

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – February 11, 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, Lowell Seyburn, Timothy Bunch, Doug Rhodus, Betty Schimmel, Michael Robbe, Mariana Singer, and Glenn Smith.

MEMBERS EXCUSED: 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 January 28, 2013 minutes as submitted. Upon voice vote, motion was approved 7-0.

OLD BUSINESS:

NEW BUSINESS:

ZBA #12-20, 5260 Lovers Lane: Mais summarized the request for: a) a variance to erect a sign 64 feet above the adjacent I-94 street grade, where a maximum 40-foot high sign is permitted; and b) a variance to erect a 378 square-foot sign, where a maximum 300 square-foot sign is permitted. The applicant, Andy Wenzel, stated the Zoning Code requires sign height to be calculated from adjacent street grade (at I-94) and does not allow height to be measured from elevated roadways such as the Lovers Lane overpass. The topography at the proposed sign location presents a practical difficulty since the grade of I-94 is lower near the elevated Lovers Lane overpass and as a result the sign visibility for west bound traffic was impacted. Concerning the sign area request, a variance was needed because the proposed sign would be setback approximately 145 feet from the nearest travel lane, there are several mature trees in the vicinity which they did not want to remove, and the presence of a 20 foot wide strip of land between the subject property and I-94. Mr. Wenzel stated the proposed 378 square-foot sign is an industry standard size and that 300 square-foot signs were not as common. Linenger inquired what the practical difficulties were with regard to the sign area. Mr. Wenzel stated the increased setback due to the trees and 20 foot wide strip of land. Mr. Wenzel also noted there was an existing billboard (5242 Lovers lane) to the west that was the same size as the proposed sign.

A public hearing was opened. Jim Brutsche, 5421 Lovers Lane stated the existing billboard (5242 Lovers Lane) was highly visible from his home and he did not want to see another such sign located even closer. The public hearing was closed.

Seyburn inquired if the applicant would be willing to accept a variance for a 378 square-foot sign if it were conditioned upon not being an Electronic Message Display. Mr. Wenzel said no. A motion was made by Seyburn, seconded by Schimmel, to grant a) a variance to erect a sign 64 feet above the adjacent I-94 street grade, where a maximum 40-foot high sign is permitted. There are exceptional circumstances applying to the property which include the proximity of the elevated Lovers Lane overpass, and lowered street grade elevation of I-94 that will impact the visibility of the sign; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to display a billboard and be seen; 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-No, Schimmel-Yes, Singer-Yes Linenger-No, Rhodus-No, Seyburn-Yes. Motion passed 4-3.

A motion was made by Smith, seconded by Singer to deny the request to erect a 378 square-foot sign, where a maximum 300 square-foot sign is permitted for the following reasons: there are no exceptional or

extraordinary circumstances applying to the property that do not apply generally to other properties in the same zoning district; the variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available such as erecting a 300 square-foot sign; the variance would be detrimental to adjacent property and the surrounding neighborhood, and; the variance would materially impair the intent and purpose of the zoning ordinance. Upon roll call vote: Bunch-Yes, Smith-Yes, Schimmel-Yes, Singer-Yes Linenger-Yes, Rhodus-Yes, Seyburn-Yes. Motion passed 7-0.

ZBA #12-21, 6123 South Westnedge Avenue: Mais summarized the request for a variance to replace the sign panels on a nonconforming freestanding sign. James Mikrut of Icon Sign Company was present to answer any questions.

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

A motion was made by Singer, seconded by Schimmel to grant a variance to replace the sign panels on a nonconforming freestanding sign, with the condition that future sign panel replacements may be approved by the city administration, provided no structural changes to the sign are proposed and a sign permit is obtained. 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: the small, shallow lot, building setback, location of existing nonconforming sign and landscaping. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to identify a business; 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-Yes, Robbe-Yes. Motion passed 7-0.

ZBA #12-22, 8818 Portage Road: Mais summarized the request for a variance to allow operation of a veterinary hospital adjacent to property zoned R-1B, One Family Residential. Mais stated the request was identical to the variance the Board granted a year ago (ZBA 11-14) but that the variance had expired. Mr. Greathouse stated he agreed with staff's recommendations. Smith noted staff recommended no outdoor kennels. Mr. Greathouse stated he did not intend to have any. Smith inquired if there would be any prospect of the animals creating a disturbance for neighbors. Mr. Greathouse stated most of the animals that would be sick enough to have to stay overnight at his current clinic (10336 Portage Road) are referred to a 24 hour animal hospital, and intends to continue to do so as he does not have overnight staff. Seyburn inquired if there had been any noise complaints at 10336 Portage Road. Mais stated no. Rhodus inquired if a six-foot fence was required at both the edge of the parking lot and the property line. Mais replied just along the property line.

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

A motion was made by Bunch, seconded by Smith, to grant a variance to allow operation of a veterinary hospital adjacent to property zoned R-1B, One Family Residential with the following conditions: 1) a six-foot privacy fence along the west property line be maintained to protect adjacent residential properties; 2) no outdoor kennels or runs are provided on site; 3) the hospital/clinic be limited to the treatment of small animals (i.e. domesticated pets); and 4) no animal crematory facilities shall be provided on site. 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: the operational characteristics of the proposed small-scale veterinary hospital/clinic, and location of existing building from adjacent residential dwelling. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to operate a veterinary clinic; 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-Yes, Robbe-Yes. Motion passed 7-0.

OTHER BUSINESS:

Seyburn noted Linenger and Schimmel's terms expired this month and thanked them for their years of service on the Board.

STATEMENT OF CITIZENS:

Henry Kerr, 3111 Fleetwood, stated he and other residents in his neighborhood are concerned about the negative impacts the proposed EMD billboard on the school-owned property at Angling Road Elementary will have on the neighborhood. Mr. Kerr said he understands the Board did not have authority on this issue but wanted to take the opportunity to urge city staff to do what it could to stop what already appeared to be a 'done deal' and was concerned that other billboards will be erected on school property at other locations. Seyburn stated he believed there is case law available which would support the city in trying to prevent the sign and urged staff to consult with the city attorney.

ADJOURNMENT: There being no further business, the meeting was adjourned at approximately 8:03 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator