

**BOROUGH OF PALMYRA
LAND USE BOARD
APRIL 19, 2017
MINUTES**

CALL TO ORDER. Vice Chairman Beck calls the April 19, 2017 Land Use Board meeting to order at 7:05 p.m.

ROLL CALL.

PRESENT: Mr. King, Mr. Gural, Mr. O’Kane, Mr. Stokes, Councilman Yetter, Mayor Arnold, Vice-Chairman Beck

ABSENT: Mr. Blaisdell, Chairwoman Locke

OPEN PUBLIC MEETINGS ACT.

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

- A. Posting written notice on the Official Bulletin Board at the Palmyra Borough Hall on January 13, 2017.
- B. Mailing written notice to the Burlington County Times and Courier Post on January 13, 2017.
- C. Notice to all Board members.

PLEDGE OF ALLEGIANCE with a request from Vice Chairman Beck to silence all cell phones.

SWEARING IN OF ALTERNATE: Mr. Jason Furrer was sworn in by Attorney Kelly Grant as an Alternate #1 for the Land Use Board for a term 2 years.

MINUTES. Approval of the minutes from January 18, 2017, Mayor Arnold made a motion to approve the minutes, Mr. King second the motion. At the call of the roll, the vote was:

AYE: Mr. King, Mr. Gural, Mr. O’Kane, Councilman Yetter, Mayor Arnold, Vice Chairman Beck

NAY: None

ABSTAIN: Mr. Stokes, Mr. Furrer

RESOLUTIONS:

Application #2017-LUB1, 6 West Spring Garden Street, Block 36, Lot 3, bulk variance application.

Applicants Thomas Taylor and Jessica O’Connor are sworn in by Attorney, Kelly Grant. Mr. Taylor explains that they are applying to the Board to build a carport at 6 West Spring Garden Street for the purpose of storing vehicles out of the weather. Mr. Gural asks if he and Ms. O’Connor are the owners of the property

and is advised that they are not. Vice Chairman Beck asked if the property owner was present and is advised that the property owner is not present but they have consent from the owner in the application packet. The property owner is Mr. Taylor's great aunt, is elderly and resides in Pennsylvania. Ms. Grant advises that it is up to the Board to decide if they will accept the consent form. Mr. Gural suggests that the Board hear the engineer's report before deciding to accept the consent and asks the engineer to begin. Mr. Winckowski reports that the applicants are proposing a 600 foot carport. This will be a second accessory structure on the property. There is an existing garage. There was confusion regarding the zoning of the property as to if it was R-1 or R-2. It is R-1. The set-back is conforming to the side but the variance needed is for the set back. It should have a 10 feet carport set back from main structure. The property basically cannot conform due to unusual shape of the lot and main structure. Mr. Winckowski asks the applicants what is the need for this carport. Mr. Taylor advises it will be used to store cars out of the elements and personal use for coverage for home repair. The engineer asks if applicants plan on doing any commercial work on this property and is advised by Mr. Taylor no. Mr. Winckowski confirms with the applicant that in their response letter it states there are no utilities connected to the carport, the outside will match the existing structure, the height and area will conform to the current Code of a maximum of 18 feet and Mr. Taylor agrees. Regarding the impervious coverage, Mr. Winckowski advised that there is already an existing driveway with a slight expansion. Mr. Gural asks if this is a single front yard setback variance that is required and is advised by Mr. Winckowski that it is an accessory structure set back from the principle structure. Mayor Arnold asks if this will abut to the existing garage and is advised that it will not be connected and it will be aligned with the house and there will be a gap that will not be visible from the street. The Mayor asks if any consideration is needed from the fire department in regards to accessibility where the structure is going to be located. Mr. Stokes advised that there shouldn't be a problem because it is not enclosed. Councilman Yetter confirms that the driveway expansion will be stone and not concrete. Vice Chairman Beck asks for any further questions of the Board then requests a motion to be open to the public. Mr. Gural makes the motion to open to the public and Mr. O'Kane second. All were in favor. Bradley MacDonald, 828 Parry Avenue states that he is in support of this application. The resident, Mr. Roig, at 815 ½ Garfield supports the application. Glenn Kantor of 706 Washington Avenue supports a carport. There being no further comments, Vice Chairman Beck requests a motion to close the public portion. Mr. Gural makes the motion and Mr. Stokes second. All were in favor. Vice Chairman Beck inquired about possible problems with run off. Mr. Winckowski sees no problem and Ms. O'Connor advised that in the gap area between the garage and the beginning of the car port to the rear, there has been a french drain installed and there have been no problems with drainage.

Vice Chairman Beck requests a motion to accept or deny the application. Mr. Gural makes a motion to approve the application as submitted, Mr. Yetter second. At the call of the vote, the vote was:

AYE: Mr. King, Mr. Gural, Mr. O'Kane, Mr. Stokes, Councilman Yetter, Mayor Arnold, Vice Chairman Beck, Mr. Furrer

NAYES: None

The application is approved.

Application #2017-LUB2, 828 Parry Avenue, Block 15, Lot 8, appealing zoning violation.

Vice Chairman Beck recuses himself because he is within the 200 foot list of the applicant. Mr. O’Kane takes over the meeting. Attorney Grant explains that the applicants would like to appeal the violation issued by the Zoning Officer, Tracy Kilmer. The Board will make a decision whether to uphold the violation based on the testimony given. Mr. O’Kane asks what the violation was. Mrs. Kilmer advises that the violation was issued for not complying with a Resolution from 2005. It is in her interpretation that the applicant occupied the structure for more than a private garage which stores a maximum of three vehicles and that they are doing auto mechanic work. James Esposito, Esquire, appearing on behalf of applicant, Wanda MacDonald testifies that the applicant is appealing the zoning violation regarding the usage of the garage and gives background of the 2005 Resolution permitting a bulk variance to permit the garage to be built and for a height variance. As a condition of the approval in 2005, the garage was not to be used or occupied for other than a private garage. Mr. Esposito defines a private garage within the Borough’s development code and feels the interpretation is what is at play. According the violation, the zoning officer believes that the garage can only have 3 vehicles stored in it. No tools or equipment can be stored and no maintenance or repair work be done on their own personal vehicles can occur. Mr. Esposito further states that the other issue with the violation letter is that it states that it is not being used as a private garage but it is being used as a private auto repair garage. He asks for a definition and clarification of a private auto repair garage and how this is applied to the property. Mr. Esposito also asks that, in the alternative, that if the appeal is not granted that the Resolution be amended to permit the personal use, the maintenance of the cars and the storage of the tools and equipment. Mr. Gural states that it may not be possible for this governing body to amend a Resolution from 11 ½ years ago. Mr. Esposito explains that the zoning officer advised him to request a modification of the Resolution as opposed to a variance request. Mr. O’Kane refers to Ms. Grant as to the best way to proceed and she agrees with the Board, that this should be treated as two separate steps starting with the testimony of the zoning officer. Mr. O’Kane asks the zoning officer, Tracy Kilmer to give her testimony. Mrs. Kilmer states that she received a complaint in December of 2016 regarding the prior approval for the applicant’s garage. The complaint was for the use of a pole barn for automotive repair, the installation of the heating unit and noise complaint. She reviewed the Resolution granted to the applicant in 2005 and the Resolution stated that the pole barn will be used to primarily store the recreational vehicle. The approved Resolution states that pole barn cannot occupy or be used for any purpose except as a private garage for the storage of a maximum of 3 vehicles owned and operated by the applicant. Mrs. Kilmer asked the applicant for the opportunity to inspect the pole barn and was granted access and observed a vehicle lift, grinding and sanding equipment and other various vehicle commercial shop equipment indicating more than personal use. After review and discussion with the Borough Administrator and previous Land Use Board Attorney she determined that it was in violation of the 2005 Resolution and notified the applicant. Mrs. MacDonald responded to the notification with an e-mail citing Borough Code Section PM308.1 which addresses motor vehicles being parked or stored. Mrs. Kilmer responded that this did not apply and gave the applicant the option of removing the equipment or going to Land Use Board for an amendment to the prior approval. There was a discussion regarding applicant’s health and comments made regarding social media. Mr. O’Kane asked if the Board has any questions or comments. Mr. Esposito asked Mrs. Kilmer that, according to the violation notice itself, the garage now is considered an auto repair garage and could she please explain the definition and disclose the Code it applies to. Mrs. Kilmer states that it is considered one due to the equipment. It is equipment that is not normally

found in a residential garage. Mr. Esposito asks for a definition of private auto repair garage and how was it decided that this applied to this property. Mrs. Kilmer states that her decision was based on the equipment inside and also states there is no definition listed in the Code for private auto repair garage. Mr. Gural comments that he believes that this violation is because of an unartfully worded Resolution and that this perhaps lead Mrs. Kilmer, himself and former attorney to believe that there was a violation and something other than what was allowed. Mrs. MacDonald states that the equipment is the same as when Mrs. Kilmer inspected the garage in 2007 after a complaint was filed. Mr. Esposito confirms that after the 2007 complaint Mrs. Kilmer sent correspondence stating that the garage was in compliance with the 2005 Resolution as a private garage. The applicant states that most of the equipment owned is old and passed down from father, to son, to grandson and it is old technology equipment. Mr. O'Kane states that he does remember when the Resolution went through and nowhere was it described that it would have a lift. Mrs. MacDonald states that the equipment is the same but the lift was not there at the time of the initial application but it was there when Mrs. Kilmer inspected the garage in 2007. Mrs. MacDonald states that she received a letter from Mrs. Kilmer in 2007 asking for an inspection due to a complaint being filed. Mrs. MacDonald states she responded to Mrs. Kilmer that the garage was only used for personal use, there is no business being conducted and had signed statements of immediate neighbors attesting to this fact but she would make herself available for an inspection if needed. Mr. Esposito asks Mrs. MacDonald to clarify that there is no business being run out of this garage. Mrs. MacDonald makes that clarification. There is a discussion among the attorney, Mr. O'Kane and Mr. Stokes regarding what would be considered a business. Mr. Stokes states that the applicant states they are not operating a business in the garage and it is for fixing their own cars and this should be allowed. Mr. Yetter asks the applicant if there is any painting of the vehicles because painting would be an issue. Mrs. MacDonald states no. Mr. Stokes comments about storage of the equipment. Mr. Gural comments that the applicants have already testified that they are not running an auto repair business and asks if there are any other witnesses to be called. Mr. Esposito state no witnesses to testify at this time. Mayor Arnold comments on the difficulty of this situation and comments that the wording in the Resolution should be more concise when applicants come before the Board. Mayor Arnold states that if no commercial work is being done she is satisfied. Mr. Furrer comments that if the lift was there when Mrs. Kilmer in 2007 than what was the difference now that prompted the violation. Mrs. Kilmer states it looked different than it did in 2007. Mr. King comments that it is important for honesty and transparency in this situation. He just wants to make sure that proper interpretation of the law is given, all parties are satisfied and moving forward that even the ones complaining will have an understanding that the applicant is due to privacy. Mr. King is satisfied with the testimony. Mr. O'Kane asks Ms. Grant if there should be a public comment and Ms. Grant states that public comment is not warranted because it is an appeal. Mr. O'Kane asks Mrs. Kilmer if, with the testimony and comments of the Board, she would withdraw the violation against the applicant. Mrs. Kilmer states that she would like to, however, she would like to make sure that this situation does not arise again and that this has been continuous since 2007. Mr. Gural states that if the complaint is withdrawn the matter is concluded. Mrs. MacDonald asks, as previously stated, the Resolution is vaguely worded and if the current zoning official withdrawals the complaint she has a concerns that this will happen again. Mr. Esposito inquires if the over-turning of the violation itself is something that she could rely on. Mrs. MacDonald asks if she will have some documentation for the future. Mr. Gural suggests that our zoning officer not withdraw the complaint, allow the Board to make a motion on the appeal and that decision be reduced in a form of a Resolution prepared by our attorney. A Resolution will carry more weight than the withdrawal of the complaint. The Board decides it is not

necessary to open to the public and after discussion, Mr. Gural makes a motion to overturn the decision on appeal. Mayor Arnold second. At the call of the vote, the vote was:

AYES: Mr. King, Mr. Gural, Mr. O'Kane, Mr. Stokes, Councilman Yetter, Mayor Arnold, Mr. Furrer

NAY: NONE

ABSTAIN: Vice Chairman Beck

The motion is carried to overturn the decision on appeal.

NEW BUSINESS: Vice Chairman Beck mentions that the Masterplan review was last done in 2008 and must be done every 10 years. John Gural states that he did budget the funds for this year if we wanted to begin the process early.

OPEN TO THE PUBLIC: Vice Chairman Beck requests a motion to open to the public. Mr. O'Kane makes a motion to open to public and Mr. Furrer second.

Seeing no one wishing to speak, Vice Chairman Beck asks for a motion to close. Mr. O'Kane makes a motion to close and second by Mr. King.

ADJOURNMENT. Vice Chairman Beck requests a motion to adjourn. Mr. King make a motion and Mr. Gural second.

Meeting adjourned at 8:15 p.m.

Respectfully submitted,

MARIE L. NAGLE
LAND USE BOARD SECRETARY