

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – September 14, 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. Five people were in the audience.

MEMBERS PRESENT: Timothy Bunch (alt.), David Felicijan, Henry Kerr, Rob Linenger, Betty Schimmel, Lowell Seyburn, Marianna Singer, Donald Mordas (alt.)

MEMBERS ABSENT: Robert Atkins

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

APPROVAL OF THE MINUTES: Felicijan moved, and Linenger seconded a motion to approve the July 13, 2009 minutes as submitted, and the August 26, 2009 minutes with a modification. Upon voice vote, motion was approved 7-0.

NEW BUSINESS:

ZBA #09-05, 7198 Angling Road: Staff summarized the request for a variance to replace a 60 square foot nonconforming wall sign on the west elevation of church building with a 75 square foot wall sign. Thomas Brussee, Agio Imaging, spoke on behalf of The Bridge Church, and explained the sign modifications were proposed due to a church name change, not an ownership change. Brussee clarified the freestanding sign on Angling Road meets the code and only involves a sign panel change, while the west wall sign will be three feet wider to accommodate more letters in the new name, but otherwise is the same height. The applicant noted the church received a variance in 1993, and that all the same practical difficulties still exist, but the speed limit on US 131 has increased to 70 mph since, making it more difficult to read a smaller sign.

Kerr asked why the church logo is not regulated. Staff explained the applicant contends the logo is a religious symbol, which is exempt from the Zoning Code. In response to Felicijan, staff explained the applicant can make the sign conforming, sign a 5-year non-conforming sign agreement, or obtain a variance. Felicijan asked if the church would forego the freestanding sign if a wall sign variance were granted. The applicant indicated no.

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

A motion was made by Seyburn, supported by Singer, to approve a variance to replace a 60 square foot nonconforming wall sign on the west elevation of the church building with a 75 square foot wall sign, the hardship being that the wall is approximately 450 feet from US 131, the speed of traffic on US 131 has increased from 55 mph to 70 mph since the last variance and a smaller sign would cause a driver to be distracted by not being able to read a smaller sign, and the variance does not effect any of the abutting residential properties because it cannot be seen from any of the abutting residential properties. In addition, 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; the variance would not be detrimental to adjacent property and surrounding neighborhood; the variance will not materially impair the intent and purpose 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, Kerr-No, Seyburn-Yes, Schimmel-Yes, Felicijan-No, Singer-Yes, Mordas-Yes. Motion carried 5-2.

ZBA# 09-06, 9017 Portage Road: Staff summarized the request for a variance to permit a six-foot privacy fence instead of the permitted maximum four-foot high chain-link, split rail, or wire fence in the lakeside (rear) yard. Bill Rowe was present and explained the fence was installed on the north and south property lines of 9029 Portage Road, which was recently divided into two lots addressed as 9017 and 9021 Portage Road. The fence was installed to screen the adjacent boat launching area during the summer months, and boat storage during non-summer months. The applicant offered to remove the fence if the nonconforming boat launch and storage ceased to exist. Schimmel asked how the applicants' property is different from other nearby properties that have a view of the boat launch and storage area. Rowe indicated other variances have been granted in similar situations. Schimmel inquired about landscaping instead of fencing. Rowe indicated that landscaping would have the same effect as a wood fence. Staff clarified that vegetation is not regulated by the Zoning Code. Seyburn inquired if the applicant knows Mr. Peterson who wrote a letter included in the agenda, or neighbors to the north. Rowe indicated no. Felicijan asked if the finished fence side must face out, and if permits are required for fences. Staff indicated no. Singer indicated she preferred vegetation over the wood fencing, and inquired how close to the lake boat storage occurs. Rowe indicated boats are stored right to the waters edge. Linenger indicated a solid wood fence blocks the view of the lake during the summer months when lake front lots are used the most. Rowe indicated the fence would help protect the residential dwelling to be built on the site. Felicijan noted if a two-story house were constructed on the site, the boat storage would be visible from the second floor.

A public hearing was opened. A letter from Ben Peterson, 9105 Austin Drive, in opposition to extending wood fencing further towards the lake was read into the record. As no further comments were received, the public hearing was closed. Seyburn asked for clarification as to the location of 9105 Austin Drive, which staff provided after further discussion. Mr. Rowe indicated he believes Mr. Peterson's letter refers to the fence on the south side of the property, which is about 70 feet back from the shoreline, as opposed to the fence on the north property line that requires a variance.

A motion was made by Linenger, supported by Felicijan, to deny the request for a variance to permit a six-foot privacy fence instead of the permitted maximum four-foot high chain-link, split rail, or wire fence in the lakeside (rear) yard since the immediate practical difficulty causing the need for the variance request was created by the applicant; the variance would be detrimental to adjacent property and surrounding neighborhood; and the variance would materially impair the intent and purpose 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. Staff clarified that by denying the request they were denying any freestanding sign unless the Board granted a lesser variance specifically for the freestanding sign. After further discussion and upon roll call vote: Linenger-Yes, Kerr-Yes, Seyburn-No, Schimmel-Yes, Felicijan-Yes, Singer-Yes, Mordas-Yes. Motion carried 6-1.

ZBA# 09-08, 10904 Country Grove Circle: Staff summarized the request for a 14-foot variance to construct a 14-foot by 16-foot three-season porch 26 feet from the rear (west) property line where a minimum 40 foot setback is required. Scott and Teresa Diewald were present and explained the property owner to the west would not sell their property, but would grant an easement, which they thought met the requirements of the Zoning Code. In response to Kerr, the staff clarified the house has a 32-foot front setback where 30 feet is required. Ms. Diewald indicated the house plan was selected based on an understanding that an easement would suffice. The applicant added that the harsh sun, proximity to water and mosquitoes present a hardship. Kerr asked if the building plans showed a future three-season porch. The applicant indicated no. Schimmel asked how the applicant's property differs from similarly sized lots to the south. The applicant indicated other houses have screened porches, and the property to the west is heavily wooded, swampy land, and the pine trees would screen the view of the porch. Singer and Linenger inquired if the lot to the west is can be further developed. The applicant and staff indicated there is sufficient frontage to develop the property, but development potential may be limited in comparison to the existing subdivision due to site characteristics and road access. Felicijan indicated property to west may likely develop and unfortunately, information regarding the suitability of an easement was not obtained from the builder when the house was built. In response to Linenger, the applicant confirmed the hardship is the shallowness of the lot, location of dwelling on the lot associated with the floor plan and location of sliding door off the rear of the dwelling.

A public hearing was opened. The following support letters were read into the record: Tammy Kriekard, 10932 Country Grove Circle; Colleen Olejnik, 10925 Country Grove Circle; Timothy and Nicole Millard, 10877 Country Grove Circle; Marilyn Highland, 10859 Country Grove Circle; Fred and Carol Faux, 10974 Country Grove Circle; Cal and Elizabeth Vandenberg, 10989 Country Grove Circle. No other comments were received, and the public hearing was closed.

A motion was made by Felicijan, supported by Schimmel, to deny the request for a 14-foot variance to construct a 14-foot by 16-foot three-season porch 26 feet from the rear (west) property line where a minimum 40 foot setback is required for the following reasons: there are no exceptional conditions applying to the property that do not generally apply to other properties in the same zoning district; the immediate practical difficulty causing the need for the variance request was created by the applicant; the variance would materially impair the intent and purpose 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 further discussion, a motion was made by Seyburn, supported by Singer, to postpone action on the request until the October 12, 2009 Board meeting to allow the applicant an opportunity to present written documentation that an easement can be obtained from the property owner to the west. Upon roll call vote: Linenger-Yes, Kerr-No, Seyburn-Yes, Schimmel-No, Felicijan-No, Singer-Yes, Mordas-Yes. Motion carried 4-3.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 8:20 p.m.

Respectfully submitted,

Vicki Georgeau, AICP
Deputy Director of Neighborhood Services