

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – October 10, 2011

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

MEMBERS PRESENT: Mariana Singer, Lowell Seyburn, Daniel Rhodus, Betty Schimmel, Rob Linenger, David Felicijan, and Jeff Bright.

MEMBERS EXCUSED: Timothy Bunch

MEMBERS ABSENT: Donald Mordas

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

APPROVAL OF THE MINUTES: Felicijan moved and Seyburn seconded a motion to approve the September 12, 2011 minutes as submitted. Upon voice vote, motion was approved 7-0.

OLD BUSINESS:

ZBA #10-20, 8127 Portage Road. Staff provided a status update on the Temporary Use Permit that the Board had approved on June 27, 2011 for Sheila Shubnell, on behalf of Green Earth Hydroponics, to operate a farmer's market at 8127 Portage Road. Staff reported the farmer's market had low turnout of both customers and vendors, no problems were reported or observed during the course of the four times it operated, and appeared generally to have had minimal impacts as a result.

A public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Felicijan, seconded by Bright, to approve a Temporary Use Permit for Sheila Shubnell, on behalf of Green Earth Hydroponics, to operate an outdoor farmer's market on Mondays from 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; and 3) the Temporary Use be reviewed by staff annually hereafter. Upon voice vote motion passed 7-0.

NEW BUSINESS:

ZBA #11-4, 7085 Sandpiper Street. Staff summarized the request for a three-foot rear yard setback variance to construct a 12-foot by 18-foot sunroom to within 37-feet of the rear property line, where a 40-foot rear yard setback is required. Paul Honeysett was present and explained he wished to construct a sunroom that would match the setbacks and footprint of where the rear deck is currently situated. Felicijan inquired if the applicant intended to use the addition as a sunroom. Mr. Honeysett stated yes. Rhodus noted a three foot discrepancy between where the applicant indicated the rear property line was and the plat boundary depicted on GIS. The applicant stated he has confirmed the measurements in the field and is confident they are accurate. Staff added the GIS mapping system is not survey accurate, and measurements have to be field verified by the property owner or applicant.

A public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Felicijan, supported by Bright, to grant a variance for a three-foot rear yard setback to construct a 12-foot by 18-foot sunroom to within 37-feet of the rear 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 dwelling's 35 foot front setback, the variance will not be detrimental to adjacent property and will not materially impair the intent and purpose of the zoning ordinance. In addition, the application and related materials, staff report and all discussion and additional materials presented at this hearing shall be incorporated into the record of this hearing and the findings of the Board, and action of the Board shall be

final and effective immediately. Upon roll call vote: Schimmel – Yes, Linnenger –Yes, Seyburn-Yes, Rhodus - Yes, Bunch-Yes, Bright-Yes, Felicijan-Yes. The motion carried 7-0.

ZBA #11-05, 2404 Fairfield Road. Staff summarized the request for a 30 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. Mr. Kilkelly stated when the shed was constructed 16 years ago he believed the contractor had obtained the proper permits, but that was not the case and he has been working hard with staff to find solutions since he last was before the Board a year ago. He stated he already combined his two contiguous lots, re-measured all structures, and modified his proposal so it would meet codes as much as possible. Seyburn inquired if the breezeway created by attaching the shed and garage with a common roof counted towards the accessory building area. Staff stated the roof attachment eliminated the applicability of the 10-foot building separation requirement and that Section 42-121 specifically exempted breezeways being counted towards accessory building area.

A public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Felicijan, seconded by Bunch to grant a 30 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, as there are exceptional circumstances applying to the property that do not apply generally to other properties in the zoning district which include it is adjacent to developed commercial property to the south and east and is screened from view to the east and south by a six-foot opaque fence and mature vegetation; the house is located directly in front of the shed and blocks the view from the north; the applicant owns the adjacent lot to the west at 2324 Fairfield Road; 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 related materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated into the record of this hearing and the findings of the Board, and that action of the Board shall be final and effective immediately. Upon roll call vote: Seyburn-Yes, Rhodus-Yes, Schimmel-Yes, Felicijan-Yes, Linnenger-Yes, Bunch-Yes, Bright-Yes, the motion carried 7-0.

ZBA #11-06, 8585 Portage Road Staff summarized the requests for variances from two special land use provisions for a commercial kennel: a) a 380-foot variance from the 500-foot setback from a residential district boundary; and b) a variance from the enclosure requirements for outside exercise areas. Shannon Reeves explained Wiggles Waggles and Tails has been open for a year and when they initially received approval for a Special Land Use Permit by the Planning Commission last year, they did not anticipate there would be any demand for overnight boarding, however, numerous customers have since inquired prompting this request. Customers have noted a lack of boarding facilities in town and are compelled to board in other surrounding communities. Ms. Reeves stated their staff is already present and monitoring the exercise area whenever the dogs are outside. Bright inquired who owned the adjacent undeveloped properties. Ms. Reeves stated Pfizer owned the adjacent heavily wooded parcels. Felicijan inquired how boarding kennels are typically configured. Ms. Reeves explained most kennels have a ‘U’ shaped kennel configuration with both indoor and outdoor access, her proposal, however, entailed the kennels being entirely within the existing building. Felicijan stated that while he supported the growth of small businesses, a 380-foot variance request was quite substantial and struggled finding a practical difficulty. Schimmel inquired if anything in the city codes requires employees to be present 24 hours a day at overnight boarding kennels. Staff responded no.

A public hearing was opened. A letter, dated September 10, 2011 from Wiggles, Waggles and Tails, 8585 Portage Road was read into the record. The public hearing was closed.

After additional discussion, a motion was made by Felicijan to deny the request for a 380-foot variance from the 500-foot setback from a residential boundary for the following reasons: there are no exceptional circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district; the immediate practical difficulty causing the need for the request was created by the

applicant; the variance would be detrimental to the surrounding neighborhood, and the variance would materially impair the intent and purpose of the Zoning Ordinance. Upon roll call vote: Felicijan-Yes, Bunch-Yes, Linenger-Yes, Schimmel-No, Seyburn-No, Bright-No, Rhodus-No. Motion failed 3-4.

A motion was made Bright, seconded by Seyburn, to grant variances from two special land use provisions for a commercial kennel: a) a 380-foot variance from the 500-foot setback from a residential district boundary; and b) a variance from the enclosure requirements for outside exercise areas for the following reasons: there are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district, which include they are the only dog kennel in the area, the existing building design, the limited size of the kennel operation, and the retention of existing mature vegetation; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to provide service to dog owners; the variance will not be detrimental to adjacent property and surrounding neighborhood; and the variance will not materially impair the intent and purpose of the Zoning Ordinance. The following conditions will apply 1) the number of animals be limited to not more than 45 (30 daycare dogs and 15 for overnight boarding); 2) the outdoor exercise area not be expanded beyond its current dimensions, and no cages/runs be established in this area; 3) kennel staff be present any time animals are located within the outdoor exercise area; and 4) should there be noise complaints that cannot be resolved by operational changes to the business, a six-foot solid screen fence or wall must be installed around the outdoor exercise area. In addition, the application and related materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated into the record of this hearing and the findings of the Board, and that action of the Board shall be final and effective immediately. A motion was made by Felicijan to amend condition 4) to require installation of the fence prior to operating overnight boarding received no support. Upon roll call vote: Felicijan-No, Bunch-No, Linenger-No, Schimmel-Yes, Seyburn-Yes, Bright-Yes, Rhodus-Yes. Motion passed 4-3.

ZBA #11-07, 1901 Romence Road Parkway: Staff summarized the request for a 10-foot variance to erect two, 14 square-foot directional signs identifying the Stryker Corporation near the west building entrance of 1901 Romence Road Parkway. Steve Vandersloot of Sign Art was present on behalf of the applicants. Mr. Vandersloot stated Stryker was occupying the northwest quadrant of the office building at 1901 Romence Road Parkway and intended the proposed signs to help create a sense of arrival. The signs were not intended to be readable from Romence Road Parkway and would use soft lighting similar to the Trade Center signs. Felicijan inquired if the applicant was requesting one or two directional signs. Mr. Vandersloot stated Stryker was occupying the northwest quadrant of the building and only needed one Stryker sign, however, there was a good possibility they might be occupying the southwest quadrant as well at which time the applicant was comfortable with returning to the Board to make a similar second request. Seyburn noted the Board could save time and trouble if they approved a variance for two directional signs – not necessarily two ‘Stryker’ signs - as the applicant is under no obligation to erect the second sign. Felicijan stated he had some concerns about possibly creating a precedent for larger directional signs. Mr. Vandersloot stated Stryker had previously received a variance for directional signs at their Sprinkle Road campus.

A public hearing was opened. No one was present to speak for or against the request. The public hearing was closed.

A motion was made by Felicijan, seconded by Seyburn, to grant a 10-foot variance to erect two 14 square-foot directional signs near the west building entrance of 1901 Romence Road Parkway 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 size of the subject property, the location of the existing site improvements and location/orientation of the proposed signs, the Board previously approved a variance for Stryker’s directional signs at the Sprinkle Road campus, the signs will not be visible to adjacent property or the surrounding neighborhood, and will not materially impair the intent and purpose of the Zoning Ordinance. In addition, the application and related materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated into the record of this hearing and the findings of the Board, and that action of the Board shall be final and effective

immediately. Upon roll call vote: Seyburn-Yes, Rhodus-Yes, Schimmel-Yes, Felicijan-Yes, Linnenger-No, Bunch-Yes, Bright-Yes, the motion carried 6-1.

Election of officers: A nomination was made by Felicijan, seconded by Schimmel for Linnenger to serve as Chair. A nomination was made by Bright, seconded by Rhodus for Seyburn to serve as Vice Chair. A nomination was made by Felicijan, seconded by Seyburn, for Schimmel to serve as Secretary. The nominations were closed. Upon voice vote, all nominations were approved 7-0.

STATEMENT OF CITIZENS:

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 8:17 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator