, what is requested is a reasonable accommodation and he
17 was willing to grant it. He understood Mrs. Tobey's objection that they want the exception to be
18 granted to lift the fence restriction regardless of who lives in the home. Mrs. Tobey confirmed
19 that was her position.

20
21 Mrs. Tobey made the following points:

- 22
- 23 • The focus should be on disability laws and, as a caregiver, flexibility is key. This has
24 caused her mental stress and something she would like to be free from. The City has
25 already proposed the idea that they be required to remove the fence once her identified
26 person is no longer living in the home. She stated that for some, they can eventually
27 transition to a group home where they may live permanently. However, she mentioned
28 that her identified person could boomerang from a group home and move back into her
29 home after five (5) or so years when things change in the group home beyond the identified
30 person's control. The issue of privacy was addressed.
 - 31 • Her primary concern was what happens when they no longer own the property. She stated
32 that ownership can change if she and her husband suddenly die, and the ownership of the
33 home is transferred to a trust where a sibling would then care for the identified person in
34 the home. The sibling would then have the burden of removing the fence.
 - 35 • Citing the FHA and the Utah Fair Housing Act, Mrs. Tobey reported that Utah has added
36 an "except that" provision to the Act. She read a provision that she asserted supports their
37 position that the only instance where the law allows conditioned permission for a
38 modification is to Rental Agreements to restore the interior of the premises. She noted
39 that this property is not a rental.
 - 40 • She cited the Department of Housing & Urban Development in the Department of Justice
41 article entitled Reasonable Accommodation Under the Fair Housing Act dated March 5,
42 2008, Item 26. The statement indicates that housing providers may only require restoration
43 of modifications made to the interior of the dwelling at the end of the tenancy. Reasonable
44 modifications such as ramps to the door or modifications in laundry rooms or building
45 entrances are not required to be restored. Because this is a housing provider issue, this
46 information supports their position that the City should not be allowed to make a condition

1 on the receipt of an accommodation stating that it has to be removed. That was her concern.
2 They are talking about extra height on the fence to keep the identified person safe.
3

4 Hearing Officer Call acknowledged her care and expressed concern. He stated that upon review,
5 this is the appropriate process as the exception would apply regardless of which family member
6 owns the home as long as the person needing the exception lives there. He added that no one is
7 going to be checking. Therefore, there is no City privacy issue. The family was asked to notify
8 the City once the home is no longer owned by the family. In relation to the fence, Hearing Officer
9 Call asked for clarification if concrete was required as part of the new fence. Mrs. Tobey clarified
10 that the concrete would go around the fence to address her concern with a neighbor's messy trees.
11 Hearing Officer Call asked if a person had to lower the fence, if they could use the proposed posts
12 to shorten the height of the fence or if concrete removal would be necessary. He was assured that
13 the concrete would not need to be removed to lower the fence as the posts would already be in
14 place. Hearing Officer Call then requested that Mrs. Tobey provide her source material on
15 accommodations made for exterior changes and she provided the materials she had referenced.
16

17 Director Cardenas reported that the fence removal would be at the end of tenancy or owner
18 occupancies. To exceed the height for anyone else would require a variance. In this case, they are
19 calling it a reasonable accommodation and their position is that the accommodation can be present
20 as long as there is a need. Once the need is gone, the fence should come into compliance with the
21 Code. He had not heard about the boomerang factor before, which raised thoughts about further
22 discussion. There was discussion about whether restoration requirements under the federal law
23 would only apply to interior improvements. There was also discussion about the exception running
24 with the land and why a reasonable accommodation would be a more personal accommodation.
25

26 Hearing Officer Call stated that Mr. Tobey's impression was that the City would pay to remove
27 the excess height of the fence, which is not accurate. The question would then pertain to the
28 subsequent property owner. Disclosure of that requirement would be needed. Mrs. Tobey stated
29 that such a requirement harms their family. Mr. Tobey thought that the cost of removal of the
30 fence was actually a fee. Eventually, they will have to pay for the removal to obtain the exception.
31 Director Cardenas explained that the City will need to conduct an analysis of accommodations and
32 removals to determine if the proposed modification would meet any statutory qualifications.
33 Hearing Officer Call stated that the remaining issue of whether the fence needs to be altered once
34 it is no longer needed requires additional research. He was willing to agree that ownership could
35 be clarified to include family ownership to address the boomerang factor. He needed to perform
36 additional research on the Fair Housing Act as well. Mrs. Tobey provided additional source
37 materials that were entered into the record. Hearing Officer Call reported that the City will not
38 take lightly, any concern raised regarding compliance in full with the Fair Housing Act and the
39 Americans with Disabilities Act ("ADA"). He noted that possible options could include making
40 full accommodation as requested without a duty to restore the fence to a compliant height or
41 agreeing that the reasonable accommodation is fully provided without offering that particular
42 benefit. Regardless, it was difficult for him to decide without doing more research on the matter.
43 The City can choose to have him conduct additional research but he was hesitant to do anything
44 that could result in a legal liability for the City. He commented that the issue involving the fence
45 should be consistent in the application of the Code on the subsequent property owner.
46

1 Mrs. Tobey asked if a portion of the fence could be left at the taller height. Hearing Officer Call
2 stated that the fence height was the accommodation and he did not consider such a ruling to be
3 within his authority.

4
5 Director Cardenas stated that the City will respond within five (5) business days.

6
7 Hearing Officer Call asked the applicants if anything discussed today would require protection.
8 The applicants did not recall. It was noted that the ADA is broad. Written materials prepared by
9 Hearing Officer Call or the City will be circulated to applicants for review to determine if there is
10 reference to any protected material. If the applicants see anything that they consider confidential,
11 they should notify Director Cardenas.

12
13 The Appeals Hearing adjourned at 1:06 p.m.

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15
16
17 -SEE DECISIONS-

18 Craig Call, Hearing Officer

19
20
21 
22 Christina Gregory, Planning & Zoning Assistant

23
24 6/26/2024
25 Date Approved