CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – September 9, 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. Eleven people were in the audience.

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

MEMBERS EXCUSED: James White

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator and Randy Brown, City Attorney

APPROVAL OF THE MINUTES: Smith moved and Rhodus seconded a motion to approve the August 12, 2013 minutes with the correction that Lowell Seyburn called the meeting to order. Upon voice vote, motion was approved 7-0.

OLD BUSINESS:

ZBA #13-1, 9136 Shaver Road: Mais summarized the request for a variance from the conflicting land use screening requirements along the north property line where abutting a nonconforming single family dwelling. Mr. Larry Harris, property owner's representative, stated the practical difficulties included the change in grade near the north property line, the existing mature vegetation, and the presence of an easement for AT&T and Consumers Energy.

A public hearing was opened. Ed Stiller, owner of 9126 Shaver Road, stated other people dumped much of the debris that was on his property but would soon complete the cleanup. He was also upset by the applicant's property being rezoned several months earlier. Seyburn responded the Board was not involved with either issue.

A motion was made by Singer, seconded by Bunch to grant a variance from the conflicting land use screening requirements along the north property line where abutting a nonconforming single family dwelling. There are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district, which include: the topographic differences between the adjacent properties, the presence of above and below ground utilities, the nonconforming status of the adjacent residence, and surrounding zoning/land use pattern. 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 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: Upon roll call vote: Rhodus-Yes, Singer-Yes, Bright-Yes, Robbe-Yes, Seyburn-Yes, Bunch-Yes, and Smith-Yes. Motion passed 7-0.

ZBA #13-2, 665 Mall Drive: Mais summarized the requests for: a) a variance to erect a 194 square-foot "Dunham's Sports" wall sign on the west elevation where a minimum 150 square feet is permitted; b) a variance to erect a 112 square-foot "Sears Outlet" wall sign on the west elevation where a maximum 100 square feet is permitted; c) a variance to erect a 15 square-foot "merchandise pickup" directional sign on the north elevation where a maximum four square feet is permitted; and d) a 268 square-foot "Dunham's Sports" wall sign on the east elevation where no additional wall signage is permitted. Mais noted the applicant had submitted revised information significantly reducing request d) from the 859 square foot wall sign included in last month's agenda to 268 square feet by removing the background frame that code required be included as sign area. Additionally, the applicant indicates they intend to erect their second permitted freestanding sign near the southeast corner of the building to help identify the tenants from Ring Road, which had not previously been discussed. As a result, the applicant does not agree with staff's recommendation that a sign on the east elevation be permitted in lieu of a second sign. Lastly, the

applicant states variances a) and b) are needed because the west elevation has reduced visibility due to its distance from Martin Luther King Drive.

Seyburn inquired if staff was changing its recommendations based on the information provided by the applicant. Mais stated staff has modified the language from the previous report and appreciates the applicant has now provided some rationale for the sign requests on the west elevation. Mr. Josh Weiner and Mr. Steve Vandersloot were present to answer questions. Mr. Weiner stated the variances for wall signs on both the east and west elevations were needed to increase tenants' visibility if not from South Westnedge then from other nearby commercial properties. Mr. Weiner stated the same walls could have significantly more signage if they had more tenants and that the proposed signs were not out of character with the area. Seyburn inquired if the applicant was likely to lose the tenants if they did not get the variances. Mr. Weiner said yes. Robbe stated he did not see what difference it would make having slightly larger signs than permitted by code on the west elevation, and asked why the applicant couldn't simply reduce the letter sizes a few inches and make them conforming. Mr. Weiner asked why the board couldn't simply grant a variance for letters that were a only a few inches larger. Singer noted the building was very non-descript and while large, did not have good visibility. Seyburn inquired if the applicant would be utilizing any changeable copy board signs. Mr. Weiner said no. Mr. Vandersloot stated the practical difficulties were the building's orientation, and noted the additional sign areas available for "big box" retailers under Section 42-552(I) did not help Sears because their tenant space was 83 feet wide but deep enough they had over 36,000 square feet of floor area. Rhodus noted view of the east elevation was obstructed by other buildings and did not see how a larger sign would correct that situation. Mr. Weiner stated the view was obstructed from some angles but not others and the larger sign would be visible at points along Mall Drive and JC Penney Drive. Mr. Vandersloot stated the applicant was willing to reduce their proposed signage on the east elevation from 268 to 250 square feet, thereby matching the size of the wall sign recently approved for Dick's Sporting Goods. Bright inquired if smaller signs tended to get lost. Mr. Vandersloot stated they do and that he was aware of studies that showed that larger signs posed less traffic safety risks than smaller signs.

A public hearing was opened. Joe Hollander, 1822 West Milham, stated he owned the senior living facility at 610 Mall Drive and supports the requested variance, because the residents don't like living near a vacant building.

A motion was made by Bright, seconded by Singer to grant: a) a variance to erect a 194 square-foot "Dunham's Sports" wall sign on the west elevation where a minimum 150 square feet is permitted; b) a variance to erect a 112 square-foot "Sears Outlet" wall sign on the west elevation where a maximum 100 square feet is permitted; c) a variance to erect a 15 square-foot "merchandise pickup" directional sign on the north elevation where a maximum four square feet is permitted; and d) a 250 square-foot "Dunham's Sports" wall sign on the east elevation where no additional wall signage 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 industrial appearance of the building, the building entrance orientation toward the parking lot, and the view from MLK Drive and other nearby commercial properties is impaired. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to adequately identify a business which is similar to that possessed by other properties in the same zoning district and in the vicinity; 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 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: Upon roll call vote: Rhodus-No, Singer-Yes, Bright-Yes, Robbe-No, Seyburn-Yes, Bunch-Yes, and Smith-Yes. Motion passed 5-2.

<u>ZBA #13-3, 9033 West End Drive:</u> Mais summarized the request for a variance to construct a 30-foot by 40-foot accessory building on a zoning lot separate from the principal use. Seyburn observed that the

Board had on previous occasions treated similar requests where dwellings and accessory buildings were on the opposite sides of West End Drive as separate zoning lots and that a use variance was needed for this request. Mr. Lutz stated all the houses on the east side of West End Drive had accessory buildings on the west side. He had spoken to nine of the property owners on West End Drive and none indicated any objection to his request. Singer inquired if any homes along West End Drive were constructed on the west side of the street. Mr. Lutz stated no.

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 Smith to grant a use variance to construct a 30-foot by 40-foot accessory building on a zoning lot separate from the principal use, conditioned upon 1) construction of the accessory building on lot 45 be conducted concurrent with construction of the dwelling on lot 12, 2) the combined accessory building area of the proposed 1,200 square-foot detached accessory building on lot 45 and any accessory building constructed on lot 12 not exceed the ground floor living area of the dwelling, and 3) that the accessory building on lot 45 be owned and used in conjunction with the dwelling (principal use) to be constructed on lot 12. There are unique circumstances that create an unnecessary hardship, which include the surrounding development pattern along West End Drive; that the land cannot be reasonably used consistent with the uses allowed in the zoning district, the variance will not alter the essential character of the neighborhood nor be a detriment to adjacent properties; the variance will not materially impair the intent and purpose of this article or the district in which the property is located; and the immediate unnecessary hardship causing the need for the variance request was not created by the applicant. 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: Rhodus-Yes, Singer-Yes, Bright-Yes, Robbe-Yes, Seyburn-Yes, Bunch-Yes, and Smith-Yes. Motion passed 7-0.

NEW BUSINESS:

ZBA #13-4, David Corstange, 1711 & 1749 East Centre Avenue: Mais summarized the request for a Temporary Use Permit to sell Christmas trees and holiday plants November 29, through December 23, 2013, and annually thereafter. Mr. Corstange stated he had nothing to add to staff's summary.

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

A motion was made by Smith, seconded by Bright, that the application is found to be consistent with the provisions of Section 42-622(D) and a Temporary Use Permit be granted to sell Christmas trees and holiday plants November 29, through December 23, 2013 and annually thereafter, in accordance with the application materials submitted, conditioned upon review and approval by city staff annually thereafter. Upon roll call vote: Rhodus-Yes, Singer-Yes, Bright-Yes, Robbe-Yes, Seyburn-Yes, Bunch-Yes, and Smith-Yes. Motion passed 7-0.

OTHER BUSINESS:

None

STATEMENT OF CITIZENS:

None

ADJOURNMENT: There being no further business, the meeting was adjourned at 9:00 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator