

## CITY OF PORTAGE ZONING BOARD OF APPEALS



Minutes of Meeting – May 10, 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, Linda Fry, Lena Jomaa, Alexander Philipp, Lynn Haddow, Jay Eichstaedt

**MEMBERS EXCUSED:**

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

**APPROVAL OF THE MINUTES:** Eichstaedt moved and Fry seconded a motion to approve the April 12, 2021 minutes as submitted. Upon roll call vote, the motion was approved 6-0.

### **NEW BUSINESS:**

**ZBA #20-16: 10003 Handel Street:** Mais summarized the request to construct a 1,526 square-foot accessory building, which will result in 2,145 square feet of accessory building area where a maximum 1,128 square feet is permitted. Keith Kurtz explained the variance he was granted expired because the seller dragged their feet on the sale of the property. The applicant stated he did not realize that adding lean-to's on both sides of the pole barn counted as accessory building area, but he wanted the areas to store his motorcycle trailer and to create a covered outdoor patio area for grilling. The applicant added he was moving the proposed location of the pole barn farther south from the north property line than proposed in 2018, putting it more or less in alignment with the adjacent residence, due to discovering the location of the septic field. Fry inquired if he intended to lease the space for others to store items. The applicant responded no, it was all for personal storage.

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 Haddow, to grant a variance permitting construction of the 960 square-foot pole barn as previously approved in October, 2018, 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 limited storage space; 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 improve one's property; 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, Haddow-Yes, Philipp-Yes, Eichstaedt-Yes, Fry-Yes. Motion passed 6-0.

**ZBA #20-17: 3428 East Shore Drive:** Mais summarized the requests for a) a finding there has been a change of circumstances since the March 8, 2021 denial; b) variance to construct a 376 square-foot detached pergola where a maximum 80 square-foot structure is permitted; and c) variance to erect a 10-foot high detached pergola in a rear lakeside yard where a maximum 8-foot high accessory building is permitted. Greg Dobson spoke on behalf of the owner, Vishal Gupta. The applicant stated their goal was to create a structure that would be aesthetically pleasing and that the neighbors would like. Mr. Dobson stated the same size pergola is proposed as in the March 8 request, however, because detached, it would now be a different request that is subject to height and size restrictions that the previous attached pergola was not. The applicant stated the additional height is needed because the patio area is two feet below the elevation of the dwelling and the rear door could not be opened if the pergola were eight feet high. The pergola would be located one inch from the house so that it would minimize the impacts of the sight lines to neighboring properties. Mr. Dobson said the proposed size of the structure was consistent with the size of the existing patio area and the larger size is necessary to appear aesthetically pleasing as well as provide adequate area for shade. Philipp inquired if the drawing in the agenda was to scale. Mr. Dobson said yes. Eichstaedt noted the current request was identical

to the previous request with the exception of moving the pergola one inch. Finch inquired who installed the patio. Mr. Dobson said the owner when the property was regraded. Finch inquired what material the patio was made from. Mr. Dobson responded a tan-colored poured concrete.

A public hearing was opened. Ron Clifton, 3420 East Shore Drive, called in and stated that as a next door neighbor he was opposed to the request and thought the pergola would interfere with his view of the lake. Jomaa noted Mr. Clifton had previously signed the applicant's letter of support and asked why he was now opposed to the request. Mr. Clifton stated he signed it before he understood how far the pergola would extend towards the lake. John Fisher, 3506 East Shore Drive called and spoke in support of the request. The public hearing was closed.

After additional discussion, a motion was made by Haddow, seconded by Jomaa, to a) make a finding there has been a change of circumstances since the March 8, 2021 denial. Upon roll call vote: Finch-Yes, Jomaa-Yes, Haddow-Yes, Philipp-Yes, Eichstaedt-No, Fry-Yes. Motion passed 5-1

A motion was made by Eichstaedt, seconded by Haddow, to deny: b) a variance to construct a 376 square-foot detached pergola where a maximum 80 square-foot structure is permitted; and c) variance to erect a 10-foot high detached pergola in a rear lakeside yard where a maximum 8-foot high accessory building is permitted for the following reasons: there are no exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zoning district. 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-No, Philipp-No, Fry-Yes. Motion to deny passed 4-2.

ZBA #20-18; 7813 South 12<sup>th</sup> Street: Mais summarized the requests for: a) an appeal of administrative determination that three 23-foot by 10-foot crosses affixed to a telecommunications tower meet the definition of sign; or b) a variance to erect a 230 square-foot sign (having three faces) on a telecommunications tower at 7813 South 12<sup>th</sup> Street, where all signs are prohibited. Eichstaedt inquired if the applicant could construct a cell tower at this location. Mais responded the Planning Commission has already approved the tower with the sheathing, but left the matter of the crosses to the Zoning Board of Appeals. Derek McGrew spoke on behalf of the applicant, AT&T, and stated they began a search for a suitable tower location two years ago and the only party interested has been the Berean Baptist Church. The lease had been worked out with the understanding that the tower would be made to look like a church bell tower with crosses on it. Mr. McGrew added the tower would be used among other things to accommodate FirstNet services which would help local emergency first responders. Mr. McGrew displayed photographs of 14 different church bell steeples having crosses on them and stated the crosses were not intend to draw attention to the church, but were considered architectural features and not signs. Counsel for AT&T stated the tower needed to look like a bell tower so that it would appear harmonious with the surrounding uses, which happens to include a church on site. Finch inquired if the church was requiring the crosses as part of their lease. The applicant responded it was not specifically a term of the lease, but the church has made it clear they want the crosses. Eichstaedt inquired if it was not expressly a term of the lease, did the church have final review. The applicant responded the church could reject a design without crosses. Attorney Thall encouraged the Board to focus on the Zoning Code definition of sign in reviewing the appeal and if the Board upholds staff's determination, apply the specific review criteria for a sign variance, which in this instance would entail the number, size, and height of a sign. Eichstaedt noted the 14 photos shown by the applicant earlier all depicted crosses affixed to churches not cell towers. Eichstaedt inquired of staff if the church could put a cross on the church building, as opposed to the cell tower. Mais responded the church could erect an up to 100 square-foot cross if it was mounted to the church.

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

After additional discussion, a motion was made by Eichstaedt, seconded by Philipp, to uphold the administrative determination that three 23-foot by 10-foot crosses affixed to a telecommunications tower

meets the definition of sign. Upon roll call vote: Finch-Yes, Jomaa-Yes, Haddow-Yes, Philipp-Yes, Eichstaedt-Yes, Fry-Yes. Motion passed 6-0.

A motion was made by Eichstaedt, seconded by Philipp, to deny b) a variance to erect a 230 square-foot sign (having three faces) on a telecommunications tower at 7813 South 12<sup>th</sup> Street, where all signs are prohibited for the following reasons: there are no exceptional or extraordinary 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 other properties in the same zoning district in the vicinity because there are conforming alternatives available such as erecting cross signs on the church building; the immediate practical difficulty causing the need for the variance request was created by the applicant; the variance will be detrimental to adjacent property and the surrounding neighborhood, and; the variance will 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, Haddow-Yes, Philipp-Yes, Eichstaedt-Yes, Fry-Yes. Motion passed 6-0.

**OTHER BUSINESS:** None.

**STATEMENT OF CITIZENS:** None.

**ADJOURNMENT:** The meeting was adjourned at 9:12 p.m.

Respectfully submitted,



Jeff Mais  
Zoning & Codes Administrator