



ZONING BOARD OF APPEALS

June 8, 2015

CITY OF PORTAGE ZONING BOARD OF APPEALS
Agenda

Monday, June 8, 2015
(7:00 pm)
Portage City Hall
Council Chambers

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

APPROVAL OF MINUTES:

- * May 11, 2015 meeting

OLD BUSINESS:

NEW BUSINESS:

- * ZBA #14-26, Cheryl Butler, 10650 South Westnedge Avenue: Requesting a variance from the public street frontage requirement to obtain a building permit.

OTHER BUSINESS:

Election of Officers

STATEMENT OF CITIZENS:

ADJOURNMENT:

Star (*) indicates printed material within the agenda packet

Minutes of Meeting – May 11, 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. Two people were in the audience.

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

MEMBERS ABSENT: Lowell Seyburn

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

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

NEW BUSINESS:

ZBA #14-25, The Home Depot, 6685 South Westnedge Avenue: Mais summarized the request to modify a previously approved Temporary Use Permit to allow: a) an additional 6-foot by 55-foot outdoor sales/display in front of the store from March 15 through September 15, 2015 and annually thereafter; and b) an 8-foot by 100-foot storage area for bagged goods behind the store from April 1st through June 30th, 2015 and annually thereafter. John Tsokonas, manager of the Home Depot, stated he agreed with the staff report and what he was requesting was comparable to what similar businesses were doing elsewhere in the city. Robbe noted there were bagged goods in front of the store last week. The applicant stated they have already been removed from the front.

The public hearing was opened. Gina Stoneburner, 330 Ruth Street, stated she was concerned noise might result from the proposed activity. Learned inquired if Ms. Stoneburner was currently experiencing any noise issues from Home Depot. Ms. Stoneburner stated no, but wanted assurance that the proposed changes would not create noise issues. The applicant responded the proposed changes would in no way increase noise levels from current store operations. The public hearing was closed.

Schau asked if staff could revoke the permit since it is subject to annual review by staff. Mais stated the intent was to allow staff to review the set up and operation of the Temporary Use in subsequent years so the applicant would not have to return to the Board for approval. Mais stated in the event of major noncompliance issues, staff would refer revocation of the Permit to the Board. Attorney Bear stated the Board, not staff, had authority to revoke a Temporary Use Permit. A motion was made by Smith, seconded by Schau to approve a modification to the previously approved Temporary Use Permit to allow: a) an additional 6-foot by 55-foot outdoor sales/display in front of the store from March 15 through September 15, 2015 and annually thereafter; and b) an 8-foot by 100-foot storage area for bagged goods behind the store from April 1st through June 30th, 2015 and annually thereafter with the following conditions: 1) no other outdoor display/storage be permitted outside of the proposed Temporary Use areas; 2) Hours of operation intended for the Temporary Use coincide with regular store operations (when open); 3) no outdoor storage of bagged goods be permitted in front of the store; 4) No outdoor display shall encroach into or block the fire lane or emergency exits; 5) Renewal of the permit shall be subject to review by city staff on an annual basis. Upon roll call vote: Smith-Yes, Phillip-Yes, Schaefer-Yes, Robbe-Yes, Bright-Yes, Learned-Yes, Schau-Yes. The motion passed 7-0.

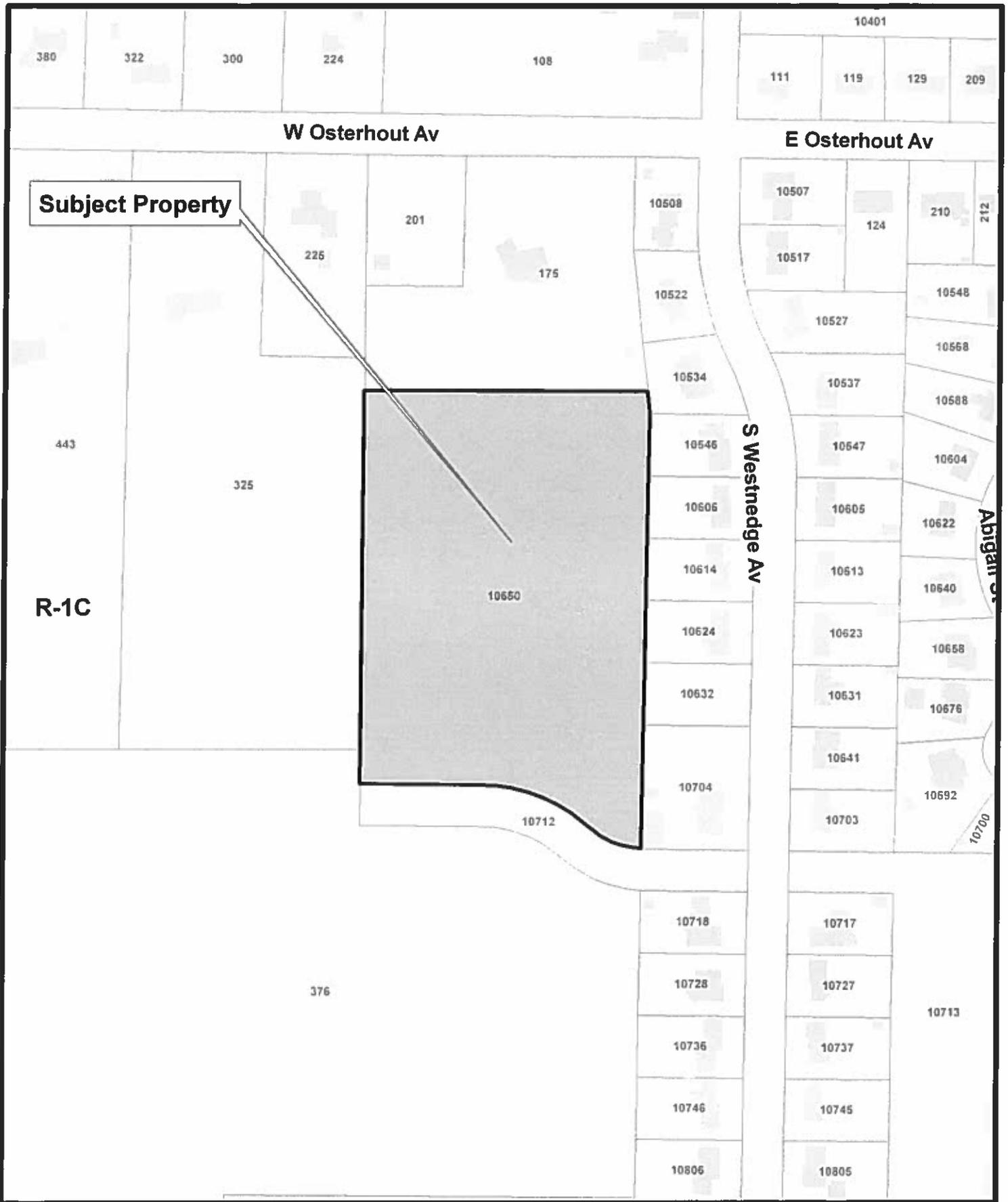
OTHER BUSINESS: None.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at 7:31 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator



Subject Property

R-1C

ZBA 14-26

10650 South Westnedge Avenue

-  Zoning Boundary
-  Subject Properties
-  Notification Area



1 inch = 200 feet

RECEIVED

MAY 07 2015

ZONING BOARD OF APPEALS APPLICATION

COMMUNITY DEVELOPMENT

FOR COMPLETION BY APPLICANT

Application Date 5-6-2015

Name of Applicant Cheryl A. Butler, Trustee
Print

Cheryl A. Butler, Trustee
Signature

Applicant's Address 10717 S. Westnedge Portage

Phone No. 269-327-3377

Name of Property Owner (if different from Applicant) Everett L. Floyd Trust

Address same as applicant

Phone No. same

Address of the Property that is the subject of this Application:

Street Address 10650 S. Westnedge Portage

For Platted Property: Lot _____ of _____ Plat _____

[If The Property Is Unplatted, the Legal Description is needed. Please attach on a separate sheet.]

Applicant's interest in Property that is the subject of this Application: Property is in a trust, as trustee I intend to sell the property so we can close the trust.

Application Fee \$135.00 (Residential Uses)

(All Other Uses)

Type of Appeal (Please check one of the following bold choices and provide the requested information):

Variance from Zoning Ordinance: Article 42 Section 125 Paragraph B
Regarding: Use _____ Area _____ Yards _____
Setbacks _____ Parking _____ Other _____

Reason for Request (Also complete page 2 of application): Obtain variance of street frontage requirement to obtain building permit.

____ **Appeal of Administrative Decision:** Article _____ Section _____ Paragraph _____

Reason for Request: _____

____ **Interpretation of the Zoning Ordinance:** Article _____ Section _____ Paragraph _____

Reason for Request: _____

____ **A Temporary Permit for:** Building _____ Use _____ Other Approval _____

Article _____ Section _____ Paragraph _____

Reason for Request: _____

FOR STAFF USE

Application Number: <u>14-26</u>	Filing Date: <u>5/7/15</u>	Tentative Hearing Date: <u>6/8/15</u>
Previous Application Filed Regarding This Property: <u>ZBA 07-23</u>		

Reason For Variance

1. Please explain how the property has characteristics such as narrowness, shallowness, irregular shape, topography, or natural features that prevent compliance with the Zoning Ordinance. (Attach additional sheets if needed.)
The property does not abut a public road, the attached right-of-way does.
2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
The neighboring properties have the same characteristic and have been granted variances.
3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)
The property cannot be used without this variance according to the City of Portage's current zoning language.
4. Is the variance the minimum necessary to permit reasonable use of the land and buildings, or would a lesser variance be fair and equitable to the applicant as well as logical and just to other property owners in the area? (Attach additional sheets if needed.)
This is the minimum solution. There are no alternatives.
5. Explain how the variance would not result in adverse affects on adjacent properties or alter the character of the area. (Attach additional sheets if needed.)
The right-of-way already permits our vehicle traffic to the property. It would not have any future affects on adjacent properties.
6. Explain how the variance would not result in increased traffic congestion, noise, or other potential concerns, or in dangers from fire, flood or other hazards, that would be detrimental to the property or to the area. (Attach additional sheets if needed.)
As stated above, we already drive to and from the property so a single family residence would not be detrimental.
7. Is the reason for the request, the practical difficulty or the hardship created, due to an act of the applicant or due to an act by the previous property owner? (Attach additional sheets if needed.)
The hardship difficulty was created by the City of Portage when it changed the frontage requirement which adversely affected these properties.
8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
The property is zoned R-1C. The variance would allow the fulfillment of the residential zoning.

Cheryl A. Butler, Trustee
Signature of Applicant

5-6-2015
Date

10650 S. Westnedge
Portage MI 49002
May 6, 2015

RECEIVED

MAY 07 2015

COMMUNITY DEVELOPMENT

City of Portage
Zoning Board of Appeals
7900 S. Westnedge
Portage, MI 49024

Re: 10650 S. Westnedge

Members of the Board:

This variance request concerns the last undeveloped parcel of land that was established in 1975 by the original owner, Junior Matteson. In 1975, Mr. Matteson divided his land into ten parcels. To access these properties he created two right-of-ways. Each parcel has ownership in its adjacent right-of-way. The intent was to utilize the parcels for single family residences. At the time this method of development was accepted and the first home was built in 1977. In 1978, the City of Portage revised the building code to require sixty feet of public street frontage to build a residence. This change put the Matteson parcels into noncompliance for building purposes. Since that time, two other residences have been constructed on these parcels with the most recent in 2003. Both required and received a variance to the code.

In 1979, Everett and Virginia Floyd purchased two of the Matteson parcels which include the previously mentioned right-of-way ownership of sixty-six feet of frontage on S. Westnedge known as 10712 S. Westnedge. The Floyds never sought to develop the property and with their passing in 2011 the property is subject to their estate trust.

Since the 1978 zoning change is still in effect, the City of Portage holds that the property is noncompliant and will not issue a building permit. We contend however that the property has the required street frontage with the sixty-six foot right-of-way to 10712 S. Westnedge.

The current code for the development of the city is understandable and probably appropriate for most areas of development. We ask however that this particular situation be given different consideration. The original owner wished his land be used for single family residences. Many of the parcels have been combined as has the Floyd parcels. There will never be the number of residences that Mr. Matteson envisioned. The City of Portage at some point in time must have agreed with Mr. Matteson since the land was zoned R-1C. Further, Mr. Matteson could not have foreseen the future changes to the building code and create contingency plans.

In an attempt to comply with the current code we have explored land purchase options to which there are none. We explored the creation of a public street but we share ownership and therefore do not have total control of the property.

We believe a single family residence is the best use of this property and ask for favorable consideration to the variance.

Sincerely,

Cheryl (Floyd) Butler, Trustee

Cheryl (Floyd) Butler, Trustee

10650 S WESTNEDGE AVE PORTAGE, MI 49024 (Property Address)
 Parcel Number: **00033-178-O**

No Images Found

Property Owner: FLOYD, EVERETT & VIRGINIA TRUSTEES
Summary Information
 > Assessed Value: \$33,400 | Taxable Value: \$20,424 > Property Tax Information found

Owner and Taxpayer Information

Owner	FLOYD, EVERETT & VIRGINIA TRUSTEES Taxpayer 10717 S WESTNEDGE AVE PORTAGE, MI 49002	SEE OWNER INFORMATION
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General Information for Tax Year 2015

Property Class	402 RESIDENTIAL VACANT	Unit	10 CITY OF PORTAGE
School District	PORTAGE	Assessed Value	\$33,400
SECTION	Not Available	Taxable Value	\$20,424
BOOK	Not Available	State Equalized Value	\$33,400
PROPERTY TYPE	Not Available	Date of Last Name Change	04/01/2013
USER ALPHA 3	Not Available	Notes	Not Available
Historical District CODE	Not Available	Census Block Group	Not Available

Principal Residence Exemption Information

Homestead Date Not Available

Principal Residence Exemption	June 1st	Final
2016	0.0000 %	-
2015	0.0000 %	0.0000 %

Previous Year Information

Year	MBOR Assessed	Final SEV	Final Taxable
2014	\$33,400	\$33,400	\$20,103
2013	\$33,400	\$33,400	\$19,787

Land Information

Zoning Code	R-1C	Total Acres	6.770
Land Value	\$66,800	Land Improvements	Not Available
Renaissance Zone	No	Renaissance Zone Expiration Date	Not Available
ECF Neighborhood	SE RESIDENTIAL GRP 3	Mortgage Code	Not Available
Lot Dimensions/Comments	Not Available	Neighborhood Enterprise Zone	Not Available

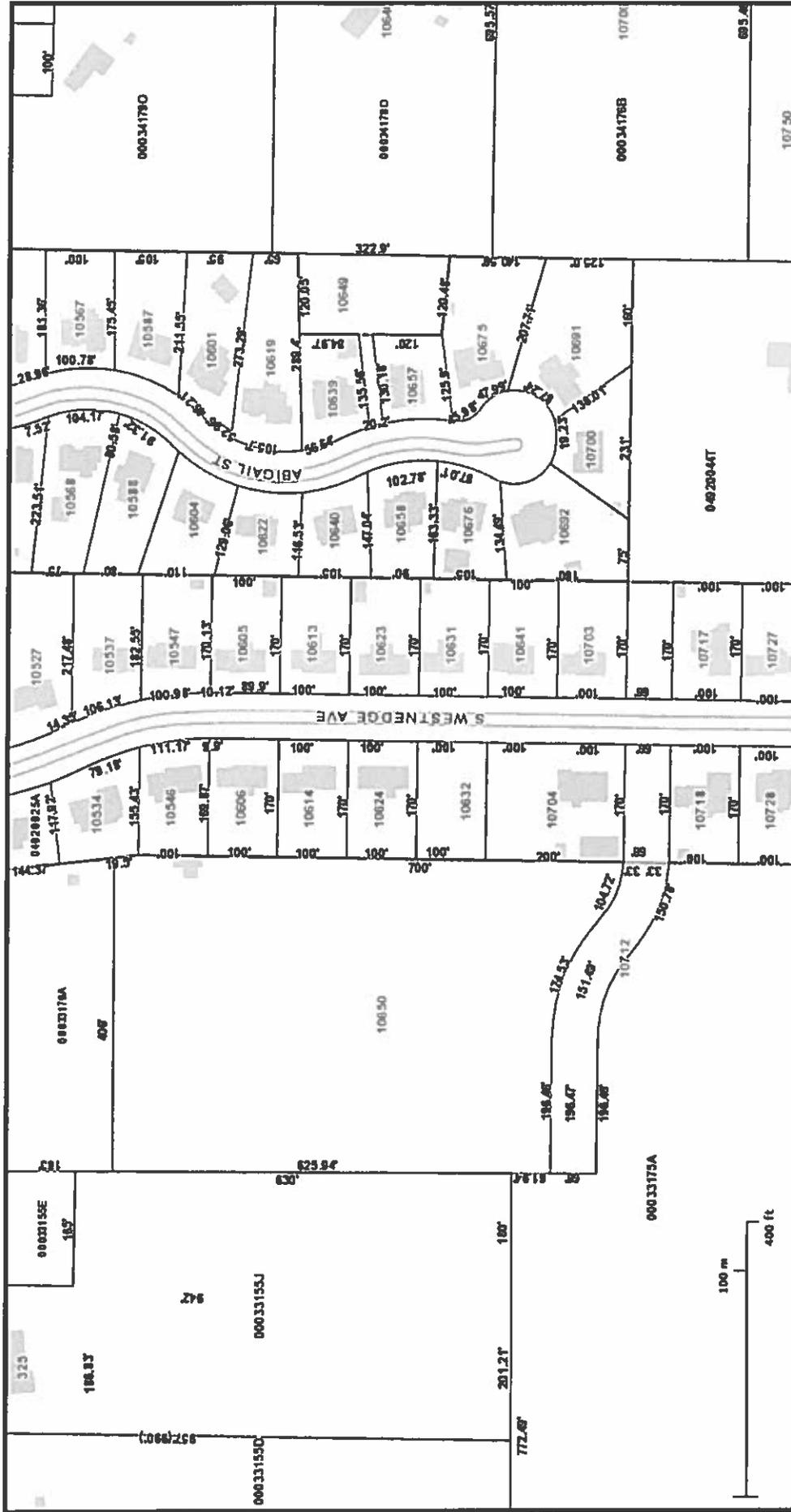
Lot(s)	Frontage	Depth
No lots found.		
Total Frontage: 0.00 ft		Average Depth: 0.00 ft

Legal Description

SEC 33 3 -11- BEG AT SW COR LOT 33 PLAT OF MATTESONS ESTATES, TH N 700 FT ALG W LI OF SD PLAT, TH N 6 DEG 54 MIN W 19.50 FT, TH W 451.20 FT, TH S 625.94 FT, TH E 196.46 FT, TH SELY 174.53 FT ON ARC OF CURVE TO RIGHT, TH ELY ON ARC OF CURV TO LEFT 104.72 FT TO P.O.B, ALSO 66 FT ROW TO S WESTNEDGE AVE.

Sale History

Sale Date	Sale Price	Instrument	Grantor	Grantee	Terms of Sale	Liber/Page
01/14/2000	\$0.00	WD	FLOYD, EVERETT L & M V	FLOYD, EVERETT & VIRGINIA TRUSTEES	ARMS LENGTH	2005-039530



City of Portage Map Document



Disclaimer:

This map does not represent a survey or legal document and is provided on an "as is" basis. City of Portage expresses no warranty for the information displayed on this map document.



 1:3500

 Map Publication:

 Thu May 7 2015 04:46:24 PM





City of Portage Map Document



web mapping by
Amalgam LLC



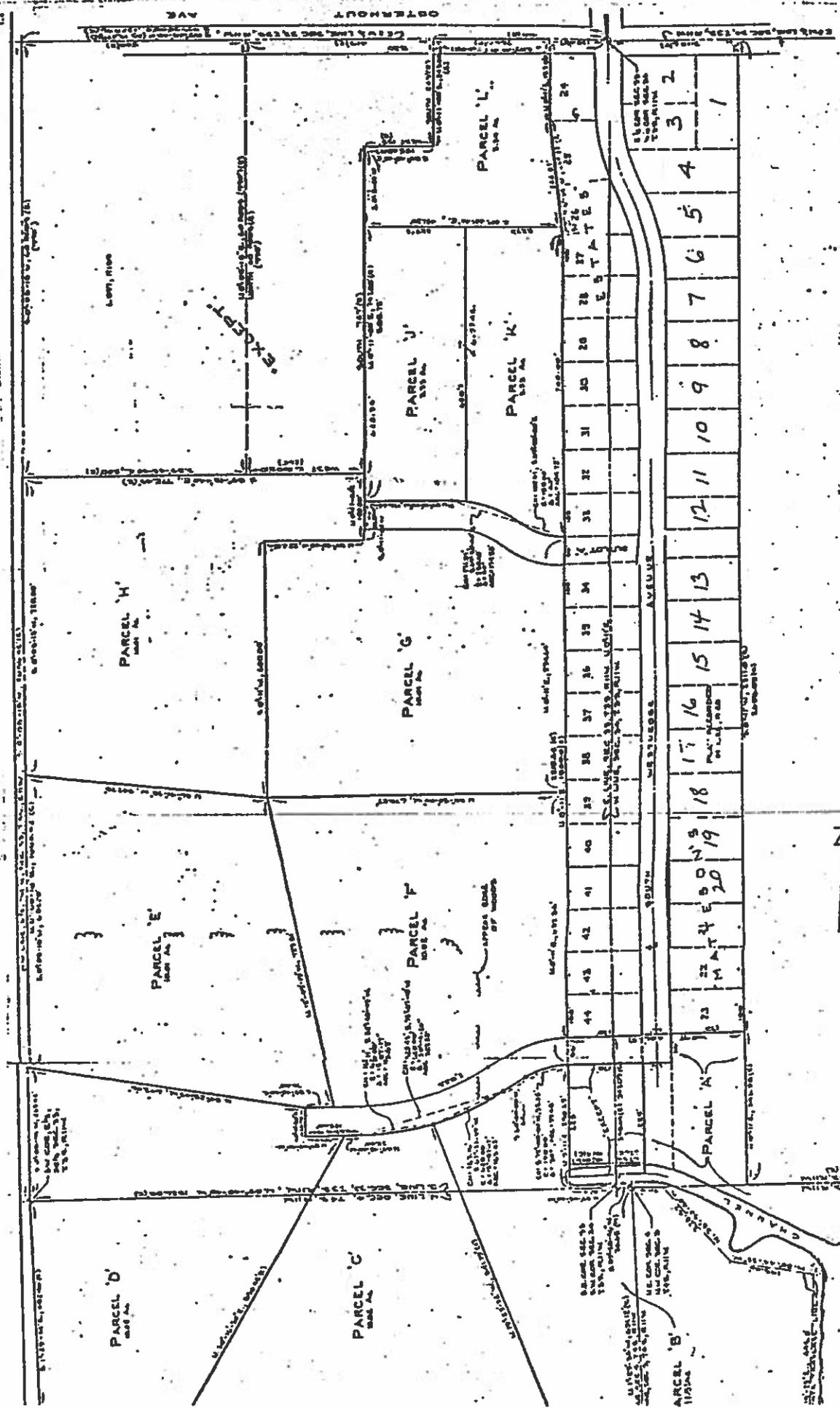
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Map Publication:

Thu May 7 2015 04:43:53 PM

Disclaimer:

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PROPOSED PARCEL SPLIT
 ALSO INCLUDING SPLITTING, INC
 151 BROADWAY, SUITE 2000
 NEW YORK, NY 10038
 FOR MR. JUNIOR PATTERSON
 151 BROADWAY, SUITE 2000
 NEW YORK, NY 10038

SCALE 1"=100'

(M) - MEASURED DIMENSIONS
 (C) - CALCULATED DIMENSIONS USING SCALE 1"=100'
 (E) - EXCEEDED TOLERANCE

ECK
 KE

TO: Zoning Board of Appeals **DATE:** May 29, 2015
FROM: Vicki Georgeau, ^{Va.} Director of Community Development
SUBJECT: ZBA #14-26, Cheryl Butler, 10650 South Westnedge Avenue, R-1C, One Family Residential

CODE SECTION: 42-125(B), Street Frontage Requirements, p. CD42:31.

APPEAL: Requesting a variance from the public street frontage requirement to obtain a building permit.

STAFF RECOMMENDATION: The applicant is requesting the above referenced variance per the enclosed application, map, letter of explanation, and related materials. The 6.8 acre undeveloped parcel is zoned R-1C, one family residential, and is adjacent to single family residences to the north, west and east. To the south is a 66-foot wide private right-of-way and Outlot A of Matteson Estates (10712 South Westnedge Avenue), jointly held by the owner of 376 Matteson Court (2/3 ownership interest) and the applicant (1/3 ownership interest).

As background information, the property at 10650 South Westnedge Avenue was originally part of a larger tract of land encompassing areas to the west and south of the Matteson Estates plat. During the mid-1970's, the Recreation Park and Beach Association was created and lake access (at 10951 South Westnedge Avenue) was provided to three parcels referenced in the association by-laws: 1) Parcel I, addressed as 10930 South Westnedge Avenue; 2) Parcel II, the 44 lots and Outlot B in Matteson Estates; and Parcel III, an approximate 83-acre parcel shown with proposed parcels B through L (refer to attached drawing). The parcels on the attached drawing shown as J and K comprise the property at 10650 South Westnedge Avenue. At the time, the public street frontage was not required and parcels G, H, J and K were intended to be accessed through a 66-foot wide private right-of-way and Outlot A of the Matteson Estates plat. The land divisions, however, were not recorded at that time and the Zoning Code was amended in January 1978 to require public street frontage for all buildable lots and parcels. The vacant property at 10650 South Westnedge Avenue was subsequently created and purchased by Everett and Virginia Floyd in 1979. While the property is adjacent to and has partial ownership of a 66-foot private right-of-way and Outlot A, the property does not have the required 60-feet of frontage on a public street. The trustee now wishes to sell the property as a single buildable lot.

As additional information, four prior variance requests involving land within the "Parcel III" area noted above have been requested from the Zoning Board of Appeals, but only one variance has been approved (refer to attached minutes). In

1981 and 1985, variances were requested to create 5-6 parcels without public street frontage. The 1981 variance request was withdrawn by the applicant, and the subsequent 1985 variance request was denied by the Board. In 1982, the Board granted a public street frontage variance for 236 Matteson Court (parcel "F"), citing the 66-foot wide undedicated easement and characteristics of the subject parcel (one parcel vs. several parcels without street frontage) as meeting the intent of the ordinance. In 2008, an application was submitted by a potential purchaser of 10650 South Westnedge who desired to split the parcel into two buildable lots without street frontage. After a lengthy review of the application and the history of the development plans for this parcel and the vicinity, the Board denied the variance request.

Subsequent to the 2008 Board decision, the applicant has, in cooperation with the owner of 376 Matteson Court, accomplished a lot line adjustment, whereby the 66-foot wide Outlot "A" (10712 South Westnedge Avenue) was combined with the 66-foot wide private right-of-way that extends along the entire length of the south property line of 10650 South Westnedge Avenue. The review and approval of this lot line adjustment formally recognizes the shared access and ownership of 10650 South Westnedge Avenue and 376 Matteson Court. In addition, the parties have entered into a Shared Access Maintenance Agreement for Outlot A and the 66-foot wide private right-of-way. Finally, and in comparison to the 2008 variance request, the applicant is seeking a public street frontage variance for one buildable lot, similar to the variance granted in 1982 for 236 Matteson Court.

The conforming option of constructing public street frontage is still available, but it is understood the co-owner of 10712 South Westnedge Avenue does not support this proposal. There are, however, exceptional circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district which include the recent modification of 10712 South Westnedge Avenue to provide a contiguous shared ownership of a parcel directly abutting a public street; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to develop a 6.8-acre residentially zoned parcel; the immediate practical difficulty causing the need for the variance request was not created by the applicant; the 66-foot wide shared access functions essentially as a shared driveway for two large residential parcels; 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. For the reasons noted above, approval of variance can be recommended.

**PRACTICAL
DIFFICULTY:**

Unique circumstance with shared ownership of 66-foot wide private right-of-way and Outlot A (10712 South Westnedge Avenue). See suggested motion form

Portage / Schoolcraft boundary

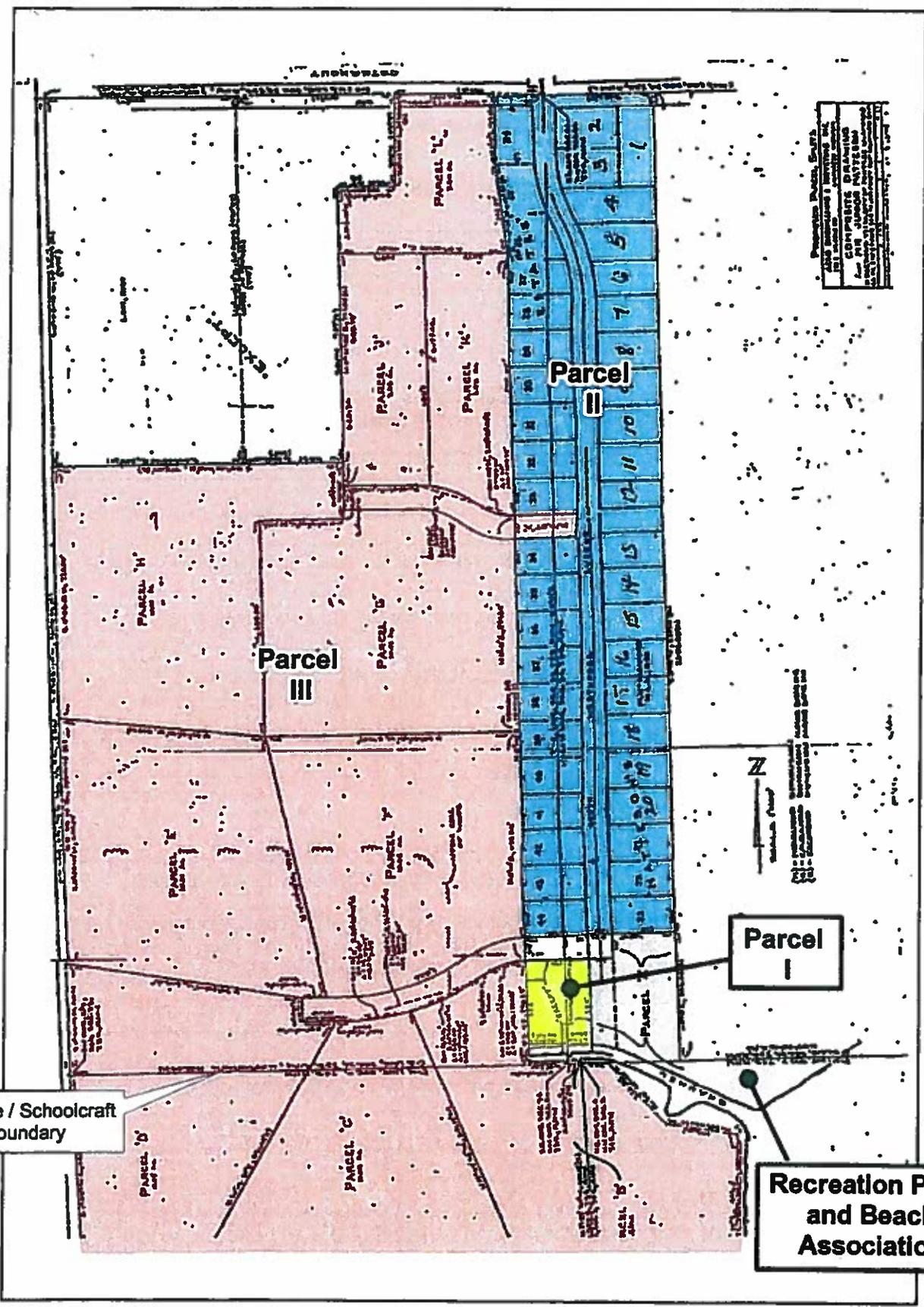
Recreation Park and Beach Association

Parcel I

Parcel II

Parcel III

PROPOSED PARCEL SPLIT
 FOR THE
 RECREATION PARK AND BEACH ASSOCIATION
 COMPREHENSIVE DRAFTING
 AND PLS JAMES PATTERSON
 10000 100TH AVE, SUITE 100
 BURNING WOODS, MN 55305
 TEL: 763-251-1111
 FAX: 763-251-1112



173

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting - Monday - September 14, 1981

The City of Portage Zoning Board of Appeals meeting of September 14, 1981 was called to order by Chairman Lawson in the community room of the Portage Public Library, 300 Library Lane. Chairman Lawson spoke to the rules governing the Board's hearings and requested that all questions brought before the Board be directed to the Chairman.

MEMBERS PRESENT:

Jim Carroll; Henry Beertema; David Moran; Eleanor Stevens; Mike Marshburn; Tom Lawson, Chairman

MEMBERS ABSENT:

None

MEMBERS EXCUSED:

A motion was made and seconded to excuse Baker, Harding and Moxley from the September 14, 1981, Zoning Board of Appeals meeting. Motion was approved 6-0.

IN ATTENDANCE:

Brian J. Bowling, Acting Director of Planning & Community Development Department; Norman Smith, Director of Inspections & Code Enforcement; and Lowell Seyburn, Assistant City Attorney.

APPROVAL OF MINUTES:

A motion was made by Beertema, seconded by Carroll, that the minutes of August 10, 1981, be approved as written. Motion was approved 6-0.

NEW BUSINESS:

1. ZBA #81-65, Dorothy Gettings, 7665 Timber Creek. Mrs. Gettings presented her request to the Board and indicated that she was seeking a variance of 176 sq. ft. to allow the construction of a 864 sq. ft. home with a basement on lots #3 and #4, Westnedge Heights Plat, Block P. Mrs. Gettings indicated that she had purchased the lots which had a building on them which had to be destroyed. At this time she desired to rebuild an 864 sq. ft. home. The properties immediately across the street at 303 and 307 W. VanHoesen contain 716 sq. ft. and 876 sq. ft. respectfully. Mrs. Gettings indicated that she believed a home of greater size than that proposed would be out of place in the area given the size of surrounding structures.

Mr. Carroll questioned if the existing basement was to be utilized for the new structure. Mrs. Gettings indicated that the basement will be enlarged and built over. Mr. Beertema questioned if a one-story structure was proposed. Mrs. Gettings indicated that this was correct. No one was present speaking in opposition to this request. A motion was made by Beertema, seconded by Carroll, that the Zoning Board of Appeals grant Dorothy Gettings, 7665 Timber Creek, a variance of 176 sq. ft. to allow the construction of an 864 sq. ft. home with basement on lots #3 and #4, Westnedge Heights Plat, Block P. The hardship in this case is that the size of adjacent homes in this area supports the granting of this variance. Upon a roll call vote, all members voted yes. Motion was approved 6-0.

2. ZBA #81-66, Cathleen Matteson Dervan, 9655 East Shore Drive. Mrs. Dervan presented this request to the Board and indicated that she was seeking a variance to allow the establishment of six (6) properties without having 66' of frontage on a dedicated public street. The proposed parcels are C, D, E, F, G, and H, Section 33 SE, west of South Westnedge Avenue. Mrs. Dervan indicated that they had originally intended to plat the property in 1975 at which time a preliminary copy of the lot split was delivered to the City. These splits

were, however, never recorded. Mrs. Dervan indicated that she had spoken to people south of Osterhout in the area and all seemed glad to see the large lot development concept. Mrs. Dervan indicated that she had assumed until last year that permits could be obtained, at which time she found that an ordinance had been passed in 1979 precluding the development on private streets.

Mr. Moran questioned if the private roads were paved. Mrs. Dervan indicated that they were presently gravel. Mr. Marshburn questioned if Mrs. Dervan was attempting to avoid the provision of a roadway improvements. Mrs. Dervan indicated that this was correct as the cost of such improvements would make the cost of the lots too great.

Speaking in support of Mrs. Dervan's request were Mr. Evert Floyd, South Westledge Avenue and Mr. Hall, 10912 South Westledge. Speaking in opposition to the request were Mr. Don Butler, and Mrs. Barb Brown. The primary objections were the potential increase in dust to be generated by additional development in the area along the private roads.

Mr. Carroll questioned if the roads were paved and improvements installed to City Council specifications would a variance still be required. Mr. Seyburn indicated that the development of the roads to Council's standards and the acceptance of the streets as dedicated public streets would eliminate the need for the variance. Mr. Marshburn questioned if other improvements such as sewer and water utilities would have to be installed with the upgrading of the streets. It was indicated that this would be up to the City Council and generally depends on the extent of improvements which exist in the area currently. Members of the Board then discussed the apparent lack of hardship with respect to the property. After some further discussion, Mrs. Dervan requested that this item be withdrawn in order that she may investigate the possibility of improvement and dedication of private roadways.

3. ZBA #81-67, Richard Fenner, 625 Forest, Kalamazoo. Mr. Fenner presented this request to the Board and indicated that he was seeking a variance to allow the division of lot #17, Timberland Grove Plat, creating two lots. A variance of 30' from the minimum R-1B lot frontage requirement for lots with neither sewer nor water, permitting lot 17A to be 70' in width and a variance from Section 1815, allowing development on a lot (i.e., 17B) without 66' of frontage on a dedicated public street are requested.

Mr. Marshburn questioned if Mr. Fenner desired to build a home for himself. Mr. Fenner indicated that he would either construct the home for himself or rent the structure. Mr. Fenner explained that lots to the north could not support this type of development given the soil conditions of the property.

Mr. Carroll questioned if Mr. Fenner had attempted to buy the 20' easement which exists to the south of the subject property. Mr. Fenner indicated that the owner had no desire to sell this property. Mr. Marshburn questioned if there was any way to grant an easement for access to the subject property, eliminating the necessity for the granting of a variance from the 66' frontage requirement. Mr. Seyburn explained that this could be done. Mr. Marshburn indicated that he personally could justify the hardship with respect to the property because of the depth of the lot and given the development which was proposed on property further west. Mr. Marshburn commented that he could not, however, justify the creation of a substandard lot. A motion was then made by Marshburn, seconded by Beertema, that the Board of Appeals grant Richard Fenner, 625 Forest, a variance to allow the division of lot #17, Timberland Grove Plat, contingent upon approval by the Zoning Board of Appeals of the Document of Conveyance, creating two lots, one lot being the west 400' and the other lot being the east 400', with the south, eastern 40' as an easement for vehicular access and utility purposes. The hardship in this case is that the excessive depth and surrounding development precludes any better use of the rear portion of the subject property. Upon a roll call vote, Stevens, no; Moran, yes; Beertema, yes; Marshburn, yes; Carroll, yes; Lawson, yes. Motion was approved 5-1..

ZBA
10/25/82

8. ZBA #82-92, Mr. and Mrs. Adolph Lubic, 10341 Portage Road. Mr. Lubic was present to explain that they were seeking a variance from Section 1815(1), Required Access, in order to build a residence on parcel 1750, Section 33, located on Matteson Court. Chairman Lawson questioned when Mr. Lubic bought the property and if he had known that the previous land owner had requested a similar variance. Mr. Lubic responded that he had purchased the property in 1977 and that he was not aware of any previous variance request. Mr. Lubic further explained that they desired to build a house on the subject property. It was their belief that the development of the parcel would not burden any adjacent property owner.

Mr. Marshburn explained that he did not support the previous application (ZBA #81-66, Cathlene Matteson Dervan) because the multiple parcels involved in that application could have been developed in one unit. In terms of the development of a single dwelling unit on the subject parcel on Matteson Court, he could support the request.

The Board members and the applicant discussed several issues relating to the Matteson properties. These issues included, among others, whether or not Cathlene Matteson Dervan still owned several of the ten acres parcels; the date the subject property was purchased by the applicant; availability of utilities; and the effective date of Section 1815 of the Portage Zoning Ordinance.

Mr. W. Cooper, 10904 S. Westnedge, was present to explain that he supported the application. It was his opinion that the dwelling would be an improvement to the neighborhood. Mr. B. Brown, 10930 S. Westnedge Avenue, was also present to register his support of the application.

After discussion the application, staff report and characteristics of the subject parcel, a motion was offered by Marshburn, seconded by Moran, that the Zoning Board of Appeals grant Mr. and Mrs. Adolph Lubic, 10341 Portage Road, a variance from Section 1815(1), Required Access, in order to allow a residence on parcel 1750, Section 33, located on Matteson Court. The hardship being that access to the property along Matteson Court is via a 66' wide undedicated easement which meets the intent of the Ordinance. Upon a roll call vote, Beertema, no; Marshburn, yes; Harding, yes; Moran, yes; Moxley, yes; Carroll, yes; Lawson, yes. The motion was approved 6-1.

9. ZBA #82-93, John Bonnema, 1129 W. Centre Avenue. Mr. Bonnema was present to explain that he was seeking permission to build a 10' x 12' addition onto the southwest corner of the existing structure. Mr. Marshburn questioned if the applicant had sold property to the west of the subject structure to Mr. Ryder. Mr. Bonnema indicated that he did sell property to Ryder. The City of Portage required 66' of frontage on Centre Avenue. Mr. Bonnema emphasized that the property was to be used for access only and was not a buildable portion of the lot. In response to a question from the Board, Mr. Bonnema indicated that he would be using the addition for storage purposes. There was no one present to speak either in favor of or in opposition to the application.

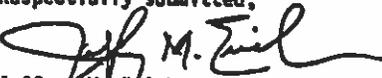
After some limited discussion, a motion was offered by Carroll, seconded by Moran, that the Zoning Board of Appeals grant John Bonnema, 1129 W. Centre Avenue, a favorable interpretation that building a 10' x 12' addition onto the southwest corner of the existing structure does not constitute the expansion of a nonconforming structure. This action is based on the fact that the west and south walls of the addition will be a continuation of the respective walls of the present building. Upon a roll call vote, all members voted yes. The motion was unanimously approved.

STATEMENTS OF CITIZENS:

None.

There being no further business to come before the Board, the meeting was adjourned at 9:07 p.m.

Respectfully submitted,


Jeffrey M. Erickson, Assistant Director
Planning, Economic & Community Development

JME:kl

10/25/82

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting - Monday - September 9, 1985

The City of Portage Zoning Board of Appeals meeting of September 9, 1985 was called to order by Vice-chairman Moxley in the lower level conference room of the Portage Public Library, 300 Library Lane. Vice-chairman Moxley spoke of the rules governing the Board's hearings and requested that all questions brought before the Board be directed to the Chairman. Approximately thirty-five (35) people were in the audience.

MEMBERS PRESENT:

Royal Hathaway; Oscar Hudson; Bill Ester; Henry Beertema; James Kalleward; Larry Hilton (Alternate); Richard Westland (Alternate); Vice-chairman Moxley.

MEMBERS ABSENT:

None

MEMBERS EXCUSED:

Chairman Harding had previously requested to be excused from this Zoning Board of Appeals meeting.

IN ATTENDANCE:

Randall Brown, Assistant City Attorney; Jeffrey M. Erickson, Manager, Planning & Zoning Division; Norman Smith, Manager, Building Services Division.

APPROVAL OF MINUTES:

The minutes of the August 12, 1985 and August 19, 1985 Zoning Board of Appeals meetings were introduced for approval. Jeff Erickson commented that page 4 of the August 19, 1985 minutes should be corrected to reflect that the Zoning Board of Appeals granted Robert Perkins, 3515 Westcove Drive, a variance to allow construction of a deck to within 12' of the rear property line. Jeff Erickson informed the Board that several copies of minutes with an incorrect dimension had been distributed. Vice-chairman Moxley commented that the Boardmember's minutes did reflect the correct dimension. A motion was offered by Beertema, seconded by Ester, that the August 12, 1985 meeting minutes and the August 19, 1985 special meeting minutes be approved as written. The motion was unanimously approved.

OLD BUSINESS:

1. ZBA #85-71, Steve Marks, on behalf of Mother Paula's, 7237 South Westledge. Mr. Lowell Seyburn, Attorney representing the applicant, requested that this item be postponed until the next Zoning Board of Appeals meeting when a full board would be present. Randall Brown explained that Mr. Westland and Mr. Hilton could not vote at this meeting. Consequently, only six members were present. A motion was offered by Beertema, seconded by Hudson, that ZBA #85-71 be tabled until the October 14, 1985 board meeting. The motion was unanimously approved.

2. ZBA #85-72, Larkin Winther, on behalf of Junior Matteson, owner of the land in the 10500 block of South Westledge Avenue. Mr. Winther was present to explain that he was seeking a variance to create by division five (5) parcels, each 10+ acres in size, with no frontage on a public street. Mr. Winther explained some of the history to Mr. Matteson's development project. The division of the subject land had been planned in the mid 70's. Acro Engineering had been engaged to prepare a plan for the division of Mr. Matteson's property into 10 acre parcels. The project plan was completed in 1975. Mr. Winther emphasized that the project had been completed prior to the City's ordinance requiring 66' of frontage on a public street. Mr. Winther further explained that his client's position was that building permits should be issued for each of the 10+ acre parcels and that it was unfair to require his client to meet the requirements that were not applicable in 1975. Mr. Winther also briefly discussed the procedures for obtaining Zoning Board of Appeals review and decisions.

Mr. Rod O'Brien, a real estate professional, was present to speak in favor of the variance request. He also questioned if the City had previously reviewed and approved Mr. Matteson's development proposal prior to the public street requirement. In response to a question from Mr. O'Brien, Jeff Erickson explained that the land divisions proposed by Mr. Matteson were not recognized as legal divisions by the City of Portage. They were not created and/or recorded prior to the ordinance requirement becoming effective. There was subsequent discussion of the City's informal and formal review procedures.

A neighboring property owner on South Westnedge Avenue was present to express his support of the variance request. He also felt that Mr. Matteson has been harassed and the approval should be given. Mr. Ed Lubic, 236 Matteson Court, was present to register his support for the variance. He felt that 10 acre parcels were better than a number of subdivision lots in the area. Mr. Dan Rineveld, 1062A South Westnedge, registered his support for the variance request. In his opinion, the 10 acre parcels would reduce the potential traffic congestion problem.

A resident of South Westnedge Avenue was present to express that she felt that the residential neighborhood should be maintained. She did not like the idea that gravel streets would be provided for access purposes.

Mr. Matteson, and Ms. Dervan, owners of the property, explained the history of the proposal, the previous application submitted in 1981, and that development of public streets was cost prohibitive.

Mr. Hilton questioned how the private easements to the parcels would be covered in the deed. Furthermore, could individuals subsequently divide the 10 acre parcels and/or the easements. It was pointed out that later divisions of each 10 acre parcel could also be attempted by subsequent owners.

Jeff Erickson clarified that Mr. Matteson could obtain building permits for a residence on each 10 acre parcel if each 10 acre parcel had 66' of frontage on a public street. The City was not objecting to development of the parcels. However, the City felt that access to the properties should be provided via a public street. Access by public street will assure access to property owners, proper maintenance and snow plowing by City personnel, and year-round access for emergency vehicles. This requirement is a typical requirement for development in the City of Portage. It is consistently applied.

Vice-chairman Moxley commented that a letter signed by eight (8) residents in opposition to the variance request had also been received. The letter was read for those in attendance.

In response to a question from Mr. Kalleward, Jeff Erickson circulated a copy of the minutes pertaining to the Ed Lubic variance application that was approved by the Zoning Board of Appeals.

Mr. Hall, 10912 South Westnedge Avenue, expressed no opposition to gravel roads in this neighborhood. A neighboring resident expressed his opposition to the variance. He felt that public street access was necessary. He also felt that substandard roads would be detrimental to the neighborhood.

The Boardmembers, the applicant and staff subsequently discussed the application and staff report. The ordinance requirements were also explained. After this discussion, a motion was offered by Hudson, seconded by Hathaway, that Larkin Winther, on behalf of Junior Matteson, owner of the land, be granted a variance to create by division five (5) parcels, each 10+ acres in size, with no frontage on a public street. The hardship being the cost on Mr. Matteson to build the 66' right-of-way and public street. Mr. Brown interjected that monetary hardships have not been considered valid hardships justifying a variance from the Zoning Code. Mr. Hudson restated his hardship: The hardship being that the lots were created prior to the Zoning Code provision becoming effective. Upon a roll call vote, Kalleward, no; Hudson, yes; Beertema, no; Hathaway, yes; Ester, no; Moxley, no. The motion was denied 4-2.

NEW BUSINESS:

1. ZBA #85-73, Patrick Lynch, 9029 West End Drive. Mr. Lynch was present to explain that he was seeking an 8' variance from the 40' rear yard setback requirement in order to construct a deck to within 32' of the rear (east) property line. No one was present wishing to speak in opposition to the proposal. The public hearing was declared closed.

same zoning district, the variance is not necessary for the preservation and enjoyment of a substantial property right to that possessed by other properties in the same zoning district; the immediate practical difficulty causing the need for the variance request was created by the applicant; and the variance will be detrimental to adjacent property and the surrounding neighborhood. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and action of the Board be final and effective immediately. Upon roll call vote: Linenger-Yes, Flora-Yes, Stoffer-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-Yes, Seyburn-Yes. Motion passed 7-0.

ZBA #07-23: Andy Seiser (Everett and Virginia Floyd Trustees, owner), 10650 South Westnedge Avenue: Staff summarized the staff report regarding the request for a variance from the street frontage requirements to divide 10650 South Westnedge Avenue into two buildable lots with no frontage on a public street. Mr. Seiser was present to explain his request to develop the land as originally designed. The applicant indicated construction of a public road to the property is not practical for the following reasons: a paved road with curb and gutter, sidewalks and utilities does not exist in the vicinity, agreement would have to be obtained from the resident who has 2/3 ownership interest in outlot A and the land upon which the easement runs across; 500-feet of public road would cost \$125,000 per the City Engineer; and there are several other examples of shared access in the city such as the end of Woodlawn Drive, Glencoe Court and Marylynn Court. Mr. Seiser noted that per the current Zoning Code, the parcel is not buildable without a variance to build even one house, and that two houses with lake membership is a more desirable alternative than other development options.

Felicijan asked staff for clarification on the outlot. Staff indicated outlots are not available for building sites, but are usually intended for future street connections, utility easements, and other purposes and the outlot in question is addressed as 10712 South Westnedge Avenue. Felicijan inquired about history of other shared access drives in the city mentioned by the applicant. Staff indicated that the Marylynn Court development involved litigation between the city and property owner and that other examples of such development may be legally nonconforming. Seyburn noted he has a conflict of interest as he has a purchase agreement for the property at 10546 South Westnedge Avenue and would abstain from voting. Seyburn asked if the land division was considered legal at the time they were accomplished. Staff indicated that the divisions were proposed in the mid-1970's but not recorded prior to the 1978 Zoning Code amendment that required frontage on a public street, and therefore the divisions did not have a vested right. Atkins inquired regarding the city's vision for the property. Staff explained the area is planned for low-density single-family residential and development options with a public street include a traditional or open space subdivision, planned development, and other options provided there is compliance with City Code. Linenger noted only six Board members were able to vote, and the applicant had the option to postpone action until the next meeting. Stoffer inquired regarding the ownership rights of outlot A. Staff and the applicant clarified that 10650 South Westnedge Avenue has 1/3 interest in outlot A (parcels J & K have a 1/6 ownership interest each in outlot A), while 376 Mateson Court has the remaining 2/3 ownership interest in outlot A. Stoffer also inquired about the development of 376 Mateson Court, and staff explained there is a single-family house developed on the property. Felicijan inquired about the previous variances involving the properties to the south. Staff explained a variance was granted in 1982 (ZBA 82-92) to construct a single-family dwelling on 236 Mateson Court, shown as parcel F on sketch 2 in the application. Flora asked if with only a 1/3 interest in outlot A and an easement over 376 Mateson Court, could the applicant build a public road. Staff indicated that the owner of 376 Mateson Court would have to agree to a public road development. Stoffer asked if one dwelling could be built on the property. Staff indicated no because the property does not have frontage. Felicijan asked the applicant if he objected to building just one dwelling on the property. Mr. Seiser responded yes, because the property has two memberships to the lake park.

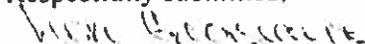
A motion was made by Atkins and seconded by Stoffer to postpone action on the request as requested by the applicant until the January 14, 2008 meeting. Upon roll call vote: Linenger-Yes, Flora-Yes, Stoffer-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-Yes, Seyburn-Abstain. Motion passed 6-0.

OTHER BUSINESS: None.

STATEMENT OF CITIZENS: A citizen inquiry was made regarding possible postponement of ZBA 07-23 again in January 2008. Stoffer indicated it is unlikely that a full Board will not be present to vote on the case at the next meeting.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:25 p.m.

Respectfully submitted,


Vicki Georgeau, Deputy Director of Neighborhood Services

CITY OF PORTAGE ZONING BOARD OF APPEALS
Minutes of Meeting – January 14, 2008

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Henry Kerr at 7:00 p.m. in the Council Chambers. Approximately 20 people were in the audience.

MEMBERS PRESENT: Robert Atkins, David Felicijan, Clyde Flora, Henry Kerr, Betty Schimmel, Wayne Stoffer, Lowell Seyburn.

MEMBERS EXCUSED: Rob Linenger

IN ATTENDANCE: Vicki Georgeau, Deputy Director of Neighborhood Services; Charlie Bear, Assistant City Attorney.

APPROVAL OF THE MINUTES: Flora moved, and Atkins seconded a motion to approve the December 10, 2007 minutes as submitted. Upon voice vote, motion was approved 7-0 (Seyburn voting alternate).

OLD BUSINESS:

ZBA #07-21; RWL Signs, on behalf of Little Caesars Pizza, 6005 South Westnedge Avenue/120 East Milham Avenue: Staff summarized the request for a variance to replace a legally nonconforming freestanding sign, which is located two feet from the front property line instead of required 10-foot setback. Mark Ritchie was present to explain the request and clarified that the entire sign cabinet for Little Caesars Pizza sign is proposed to be replaced, not just the sign panel. Kerr asked if the applicant had considered a five-year nonconforming sign agreement. Staff indicated it was discussed but the property owner does not feel moving the sign at the end of the five-year period is feasible due to the site parking and access configuration. Atkins inquired regarding other similar variances that were denied in the vicinity. Staff explained that Uptown Pets and Lentz had viable conforming alternatives and were denied by the Board. Schimmel asked if the other sign variances involved changing the sign panel or the entire sign cabinet. Staff indicated they recalled it was the sign panels that were being replaced. A public hearing was opened. As no verbal or written comments were received, the public hearing was closed.

A motion was made by Seyburn, seconded by Atkins, to approve a variance from the setback requirement to replace the sign face and sign can conditioned upon no sign being erected on the East Milham Avenue street frontage, 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 existing location of the freestanding sign and moving such sign back close to the maneuvering lane and the applicant is willing to give up the right to a second freestanding sign reducing the overall signage on the property, the variance is necessary for the preservation and enjoyment of a substantial property right to that possessed by other properties in the same zoning district; 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 will not materially impair the intent and purpose of the zoning ordinance and will enhance its purpose. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and action of the Board be final and effective immediately. Upon roll call vote: Flora-Yes, Stoffer-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-Yes, Kerr-Yes, Seyburn-Yes (voting alternate). Motion passed 7-0.

ZBA #07-23; Andy Seiser (Everett and Virginia Floyd Trustees, owner), 10650 South Westnedge Avenue: Kerr informed the applicant that one Board member was absent and one Board member has a conflict of interest, and asked if he wanted to again postpone action. The applicant responded yes. Kerr asked if staff or the applicant know for certain that outlot A at 10712 South Westnedge Avenue could indeed be privately owned and sold, given that outlots are typically dedicated to the public and intended for future street connections. Seyburn indicated that title insurance may be available to verify the matter. Bear indicated that in some cases outlots can be reserved by private owners of a plat and others may have been dedicated to the local road commission or unit of government.

A motion was made by Flora and seconded by Stoffer to postpone action on the variance as requested by the applicant until the February 11, 2008 meeting. Upon roll call vote: Kerr-Yes, Flora-Yes, Stoffer-Yes, Schimmel-Yes, Atkins-Yes, Felicijan-Yes, Seyburn-Abstain. Motion passed 6-0.

NEW BUSINESS: None.

OTHER BUSINESS: None.

CITY OF PORTAGE ZONING BOARD OF APPEALS
Minutes of Meeting – February 11, 2008

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Henry Kerr at 7:07 p.m. in the Council Chambers. Approximately 12 people were in the audience.

MEMBERS PRESENT: David Felicijan, Clyde Flora, Henry Kerr, Betty Schimmel, Wayne Stoffer, Lowell Seyburn

MEMBERS EXCUSED: Robert Atkins, Rob Linenger, Betty Schimmel

IN ATTENDANCE: Vicki Georgeau, Deputy Director of Neighborhood Services; Charlie Bear, Assistant City Attorney

APPROVAL OF THE MINUTES: Flora moved, and Stoffer seconded a motion to approve the January 14, 2008 minutes with one correction. Upon voice vote, motion was approved 5-0 (Seyburn voting alternate).

OLD BUSINESS:

ZBA #07-23; Andy Seiser (Everett and Virginia Floyd Trustees, owner), 10650 South Westnedge Avenue: While staff and the Office of City Attorney have met and preliminarily reviewed the materials provided by the applicant on January 21st and January 29th, it was recommended that action be postponed until the March 10, 2008 Board meeting.

A motion was made by Flora and seconded by Stoffer to postpone action on the variance until the March 10, 2008 meeting. Upon roll call vote: Kerr-Yes, Flora-Yes, Stoffer-Yes, Felicijan-Yes, Seyburn-Abstain. Motion passed 4-0.

NEW BUSINESS:

ZBA #07-24; Jed McCrumb, 2481 Woody Noll Drive: Staff summarized the request for a four-foot variance to permit the construction of a 311 square-foot two-story dwelling addition six-feet from the west side property line where a 10-foot setback is required. Mr. McCrumb was present to explain his house floor plan, a tri-level dwelling with the full two-story portion facing the lake, creates practical difficulties and that conforming alternatives are not practical. In addition, a lesser variance would result in room additions too small to be usable. The applicant indicated that he did not build the house and the size of the master bath and closet are not typical for a lakefront house in the price range of the home.

Kerr noted that the lot size and house with a large garage are conforming and he does not find a hardship. In addition, building into required setbacks is not desirable for fire protection and other reasons. Seyburn asked where the house sits in relation to the neighboring house to the west and would it impede the neighbors view of the lake. The applicant indicates the neighboring house is closer to the lake and the addition would not impact the view of the lake as the addition is proposed adjacent to the neighbors driveway.

A public hearing was opened. Noel Guilford, 2385 Woody Knoll, expressed concern that the proposed addition would violate plat restrictions that require compliance with the Zoning Code setbacks. Mr. McCrumb indicated that plat restrictions have not been followed or enforced. As no other comments were received, the public hearing was closed.

A motion was made by Stoffer, seconded by Felicijan, to deny a variance a four-foot variance to permit the construction of a 311 square-foot two-story dwelling addition six-feet from the west side property line where a 10-foot setback is required 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 additions in the front or rear yard areas, a smaller addition that meets the required 10-foot setback, finishing additional basement floor area or an interior expansion of the current second floor over the first floor; the immediate practical difficulty causing the need for the variance request was created by the applicant; the variance will be detrimental to adjacent property and the surrounding neighborhood; 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 are to be incorporated in the record and action of the Board be final and effective immediately. Upon roll call vote: Flora-Yes, Stoffer-Yes, Felicijan-Yes, Seyburn-Yes, Kerr-Yes. Motion passed 5-0.

ZBA #07-25; SignArt, Inc., on behalf of Bank of America, 4431 West Centre Avenue: Staff summarized the request for a variance to allow replacement of a nonconforming sign panel at 4301 West Centre Avenue. Steve VanderSloot was present to explain that the requested variance is similar to those previously requested to change the name of the new bank owner at 4431 West Centre Avenue and that the size of the sign would not be enlarged.

CITY OF PORTAGE ZONING BOARD OF APPEALS
Minutes of Meeting – March 10, 2008

The City of Portage Zoning Board of Appeals meeting was called to order by Chair Henry Kerr at 7:00 p.m. in the Council Chambers. Approximately 20 people were in the audience.

MEMBERS PRESENT: Robert Atkins, David Felicijan, Clyde Flora, Henry Kerr, Rob Linenger, Betty Schimmel, Lowell Seyburn, Wayne Stoffer

IN ATTENDANCE: Vicki Georgeau, Deputy Director of Neighborhood Services; Charlie Bear, Assistant City Attorney

APPROVAL OF THE MINUTES: Flora moved, and Felicijan seconded a motion to approve the February 11, 2008 minutes with one correction. Upon voice vote, motion was approved 7-0.

OLD BUSINESS:

ZBA #07-23; Andy Seiser (Everett and Virginia Floyd Trustees, owner), 10650 South Westnedge Avenue: Staff summarized the request for a variance from the street frontage requirements to divide 10650 South Westnedge Avenue into two buildable lots with no frontage on a public street. Andy Seiser was present to summarize his request and his application materials. Seiser noted that Parcel J and K each have 1/6 ownership of Outlot A and a 66-foot strip of land extending west of the outlot, and while there is a land bar on the Proposed Parcel Split drawing, the owners have two separate deeds for parcels J & K. In addition, there is multiple ownership for Outlot A and for Matteson Court in the vicinity. Parcel F, 276 Matteson Court, received a public street frontage variance in 1982 and has only a 1/5 ownership interest in Matteson Court. Mr. Seiser indicated that the variance requested is no different from the variance granted for 276 Matteson Court, or the house built at 376 Matteson Court without full ownership of the public street frontage. Mr. Seiser presented two examples of land divisions on Osterhout Road and Oakland Drive that technically meet the Zoning Code but actual access is along shared private driveways. Mr. Seiser indicates that such proposals are very similar to his request. Finally, Mr. Seiser indicated that neighbors in the vicinity approved by-laws that acknowledged the development of Parcels J and K, and provided several reasons why he believes the criteria for granting a variance are met.

Kerr asked staff if Matteson Court is a private or public road. Staff indicated it is a private, gravel road. Kerr asked the applicant if there is any proof Parcels J & K existed prior to 1978. The applicant indicated no, but the development proposal was developed in 1975. Kerr noted that a condominium or plat presents a conforming alternative and the land divisions on Osterhout and Oakland had full ownership of the public street frontage. Mr. Seiser indicated the original 1975 design is preferable. Atkins asked staff to explain difference between the variance request and houses at end of Matteson Court. Staff explained two of the houses existed prior to the 1978 Zoning Code change, and the house at 276 Matteson Court received a variance in 1982 to build one house on a nonconforming lot, where Seiser wants to split the property and build two houses. Atkins asked if the city envisions a fully developed subdivision in the area. Staff indicated various options are available for development. Seiser indicated cost of a public road is not the only obstacle, the owner of 376 Matteson Court does not want to build a public road. Felicijan asked if the applicant could purchase the remaining ownership interest in Outlot A from Ms. Maxey. Staff indicated not without obtaining a variance for the house at 376 Matteson Court which has been allocated the full street frontage at Outlot A.

A public hearing was opened. Kay Maxey, 10712 South Westnedge Avenue (376 Matteson Court), indicated support of the variance and questioned how the variance request was different than development along Matteson Court. Don Butler, 10717 South Westnedge Avenue, spoke in favor of the request indicating the owners bought the property with the understanding it could be developed as two parcels, that property owners in the neighborhood agreed to and understand the development proposal. In addition, platting the area in the current housing market is not feasible. Letters of opposition from Valerie Rineveld, 10624/10632 South Westnedge Avenue, Elizabeth VanBruggen, 10614 South Westnedge Avenue, and Ralph and Shirley Ozman, 10547 South Westnedge Avenue were read into the record. As no other comments were received, the public hearing was closed.

A motion was made by Flora, seconded by Linenger, to deny a variance from the street frontage requirements to divide 10650 South Westnedge Avenue into two buildable lots with no frontage on a public street for one or more of 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 extension of a public street through outlot A in cooperation with adjacent owners; the immediate practical difficulty causing the need for the variance request was created

by the applicant; 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. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and action of the Board be final and effective immediately. Upon roll call vote: Atkins-No, Felicijan-Yes, Flora-Yes, Kerr-Yes, Linenger-Yes, Schimmel-Yes, Stoffer-Yes. Motion passed 6-1.

NEW BUSINESS:

ZBA #07-28; Robert Hutchins, 9810 East Shore Drive: Staff summarized the request for a) a three-foot variance from the required eight-foot side yard setback for the existing dwelling, b) a one-foot variance from the required eight-foot side yard setback to permit construction of a 400 square-foot three-season porch in the lakeside yard, c) a 20-foot variance from the 27-foot required front yard setback to allow a pre-existing shed to remain; and d) a variance to exceed the 2,557 square-foot maximum lot coverage by 43 square-feet. Robert Hutchins was present to explain his request and that property line encroachments have existed for many years, which will be resolved through a Circuit Court Settlement Agreement. Mr. Hutchins explained if not for the Settlement Agreement, which will reduce the size of his lot and the location of his north property line, the variances requested would not be needed. The proposed addition will not impact the neighbor's view of the lake and will provide privacy between the two lots. The shed has existed for over 20 years, does not create a vision obstruction and is needed as the house has only a one-car garage and no basement.

Kerr asked if there is a building permit on record and if there were conforming locations for the shed. Staff indicated there was no building permit on record and the existing shed is too large to be moved to a conforming location on the lot. Stoffer asked if addition would comply without the Settlement Agreement. Staff indicated yes. In response to a comment by Atkins, staff indicated the Settlement Agreement will resolve problems with the neighbor, but create some nonconformities on the Hutchins property. Felicijan asked how long the applicant owned the house and when the water run-off problems began. Hutchins indicated he bought the house in 2002 and the storm drainage problems began about 1½ years ago.

A public hearing was opened. No one was present to speak for or against the request. Letters of support from Joseph Bennett, 9844 East Shore Drive, Donald Schrauger, 9818 East Shore Drive, and Brett Grossman, 9732 East Shore Drive. As no other comments were received, the public hearing was closed.

A motion was made by Felicijan, seconded by Atkins, to grant a) a three-foot variance from the required eight-foot side yard setback for the existing dwelling for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that apply generally to other properties in the same zoning district, the variance is necessary for the preservation and enjoyment of a substantial property right; the immediate practical difficulty causing the need for the variance request was not created by the applicant; the variance would 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. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and action of the Board be final and effective immediately. Upon roll call vote: Atkins-Yes, Felicijan-Yes, Flora-Yes, Kerr-Yes, Linenger-Yes, Schimmel-Yes, Stoffer-Yes. Motion passed 7-0.

A motion was made by Felicijan, seconded by Atkins, to grant b) a one-foot variance from the required eight-foot side yard setback to permit construction of a 400 square-foot three-season porch in the lakeside yard conditioned upon removal of the pre-existing nonconforming 192 square foot shed located in the front yard for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that apply generally to other properties in the same zoning district, the variance is necessary for the preservation and enjoyment of a substantial property right; the immediate practical difficulty causing the need for the variance request was not created by the applicant; the variance would 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. In addition, the application and supporting materials, staff report, and all comments, discussion and materials presented at the hearing are to be incorporated in the record and action of the Board be final and effective immediately. Upon roll call vote: Atkins-Yes, Felicijan-Yes, Flora-No, Kerr-Yes, Linenger-Yes, Schimmel-No, Stoffer-No. Motion passed 4-3.

ZBA #07-29; Clayton Raifsnider on behalf of Jeff and Rita Briggs, 6843 Cromwell Street: Staff summarized the request for a variance to construct a 30-foot by 22-foot second story addition to a legal nonconforming dwelling that does not

SUGGESTED NON-USE VARIANCE MOTION FORM

Mr. Chairman:

I move, in regard to ZBA # _____, the application by _____

for a variance from _____

be:

a. granted for all of the following reasons:

- 1a. 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 _____;
- 2a. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to _____, which is similar to that possessed by other properties in the same zoning district and in the vicinity;
- 3a. The immediate practical difficulty causing the need for the variance request was not created by the applicant;
- 4a. The variance will not be detrimental to adjacent property and the surrounding neighborhood, and;
- 5a. The variance will not materially impair the intent and purpose of the zoning ordinance.

-OR-

b. denied for one of more of the following reasons:

- 1b. 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;
- 2b. 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 _____;
- 3b. The immediate practical difficulty causing the need for the variance request was created by the applicant;
- 4b. The variance would be detrimental to adjacent property and the surrounding neighborhood, and;
- 5b. The variance would materially impair the intent and purpose of the zoning ordinance.

c. In addition, the application and supporting materials, 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.