

**BROOKS TOWNSHIP
ZONING BOARD OF APPEALS HEARING
Scott Portenga Re-Hearing
Parcel# 62-19-33-103-009
October 6, 2021
APPROVED**

MEMBERS PRESENT: Frank Janusz, Mark Pitzer, Dave Warren, Derrik McLeod, Greg Myers

MEMBERS ABSENT: None

MEMBERS OF THE PUBLIC PRESENT: Joe Selzer, Zoning Administrator, Cory Nelson, Township Supervisor, John Clyde, Cassie Boone, Scott Portenga, Lisa Portenga, Jan Hohs, Larry Hohs, Clarence Wamser

Chairman Janusz called the meeting to order at 7:00 PM. This meeting was properly posted and a quorum of the Brooks Township Zoning Board of Appeals was present. Minutes are not a transcription as comments have been summarized for brevity and clarity.

APPROVAL OF AGENDA:

Moved by Myers, **seconded** by Pitzer to approve the agenda. **Approved Unanimously**

APPLICANT: Scott and Lisa Portenga were physically present.

REASON FOR HEARING:

Chairman Janusz stated the hearing is the result of a variance request, by Scott Portenga to reduce the required side property setback requirement for addition of a lean-to garage located at 1717 E. 88thSt., Parcel # 62-19-33-103-009.

ADJOINING PROPERTY OWNERS' NOTIFICATION:

All property owners within 300 feet of the above parcel were re-notified with a copy of the Public Notice for the October 6th hearing.

RULES OF PROCEDURE:

Chairman Janusz introduced himself and explained the order of procedure for the hearing.

ZONING ADMINISTRATOR COMMENTS: (See Staff Report for Variance Request filed 5/5/21)

Joe Selzer, ZA, stated that on August 25, the Township received a letter from the Portenga's attorney including 10 photographs of structures similar the one Portenga's wanted to add on to their garage. He pointed out that each of the photos sent were "free-standing, detached structures". Based on measurement of each structure he determined that all but two (2) of the structures met side setback requirements and were the required distance from any other structure. He found that four (4) of them had secured a permit and it was difficult to tell when then others had been placed on the properties.

Q: ZBA, Pitzer: Does it matter what type of structure it is when added onto an existing structure; IE: metal, stud, pole etc.

R: ZA, Selzer: A structure could be various types of material (a metal carport or stick built structure, etc.). The key is that it is free-standing, and not attached to the house. Setbacks are different from an attached garage.

Q: ZBA, Janusz: Does a free-standing structure need to also abide with set-back requirements?

R: ZA, Selzer: Yes, free-standing structures, or detached, accessory structures have separate setback requirements - Five feet (5') from the side property line; fifteen feet (15') from the rear; twenty-five feet (25') from the front; and cannot be closer than 10' to any other structure.

APPLICANT'S REASONS FOR APPEAL:

Scott Portenga advised the board that the proposed structure is a carport that is not going to be attached to the garage. Lisa Portenga added that it will also be a temporary structure that can be taken down.

ZBA MEMBERS QUESTIONS AND COMMENTS and SUPPORTING/OPPOSING STATEMENTS FROM PUBLIC:

Q: ZBA Warren: So your application states you are building a lean-to, but that is not actually what you want to build?

R: Lisa Portenga: I'm not sure what the actual term is; I call it a lean-to because it will have a slanted roof; it will be like a carport.

Q: ZBA Warren: It sounds like a "free-standing" metal structure. So, your variance request is actually a variance request for the side setback, and the setback area between the two structures?

R: Lisa Portenga: I didn't know we had to have a variance between the two structures.

ZBA Warren: Structures need to have ten feet (10') of separation; separate buildings need to be ten feet apart for both conforming and non-conforming lots. If you were to build a garage, it would need to be at least 10 feet away from your house. Essentially what you're doing is building another structure.

R: Lisa Portenga: Right.

Q: ZBA Warren: Your current request asks for a variance for the side lot for a lean-to?

R: Lisa Portenga: Yes

ZBA Warren: But your current request is not for a lean-to, it's a free-standing structure, so you need two (2) variances.

ZBA Janusz: There appears to be some confusion from the beginning; we are looking at what's on the application and you (the Portenga's), have a different concept.

R: Lisa Portenga: Can I clarify something? I first applied in June; your variance application is not on-line, so I assumed your on-line building application needed to be filed and it showed that it was unattached. When I dropped it off with the check, I received a call from Joe who stated I'd completed the wrong form and needed to complete new paperwork. When I completed new paperwork, I was told it had to be attached. So the hearing in July was for an attached structure, but we did not actually want it to be attached.

Q: ZBA, Pitzer: Joe, can you clarify this? If it is going to be a separate free-standing structure, it needs to be ten feet from the garage, correct?

R: ZA, Selzer: That's correct; it also needs to be 5 feet (5') from the side property line. Currently, there is fifteen feet (15') from the side of the garage to the property line. They want to put up a twelve-foot structure. There is not sufficient room (ten feet separation from the current garage plus five feet from the side property line) to put up a twelve-foot structure. I told Mrs. Portenga that the only way they could possibly have the structure added, would be to file an application for a variance. If they wanted it in that location, it could not be separate from the garage and they could request a reduction in the side property line. That would potentially give them three feet from the side property line instead of the five feet that's required by ordinance for a detached garage. I told her the only way they could have it done correctly was with a variance.
There is an amended application, however, the Township attorney advised to accept the new application but not process it at this point. The (re) hearing was to proceed with the original application before dealing with an updated request.

Lisa Portenga: States that was not her understanding. According to her attorney, (based on a conversation with the Township attorney), she was advised to complete a new application. Her attorney wanted to complete a new, amended application but she was advised she would need to complete it and drop it off. She states she dropped the amended application off around September 13th, along with seven copies of schematics and where it would be.

ZA, Selzer: The amended application was received, and he again stated that the Township attorney advised him to take the new (amended) application, but to proceed with the hearing based on the original request. When asked if he agreed with that decision by ZBA Warren, he stated yes, as any new application would be considered a new variance request and involve an additional fee for the applicant. It appears that the attorneys will need to clarify unclear issues.

Q: Lisa Portenga: What is the purpose of this hearing if you are basically going to deny the Request? All her neighbors here, did not receive notification of the hearing. This is a violation of the Open Meetings Act.

R: ZA, Selzer: The attorneys believed a rehearing would be in order as there were allegations of an Unfair Open Meetings Act, along with another violation. To avoid going through litigation through the court they agreed to re-hear the original variance at this time.

ZBA, Janusz: Let's say it could have happened that letters did not go out, we have a re-hearing now to address that issue and proof that letters did go out for the re-hearing. The allegation of an Unfair Open Meetings Act is being addressed by holding a re-hearing as advised by the Township Attorney.

Lisa Portenga: If you're going to do a re-hearing we should have the opportunity to submit an amended application?

Q: ZBA Warren: What is the timeframe for handling an amended application

R: ZA, Selzer: Once a variance is denied, they cannot reapply for twelve (12) months. However, there are extenuating circumstances with this particular request. For example, if the original variance had been denied, the Portenga's could not apply for twelve months.

Q: ZBA Warren: Because of an alleged government oversight this is considered the first legitimate hearing for this variance, how long do they have to amend their application prior to the hearing.

R: ZA Selzer: I don't know the answer as this situation has never occurred. I was advised by the Township Attorney, the hearing was based on the original request so I did not go through the Standards of Review with the amended request.

Lisa Portenga: I'm sure our attorney would have told us that you had not accepted the amended application if the Township Attorney actually said that. To me, this is a mute point if you are just going to do a re-hearing on the first request, you're just going to deny it. Yet the Zoning Administrator has made exceptions for other neighbors. For example, Larry and Jan, they put a large addition on their home; they are within several feet of the public access fence line and his builder came up to talk to Joe because they thought they would need a variance and Joe waived it.

ZA Selzer: I don't think we are comparing apples to apples. They were allowed to build their house in the same footprint. If their setback did not meet the requirements because it was in existence prior to the ordinance coming into effect they were grandfathered in. It's not the same thing as putting up a carport or accessory structure.

ZBA CHAIRMAN REVIEW

ZBA Janusz: Every variance has different issues that you may not be aware of and certain standards have to be met. Your initial request did not meet several of the standards necessary. My understanding is this re-hearing was held due to the allegation that the Township violated the Open Meetings Act. We are trying to give you another fair hearing.

FINAL REBUTTAL/COMMENTS

Lisa Portenga: On my amended application that I filed.

ZBA Warren: That application is not in front of the board right now.

ZBA Pitzer: I believe we should stop this meeting and reschedule after the attorneys have come to a joint solution.

Lisa Portenga: We are willing to work with the township. We are willing to work with the Zoning Board to provide whatever structure that you're willing to allow so we can cover our boat in the winter. We have a spot, it's not hindering anyone's view, our property is pretty much immaculately maintained. We are a positive contribution to the township. All of my neighbors are here in support and don't have an issue with it. So, we are willing to work with you if you are willing to work with us.

ZBA Pitzer: We have to abide by what are called Standards of Review. There are six specific standards that must be met. We want to be fair and need to know for sure which application we need to be looking at.

Lisa Portenga: Our attorney helped us with the application and we feel that we have met all six standards.

Township Supervisor Nelson: The reason for this hearing is that the township received a letter from your attorney and we are in litigation. Allegations were made that the Township did something improperly so we are here to fix that. I recommend the hearing be closed until a joint determination is made by the attorneys.

CORRESPONDENCE: None

DELIBERATIONS BY THE ZBA:

Moved by Myers, **seconded** by Pitzer to close the meeting.

NEW BUSINESS:

None

UNFINISHED BUSINESS

- 1) Picking a specific day for future meetings
- 2) Determination by attorney's

BOARD MEMBER COMMENTS: Comments received

PUBLIC COMMENTS: None

ADJOURNMENT:

Meeting was adjourned by Janusz at 7:58 PM.

Respectfully submitted,

Frank Janusz
Zoning Board Chairman

Dianna Schaafsma
Recording Secretary