ZONING BOARD OF APPEALS

March 9, 2020
CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL
APPROVAL OF MINUTES
* January 13, 2020 meeting
OLD BUSINESS:
NEW BUSINESS:
* 1 ZBA #19-12; 2530 Ashford Trail: Requesting a) a determination that there has been a change in circumstances since the January 13, 2020 hearing; and b) a variance to allow a Juliana mini pig to be kept as an emotional support animal at 2530 Ashford Trail.
OTHER BUSINESS:
STATEMENT OF CITIZENS:
ADJOURNMENT:
MATERIALS TRANSMITTED

Star (*) indicates printed material within the agenda packet
The City of Portage Zoning Board of Appeals meeting was called to order by Vice Chair Eichstaedt at 7:00 p.m. in the Council Chambers. Seven people were in the audience.

**MEMBERS PRESENT:** Alexander Philipp, Jay Eichstaedt, Linda Fry, John Byrnes, Randall Schau, Jeff Wettig, and Linda Finch.

**MEMBERS ABSENT:**

**MEMBERS EXCUSED:**

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

**APPROVAL OF THE MINUTES:** Finch moved and Fry seconded a motion to approve the November 11, 2019 minutes as submitted. Upon voice vote, the motion was approved 7-0.

**NEW BUSINESS:**

ZBA #19-10: 5811, 5817 South Westnedge Avenue, 122 Boston Avenue: Mais summarized the variance requests to a) construct a building 23.5 feet from the (north) front property line where a minimum 30-foot setback is required; b) construct a parking lot 10 feet from the (north) front property line where a minimum 27-foot front setback is required; and c) permit parking lot ingress/egress across a five-foot wide strip of residentially zoned property. Houston Peterson representing the applicant was present answer questions. Eichstaedt asked the applicant to explain the use of each building. Mr. Peterson stated he believed they are vacant. Schau inquired if the applicant had considered locating the building near the south side of the property so variance a) would not be needed. Mr. Peterson responded they had looked at it, but such a configuration would not accommodate a drive-thru for the restaurant. Eichstaedt noted the proposed building would be a reduction in degree of nonconformity and would be located further away from Boston Avenue than the existing building. Schau inquired if the property across the street at 121 Boston is zoned commercial. Mais stated yes.

A public hearing was opened. Copies of a letter, affidavit of ownership, and utility bills were provided by Rajendra Sharma and read into the record. Mr Sharma stated he still owns the subject properties. The applicant provided the Board several exhibits including copies of a Quitclaim deed signed by Mr. Sharma, Kalamazoo County Register of Deeds title search results, and a signed Court Order for the eviction of Raj Sharma. Attorney Eichstaedt inquired if the Board had authority to resolve ownership disputes. Attorney Bear advised the Board they did not have authority, and based on the title record, should move forward with the variance request, as resolution of civil disputes is a function of the courts. Schau noted if the Board were to grant a variance and it was later found by the courts that the applicant did not own the property, it would invalidate that variance. Eichstaedt inquired if that was Mr. Sharma’s signature on the Quitclaim deed and if so why did he sign it. Mr. Sharma responded it was his signature but he felt he was pressured to sign it and was not given just compensation. The public hearing was closed.

After brief discussion, a motion was made by Schau, seconded by Finch, to grant variances to: a) construct a building 23.5 feet from the (north) front property line where a minimum 30-foot setback is required; b) construct a parking lot 10 feet from the (north) front property line where a minimum 27-foot front setback is required; and c) permit parking lot ingress/egress across a five-foot wide strip of residentially zoned property, for the following reasons: there are exceptional circumstances applying to the property that do not apply generally to other properties in the same zoning district, which include the property at 121 Boston is commercial, and the proposed building is a reduction in the degree of nonconformity. The variance is necessary for the preservation and enjoyment of a substantial property right, the right to develop property with a safe traffic flow; 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, discussions 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: Wettig-Yes, Fry-Yes, Finch-Yes, Philipp-Yes, Byrnes-Yes, Schau-Yes, Eichstaedt-Yes. Motion passed 7-0.

ZBA #19-11: 2530 Ashford Trail: Mais summarized the request for a variance to allow a Juliana mini pig to be kept as a household pet/emotional support animal at 2530 Ashford Trail. Erin Rafferty described how the proposed animal would live inside as a household pet and named the supporting materials she submitted along with her application. She added her son experiences anxiety and the doctor suggested an emotional support animal might be beneficial. Finch inquired if the applicant had any documentation from the pediatrician, and did it have to be a pig as opposed to another sort of animal. The applicant stated she did not have documentation, but they visited the subject mini pig and observed that it reduced anxiety more than other animals.

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 Finch, seconded by Schau to deny the request to allow a Juliana mini pig to be kept as a household pet/emotional support animal at 2530 Ashford Trail 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 others in the same zoning district in the vicinity because there are conforming alternatives available such as keeping a different domestic pet that is not a farm animal. 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: Wettig-Yes, Fry-Yes, Finch-Yes, Philipp-Yes, Byrnes-No, Schau-Yes, Eichstaedt-Yes. Motion passed 6-1.

OTHER BUSINESS:

STATEMENT OF CITIZENS: None.

ADJOURNMENT: There being no further business, the meeting was adjourned at 8:10 p.m.

Respectfully submitted,

Jeff Mais
Zoning & Codes Administrator
ZONING BOARD OF APPEALS APPLICATION

FOR COMPLETION BY APPLICANT

Application Date __________

Name of Applicant Matthew Rafferty

Print __________

Applicant’s Address 2530 Ashford Trail

Signature __________

Phone No. 269 806 7175

Name of Property Owner (if different from Applicant)

Address ____________________________

Phone No. __________________________

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

Street Address Same

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:

________________________________________________________________________________________

Application Fee __________ (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 121 Paragraph D 1 a.

Regarding: Use Area Yards

Setbacks Parking Other

Reason for Request (Also complete page 2 of application): To keep a domestic American Juliana mini pig as an emotional support pet.

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: Determination of change in circumstances. Variance to keep a mini juliana pig as a pet as well as an emotional support animal.

FOR STAFF USE

Application Number: ________

Filing Date: ________

Tentative Hearing Date: ________

Previous Application Filed Regarding This Property: ________
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 is less than 10 acres as specified in zoning for livestock. However, a Juliana mini pig is not livestock. They are bred for companionship, not domestication.

2. Are the physical characteristics you explained above unique and not shared by neighboring properties? (Attach additional sheets if needed.)
   N/A

3. Can the property be reasonably used for the uses permitted in the zoning district without granting the variance? (Attach additional sheets if needed.)
   No, family is unable to have a dog as a pet (family member bitten by Haags in past), allergy to cats and rabbits, hamsters, gerbils, rodents are difficult to train and not pet to be enjoyed indoors and outdoors.

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.)
   The variance is the minimum necessary to obtain a mini pig as an emotional support animal.

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.)
   Property does not have neighbors/neighbor property that can see, hear, or interact with the mini pig, because she will live inside.

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.)
   The mini pig will be contained and/or leashed if leaving the home.

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.)
   Applicants:

8. Explain how the variance would fulfill the spirit and intent of the Zoning Ordinance. (Attach additional sheets if needed.)
   The keeping of livestock is defined in zoning ordinances. Per definition of Juliana mini pig, this pig is not livestock and previously spayed as to not be bred for profit. This is in fact an animal kept for pleasure and companionship and emotional support.

Signature of Applicant  Date

7900 South Westnedge Avenue  Portage, Michigan 49002  (269) 329-4477
www.portagemi.gov
TO: Zoning Board of Appeals
FROM: Christopher Firth, Interim Director of Community Development
SUBJECT: ZBA #19-12, Matthew Rafferty, 2530 Ashford Trail, R-1B, One Family Residential
CODE SECTION: 42-121(D)(1)(A); Domestic Animals, p. CD42:133.

APPEAL: 42-623(C)(5); Decisions

Requesting: a) a determination that there has been a change in circumstances since the January 13, 2020 hearing; and b) a variance to allow a Juliana mini pig to be kept as an emotional support animal at 2530 Ashford Trail.

STAFF RECOMMENDATION:
The applicant makes the above named requests per the enclosed application. The Board denied the request to allow a Juliana mini pig to be kept as an emotional support animal at 2530 Ashford Trail at the January 13, 2020 hearing. Both city staff and Board members inquired if the applicant could provide supporting documentation from a medical authority stating the subject animal would provide psychological/therapeutic benefit for a member of the household. The applicant was unable to provide this information and, as a result, the Board denied the request for lack of a demonstrated practical difficulty.

Section 42-623(C)(5) states that an application may not be resubmitted for one year following a denial, unless permitted by the Board after a determination that there has been a change in circumstances since the last request. On January 22, 2020 the applicant provided staff a letter from Thomas B. Henry, MD, a board certified psychiatrist and licensed counselor, which recommends an emotional support animal for a member of the household. Due to the private contents dealing with a specific diagnosis and condition, a copy of the letter has not been included with the agenda. Staff will, however, confirm that a medical authority in this instance has determined an emotional support animal would provide psychological/therapeutic benefit for a family member to treat a specific medical condition.

Concerning request a), the applicant was unable to demonstrate a practical difficulty on January 13, 2020, however, subsequent to the denial, the applicant has provided written documentation from a medical authority supporting their request. Staff, therefore recommends the Board find that there has been a change in circumstances since January 13, 2020 and permit the applicant to reapply for a variance to allow a Juliana mini pig to be kept as an emotional support animal at 2530 Ashford Trail.

With regard to request b), the applicant may now cite the treatment recommendation of a medical authority as an exceptional circumstance or extraordinary condition. It is recommended, the variance be granted with the
following conditions: 1) the rear yard be enclosed with a fence not less than 48 inches high; 2) the animal be kept on a leash at all times when not indoors or in the rear yard.

PRACTICAL DIFFICULTY: Recommendation of medical authority. See suggested motion form.
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.