

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – August 14, 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. Sixteen people were in the audience.

**MEMBERS PRESENT:** Alexander Philipp, Lowell Seyburn, Randall Schau, Jay Eichstaedt, Veronica Demaio, Natalie Rowe, Linda Finch, Brenda Carlton.

**IN ATTENDANCE:** Jeff Mais, Zoning & Codes Administrator and Randy Brown, City Attorney.

**MEMBERS EXCUSED:** John Byrnes

**APPROVAL OF THE MINUTES:** Rowe moved and Finch seconded a motion to approve the July 10, 2017 minutes as submitted. Upon voice vote, the motion was approved 7-0.

### **NEW BUSINESS:**

**ZBA #17-02, David Hoeksema, 443 West Centre Avenue:** Mais summarized the request for a variance to construct a 21.5-foot high accessory building where a maximum 14-foot height is permitted. Mr. Hoeksema was present to answer questions. Seyburn inquired what the height of the proposed pole barn would be to the peak. The applicant stated 23 feet 9 inches. Eichstaedt inquired if the applicant had considered removing the upper roofline to reduce the building height. Mr. Hoeksema said he would not construct the building unless it was aesthetically pleasing to him and that included having the upper roofline. Seyburn inquired what the applicant intended to store inside. The applicant stated the larger items include a tractor, brush hog, ATV, and cargo trailer. Seyburn inquired if there would be any business-related storage. The applicant responded no.

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

A motion was made by Rowe, seconded by Schau, to grant a variance to construct a 21.5-foot high accessory building where a maximum 14-foot height is permitted for the following reasons: there are exceptional circumstances applying to the property that do not apply generally to other properties in same zoning district, which include the size of the property, the presence of mature trees, and the distance to the neighboring residences; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to construct an accessory building, which is similar to that possessed by other properties in the same zoning district and in the vicinity; the immediate practical difficulty causing the need for the variance request was not caused by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the intent and purpose of the zoning ordinance. In addition the application and supporting 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. Upon roll call vote: Finch-Yes, Rowe-Yes, Philipp-No, Seyburn-Yes, Schau-Yes, Eichstaedt-Yes, Demaio-No. Motion passed 5-2.

**ZBA #17-03, Rusty Hotchkiss, 543 East Osterhout Avenue:** Mais summarized the request for a use variance to retain an existing accessory building without a principal use at 543 East Osterhout Avenue from August 15, 2017 through August 15, 2018. Ms. Rowe stated she had a conflict of interest and left the chambers. Mr. Hotchkiss was present to answer questions. Schau noted staff has recommended the variance be conditioned upon starting new home construction within 12 months and wondered if it might not be preferable to require construction be completed within 12 months. Mais replied staff's intent was to provide the applicant some flexibility. Schau stated his concern would be construction would start but come to a stop and not be completed. Mais stated that would be handled as an enforcement issue. Schau inquired if the applicant objected to any of staff's recommended conditions. Mr. Hotchkiss said the only condition he had an issue

would be the requirement to obtain a building permit for a building that was constructed by a previous owner many years earlier.

A public hearing was opened. Communications from Jennifer Robinson, 622 Cliffwood Avenue, William Powers 656 Cliffwood Avenue, stating no objection to the request were read into the record. Phil DeHaan 655 Cliffwood Avenue spoke in favor of the request. The public hearing was closed.

A motion was made by Demaio, seconded by Eichstaedt, to grant a use variance to retain an existing accessory building without a principal use at 543 East Osterhout Avenue from August 15, 2017 through August 15, 2018 conditioned upon 1) obtaining a building permit for the pole barn within 30 days; 2) obtaining a permit for a new dwelling within six months; and 3) beginning construction of a principal residence within twelve months. The condition, location, or situation of the specific piece of property or of the intended use of the property is unique to that property in which it is located, which include the accessory building was constructed originally on the same parcel which contained a principal use by a previous owner; the building structure or land cannot reasonably be used in a manner consistent with the uses allowed in the zoning district, due to the actions of the previous owner; the immediate unnecessary hardship causing the need for the variance request was not caused by the applicant; the variance will not alter the essential character of the surrounding neighborhood, and; the variance will not materially impair the intent and purpose of the zoning ordinance. In addition the application and supporting materials, staff report, and all comments, discussion and materials presented at 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: Carlton-Yes, Finch-Yes, Philipp-Yes, Seyburn-Yes, Schau-Yes, Eichstaedt-Yes, Demaio-Yes. Motion passed 7-0.

ZBA #17-04, Airway Fun Center, 5626 Portage Road: Mais summarized the request for a Temporary Use Permit to operate an outdoor “Pinz N’ Skinz” event at 5626 Portage Road from August 14 through October 14, 2017 and from May 15 through October 15, 2018. James St. John was present to answer questions. Seyburn inquired if there were any residences nearby. Mais stated the nearest residence was approximately one quarter mile away. Eichstaedt noted the airport across the street likely creates more noise than the proposed outdoor game.

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

A motion was made by Schau, seconded by Rowe, to approve a Temporary Use Permit with the following conditions 1) the event be permitted from August 14 through October 14, 2017 and from May 15 through October 15, 2018; 2) Event set-up as indicated on the submitted site plan; 3) Emergency plan, as submitted, will be provided to all volunteers/event workers 4) Emergency exits shall be clearly labeled and defined within the enclosed game area; 5) as indicated in the application, no tents or structures are to be used inside the enclosed area; 6) parking on site must not obstruct building entrances/exits, maneuvering lanes, or access roads and no parking is permitted in lawn areas. Upon roll call vote: Finch-Yes, Rowe-Yes, Philipp-Yes, Seyburn-Yes, Schau-Yes, Eichstaedt-Yes, Demaio-Yes. Motion passed 7-0.

ZBA #17-05; Senior Services, on behalf of Terry McGuire, 337 Gingham Avenue: Mais summarized the request for a 19-foot variance to construct a wheelchair ramp 11 feet from the front property line where a minimum 30 foot front setback is required.

A public hearing was opened. No applicant was present. A motion to postpone the item to the September 11, 2017 hearing was made by Rowe, seconded by Eichstaedt, Upon voice vote, the motion passed 7-0.

ZBA #17-07; Phillip Reed, on behalf of Theophlis and Diana Duckett, 228 Tamarix Avenue, Mais summarized the request for a five (5) foot side yard setback variance where an eight (8) foot setback is required. Mr. Reed

stated his clients replaced a shed that originally had been placed next to the garage without a permit by a previous owner many years earlier, and his clients did not realize a permit was required for the shed. Mr. Reed stated there were no practical conforming locations to place the shed due to the location of a five-foot high retaining wall in the side yard, the topography in the rear yard, and the presence of an in-ground pool.

A public hearing was opened. The residents at: 5416 Plateau Street, 5341 Plateau Street, and 5350 Plateau Street spoke in favor of the requested variance. The public hearing was then closed.

A motion was made by Rowe, seconded by Phillip to grant a variance for a five (5) foot side yard setback where an eight (8) foot setback is required with the condition that the attachment of the accessory building to the garage meets all applicable building codes based on the following reasons: there are exceptional circumstances applying to the property that do not apply generally to other properties in same zoning district, which include the presence of a five-foot retaining wall, and the topography in the rear yard; the variance is necessary for the preservation and enjoyment of a substantial property right, the right to have an accessory building, which is similar to that possessed by other properties in the same zoning district and in the vicinity; the immediate practical difficulty causing the need for the variance request was not caused by the applicant; the variance will not be detrimental to adjacent property and the surrounding neighborhood; and the variance will not materially impair the intent and purpose of the zoning ordinance. In addition the application and supporting 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. Upon roll call vote: Finch-Yes, Rowe-Yes, Philipp-Yes, Seyburn-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