

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – July 12, 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 5 people were in the audience.

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

MEMBERS EXCUSED: Donald Mordas

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

APPROVAL OF THE MINUTES: Felicijan moved and Linenger seconded a motion to approve the June 14, 2010 minutes as submitted. Upon voice vote, motion was approved 7-0.

NEW BUSINESS:

ZBA# 10-01; 6925 South Westnedge Avenue: Staff summarized the request for a) an appeal of the administrative decision denying a sign permit application to replace the pole of the existing nonconforming McDonald's restaurant freestanding sign and an interpretation that Sections 42-541(A) and 42-544(B) of the City Code of Ordinances authorize replacement of the sign pole; or b) a variance to modify an existing nonconforming freestanding sign. Staff also referred to the correspondence from the City Attorney regarding request a). Paul Nystrom was present on behalf of Golden Arch Realty Corporation, and summarized the applicant's arguments, noting the importance of the sign to the McDonald's restaurant business, the need to replace the sign pole which has corrosion at the base. Mr. Nystrom compared the actual sign area to the sign area as defined by the Zoning Code. With regard to the appeal and interpretation, the applicant reiterated his position that a pole is not part of a sign, that the definition of sign in Article 11 is not applicable to Article 4, Zoning, of the City Code, and that when the Zoning Code is unclear, the benefit of the doubt goes to the property owner. With regard to the variance, the applicant notes the degree of nonconformity will be reduced as the setback will meet the code, the sign size will be reduced, and that trees and adjacent buildings block the sign visibility. In addition, the applicant agreed to forego the second sign permitted on Admiral Avenue. In response to Kerr, the applicant noted that the pole supported the sign. Kerr noted without the pole, there can be no freestanding sign. Felicijan asked if the applicant has inspection or other structural reports that indicate the sign pole should be replaced. The applicant indicated for precautionary measures, the applicant desires to replace the pole in the near future. Felicijan asked if the city would allow replacement of the pole if it was determined hazardous. Staff indicated a hazardous condition would have to be addressed, but because the sign is nonconforming, and the ordinance does not allow a structural alteration to the sign. Felicijan asked if the trees along South Westnedge Avenue are required and owned by McDonalds. The applicant indicated yes, and staff indicated the trees are likely part of required site landscaping, and while the trees can be trimmed or replaced, replacement with smaller trees would not be desirable. Schimmel noted that many other McDonald's have much smaller signs and that most customers know where the restaurant is located or can easily find it with cell phone/GPS technology. The applicant indicated most customers buy on a spur of moment view of the sign and/or restaurant building and most people do not have modern GPS technology. Linenger asked where a sign would be located on Admiral, noting very little green space availability. Mr. Nystrom indicated a location had not been previously contemplated, but they would evaluate further if forced to erect a smaller sign on South Westnedge Avenue. In response to Linenger, Assistant City Attorney Bear reviewed the ordinance provisions, and indicated that the Zoning Code is not unclear. Mr. Bear reiterated the points in his correspondence, including that a pole or other support structure is part of a sign, that the intent of the sign regulations in Article 4 reference construction and anchoring of signs, that a freestanding sign includes its pole, that Article 11 of the Land Development regulations is intended to be read together with Article 4, Zoning, and that replacement of the sign pole is a structural alteration that is not permitted for a nonconforming sign. Linenger asked the applicant if an engineer has recommended repairs to the sign pole instead of replacement. The applicant indicated bracing could potentially be accomplished.

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

Seyburn noted that the statute encourages nonconforming uses and structures to eventually phase out, and notes that changing the sign pole is more than normal maintenance and would extend the life of the sign. Seyburn also notes that he likes the tall mature trees that have grown over the years and it would be unfortunate if the trees were

removed with smaller trees. In the past, Seyburn recalls that the Board had approved sign variances with a similar reduction in the degree of nonconformity. Staff noted that per the sign area defined in the Zoning Code, the proposed sign would be only 21% smaller than the existing sign. Seyburn noted the Board determines if the reduction meets the intent of the Code, and staff noted that the applicant has a standard 200 square foot sign that may be more acceptable, from a staff perspective. In response to Singer and Linenger, staff confirmed that the proposed sign would be moved to meet the setback, but that the height would remain at 36 feet.

A motion was made by Linenger, supported by Felicijan, to deny an appeal of the administrative decision which denied a sign permit application to replace the pole of the existing nonconforming McDonald's restaurant freestanding sign and the interpretation that Sections 42-541(A) and 42-544(B) of the City Code of Ordinances authorize replacement of the sign pole because a "sign" as defined in the Zoning Code includes the pole and due to a lack of practical difficulty. 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, Kerr-Yes, Schimmel-Yes, Felicijan-Yes, Singer-Yes, Seyburn-Yes, Bunch-yes) motion carried 7-0.

A motion was made by Linenger, supported by Felicijan, to deny a variance to modify an existing nonconforming freestanding sign for the following reasons: the variance would materially impair the intent and purpose of the zoning ordinance, the lack of practical difficulty, conforming alternatives are available; and maintenance repairs appear to be necessary and achievable. 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, Kerr-Yes, Schimmel-Yes, Felicijan-Yes, Singer-Yes, Seyburn-No, Bunch-Yes) motion carried 6-1.

ZBA# 10-02; 7021 and 7101 South Westnedge Avenue: Staff summarized the request for a variance to change a 140 square foot existing Sam's Club store sign panel on a 224 square foot nonconforming freestanding sign. Staff also reviewed the practical difficulties noted in 2005 when the Board granted a variance for the existing sign, which was conditioned upon no additional signs on Romence Road Parkway. Ryan Shrimplin was present to explain the variance was requested to allow Sam's Club to change its freestanding sign panel consistent with a new corporate logo and that no other changes to the sign would be made. The sign will not be moved, enlarged or otherwise altered. Linenger asked if there is an intent to erect signs on Romence Road Parkway. The applicant indicated no.

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

A motion was made by Linenger, supported by Felicijan, to approve a variance to change a 140 square foot existing Sam's Club store sign panel on a 224 square foot nonconforming freestanding sign conditioned upon no additional freestanding signs be located on Romence Road for the following reasons: there are exceptional circumstances applying to the property that include the freestanding sign authorized at the May 9, 2005 ZBA meeting, the variance is necessary for the preservation and enjoyment of a substantial property right, the right to identify the existing business with an update logo; 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. After further discussion and upon roll call vote (Linenger-Yes, Kerr-Yes, Schimmel-Yes, Felicijan-Yes, Singer-Yes, Seyburn-Yes, Bunch-no) motion carried 7-0.

STATEMENT OF CITIZENS: Felicijan apologized for his absences at recent Board meetings.

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 8:05 p.m.

Respectfully submitted,

Vicki Georgeau, AICP
Deputy Director of Neighborhood Services