

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – November 8, 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. One person was in the audience.

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

**IN ATTENDANCE:** Vicki Georgeau, Deputy Director of Neighborhood Services, Randall Brown, City Attorney

**APPROVAL OF THE MINUTES:** Linenger moved and Felicijan seconded a motion to approve the October 11, 2010 minutes as submitted. Upon voice vote, motion was approved 7-0.

### **OLD BUSINESS:**

**ZBA# 10-06, Scott Sampson, 4726 Deep Point Drive:** Staff summarized the requested variance and provided an overview of additional information in the agenda regarding the 1988 variance granted for the attached garage, and an update on Building Code deficiencies, as requested by the Board at the October 11, 2010 meeting. Mr. Sampson reviewed photos of the property and dwelling and further explained the rationale for his requested variance, noting the property corner is located within the actual road pavement, that the lot has an unusual shape, that the corner of the addition will not obstruct traffic, or otherwise impact neighboring property in a negative manner. In response to Linenger, the applicant and staff noted the footing depth for the west side of dwelling has been approved by the Building Inspector. Rhodus indicated he reviewed the City Attorney opinions on lakefront lot boundaries, but has concerns the plat for this property does not describe the land to the shoreline and no deed has been provided that indicates the applicant owns additional land. In addition, Rhodus noted and staff concurred that without the additional land area, there is a lot cover problem with the dwelling. Attorney Brown indicated that the variance requested involves a setback issue only, not a lot cover issue. Further, Mr. Brown indicated that the opinions provided over the years, for which staff has relied upon, indicate that unless a lakefront plat has a public beach, walkway, promenade or other clear intent to restrict the land along the shore to public use, there is a presumption that lake front lot owners own property to the legal lake level. If the entire Board has concerns with the opinions provided on lakefront lot boundaries, additional research could be accomplished by the Office of City Attorney, and if that is desired, Mr. Brown recommended that all action on the setback variance request be postponed.

A public hearing was opened. No written or verbal comments were received and the public hearing was closed.

In response to Seyburn, Rhodus indicated he would have to vote “no” or “abstain” if the Board took action on the variance request due to his concerns with the lake front yard area. Seyburn asked the City Attorney to comment on the road encroachment onto the front yard. Brown indicated this matter is not relevant to the request. Felicijan and Linenger indicated the Board should focus only on the setback variance requested.

A motion was made by Linenger, supported by Singer, 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, as the variance would materially impair the intent and purpose of the zoning ordinance, and there are no exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing shall be incorporated in the record of this hearing and the findings of the Board, and that the action of the Board be final and effective immediately. Upon roll call vote, the motion carried 4-3 (Kerr-Yes, Linenger-Yes, Mordas-No, Schimmel-Yes, Seyburn-No, Singer-Yes, Rhodus-No).

**OLD BUSINESS:** None

**STATEMENT OF CITIZENS:** None

**ADJOURNMENT:** There being no further business, the meeting was adjourned at approximately 7:35 p.m.

Respectfully submitted,

Vicki Georgeau, AICP  
Deputy Director of Neighborhood Services