

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – May 11, 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. Four people were in the audience.

MEMBERS PRESENT: Henry Kerr, Rob Linenger, Lowell Seyburn, Marianna Singer, Wayne Stoffer

MEMBERS EXCUSED: Robert Atkins, David Felicijan, Betty Schimmel

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

APPROVAL OF THE MINUTES: Linenger moved, and Seyburn seconded a motion to approve the April 13, 2009 minutes as submitted. Upon voice vote, motion was approved 5-0.

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 and rationale, and provided information regarding the carport foundation, which was verified since the prior meeting. In response to the Board, staff verified that the carport structure is not anchored as required by the Building Code and each support pole requires a 12-inch diameter, 36 inch-deep footing, with or without the requested variance. Kerr indicated there appears to be no practical difficulty, and Stoffer indicated the carport is structurally sound enough to relocate and comply with the Zoning Code. Seyburn indicated the applicant could slide the carport back five feet to meet the front setback, but perhaps the one foot variance from the house is a reasonable request.

A public hearing was opened. No public comments were received, but a letter of support for the one-foot variance received from Rod O'Brien, 2229 Helen, was read into the record. The public hearing was then closed.

A motion was made by Seyburn, supported by Linenger to deny 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 for the following reasons: the Board does not have the authority to waive the Building Code requirements for footings; there is no reason the carport cannot be moved to a conforming location; and there are no exceptional or extraordinary circumstances that do not apply generally to other properties in the same zoning district. 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. After additional discussion and upon roll call vote: Linenger-Yes, Kerr-Yes, Seyburn-Yes, Singer-Yes, Stoffer-Yes. Motion carried 5-0.

ZBA# 08-20, 2327 Winters Drive: The variance application was withdrawn by the applicant.

ZBA# 08-24, 7428 South Westnedge Avenue: Staff summarized the request for a variance to replace the sign panels on the nonconforming freestanding sign at 7428 South Westnedge Avenue. Scott Hocevar was present to explain his request and indicated an update to the sign logo, wall and freestanding signs was proposed to improve visibility of the business. The applicant indicated a concern with regard to the recommended conforming alternative in the northeast portion of the parking lot, as a significant number of trucks travel through the area, snow is stored in the vicinity and another sign, in addition to the Campbell sign on the property to the north would cause traffic circulation problems on both properties. Kerr inquired if the applicant objects to sign a five-year nonconforming sign agreement. Mr. Hocevar stated this option is not preferred. In response to Seyburn, staff indicated the greenstrip between the curb and property line is about 15 feet in width, including the sidewalk, and that the right-of-way was not widened since the last variance request in 1991.

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

A motion was made by Linenger, supported by Stoffer to approve a variance to replace the sign panels only on the nonconforming freestanding sign at 7428 South Westnedge Avenue for the following reasons: the practical difficulty being to eliminate the potential loss of the parking and maneuvering lane on the site and to the adjacent Campbell property to the north, and that the variance will not be detrimental to adjacent property and the surrounding neighborhood. 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, Kerr-Yes, Seyburn-Yes, Singer-Yes, Stoffer-Yes. Motion carried 5-0.

ZBA# 08-25, 2120 Oak Leaf Trail: Staff summarized the request for: a) to appeal the administrative decision to deny the home occupation permit; or b) an interpretation that a photography studio qualifies as a home occupation; or c) a variance to conduct the Angelworks Photography home business at 2120 Oak Leaf Drive. Charity Finstrom was present to explain her request and the manner in which her business operates, and noted the complainant did not specify the business is a nuisance. Ms. Finstrom agreed that a variance with conditions was likely the best option with regard to the application, but asked the Board to consider allowing her to have hours that extend until 8 p.m., Monday through Friday and until 6 p.m. on Saturdays, and that she be permitted up to an average of 10 customers per week and four customers on a given day, as her business has seasonal peaks around holidays, graduations, weddings, etc. The applicant also noted concern regarding the fifth condition recommended in the staff report. Finally, the applicant presented a petition supported by 10 neighbors that agreed to the above conditions requested of the Board.

Kerr noted concern regarding 10 customers per week and inquired regarding the number of customers per year. Ms. Finstrom indicated 20 during 2009, and that photo shoots last 1½ hours with 30 minutes between sessions. Stoffer noted a concern with traffic more than noise, and inquired of staff regarding traffic typical for a single-family home. Staff indicated a typical single-family home generates 10 vehicle trips daily. Finstrom noted that because she is on the corner of Oakland and Oak Leaf Trail, customers are not driving through the neighborhood. Stoffer noted that option c), a variance, is the best approach as conditions can be placed on the operation to minimize the impact on the neighborhood. Seyburn indicated a concern that if staff made a determination that the photo studio is excluded from the definition of a home occupation, than a use variance appears necessary, rather than a variance from the specific standards for home occupations. Stoffer inquired if a variance for the photo studio runs with the land. Staff indicated a variance with specific conditions to operate a photo studio only would run with the property. The Board had extensive discussions regarding options available to act on the application, which involved whether an appeal of the administrative decision to deny the home occupation permit, or an interpretation that a photography studio qualifies as a home occupation were better options than a variance as proposed in the staff report. Seyburn recommended that a narrow interpretation that involves a very low intensity photo studio, with limited traffic appears to be the best option. In response to Kerr, staff explained that a recent music lesson business received a variance from the standards for a home occupation, but that case involved the instruction of a fine art, which state statute requires the city to permit. In response to Singer, staff clarified that state statute also requires the city to permit day care homes. Stoffer and Kerr asked for clarification as to how staff would monitor the impact of the home occupation if a favorable interpretation was approved. Staff indicated they would rely on all the information included in the Board agenda and minutes.

A public hearing was opened. Julie Peek, 10909 Poplar Bluff, spoke in favor of the request. In addition, 11 petitions and two letters of support included in the agenda were read into the record. In addition, the applicant presented new petitions of support signed by the owners of the following properties, which were read into the record: 10752 Oakland Drive; 10909 Poplar Bluff; 2119 Oak Leaf Trail; 10920 Oakland Drive; 2149 Oak Leaf Trail; 10785 Oakland Drive; 2150 Oak Leaf Trail; 10785 Oakland Drive; 10819 Poplar Bluff; 10839 Poplar Bluff.

A motion was made by Seyburn that the Director's administrative decision that the applicant's request did not meet the requirements of a home occupation be upheld. As no support was received, the motion failed. A motion was made by Stoffer, supported by Seyburn, to grant a favorable interpretation that a photography studio is a home occupation so long as the average number of vehicle trips per week does not exceed six trips per week. 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. After additional discussion and upon roll call vote: Linenger-Yes, Kerr-No, Seyburn-Yes, Singer-Yes, Stoffer-Yes. Motion carried 4-1. Kerr recommended a motion be made on request c) a variance to conduct the Angleworks Photography home business. After further discussion, the Board determined action on request c) was not necessary.

OTHER BUSINESS: None.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 9:05 p.m.

Respectfully submitted,

Vicki Georgeau, AICP
Deputy Director of Neighborhood Services