

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – April 13, 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. Six people were in the audience.

MEMBERS PRESENT: Robert Atkins, David Felicijan, Henry Kerr, H. Lincoln Lewis, Rob Linenger, Lowell Seyburn.

MEMBERS EXCUSED: Betty Schimmel, Wayne Stoffer

MEMBERS ABSENT: Mariana Singer

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

APPROVAL OF THE MINUTES: Linenger moved, and Felicijan seconded a motion to approve the March 9, 2009 minutes as submitted. Upon voice vote, motion was approved 5-0. Seyburn arrived after approval of minutes.

NEW BUSINESS:

ZBA# 08-19, 2128 Eckner Drive: Staff summarized the request for: a) a five-foot variance to retain an existing carport 25 feet from the front property line where a 30-foot front yard setback is required; and b) a one-foot variance to retain an existing carport nine feet from the dwelling where a 10-foot separation is required. Mark McGlothlen was present to explain his request. Kerr inquired if the carport has a concrete foundation. The applicant indicated there is some type of metal track at grade along both sides of the carport posts, but he does not know what type of footing is present. Kerr noted that the degree of noncompliance is minor and it appears feasible to meet the Zoning Code. Mr. McGlothlen indicated the carport may not survive relocation and the driveway and rear yard fence may have to be modified. Kerr inquired if a variance can be conditioned upon relocating the carport if it were damaged by an act of nature. The City Attorney indicated such condition seems reasonable. Seyburn inquired if the carport is steel. The applicant indicated yes. Linenger suggested the applicant consider postponement to allow the applicant to investigate what type of foundation the carport has, and provide information to the Board for additional consideration. The applicant agreed to the suggestion.

A motion was made by Seyburn, supported by Lewis to postpone action on the requested variances until the May 2009 meeting. Upon roll call vote: Atkins-Yes, Felicijan-Yes, Kerr-Yes, Lewis-Yes, Linenger-Yes, Seyburn-Yes. Motion carried 6-0.

ZBA# 08-20, 2327 Winters Drive: Staff summarized the request for a variance to establish exterior storage of business vehicles, trailers, and equipment and building materials in the rear yard for a building contractor use that specializes in a property cleaning/maintenance services. The property is zoned B-3, General Business District, which does not permit exterior storage. Angie Dawson of Diverse Property Solutions, LLC, and Dave Sims, the property owner were present to explain their request and the manner in which the current use operates. Kerr noted the property looks like a waste transfer station, and inquired if there are other more suitable zoning districts for the use. Staff indicated the use would be permitted in an I-1 or I-2 Industrial district without a variance. Kerr noted storage of wrecked vehicles are inappropriate in a B-3 zoning district. Dawson explained challenges with regard to the logistics of waste disposal and inoperable, abandoned vehicle disposal. Felicijan inquired what the applicant would store within a smaller exterior area if the variance were approved as recommended by staff. Dawson indicated trailers (with debris inside) and vehicles would be stored in the area, and no tires would be stored on site in the future. Felicijan indicated a concern with regard to the proximity of the use to residential areas. Linenger asked if the applicant and property owner would be willing to comply with the recommended site improvement conditions in the staff report. Ms. Dawson and Mr. Sims indicated they do not know how much the recommended site improvements, and required current building improvements would cost, and Mr. Sims requested a three month extension. Atkins indicated that such uncertainty makes it difficult for the Board to make a decision. Felicijan asked how much time the applicant would have to comply. Staff indicated if the Board approves the variance, the next step would be to obtain a Special Land Use Permit from the Planning Commission and that it is anticipated the applicant and property owner would have a site plan prepared and submitted for review by early summer.

Subsequently, the applicant would be provided a reasonable time period to make the required site improvements, and if not completed within the time specified, additional enforcement action would be necessary. Lewis inquired how much of the building is office and warehouse, and how access is accomplished. Dawson indicated about 40% is office, 60% is warehouse and access is obtained by steps on the front of the building and an overhead door with wood ramp off the rear of the building. Kerr inquired if vehicles and/or trailers can be stored inside the building. Dawson indicated one or two trailers may fit inside, but the existing ramp is not adequate to drive a trailer into the

building. Seyburn indicated he can support storage of vehicles and trailers, but cannot support the storage of debris on site. Dawson indicated debris is not stored on the ground, but instead inside the trailers. Linenger inquired regarding barrier-free building requirements. The applicant explained there is no ramp to access the building and barrier free bathrooms. Staff indicated that due to a change of use occupancy, the Building Code requires the building to be brought into compliance. Seyburn inquired if a Temporary Use Permit can be approved for the exterior storage. Staff indicated it is not clear if a Temporary Use Permit would be applicable in this case, and even if it were determined appropriate, proper public notice has not been provided. Further, if the Board wants staff to investigate this alternative, and/or to permit the applicant additional time to determine the cost of necessary improvements, the Board could consider postponement of action on the request. Kerr asked if the applicant needs more time to determine the costs of necessary improvements. The applicant indicated yes. Felicijan noted that in consideration of the neighborhood, the Board should require action in the near future. The applicant requested a 30-day extension. Lewis suggested in the interim, the applicant and property owner should make an effort to clean up the property and its appearance.

A motion was made by Felicijan, supported by Atkins to postpone action on the requested variance until the May 2009 meeting. Upon roll call vote: Atkins-Yes, Felicijan-Yes, Kerr-Yes, Lewis-Yes, Linenger-Yes, Seyburn-Yes. Motion carried 6-0.

ZBA# 08-21, 5121 South Westnedge Avenue: Staff summarized the request for a Temporary Use Permit to operate a windshield repair kiosk business from April 14 through October 31, 2009 in the parking lot of the Meijer, Incorporated, store at 5121 South Westnedge Avenue. Richard Proulx, of AGM Professionals, LLC, located in Battle Creek, was present to explain his request. Kerr requested an explanation why the proposal is for a full-time business via a temporary use permit. The applicant indicates he operates a mobile service from his residence year-round, but this proposal is for additional seasonal business sales. Kerr asked if other Temporary Use Permits are typically operated by the business on site. Staff indicate yes, however, some fireworks, pumpkin and Christmas Tree sales are operated with Temporary Use Permits. In response to Felicijan, staff explained that a zoning lot can have a total four Business Special Event permits for a total of 28 days per calendar year. In response to Felicijan and Lewis, the applicant explained the location and appearance of the proposed use, which will include one truck, a small canopy, and sign decals on the vehicle. Seyburn indicated the proposal would have a minor impact and is better when regulated, than not. Kerr indicated a preference for permanent business versus Temporary Uses. Felicijan expressed concern about setting a precedence for numerous temporary uses along commercial corridors.

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

A motion was made by Linenger, supported by Atkins to approve a Temporary Use Permit to operate a windshield repair kiosk business from April 14 through October 31, 2009 in the parking lot of Meijer at 5121 South Westnedge Avenue with the following conditions: 1) no capital improvements of a structural nature shall be erected; 2) a pedestrian safety barrier be located around the perimeter of the area; 3) the canopy be flame resistant and "No Smoking" signs be posted; 4) no signs be permitted; 5) the applicant should work with the property owner regarding changeable copy board or electronic message board signage; and 6) no additional Temporary Use Permits allowed for this zoning lot in 2009. 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: Atkins-Yes, Felicijan-No, Kerr-Yes, Lewis-Yes, Linenger-Yes, Seyburn-Yes. Motion carried 5-1.

OTHER BUSINESS: None.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 8:02 p.m.

Respectfully submitted,

Vicki Georgeau, AICP
Deputy Director of Neighborhood Services