

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – October 11, 2010

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. Four people were in the audience.

MEMBERS PRESENT: Timothy Bunch, Rob Linenger, Betty Schimmel, Lowell Seyburn, Marianne Singer Donald Mordas, Henry Kerr, Daniel Rhodus

MEMBERS ABSENT: David Felicijan

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

APPROVAL OF THE MINUTES: Linenger moved and Seyburn seconded a motion to approve the September 20, 2010 minutes as submitted. Upon voice vote, motion was approved 7-0.

NEW BUSINESS:

ZBA# 10-06, Scott Sampson, 4726 Deep Point Drive: Staff summarized the request for a variance to enlarge or alter a nonconforming dwelling within the front yard setback where 27 feet is required to retain an addition on the northwest corner of the dwelling. Mr. Sampson explained that since he came to the Zoning Board in 2009, he has removed the east side of the dwelling and made repairs to the northwest side of the dwelling, a small portion of which extends into the required front setback and he wishes to retain due to the floor plan. The applicant notes a prior variance was granted for the attached garage, other houses in the area do not meet the current setback requirements, that the shape of the lot is unique and that a portion of the road pavement actually encroaches onto his property. Kerr stated he does not find a practical difficulty and that the request is essentially the same as submitted one year ago. Sampson indicated the two lots of his property come together a unique shape and the city has paved part of the road onto his property. In response to Rhodus, staff clarified that the setback is measured from the right-of-way line, not the road pavement edge. Rhodus also inquired as to why the lot boundaries shown on the survey extend past the platted lot dimensions, as the plat does not indicate the lot extends to the shoreline. Staff indicated the issue of lake front property lines has arisen many times and that the City Attorney has provided several opinions in regard to the issue. If the plat does not have a public beach, walkway or promenade shown running along the shore, it has been presumed that lake front property extends to the legal lake level/established high water mark. The City Attorney indicated that statute and case law is consistent with this position. Rhodus expressed a concern regarding this matter, and requested additional information regarding case law on this matter. In response to Seyburn and Singer, the applicant indicated that while there is a closet at the corner of the house that encroaches into the setback, more than just the closet would have to be removed to comply with the setback, which would adversely impact the floor plan. Seyburn indicated if the entire northwest addition to the house were shifted to the south to comply with the setback, about 10 feet of wall area would connect to the older area of the dwelling, which does not seem desirable. Kerr noted that the addition was built without prior permit approval, and several conforming alternatives are available to the applicant. Linenger expressed concern that the process to comply with the decision of the Board has taken so long and that legal enforcement action by the city was necessary. In response to Seyburn and Bunch, staff indicated that Building Code violations do remain, but the applicant has been working to rehabilitate the dwelling. The applicant added that an interior inspection of the east side of the dwelling remains, and only two footings on the west side of the house have yet to be replaced. Linenger asked if action is needed on the attached garage built in 1988. Staff indicated no as a front setback variance was granted. Seyburn indicated it would be helpful to have information regarding the variance decision in 1988.

A public hearing was opened. No one was present to speak for or against the request. Mr. Sampson presented a letter of support from Daniel and Joyce Jackson, 4802 Deep Point and Mark Nakayama, 4708 Deep Point Drive, which was read into the record. There being no further comments the public hearing was closed.

A motion was made by Seyburn, supported by Rhodus, to postpone action on the request to the November 8th meeting to allow the Board an opportunity to review information relevant to the 1988 variance for the attached garage, and to receive an update regarding the conformity of the dwelling with the Building Code. After further

discussion and upon roll call vote, the motion failed 3-4 (Kerr-No, Linenger-No, Mordas-Yes, Schimmel-No, Seyburn-Yes, Singer-No, Rhodus-Yes).

A motion was made by Singer, supported by Linenger, to deny a variance to enlarge or alter a nonconforming dwelling within the front yard setback where 27 feet is required to retain an addition on the northwest corner of the dwelling. The immediate practical difficulty causing the need for the variance request was created by the applicant, and while the applicant did not construct the illegal addition, he knew about it when he purchased the property, and the variance would materially impair the intent and purpose of the zoning ordinance. Upon roll call vote, the motion failed 3-4 (Kerr-No, Linenger-Yes, Mordas-No, Schimmel-Yes, Seyburn-No, Singer-Yes, Rhodus-No).

A motion was made by Seyburn to reconsider the first motion, which was supported by Rhodus, to postpone action on the request until the November 8, 2010 meeting to allow an opportunity to review information relevant to the 1988 variance for the attached garage, and to receive an update regarding the conformity of the dwelling with the Building Code. Upon roll call vote, the motion passed 5-2 (Kerr-No, Linenger-Yes, Mordas-Yes, Schimmel-Yes, Seyburn-Yes, Singer-No, Rhodus-Yes).

ZBA #10-07, William Kilkelly, 2404 Fairfield Road: Staff summarized the request for a) a 60 square foot variance to retain a 256 square-foot shed and 528 square foot garage with a combined area that exceeds the ground floor living area of the dwelling; and b) a four-foot variance from the required 10-foot building separation between the accessory buildings as specified in the Zoning Code. Mr. Kilkelly was present to explain his request, and that he hired a licensed contractor that told him he did not need a permit for a shed. The roof lines of the two buildings and service door for the garage present a problem with regard to attaching the buildings, and that the shed was built over 15 years ago, with no complaints. The applicant does not want to combine his adjacent lot due to tax ramifications. Bunch asked if the complaints about debris in the neighborhood involved this property. Staff responded yes and that the violations were addressed in a short period of time. Singer asked if the shed could be moved east without a setback problem. The applicant noted there is plenty of room, but that the shed could not be easily moved and would require a new slab. In response to Seyburn, staff indicated that if the Board granted a variance from the separation requirement, a fire wall in both the shed and adjacent garage wall are recommended. Linenger indicates it is unfortunate that a building permit was not obtained. Bunch indicated that a fire rated wall between the buildings would be an acceptable condition to address the building separation variance. In response to Schimmel, staff verified that if a 60 square foot addition was added to the dwelling, one of the two variances would not be needed.

A public hearing was opened. William Inkster, 2320 Fairfield Road, spoke in favor of the request, noting there is commercial property to the south and east with a six-foot solid wood fence, that the shed has been up for 15 years with no impact on the neighborhood. Seyburn asked if the house has a basement, and Mr. Inkster indicated yes. There being no further comments the public hearing was closed.

A motion was made by Linenger, supported by Singer, to deny a) a 60 square foot variance to retain a 256 square-foot shed and 528 square foot garage with a combined area that exceeds the ground floor living area of the dwelling; and b) a four-foot variance from the required 10-foot building separation between the accessory buildings as specified in the Zoning Code due to a lack of practical difficulty, and because the variance will 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, Rhodus-No, Seyburn-No, Kerr-Yes, Singer-Yes, Mordas-Yes) motion carried 5-2.

STATEMENT OF CITIZENS: None

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 8:10 p.m.

Respectfully submitted,

Vicki Georgeau, AICP
Deputy Director of Neighborhood Services