

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – November 9, 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. Three people were in the audience.

**MEMBERS PRESENT:** Jeffrey Bright, Michael Robbe, John Byrnes, Phillip Schaefer, Chadwick Learned, Randall Schau, and Alexander Philipp.

**MEMBERS EXCUSED:** Lowell Seyburn, Glenn Smith.

**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 September 14, 2015 minutes as submitted. Upon voice vote, the motion was approved 7-0.

### **NEW BUSINESS:**

ZBA #15-6, Doug Lynes, on behalf of the Lake Center Business Association, 8136, 8324/8328, 8626, 8944, 9345, 9651, 10011, 10332 Portage Road and 9601 Austin Drive; Mais summarized the variance requests: a) to allow banners on municipal poles to be displayed year round where a maximum 60 days is permitted; b) to permit banners on municipal poles 13 feet from grade where a maximum 16 feet is required; c) to permit banners on private property extending over a public sidewalk; and d) a variance to erect one additional banner sign specific to the businesses at 8136, 8324/8328 Portage Road, and 9106 Austin Drive. Doug Lynes was present to answer questions. Bright inquired if the intent of the proposed signs was to help establish identity for the business corridor along Portage Road. Mr. Lynes stated yes. Learned noted these sorts of banners are seen in many other communities and in some instances the banners appeared to be in disrepair. Mais stated if the Board approved the variances city staff could address maintenance issues as a code enforcement matter. Mr. Lynes stated the banners would be regularly monitored and maintained.

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

Schau inquired who had reviewed and approved the Comprehensive Plan and Lake Center subarea plan where the banners were first identified as a placemaking tool. Mais stated the Planning Commission and City Council. Learned stated he thought a text amendment should have been considered during that review to address these sorts of placemaking banners. Schau inquired if there had been previous variance requests for the duration that banners could be displayed on municipal poles. Mais stated this was the first such request. Learned requested clarification of how long a time period the proposed banners would be displayed. Mr. Lynes replied year round. Learned inquired if the banners on municipal poles could be changed out in the future to identify individual businesses. Attorney Bear stated there had been a recent Supreme Court decision that held municipalities cannot regulate sign content, but may still regulate the manner and location in which signs are displayed and the length of time. Bright inquired what controls the city would have over the proposed banners after a variance was granted. Mais stated the city could address the maintenance of the signs but understood that variances went with the land and the applicant would retain the right to maintain the signs in perpetuity. Schaefer stated he supported the idea behind the banners but did not think a variance was the way to go about it, and thought the city should instead investigate amending the code. Byrnes inquired if the variance request was for specific poles as utility poles are sometimes removed. Mais replied yes. Learned inquired if the applicant would be willing to accept a time limit of five years to display the banners on municipal poles. Mr. Lynes replied he could but would request a ten year period. Learned moved and Robbe seconded, a motion to grant variances b) to permit banners on municipal poles 13 feet from grade where a maximum 16 feet is required; c) to permit banners on private property extending over a public sidewalk; and d) a variance to erect one additional banner sign specific to the businesses at 8136, 8324/8328 Portage Road, and 9106 Austin Drive for the following reasons there are exceptional circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the narrow right-of-way and the limitations imposed by Consumers Energy; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to identify the business district with banners; 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 material, 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: Phillip-Yes, Byrnes-Yes, Robbe-Yes, Bright-Yes, Learned-Yes, Schau-Yes, Schaefer-No. The motion passed 6-1.

A motion was made by Schau, seconded by Learned to grant a) a variance to allow banners on municipal poles on public property to be displayed for a five year period where a maximum 60 days is permitted for the following reasons: there are exceptional circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the unique business district on Portage Road between East Centre Avenue and East Osterhout Avenue; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to promote the general business district; 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 material, 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: Phillip-Yes, Byrnes-Yes, Robbe-Yes, Bright-Yes, Learned-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-07, Gary Supp, 10745 South Westnedge Avenue: Mais summarized the request for a variance to replace an attached nonconforming 20-foot by 22-foot carport with an attached garage of the same dimensions, eight feet from the (north) side property line where a minimum 12 feet is required. Mr. Supp was available to answer questions. Robbe noted the applicant could construct a detached garage in a conforming location and that he was not in favor of the request as the Board has denied a number of similar requests where applicants have wanted a three stall garage but could not meet the side setbacks. Schau stated this request differed from others in that a carport had already been in existence in the same footprint with no problems for decades and the applicant was simply constructing an enclosed garage in the same location.

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

A motion was made by Schau, seconded by Schaefer, to grant a variance to replace an attached nonconforming 20-foot by 22-foot carport with an attached garage of the same dimensions eight feet from the side property line where a minimum 12 feet is required for the following reasons: there are exceptional circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include that there has been a carport in the same footprint since the 1950's; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to convert a carport into a garage using the same footprint; 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 material, 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: Phillip-Yes, Byrnes-Yes, Robbe-No, Bright-Yes, Learned-Yes, Schau-Yes, Schaefer-Yes. The motion passed 6-1.

**OTHER BUSINESS:** None.

**STATEMENT OF CITIZENS:** None.

**ADJOURNMENT:** There being no further business, the meeting was adjourned at 8:40 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator