

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – December 9, 2013

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

**MEMBERS PRESENT:** Tim Bunch, Glenn Smith, Michael Robbe, Doug Rhodus, Marianna Singer, and Philip Schaefer.

**MEMBERS EXCUSED:** James White, Lowell Seyburn, Jeff Bright

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

**APPROVAL OF THE MINUTES:** Bunch moved and Smith seconded a motion to approve the November 11, 2013 minutes as submitted. Upon voice vote, motion was approved 6-0.

**OLD BUSINESS:**

**NEW BUSINESS:**

Singer advised all applicants that because the Board was short one voting member, they had the option to postpone their request until the next regularly scheduled meeting in hopes that seven members would be present at that time, or could proceed now with only six voting members.

**ZBA #13-09, 5260 Bronson Boulevard:** Attorney Bear advised the Board that in reviewing appeals the decision of the Board is limited to the information that was available to the officials making the decision at that time, and that while the item had been noticed as a public hearing and anyone had the right to speak, the Board was not to consider letters or statements from citizens provided after the time of staff's determination as evidence in making their decision. Mr. Bear stated garage sales are not defined or regulated in the zoning code and read a definition of 'garage sale' from the American Heritage dictionary. Mr. Bear stated staff made the decision that the sales activities at 5260 Bronson Boulevard in August, 2013 exceeded the scope of what is considered a normal garage sale and crossed the line into becoming a Home Occupation, second hand goods sale, or other home-based business activity. In evaluating this decision, the Board should consider factors such as the amount of traffic, past enforcement history (included in the supplemental agenda materials), the presence of items purchased expressly for resale, the size, duration, and intensity of the sales activities observed by staff. Mais summarized the staff report included in the agenda packet. Mr. Kragt then summarized his appeal application letter included in the agenda packet. Schaefer inquired if Mr. Kragt believed his sales activities were permitted. Mr. Kragt stated yes. Schaefer then inquired if he thought he could operate a sale every day of the year. Mr. Kragt stated no, that would be a business. Schaefer inquired how many times a year did he think he could operate a sale and not be a business. Mr. Kragt responded the code allowed him to do it three times a year. Smith inquired how many days a year the sales occurred. Mr. Kragt indicated between the three sales about nine or ten days in total for the year. Mr. Kragt stated the Saturday events were half off sales and often generated substantial traffic. Mr. Kragt stated that if people get upset about not being able to back out of their driveway they take care of the situation.

A public hearing was opened. Molly Ettwein, 5265 Bronson Boulevard, Mike Duggan, 5260 Bronson Boulevard, and Tim Dooley, 5239 Bronson Boulevard spoke in favor of affirming staff's decision. Robert Ailes, 5229 Bronson Boulevard, recommended a compromise which might allow Mr. Kragt to continue to have sales and maintain neighborhood harmony. Donna Kragt, 5260 Bronson Boulevard spoke in favor of reversing staff's decision. The public hearing was closed.

Smith inquired if it was the city's position that the resale of items was what prompted the August 30, 2013 letter. Mais clarified the resale of items was one contributing factor, but what prompted the letter was described in the middle paragraph where it stated the resale of merchandise with the intent to resell it was not consistent with the intent of a typical household garage sale, and that the larger inventories attracted larger numbers of customers which resulted in increased negative impacts on other neighborhood residents.

The city had received complaints in the past about Mr. Kragt's sales, but that it was not known for certain that the large inventories were the result of items purchased expressly for resale until Mr. Kragt stated so himself on August 30<sup>th</sup>. Bunch noted it was the position of city staff that they were not prohibiting Mr. Kragt from having any garage sales, just limiting the sales to items from his own household. Bunch inquired what staff would do in the future if Mr. Kragt held a garage sale with items from just his household and still got complaints. Mais stated he could not say without assessing the nature and extent of the complaint at that time. The Board discussed the propriety of imposing conditions on future sales and Mr. Kragt questioned how he should proceed with sales in the future. Schaefer stated the Board was not advising on the operation of future sales but, rather, was deciding whether or not staff acted correctly when it made its decision on August 30, 2013 and would either affirm or reverse that decision. A motion was made by Smith, seconded by Schaefer that the staff decision and action concerning ZBA #13-09 be affirmed, and that the staff interpretation of the intent of the code was correct. Further, the sale of items at a garage sale should be limited to items from the household, and acquiring items with the specific intent of resale, especially with the amount of items on the scale described in Mr. Kragt's Craigslist ad and that the sale caused undue amounts of traffic congestion in the neighborhood, may create safety issues, and is a nuisance to neighbors. Upon roll call vote: Robbe-Yes, Rhodus-Yes, Schaefer-Yes, Bunch-Yes, Smith-Yes, Singer-Yes. Motion passed 6-0.

ZBA #13-10, 7725 Portage Road: Mais summarized the request for a 115 square-foot freestanding sign where a maximum 48 square-foot sign is permitted. John Wright stated the sign was already manufactured and installed before they realized it didn't meet code, but was removed prior to the hearing pending variance approval. Singer noted the view of Zoetis' building was partially blocked by a number of trees. Bunch inquired if the applicant would be willing to consider a lesser variance. Mr. Wright stated because they had already purchased the sign they would prefer not.

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

A motion was made by Robbe, seconded by Rhodus to deny the request for a 115 square-foot freestanding where a maximum 48 square-foot sign is permitted. There are no exceptional circumstances applying to the property that do not apply generally to other properties in the zoning district; The immediate practical difficulty causing the need for the variance request was caused by the applicant when they ordered the sign before finding out the code requirements; the variance would materially impair the intent and purpose of the zoning ordinance. Upon roll call vote: Robbe-Yes, Schaefer-Yes, Rhodus-Yes, Bunch-No, Singer-No, and Smith-No. Motion failed 3-3.

A motion was made by Smith, seconded by Bunch, to grant a variance for an 83 square-foot freestanding sign where a maximum 48 square-foot sign is permitted. There are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district, which include the Zoetis building is setback from Portage Road over 1,000 feet, reducing any wall sign's visibility; the variance is necessary for the preservation of a substantial property right, the right to have a sign similar in size to others in the 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. 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: Robbe-No, Rhodus-Yes, Bunch-Yes, Singer-Yes, Schaefer-Yes, and Smith-Yes. Motion passed 5-1.

ZBA #13-11, 1006 Forest Drive: Mais summarized the request for a variance to construct a new dwelling 26 feet eight inches in height where a maximum 25 feet is permitted. Mr. Clifford stated the request was small, the slope near the lake posed a potential danger to young children, and the reason they purchased this property was so that they could build a walkout home. Mr. Clifford also stated the neighbors had no objection to the request. The applicant provided the Board information supplied by a surveyor which purported to show the average height of several houses in the vicinity were taller than 25 feet. Mais pointed out the surveyor used a different method of calculating building height than that set forth in code. Mrs.

Clifford stated they were looking for a child friendly design and she did not think the conforming alternative was as safe.

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

A motion was made by Robbe, seconded by Bunch, to deny a variance to construct a new dwelling 26 feet eight inches in height where a maximum 25 feet is permitted. There are no exceptional circumstances applying to the property that do not apply generally to other properties in the zoning district; the variance is not necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district in the vicinity because there are conforming alternatives available such as alternative building plans that meet code; the immediate practical difficulty causing the need for the variance request was caused by the applicant; the variance would materially impair the intent and purpose of the zoning ordinance. Upon roll call vote: Robbe-Yes, Rhodus-Yes, Bunch-Yes, Singer-Yes, Schaefer-Yes, and Smith-Yes. Motion passed 6-0.

ZBA #13-12, 6225 South Westnedge Avenue: Mais summarized the request for variances to: a) construct a vestibule 45 feet from the South Westnedge Avenue, and b) erect a wall sign that extends 72 inches from the building wall where a maximum 18 inches is permitted. Mr. Rahn was present to answer any questions on behalf of the applicant. Robbe inquired why not move the vestibule to a different side of the building. Mr. Rahn stated their proposal is intended to maximize use of the existing space and alternate locations did not do this. Robbe inquired of staff if the applicant absolutely had to have this vestibule. Mais stated no, but the vestibule would protect customers from wind, cold and the elements whenever the front door opened.

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

A motion was made by Bunch, and seconded by Smith to grant variances to: a) construct a vestibule 45 feet from South Westnedge Avenue, and b) erect a wall sign that extends 72 inches from the building wall where a maximum 18 inches is permitted. There are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district, which include the nonconforming building's unique design; 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 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: Robbe-Yes, Rhodus-Yes, Bunch-Yes, Singer-Yes, Schaefer-Yes, and Smith-Yes. Motion passed 6-0.

**OTHER BUSINESS:**

**STATEMENT OF CITIZENS:** None

**ADJOURNMENT:** There being no further business, the meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator