

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – October 10, 2016

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. Seventeen people were in the audience.

MEMBERS PRESENT: Phil Schaffer, Chadwick Learned, Alexander Philipp, Lowell Seyburn, Jay Eichstaedt, Michael Robbe, Randall Schau

MEMBERS EXCUSED: Jeffrey Bright, John Byrnes

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

APPROVAL OF THE MINUTES: Robbe moved, support by Schaffer, to approve the September 12, 2016 minutes as submitted. Upon voice vote, the motion was approved 7-0.

OLD BUSINESS:

ZBA #16-04, Adam & Sarah Beuker, 2611 Woodbine Avenue: Mais summarized the request for: a) variance to construct a 25-foot wide by 20-foot deep attached garage 5.6 feet from the front property line where a minimum 30-foot setback is required; or b) a variance to retain the existing dwelling 25.6 feet from the front property line where a minimum 30-foot front setback is required. Adam Beuker stated the variance should be granted because of the steep pitch of the driveway (four foot drop), inadequate drain system near the garage, hazardous conditions during the winter time to enter and exit their property, structural concerns due to rain and snow melt. The owners stated a flood occurred in August 2016, and they have had to hire a restoration company to repair the extensive flood damage. Learned inquired about the parking of vehicles in the public right-of-way should the variance be granted. Mr. Beuker responded that vehicles will not impact visibility nor the intent of the ordinance should the variance be granted and that many other properties in the area along Woodlawn Avenue had garages as close as the proposed garage. Mais acknowledged there are many legal nonconforming garages on Woodlawn but the city's position is new nonconformities should be avoided when conforming options are available. Schau inquired about bringing the area to grade. Mrs. Beuker stated the difficulty of bringing the driveway area to level grade, and then expanding the home elsewhere to make up for the loss of the garage space would be cost prohibitive.

A public hearing was opened. No one spoke for or against the variance requested. Public hearing was then closed.

A motion was made by Learned, supported by Robbe, to deny a variance for the construction of a 25-foot wide by 20-foot deep attached garage 5.6 feet from the front property line where a minimum 30-foot setback is required for the following reasons: There are no exceptional or extraordinary circumstances or conditions applying to the property that would apply to other properties in the same zoning district; the variance is not necessary for the enjoyment of the property; a lesser variance would be more in line with the neighborhood; a drainage system could be installed to handle the water concerns brought forth by the property owner; the variance may be detrimental to neighboring properties; while the practical difficulty was not caused by the applicant, the applicant was made aware of the driveway slope prior to purchasing the home. Upon roll call vote: Robbe – yes, Schaefer – no, Philipp – no, Schau – no, Seyburn – no, Learned – yes, Eichstaedt – no. Motion failed 5-2.

A motion was made by Schau, supported by Philipp, to grant a variance for the construction of a 25-foot wide by 20-foot deep attached garage 5.6 feet from the front property line where a minimum of 30-foot setback is required for the following reasons: there are exceptional or extraordinary circumstances or conditions that do not apply generally to other properties in the same zoning district which include: the steepness of the present driveway; the variance is necessary for the preservation of a substantial property right – the right to not have one's home flood; the immediate practical difficulty causing the need for the variance was not created by the applicant but rather by the architect fifty years ago; 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 action of the Board be final and effective immediately. Upon roll call vote: Robbe – no, Schaefer – no, Philipp – yes, Schau – yes, Seyburn – yes, Learned – no, Eichstaedt – yes. Motion passed 4-3.

ZBA #16-06, Wal-Mart Stores, Inc.: Mais summarized the request for a variance to allow 735 square feet of wall signage where a maximum 325 square feet is permitted. Doug Plumber (Development Representative) was present on behalf of the applicant. Mr. Plumber stated the need for the variance is to keep signs proportional to the building size and that there would be no vision impairment with the additional signage. Robbe inquired of staff if the addition of the new building addition gave Wal-Mart additional wall signage. Staff stated the applicant is currently entitled to the maximum amount of wall signage allowable.

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

Seyburn inquired about the current signage at Meijer on Shaver Road; staff stated the Board granted Meijer a variance allowing 400 square feet. Seyburn noted Walmart was configured differently than Meijer in the number and location of separate building entrances. Eichstaedt inquired if the variance was granted, could a second freestanding sign be erected. Mais responded yes provided the zoning lot did not change.

A motion was made by Robbe, supported by Schau to deny the variance requesting 735 square feet of wall signage where a maximum of 325 square feet is permitted for the following reasons; there are no exceptional or extraordinary circumstances or conditions that apply to the property that do not apply generally to other properties in the same zoning district; the variance is not necessary for the enjoyment of the property due to conforming alternatives being available; the practical difficulty was created by the applicant (Wal-Mart); the variance will be detrimental to adjacent property and the surrounding neighborhood; the variance would 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; Robbe – yes, Schaefer – yes, Philipp – yes, Schau – yes, Seyburn – no, Learned – no, Eichstaedt – no. Motion passed, 4 – 3.

After further discussion, a motion was made by Learned, supported by Eichstaedt to grant a variance allowing 400 square foot of wall signs for the front of the building (east elevation) and a maximum of 112 square feet of signage for the north elevation with the condition no additional freestanding sign may be erected on the property without express permission from the Board, for the following

reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties of the same zoning district which include; the total length of the building and significant setback from Shaver Road; the ability to identify multiple sections of the business; 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; the variance will not materially impair the intent and purpose of the zoning ordinance. 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: Robbe – no, Schaefer – yes, Philipp – no, Schau – no, Seyburn – yes, Learned – yes, Eichstaedt – yes. Motion passed 4-3.

NEW BUSINESS:

ZBA #16-07, Kim Neeb, 9138 Portage Road: Requesting a variance to retain two freestanding signs where one sign is permitted. During the meeting, the application was withdrawn at Mr. Neeb's request. The board accepted the request.

ZBA #16-08, Dan Jaqua, 408 and 414 West Milham Avenue: Mais summarized the requests for: a) a variance to reconstruct an off-street parking lot 2.5 feet from the (north) side property line where a minimum 10-foot greenstrip is required; and b) a variance to locate a refuse container and enclosure nine feet from the north property line and six feet from the east property line where a 20-foot setback from each property line is required. Mr. Jaqua stated the properties at 414 West Milham and 328 West Milham Avenue were being redeveloped. The applicant stated he disagreed with the suggestion to eliminate parking spaces as they needed all the parking shown on the plan, and a screening fence along the north property line would impact visibility for drivers backing out of 5923 Missouri Avenue. Discussion followed.

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

Motion was made by Learned, supported by Schau, to deny the variance requests to a) reconstruct an off-street parking lot 2.5 feet from the (north) side property line where a minimum 10-foot greenstrip is required; and b) a variance to locate a refuse container and enclosure nine feet from the north property line and six feet from the east property line where a 20-foot setback from each property line is required for the following reasons; there are no exceptional or extraordinary circumstances or conditions applying to the property that would apply generally to other properties in the same zoning district which include: a conforming alternative for the location of the refuse dumpster and a new site plan for the properties in question; the immediate practical difficulty causing the need for the variance was created by the applicant; the variance would be detrimental to adjacent property and the surrounding neighborhood. 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: Robbe – yes, Schaefer – yes, Philipp – yes, Schau – yes, Seyburn – no, Learned – yes, Eichstaedt – no. Motion to deny passed 5-2.

ZBA #16-09, Plaza Corp, 6525 South Westnedge Avenue and 150, 206 Ruth Street: Mais summarized the requests for: a) a variance to erect a 5,120 square-foot commercial building 60 feet from the (north) front property line where a minimum 75-foot setback is required; and b) a variance to locate a refuse container in a P-1 vehicular parking district. Due to a conflict of interest, Eichstaedt

stepped down and abstained from participation. Andy Wenzel stated they proposed to redevelop the subject property with a new 5,120 square-foot commercial building having a setback that results in a reduction in nonconformity from the current building. Mr. Wenzel stated the goal is to develop the site for two new businesses, a parking lot that extends onto 150 Ruth Street and provide storm water management on 206 Ruth Street. The proposed location of the refuse container and screening area are to be 160 feet away from the nearest resident. Robbe asked the applicant what type of material will be used for the dumpster screening. Mr. Wenzel stated the dumpster would have a walled enclosure made of the same materials used for the building facade and a gate for waste management access. Discussion followed.

A public hearing was opened.

A resident at 418 Ruth stated she was concerned about the commercialization of the vacant property (150 Ruth) and that any new development would have a negative impact on the neighborhood. The resident also stated she and other property owners along Ruth Street do not wish to see the trees cut down at 150 Ruth Street – for the trees provide a noise buffer from the adjacent businesses. The resident also presented a petition for the record “strongly objecting to the variance as it consists of the destruction of trees for parking lot purposes.” Seyburn clarified that the only matters the Board had authority in this case to address were regarding a setback variance and whether to allow a dumpster to be located on a P-1 zoned property at 150 Ruth Street, and could not prohibit construction of the parking lot at that location. Patricia Sybul who has friends that live on Ruth Street, was concerned with pests on the now vacant property on Ruth Street. Mr. Wenzel stated he will look into the concern and correct any issues that may be present. Tom Wagner, 308 Ruth Street, was concerned with the waste management pickup schedule and cited current schedules have companies removing the trash in the dumpsters at 4:00 a. m. Mr. Wagner was also concerned about parking lot noise and light pollution from parking lot lights. A resident at 409 Ruth inquired about an alternative location for the refuse container. Mike White, 220 Ruth Street, shared his concerns for the location and appearance of the dumpster. There being no further comments the public hearing was then closed.

A motion was made by Learned, supported by Schau, to grant a variance to erect a 5,120 square-foot commercial building 60 feet from the (north) front property line where a minimum 75-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 narrow corner lot configuration; the variance would result in a reduction of non-conformity; the immediate and 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 action of the Board be final and effective immediately. Upon roll call vote: Robbe – yes, Schaefer – yes, Philipp – yes, Schau – yes, Seyburn – yes, Learned – yes. Motion passed 6-0.

A motion was made by Robbe, supported by Schaefer, to grant a variance to locate a refuse container in a P-1 vehicular parking district 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 variance will allow waste management companies to

gain access to the refuse containers in a safe manner; the immediate and 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 action of the Board be final and effective immediately. Upon roll call vote: Robbe – yes, Schaefer – yes, Philipp – yes, Schau – yes, Seyburn – no, Learned – no. Motion passed 4-2 (Eichstaedt abstained).

OTHER BUSINESS: Seyburn stated he will not be able to attend the December, 2016 and February, 2017 meetings.

STATEMENT OF CITIZENS:

ADJOURNMENT: There being no further business, the meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Kyle Mucha
Zoning & Codes Administrator