PARKMAN TOWNSHIP BOARD OF ZONING APPEALS

 Regular Meeting

 March 14, 2017

Members present: Cindy Gazley, Jo Lengel, Rich Hill, Lucinda Sharp-Gates, Kathy Preston, Nancy Ferguson, Dale Komandt and Jan Helt (Secretary)

Meeting was called to order by Chairperson Lucinda Sharp-Gates at 7:07 p.m.

**Minutes Approval:**

Motion made by Ms. Preston and seconded by Ms. Lengel to approve minutes for January 10, and January 30 with corrections. All in favor Ms. Gazley abstained.

Mr. Hill took this opportunity to recuse himself from the first appeals # 2016-16669 and 2016-16976.

**Ms. Sharp-Gates explained that a variance is a permanent and officially-approved deviation from governmental unit’s zoning regulations. A variance runs with the land from successor-in-interest to successor-in-interest. It is not a personal license. Zoning variance may, however expire upon either the terms of the zoning ordinance or resolution or by their own terms.**

Ms. Sharp-Gates introduced herself (Chairperson) and Jan Helt (Secretary) all board members did the same. Ms. Sharp-Gates gave the Oath of Truthfulness to all persons in attendance individually, that planned on providing testimony at this hearing.

**Variance# 2016-16669 and 2016-16976:**

The first application submitted by Matthew E. Kurtz, Variance Request #2016-16669 located at 16669 Nash Road (Parkman Township,) Middlefield Ohio 44062, and Eli R. Kurtz, Variance Request #2016-16976 located at16976 Nash Road (Parkman Township,) Middlefield Ohio 44062 are requesting a variance from the Parkman Township Zoning Resolution for property located at, same addresses as above, which shall be in accordance with all of the applicable regulations for the District and the following regulations: ARTICLE IV Section 402.5 Minimum Lot Width. The minimum lot width shall be 200 feet.

Mr. Eli Kurtz Sr. stated that his sons Eli and Matthew want to build their respective homes on their property. “My boys are asking for 10 ½% for frontage verses acres.” Matthew Kurtz stated he and Eli would like to get the variance to build their homes, he stated “we do pay taxes and it would help with roads and schools in Parkman Township.”

John Augustine stated he has nothing against Mr. Kurtz and his family “I heard they are nice people.” He stated the Rural Zoning Handbook is our bible and we have this to follow when deciding to give someone a variance. He stated a point he would like to make (to the BZA) is that he does not see any special hardships listed in the standards. In talking to members he did not hear of any mention of hardships. These two parcels would be under different circumstances if a stream was running through them that might be a hardship. Mr. Augustine stated that if a person purchases the property with knowledge of the restriction, he is not entitled to a variance. He stated that the board should take this into consideration.

Mr. Kurtz stated that they knew when they bought the property that they would have to get a variance for frontage. They also knew they had twenty acres each.

Chrissy Priem stated that it is 60 acres purchased 2 years ago, they have beautiful places, and they take care of their properties.

Ms. Sharp-Gates asked if there were any other questions, the answer was no, closed that portion of the meeting opened to the public.

**General Public Discussion:**

Mr. Eli Kurtz stated that there are rules and laws but sometimes common sense has to be part of the decision.

Mr. Gatrell stated he has no dog in this but he used to be on a board where he lived before. He just moved back to this area he feels the purpose of this board is to look at the betterment of this community. Mr. Gatrell stated that Mr. Augustine’s evaluation is black and white and not to the spirit of zoning and the Board decision.

Mr. Augustine stated that he does not necessarily believe this is for the betterment of the community. Mentor has industry coming out all over which does not mean it is for the betterment of the community.

Mr. Fisher, a neighbor to Matthew and also a Bishop to his District, stated one person with an issue should not have disrupted the variance.

Ms. Sharp-Gates stated to be clear that there was an error in the paperwork and a person of interest should have recused himself from voting at the January meeting. That is the reason for rehearing the variance.

Mr. Fisher stated that he does not want to see a commercial business in a residential area or anything like that: but he feels common sense should be used when deciding on the variance. He said some people do not want zoning but he does and it could be an issue later.

Freeman Miller spoke in support of the variance; he stated that Amish have to stay in the church community. We can’t drive so we are limited to where we can go.

Wilbur Miller said that one statement made here tonight makes a lot of sense. I think zoning is good but if there is no common sense we will vote against it.

**Board Discussion**:

Ms. Gazley read from a Zoning Variance Workshop (JUNE 6, 2014) she stated variance for **“area”** is a less stringent legal standard than for a Use Variance **“practical difficulty”** in meeting code requirements is all that is required to be shown by a property owner, not an **“unnecessary hardship”.**

Ms. Ferguson stated when using the **Duncan Factors** they are only for establishing the right to an area or size variance and an applicant need not meet each and every Duncan Factor.

Ms. Preston stated that there have been court cases since the publication of the Rural Zoning Handbook that have lowered the demonstration of need from **unnecessary hardship** to **Practical Difficulty.**

Ms. Sharp-Gates asked Mr. Kurtz if he purchased the land knowing it could not be split.

Mr. Kurtz said he knew he would need a variance, he also knew they had 20 acres each and felt that would make a difference in requesting a variance.

Ms. Sharp-Gates stated we have never granted this type of variance on unimproved land.

Ms. Gazley stated each of our decisions stands alone whether we have done it before or not. Ms. Gazley asked what the frontage was for each parcel. It was stated that the frontage on each parcel is 178.8, short by 21.2 feet. Ms. Gazley stated she did not hear any testimony as to whether the essential character of the neighborhood would be changed or any adjoining properties would be altered. Is there anything unique about the land we should be aware of.

Mr. Kurtz stated that he felt it would not change the neighborhood or affect other properties.

Ms. Gazley stated 22 feet is less than 11% of the allowable 20% we use as a bench mark. Accordingly the spirit and intent would be observed in granting the variance.

John Augustine said again no one has mentioned anything about a hardship. So more people, 50% more houses, is substantial justice being done or not being done.

Ms. Ferguson again stated they do not have to meet every Duncan Factor. There was no set precedent when we developed how many feet for frontage; it is not an exact science. Twenty acres and 11% are not substantial. What would be the sense in having a BZA, we follow the Duncan Factors to a point, but we also use common sense.

Mr. Komandt asked exactly where the property is located on Route 88. He was told it is west of Route 608 next to Rich Hill. Mr. Komandt said he knows exactly where it now.

Ms. Lengel asked exactly when Mr. Kurtz purchased the property. Mr. Kurtz said about a year and a half ago.

Ms. Gazley asked if there was anything else. There was not.

**FINDING OF FACTS:**

The Board reviewed the facts in regard to the appeal:

1. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance**: Could be used for farming.**

1. Whether the variance is substantial: **No**
2. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance**: No, low impact, plenty of acreage**

**.**

 d. Whether the variance would adversely affect the delivery of governmental services: **No**  . **problem with deliveries.**

 e. Whether the property owner purchased the property with the knowledge of the zoning

 restriction: **Yes, they did have knowledge of restrictions**.

 f. Whether the property owner’s predicament feasibly can be obviated through some

 other method other than a variance: **No**

 g. Whether the spirit and intent behind the zoning requirement would be observed and

whether substantial justice will be done by granting the variance: **Yes it would**

**Ms. Sharp-Gates** motioned to approve the finding of facts for the appeal, and Ms. Preston seconded the motion. Motion passed unanimously. Roll call to grant the appeal followed:

ROLL CALL:

**Cindy Gazley** **Yes**

**Jo Lengel Yes**

**Kathy Preston Yes**

**Dale Komandt Yes**

**Lucinda Sharp-Gates (abstained)**

**Ms. Sharp-Gates** stated the Appeal has been granted. Ms. Sharp-Gates stated that a letter will be mailed to the applicant within 10 days with the decision results of the appeal. This decision may be appealed with the Geauga County Court of Common Pleas within 30 days.

Mr. Hill returned to the Board to hear the next two variances # 2017-17110 and 2017-19171.

**Variance # 2017-17110**

Next on the agenda **Variance #2017-17110** application submitted by Wilmer Miller 15645 Newcomb Road (Parkman Township), Middlefield Ohio 44062, is requesting a variance from the Parkman Township Zoning Resolution for property located at, 17110 Madison Road which shall be in accordance with all of the applicable regulations for the District and the following regulations: ARTICLE 1V Section 402.6.

Ms. Helt read five letters sent from neighbors supporting Mr. Miller. Mr. Don Gatrell spoke up and stated that he also supported Mr. Miller in his request for a variance.

Ms. Sharp-Gates asked Mr. Miller what he was requesting. He stated he would like to build his house as close to the property line as possible. Right now there is no house on the property, there is a barn. The previous home burnt down and was removed.

Ms. Lengel asked Mr. Miller to show us on the map exactly where he would like to put the house. The driveway is next to the barn. Ms. Lengel asked how close to the line are you requesting. Mr. Miller stated he would like 10 feet but he would settle for 15 feet. He explained that his property is right next to Geauga County Park District. He and Mr. Spelich both spoke to John Orr from the Park District and he said he has no problem with putting the home 15 feet from the property line. Ms. Helt verified that John Spelich did speak with John Orr about Mr. Miller’s property. He stated he wants to be a good neighbor. Mr. Miller explained that there is not a lot of space between the barn and the creek (Grand River). The Grand River runs through his property and gets pretty high on the North side of the property.

**Ms. Preston motioned Mr. Hill seconded to grant the variance**

**Board discussion:**.

Ms. Lengel asked why he does not build where the old house had been. He said he would have to jump the ditch to get to his barn. He said the old house was too close to Route 528. He stated that the septic will be behind the house, if he moved it back he would not have enough room. His septic would be under water. Mr. Miller stated he already has a building permit and septic permit.

Ms. Preston asked for clarification on the setback requested. Mr. Miller said he wants 10 feet but would settle for 15 feet.

Rich Hill stated you can’t put it on the north because of the ditch. Mr. Miller stated that it floods out pretty bad in the back, so he can’t move the house back. It floods out that sometimes you would not be able to cross the ditch. Ms. Helt stated the ditch is about 5 feet wide (she took pictures of the ditch for everyone’s packet) they would have to go on to the road to get over to the barn. That would be a safety issue.

Ms. Lengel stated they could build a bridge. Ms. Lengel asked what size the house he is building will be. Mr. Miller said the house will be 32x44 with a porch 16x20, and 10x20 wings on porch, so you are looking at 60 feet.

Ms. Lengel asked if he had the house plans with him, Mr. Miller said he did not. Can you turn the house sideways the answer is no because you would not have enough room for the septic system on the North side.

Mr. Miller said he does not want the house too close to the barn at least fifteen feet or more away. He stated he already has his driveway in by the barn and to the new home he plans on building.

Mr. Hill asked what he is doing with the north side, Mr. Miller stated it would use it for pasture.

Mr. Hill stated it is a peculiar situation out of the ordinary.

Ms. Preston asked why do we have twenty five feet side line. Ms. Ferguson stated that is what was chosen when setting up zoning, probably from the model zoning.

Ms. Sharp-Gates stated set- backs are protection so no one builds too close to their neighbor’s lot line.

**FINDING OF FACTS:**

The Board reviewed the facts in regard to the appeal:

1. Whether the property in question will yield a reasonable return or whether there can be

 Any beneficial use of the property without the variance**: Yes, he could build a bridge .**

 **Or he could build a smaller house.**

1. Whether the variance is substantial: **Yes**
2. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance**: No.**

**.**

1. Whether the variance would adversely affect the delivery of governmental services: **No**

 e. Whether the property owner purchased the property with the knowledge of the zoning

 restriction: **No, Mr. Miller said he tried to buy land from the Park District.**.

 f. Whether the property owner’s predicament feasibly can be obviated through some other

 method than a variance: **No**

 g. Whether the spirit and intent behind the zoning requirement would be observed and

whether substantial justice will be done by granting the variance: **Yes it would**

**Ms. Sharp-Gates** motioned to approve the finding of facts for the appeal, and Ms. Lengel seconded the motion. Motion passed unanimously. Roll call to grant the appeal followed:

Cindy Gazley-Yes, Kathy Preston-Yes, Jo Lengel- Yes, Rich Hill-Yes, Lucinda Sharp-Gates-Yes.

**Ms. Sharp-Gates** stated the Appeal has been granted. Ms. Sharp-Gates stated that a letter will be mailed to the applicant within 10 days with the decision results of the appeal. This decision may be appealed with the Geauga County Court of Common Pleas within 30 days.

**Variance # 2017-19171**

Next on the agenda, variance # 2017-19171 application submitted by Andrea Ross 22675 Fairmont Blvd. Shaker Heights, Ohio 44118, is requesting a variance from the Parkman Township Zoning Resolution for property located at, 19171 Nelson Parkman Road (Parkman Township) which shall be in accordance with all of the applicable regulations for the District and the following regulations: ARTICLE 1V Section 401.0.

Ms. Andrea Ross stated she would like to start a Home Occupation Business at 19171 Nelson Road Garrettsville Oh 44231 (Parkman Township). Currently there is a house (Freeman Miller lives in), and a barn and a small accessory building that is used for lawn and garden equipment. There is also a 32x72 building is being used for buggy and farm equipment (agriculture). The new proposed building would be 28x40 one story building. The building would be used for mixing and processing a drink that would be sold to distributers only. The drink is 20% and 40% alcohol mixed with juices. It is called Lemon Chello and Apple Pie Moonshine. She would need a federal and state license and a commercial Septic system for this business. Ms. Ross stated that the Health Department would inspect building on a regular basis.

Ms. Sharp-Gates asked if the Lemon Chello was a liqueur. Ms. Ross said yes it is a liqueur.

Mr. Hill asked if Ms. Ross would be using any grain from the land. Ms. Ross stated that she would be purchasing the ingredients. She stated she would be using filtered water. The recipe is her own she makes it for friends and family. Ms. Ross said she is not able to sell it until she gets a license, she has to have a place to make it before she can get a license.

Ms. Lengel asked for Ms. Ross to show us on the map where the building would go.

Ms. Sharp-Gates stated it would be close to the property line. Ms. Ross stated that was also their land, some of it is in Portage County.

Ms. Sharp-Gates asked if there were any other questions, the answer was no closed that portion of the meeting opened to the public.

**General Public Discussion:** There were no questions.

Mr. Hill motioned Ms. Preston seconded to grant the variance.

**Board Discussion:**

Ms. Sharp-Gatesasked what is the property being used for to the east and south of the property. Ms. Ross stated it is farmland. Ms. Ross stated that they have kept it rural they would like to keep the trees and land the way it is.

Ms. Lengel read in Ohio Rural Zoning Handbook where they allowed a dentist to set up shop in a residential area as a Home Occupation which is not allowed. The BZA can’t grant a Use Variance for a Home Occupation. Also in order to get a new Home Occupation you must live on the property. Ms. Lengel stated that the Zoning Commission has the authority to grant a Home Occupation, the BZA does not. You want to put a building on the property to manufacture a product in a residential area.

Mr. Hill stated that for instance a winery is considered agriculture provided they grow the grapes on their property.

Ms. Ross stated that she would not bring crime or anything bad into the neighborhood. She said she would not be selling on the property. She said she is praying that the board would allow her to do this so she can support her child. Ms. Ross stated that she needs a building first before she is able to apply for a license. It was suggested she rent a place in an industrial or commercial area to manufacture her product. Ms. Ross stated she would do that in Cleveland rather than in Parkman.

Mr. Solomon stated Ms. Ross is getting a divorce and she needs to be able to support her daughter, she can’t do it working as a waitress, her alimony is about done. Father stated maybe he should do some fracking on his property and search for oil.

Ms. Ross stated that the property would remain in the family. Ms. Lengel stated you can’t guarantee that. The BZA would not ask for that guarantee.

Ms. Sharp-Gates closes the general discussing. Ms. Gazley motioned and Ms. Lengel seconded to grant the variance.

**FINDING OF FACTS:**

The Board reviewed the facts in regard to the appeal:

a. The variance requested stems from a condition which is unique to the property at issue and not ordinarily found in the same zone or district**. There is no unique condition..**

b. The hardship condition is not created by actions of the applicant. **There is no hardship.**

c. The granting of the variance will not adversely affect the rights of adjacent owners.

**It would be completely against zoning.**

d. The granting of the variance will not adversely affect the public health, safety or general welfare. **It would be adverse to the public; residential should be residential.**

e. The variance will be consistent with the general spirit and intent of the zoning resolution. **No it would not**.

f. The variance sought is the minimum which will afford relief to the applicant. **No reason.**

Ms. Sharp-Gates closes the board discussion and asks for a roll call: Ms. Gazley No, Ms. Preston No, Ms. Lengel No, Mr. Hill No, Ms. Sharp-Gates No.

**ADJOURNMENT**:

Ms. Lengel motioned to adjourn, Ms. Preston seconded, the motion passed unanimously. The meeting adjourned at 9: 25 p.m.

Respectfully Submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Jan Helt Date Lucinda Sharp-Gates Date

 Secretary, BZA Chairman, BZA