

PLANNING COMMISSION

December 3, 2009

The City of Portage Planning Commission meeting of December 3, 2009 was called to order by Chairman Fox at 7:00 p.m. in Council Chambers of Portage City Hall, 7900 South Westnedge Avenue. Four citizens were in attendance.

MEMBERS PRESENT:

Jim Pearson, Rick Bosch, Miko Dargitz, Cory Bailes, James Cheesebro, Bill Patterson, Paul Welch and Chairman Thomas Fox.

MEMBERS ABSENT:

Wayne Stoffer.

MEMBERS EXCUSED:

None.

IN ATTENDANCE:

Christopher Forth, Deputy Director of Planning and Development Services; Terry Novak, Deputy Director of Neighborhood Services; Michael West, Assistant City Planner and Randall Brown, City Attorney.

PLEDGE OF ALLEGIANCE:

The Planning Commission, staff and audience recited the Pledge of Allegiance.

APPROVAL OF MINUTES:

Chairman Fox referred the Commission to the November 19, 2009 meeting minutes. Commissioner Dargitz asked that the second paragraph, page 3 of the minutes be amended to include a reference that she believes the current Flood Hazard Areas Ordinance is clearer "and more restrictive than Appendix G and would, therefore, be consistent with NFIP minimum requirements". A motion was then made by Commissioner Welch, seconded by Commissioner Cheesebro, to approve the minutes as amended. The motion was unanimously approved.

PUBLIC HEARINGS:

1. Special Land Use Permit: Mullins Auto Service (expansion), 9444 South Sprinkle Road. Mr. West summarized the staff report dated November 25, 2009 regarding a request by Mullins Auto Service to expand the existing automobile repair facility located at 9444 South Sprinkle Road. Mr. West provided a brief summary of the development history of the site and the previously issued special land use permit/conditional use permit granted by the Planning Commission in 1985. Since 1985, Mr. West stated that changes have been made to both the Zoning Code and automobile repair use (discontinued fuel sales) which no longer require a special land use permit. Mr. West indicated that the automobile repair facility is now considered a principal permitted use in the B-3 zoning district and is subject to site plan review. Following any public comment which may be received during the public hearing, Mr. West stated that staff was advising the Planning Commission to withdraw the special land use permit.

The public hearing was opened by Chairman Fox. No citizens spoke in regard to the special land use permit application. A motion was made by Commissioner Welch, seconded by Commissioner Cheesebro, to close the public hearing. The motion was unanimously approved. Mr. Steve Mullin,

owner/operator of Mullins Auto Service, spoke and confirmed that he is requesting that the Planning Commission withdraw the special land use permit. A motion was then made by Commissioner Welch, seconded by Commissioner Bosch, to withdraw the Special Land Use Permit for Mullins Auto Service (expansion), 9444 South Sprinkle Road. The motion was unanimously approved.

SITE/FINAL PLANS:

1. Site Plan for Mullins Auto Service (expansion), 9444 South Sprinkle Road. Mr. West summarized the staff report dated November 25, 2009 involving a site plan to expand the existing automobile repair facility located at 9444 South Sprinkle Road. Mr. West stated the proposed expansion project involves an approximate 2,400 square foot building addition, parking lot expansion, driveway modifications and associated site improvements. In conjunction with the site plan, Mr. West stated the applicant was also requesting a sidewalk waiver along the public street frontages citing the lack of sidewalk in the surrounding area, lack of pedestrian traffic and safety concerns. Mr. West indicated the Kalamazoo County Road Commission (KCRC) has informed staff that sidewalk along the South Sprinkle Road frontage was not desired. Mr. West also stated that no sidewalk was present along Branch Avenue, no sidewalk was planned for Branch Avenue in the ten-year Capital Improvement Program and the surrounding uses do not generate significant pedestrian traffic.

The Commission and staff briefly discussed the proposed access arrangement. Mr. Steve Mullin, owner/operator of Mullins Auto Service, was present to support the application. After a brief discussion, a motion was made by Commissioner Cheesebro, seconded by Commissioner Welch, to approve the Site Plan for Mullins Auto Service (expansion), 9444 South Sprinkle Road, including a sidewalk waiver along Branch Avenue given the lack and demand for sidewalk in this area. The motion was unanimously approved.

PUBLIC HEARINGS:

1. Preliminary Report: Ordinance Amendment 09-A, Flood Hazard Management Regulations. Chairman Fox introduced Mr. Earnest Sarkipato, Floodplain Engineer for the Michigan Department of Environmental Quality (MDEQ), who gave a short presentation regarding the National Flood Insurance Program (NFIP) and the City of Portage participation since the early 1980s. Mr. Sarkipato discussed the history of the NFIP and stated the Federal Emergency Management Agency (FEMA) will offer the program to communities who agree to manage development within flood hazard areas and adopt regulations which meet minimum requirements. Mr. Sarkipato also discussed the NFIP Community Rating System (CRS) and indicated the City of Portage has a class 8 rating which provides a 10% reduction in flood insurance policy premiums to the approximate 32 participants. Mr. Sarkipato stated the City of Portage was last audited in 1996 and was found to be in conformance with NFIP requirements. Finally, Mr. Sarkipato provided a brief discussion of the differences between floodplains and wetlands and how they are regulated separately by the federal/state government.

Mr. Forth summarized the preliminary staff report dated November 25, 2009. As recommended by Mr. Sarkipato and Mr. Les Thomas (NFIP Coordinator) of the MDEQ, Mr. Forth stated that staff and the City Attorney are advising that Appendix G of the 2006 State of Michigan Building Code be adopted, along with the updated Flood Insurance Study and Flood Insurance Rate Maps. Mr. Forth also discussed the several ambiguities which exist in the current ordinance and indicated that staff and the City Attorney were also recommending that Section 42-162(D)(1)(2), Flood Boundaries and Sections 42-320 to 42-330, Flood Hazard Areas be repealed and Section 42-991 be updated to include Section 42-995, Floodplain Management Regulations, designating the city as the enforcing agency and adopting Appendix G, Flood Insurance Study and Flood Insurance Rate Maps. Mr. Forth indicated the recommended ordinance modifications will eliminate the existing ambiguities which exist in the current ordinance and meet NFIP requirements for continued participation in the flood insurance program. Mr. Terry Novak, Deputy Director of Building Services, was also present and restated that the State of Michigan is strongly encouraging Michigan

communities to adopt Appendix G in an effort to unify/standardize floodplain regulations throughout the state.

Commissioner Pearson asked several questions regarding the differences between the current ordinance and the proposed ordinance amendment. Although ambiguities exist in the current ordinance, Mr. Forth clarified that the current ordinance does not prohibit building construction within the floodplain. Attorney Brown stated the current ordinance is very ambiguous but does allow building construction within the floodplain. Attorney Brown indicated that any changes to the ordinance which would prohibit building construction within the floodplain could be considered a “taking”. Attorney Brown reviewed various sections of the current ordinance which reference allowances for building construction within the floodplain. Mr. Forth stated that very few applications have been made for building construction within the floodplain due, in part, to higher construction costs and insurance premiums. Commissioner Patterson stated he was a builder and it was his experience that builders will generally avoid construction in the floodplain given the added expense resulting from higher construction standards. Commissioner Patterson indicated that generally only a portion of a structure is built within a floodplain and only when limited alternatives are available to the builder. Mr. Novak discussed the design standards contained in Appendix G of the 2006 State of Michigan Building Code.

Commissioner Dargitz asked Attorney Brown for clarification regarding ambiguities within the current ordinance and expressed concerns regarding the elimination of the intent/objectives contained in Section 42-320 ordinance. Commissioner Dargitz referenced Section 42-322.C of the current ordinance which describes how conflicts in requirements are resolved. Commissioner Dargitz stated she believes the current ordinance does not allow building construction within the floodplain other than those uses listed as principal permitted uses in Section 42-323 (A through H). Commissioner Dargitz indicated she believes the current ordinance meets NFIP requirements and does not support repealing the existing ordinance sections. Attorney Brown restated examples of ambiguities and inconsistencies which exist in the current ordinance and stated that he believes the current ordinance should be repealed with adoption of Appendix G. Attorney Brown indicated it was his legal opinion that the principal permitted uses referenced in Section 42-323 (A through H) are overlay uses which are allowed beyond those listed in the underlying zoning district. Mr. Forth stated that the purpose and objectives section of the ordinance are contained on the first page of Appendix G and are very similar to the current ordinance language. Mr. Forth stated that very little change/impact would occur with the ordinance amendment and building construction would still be allowed in the floodplain. Mr. Forth stated that the underlying zoning district governs what types of land uses can be built in the floodplain and Appendix G would establish the specific construction requirements for the buildings/structures. Chairman Fox asked if the flood hazard areas ordinance functions as an “overlay” ordinance with the underlying zoning establishing the types of uses allowed. Attorney Brown restated that it was his opinion that Section 42-323 (A through H) of the current ordinance listed uses which are permitted, above and beyond, the uses allowed by the underlying zoning district.

After additional discussion and upon no additional public comment, a motion was made by Commissioner Bailes, seconded by Commissioner Welch, to adjourn the public hearing for Ordinance Amendment #09-A, Flood Hazard Management Regulations, to the December 17, 2009 meeting. The motion was unanimously approved.

PLATS/RESIDENTIAL CONDOS:

None.

OLD BUSINESS:

None.

NEW BUSINESS:

None.

STATEMENT OF CITIZENS:

None.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 8:50 p.m.

Respectfully submitted,

Christopher T. Forth, AICP
Deputy Director of Planning and Development Services