

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – November 11, 2013

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

MEMBERS PRESENT: Jeffrey Bright, Lowell Seyburn, Tim Bunch, Glenn Smith, Michael Robbe, Doug Rhodus, Marianna Singer, and Philip Schaefer.

MEMBERS EXCUSED: James White

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

APPROVAL OF THE MINUTES: Bunch moved and Singer seconded a motion to approve the October 14, 2013 minutes as submitted. Upon voice vote, motion was approved 7-0.

OLD BUSINESS:

NEW BUSINESS:

ZBA #13-07, 3308 East Shore Drive: Mais summarized the request for a variance to expand an existing nonconforming garage by constructing a 446 square-foot addition 15 feet from the front property line where a minimum 27 foot front setback is required. Henry Ryskamp stated his proposed configuration was more logical than placing an attached garage on the west side of the dwelling, or attaching it to the east side of the dwelling where it would be adjacent to a bedroom. Singer inquired if the applicant had considered a tandem garage design. Mr. Ryskamp stated that alternative would not accommodate their parking needs. Bright inquired who owned the property to the west and if the applicant had spoken to his neighbors about the request. Mr. Ryskamp stated the undeveloped property to the west was owned by Pfizer, and he had spoken to the neighbor to the east who stated no objection.

A public hearing was opened. Sharon Ryskamp, 3308 East Shore Drive, inquired if the garage were constructed on the west side of the dwelling how could the driveway access be configured. Mais stated they had the option to either extend the existing driveway across the front yard, or could install a second driveway further west, as East Shore Drive was not a major thoroughfare. The public hearing was closed.

A motion was made by Smith, seconded by Singer to deny a variance to expand an existing nonconforming garage by constructing a 446 square-foot addition 15 feet from the front property line where a minimum 27 foot front setback is required 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 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 constructing a garage on the west side; 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. In addition, the application and supporting materials, staff report, and all comments and 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: Bright-Yes, Robbe-Yes, Rhodus-Yes, Seyburn-Yes, Bunch-Yes, and Smith-Yes, Singer-Yes. Motion passed 7-0.

ZBA #13-08, 9033 West End Drive: Seyburn stated he would abstain from the discussion and voting since he was involved in the creation of the lot that occurred several years earlier. Mais summarized the request for a three-foot variance to construct a new dwelling five feet from the north and south side property lines where a minimum eight-foot side yard setback is required. Mr. Verduzco inquired why eight foot side setbacks applied to this property, which has a 50 foot wide building envelope, and what setbacks applied to other 50-foot wide lots on West End. Mais stated 9033 West End Drive was 65 feet wide at the street and this width extended back 27 feet to the front building line where it then narrows to 50 feet. Because lot width is determined at the front building line the lot meets the required width at that point and is

considered conforming so eight foot side setbacks apply. If the lot was 50 feet wide for its entire length, then five-foot side setbacks would apply. Singer inquired if any portion of the lot met the required width beyond the front building line Mais replied about one inch. Singer inquired how wide most of the other lots were on West End Drive. Mais replied 50 feet. Rhodus inquired why the applicant didn't just purchase lot 12 and not the additional 15-foot by 27-foot portion of lot 13. Mais stated that wasn't an available option when the lot was split in 2000 and the city could only approve conforming parcels. Rhodus suggested that lot 12 was part of a recorded plat and it would be necessary to amend the plat in order to change the property lines. Attorney Bear stated the city could approve alteration of interior lot lines without amending a plat. Attorney Bear also that the Board should consider whether the lot configuration is a self-created hardship when 9033 West End Drive was created. Case law supports the position that self-created hardships can carry over to subsequent owners. Schaefer requested clarification if lot 12 at 50 feet wide was a buildable lot and the role of the 15-foot by 27-foot portion. Attorney Bear stated it was a buildable lot, and the 15-foot by 27-foot portion was to satisfy the minimum lot width requirement. Mais added that prior to the split in 2000, lots 12, 13, and 14 were considered a single tract when they came under contiguous ownership earlier and were combined. When the owner of the tract wanted to split a portion in 2000, the new parcel had to meet current code requirements, including minimum lot width.

A public hearing was opened. Mark Caley, 9039 West End Drive stated he had no objections and thought there would be adequate building separation between his house and the proposed dwelling. Mr. Caley stated he would rather see the proposed dwelling built with five-foot side yard setbacks than a narrower dwelling with conforming setbacks that extended closer to the street than the other houses along West End Drive. Singer agreed the houses along that street appeared to be more or less uniformly setback from the street at least 50 feet. The public hearing was closed.

Schaefer stated he was not in favor of the request because the lot was buildable and conforming alternatives were available. Bright stated he felt the city caused the practical difficulty when it created the unusual lot configuration. Mais stated the city must approve lot split applications that meet code requirements. Robbe stated the city may not have caused it, but did allow a lot split that took advantage of a loophole. A motion was made by Bright, seconded by Robbe to grant a three-foot variance to construct a new dwelling five feet from the north and south side property lines where a minimum eight-foot side yard setback is required, conditioned upon the front setback be not less than 50 feet, for the following reasons: there are exceptional circumstances applying to the property that do not apply to other properties in the zoning district which include the size and shape of the parcel, the variance is necessary for the preservation and enjoyment of a substantial property right, the right to build on a lot which is similar to that possessed by other properties in the vicinity; the immediate practical difficulty causing the need for the variance request was not created by the applicant; 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 and 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: Bright-Yes, Robbe-Yes, Schaefer-No, Rhodus-No, Bunch-No, Singer-Yes, and Smith-Yes. Motion passed 4-3.

OTHER BUSINESS:

STATEMENT OF CITIZENS: None

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:11 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator