

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – October 8, 2012

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. Five people were in the audience.

MEMBERS PRESENT: Rob Linenger, Timothy Bunch, Doug Rhodus, Betty Schimmel, Jeffrey Bright, Lowell Seyburn, Mariana Singer, Michael Robbe, and Glenn Smith.

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

APPROVAL OF THE MINUTES: Schimmel moved and Rhodus seconded a motion to approve the September 10, 2012 minutes as submitted. Upon voice vote, motion was approved 7-0.

NEW BUSINESS:

ZBA #12-09, 2320 Ramona Avenue: Mais summarized the requests for: a) a variance to allow the combined area of all existing accessory buildings to exceed the ground floor living area of the main building by 516 feet; and b) a six-foot variance to allow an accessory building to be located four-feet from another accessory building. The applicant, Mr. James Wilson, stated he did not agree with staff classifying the 120 square-foot as a shed because his grandchildren use it as a play structure. Mr Wilson explained he needed the 288 square-foot building for wood storage and for storing the lawn tractors that he restores as a hobby. Linenger inquired what accessory building(s) the applicant would be willing to remove from the property and to identify the practical difficulty. Mr. Wilson stated he is on disability and needs all the buildings for storage. Schimmel inquired why the applicant did not obtain building permits. The applicant replied he did not think permits were needed for buildings that were removable. Seyburn asked Mr. Wilson what was inside the 120 square-foot structure that the applicant identified as his grandchildren's playhouse. Mr. Wilson stated he stores tools inside the building his grandchildren like to play with. Bright inquired if any of the neighbors had any problems with the sheds. Mr. Wilson said no. Linenger stated he thought the 120 square-foot structure was a tool shed, not a playhouse. Singer inquired if "playhouse" was defined in the Zoning Code. Mais stated there is no definition of a 'playhouse' in the Zoning Code.

The public hearing was opened. No one spoke for or against the request. The public hearing was closed.

After additional discussion, a motion was made by Seyburn, seconded by Rhodus, to grant a variance for the combined accessory building area to exceed the ground floor living area by 108 square feet, conditioned upon: 1) removal of the existing 288 square-foot shed within 150 days, and 2) the 10-foot by 12-foot playhouse and 7-foot by 7-foot playhouse be moved to ensure that at least 10 feet of building separation exists between the play structures and any other building within 150 days, for the following reasons: there are exceptional circumstances applying to the property that do not apply generally to other properties in the zoning district which include an older nonconforming home that does not have adequate storage space; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to have reasonable storage area; the variance will not be detrimental to adjacent property and the surrounding neighborhood, and the variance will not 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 this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call vote: Bunch-Yes, Seyburn-Yes, Bright-Yes, Schimmel-Yes, Singer-No, Linenger-No, Rhodus-Yes. Motion passed 5-2.

ZBA #12-10, 1622 Forest Drive: Mais summarized the request for a variance to construct a six-foot by ten-foot covered porch/second-story deck, 16 feet from the (east) front property line adjacent to Glenn Drive, and 20 feet from the front (west) property line along Frederick Drive, where a minimum 27-foot setback is required. Since the applicant was not present, Seyburn moved and Rhodus seconded a motion to postpone the hearing until the November 12, 2012 meeting. Upon voice vote motion passed 7-0.

ZBA #12-11, 701 East Milham Avenue: Mais summarized the request for a variance to replace the sign panels on a nonconforming freestanding sign. Melissa Ray stated the new owner simply wants to replace the sign panel with no alterations to the sign structure to identify AbraXas. Bright inquired if they had to replace the entire sign structure with a conforming sign how much would it cost. Ms. Ray stated twenty to thirty thousand dollars. Seyburn stated he was surprised that the Zoning Code only permits a 48 square-foot sign for a site that has significant public street frontage.

The public hearing was opened. Gary Wager, 5936 Concord Street stated the subject sign looks brighter now than it used to and he and his neighbors would not want to see a larger sign. Seyburn inquired if the city had any illumination standards for signs. Mais stated there are no specific sign luminance standards; however, the Zoning Code does have general language prohibiting signs from glaring or shining onto adjacent residences. Bunch inquired if the applicant would be willing to turn the sign lights off between 10 p.m. and 6 a.m. The applicant responded they would be willing to accommodate the neighbors and turn the sign lights off at night. The public hearing was closed.

A motion was made by Seyburn, seconded by Bright, to grant a variance to replace the sign panels on a nonconforming freestanding sign, conditioned upon the sign lighting be turned off between the hours of 10 p.m. and 6 a.m. There are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district which include having 1300 feet of frontage; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to identify the new owner which is similar to that possessed by other properties in the same zoning district and vicinity; 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 Code. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call vote: Upon roll call vote: Bunch-Yes, Schimmel-Yes, Seyburn-Yes, Singer-Yes, Linenger-Yes, Rhodus-Yes, Bright-Yes. Motion passed 7-0.

ZBA #12-12, 2728 East Shore Drive: Mais summarized the request for: a) a decision that there is a change of circumstances subsequent to a variance denial on August 20, 2012; and b) a variance to construct a 10-foot by 24-foot garage addition 24 feet from the front (north) property line, where a minimum 27 foot front yard setback is required. Attorney Bear advised the Board needed to compare the present application materials with the previous submittal in determining whether or not a change of circumstance has occurred.

A motion was made by Bright, seconded by Seyburn to make the finding that there has been a change of circumstances. Upon voice vote the motion passed 7-0.

Tina Kuchenbuch explained they revised their plans and decided they could utilize a double door garage design. The applicant noted their practical difficulty was the topography sloped down towards the lake and this determined where the house was originally constructed on the lot, including the garage being in close proximity to the front property line. Ms. Kuchenbuch stated they neither constructed the house, nor the side-entry garage but still needed protection from the elements and security. The applicant produced a diagram which depicted how turning movements out of the garage are executed. The applicant also showed photographs of other houses on East Shore Drive that are closer to the front property line than their proposal. Linenger inquired what driveway improvements were planned. Ms. Kuchenbuch stated they would only be widening the driveway directly in front of the proposed stall, as a mature tree in the yard prohibits much widening.

The public hearing was opened. No one spoke for or against the request. The public hearing was closed.

A motion was made by Bright, seconded by Bunch to grant a variance to construct a 10-foot by 24-foot garage addition 24 feet from the front (north) property line, where a minimum 27 foot front yard setback is required. There are exceptional circumstances applying to the property that do not apply generally to other

properties in the same zoning district, which include the sloping lakefront lot and the orientation of the garage that prevents construction of an addition in a conforming location, the variance is necessary for the preservation of a substantial property right, the right to protect their cars from the elements, 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 Code. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call vote: Upon roll call vote: Bunch-Yes, Schimmel-Yes, Seyburn-Yes, Singer-Yes, Linenger-Yes, Rhodus-Yes, Bright-Yes. Motion passed 7-0.

ZBA #12-13, 5717 Oakland Drive: Mais summarized the request for a variance from the conflicting land use screening requirements along the north and south property lines in conjunction with a new office development project. Steve Bosch, representing the property owner, was present to answer questions. Linenger noted there was existing vegetation located along the north property line. Mr. Bosch stated they intend to keep as much of it as they could but made it clear they were seeking a variance from other screening requirements as well, such as the required ten-foot green strip. Linenger inquired if some of the vegetation was on the church's property. The applicant answered yes. Bright requested clarification of the shared access drive location. Mr. Bosch explained it would centered on the shared property between the two parcels and would provide access to future development further east.

The public hearing was opened. A letter in support of the request from the pastor of Cross Community Church of the Nazarene, 5603 Oakland Drive was read into the record. The public hearing was closed.

A motion was made by Singer, and seconded by Schimmel to grant a variance from the conflicting land use screening requirements along the north and south property lines in conjunction with a new office development project. There are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district which include the unlikelihood of future residential development; the variance is necessary for the preservation of a substantial property right, the right to ingress and egress; the immediate practical difficulty causing the need for the variance request 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 Code. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call vote: Upon roll call vote: Bunch-Yes, Schimmel-Yes, Seyburn-Yes, Singer-Yes, Linenger-Yes, Rhodus-Yes, Bright-Yes. Motion passed 7-0.

OTHER BUSINESS:

STATEMENT OF CITIZENS:

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

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator