

PARKMAN TOWNSHIP BOARD OF ZONING APPEALS

Regular Meeting of May 13, 2014

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

Members not present: Rich Hill and Paul Nalepa

The meeting was called to order by Cindy Gazley at 7:30 p.m. and announced that Dale Komandt would be the alternate for Rich Hill. Due to there being three appeals to be heard Ms. Gazley recommended hearing the appeals first, then dealing with other business. All agreed.

Approval of Minutes

Ms. Sharp-Gates moved to waive the reading of the minute's portion of the meeting until after the appeals have been heard. Kathy Preston seconded and the motion passed unanimously.

General information for audience: Ms. Gazley explained that when there is an appeal for a variance, the presumption is that the zoning regulation will be upheld unless there is a unique circumstance as to that property. In determining the uniqueness of the circumstance, BZA must use the criteria determined by law for the variance, and those criteria are the ones listed in the appeal application.

OLD BUSINESS:

Ms. Gazley stated that we would hear the older appeals first (2014-16654 and 2014-15690) and then the newest appeal (2014-16388 would be last).

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

Ms. Gazley stated that in January, 2014 and April, 2014 we heard testimony about this appeal. We will incorporate the information from those meetings, as recorded in our minutes, into this meeting. Ms. Gazley gave the Oath of Truthfulness to Mr. Spelich, Mr. Shilman was not present. No one was present on the applicant's behalf. Notice of this meeting was given in accordance with the instructions of the Prosecutor office.

Mr. Spelich said that Mr. Shilman turned the paperwork in that we requested at the last meeting. Mr. Shilman got the Power of Attorney from Olga Prorkhorov and the original Land Installment Contract for the property. Mr. Spelich testified that he contacted the EPA and they said that the EPA would not come out to inspect a business unless they have a complaint.

Ms. Preston asked if there was a certification process (EPA) for a business and Mr. Spelich said there is not.

Mrs. Lengel asked “if Mr. Soltis was present?” and he was not.

Mr. Spelich stated that he believes Mr. Shilman and Mr. Soltis must have worked everything out. Mr. Spelich said he inspected the property and he believes everything was removed from the property lines.

Ms. Preston asked “Does Mr. Shilman take the parts and pieces he does not use to the junkyard?” Mr. Spelich said he does take whatever he does not use to the junkyard.

Ms. Lengel asked about the non-conforming sign in front of the property. Mr. Spelich stated that it would be gone.

Ms. Gazley stated she was at the post office and found a business card for Amen Towing. It uses the address of the property as the business address. We all thought that the business was no longer there; Ms. Gazley gave it to Ms. Helt to make copies and have it on record.

Ms. Lengel asked “Does the 25 cars allowed on the lot include the back lot?” Mr. Spelich said no he is allowed 10 vehicles on the back lot for parts and pieces to fix the cars he will eventually sell on the front lot. Mr. Spelich said he made it clear that he needs to continue to clean up his property.

Mr. Spelich stated the application for conditional use is for a vehicle sales lot. Ms. Gazley stated we would use the criteria in the zoning regulation to determine whether to grant the conditional use.

Ms. Gazley asked everyone to go to article 505.0 and we would have a discussion about it. Ms. Gazley went over the General standards for Conditional uses, (and these are the proposed Finding of the Facts relating to this Conditional Use application):

General Standards for Conditional Uses

- A. The location, size and intensity of the proposed use shall be considered in relationship to the site. *Ms. Preston stated it is located in a commercial area. Ms. Lengel stated as long as Mr. Spelich is good with it she was happy.*
- B. The proposed roads and other means of ingress and egress are of adequate width and condition to accommodate expected vehicular traffic to be generated by the proposed use and are reasonably constructed to permit access by fire-fighting, police, and ambulance and other safety vehicles and will not interfere with traffic on adjacent thoroughfares. A traffic impact study by qualified traf-

fic engineer may be required. *Mr. Spelich stated that traffic flow does not present any issues in this circumstance. There have not been any problems with citations. We discussed ingress and egress to the site from Route 422 and noted that it is a divided, one way highway in front of the property. We have not requested a traffic impact study and do not feel we need to.*

- C. The size and number of proposed off street parking spaces and loading/unloading spaces are adequate and are in accordance with the provisions of article V1 of this resolution. *Ms. Gazley stated that the number of parking spaces has been purported to meets provisions of article V1.*
- D. The type size, location and number of proposed signs are in accordance with the provisions of article V11 of this resolution. *Ms. Gazley said the type size and location have been discussed. Flagging signs had been present. Upon the insistence of our zoning inspector, they have been removed. The mobile sign continues to be present.*
- E. Proposed use will be compatible with the township land use plan. *Yes, the proposed use is in accordance with land use plan. It is located in a commercial district.*
- F. The proposed use will not be hazardous or disturbing to existing or future neighboring uses. *The neighbor did complain because of encroachment on his property. Upon the insistence of the BZA and Zoning Inspector, the encroaching cars have been removed according to the testimony of the Zoning Inspector. The Zoning Inspector believes that he will continue to observe the property to assure that it is compliant in all respects. The Zoning Inspector believes there is a separate septic for the residence on the property and for the business.*
- G. The proposed use will be served adequately by essential public facilities including roads, police and fire protection, drainage structures, refuse disposal, water and sewage disposal facilities, and schools, or that the applicant shall be able to adequately provide such services. Proof of compliance with applicable codes and regulations pertaining to the protection of public health and safety including fire, sanitary sewage, water supply, erosion control, and storm water runoff may be required. *The Zoning Inspector testified that the proposed use will be adequately served and that the use is currently compliant with applicable health and safety codes and regulations.*
- H. The proposed use will not create excessive additional requirements at public cost or public facilities and services and will not be detrimental to the economic welfare of the community. *No it will not.*

- I. The proposed uses will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare. *No it will not.*

Ms. Gazley asked if there were any more questions on this appeal. The members concluded that they needed evidence of the approval of the septic system by the Geauga County Health Department before moving to vote on the variance. Mr. Spelich will advise the applicant to produce evidence of the approvals at the next meeting, June 10, 2014.

Appeal # 2014-16654 Allen Weaver (2 Variances)

Neither Mr. Weaver nor anyone on behalf of the applicant was present at this meeting. Notice was given in accordance with instructions given by the Prosecutor.

Ms. Gazley stated that the lot in question has 2 dwellings not in conformance with our current zoning regulations. However we have a preliminary determination from ZI that the lot, if not changed, is currently ok because it is in conformance with the Zoning regulations published at the time the homes were built (circa 1979 or 1980.) Ms. Gazley stated that the Prosecutor's Office advised lots can exist as "grandfathered" without the need for a variance, but as soon as a lot is split or otherwise reconfigured in any way **A NEW PARCEL IS CREATED.** Therefore, **BOTH NEW PARCELS (DUE TO THE SPLIT)** must meet the zoning regulation in effect at the time the new parcel is created, which would be now under the current regulations. Ms. Gazley asked Mr. Spelich to speak with Mr. Weaver and make sure he understands the situation. If he pursues the Flag Lot he will be changing the lot lines, creating new parcels, and all current zoning will apply. Ms. Sharp-Gates motioned and Mr. Komandt seconded the motion to continue this appeal on June 10, 2014.

Ms. Gazley asked Ms. Helt to send a certified letter explaining the situation to Mr. Weaver. Ms. Gazley also asked Mr. Spelich to inspect the property and/or application to be sure Mr. Weaver does not need any more variances than the 2 already requested. Mr. Spelich said he would do that and then get together with Ms. Helt and go over everything so if applicant does need any more variances we will be able to advertise before the next meeting. Ms. Preston said that maybe Mr. Spelich should speak to Mr. Weaver and explain everything to him so he understands instead of putting it in a letter. We do not want him to feel we are planning to deny his appeal, because that is not the case. Mr. Spelich said he would take care of it.

Kenneth Klima Appeal # 2014-16388

Ms. Gazley explained the procedure for the hearing to Mr. Klima and administered the Oath of Truthfulness to him and Mr. Ikeler. Mr. Spelich is already under oath for this meeting.

Mr. Spelich read the request for an area variance to allow 2 dwellings on one lot.

Mr. Klima said it was his parents' request in their estate planning to separate the land. A Trust was created and the distribution according to the terms of the Trust necessitates a split in the land. There are 2 homes on the remaining lot (once split), which is just under 6 acres. Mr. Klima said he came to see Mr. Spelich in October of 2013. At that time the lot split was approved but the paperwork had to be filled out and filed. He said a new Head Prosecutor took over and since the paperwork had not been processed they had to start all over.

Ms. Sharp-Gates asked if he had frontage on 2 roads. Mr. Klima said that yes he did have frontage on 2 roads. Mr. Klima showed everyone where the two proposed lots are located on the map. He stated that the rest of the land (22 acres after the split) is leased to Mr Soltis for farming. Both homes on the lot are rented to his brother and his brother's daughter and her husband. There is no way they can do a lot split with the 2 homes because of the way they are situated. They have separate septic systems but they are located on the same side of the property. Mr. Klima said this lot is in the family Trust and is to remain in the family forever. Mr. Klima stated there will always be a Klima living on the property long after he is gone.

Ms. Preston asked about probate and Mr. Klima said all that is done. He wants to honor his parent's wishes as to what they wanted done with the land and he wants to comply with the terms of the Trust.

Ms Gazley asked the applicant if he had anything else to add. Mr. Klima stated that he hopes we can see his side of this situation. Ms Gazley closed that portion of the hearing and opened the hearing to the public.

Mr. Ikeler lives next door to the property and stated it has been a hardship for the Klima's family having to deal with all these issues we need to get this resolved. Mr. Ikeler stated he has no problems with these plans.

Mr. Spelich stated there is no feasible way to split the lot with the 2 homes on it and be in compliance with Parkman zoning.

Ms. Gazley closed that portion of the meeting. Ms. Lengel motioned to grant the variance 2014-16388. Ms. Preston seconded the motion.

There being 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?
There can be a beneficial use of the property, which is to leave it as it is. However, this cannot be done due to the terms of the Trust.
2. Is the variance substantial?
Yes it is 100%
3. Would adjoining properties suffer or be altered?
No, because it has been like this for years, neighbors have no problem with it.
4. Is variance adverse to providing government services?
No, they have been delivering the same services since 1956, when the home was built.
5. Was purchase of property with knowledge of restrictions?
No. The property was not purchased. It is being passed to beneficiaries according to the terms of the Trust.
6. Can predicament be obviated by means other than by variance?
No, it would not meet the requirements of the Trust. If split both septic's would be on one property.
7. Would the spirit and intent of the zoning be upheld?
Yes the 2 homes have been there for years. The health and welfare will not change. We are trying to comply with the Trust.

Ms. Gazley asked for any other questions or comments from the board members, closed that portion of the hearing and asked for a roll call vote on the motion to grant the variance: *Cindy Gazley – yes, Lucinda-Sharp-Gates – yes, Betty-Jo Lengel – yes, Kathy Preston – yes, Dale Komandt – yes, and the motion passed unanimously*

Ms. Gazley advised the applicant Kenneth Klima that variance request #2014 – 16388 was granted and that a party who may disagree has 30 days to appeal the decision.

The board signed the decision form and completed the findings of facts as follows:

The variance is 100% and therefore substantial. The 2 dwellings have been in place since 1956. There is enough land but the lot can't be split because it can't be done in a way that meets current zoning, there would also be a problem with the septic and the well they would both be on the same lot. Enforcement would require demolition of one of the structures that was legal when it was built. This is a lot split pursuant to deceased owner's wishes as required in his estate planning documents.

Ms. Preston moved to adopt the findings of the fact for appeal #2014 -16388, Ms. Sharp-Gates seconded and upon roll call the vote was Ms. Gazley-yes, Ms. Sharp-

Gates-yes, Ms. Lengel-yes, Ms. Preston-yes, Mr Komandt-yes, and the motion passed unanimously.

MINUTES OF APRIL 8, 2014:

The members of BZA reviewed the minutes of April 8, 2014 and suggested changes. Ms. Gazley moved to approve minutes for April 8, as amended, Ms. Lengel motioned and Ms. Sharp-Gates seconded and the motion passed unanimously.

OLD OR NEW BUSINESS:

Ms. Gazley asked if there was any old or new business. Mr. Spelich stated that CNC gave him copies of the proposed new building plans. He said everything was looking good. Ms. Gazley asked if they will need any variances and Mr. Spelich said he did not think so.

Ms. Gazley asked if everyone had resolved their issues with OPERS? There were no comments on this issue. She reminded members to look into this on their own if they are interested in doing so.

Ms. Gazley stated that we would hear the 2 appeals #2014 – 15690 and 2014 – 16654 at our next meeting on June 10, 2014.

We discussed the training being held on June 6. Members who are interested in attending are to register on their own and the Township will pay the registration fees on their behalf.

ADJOURNMENT:

Ms. Lengel moved to adjourn, Mr. Komandt seconded, and the motion passed unani-
mously. The meeting adjourned at 9:30 pm.

Respectfully Submitted,

Jan Helt Date

Secretary, BZA

Cindy Gazley Date

Chairpman, BZA

