

CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – March 8, 2021

The City of Portage Zoning Board of Appeals virtual meeting was called to order by Chair Finch at 7:00 p.m.

MEMBERS PRESENT: Linda Finch, Jay Eichstaedt, Lena Jomaa, Alexander Philipp, Lynn Haddow

MEMBERS EXCUSED: Linda Fry

IN ATTENDANCE: Jeff Mais, Zoning & Codes Administrator; Catherine Kaufman, City Attorney.

APPROVAL OF THE MINUTES: Philipp moved and Eichstaedt seconded a motion to approve the February 8, 2021 minutes as submitted. Upon roll call vote, the motion was approved 5-0.

NEW BUSINESS:

ZBA #20-10; 7171, 7000 Portage Road: Mais summarized the request for variances to construct an approximate 400,000 square foot two-story building addition that is: a) within 50 feet of the (north) front property line where a minimum 100-foot setback is required, b) is 66 feet 8 inches high where a maximum 60 feet is permitted, and c) construct a temporary off-street parking lot at 7000 Portage Road with an asphalt milling surface where asphalt or concrete is required. Joshua Slater was present on behalf of Pfizer to answer any questions. Eichstaedt inquired if the pedestrian bridge over Portage Road would be temporary or permanent. Mr. Slater responded it will be removed after construction is completed. Finch inquired if the temporary bridge would have adequate clearance height for semis. Mr. Slater responded yes and they are currently working out the details with the City. Finch inquired why the additional 12 inches of building height is needed. Mr. Slater stated to adequately align with the existing building 41. Jomaa inquired if the applicant agrees with the condition to remove the temporary parking lot within 30 days of completion. Mr. Slater responded yes.

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

After additional discussion, a motion was made by Eichstaedt, seconded by Jomaa, to grant variances to construct an approximate 400,000 square foot two-story building addition that is: a) within 50 feet of the (north) front property line where a minimum 100-foot setback is required, b) is 66 feet 8 inches high where a maximum 60 feet is permitted, and c) construct a temporary off-street parking lot at 7000 Portage Road with an asphalt milling surface where asphalt or concrete is required, conditioned upon removal of the asphalt milling surface and restoration to its original state within 30 days of completing construction of the MAP facility, for the following reasons: there are exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zoning district, which include the operation of internal manufacturing processes, the unique nature of the manufacturing campus, and compliance with FDA regulations; 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, the manufacture of pharmaceuticals; 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. In addition, the application and supporting materials, staff report, and all comments 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, Jomaa-Yes, Eichstaedt-Yes, Philipp-Yes, Haddow-Yes. Motion passed 5-0.

ZBA #20-11; 7215 South Westnedge Avenue: Mais summarized the requests for: a) a variance from the requirement that a medical marijuana dispensary be allowed to locate within 972 feet from a park where a minimum 1000 feet separation distance is required; and b) a variance from the requirement that a ten-foot greenstrip be provided between the right-of-way and parking lot. Mais stated both variances had already been approved by the Board but had expired due to construction not commencing and the applicants were

now seeking renewal of both variances. James Brayton stated they had run into several covid-related delays with both the State and with contractors and were unable to start construction when they initially wanted to.

A public hearing was opened. The owner of 7130 South Westnedge Avenue stated he did not think a medical marijuana dispensary should be allowed at 7215 South Westnedge Avenue, as it would promote the use of drugs in the community and would devalue surrounding properties. Eichstaedt stated he works in commercial real estate and seriously doubts the clinic would negatively affect surrounding property values and noted similar buildings and operations in Kalamazoo are indistinguishable in both appearance and impacts from any other professional offices. Eichstaedt added the City of Portage spent years of study and held numerous public hearings and ultimately decided medical marijuana facilities are allowed in commercial areas. Eichstaedt inquired if anyone objected to either variance request during the Board's two previous public hearings. Mais responded no. Attorney Kaufman reminded the Board they had previously granted the requested variances, made findings of practical difficulties, and should be focusing now on whether the previously cited practical difficulties concerning site design are still applicable. The public hearing was closed.

After additional discussion a motion was made by Eichstaedt, seconded by Philipp, to grant: a) a variance from the requirement that a medical marijuana dispensary be allowed to locate within 972 feet from a park where a minimum 1000 feet separation distance is required; and b) a variance from the requirement that a ten-foot greenstrip be provided between the right-of-way and parking lot, conditioned upon a ten-foot greenstrip with trees and shrubs as otherwise required by the Zoning Code be provided within the right-of-way for the following reasons: there are exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zoning district, which include; the presence of wetlands, creek and railroad tracks between the subject property and park, and the irregular right-of-way width; 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, the right to operate a medical marijuana dispensary; 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. In addition, the application and supporting materials, staff report, and all comments 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, Jomaa-Yes, Eichstaedt-Yes, Philipp-Yes, Haddow-Yes. Motion passed 5-0.

ZBA #20-12; 3428 East Shore Drive: Mais summarized the request for a variance to construct a 376 square-foot attached pergola 32 feet 9 inches from the rear (south) property line where a minimum 40-foot rear yard setback is required. Eichstaedt requested clarification who the applicant is. Mais stated Sumner Brinker is the contractor and Vishal Gupta is the property owner. Mr. Brinker explained the pergola will be attached to the house to provide additional support, would be ten feet high, and features a retractable cover that can deploy when it rains outside. Philipp inquired what part of the pergola the rear setback is calculated from. Mais responded from the vertical support posts. Jomaa inquired how the applicant felt about a detached pergola. Mr. Gupta stated they wanted to construct an attached pergola. Eichstaedt inquired how the applicant might feel about a lesser variance. Mr. Gupta stated they already purchased the materials to construct the pergola as requested. Eichstaedt inquired if the pergola could be considered detached if it were only an inch or two from the dwelling. Mr. Brinker stated they may be able to move the pergola so it isn't contacting the wall but would want to extend flashing between the pergola and house. Mais stated the pergola is subject to the main building setbacks if it shares any contact with either the roof or wall of the dwelling. Finch inquired if electric would be run to the pergola. Mr. Brinker responded yes.

A public hearing was opened. Susan Sandmeyer, 3520 East Shore, spoke in support of the request. Mr. Gupta stated all of the neighbors have said they like how the proposed pergola will look. Attorney Kaufman reminded the Board the standard for approving a variance is not whether the neighbors like how something will look but, rather, if there is a practical difficulty present that prevents complying with code. The public hearing was closed.

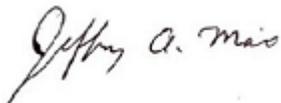
After additional discussion, a motion was made by Finch, seconded by Philipp, to deny the requested variance for the following reasons: there are no exceptional circumstances or conditions applying to the property that do not apply generally to other properties in the same zoning district; the variance is not necessary for the preservation and enjoyment of a substantial property right enjoyed by other properties in the same zoning district in the vicinity because there are conforming alternatives available, such as constructing a shallower attached pergola or a detached pergola; the immediate practical difficulty causing the need for the variance request was created by the applicant; 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 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, Jomaa-Yes, Eichstaedt-Yes, Philipp-Yes, Haddow-Yes. Motion passed 5-0.

OTHER BUSINESS: Finch inquired when the Board might again meet in person. Attorney Kaufman responded the State has changed its covid restrictions after March 31, 2021 to allow up to 25 people in a room, however, the decision of how and when to conduct meetings in person will be up to the city administration. Mais stated it was not known when in person meetings would resume, but Board members will be notified of any changes in meeting format taking place as soon as it is known.

STATEMENT OF CITIZENS: None.

ADJOURNMENT: The meeting was adjourned at 8:27 p.m.

Respectfully submitted,



Jeff Mais
Zoning & Codes Administrator