

## **June 2010 -- Minutes**

### **BOROUGH OF PALMYRA LAND USE BOARD June 21, 2010 Minutes**

The caucus meeting was called to order by Chairwoman Carol Riener at 7:00 pm and the following members of the Board were recognized as being present:

**Present:** Riener, Neely, Beck, Stokes, and Elmes

**Absent:** Gural, Locke, Norcross, Jackson, O'Kane and Dunn-Sanders

Chairwoman Riener asked for an update on the Kobolak application; which both Mr. Denton and Mr. Brewer commented. It was determined a sealed document or notarized letter of the cross easement for parking is needed. Chairwoman Riener stated it's prudent the board receive the appropriate letter. She then asked is Mr. Kobolak should be present at the meeting.

Mrs. Scott-Forman commented Mr. Kobolak called and questioned if he needed to be present and he was told no. Mrs. Kilmer commented he is scheduled to appear in Municipal Court's next session.

Mr. Brewer suggested to postpone the appearance.

The Board reviewed the applications on the agenda and the Chair asked for any additional comments or questions concerning the agenda.

Mr. Brewer commented the use variance on the agenda needs 5 votes meaning the vote this evening would need to be unanimous. He added that a use variance is a significant change and the possibility of 5 affirmative votes could be slim; the applicant should be made aware he may have a better chance with a full board to hear the application.

Chairwoman Riener asked Mrs. Kilmer to give a brief overview of the appeal of her decision. Mrs. Kilmer commented it is the warehouse at Keystone Automotive next to the current building and the applicant is actually doing auto body work.

Mr. Brewer stated he had no thoughts on it and will hear the appeal.

The Code Enforcement and Zoning Officer's monthly reports were discussed. The question arose concerning yard sales on Delaware Avenue. Mrs. Kilmer commented they haven't had any other yard sales since the summons was sent.

Mrs. Elmes questioned the driveway ordinance. Chairwoman Riener stated it's an ongoing ordinance; Tracy is still enforcing the ordinance since council's passing of the ordinance.

Mr. Neely questioned if the Fillit litigation was still ongoing? Mr. Brewer stated he will comment in executive session.

No other questions or comments were discussed.

Chairwoman Riener closed the conference portion of the meeting and moved right into the regular meeting of the board.

**BOROUGH OF PALMYRA  
LAND USE BOARD  
June 21, 2010 Meeting minutes**

Meeting was called to order by Chairwoman Riener at 7:30 pm followed by the salute to the flag and the Open Public Meeting Statement which was read in to the record as follows:

Public Notice of this meeting pursuant to the Open Public Meetings Act, has been given by the Board Secretary in the following manner:

- A.** Posting written Notice on the Official Bulletin Board at the Palmyra Borough Hall on December 29, 2009.
- B.** Mailing written Notice to the Burlington County Times on December 29, 2009; for publication on December 31, 2009.
- C.** Notice to All Board Members.

Roll call was recorded as follows:

**Present:** Riener, Beck, Neely, Stokes and Elmes

**Absent:** Gural, Norcross, Locke, Jackson, O'Kane and Dunn-Sanders

Mr. Brewer, Esq. swore in Mrs. Kilmer (Zoning Officer) and Mr. Denton (Board Engineer)

Mr. Beck placed a motion on the floor for the approval of the April minutes

Mr. Neely seconded the motion

The April minutes were approved and recorded with a unanimous voice vote

The professional vouchers were tabled to be reviewed in executive session as there were questions concerning litigation charges.

Chairwoman Riener stated the application 2007-10A Kobolak would be moved to the July 19, 2010 meeting beginning at 7:30 pm. She then called application 2010-01, Mr. Iqbal Ahmed; use variance to change form retail to office front with rear apartment in the TC zone.

Mr. Brewer swore in Mr. Ahmed

Chairwoman Riener questioned Mr. Ahmed if he had an attorney to represent him, he replied no.

Mr. Brewer explained the difference between a use and bulk variance and strongly recommended to the applicant he have an attorney and a planner to represent his interest. "Without one you run the risk of not having all the information on the record; if the application is denied and you don't give specific detail you run the risk of losing the hearing."

Chairwoman Riener commented the legal standard to help you make your case is an attorney. This application requires that all of use present tonight would have to be in favor of your application. Because we only have 5 members of the board present you have the option to postpone to next month when more members of the board may be present giving you better odds in the affirmative for you. She also asked him not to put anything on the record if he chose to postpone.

Mr. Denton suggested the Board also request a site plan for ingress and egress as a minimum and approval could be contingent upon a site plan.

In the end Mr. Ahmed decided to postpone the application until the July 19th date.

Chairwoman Riener called Zoning Appeal Z-0001-2010 Charles Krepellka

Mr. Hercules Pappas, Esq. appeared along with Mr. Krepellka as his attorney along with Mr. Linbomb and Mr. Brooks. Mr. Brewer swore in Mr. Krepellka, Mr. Linbomb and Mr. Brooks.

Prior to Mr. Pappas' opening statement Chairwoman Riener stated that she works for Theodore E. Mozer's fabricating and asked if that would in any way prohibit her from hearing the appeal.

Mr. Pappas, Esq. his client had no problem.

Mr. Pappas gave his opening statement indicating Mr. Krepellka came to the neighborhood to do shop work and rented from Mr. Brooks. "Prior to signing the lease they spoke to Mrs. Kilmer and were given the okay. Since that time Mrs. Kilmer subsequently denied the application. Mr. Pappas commented his client has been paying rent on a signed lease since January of this year and has now expended money and is essentially now in a financial hardship to pull out and move else where."

Chairwoman Riener questioned that the application was initially approved and then subsequently denied due to misrepresentation.

Mr. Pappas replied "the neighborhood appears to be exactly what everyone else is doing." He then continued by asking questions of Mr. Krepellka concerning the layout of the building, the neighborhood and the process of signing the lease after he spoke to Mrs. Kilmer. Mr. Pappas continued with his line of questioning concerning the paint booth that was being constructed and monies paid.

Chairwoman Riener commented the board can not take into consideration any financial hardships and asked Mr. Brewer if he had any questions. Mr. Brewer questioned if witnesses will be testifying and if this is an appeal.

Mr. Pappas replied he is appealing the application was initially approved and then denied and that Mr. Krepellka made provisions to rent the building.

Mr. Brewer continued his line of questioning by asking "is your position that the land use ordinance allows the work"

Mr. Pappas again stated "the appeal is that it was first approved and then denied."

Mr. Brewer questioned if the appeal is from the decision Mrs. Kilmer made in denial and that she was correct the first time? For this board to do anything there has to be a demonstration that the land use ordinance specifically allows and she was incorrect.

Mr. Pappas at this time stated they would like to continue to the July 19th meeting and amend the appeal to include an application for a variance.

Mr. Brewer commented the absent members should make every provision to listen to the tapes prior to the next meeting.

Chairwoman Riener stated the zoning appeal # Z-0001-2010 for Mr. Charles Krepellka will be continued at the July 19th meeting provided all requirements are met.

Chairwoman Riener stated that the outside display and dining ordinance will be on the September meeting and Mr. Gerken will be asked to attend.

Mr. Neely placed a motion on the floor to open the meeting to the public

Mr. Beck seconded the motion

An affirmative voice vote was recorded

Mr. Richard Rosenfeld of 803 Cinnaminson Avenue stated "I received a notice of violation dated May 16, 2010 and stated his parking spaces are in the rear of the yard and that the ordinance doesn't represent his property. What it comes down to is that if I pave the entire drive way then I would be in direct conflict of impervious coverage. If Mrs. Kilmer's interpretation is correct I would need to get several variances and spend several thousand dollars for something that has been in existence and legal for decades."

Mr. Brewer informed Mr. Rosenfeld Council writes the ordinances and that it is Mrs. Kilmer job to enforce them. She is under the direction of Council.

Mrs. Kilmer commented she did not tell him he had to concrete the entire driveway and stated he could use pavers for tire travel.

Mr. Rosenfeld replied he "could not because there is not enough room to allow a driveway. Zoning laws change all the time, we'll have to go to court. The set back and the minimum lot size has now been increased how is there no provision for a non conforming existing condition?"

Mr. Brewer commented “you have great and interesting facts, and you have a completely appropriate ‘beef’ but only the governing body can make the decision.” If Tracy is accurately applying the ordinance then the governing body would need to make the change.

Daniel Martin who identified himself as Mr. Rosenfeld’s brother-in-law questioned the board “Did you ever envisioned grandfathering non conforming existing use as it continues? If there is no action on the facility the grandfather is to be used.”

Chairwoman Riener replied the discussion was had but determined it would be no grandfathering, it would be laterally applied.

Mr. Rosenfeld then commented the original letter stated the change was partly due to the change in the states water run off.

Mrs. Kilmer commented to Mr. Rosenfeld that she had already explained that to him.

Chairwoman Riener asked for any other comments; and none were presented to be acknowledged.

Mr. Neely placed a motion on the floor to close the public comment portion of the meeting.

Mr. Beck seconded the motion

An affirmative voice vote was recorded

Mr. Beck placed a motion on the floor to enter into executive session.

Mrs. Elmes seconded the motion.

An affirmative voice vote was recorded

### **EXECUTIVE Minutes June 21, 2010 Land Use meeting**

Mr. Brewer updated the Board about the ongoing Fillit litigation. The Fillit litigation is a dual litigation, they requested more information typically to include the last 40 years with evidence on lots 1, 2 and 3 and why it was bad for all three lots and the lots near it have an effect also. We’re in the middle of the case and then the Judge decided to allow both parties to submit what they saw fit. An appraiser’s information was supplied and another set of information was submitted 12 days late. Fillit objected to the additional evidence, the court allowed the supplemental information. Oral argument is on Wednesday June 30th. Andy expects they won’t put in any other discovery.

Mr. Neely commented he believed the money is being well spent. My question about the billing was that we never hear about Fillit but we're constantly being billed for it.

No other comments or questions were asked nothing further for executive session.

Mr. Neely placed a motion on the floor to close executive and return to open forum

Mrs. Elmes seconded the motion

An affirmative voice vote was recorded.

Pamela Scott-Forman

LUB Secretary

Mr. Beck placed a motion on the floor to approve the professional vouchers submitted

Mrs. Elmes seconded the motion

An affirmative roll call vote was recorded of members present with no abstentions

The board reviewed discussion items the driveway topic was top on the list.

Mr. Beck strongly commented how ridiculous that there were one or two items left out of the testimony as what is considered parking material and parking on grass and leaves. The pervious and impervious coverage concerns it now causes. We were trying to avoid total coverage and having sewers back up.

Mr. Stokes questioned what the driveway coverage is and if you can't put stone down for coverage? Mrs. Kilmer commented no.

Chairwoman Riener commented that "grandfathering opens ourselves up to litigation" we need to review our own recommendations.

Mr. Brewer commented this board can send a recommendation to council and what recommendations to make.

Mr. Stokes questioned again why stone was not acceptable. Chairwoman Riener commented the state laws changed.

Mr. Denton commented pervious and impervious anything that doesn't absorb water naturally was impervious.

Mrs. Elmes suggested using the state ruling to the board's advantage for those who changed the driveways already.

Mr. Brewer suggested each member of the board review the ordinance for the recommendations to council giving consideration to specific items for change.

Chairwoman Riener requested Mrs. Kilmer to contact Mrs. Besicca for a report on use concerning driveways.

Mr Neely requested she provide examples from other townships. He then brought up a concern of parking to close to corners.

A discussion was had about site lines and corners.

There was some additional discussion concerning the appeal and the type of painting he was doing and that the service is well within the realm of work.

Mr. Neely commented "what he indicated to Tracy and what he was actually doing are two different things.

Mr. Neely placed a motion on the floor to adjourn the meeting at 8:55 pm

Mrs. Elmes seconded the motion

An affirmative voice vote was recorded.

Respectfully submitted

Pamela Scott-Forman