

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – January 28, 2013

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:** Rob Linenger, Timothy Bunch, Doug Rhodus, Betty Schimmel, Michael Robbe, Mariana Singer, and Glenn Smith.

**MEMBERS EXCUSED:** Lowell Seyburn, Jeffrey Bright

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

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

**OLD BUSINESS:**

**NEW BUSINESS:**

**ZBA #12-18, 251 and 325 Mall Drive:** Mais summarized the request for a 29-foot variance to construct a 7,575 square-foot restaurant 46 feet from the front (north) property line, where a minimum 75-foot setback is required. Josh Weiner and Tim Timmons were present to answer any questions. Mr. Weiner stated he agreed with the staff report and that the neighbors supported the request as well. Linenger inquired if the applicant had received site plan approval already. Mr. Weiner stated the site plan may vary in some details, but would closely resemble the conceptual plan the Board was looking at when it comes up for site plan review. Linenger inquired if they had considered altering their access arrangement onto Mall Drive so that the Southland Mall access would align directly with this development's access. Mr. Weiner stated they had and that the issue has been discussed on previous occasions with staff where it was determined the existing arrangement was preferable. Rhodus inquired who owned the property. Mr. Weiner stated BW3 Acquisitions LLC was an entity created by his corporation.

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 Bunch, seconded by Singer, to grant a 29-foot variance to construct a 7,575 square-foot restaurant 46 feet from the front (north) property line, where a minimum 75-foot setback is required, conditioned upon 1) the building height be limited to 25 feet to ensure a low-profile building ; and 2) the building design and materials include masonry (brick) materials and several window openings consistent with the conceptual building elevations. There are exceptional circumstances applying to the property which include the location of the existing building and limited building width along the north side of the building; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to construct a business of reasonable dimensions; 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 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, Smith-Yes, Schimmel-Yes, Singer-Yes Linenger-Yes, Rhodus-No, Robbe-No. Motion passed 5-2.

**ZBA #12-19, 6600 Ring Road:** Mais summarized the request for a 194 square-foot variance to erect a 194 square-foot wall sign where there already exists a sign that is the maximum permitted 225 square feet. Scott Urbane and Roger Lubs were present to answer questions. Mr. Lubs stated that the IMAX theater was unique in the area, and that the next nearest theaters were in Grand Rapids or Lansing. Mr. Lubs said the business draws many school busses for field trips and other patrons from outside the community who are not familiar with the area and that the IMAX sign was necessary to help with way-finding. Mr. Urbane

showed photographs depicting the limited visibility of the site from Ring Road. Linenger noted the request greatly exceeds what is permitted and wondered if the applicant had considered removing or reducing the existing wall sign. Mr. Lubs said they had not because they wanted to achieve roughly equal balance between signs identifying "Celebration Cinema" and the "IMAX" theaters. Mr. Lubs stated the IMAX theater is bigger than regular theaters and wanted the sign to reflect that. Schimmel inquired that if the Celebration Cinema sign was not even visible from Ring Road, why not remove it and allocate the sign area for IMAX. Mr. Lubs stated the existing Celebration sign is visible from the food court at the mall and is important to draw customers from the mall. Schimmel and Smith both inquired if other businesses around the mall got wall sign variances. Mais responded that several businesses including Cole-Century, Sears, and JC Penney got wall sign variances of various sizes, but were for smaller signs than the present application. Smith stated he did not see an aesthetic problem with the theater having larger signage, but wondered if the applicant would consider reducing the size of the IMAX sign as recommended by staff. Mr. Lubs said IMAX was almost like a separate entity and it was important to maintain a rough balance between the Celebration and IMAX sign sizes. Bunch stated he was concerned about granting a variance for the largest sign in vicinity as it would set a precedent. Singer stated she did not see why 70 inch tall letters were needed for the IMAX sign. Mr. Lubs stated they would be willing to make do with a 120 square-foot sign. Robbe stated the applicant should be making a choice to either advertise Celebration Cinema or IMAX and if they wanted to choose a large IMAX sign, the Celebration sign should be removed from the east elevation.

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

A motion was made by Smith, seconded by Singer to grant a 120 square-foot variance to erect a 120 square-foot wall sign, where the maximum permitted 225 square feet of signage already exists. There are exceptional circumstances or extraordinary circumstances applying to the property that do not apply generally to other properties in the same zoning district, which include: much of the wall signage is obscured from view of Ring Road due to the elevation change and that IMAX was like a second entity. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to identify a business, and that other businesses in the area had received wall sign variances; 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 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-No, Smith-Yes, Schimmel-Yes, Singer-Yes Linenger-Yes, Rhodus-No, Robbe-No. Motion passed 4-3.

**OTHER BUSINESS:** Schimmel noted the Board would soon be losing the Chair and Secretary due to term limits and that perhaps elections should be scheduled for new officers soon. Mais stated the rules & procedures stated the Vice Chair takes over as chair for the remainder of the term, but would look into what needed to be done to replace the Secretary.

**STATEMENT OF CITIZENS:**

**ADJOURNMENT:** There being no further business, the meeting was adjourned at approximately 8:07 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator