

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – June 8, 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. Seven people were in the audience.

**MEMBERS PRESENT:** Robert Atkins, Timothy Bunch, David Felicijan, Henry Kerr, Rob Linenger, Betty Schimmel, Lowell Seyburn, Marianna Singer

**MEMBERS EXCUSED:** Donald Mordas

**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 May 11, 2009 minutes as submitted. Upon voice vote, motion was approved 7-0.

### **NEW BUSINESS:**

**ZBA# 08-26, 9029 Portage Road:** Staff summarized the request for a variance from the street frontage requirement to divide 9029 Portage Road and create two lots that will have 20 feet of frontage where a minimum 60 feet of frontage is required. Singer explained she had a potential conflict of interest and that she would abstain from discussion and voting on the request. Kerr indicated Bunch would vote on the variance request. Bill Rowe was present to explain his request and noted the property has unique characteristics with the split zoning and surrounding development pattern. In addition, he noted the property owner to the north is not interested in selling his property, the property owner to the south cannot extend a road because there is only 20 feet of street frontage available to do so, and extending a cul-de-sac from Portage Road would not line up with the public street across Portage Road. Felicijan asked what reservations the applicant has with regard to having two lots with 60 feet of frontage as shown on the sketch provided by staff. Rowe indicated the option is not consistent with the intent of the ordinance, and may adversely impact signage for the commercial use. Staff clarified that existing signage would not be impacted, and while less signage would be permitted in the future based on reduced frontage, existing signage could be expanded in the future and comply with the Zoning Code. Atkins noted the 60-foot flag lots options does not seem consistent with the intent of the Code. Kerr noted there are numerous examples of similar flag lots in Portage. Seyburn noted that while the double flag lots meet the Code, he is not sure what the city gains from the configuration and that available commercial signage will be reduced.

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

A motion was made by Felicijan, supported by Linenger, to deny a variance from the street frontage requirement to divide 9029 Portage Road and create two lots that will have 20 feet of frontage where a minimum 60 feet of frontage is required for the following reasons: there are no exceptional or extraordinary circumstances 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 conforming alternatives such as 60-foot splits as proposed by staff in the agenda package; and the variance would materially impair the 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. After additional discussion and upon roll call vote: Linenger-Yes, Kerr-Yes, Seyburn-Yes, Schimmel-Yes, Atkins-No, Felicijan-Yes, Bunch-Yes. Motion carried 6-1 (Singer abstained).

**ZBA# 08-27, 3807 Woodhams Avenue:** Staff summarized the request for a) a variance to reconstruct/enlarge an existing enclosed porch under a deck and authorize the existing dwelling and garage with a three-foot side yard setback (where five feet is required) and that exceeds the maximum 25% building lot cover by 355 square feet; OR b) a variance to authorize the existing dwelling and garage with a three-foot side yard setback and that exceeds the maximum 25% building lot cover by 163 square feet. Tom and Laura Lentenbrink were present to explain their request and indicated the house and deck were to be upgraded to meet current code and improve the appearance of the house. Kerr indicated the house appears to be of good size and questioned what the applicant's hardship was. The applicant indicated while there is a full basement, very little storage space is available, and the proposed porch will enclose an exterior door. Kerr asked how the house became nonconforming. Staff indicated the house and garage were conforming when built in 1976, but it appears at a later date that the width of the lot was reduced creating the nonconformity with regard to the side setback and lot cover. Seyburn noted that the degree of nonconformity would be reduced by relocation of the deck stairs and removal of the attached shed. In addition, Seyburn noted that since an uncovered deck does not count towards lot cover, even though it covers the existing enclosed porch, the deck could be further expanded and meet the Code. Felicijan noted he has a concern with the practical difficulty. The applicant noted the porch was present when they purchased the property

and has been used for many years, it provides a covered rear entry, and that safety issues will be resolved by the project. In response to Felicijan, the applicant and staff indicated there are lots that are larger and of similar size in the area.

A public hearing was opened. No comments were received, but a letter of support from John and Susan Kaminski, 3803 Woodhams, and John Peterson, 3815 Woodhams, was read into the record, and then public hearing was closed.

A motion was made by Linenger, supported by Atkins, to approve a variance to reconstruct/enlarge an existing enclosed porch under a deck and authorize the existing dwelling and garage with a three-foot side yard setback (where five feet is required) and that exceeds the maximum 25% building lot cover by 355 square feet conditioned upon the repositioning the deck stairs and removal of the attached shed for the following reasons: there are exceptional or extraordinary circumstances that may not apply generally to other properties in the same zoning district which include the legally nonconforming lot, and limited storage area available within the building; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the 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, Singer-Yes, Kerr-No, Seyburn-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-Yes, Bunch-Yes. Motion carried 6-1.

ZBA# 08-28, 6147 Devon Street: Staff summarized the request for the following variances to retain a 429 square-foot dwelling addition: a) variance to enlarge an existing nonconforming building to within five-feet of the side property line; and b) a 246 square-foot variance to exceed the maximum 25% building lot cover. Scott Hoeksema was present to explain the request and that the addition roof is setting on the garage roof and that the loading problem will be corrected if the variance is approved. The applicant noted that a previous variance for the garage was approved and the addition is two feet further from the side lot line than the garage. Kerr acknowledges the problem the family faces, but questioned that practical difficulty with regard to the property. The applicant and staff noted other legal nonconforming dwellings in the vicinity that do not meet side yard setbacks, that the setback and lot cover variances are minimal, and a covered rear stairway that counts towards lot cover is needed due to flooding problems with the tri-level dwelling. Seyburn noted the covered stairway on the rear of the dwelling seems to be a practical difficulty and that the lot cover is not out of character for the area. Kerr noted a concern that setbacks are needed for fire safety concerns, and permits are needed prior to construction. Seyburn agreed and noted the house addition is not next to the adjacent dwelling.

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

A motion was made by Linenger, supported by Singer, to approve the following variances to retain a 429 square-foot dwelling addition: a) variance to enlarge an existing nonconforming building to within five-feet of the side property line; and b) a 246 square-foot variance to exceed the maximum 25% building lot cover, conditioned upon obtaining approved building permits for the following reasons: 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; there are exceptional or extraordinary circumstances that do not apply generally to other properties in the same zoning district such as the nonconforming existing dwelling, the previous variance for garage addition, the location of the dwelling on the lot and interior room arrangement. 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, Singer-Yes, Kerr-Yes, Seyburn-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-Yes, Bunch-Yes. Motion carried 7-0.

**OTHER BUSINESS:** Kerr noted the Board will hold a special meeting at 7 p.m. on June 22, 2009. Kerr also noted that Elections of Officers will be held at the July 13, 2009 meeting.

**STATEMENT OF CITIZENS:** None.

**ADJOURNMENT:** There being no further business, the meeting was adjourned at approximately 8:13 p.m.

Respectfully submitted,

Vicki Georgeau, AICP  
Deputy Director of Neighborhood Services