

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – May 22, 2017

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Seyburn at 7:00 p.m. in the Council Chambers. Twelve people were in the audience.

**MEMBERS PRESENT:** John Byrnes, Alexander Philipp, Lowell Seyburn, Scott Chu, Veronica Demaio, Natalie Rowe.

**MEMBERS EXCUSED:** Randall Schau, Jay Eichstaedt

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

**APPROVAL OF THE MINUTES:** Byrnes moved and Philipp seconded a motion to approve the April 10, 2017 minutes as submitted. Upon voice vote, the motion was approved 6-0.

### **NEW BUSINESS:**

**ZBA #16-20, Karen Colacino Trust, 4011 Woodhams Avenue:** Mais summarized the request for a variance to exceed the 25% lot cover requirement by 260 square feet. Attorney Jeff Swenarton spoke on behalf of the applicant and stated the property had been issued a certificate of occupancy and the applicant had no part in exceeding the maximum permitted lot coverage as they did not provide the city faulty survey information nor did they request the contractor build a larger garage than shown in the original building plan. Mr. Swenarton added the request was very small, was not created by the applicant, would provide substantial justice, and the applicant should not be punished financially for the errors of others. Mais advised the Board that Section 622(B) stated that even if compliance was more costly that should not be a consideration, and in any case there was no practical difficulty in this situation as the conforming alternative to do a lot line adjustment with the adjacent property owned by the applicant was readily available and this option did not entail financial hardship. Seyburn inquired if the applicant purchased the properties at 4011 and 3927 Woodhams Avenue at the same time. The applicant replied yes.

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

Chu stated he did not support the variance because a conforming alternative was available. Rowe stated she did not think the practical difficulty was financial and agreed it was not the applicant's fault. A motion was made by Demaio, seconded by Byrnes to deny the variance to exceed the 25% lot cover requirement by 260 square feet for the following reasons: there are no exceptional circumstances 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 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 adjusting a lot line; the variance would be detrimental to adjacent property and would materially impair the intent and purpose of the zoning ordinance. Upon roll call vote: Byrnes-Yes, Rowe-No, Philipp-No, Seyburn-No, Chu-Yes, Demaio-Yes. Motion failed 3-3.

Chu inquired what would happen to the applicant's property. Mais stated they would either have to remove 260 square feet from the dwelling or do a lot line adjustment allocating 10 feet from 3927 to 4011 Woodhams Avenue. Chu expressed concern that in terms of enforcement there may be a potential issue with regard to a statute of limitations. A motion was made by Rowe, seconded by Phillip to grant a variance to exceed the 25% lot cover requirement by 260 square feet 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 faulty survey information submitted prior to the applicant's purchase of the property; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to maintain a dwelling that a certificate of occupancy had been issued for; 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 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, discussion and materials presented at the hearing be incorporated into the record of this hearing and that action of the Board be final and effective immediately. Upon roll call vote: Byrnes-No, Philipp-Yes, Chu-Yes, Rowe-Yes, Seyburn-Yes, Demaio-No. The motion passed 4-2.

ZBA #16-21, Helene Reish, 1426 Vickery Road: Mais summarized the request for a variance to construct a dwelling with the following minimum setbacks: 27 feet from the north property line, 8 feet from the east and west property lines, and 40 feet from the south property line. Ms. Reish stated they had earlier offers on the property but they backed out once buyers learned a variance was needed. Ms. Reish inquired if the Board could issue a variance for a period longer than six months while she was trying to sell the property. Attorney Bear stated the Zoning Code expressly limits variances to six months.

A public hearing was opened. David Preston, 1504 Vickery; Michael Roeder, 1428 East Osterhout Avenue; and Rita Fox, 1330 East Osterhout Avenue expressed concerns that the proposed setbacks might allow construction of a dwelling that either blocks their view of the lake or would be located too close to neighboring residences. Ms. Reish stated she has been paying taxes for this buildable lot years and had the right to develop the property. Jeff Bertolissi, 10646 Portage Road spoke in favor of the request.

A motion was made by Rowe, seconded by Byrnes to grant a variance to construct a dwelling with the following minimum setbacks: 27 feet from the north property line, 8 feet from the east and west property lines, and 40 feet from the south property line, 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 lot's orientation to the street; 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 and the vicinity, the right to construct a reasonable dwelling; 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 materials, staff report, and all comments, discussion and materials presented at the hearing be incorporated into the record of this hearing and that action of the Board be final and effective immediately. Upon roll call vote: Byrnes-Yes, Philipp-Yes, Seyburn-Yes, Demaio-Yes, Rowe-Yes, Chu-Yes. The motion passed 6-0.

**OTHER BUSINESS:**

**STATEMENT OF CITIZENS:**

**ADJOURNMENT:** There being no further business, the meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Jeff Mais  
Zoning & Codes Administrator