

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – September 14, 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. Four people were in the audience.

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

MEMBERS EXCUSED: A motion was made by Learned, seconded by Smith to excuse Lowell Seyburn. Upon voice vote, motion was approved 7-0.

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

APPROVAL OF THE MINUTES: Learned moved and Philip seconded a motion to approve the July 13, 2015 minutes as submitted. Upon voice vote, the motion was approved 7-0.

NEW BUSINESS:

ZBA #15-3, Allied Signs on behalf of Earth Fare, 531 West Kilgore Road, 5024, 5036, 5050, 5070 South Westledge Avenue: Mais summarized the request for a variance to erect a 125 square-foot wall sign on the west elevation where no additional signage is permitted. Patrick Stieber with Allied Signs stated the sign is needed to help identify the business to traffic using the Lowe's Kilgore Road access drive. Mr. Stieber stated the building's setback is also a visibility issue. Philipp inquired if there was some reason the freestanding sign on Kilgore was ineffective. Mr. Stieber responded their panel was small. Schau noted the freestanding sign identifying Earth Fare is located just west of the second Kilgore Road access drive and if motorists travelling east on Kilgore Road miss the first drive, there is a second entrance drive that can be used as they approach South Westledge. Bright inquired if the applicant had investigated allocating sign area from one of the other walls to the west elevation. Mr. Stieber stated they had but considered all of the signage on the east and north elevations necessary due to the setbacks.

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

Schaefer stated he has been to Earth Fare several times and based on the amount of business he observed, it seemed people were not having problems finding the location. Smith stated the building did have a large setback but noted they received extra wall signage and the freestanding sign was quite visible to eastbound West Kilgore traffic. A motion was made by Smith, seconded by Schaeffer, to deny a variance to erect a 125 square-foot wall sign on the west elevation where no additional signage is permitted for the following reasons: there are no exceptional or extraordinary 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 erecting directional signs; 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. Upon roll call vote: Smith-Yes, Philipp-Yes, Robbe-Yes, Bright-Yes, Learned-yes, Schau-Yes, Schaeffer-Yes. The motion passed 7-0.

ZBA #15-4, 204, 212, 220 West Milham Avenue: Mais summarized the request for a variance from the parking requirements to provide 96 off-street parking spaces where a minimum 114 spaces are required. The applicant, Mark Tomasik, provided a letter dated September 8, 2015 to the Victory Baptist Church, 308 West Milham Avenue, proposing a lease agreement to use 18 church parking spaces for the applicant's employees Mondays through Saturdays during operating business hours. The applicant also provided an email response from the church minister dated September 14, 2015 indicating tentative agreement, pending church board approval. Mr. Tomasik stated the business owner, Larry Walt, currently operates several other facilities in the state with comparable building area that provide fewer parking spaces than the proposed plan with no parking problems. Mr. Tomasik stated they needed fewer spaces than required by city code because of the staggered employee schedules and the same salon-spa employees perform multiple tasks in different locations in the building. Consequently, all the styling chairs will not be in use at the same time.

Schau inquired if the applicant had looked at different parking configurations to maximize the number of spaces. Mr. Tomasik responded yes. Learned requested clarification concerning the lease agreement with the church. Mais stated staff suggested the applicant could investigate the possibility of a parking agreement with neighboring properties as a potential condition should the Board approve the variance. Such an arrangement could serve as a means to address overflow parking in the event the applicant's parking projections prove incorrect. Schau inquired if code permitted parking on someone else's property. Mais stated no, but in this instance the Board may find it meets the spirit and intent of the code. Attorney Bear stated a condition requiring an applicant to provide parking on someone else's property was problematic, as the church property could, for example, be sold to someone who may not consent to continue the parking agreement. Learned noted the parking standards might change with different occupancy in the future. Mais stated staff had considered this and if the building's occupancy were to change to general retail or office, the parking requirements would decrease. However, a combination of more intensive uses was a possibility as well. Learned inquired if the Board were to grant the variance, could a use requiring more parking locate there. After conferring with Attorney Bear, Mais responded the appeal was specifically to provide 96 parking spaces where 114 spaces are required and that if future occupants wished to locate there requiring a greater number of parking spaces than 114, they would need Board approval to do so.

The public hearing was opened. Larry Walt reiterated he has operated similar stores successfully for many years with less parking than the proposed plan. Mr. Walt added if the Board wanted him to enter into a lease agreement with the church for 18 parking spaces he had no objections, but thought it very unlikely they would ever be needed. There being no further comments, the public hearing was closed.

Robbe noted the applicant had conforming alternatives available and could simply reduce the number of chairs to meet code. Bright stated he appreciated staff's efforts to work with the applicant in devising possible solutions. Schau stated if the characteristics of the applicant's business operations were to be considered a practical difficulty, then it is essentially a self-created hardship. A motion was made by Learned, seconded by Schaeffer, to grant a variance from the parking requirements to provide 96 off-street parking spaces where a minimum 114 spaces are required with the condition that staff may, at its discretion at any time during the next two years, require the applicant to enter into a parking agreement for 18 spaces with the owner of 308 West Milham Avenue if they find parking to become a problem, for the following reasons: there are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district which include the unique nature of the applicant's business that requires less parking; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to run a business that will not create a hardship for the public which is similar to that possessed by other properties in the vicinity; the variance will not be detrimental to adjacent property and the surrounding neighborhood, and; and the variance will not impair the intent and purpose of the Zoning Code. Upon roll call vote: Smith-Yes, Philipp-Yes, Robbe-No, Bright-Yes, Schau-No, Schaeffer-Yes, Learned-Yes. The motion passed 5-2.

OTHER BUSINESS: Mais announced interested citizens could comment on the 10-year capital improvement program either online or at the 7 p.m. community open house at City Hall on September 28, 2015. Interested parties could also attend the Portage 2025 Renewal event at Portage Central High School on October 3, from 9 a.m. to 2 p.m.

Chairman Bright stated he was running for City Council but would continue to serve on the Board, and would step down in the event he is elected.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:33 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator