

## **PARKMAN TOWNSHIP BOARD OF ZONING APPEALS**

### **Regular Meeting**

**Tuesday, January 8, 2013**

Members present: Cindy Gazley, Jo Lengel, Jon Ferguson, Rich Hill, Lucinda Sharp-Gates, and Jerry Jacobs

Members not present: none

Others Present: Ben Byler, Nancy M. Byler, and John Spelich-Zoning Inspector

The meeting was called to order by Cindy Gazley at 7:30 p.m.

Cindy Gazley explained the format of the meeting and then gave an overview of how the meeting would be run. Everyone was asked to sign in on the sheet provided.

Jon Ferguson made a motion to dispense with the reading of the minutes of the December 4, 2012 meeting until after the appeal is heard. Lucinda Sharp-Gates seconded the motion. Motion passed unanimously.

Rich Hill, Lucinda Sharp-Gates and Jerry Jacobs asked to be recused because they perceived it to be a conflict of interest and sat in the audience and did not participate in the appeal.

Cindy Gazley administered Oath of Truthfulness to all present:

Sworn in witnesses: Ben Byler, Nancy M. Byler, and John Spelich-Zoning Inspector.

There is an area variance application to be addressed by the Board at this meeting:

- **NUMBER 2012-16496**

#### **Applicant Explanation for requesting variance to Parkman Township Zoning Resolution.**

This application submitted by Ben Byler, 16496 Nash Road, (Parkman Township), Middlefield, Ohio is requesting an area variance from Parkman Township Zoning resolution for property located at 16496 Nash Road, Parkman Township. Mr. Byler said he owns property on which he has a store which sells agricultural products and general hardware. Mr. Byler was considering an addition to his house and building. Mr. Byler said his brother is partially disabled and the store offers employment for him with a slower pace of work. He contacted the Zoning Inspector at that time, who suggested that when he was ready to build he should contact him. In January, 2012 Mr. Byler attempted to contact the Zoning Inspector before beginning construction on an addition to a building. He states he did not receive a response. He proceeded with the pouring of concrete for the building. He then received a stop work order

because of no permit and stopped work on the building. He planned on using the building for animal feed, fertilizer, and seed. He said the building is not quite done with some siding needed for the back and finishing of a lean-to.

Cindy Gazley asked for any other information. There was none. Cindy Gazley closed that portion of the meeting.

Cindy Gazley asked if there was a motion to grant the variance. Jo Lengel moved and Jon Ferguson seconded the motion to grant the variance.

### **Open Floor to Public**

Mr. Spelich said he became Zoning Inspector this past year. In March or April of 2012 he drove by Mr. Byler's store and noted new construction. He said his first thought was that this may be an agricultural building but with more investigation concluded it was a commercial business. He noted 3-4 buildings on a 5 acre property. One month later he issued a stop work order because of building without a permit. Mr. Byler stopped work on the building, but 4 months later started working again. Mr. Spelich noted that the square footage of the building is over the limit allowed for a home occupation in a residential area. He said at this point the building is up. He said it was a nice looking building and Mr. Byler runs a good business. Mr. Spelich would like to see no additional building.

Cindy Gazley asked for any other questions. There were none. Cindy Gazley closed that portion of the meeting.

### **Board Members Questions/Comments to Applicant.**

Cindy Gazley asked the board members if they had any questions. Board Member Jo Lengel asked the size of the buildings on the property. It was determined that if they exclude the house and barn and consider the store, warehouse and new addition it is about 6976 square feet in area. Mr. Spelich was asked the square foot limits per Zoning Regulation for a 5 acre lot in a Residential District. He said the limit is 2500 square feet. It was determined that this was substantial, over 25%.

The BZA members reviewed the responses of the applicant on the area variance application.

### **Board Members Discussion/Deliberation.**

Cindy Gazley led the Board in considering the following issues.

- a. 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, the property is residential and he already had a variance for part of the business.
- b. Whether the variance is substantial: yes.

- a. 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: Jon Ferguson said yes because a Home Occupation specifies no alteration of the front of the property and there is a dock door and parking in front of the Byler property. All members agreed yes.
- b. Whether the variance would adversely affect the delivery of governmental services: no.
- c. Whether the property owner purchased the property with the knowledge of the zoning restriction: yes. Cindy Gazley pointed out that when Mr. Byler answered that question on Form No. 12, the answer indicated he knew he would need a variance to add a hardware store and since he engaged in the process before, he was aware that zoning applies to his property.
- d. Whether the property owner's predicament feasibly can be obviated through some method other than a variance: yes. Jon Ferguson noted that Mr. Byler could use the existing floor space he had, or buy additional property in a commercial Area.
- e. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance: no.
- f. Such other criteria which relate to determining whether the zoning regulation is equitable: The BZA was provided no other evidence about any other criteria.

**Roll Call as to Whether to Approve the Variance**

Cindy Gazley	No
Jo Lengel	No
Jon Ferguson	No

Cindy Gazley told the applicant the appeal was denied. She stated that a letter will be mailed to the applicant within 10 days with the decision results of the appeal. She told the applicant that the decision may be appealed with the Geauga County Court of Common Pleas within 30 days.

**Finding of Facts**

- a. The property in question will yield a reasonable return and there can be beneficial use of the property without the variance by utilization as a residence and the continued use of the property as approved in the previous zoning variance.
- b. The variance is substantial, over 25%.
- c. The essential character of the neighborhood would be substantially altered and adjoining properties would suffer a substantial detriment as a result of the variance because Home Occupation specifies no alteration to the front of the property and there is a dock door and parking in front of the Byler property.
- d. The variance would not adversely affect the delivery of governmental services.
- e. The property owner purchased the property and knew of the zoning restriction. Mr. Byler's answer on Form No. 12 indicated he knew he would need a variance to add a hardware store and since he engaged in the process before he was aware that zoning applies to his property.
- f. The property owner's predicament feasibly can be obviated through some method other than a variance by using existing floor space or the purchase of Commercial Property in a commercial district.
- g. The spirit and intent behind the zoning requirement would not be observed and substantial justice not done by granting the variance.
- h. There are no other criteria which relate to determining whether the zoning regulation is equitable.

**Roll call to Roll call to approve the Finding of Facts.**

Cindy Gazley	Yes
Jo Lengel	Yes
Jon Ferguson	Yes

**Old and New Business**

Lucinda Sharp-Gates made a motion to approve the minutes of the December 4, 2012 meeting. The motion was seconded by Rich Hill. The motion passed with Jon Ferguson and Jo Lengel abstaining.

Cindy Gazley said that she had been in contact with Rebecca Schlag Assistant Geauga County Prosecutor in regards to ethics training for Board of Zoning Appeals members. She said that

the Prosecutors office is working on a class for Geauga County Zoning Appeal Board members dealing with Geauga County issues.

Lucinda Sharp-Gates made a motion, seconded by Jo Lengel to nominate Cindy Gazley as Chairperson for the Board of Zoning Appeals for 2013. Motion passed unanimously.

Cindy Gazley asked if BZA minutes have been posted on the web site. Renee Patry said she has been sending them to Cory Anderson for posting.

Cindy Gazley asked for an update on the Zoning Resolution. Renee Patry said that the Zoning Commission meets January 22, 2013 and will review the book for accuracy. Then new books will be printed for all members and the Regulations will be put on the web site.

Cindy Gazley asked for ideas for education of the public so that they would be aware of the need to check with the Zoning Inspector before building to avoid misunderstandings leading to appeals. Several suggestions were made including submitting an article to the Parkman Paragraphs, Villager, getting the Zoning Regulations on the web site, and placing a flyer at the Amish book store. John Spelich will check with the Zoning Inspector Association as to how different communities get information out to the public.

Mr. Spelich explained to the Board that he received an email from the Planning Commission in regards to the variance granted for Appeal 2012-16550(2). Mr. Dietrich asked if the BZA had set any conditions on the variance. Mr. Spelich replied to the Planning Commission that there were no conditions.

Cindy Gazley asked if John Spelich had any news about Parkman Auto. Mr. Spelich said that the owners of Parkman Auto were expected at Zoning Hours on Wednesday for possible request for a Conditional Use Variance.

The Board of Zoning Appeals will meet on February 12, 2013 at 7:30 p.m. for approval of minutes and will hear the Conditional Use Variance request if it has been made by that time and if it was made in time for publication and notification of adjacent property owners.

A motion was made by Jo Lengel and seconded by Jon Ferguson to adjourn the meeting at 8:35 p.m. Motion passed unanimously.

Respectfully Submitted,

Approved,

Renee Patry

Cindy Gazley

Zoning Secretary

Chair

