

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – March 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. Approximately 50 people were in the audience.

MEMBERS PRESENT: David Felicijan, Henry Kerr, Rob Linenger, Betty Schimmel, Lowell Seyburn, Marianne Singer, Donald Mordas, Daniel Rhodus (alt.)

MEMBERS EXCUSED: Timothy Bunch (alt.)

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

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

NEW BUSINESS:

ZBA# 09-14, 7508 Oakland Drive: Staff summarized the request for a) an appeal of the staff determination that a sign permit can not be issued for the roof shamrock; or b) an interpretation that the shamrock on the roof of the Shamrock Montessori Center is not a sign; or c) a variance to allow a 320 square-foot roof sign when only a maximum 32 square feet of combined wall and freestanding signage is permitted. Michael and Yolanda Quinn were present to explain the request and explained the history of the Shamrock Montessori School which started in 1985 and indicated that the shamrock painted on the roof of the school is a symbol of Irish heritage and not considered sign. Ms. Quinn indicated that the Zoning Code is overly broad and the staff interpretation is burdensome. Ms. Quinn noted that their roofing contractor inquired with the city regarding permit requirements, and Mr. Quinn indicated the school has the support of neighboring property owners and questioned why the city does not consider the shamrock art and a form of self expression.

Kerr noted the name of the business includes a shamrock and indicated the shamrock appears to be a sign. Mr. Quinn indicated if the shamrock was on the roof of a house, or matched the color of the shingles, it may not be in violation. In response to Kerr, staff clarified that while a similar symbol on a house roof may not be regulated by the code, it may still present concerns and have an adverse impact on property values. Further, no other Portage businesses have similar roof symbols for comparison purposes. Mr. Quinn indicated that the ordinance is so broad, that it is subject to subjective bureaucratic interpretation. Kerr indicated that Community Development acted in accordance to the authority provided in the code. Linenger added that the Board has been asked to interpret the code as the applicant disagrees with staff.

A public hearing was opened. The following persons spoke in favor of the request: Larry Provancher, 7414 Starbrook; Jason Frank, Kalamazoo resident; Andelas Strautkalns, 6820 Lovers Lane; Peggy Collins, 5620 Angling; Halim Knight, Kalamazoo resident; Tim Keck, 7551 Montego Bay; Sara Baker, Kalamazoo resident; Hugh Mark, 6426 Cherrywood; Lara Huff, 7581 Capri; Robert Ingalls, 542 Aldersgate; Brian McIntrye, 9913 S. 12th Street; Chris Hurley, 6329 Westshire; Katie Hurley, 6329 Westshire; Zora Provancher, 7414 Starbrook. Citizen comments included: that the shamrock is a symbol of solidarity, self-expression, heritage and art that beautifies the building and it is not advertising; that no complaints had been received and the shamrock is not offensive; that the interpretation the shamrock is a sign is overbroad and unreasonable; and that a variance should be granted in this instance. A petition signed by Taukir Gill, 1960 Schuring Road and Dan Mowry, 1940 Schuring Road, and an email communication from Melvin Visser, 2001 Schuring Road, in support of the request, were read into the record. There being no more comments, the public hearing was closed.

Felicijan noted his support of small local business and indicated that he too struggled with whether the shamrock was a sign. Attorney Bear clarified that former and current signs for the Peppermill and Kindercare businesses are legal nonconformities that may continue as long as no changes are made. Mr. Bear also noted the shamrock is ten times larger than permitted by the Zoning Code. Seyburn requested clarification on the zoning and the reason why a sign permit was not issued. Staff noted that the sign is too large and is located on the roof, and that roof signs are not permitted by the Code. Linenger cautioned that the decision of the Board can set precedent for future similar requests.

After additional discussion, with regard to requests a) an appeal of the staff determination that a sign permit can not be issued for the roof shamrock; and b) an interpretation that the shamrock on the roof of the Shamrock Montessori Center is not a sign, a motion was made by Felicijan, supported by Singer, that a) a sign permit cannot be issued for the roof shamrock and b) that the shamrock on the roof is a sign as defined by the Zoning Code. 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. Felicijan-Yes, Linenger-Yes, Kerr-Yes, Seyburn-Yes, Schimmel-Yes, Mordas- Yes, Singer-Yes. Upon roll call vote, the motion carried 7-0.

With regard to request c), a variance to allow a 320 square-foot roof sign when only a maximum 32 square feet of combined wall and freestanding signage is permitted, a motion was made by Felicijan, supported by Mordas, to deny the variance for the following reasons: 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; 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 in the vicinity because there are conforming alternatives or signage falls under legal nonconforming conditions; 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. Felicijan-Yes, Linenger-Yes, Kerr-Yes, Seyburn-Yes, Schimmel-Yes, Mordas- Yes, Singer-Yes. Upon roll call vote, the motion carried 7-0.

ZBA# 09-15, 8201 Cox's Drive: Staff summarized the request for a) an interpretation that seasonal soccer practice fields are similar to an outdoor theater use in an I-2, Heavy Industrial district, or b) a variance from the maximum two 1-year time periods for a Temporary Use Permit to continue the seasonal soccer practice field use from April 2010 through October 2014, and c) a variance from the off-street parking lot paving requirement. David Rice was present to explain the request on behalf of the Portage Soccer Club and discussed the history of the use of the property for outdoor recreation, and challenges associated with the current lease with Pfizer that is limited to seven years with renewals and a 90-day termination clause. Rice indicated that Portage Soccer Club has 250 players that use the fields for practice and that the Pfizer adult co-ed soccer league also plays games on Thursday evenings at the site. Mr. Rice explained the club prefers approval for requests a) and c) together, and indicates the use is identical to previous uses, is seasonal, recreational entertainment similar to an outdoor theater, is low impact and relieves congestion at city parks. With regard to the parking lot paving variance request, Rice indicated that the formal gravel parking lot has been restored, compacted and improved with a layer of crushed asphalt, and that the site is utilized by a very low impact recreational use.

A public hearing was opened. The following persons spoke in favor of the request: John Kelleykitis, Kalamazoo Twp. resident; Norm Jansen, 2746 Pfitzer; Felicia Murry, 5611 W. Heverly; Bill Restevo, 5510 Swallow, Texas Twp. resident; Steve Thompson, Schoolcraft resident, and Tom Mellinger, 9928 Sailor. Citizen comments included: that the facility relieves congestion in city parks; that the facility is safe, provides more than ample room for the Portage Soccer Club and enhances training; and that an unpaved parking lot is consistent with the natural setting and wildlife on the site.

Seyburn asked for clarification as to which alternative, a variance from the Temporary Use Permit time period, or an interpretation that soccer practice fields are similar to an outdoor theater, is preferred by the city. Staff explained that either option is acceptable to staff, and that the applicant prefers a favorable interpretation and variance from the parking paving. Staff also verified the applicant must obtain a Special Land Use Permit and site plan approval from the Planning Commission, and that the applicant is aware of such requirement. Felicijan asked if the Planning Commission can apply conditions to the Special Land Use Permit. Staff indicated yes, provided such conditions are reasonable.

After additional discussion, a motion was made by Seyburn, supported by Linenger, to approve a variance from the maximum two 1-year time periods for a Temporary Use Permit to continue the seasonal soccer practice field use from April 2010 through October 2014 for the following reasons: the practical difficulty being that the lease is terminable at the will of the property owner, that the property is not used four months of the year and the applicant has not used the property for a full one-year period; the variance will not be detrimental to adjacent property; the variance will materially impair the intent and purpose of the zoning ordinance; and the variance will be subject to the following conditions: 1) no capital improvements of a structural nature shall be erected on site, including artificial illumination, and 2) the vehicular gravel base shall continue to be maintained and shall conform in all other respects to the off-street parking standards set forth in Section 42-521. 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. Felicijan-No, Linenger-Yes, Kerr-No, Seyburn-Yes, Schimmel-Yes, Mordas- No, Singer-No. Upon roll call vote, the motion failed 3-4.

A motion was made by Felicijan, supported by Singer, that with regard to request a) an interpretation that seasonal soccer practice fields are indeed similar to an outdoor theater use in an I-2, Heavy Industrial district, and c) a variance from the off-street parking lot paving requirement, be granted. 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. Felicijan-Yes, Linenger-Yes, Kerr-Yes, Seyburn-Yes, Schimmel-Yes, Mordas-Yes, Singer-Yes. After further discussion and upon roll call vote, the motion carried 7-0.

STATEMENT OF CITIZENS: None.

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

Respectfully submitted,

Vicki Georgeau, Deputy Director of Neighborhood Services