

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – March 28, 2016

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. Eleven people were in the audience.

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

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

APPROVAL OF THE MINUTES: Schau moved and Learned seconded a motion to approve the February 8, 2016 minutes as submitted. Upon voice vote, the motion was approved 7-0.

NEW BUSINESS:

ZBA #15-13, Mavcon Properties, 9110 Portage Road: Mais summarized the variance requests: a) for a four-foot wide greenstrip where a minimum ten-foot width is required; b) to provide 603 square feet of interior parking lot landscaping where a minimum 1,252 square feet is required; and c) from the requirement to provide a loading/unloading area. Steve Sielatycki, James Dally, and Pat Flanagan were present to answer questions. Mr. Sielatycki stated the variances were needed to accommodate more parking, and the plan to have a four-foot wide greenstrip with knee wall and hedge was consistent with the Lake Center Subarea Plan. Robbe inquired where the sidewalk was on the plans. Mr. Flanagan responded the plans before the Board are conceptual at this stage and did not show the sidewalk, but the formal site plan will show the sidewalk at the north end of the property. Robbe requested clarification of the knee wall and hedge placement. Mr. Flanagan responded it would be along the Portage Road frontage, but the specifics concerning the placement or type of hedge would be reviewed as part of the finalized site plan approval. Bright inquired what purpose the knee wall and hedge served. Mais stated to serve both as a means to separate the parking lot from the street and also for aesthetics. Seyburn inquired if the site plan would be reviewed by staff or by the Planning Commission. West stated that was yet to be determined. Seyburn inquired if the Board could include Planning Commission review of the site plan as a condition. Mais responded yes. Seyburn noted docks appear on the conceptual plan and inquired if the placement of docks was subject to city approval. Mais stated approval of docks on lakes is typically a function of the State. Mr. Sielatycki stated the docks were intended to provide West Lake residents an additional means to park boats at the restaurant without using off-street parking, and was, as already noted, conceptual. Seyburn inquired if the applicant had considered a different configuration for the off-street parking near the north end. Mr. Flanagan stated they had considered a number of different configurations, but settled on the proposed design, as it provided the most spaces while maintaining the required 22-foot maneuvering lane width. Byrnes inquired if the number of traffic lanes along Portage Road might be reduced in the future. Mais responded Portage Road was one of the streets being examined as part of the 'road diet' study, but as yet there were no plans to do so.

The public hearing was opened. A letter from Jean Truitt, 9029 Portage Road was read. The public hearing was closed.

A motion was made by Seyburn, seconded by Schau, to grant variances for: a) a four-foot wide greenstrip where a minimum ten-foot width is required; b) to provide 603 square feet of interior parking lot landscaping where a minimum 1,252 square feet is required; and c) from the requirement to provide a loading/unloading area conditioned upon: 1) installation of a 3-foot high knee-wall and landscape hedge as illustrated on the concept plan; 2) installation of a sidewalk to connect the northeast corner of the parking lot to the southeast corner of the Ames Drive/Portage Road intersection; and 3) that finalized plans for the aforementioned knee-wall/hedge and sidewalk be subject to review and approval by both city staff and the Planning Commission, 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 size and configuration of the property and its previous use; the variance is necessary for the preservation and enjoyment of a substantial property right, the right use the property as it presently exists 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 was not caused 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; and that nothing in this motion shall imply any approval related to the dock depicted in the conceptual plan. 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: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-17, Bickford Cottage Assisted Living and Memory Care, 4707 West Milham Avenue: Mais summarized the variance request to retain an approximate 8,400 square foot building addition along the west side of the existing Bickford Cottage facility to within 10-feet of the west property line (side yard) where a 30-foot setback is required. Bill Crandall was present on behalf of the property owner, Richard Eby, to answer questions. Schau inquired which portion of the building encroaches into the 30-foot setback. Mr. Crandall stated the 80-foot wide addition currently under construction and also where a new dumpster is located. Mr. Crandall added they are about four weeks from completion. Learned inquired if there was need for any traffic on the west side of the addition apart from lawn maintenance. Mr. Crandall responded no. Seyburn inquired how far the addition was from residences to the south. Mr. Crandall stated about 130 feet. Bright inquired if the applicant had approached the property owner to the west about purchasing a portion of the property. Mr. Crandall stated Mr. Eby did approach the owner about purchasing a 20-foot wide portion but the owner was not interested in selling at that time. Bright inquired if the applicant was aware of whether the neighbor had any objections to the 10-foot setback. Mr. Crandall stated the project had already gone through the Planning Commission and the neighbor had not objected during the process at any time. Learned inquired of staff if any objections from the neighbor had been received during the Planning Commission review. Mais stated no.

A public hearing was opened. Phillip Reed, counsel for Michael Busche, the property owner to the west (4721 West Milham Avenue) stated that while an offer had been made to purchase a portion of Mr. Busche's property, he had not responded yet because he was busy trying to evaluate what impact the sale would have on the development of his property. Mr. Reed stated his client approached Mr. Eby with a counter-proposal on March 25, 2016 and suggested a land swap involving a 20-foot wide portion of the southern half of Mr. Busche's property in exchange for a 20-foot wide portion of the northern half of Mr. Eby's property. Mr. Reed stated that while a variance might be the most convenient way to deal with the encroachment, he thought a remedy other than a variance should be the starting point to deal with the situation. Mr. Reed stated his client was not necessarily opposed to the building addition, but wanted the opportunity to explore what impacts a variance or a land exchange would have on the value of his property before the Board moved forward with the variance request. Mr. Reed added that Mr. Eby advised him a 10-foot wide area along the west side of the Bickford Cottage property is zoned B-2 and he questioned if it was accurate. Robbe stated Mr. Busche did not object when the Planning Commission approved the rezoning and the site plan. An error had been made and there were two remedies: obtain a variance or acquire additional land. Robbe indicated it is possible that Mr. Busche's sudden objection to the 10-foot setback (as soon as he learned a variance was needed) might be intended to hold Mr. Eby hostage during negotiations. Mr. Reed disagreed and stated his client was only asking for more time so he could better understand the issues. Seyburn clarified the chronology of events, beginning with the rezoning on January 20, 2015, the special land use permit and site plan approval on March 19, 2015 and notification for the variance request on March 11, 2016. Seyburn inquired when the setback error was discovered. West stated it was discovered about three weeks ago and that most uses in OS-1 have a 10-foot setback as shown in the Schedule of Regulations. However, special land uses in the OS-1 district have a 30-foot setback. The Zoning Code was amended in 1983 to provide greater setbacks for large and more intensive land uses of an institutional nature, such as hospitals and colleges, but also included less intensive uses like child daycare centers or assisted living facilities. West added that exceptional circumstances are present and the Board should consider the unique circumstances associated with this request. With regard to Mr. Reed's earlier comment, West confirmed the west 10 feet of

the Bickford Cottage property is zoned B-2 and was done purposefully to preserve the building area on Mr. Busche's property, which eliminated the requirement for a 75-foot building setback.

Learned stated that although Mr. Busche had no objections earlier, perhaps he may not have known or understood he had an earlier opportunity to object to a 10-foot setback and maybe the Board should consider tabling the request to give both parties an opportunity to reach a compromise. Attorney Bear asked Mr. Reed to clarify what action he was requesting of the Board. Mr. Reed stated his client was asking for more time before the Board moves forward with the request. Bright inquired when the next meeting was scheduled. Mais responded April 11, 2016, but encouraged the Board to move forward with the request tonight and consider whether a side yard setback variance is warranted. Mr. Busche stated he was confused by what was going on and wanted the item tabled to give him more time to understand the issues. Seyburn inquired if the applicant thought there was information being withheld. Mr. Busche said he did not know, but thought the situation was strange. Learned inquired if a postponement to the April 11th meeting would adversely affect the applicant. Mr. Crandall said no, but anything affecting their certificate of occupancy would be a hardship. Schau inquired if staff could issue a certificate of occupancy given the pending nature of the case. Mais stated a permanent certificate of occupancy could not be issued without zoning compliance. Mr. Crandall stated he did not see their position changing even if the Board tables the matter and asked the Board to move forward with the request tonight. The public hearing was closed.

A motion was made by Seyburn, seconded by Learned to postpone the item until the April 11, 2016 meeting. Upon roll call vote: Philipp-Yes, Robbe-No, Seyburn-Yes, Bright-Yes, Learned-Yes, Schau-No, Schaefer-Yes. The motion passed 5-2.

ZBA #15-18; Dockerty Memory Care, 710 & 732 East Centre Avenue: Mais summarized the requested variances to allow construction of an approximate 31,900 square foot 42-bed memory care facility to a) within 12-feet of the east property line (side yard) where a 30-foot setback is required, and b) within 25-feet of the south property line (rear yard) where a 30-foot setback is required. Tim Dockerty stated in May of 2015 he submitted a conceptual plan for a memory care facility that showed a 10-foot setback. Staff advised that a zoning change from B-1 to OS-1 would be needed and he subsequently requested the property be rezoned to OS-1 in November 2015. It was not, however, until last month when it was discovered a 30 foot setback is needed for a special land use. Robbe inquired what the maximum permitted height and number of stories a building could be in an OS-1 zone. West replied 25 feet and one story.

A public hearing was opened. Gary Crankshaw, 810 East Centre Avenue and Kate Dunckel, 719 Pasma spoke in support of the request. The public hearing was closed.

A motion was made by Learned, seconded by Schau, to approve variances to allow construction of an approximate 31,900 square foot 42-bed memory care facility to a) within 12-feet of the east property line (side yard) where a 30-foot setback is required, and b) within 25-feet of the south property line (rear yard) where a 30-foot setback is required 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 unusual shape of the zoning lot and the surrounding zoning/land use pattern; the variance is 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; the right to develop a property with setbacks similar to other uses in the district; the immediate practical difficulty causing the need for the variance request was not created by the applicant; and the variance would 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 action of the Board be final and effective immediately. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Abstained, Bright-Yes, Robbe-No, Schau-Yes, Schaefer-Yes, Byrnes-Yes. The motion passed 6-1-1.

OTHER BUSINESS: Bright stated he understood there may be as many as ten items on the April 11, 2016 agenda and asked which Board members might be available for a special meeting on April 18, 2016 in the event another meeting would be needed to accommodate all the applicants. Schau and Learned indicated they would not be available on that date but all other Board members would be available. Seyburn indicated he will likely not be available for the May 9, 2016 regular meeting.

Learned stated he thought the Board should consider amending its rules of procedure concerning potential conflicts of interest and provided proposed language to each Board member for consideration at a future meeting, perhaps in May or June 2016.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at 9:32 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator