

# CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – June 8, 2015

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

**MEMBERS PRESENT:** Glenn Smith, Phillip Schaefer, Jeffrey Bright, Chad Learned, Lowell Seyburn, Michael Robbe, John Byrnes, and Alexander Philipp.

**MEMBERS EXCUSED:** Randall Schau

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

**APPROVAL OF THE MINUTES:** Learned moved and Schaefer seconded a motion to approve the May 11, 2015 minutes as submitted. Upon voice vote, the motion was approved 7-0.

**ELECTION OF OFFICERS:** A motion was made by Seyburn, seconded by Learned, to keep Bright as Chair, Schaefer as Vice Chair, and Smith as Secretary. Upon roll call vote: Smith-Yes, Phillip-Yes, Schaefer-Yes, Robbe-Yes, Bright-Yes, Learned-Yes, Seyburn-Yes. The motion passed 7-0

## **NEW BUSINESS:**

**ZBA #14-26, Cheryl Butler, 10650 South Westnedge Avenue:** Seyburn stated he had a conflict of interest, would not be participating in deliberations, and stepped off the dais. Mais summarized the request for a variance from the public street frontage requirement to obtain a building permit. Cheryl Butler stated that she is Trustee for the late Everett and Virginia Floyd, and is endeavoring to sell the subject property to close the estate. Ms. Butler then summarized her May 7, 2015 letter to the Board. Learned inquired if the applicant had considered the conforming alternative. Ms. Butler said the costs associated with providing public street access exceeded the money in the trust and that the co-owner of Outlot A, Katherine Maxey, was also not agreeable to it. Smith noted a copy of the Access and Maintenance Agreement between the co-owners of Outlot A had been provided by the applicant as part of the supplemental agenda, and inquired if the document had been recorded. Ms. Butler responded no. Smith recommended they should record it. Schaefer stated he has dealt with problems associated with private access issues for many years and based on his experiences was convinced providing public access was a much better option for promoting orderly development.

The public hearing was opened. A letter by Lowell Seyburn, 10546 South Westnedge Avenue in support of the requested variance was read. Attorney Bear advised the Board to disregard the third paragraph in its deliberations, as it spoke to the actions of the Board and that Mr. Seyburn should not address the Board during the public hearing as it may create the appearance of impropriety. Mr. Seyburn stated he had a conflict of interest and was therefore not participating in the Board's deliberations, but had the right as a citizen to express his opinions. Chairman Bright stated he would allow Mr. Seyburn to speak as a citizen. Katherine Maxey, 376 Matteson Court, stated they have had no problems with the shared access driveway through Outlot A for the 14 years she has owned the property, even without a formal access agreement. Mr. Seyburn noted the city permits flag lots, which allow long driveways that sometimes have access over other properties. Schaefer stated Ms. Maxey's property would sell one day and when that happened there would be pressure to create more lots and with future owners more potential for emergency access problems. Mr. Seyburn stated the city controls all access while there is no public access, and without it any future splits would require the Board's approval. Bruce Ettwein, 10713 South Westnedge Avenue, spoke in favor of the request. Cliff Floyd, son of Everett and Virginia Floyd, spoke in favor of the request. The public hearing was closed.

Learned noted the adjacent property at 10632 South Westnedge Avenue was not developed and asked if the applicant had attempted to obtain access from there. Ms. Butler said they had but the owner was not agreeable. Robbe inquired if the Board approved the variance allowing someone to build a house, would another variance be necessary to construct an accessory building too. Mais stated no, the applicant was essentially seeking permission from the Board to consider the property a buildable lot. A motion was made by Robbe, seconded by Smith, to grant a variance from the public street frontage requirement to obtain a building permit for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which

include the lack of public street access but access is provided via private drive; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to develop a 6.8 acre residential property; 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. Upon roll call vote: Smith-Yes, Phillip-Yes, Schaefer-No, Robbe-Yes, Bright-Yes, Learned-Yes, Byrnes-Yes. The motion passed 7-0.

**OTHER BUSINESS:** None.

**STATEMENT OF CITIZENS:** None.

**ADJOURNMENT:** There being no further business, the meeting was adjourned at 8:23 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator