

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – June 12, 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. Nine people were in the audience.

MEMBERS PRESENT: John Byrnes, Alexander Philipp, Lowell Seyburn, Randall Schau, Jay Eichstaedt, Veronica Demaio, Natalie Rowe, Linda Finch.

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

MEMBERS EXCUSED: Brenda Carlton

APPROVAL OF THE MINUTES: Byrnes moved and Eichstaedt seconded a motion to approve the May 22, 2017 minutes as submitted. Upon voice vote, the motion was approved 7-0.

NEW BUSINESS:

ZBA #16-22, Mark Caley, 9033 West End Drive: Lowell Seyburn abstained from participation on the item due to a potential conflict of interest. Mais summarized the requests for: a) a dimensional variance to relocate and modify an existing dwelling from 9103 West End Drive to 9033 West End Drive that will be located seven feet from the north and five feet from the south side property lines where minimum eight foot side yard setbacks are required; and b) a use variance to construct a 30-foot by 40-foot accessory building on a zoning lot separate from the principal use, concurrent with construction of a dwelling across the street. Mr. Caley stated the Board had granted a similar variance in 2013 but the variance expired and the house did not get built. The applicant stated 9033 West End Drive has been on the market for over a decade and he believed the reason was because no one wants to build a new 34 foot wide house and a variance is needed so that any new home constructed on the lot will be consistent with other houses in the neighborhood that are subject to five-foot side yard setbacks. Schau inquired why most homes on West End Drive were subject to five foot side yard setbacks but not 9033 West End Drive. Mais responded the large majority of lots on West End are 50 feet wide and therefore substandard. When 9033 West End was split in 2002 it had to meet current code standards and an unorthodox shaped lot was split that met the minimum lot width requirement at the front building line, but was only 50 feet wide where the building envelope existed. Because the lot dimensions are considered conforming, any new construction must meet standard eight-foot side yard setbacks. Eichstaedt inquired if 34 foot wide houses are commonly constructed. Mais responded they are not uncommon on lakefront lots. Schau inquired if any had been constructed on West End Drive in recent years. Mais stated he could not recall any recent instances. Schau inquired if the house were moved unmodified from 9013 West End to 9033 West End Drive could it do so without a variance. Mr. Caley stated yes, but not if a typical two stall attached garage is constructed. DeMaio inquired if the variance was needed to accommodate the second story. Mr. Caley stated yes it was needed to accommodate the garage access. Schau inquired with respect to the use variance if any houses had been constructed in the vicinity on the west side of the street. Mais replied only accessory buildings opposite principal uses on the east side of the street.

The public hearing was opened. Tim Bennet, 9029 West End Drive (and part owner of 9033 West End Drive); Tom Vanderhorst, 9011 West End Drive; Chris Payne, 9043 West End Drive; and Joshua Sortland, 802 Shumway Street spoke in favor of the request. The public hearing was closed.

Schau inquired if the applicant had any objections to staff's recommended conditions. Mr. Caley stated only with the condition that the combined accessory building area not exceed the ground floor living area, because he needed the extra space to store all his boating equipment and tools. A motion was made by Rowe, seconded by Demaio, to grant: a) a dimensional variance to relocate and modify an existing dwelling from 9103 West End Drive to 9033 West End Drive that will be located seven feet from the north and five feet from the south side property lines where minimum eight foot side yard setbacks are required, for the following reasons: there are 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 narrowness along the building

envelope; the variance is necessary for the preservation of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity, the right to build a house similar to neighboring properties; 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 would not materially impair the intent and purpose of the Zoning Ordinance. Upon roll call vote: Byrnes-Yes, Rowe-Yes, Philipp-Yes, Finch-Yes, Schau-Yes, Eichstaedt-Yes, Demaio-Yes. Motion passed 7-0.

A motion was made by Eichstaedt, seconded by Rowe, to grant a use variance to construct a 30-foot by 40-foot accessory building on a zoning lot separate from the principal use, concurrent with construction of a dwelling across the street conditioned upon: 1) construction of the accessory building be conducted concurrent with construction of the dwelling on lot 12; 2) the combined accessory building on lot 45 and 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 a dwelling (principal use) constructed on lot 12, for the following reasons: that the condition, location or situation of the specific piece of property is unique to that property and the zoning district in which it is located, which includes the surrounding development pattern; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to construct an accessory building, and that the building, structure or land cannot otherwise reasonably be used in a manner consistent with the uses allowed in the district; that the use variance will not alter the essential character of the neighborhood or the intent of the comprehensive plan, nor be detrimental to adjacent properties; the variance will not materially impair the intent and purpose of the zoning ordinance; and that 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, 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, Rowe-Yes, Philipp-Yes, Finch-Yes, Schau-Yes, Eichstaedt-Yes, Demaio-Yes. Motion passed 7-0.

ZBA #16-23, Eric Cleasby, 1030 South Shore Drive: Mais summarized the request for the variances to: a) retain a 140 square-foot accessory building located within one foot of an adjacent accessory building where ten feet of separation between buildings is required; and b) increase the amount of nonconforming accessory building area that exceeds the ground floor living area of the residence by 140 square feet. Mr. Cleasby stated both he and his tenant stored items on premises and needed the additional storage area to keep the tenant's items separate and secure. Seyburn inquired if there was a practical difficulty related to the property. Mr. Cleasby responded no. Seyburn inquired if the applicant was using the accessory buildings for business storage. Mr. Cleasby responded no, but the tenant did drive two vehicles associated with the business that are now parked at 8086 Portage Road. Schau inquired if a building permit had been obtained for the subject shed. Mais stated no. Demaio noted if the applicant wanted to keep the owner's items separate from the tenant's, an area could be set aside in the 1,736 square-foot building for that purpose.

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

Seyburn suggested the Board deal with request (b) first as request (a) would be moot if (b) were to be denied. A motion was made by Schau, seconded by Rowe, to deny the variance request to b) increase the amount of nonconforming accessory building area that exceeds the ground floor living area of the residence by 140 square feet, 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 because there are conforming alternatives available such as using the existing large accessory building; the immediate practical difficulty causing the need for the variance request was created by the applicant when the shed was built without a permit; and the variance would 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, Rowe-Yes, Philipp-Yes, Finch-Yes, Schau-Yes, Eichstaedt-Yes, Demaio-Yes. Motion passed 7-0.

ZBA #16-24, Joshua Sortland, 802 Shumway Avenue: Mais summarized the request for a variance to permit an attached garage five feet from the (west) side property line where a minimum eight-foot side yard is required. Mr. Sortland stated he purchased the home when he was only 21 and did not understand then that permits were needed for construction and that the garage had been attached to the dwelling without a permit decades before he acquired the property. Mr. Sortland admitted that more recently he had constructed his own addition without a permit and that he first became made aware of the need for a building permit when a potential buyer made an inquiry with the city. The applicant provided a letter from his title insurance company indicating they would honor a claim for failure to identify the construction without a permit during due diligence. Seyburn noted the Board could not consider his financial circumstances as a basis for a variance but wondered if the applicant understood the scope of work that would be required if a variance were granted, as bringing the structure up to code may potentially be cost prohibitive. Mr. Sortland stated he has been working with a contractor and understands the scope and cost of work. Schau noted the applicant did not create the violation, as the addition connecting the house to the garage had already been completed during the 1980's prior to the applicant's purchase in 2007.

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

A motion was made by Schau, seconded by Demaio, to grant a variance to permit an attached garage five feet from the (west) side property line where a minimum eight-foot side yard is required conditioned upon obtaining a building permit for the additions and completing all necessary code corrections by no later than December 12, 2017, 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 that the violation occurred prior to the applicant's purchase of the property; the variance is necessary for the preservation of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity, the right to retain conforming living area; 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 as an addition has been there for over 30 years, 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, Rowe-Yes, Philipp-Yes, Finch-Yes, Schau-Yes, Eichstaedt-Yes, Demaio-Yes. Motion passed 7-0.

OTHER BUSINESS:

STATEMENT OF CITIZENS:

ADJOURNMENT: There being no further business, the meeting was adjourned at 9:16 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator