

PARKMAN TOWNSHIP BOARD OF ZONING APPEALS
July 16, 2019

Members present: Kathy Preston, Rich Hill, Betty Jo Lengel, Bryan Mullins, Jeffery Heavner, and Jan Helt, Secretary

Meeting called to order by Chairperson Kathy Preston.

Motion was made by Ms. Lengel to waive the reading of the minutes until after the appeal, seconded by Mr. Heavner.

There are two appeals to be addressed by the Board at this meeting:

- 2019-18385
- 2019-18385-2

Ms. Preston acknowledged the publication of the notice for this appeal hearing.

Ms. Preston administered Oath of Truthfulness to all present. Ms. Preston stated anyone planning on speaking or asking questions is required to take of Oath of Truthfulness.

Ms. Preston explained the format of the meeting and then gave an overview of how the meeting would be run.

Ms. Lengel requested that the board hear the use variance first.

Appeal 2019-18385-2 was called.

This application, submitted by BTE Properties LLC (Bob Troyer and John Yoder), 18385 Nelson Road (Parkman Township), Ohio, is requesting two variances from the Parkman Township Zoning Resolution for the property at, same address, which shall be in accordance with all of the applicable regulations for the District and the following regulations: ARTICLE IV Section (404.4), Section (404.5), Section (403.1).

Applicant explanation for requesting variance to Parkman Township Zoning Resolution:

Mr. Weiss, attorney for Mr. Troyer and Mr. Yoder, introduced himself and said he will speak on behalf of his clients. Dave Dietrich (Planning and Zoning Services LLC,) introduced himself. Bob Troyer (owner of BTE Properties) introduced himself, and Chip Hess (engineer for BTE Properties) introduced himself.

Mr. Dietrich explained the request for a variance as follows:

There were 7 parcels, all conforming to Parkman Township's current zoning. About a year ago, these parcels were consolidated into one parcel of 7.08 acres. The appellant's map gives an overview of the split between commercial and industrial zoned areas. Current BTE building is industrial. There is a severe slope problem and a stream to the east in the back of the property behind BTE building. BTE is unable to build an additional building on that property because of that issue. Any addition to the industrial area would have to include use of areas zoned commercial.

There will be no problems with water as there is a well that produces 25 gallon per minute. Mr. Dietrich stated that the property is connected to the public sewer service, so no problem there. Property taxes per year are \$10,066.60 and should increase with the new building. BTE will have frontage on RT. 422 and Nelson Road. "We did it this way so we would have 2 ½ acres for any retail purposes ready to go." The retail site, Parcel 1, is a shovel ready site that fully complies with Parkman commercial zone regulations.

Mr. Dietrich said BTE felt they have nowhere to go with an addition but north. This is why they are requesting a use variance. Right now, the building is being used for the manufacture of wood packing and crating products. "You tell us what you need to ship, and we build the crate to ship it." The proposed use will be the same. Mr. Dietrich said the docks will no longer be on Nelson Road: no truck parking or turning of trucks. Six new jobs will be added in the township. It just does not meet Parkman zoning.

Mr. Troyer said the area will look much better than it does now, as they plan to beautify Parkman.

Mr. Hess stated that retention ponds will be behind the building, that they can really make this an attractive and presentable property, until BTE decides to sell for retail or whatever in the future. 2 ½ acres will be retail, and will be in compliance with Parkman Township Zoning. BTE plans to spend a lot of money, and if you have any questions, feel free to ask them.

Mr. Weiss stated that BTE combined all the commercially-zoned properties. They included numerous old buildings that needed to be torn down.

Mr. Weiss said BTE has 10 to 15 employees right now. It designs crates so that items do not get damaged doing about \$14 million a year in business. "We are a small business. We need to expand, and if we can't do it here, we need to move on."

Mr. Hess showed a copy of plans to all board members. He said they leveled off the land. The pallet company wants to expand their business, and the only way to go is north. This plan is ready today depending on what happens at this meeting. There will be a driveway on Nelson Road, and the truck docks will be in the back of the building. Because water always goes downhill, the pond will be in the back of the building. "We have a pile of rocks to collect sediment at the bottom of the hill."

Mr. Dietrich said this is ready to go. There will be an agreement recorded that BTE will be required to manage the basin. Nobody will be able to see it. It will be in the back of the building. BTE will need an access easement to connect the two parcels. Only 37.5% of the commercially zoned area would shift to industrial use. We have a very careful layout the only place to go is north. This would fit in with the use by the Parkman Community House and the township garage.

Mr. Hess said everything you see has been built up with fill, and there is more BTE can do to make it nice. The commercial area will be a sought-after site. Mr. Hess said it is far

enough away from the intersection in Parkman, so it will not interfere with traffic. The entrance and exits all co-mingle.

Ms. Preston asked if there was anything else. There was nothing, closed that portion of the meeting and opened the meeting to the public.

Open Floor to Public.

No one wanted to speak, so Ms. Preston asked if anyone else had anything to add.

Ms. Preston closed that portion of the meeting.

Ms. Preston asked for a motion to grant the variance. Ms. Lengel moved to grant and Mr. Heavner seconded the motion.

Ms. Preston opened the portion of the meeting to the Board members for questions to the applicant/owner.

Ms. Preston asked why BTE did not go to Zoning Commission to have the property rezoned.

Mr. Dietrich stated BTE would still be here for the same variances. That route might take 6 months or more and BTE wants to proceed with their plans as soon as possible.

Mr. Troyer stated that within the last two years BTE purchased different pieces, and that the existing building was grandfathered in.

Ms. Preston said that the parcel behind you was changed from residential to commercial wasn't it?

Mr. Dietrich said yes, it was a legislative act. "Tonight, you know exactly what you are going to get. Tonight, you have complete assurance that what you see is what you get." If BTE deviates from that, the zoning inspector will handle it. If this is granted, the use variance runs with the land. There can be no changes. You will have 2 ½ acres of retail space make it work.

Ms. Lengel asked Mr. Troyer why he purchased all the property without a plan; why he didn't take his business to the industrial park on RT 422.

Mr. Troyer said he did not want to do business with Mr. Hostetler, who owns that Parkman industrial park.

Ms. Preston asked Mr. Troyer what is going into that 24,000 square foot building. Mr. Troyer said he needs more space for styrofoam which he uses for packaging. Mr. Troyer stated he feels his business is an asset to the Parkman community. He stated he also rents a 25,000 square foot building for storage from Johnson Rubber, and that he would like to move that material to the new building. Ms. Preston asked about potential increased truck traffic, and Mr. Troyer estimated perhaps a 10% increase.

Mr. Hill stated that Mr. Troyer is asking to put an industrial business partially in a commercial area. Mr. Hill asked Mr. Troyer if maybe he could push the building back

further on the property. Mr. Troyer stated that they are challenged with the drop off and especially for trucks. He said “Look at this plot, it is not feasible. It would take forever to fill that area and we are already challenged.”

Mr. Jacobs stated you can’t build to the east there is no way to build his only choice is north.

Mr. Dietrich said “You can’t build to the east, there is no way to build. To the south is the cemetery. The only choice is north.”

Mr. Troyer said BTE is asking for about 30 feet into the commercial district, that is all.

Mr. Dietrich reiterated that the variance runs with the property, that this use variance would be very limiting. It would be in your records and it can’t be anything else.

Ms. Lengel read a section from the Ohio Zoning Handbook, Fourth Edition, 1991:

“The issuance of variances is perhaps the single most abused zoning power. Improperly granted variances can easily destroy the protection of a zoning resolution; they can also erode the credibility both of zoning as a land use control and of local officials as administrators of that control. One problem with variances is that provisions in many zoning resolutions are too general and contain no definite standards or conditions which may be applied in specific cases to particular parcels of property. The board of zoning appeals must hear and decide applications for variances where, due to special conditions, a literal enforcement of requirements of the zoning resolution would result in an unnecessary hardship. The existence of an unnecessary hardship is often difficult to determine; however, the hardship must be proven before the board can grant the variance.”

Ms. Lengel said she felt there was not a hardship, that Mr. Troyer has a successful business.

Mr. Dietrich stated that the Ohio Zoning Handbook is outdated; it is an old publication.

Mr. Dietrich stated Ohio does allow BZAs to grant use variances. The request is only 11% of the 5 acres required. “Let us use this land for this. We have an industrial use, and we would like to move forward. With a use variance we are limited to that small piece of commercial land. “

Ms. Lengel stated that she has found no evidence that the handbook has been updated with regard to use variances.

Mr. Troyer said “when we succeed, everyone succeeds, including the community. This will bring in more revenue for the township.”

Mr. Hill asked what other options are there for this industrial building? **Mr. Troyer** said there are no other options. Mr. Hill suggested building up, not out; it would be within zoning.

Mr. Troyer said it would be higher than the 30 feet allowed; he said this is the only way. There are no other options. We can’t go up, we can’t go south because of the cemetery, east is out, the only way is north.

Mr. Hill asked if there would be anything stored outside the building. Mr. Troyer said no, nothing is stored outside the building.

Mr. Mullins asked what the hours are. Mr. Troyer stated 7:00am-3:30pm.

Mr. Hill asked if there was any noise from the building. Mr. Troyer said no, not really.

Ms. Heip, who lives across the street from the pallet shop, stated that there is a pinging noise, like from a nail gun, all day. She also stated that sometimes there are trucks that show up before they open in the winter, and that they leave their trucks running. It is not Mr. Troyer's trucks. She said it was delivery trucks, and that they arrive there before BTE opens.

Mr. Troyer said the new addition would take care of all of that. He said they will also close the doors in the future, although in the summer it might be difficult. The trucks would be able to park in the back.

Board Members Questions/Comments to Applicant/Owner: closed that portion of the meeting.

Board Members' Deliberation.

Ms. Preston led the Board in considering the following:

Standards for a "USE" variance

- 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. **It is unique to the area. The back of the property is a ravine and not usable for industry.**
- b. The hardship condition is not created by actions of the applicant. **Some of it is. Mr. Troyer does not want to use the rental property in Middlefield, preferring everything in Parkman. The ravine was not created by the actions of the applicant, but was obvious when he purchased the property.**
- c. The granting of the variance will not adversely affect the rights of adjacent property owners.
Testimony from an adjacent property owner left open that the increase in business could affect the rights of adjacent property owners, relative to increased noise and trucks.
- d. The granting of the variance will not adversely affect the public health, welfare, or safety of others. **No, it will not.**
- e. The variance will be consistent with the general spirit and intent of the zoning resolution. **No, it is contrary to the Parkman Township Zoning Resolution. The current use is commercial; the requested use is industrial. However, a use variance would limit the industrial use, unlike rezoning the parcel to all industrial.**

f. The variance sought is the minimum which will afford relief to the applicant. **The owner could build a smaller building or a second story to store foam.**

g. There is no other economically viable use which is permitted in the zoning district. **Per the appellant's testimony, BTE is a successful manufacturing business, currently operating within the regulations of the zoning ordinance.**

h. Such other criteria which the board believes relates to determining whether the zoning regulation is equitable. **None.**

Mr. Hill asked "what is the percentage of the part of the building that goes into the commercial property?"

Mr. Hess said the part that goes from industrial into the commercial area is 11% or 18,000 square feet of the footprint, and added that the commercial stays commercial, with a 40,000 to 50,000 square foot driveway.

Mr. Dietrich said you would not want it industrial all the way to the road.

Mr. Hill stated that they have about 3 acres that are not usable, so the hardship is with the property, not anything that the applicant has done.

Ms. Lengel stated that all of the conditions have not been met. You have to meet them all to get a use variance.

Mr. Mullins asked about the basin and how that was calculated.

Mr. Hess explained that the retention basin for storm water control to be utilized by both proposed lots will be located behind building on the 4.4556-acre industrial lot, per Geauga Soil and Water Conservation District criteria. A joint maintenance agreement for it would be recorded.

Ms. Preston read this interpretation of an unnecessary hardship from a zoning website:

...The applicant must demonstrate that under the zoning regulations, the applicant is deprived of all economic use or benefit from the property in question... The applicant cannot realize a reasonable return ...the property in question is unique, and does not apply to a substantial portion of the district or neighborhood...the use variance will not alter the essential character of the neighborhood...and the hardship has not been self-created."

(Although the source of this information was not stated during the appeal, it is: definitions.uslegal.com.)

Ms. Preston added that, based on additional interpretations of "unnecessary hardship" that she has read, she cannot see where the appellant has proven that it exists in this case, as his business is very successful as it is.

Ms. Lengel read the following requirements for a use variance from ohioplanning.org: “In granting a use variance, the board shall determine that all of the following conditions are met by the requests. (1) The property cannot be put to any economically viable and appropriate use under any of the permitted uses in the zoning district.”

Mr. Hill asked if anything they assembled or made would be considered commercial.

Mr. Hess stated no, nothing BTE makes would be considered commercial. Nothing was ever rejected by the zoning inspector.

Mr. Hill stated the zoning inspector rejected the application for a permit.

Ms. Preston asked for any other questions or comments from the Board members. As there were none, she closed that portion of the meeting and asked for a roll call on the motion to grant the variance.

ROLL CALL:

Kathy Preston - NO
Rich Hill - NO
Jo Lengel - NO
Bryan Mullins- NO
Jeffery Heavner NO

Ms. Preston advised applicant Mr. Troyer that the variance has been denied, that he can appeal the decision with the Geauga County Court of Common Pleas, and that the decision forms will be mailed within the next ten days.

The members completed the Decision Form and Fact Finding Sheet.

Roll call to accept the Fact Finding Sheet.

Kathy Preston - YES
Rich Hill – YES
Jo Lengel - YES
Bryan Mullins- YES
Jeffery Heavner YES

Area Variance #2019-18385 was called.

Mr. Dietrich stated BTE wants to split the 7.08-acre lot into two lots: 2.5002 acres in the commercial zoned district, which meets the minimum lot size for commercial lots, and the balance of 4.4556 in the industrial and commercial districts (rights-of-way not included). An area variance would be required for the industrial/commercial lot as industrial district zoning requires a minimum lot size of 5 acres (Section 404.4). This would be a 12% variance. A second area variance is required for frontage for the industrial/commercial lot along Nelson Road. In order to make the split at the requested

acreage, the frontage would be 267.49 feet. Zoning requires a 300 ft. frontage for industrial lots. This is an 11% variance. Parcel is compliant with coverage, driveway and off-street parking. BTE wants to split the lot so they can sell or use the commercial area for commercial use. BTE can't do a lot split unless they get the area variances.

Ms. Preston asked for a motion to grant the variance. Mr. Hill moved to grant and Ms. Lengel seconded the motion.

Board Members Questions/Comments to Applicant/Owner: There were no additional questions or comments. Ms. Preston closed that portion of the meeting.

Board Members' Deliberation..

Ms. Preston led the Board in considering the following issues:

- 1) Is there a reasonable return or beneficial use without the variance?
There already is a beneficial use.
- 2) Is the variance substantial? **No**
- 3) Would adjoining properties suffer or be altered? **No**
- 4) Is the variance adverse to providing government services? **No**
- 5) Was purchase of property with knowledge of the restrictions? **Yes**
- 6) Can predicament be obviated by means other than by variance? **Yes**
- 7) Would the spirit and intent of the zoning be upheld? **Yes**

Ms. Preston 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 variances.

ROLL CALL:

Kathy Preston - YES
Rich Hill – YES
Jo Lengel - YES
Bryan Mullins- YES
Jeffery Heavner YES

Ms. Preston advised applicant, Mr. Troyer, that the variances have been granted, and that Decision Forms will be mailed within the next ten days.

The members completed the Decision Form and Fact Finding Sheet.

Roll call to accept the Fact Finding Sheet.

Kathy Preston - YES
Rich Hill – YES
Jo Lengel - YES
Bryan Mullins- YES
Jeffery Heavner YES

Ms. Lengel moved to approve the minutes of May 29, 2019. Mr. Mullins seconded and the motion passed. Mr. Hill abstained.

Ms. Preston informed everyone that Brandon Reed has resigned from the BZA.

Mr. Heavner stated he also will be turning in his resignation, due to health issues.

Mr. Spelich suggested we get a new version of the Ohio Zoning Book if the one we have is outdated.

Ms. Lengel asked about specific issues going on in Parkman and if they have been resolved.

Mr. Duchscherer stated he will be meeting with the county prosecutor on 5 different cases at the end of the month. He is going to ask her to resolve these issues or he will request another prosecutor. Also, he will inquire about the township's ability to impose fines on property owners not in compliance with zoning.

Mr. Spelich stated that Mr. Edward and Mr. Eli Miller did do a lot split, negating their need for a variance. Also, the drive through at the Country Store on RT 422 is in progress; nothing concrete yet.

Adjournment:

Ms. Lengel motioned to adjourn, Mr. Hill seconded, the motion passed unanimously. The meeting adjourned at 10:00 p.m.

Respectfully Submitted,

Jan Helt Date

Secretary, BZA

Kathy Preston Date

Chairperson, BZA

