

PARKMAN TOWNSHIP BOARD OF ZONING APPEALS

Regular Meeting of June 10, 2014

Members present: Cindy Gazley, Jo Lengel, Kathy Preston and Jan Helt (Secretary)

Members not present: Rich Hill, Paul Nalepa, Lucinda Sharp-Gates and Dale Komandt

The meeting was called to order by Cindy Gazley at 7:38 p.m. Ms. Gazley introduced herself and the board and reminded the public that they must sign the ledger being circulated if they wish to testify or ask any questions during the course of the hearing. Because of two appeals to be heard Ms. Gazley recommended hearing the appeals first, then dealing with other business. All agreed.

Approval of Minutes

Ms. Lengel moved to waive the reading of the minutes portion of the meeting until after the appeals have been heard. Ms. Gazley seconded and the motion passed unanimously.

OLD BUSINESS:

Ms. Gazley stated that we would hear the Weaver variance first if that was ok with everyone; all agreed.

Appeal # 2014-16654 Allen Weaver (2 variances) 16654 Hosmer Road

Ms. Gazley stated this would be a continuation of the hearing from last month. Neither Mr. Weaver nor anyone on behalf of the applicant was present at the May 13th meeting.

Ms. Gazley administered the Oath of Truthfulness to Mr. Weaver and Mr. Spelich. Ms. Gazley stated the information about this variance (two homes on one lot) was already on record from the May 13, 2014 meeting.

Ms. Gazley stated she talked to the Geauga County Prosecutor's office and advised lots can exist as "Grandfathered" without the need for a variance, but once you split the property it creates 2 NEW parcels. Each NEW parcel has to abide by all standards for zoning in Parkman.

Ms. Gazley asked Mr. Weaver if he received his notice of the hearing in the mail; he said he did. Then Mr. Weaver stated "You are not going to give me the variance are you?" Ms. Gazley stated that we would discuss it further tonight and possibly make the decision tonight.

Mr. Weaver stated that he needed the variance to split the lot and keep the currently existing second home on one of the new parcels (built in 1980). Mr. Weaver stated no matter what he still wanted to

continue with the variance; his son needed the flag lot to build his home and he wanted to do that for his son.

Ms. Gazley suggested we do the first variance # 2014 - 16654-1 on the property with 2 homes.

Ms. Gazley asked Mr. Weaver if there was anything else to add other than the information he provided in earlier meetings. Mr. Weaver stated that he wanted to give his son land to build a home and he wants to get the variance for his property. Ms. Gazley closed that portion of the hearing and opened the hearing to the Board members.

Ms. Lengel asked Mr. Spelich to show everyone on the map where everything was located. Mr. Spelich showed everyone the home built before zoning and 2nd built in 1980.

Ms. Lengel asked if the leach bed was in the right of way? The answer was no. Ms. Preston asked how much land did Mr. Weaver intend to give his son? Mr. Weaver stated a little over 5 acres. On the map it showed 5.236 acres. Ms. Lengel asked "How many total acres is Mr. Weaver's property?" Mr. Weaver stated he has a total of 43 acres.

Ms. Preston stated that once a lot is split with a variance it can't be split again. Ms. Gazley said "Yes it can anyone can request a variance at any time."

Ms. Preston asked Mr. Weaver "If we grant this variance and your Mom passes away then what?" Mr. Weaver did not answer. Ms. Preston stated that Mr. Weaver has 2 houses on one lot totally against the current zoning. You are only allowed to have one flag lot on the property. Ms. Lengel asked "What happens to the other home after your Mom passes?" Ms. Gazley stated you can't predict what will happen in the future.

Ms. Lengel asked about the 60 foot driveway "Is it wide enough for a fire truck?" Mr. Spelich said yes, it is wide enough to allow a fire truck to get through.

No one had any further questions. Ms. Gazley closed that portion of the meeting and opened it to the public.

Ms. Gazley asked if there was anything else anyone wanted to add. No one had anything to add. Ms. Gazley closed that portion of the meeting. Ms. Lengel motioned to grant variance 2014-16654. Ms. Preston seconded the motion.

With no further questions for the board, Ms. Gazley closed that portion of the hearing, so the board could discuss the factors to be considered for an area variance.

- 1) Is there a reasonable return or beneficial use without the variance? Yes.

- 2) Is the variance substantial? *Yes it is 100% it is completely against zoning.*
- 3) Would adjoining properties suffer or be altered? *No*
- 4) Is the variance adverse to providing government services? *No, nothing changes in this regard.*
- 5) Was purchase of property with knowledge of restrictions? *No, zoning changed since the second home was built and then the property was purchased.*
- 6) Can predicament be obviated by means other than by variance? Yes, Ms. Gazley said another option would be to leave it as it is. Ms. Gazley stated that Mr. Weaver wants a flag lot for his son; it is his discretion.
- 7) Would the spirit and intent be upheld? Ms. Lengel felt justice would be done by granting the variance and that the spirit and intent would be upheld. Ms. Lengel stated that she could not see any other way to get it done. Ms. Preston agreed that the spirit and intent would be upheld and health and safety would also be upheld. Ms. Preston felt he had plenty of land 43 acres to accommodate what he planned on doing with the land, flag lot etc.

Ms. Gazley asked if there were any other questions or comments from the board members, closed that portion of the meeting and asked for roll call on the motion to grant the variance: Cindy Gazley No, Betty-Jo Lengel Yes, Kathy Preston Yes, and the motion passed.

Ms. Gazley advised the applicant Mr. Weaver that variance request # 2014 – 16654-1 was granted and that a party who may disagree has 30 days to appeal the decision.

The board completed the findings of the facts as follows: The answers to the Duncan Factor elements are as stated above. In addition, there are **2 homes** on the same lot, **and currently stands “Grand-fathered”** in. Mr. Weaver wants to **split the lot which will create 2 parcels no longer “Grand-fathered”** in. Each parcel will have to abide by Parkman Zoning Laws. Mr. Weaver knows this and wants to continue with the variance. Mr. Weaver said the homes were on the property when he purchased the land in 1980.

Roll Cal to approve The Finding of the Facts: Ms. Gazley – Yes, Ms. Lengel – Yes, Ms. Preston – Yes.

Regarding second appeal #2014 -16654-2. Mr Spelich said there are no problems with the second lot except for the setback for the barn. Ms. Gazley asked Mr. Spelich if he continues to believe the barn is an agricultural purpose building. He said it is. All agreed that zoning does not apply to an agricultural building. Therefore, there are no issues which need a variance. Ms. Gazley asked if there were any other issues which required a zoning variance for this new parcel. There were none according to Mr. Spelich. Ms. Gazley stated that it is not the right of the BZA to determine, but

that Mr. Spelich may consider talking to the Trustees to see if the \$250.00 application fee should be refunded for the second new parcel.

Appeal # 2014 - 15690 Conditional Use Natan Shilman 15690 Main Market Road (Main Market Auto)

Ms Gazley administered the Oath of Truthfulness to Mr. Shilman and Mr. Fisher. Ms. Gazley asked if all notices have been properly given and Jan Helt said yes.

Ms. Gazley stated that we had a lot of questions when we started this appeal which has been heard in 2014: January, February, April, May and now June.

Ms. Gazley asked about the EPA and Mr. Shilman produced a folder with some papers that the EPA sent him basically a guideline to follow to be in compliance. The EPA will not come out and inspect unless there is a complaint or he was painting vehicles in his facility. He said he spoke to a person at the EPA and went over everything with her over the phone and asked her questions. The EPA sent him in the mail all the rules and guidelines to follow.

Ms. Gazley asked if based on the guidelines if Mr. Shilman was in compliance. Mr. Shilman said that he was in compliance. Mr. Shilman stated that someone would be out to check his septic system along with someone from the EPA in the near future as soon as he fills out the paperwork and pays \$80.00. If everything is ok, they will come and inspect it every 4 years. If he has to upgrade his system, they will allow him 2 to 3 years to get it done.

Ms. Gazley asked about Mr. Soltis and Mr. Shilman stated there is no longer an issue with Mr. Soltis. He stated they have resolved the issues of the property line. It was resolved by Mr. Shilman removing the encroaching vehicles on Mr. Soltis' property.

Ms. Gazley asked if Amen Towing is still located on his property. Mr. Fisher who runs Amen Towing explained that he no longer stores any vehicles at the 15690 Main Market Road. He has been storing all towing vehicles at Ken's Auto Body and Collision located 14330 Main Market Burton, Ohio. Mr. Fisher stated that the only reason that his roll back is seen at 15690 Main Market is because of the lease to which he is committed. He lives at the 15690 address and needs his truck in case he gets a call in the middle of the night. He obtained 19.9 acres in Portage County where he will be moving to in the future. He emphasized the only activity of Amen Towing on the Main Market property in Parkman is "marketing" meaning he has a phone there and uses it as his contact address. He denied this was his principle place of business. Ms. Lengel thanked Mr. Fisher for explaining everything and she said we all understood.

Mr. Spelich stated that he felt that Mr. Shilman was in compliance with everything now. He felt that he has tried really hard to be in compliance. Mr. Shilman stated that “The Conditional Use was needed for his Auto Dealer, Sales & Repair.”

Ms. Gazley asked if there were anything else. Ms. Gazley closed that portion of the meeting and opened the meeting to the public.

Ms. Gazley asked if anyone else had anything to add. No one had anything to add. Ms. Gazley closed that portion of the meeting. Ms. Gazley asked for a motion to grant the Conditional Use. Ms. Lengel moved to grant and Ms. Preston seconded the motion.

Ms. Gazley opened the meeting to the Board members for questions to applicant.

Ms. Gazley asked if there were any other questions; there were none. Ms. Gazley stated that Mr. Spelich had to work really hard to bring Mr. Shilman into compliance. Ms. Gazley asked Mr. Shilman what it will take to have him remain in compliance in the future. Mr. Shilman stated that he would continue to be in compliance. He said he had not been in compliance because he didn't know about the regulations and he does know them now. No one had any other questions. Ms. Gazley closed that portion of the meeting.

Ms. Gazley led the Board members in considering the issues for conditional uses (Zoning Regulation 505.0, effective August 14, 2008) as discussed by the BZA in earlier meetings and findings incorporated in this meeting.

Ms. Gazley asked for any other questions or comments from the Board members, closed that portion of the meeting and asked for a roll call on the motion to grant the Conditional Use Ms. Gazley – Yes, Ms. Preston – Yes, Ms. Lengel – Yes.

Ms. Gazley advised Mr. Shilman appeal # 2014 – 15690 for a Conditional Use has been granted and that he had 30 days to appeal the decision. Decision forms would be mailed within the next 10 days.

The members signed the Decision Form and completed the Fact Finding as follows:

Ms. Preston stated that Parkman Auto is located in a commercial area. Mr. Shilman stated he will remain in compliance now and in the future. Amen Towing no longer stores any cars at the Parkman Auto address 15690 main Market. Ms Lengel stated there is no longer an issue with his neighbor Mr. Soltis. Everything has been removed from the property line. The EPA issue and septic will be checked with in a month. EPA has given Mr. Shilman guidelines to follow. Zoning inspector Mr. Spelich said that Mr. Shilman is in compliance with everything now.

Roll Call to approve the finding of the Facts: Ms. Gazley – Yes, Ms. Lengel – Yes, Ms. Preston – Yes.

