

## CITY OF PORTAGE ZONING BOARD OF APPEALS

Minutes of Meeting – January 13, 2020

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.

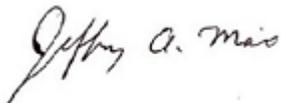
After additional discussion, a motion was made by Finch, seconded by Schau to deny the request to allow a Juliana mini pig to be kept as a household pet/emotional support animal at 2530 Ashford Trail for the following reasons: there are no exceptional or extraordinary circumstances or conditions applying 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