

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – August 9, 2010

The City of Portage Zoning Board of Appeals meeting was called to order by Vice Chair Rob Linenger at 7:00 p.m. in the Council Chambers. Approximately 5 people were in the audience.

**MEMBERS PRESENT:** Timothy Bunch, Rob Linenger, Betty Schimmel, Lowell Seyburn, Marianne Singer, Donald Mordas

**MEMBERS EXCUSED:** Henry Kerr, David Felicijan, Daniel Rhodus

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

**APPROVAL OF THE MINUTES:** Schimmel moved and Singer seconded a motion to approve the July 12, 2010 minutes as submitted. Upon voice vote, motion was approved 6-0.

### **NEW BUSINESS:**

**ZBA# 10-03; 8037 Portage Road:** Staff summarized the request for an outdoor 2,731 square-foot fenced animal/patient enclosure area for veterinary hospital animals/patients where the Zoning Code requires all activities to be conducted within a totally enclosed building. Dr. Cynthia Lunney and Dr. Andrew Helmholdt were present on behalf of Portage Animal Hospital. Dr. Lunney agreed with the conditions set forth in the staff report, but stated they needed more than 900 square feet to accommodate more animals at a time, as they anticipated treating more patients when the new facility is completed. Dr. Lunney explained they were also prepared to go with a smaller 1,575 square-foot enclosure that would otherwise meet staff's recommended setbacks and conditions, but would allow more animals to go out at a time than their current enclosure. Seyburn inquired if it was practical for dogs not to have a fence, and what other veterinarians in town do for this purpose. Dr. Lunney stated the fence is essential for the safety of both patients and staff, and that other veterinarians walk their dogs inside enclosures if they have them, or outside if they don't, but having the enclosure was safer. Bunch inquired if the only reason they were requesting the outdoor enclosure was to provide an area for dogs to eliminate. Dr. Lunney stated yes. Linenger inquired what their practical difficulties were. Dr. Lunney stated patient and staff safety.

A public hearing was opened. A letter of support from Treystar Holdings, LLC was read into the record. Seyburn inquired if a new veterinary clinic was established would they be told they couldn't have an outdoor area for dog elimination. Staff responded yes. There being no further comments the public hearing was closed.

A motion was made by Seyburn, supported by Singer, to grant a variance allowing a 1,650 square-foot fenced animal/patient enclosure area for veterinary hospital animals/patients where the Zoning Code requires all activities to be conducted within a totally enclosed building, conditioned upon: 1) the area not extend closer to the south property line than the building; 2) security lighting for the area be mounted on the building only; 3) hospital staff be present any time an animal is in the area; 4) no cages/runs be established in this area. 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, which include the safety of staff and patients based on the hours they may be there, and the proximity to two major streets, Portage Road and East Centre Avenue; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to adequate use relating to normally accepted standards for animal hospitals, which is similar to that possessed by other properties in the same zoning district; the immediate practical difficulty causing the need for the variance request was not created by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood inasmuch as the owners of the surrounding properties support the variance; and 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. After further discussion and upon roll call vote (Linenger-Yes, Schimmel-Yes, Singer-Yes, Seyburn-Yes, Bunch-Yes, Mordas-Yes) motion carried 6-0.

**ZBA# 10-04; 9303 Portage Road:** Staff summarized the requests for a) a 114 square-foot variance to construct a 686 square-foot first floor of a two-story dwelling, where 800 square feet is required; and b) a four-foot south side yard setback variance where eight feet is required. The applicant, Alex Gwiazdowski, was present to answer questions. Linenger noted that it seemed like the applicant had pretty much settled on a specific house plan and wondered if they had considered alternative floor plans or possibly re-orienting the dwelling to meet setbacks. The applicant

stated he had looked at over 20 different plans but thought this proposal was the best option. Mr. Gwiazdowski stated he thought it preferable to keep the foundation away from the channel and by obtaining a four foot side setback variance, he would be allowed to construct a standard two-stall garage instead of having cars always parked in the driveway, which could potentially cause traffic visibility issues. Seyburn noted there was a split rail fence to the south of the property and inquired if it would in any way impede emergency access to the rear yard. Mr. Gwiazdowski stated the fence belonged to the city and was 8 to 12 feet south of the property line. Seyburn noted moving the dwelling to a more conforming location closer to the channel might actually impede emergency access on the north side of the dwelling, whereas there did not appear to be access issues to the south even if the dwelling were constructed four feet from the south side property line. Mordas expressed concern over vehicles backing out of the driveway onto Portage Road and thought a turnaround should be provided.

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

A motion was made by Seyburn, supported by Mordas, to approve: a) a 114 square-foot variance to construct a 686 square-foot first floor of a two-story dwelling, where 800 square feet is required; and b) a four-foot south side yard setback variance where eight feet is required, conditioned upon a suitable turnaround be provided to the south side of the proposed driveway. 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, which include that 40% of the lot is taken up by a channel and floodplain, and the property is of limited size and as indoor parking is desirable a side yard setback is needed; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to develop the property which is similar to that possessed by other properties in the same zoning district and in the vicinity; the immediate practical difficulty causing the need for the variance request was not created by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood, and; 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, Schimmel-Yes, Singer-Yes, Mordas-Yes, Seyburn-Yes, Bunch-no) motion carried 5-1.

**STATEMENT OF CITIZENS:** None

**ADJOURNMENT:** There being no further business, the meeting was adjourned at approximately 7:55 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator