

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – October 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. Six people were in the audience.

MEMBERS PRESENT: David Felicijan, Henry Kerr, Rob Linenger, Lowell Seyburn, Marianne Singer, Donald Mordas

MEMBERS ABSENT: Robert Atkins, Timothy Bunch (alt.)

MEMBERS EXCUSED: Betty Schimmel

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator, Charlie Bear, Assistant City Attorney

APPROVAL OF THE MINUTES: Felicijan moved, and Seyburn seconded a motion to approve the September 14, 2009 minutes with a modification. Upon voice vote, motion was approved 6-0.

OLD BUSINESS:

ZBA# 09-08, 10904 Country Grove Circle: The applicants Scott and Theresa Diewald were present to explain the request. Kerr stated a motion to deny the variance was on the floor at the September 14, 2009 meeting, but was tabled to determine if the applicant was able to obtain an easement from the owner of 10892 Country Grove Circle. Mr. Diewald stated they were unable to either purchase additional land or obtain an easement, but stated the Board should consider granting the variance, as no neighbors had any objection, the rear of the property was screened by existing vegetation, and there was little chance of the property at 10892 Country Grove Circle being further developed. Kerr stated the Subdivision Control Act permitted more additional lots. Staff clarified that only two more houses could be constructed before exceeding the maximum number permitted on a cul-de-sac per Section 42-803(I). Kerr noted that the Board could grant a variance allowing more lots or a circle drive could also be constructed. Theresa Diewald stated that prior to construction the builder only offered two standard home models and that either model would still require a variance to construct any sort of three-season porch on the relatively shallow lots found on Country Grove Circle.

A public hearing was opened. A letter from Donna Apossos, 10892 Country Grove Circle, stating no objection to the request was read into the record. No other comments were received, and the public hearing was closed.

A vote was taken on the previous motion 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. Upon roll call: Linenger-No, Kerr-Yes, Seyburn-No, Felicijan-Yes, Singer-No, Mordas-No. Motion failed 2-4.

A motion was made by Linenger, supported by Mordas, to grant 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, conditioned upon the three season porch not being converted at any point to a four-season porch, for the following reasons: the shallowness of the lot, the location of the home on the lot, and the floor plan; the variance is necessary for the preservation of a substantial property right; will not adversely affect neighboring properties; and the variance will not 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 and upon roll call vote: Linenger-Yes, Kerr-No, Seyburn-Yes, Felicijan-No, Singer-Yes, Mordas-Yes. Motion carried 4-2.

NEW BUSINESS:

ZBA# 09-09, 5512, 5536, 5550 Oakland Drive: Staff summarized the request for a 117 square-foot variance to erect a freestanding sign near the I-94 exit ramp. Pastor John Flick, Larry Harris, Pastor Dave Berringer, and Steve Vandersloot were present on behalf of First Assembly of God. Mr. Flick explained that when the church located in 1983 they had good visibility from the highway similar to other churches in the community, but had no way of knowing that MDOT would erect a sound barrier in 2008 that would block the view of the church. Kerr inquired if the sign would be lit and expressed concern over potential glare. Mr. Vandersloot stated the lights would be low and shielded. Seyburn inquired about the copy, as he did not want any traffic safety issues resulting from a message board or LED display with small writing on it that drivers might strain to read. Mr. Berringer stated the sign would identify the church's name.

A public hearing was opened. A letter of opposition from Mrs. Sperry, 5515 Oakland Drive was read into the record. As no further public comments were received, the public hearing was closed.

A motion was made by Seyburn, supported by Linenger, to approve a 117 square-foot variance to erect a freestanding sign near the I-94 exit ramp conditioned that: 1). the sign only identify the name of the church and not have any electronic or manual message boards; 2). shall be properly shielded and not cause glare; and 3). the existing wall sign on the north side of the church be removed, for the following reasons: exceptional circumstances include the presence of the MDOT required sound wall and the subsequent loss of visibility; the variance is necessary for the preservation and enjoyment of a substantial property right, the right of visibility; the immediate practical difficulty was not caused by the applicant; the variance will not be detrimental to adjacent properties, and the variance will not 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: Linenger-Yes, Kerr-Yes, Seyburn-Yes, Felicijan-Yes, Singer-Yes, Mordas-Yes. Motion carried 6-0.

ZBA# 09-10, 8401 Greenspire Drive: Staff summarized the request for a 20-foot setback variance where 30 feet is required, to construct three, 12-unit apartment buildings 10 feet from the side property line. Greg Dobson was present on behalf of Greenspire and explained the apartment complex had been designed such that the buildings and the natural habitat were integrated. The proposed new units were intended for a high end market and the requested variance would help maintain that same spirit. Mr. Dobson stated the property was only 131 feet wide and getting a multi-unit building in that area was a significant challenge. Their intent was to place the buildings farther to the east and reduce the impact of Greenspire Drive using the vegetation near the drive as a buffer. Mr. Dobson added the practical difficulty was not self-created because the developers, Joe Gesmundo and Roger Hinman, did not create or alter the parcel at 8401 Greenspire when they purchased it in 1980. Kerr inquired if the Greenspire Apartments property was purchased all at one time. Mr. Dobson replied it was acquired in pieces over time. Kerr inquired if he had read the staff report that indicated conforming alternatives were available. Mr. Dobson said he had, but disagreed because the lot was so shallow there are no conforming alternatives. Kerr inquired if it was a concern to the developer that there would be hunters or other people walking by on the state-owned property. Mr. Dobson stated that was the case for the whole complex. Kerr inquired if there were any other buildings this close to the State Game Preserve. Staff responded no. Felicijan stated he appreciated the aesthetics but did not feel it was worth the sacrifice in safety. Linenger inquired why they could not eliminate the vegetation buffer and/or put narrower units in. Mr. Dobson said that was not an option if they are to pursue a high end target market.

A public hearing was opened. Betty Ongley, 8620 Tozer Court, and Russ Mohny, 8718 Shirley Court, both expressed concerns over rendering a decision while potential property line and title issues remain unresolved with the State. Mr. Dobson responded that both the survey and title work have been completed and there is no pending question about ownership or property lines. Staff added that an email was recently received from Bill Schmidt of the Office of Land and Facilities that confirmed the State's ownership of the land immediately to the east. Linenger inquired if the applicant is interested in pursuing purchase of part of the State property. Mr. Dobson responded they have attempted to do so unsuccessfully for the past 30 years. There being no more comments the public hearing was closed.

A motion was made by Felicijan, supported by Singer to deny the request for a 20-foot setback variance where 30 feet is required, to construct three, 12-unit apartment buildings 10 feet from the side property line for the following reasons: there are no exceptional circumstances applying to the property that do not generally apply to others 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 because there are conforming alternatives available; 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. After further discussion and upon roll call vote: Linenger-Yes, Kerr-Yes, Seyburn-Yes, Felicijan-Yes, Singer-Yes, Mordas-Yes. Motion carried 6-0.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 8:45 p.m.

Respectfully submitted,

Jeff Mais, Zoning & Codes Administrator