

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – February 8, 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. Eight people were in the audience.

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

MEMBERS EXCUSED: Glenn Smith.

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 December 14, 2015 minutes with the correction that Vice Chair Schaefer called the meeting to order. Upon voice vote, the motion was approved 7-0.

NEW BUSINESS:

ZBA #15-10, Kristen Salmon, 10513 Sudan Street: Mais summarized the variance request to divide 10513 Sudan Street into two 80-foot wide lots, which would result in the existing house being setback seven and a half feet from the (south) side property line where a minimum 10-foot setback is required. Ms. Salmon stated she found the double lot difficult to maintain and wanted to sell half the property to reduce the burden. Schau inquired if it would be possible to do a lot line adjustment ‘jog’ to maintain the required side yard setback. Mais responded a variance would still be necessary as the vacant lot would then fall below the minimum lot width at the building line. Bright inquired if there were many other properties in the neighborhood that did not meet the required side yard setback. Mais replied yes.

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

A motion was made by Learned, seconded by Robbe to grant a variance to divide 10513 Sudan Street into two 80-foot wide lots, which would result in the existing house being setback seven and a half feet from the (south) side property line where a minimum 10-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 location of the dwelling on site, and that the two lots were each intended to be buildable lots; the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity, the right to sell property and retain a home; the immediate practical difficulty causing the need for the variance request was not created by the applicant; and the variance would not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-11, Christine Pelletier, 4415 Raborn Court: Mais summarized the variance requests to: a) retain a 13-foot by 13-foot (169 sq. ft.) two-story accessory building in the side (east) yard that is 16 feet in height where a maximum 14-foot height is permitted and; b) retain a partially constructed 58-foot by 19-foot (1,102 sq. ft.) two-story accessory building in the rear (south) yard that is 19.5 feet in height where a maximum 14-foot height is permitted. Robbe stated he would be abstaining from participation on the item due to a potential conflict of interest. Ms. Pelletier explained she was unaware of code requirements, but that her husband and eldest son began construction of a number of accessory buildings a few years ago and thought they probably knew what they were doing. Her husband passed away in 2012 and shortly afterwards she became estranged from her children and moved out of the house that same year. Construction of the accessory buildings was continued by her eldest son after she had moved out, but he too is now deceased. Ms. Pelletier stated she will remove most of the accessory buildings but wished to retain the 169 square-foot shed in the east side yard and the 1,102 square foot barn in the rear yard, which are both higher than the maximum permitted 14 feet. Bright inquired what the applicant’s plans with the property were. Ms. Pelletier stated she intended to live

there a while but may sell the property. Learned inquired if the accessory buildings were currently being used. Ms. Pelletier stated the barn was previously used to house animals but all of the livestock have been removed. She thought the barn would be a good place for a future owner to keep horses. Seyburn noted staff's recommended condition that the accessory buildings be brought into compliance with applicable building codes and wondered if the applicant felt that six months was adequate time to accomplish that. Ms. Pelletier stated she hoped she could. Seyburn inquired if the applicant had looked into the costs associated with bringing the structures into compliance and if she knew what specifically needed to be done. Ms. Pelletier said she had not. Ken Schaffer, friend of the applicant, stated that even with church assistance eight months was a more realistic timeframe for compliance. Learned inquired if the applicant had read the letter submitted by Wayne Debroske and if so could she respond. Ms. Pelletier stated she got the impression they were objecting to some property maintenance issues and not to the buildings themselves. Byrnes inquired what purpose the "boiler room" served and was it connected in any way to heating the home. The applicant stated the boiler was not connected with heating the house and that the late Mr. Pelletier intended it to house a steam engine but it was discovered the boiler was not large enough to power the desired steam engine and the project was abandoned. Schau inquired if the applicant knew why the buildings were constructed as tall as they were. The applicant stated no. Schau noted the applicant also had the option of reducing the height of the buildings to a conforming height.

A public hearing was opened. Ken Schaffer, 58001 Lanphear Drive Paw Paw, MI stated he did not believe Ms. Pelletier had the resources available to shorten the buildings even with church assistance. Mr. Schaffer stated the requested variances were not unreasonable as the buildings were largely out of view of neighboring properties. The public hearing was closed.

A motion was made by Schau, seconded by Learned, to grant a variance to a) retain a 13-foot by 13-foot (169 sq. ft.) two-story accessory building in the side (east) yard that is 16 feet in height where a maximum 14-foot height is permitted for the following reasons: there are exceptional or extraordinary circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the size of the property and the lack of visibility to neighboring properties; the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity, the right to construct an accessory building; the immediate practical difficulty causing the need for the variance request was not created by the applicant in that she was dispossessed of the property at the time of its construction; and the variance would not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately, with the following conditions: a building permit be obtained within 30 days; the buildings identified as 1 through 4 in the staff report must be removed; and the structure be brought into compliance with all applicable building codes by November 1, 2016. Upon roll call vote: Philipp-Yes, Learned-Yes, Seyburn-Yes, Bright-Yes, Byrnes-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

Seyburn stated that when the Board grants variances for accessory buildings they are usually related to a specific purpose and it was not immediately apparent what that was in the case of the barn. Learned stated he saw the barn's purpose as being horse-related, which is permitted in residential districts. Schaefer stated he was troubled that the applicant did not know what was specifically needed to bring the barn into compliance with building code, nor have a clear idea of the associated costs, and felt the applicant should be given the opportunity to determine the full scope of work needed and costs associated with either: upgrading the barn to meet building code, demolishing the barn, or reducing its height, and thought the item should be tabled to give the applicant the opportunity to more thoroughly evaluate how realistic each of those options were. A motion was made by Schaefer, seconded by Seyburn, to postpone request b) until the April 11, 2016 meeting. Upon roll call vote: Philipp-Yes, Byrnes-Yes, Seyburn-Yes, Bright-Yes, Learned-Yes, Schau-Yes, Schaefer-Yes. The motion passed 7-0.

ZBA #15-12; Miled Awad, 6527 Naomi Street: Mais summarized the request for a variance to construct a 24-foot by 48-foot detached accessory building 18 feet from the (west) front property line where a minimum

75-foot setback is required. Mr. Awad stated he wanted to replace the accessory building which had stood for many years in the same location. The applicant stated the old garage was destroyed by a snowstorm and the reason they were requesting a variance to rebuild in the same location was because they did not rebuild the nonconforming structure within the timeframe specified by code (Section 42-133 D.2). Mais stated staff disputed the claim that the roof collapse was ‘an act of God’ as the old structure was in very poor repair having been neglected for many years, and the roof collapsing under snow was the result of deferred maintenance. The applicant stated he had attempted years earlier to purchase the city-owned property to the west (714 Ruth) which also could have eliminated the need for a variance. Bright noted the applicant’s property was largely surrounded by wetlands and industrial properties. Schau inquired why the applicant could not construct a garage in a conforming location near the northeast corner. The applicant replied the existing driveway was to the west of the house, not the northeast, and building by the northeast corner would require them to remove the decorative small pond in their front yard. Learned inquired if the applicant had considered rezoning to residential and seeking a lesser variance. The applicant stated they had but it would be too expensive. Seyburn stated given the orientation of the house he could understand why the applicant would not want to build near the northeast corner, as it would place the garage in front of their living room window. Schau noted the garage could also be built in the southeast corner and felt the applicant’s difficulties in this case were financial.

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

A motion was made by Robbe, seconded by Seyburn, to grant a variance to construct a 24-foot by 48-foot detached accessory building 18 feet from the (west) 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 having an accessory building in the same location as the previous garage; the variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district in the vicinity, the right to use property without a garage in front of the house; the immediate practical difficulty causing the need for the variance request was not created by the applicant; and the variance would not materially impair the intent and purpose of the zoning ordinance. In addition, the application and supporting material, staff report, and all comments, discussion and materials presented at this hearing be incorporated in the record of this hearing and the findings of the Board, and that action of the Board be final and effective immediately. Upon roll call vote: Philipp-Yes, Learned-No, Seyburn-Yes, Bright-Yes, Robbe-Yes, Schau-No, Schaefer-Yes. The motion passed 5-2.

OTHER BUSINESS: Seyburn stated he would not be available to attend the March meeting.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at 9:02 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator