

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – January 12, 2009

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Henry Kerr at 7:00 p.m. in the Council Chambers. Approximately 10 people were in the audience.

**MEMBERS PRESENT:** Robert Atkins, David Felicijan, Clyde Flora, Henry Kerr, H. Lincoln Lewis, Rob Linenger, Betty Schimmel, Lowell Seyburn, Wayne Stoffer.

**IN ATTENDANCE:** Vicki Georgeau, Deputy Director of Neighborhood Services, Charlie Bear, Assistant City Attorney

**APPROVAL OF THE MINUTES:** Flora moved, and Felicijan seconded a motion to approve the November 10, 2008 minutes with two corrections. Upon voice vote, motion was approved 7-0.

### **NEW BUSINESS:**

**ZBA 08-13, George Coy, 5326 Bennett:** Staff summarized the request for the following three variances: a) 21-foot variance from the front (south) setback where 25 feet is required, and a one-foot variance from the side (west) setback where five feet is required to retain an existing 85 square-foot shed; b) a 10-foot variance from the 10-foot building separation requirement to retain a 200 square-foot shed and 360 square-foot carport in the current locations; and c) a 511 square-foot variance to exceed the maximum 25% building lot cover of 1,650 square feet. Mr. Coy noted the 85 square foot shed was on site when he bought the property, and did not think he needed a permit for the larger shed and carport. Kerr noted a concern that the lot is overbuilt. Atkins asked if the applicant has considered conforming alternatives. Coy asked the Board to allow him to keep the 200 square foot shed. In response to Seyburn, Mr. Coy indicated there is a partial basement about half the size of the house. Staff clarified that if the 200 square foot shed was retained, a 66 square foot lot cover variance would be needed.

A public hearing was opened. Beverly Knowlton, 5329 Bennett, Mike Kragt, 5210 Bennett, and Ed Ralson, 1913 Eckner, spoke in favor of the requested variances. As no other public comments were received, the public hearing was closed.

A motion was made by Linenger, supported by Flora to deny a) a 21-foot variance from the front (south) setback where 25 feet is required, and a one-foot variance from the side (west) setback where five feet is required to retain an existing 85 square-foot shed for the following reasons: there are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same district; the variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are confirming alternatives available; the immediate practical difficulty causing the need for the variance was self-created by the applicant and is out of character with the surrounding neighborhood; and the variance would materially impair the purpose and intent of the zoning ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and the action of the Board shall be final and effective immediately. Upon roll call vote: Linenger-Yes, Flora-Yes, Kerr-Yes, Stoffer-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-Yes. Motion carried 7-0.

A motion was made by Linenger, supported by Flora to deny b) a 10-foot variance from the 10-foot building separation requirement to retain a 200 square-foot shed and 360 square-foot carport in the current locations for the following reasons: there are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district; the variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are confirming alternatives available; the immediate practical difficulty was caused by the applicant and is out of character with the surrounding neighborhood; and the variance would materially impair the purpose and intent of the zoning ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and the action of the Board shall be final and effective immediately. Upon roll call vote: Linenger-Yes, Flora-Yes, Kerr-Yes, Stoffer-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-Yes. Motion carried 7-0.

A motion was made by Linenger, supported by Flora to grant c) a 66 square foot variance to exceed the maximum 25% building lot cover of 1,650 square feet to retain the existing 200 square foot shed for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district which include the existing substandard lot; the variance would not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the purpose and intent of the zoning ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and the action of the Board shall be final and effective immediately. Upon roll call vote: Linenger-Yes, Flora-Yes, Kerr-Yes, Stoffer-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-No. Motion carried 6-1.

ZBA 08-14, Bhaskar Pisipati on behalf of Country Management Properties, 2375 East Milham Avenue: Staff summarized the request for a two-foot variance from the required 10-foot property line setback to retain an existing nonconforming freestanding sign in its current location. Mr. Pisipati explained he conducted due diligence before buying the property and understood the sign was in compliance. He noted that the lot has an irregular shape, the building is closer to the road than required, relocation of the sign to the west side of the property would conflict with utilities, and shared access to the east and the size of maneuvering lanes are of concern. Staff indicated that when the sign was modified in 1996, it was thought to comply with the Zoning Code based on information provided by the owner at that time. Subsequently, when a permit was submitted in 2008 to change the sign, it was determined it did not meet the required setback. In addition, staff noted the road right-of-way did not change on the north side of Milham Avenue. Atkins indicated a concern with requiring the applicant to move the sign given the circumstances. Seyburn asked how far the sign was from the roadway. Staff indicated approximately 20 feet. Seyburn noted there is a wide green strip, and since the road and utilities were recently reconstructed, it would be a very long time before additional work would be needed in the vicinity, and that this open space meets the purpose of the Zoning Code.

A public hearing was opened. As no public comments were received, the public hearing was closed.

A motion was made by Linenger to deny the requested variance. No support was offered for the motion. A motion was made by Atkins, supported by Felicijan, to approve a two-foot variance from the required 10-foot property line setback to retain an existing nonconforming freestanding sign in its current location for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include due diligence completed by the applicant prior to purchase of the property, the existing open space between the sign and roadway, and that relocation of the sign will adversely impact the parking and maneuvering lane within the site; the immediate practical difficulty causing the need for the variance was not created by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the purpose and intent of the zoning ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and the action of the Board shall be final and effective immediately. Upon roll call vote: Linenger-No, Flora-No, Kerr-No, Stoffer-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-Yes. Motion carried 4-3.

ZBA 08-15, Centre Park LLC, 721 West Centre Avenue: Staff summarized the request for a variance from the conflicting land use screening requirements and screening fence installation along the south property line. Stoffer noted a conflict of interest and Kerr appointed Lewis to vote as alternate on the request. Walt Hansen, Centre Park LLC, noted the building acts as a buffer to Centre Avenue traffic, a six foot fence would screen only part of the building roof and would necessitate removal of existing trees. Seyburn inquired why the applicant cannot plant evergreen trees. Mr. Hansen indicated there is too much shade and such trees would die. Felicijan inquired if a second story could be constructed. Staff indicated yes, but the applicant noted there would not be enough parking on site for more floor area.

A public hearing was opened. Wes Beatty, 8021 Perry Street spoke in support of the variance. As no additional public comments were received, the public hearing was closed.

A motion was made by Flora, supported by Linenger, to grant a variance from the conflicting land use screening and screen fence installation along the south property line for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the change in topography between the office and residential property, existing trees and vegetation provide dense screening in non-winter months; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the purpose and intent of the zoning ordinance. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and the action of the Board shall be final and effective immediately. Upon roll call vote: Linenger-Yes, Flora-Yes, Kerr-Yes, Stoffer-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-No. Motion carried 6-1.

**OTHER BUSINESS:** None.

**STATEMENT OF CITIZENS:** None.

**ADJOURNMENT:** There being no further business, the meeting was adjourned at approximately 8:23 p.m.

Respectfully submitted,

Vicki Georgeau, AICP  
Deputy Director of Neighborhood Services