

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – June 27, 2011

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

**MEMBERS PRESENT:** Timothy Bunch, David Felicijan, Rob Linenger, Lowell Seyburn, Betty Schimmel, Marianna Singer, Daniel Rhodus, Jeff Bright.

**MEMBERS EXCUSED:** Donald Mordas

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

**APPROVAL OF THE MINUTES:** Felicijan moved and Singer seconded a motion to approve the May 9, 2011 minutes as submitted. Upon voice vote, motion was approved 7-0.

### **NEW BUSINESS:**

**ZBA #10-17, 121 Boston Avenue & 5747 South Westnedge Avenue:** Staff summarized the request for a use variance for a single-family residential use in a B-3, General Business zone. Mr. Jay Sharma was present and explained he had listed the property at 121 Boston for lease as a business for almost two years and had gotten no responses to the listing. Mr. Sharma indicated he leased the property as a residence out of financial hardship and only wished to lease the former dwelling as a residence for one year, as opposed to the two years indicated by staff. Linenger stated the Board could not grant a variance based on a financial hardship. Linenger added the property has been zoned B-3, General Business since before the applicant purchased it, and having been used as a business by the applicant for years, worked against any argument that the property could not reasonably be used for permitted (commercial) uses. Bunch inquired if the applicant's request for one year residential use as opposed to two years had any bearing on the propriety of a Temporary Use Permit. Staff responded the reason a Temporary Use Permit was not applicable in this case was because the use of the property at 121 Boston Avenue involved an existing building and permanent capital improvements.

A public hearing was opened. A letter from Julee Burke, 129 Boston in opposition to the request was read. Mr. Sharma stated the tenants referenced in Ms. Burke's letter only violated City Code one time that he was aware of. Singer stated whether or not the tenants were 'good' or 'bad' would have no bearing on the Board's decision. The public hearing was closed.

A motion was made by Felicijan, supported by Seyburn, to deny a use variance for a single-family residential use in a B-3 General Business zone for the following reasons: the condition, location, or situation of the specific piece of property or the intended use of the property is not unique to that property and zoning district; the building, structure or land can be reasonably used in a manner consistent with the uses allowed in the zoning district; the variance would materially impair the intent and purpose of this article or the district in which the property is located; the immediate unnecessary hardship causing the need for the variance request was created by the applicant. 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, Felicijan-Yes, Seyburn-Yes, Singer-Yes, Bunch-Yes, Bright-Yes, the motion carried 7-0.

**ZBA #10-19, 7714 Pickering Street:** Staff summarized the request for a variance to expand a nonconforming dwelling by constructing a 12-foot by 24-foot sunroom 16 feet from the rear (west) property line where a 40-foot rear yard setback is required. Mr. Aeed was present to answer any questions. Linnenger inquired if the applicant intended to use the addition as a bedroom. Mr. Aeed stated he intended to use it as a sunroom. Seyburn noted the lot seemed small for a corner lot.

A public hearing was opened. A petition was read stating no objection to the request signed by the owners of 7723 Chippewa, 7741 Chippewa, 7728 Pickering, and 7720 Pickering. The public hearing was closed.

A motion was made by Seyburn, seconded by Bunch to grant a variance to expand a nonconforming dwelling by constructing a 12-foot by 24-foot sunroom 16 feet from the rear (west) property line where a 40-foot rear yard setback is required for the following reasons: there are exceptional circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the lot is a narrow corner lot, the location of the dwelling on the lot, the presence of mature evergreens, the adjacent residence to the west is over 100 feet away, and the variance would eliminate the non-conforming living area; the immediate practical difficulty causing the need for the

variance 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, Felicijan-Yes, Seyburn-Yes, Singer-Yes, Bunch-Yes, Bright-Yes, the motion carried 7-0.

**ZBA# 10-20, 8127 Portage Road:** Staff summarized the request for a Temporary Use Permit for an outdoor farmer's market each Monday from July through September 2011, and each Monday during June through September 2012 and annually thereafter. Sheila Shubnell was present to answer any questions. Felicijan noted the applicant got permission from Burger King to accommodate any potential overflow parking, and inquired how the applicant would notify patrons of this fact. Ms. Shubnell stated she intended to use the existing changeable copy board on site for that purpose. Linenger noted the site had designated entrance and exit drives and stated the one concern he had would be if patrons parked in the access drives to the north and south of the building. Ms. Shubnell stated they would be vigilant in directing patrons to park at the Burger King lot.

A public hearing was opened. Letters of support were read from The Barber Shop, 8127 Portage Road; Burger King, 8215 Portage Road; People's Food Coop, 436 South Burdick Street, Kalamazoo; Fair Food Matters, 323 North Burdick Street, Kalamazoo. The public hearing was closed.

A motion was made by Felicijan, seconded by Singer, to grant a Temporary Use Permit for an outdoor farmer's market each Monday from July through September 2011, and each Monday during June through September 2012 and annually thereafter, conditioned upon 1) a maximum of 10 vendors be situated as proposed in the east parking lot; 2) maintaining 17 parking spaces for existing businesses; and 3) the Temporary Use Permit be reviewed by the Board not later than October 11, 2011 at which time the Temporary Use can be reviewed and considered for annual administrative approval. Upon roll call vote: Linenger-Yes, Schimmel-Yes, Felicijan-Yes, Seyburn-Yes, Singer-Yes, Bunch-Yes, Bright-Yes, the motion carried 7-0.

**STATEMENT OF CITIZENS:**

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

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator