

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – January 9, 2023

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

**MEMBERS PRESENT:** Linda Finch, Lynn Haddow, Michael Reedy, Winifred Kurtz, Linda Fry, Jay Eichstaedt, Ken Seybold

**MEMBERS EXCUSED:** Lena Jomaa

**IN ATTENDANCE:** Jeff Mais, Zoning & Codes Administrator; Josh Thall Assistant City Attorney.

### **APPROVAL OF THE MINUTES:**

A motion was made by Finch, and seconded by Eichstaedt, to approve the December 12, 2022 minutes as submitted. Upon voice vote, motion passed 7-0.

### **NEW BUSINESS:**

**ZBA #22-07; 8911 Austin Court:** Mais summarized the request for: a) an interpretation that a home occupation may be operated out of a garage; or b) a variance to operate a home occupation out of an accessory building at 8911 Austin Court. Mr. Peacock explained that they had gotten approval for a home occupation at their previous residence at 1555 Redstock Avenue in 1994. The applicant, Mr. Peacock, stated he was under the belief that in 1994 the city allowed home occupations in accessory buildings if that accessory building was part of the ‘principle building’ and code section 1240.08E at the time in his opinion reflected that. The applicant stated the language in the current code is not consistent between the medical marijuana section and other home occupation sections. Mr. Peacock added he thought the code definitions were confusing and did not think that ‘garage’ was defined in the code and that when they moved into the current residence at 8911 Austin Court he believed they were operating under the same approval granted in 1994 at 1555 Redstock Avenue. He asked the Board to consider that since his home occupation was not disturbing any neighbors that it should be considered consistent with the spirit and intent of the Zoning Ordinance. Mr. Peacock concluded by saying he was open to the Board imposing any conditions they saw fit to place on a variance in order to protect the neighborhood. Eichstaedt inquired if the medical marijuana section in paragraph C was applicable to paragraph A of Section 42-129. Mais responded paragraph C standards were not applicable to paragraph A and were worded differently to comply with State of Michigan’s marijuana laws. Haddow inquired if ZBA decisions were property specific or if they are transferrable between different properties. Attorney Thall stated Board decisions are property specific and not transferable. Eichstaedt inquired how deliveries occurred. The applicant stated mostly with personal vehicles but on rare occasions occurred with larger trucks. Eichstaedt inquired about business operations and how often deliveries occurred. The applicant stated deliveries were usually five or sometimes six days a week. Seybold inquired how the business had changed since 1994. Mr. Peacock stated that it now involved two people working part time instead of one. Finch inquired if the applicant had considered moving operations out of the garage and into the house. The applicant stated doing so would disrupt the living room and dining room. Eichstaedt inquired how many square feet the home occupation took up. Mr. Peacock responded the attached (576 square feet) garage. Reedy noted 576 square feet exceeded the maximum 25% of living area permitted.

A public hearing was opened. Sharon and Tammy Gildea, 8905 Austin Court, stated they found the home occupation deliveries to be disruptive and brought too much traffic into the dead end street. A letter of support from James Dreher, 2510 East Shore Drive was read into the record. A letter of opposition from Tammy Gildea-Bird, 8905 Austin Court was read into the record. A motion was made by Finch, seconded by Fry, to close the public hearing. Upon voice vote the motion passed 7-0.

After additional discussion, a motion was made by Eichstaedt, seconded by Finch, to make an interpretation that Section 42-129(A)(2) does not permit home occupations to operate out of a garage. Upon roll call vote: Eichstaedt-Yes, Fry-Yes, Haddow-Yes, Reedy-Yes, Seybold-Yes, Kurtz-Yes, Finch-Yes; the motion passed 7-0.

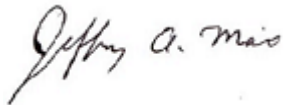
A motion was made by Seybold, and seconded by Eichstaedt to deny a variance to operate a home occupation out of an accessory building at 8911 Austin Court for the following reasons: there are no exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district; the variance is not necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district; the immediate practical difficulty was caused by the applicant; and the variance will materially impair the intent and purpose of the zoning ordinance. Upon roll call vote: Eichstaedt-Yes, Fry-Yes, Haddow-Yes, Reedy-Yes, Seybold-Yes, Kurtz-Yes, Finch-Yes; the motion passed 7-0.

**OTHER BUSINESS:** None

**STATEMENT OF CITIZENS:** None.

**ADJOURNMENT:** The meeting was adjourned at 8:25 pm.

Respectfully submitted,

A handwritten signature in black ink that reads "Jeff Mais". The signature is written in a cursive, slightly slanted style.

Jeff Mais  
Zoning & Codes Administrator