

TOWN OF PARMA
ZONING BOARD OF APPEALS
February 15, 2007

Members Present: Patrick Buskey
Veronica Robillard
Stephen Shelley
Dean Snyder
Tim Thomas

Others Present: Jack Barton, Mark Kalen

Public Present: See attached list

The meeting was called to Order by Chairperson, Veronica Robillard, at 7:00 p.m. She explained the function of the ZBOA and the decision-making process. She stated that this is a five-member board and that a quorum of three is required to pass a motion. She welcomed and introduced Mark Kalen, alternate Zoning Board member. Chairperson Robillard offered hearing aid devices for anyone who required them.

TABLED PUBLIC HEARINGS

1. ALEX DINICOLA – 1121 WEST AVENUE

Application was received from Alex DiNicola, owner, for a use variance at 1121 West Avenue. The property currently has 3 apartments and the applicant is requesting relief from Town Zoning Article 4, subsection 165-33-B which lists only single family dwellings and customary agricultural operations as permitted principle uses. This property is currently zoned medium Density Residential (MD).

Chairperson Robillard recalled that this application was tabled at the December 2006 meeting to the February 2007 meeting, per the applicant's attorney's request. She referred to a letter dated January 19, 2007 from Mr. D'Aurizio, the applicant's attorney. In this letter he recalled that he appeared on Mr. DiNicola's behalf on two meetings that followed the initial meeting, when the ZBOA approved allowing a family to occupy each of the two buildings that are on Alex's farm, but reserved a decision on allowing the continuance of the renting of one of the residential buildings for two families, actually a husband and wife, and a single lady occupy this building. Mr. D'Aurizio stated that it is absolutely necessary that Mr. DiNicola be present at this continued hearing, but due to his health problems, he is unable to attend. Therefore, Mr. D'Aurizio withdrew the application to the remaining relief.

Following discussion, a **Motion** was made by Dean Snyder that, based on the attorney's request, I recommend the withdrawal of this application with no further action needed on this again. Seconded by Stephen Shelley. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

Chairperson Robillard stated that Mr. DiNicola must cease renting this property immediately and requested that the Building Department schedule an inspection to assure that the property has come into compliance by May 15, 2007.

NEW PUBLIC HEARINGS

2. SBA PROPERTIES – 1880 NORTH UNION STREET

Application was received from SBA Properties, owners, for modification of an existing Special Permit at 1880 North Union Street. The applicant is proposing to place another antenna array along with an equipment cabinet at the tower base. This property is currently zoned General Commercial (GC).

David Hennon stated he represented SBA Properties and T-Mobile. He explained that SBA owns the tower and is requesting a modification to allow the installation of 6 additional antennas at the 150 feet level on this existing 180 feet tower. In addition, radio equipment will be stored on a 10' x 16' concrete pad in the existing fenced in area. All will be on the same mounting device. An RF engineer recommended placement at the 150 feet level to provide 1.8 miles of coverage along Route 104 and Route 259 towards the Village of Hilton.

Public Comment:

Richard Marvin – 31 Loretta Drive: Stated he lives 400 yards from the existing tower. It is in his back yard and felt that this tower devalues his home. He expressed concern about the frequency waves and resulting health hazards. He stated he understood the need for towers in order for the cell phones to work but asked the Board to address the following:

- Visual impact – can the size of the cables be smaller?
- Design of the antenna
- Safety of technology

The Board recalled that safety of technology was addressed in the Telecommunications Act and not governed by this Board.

David Hennon provided a Specs information sheet and blueprints of the project to Mr. Marvin, which provided answers to his technical questions.

The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Jack Barton reported this was an unlisted SEQR action and a negative declaration was determined at the time the existing tower was approved. He noted that approval of the tower was in accordance with conditions of Zoning Ordinance 165-74.

Following discussion, a **Motion** was made by Tim Thomas to approve the application received from SBA Properties, owners, for modification of an existing Special Permit at 1880 North Union Street. The applicant is proposing to place another antenna array along with an equipment cabinet within the existing fenced in area at the tower base located at 1880 North Union Street This approval must comply with the conditions of the original special permit, as per Zoning Ordinance 165-74. This property is currently zoned General Commercial (GC). Seconded by Dean Snyder. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

3. GLOBAL SIGNAL – 1086 OGDEN PARMA TOWNLINE ROAD

Application was received from Global Signal, owners, for modification of an existing Special Permit at 1086 Ogden Parma Town Line Road. The applicant is proposing to place another antenna array along with an equipment cabinet at the tower base. This property is currently zoned Medium Density Residential (MD).

Paul Castelli stated he represented Global Signal and Cricket Communications. He explained that they have an FCC license to install wireless service. They have service in Buffalo and Syracuse and are now expanding to the Rochester area. They are the 8th largest wireless provider. He explained that they try to co-locate on existing towers. He noted that they are requesting co-location on the tower at 1086 Ogden Parma Town Line Road. He stated they have a master lease agreement with Global Signal. He described the existing monopole as 150 feet high, with 3 existing wireless companies co-locating: Sprint, Verizon and AT&T. Their antenna array is proposed to be placed at the 100 feet level. In addition, a 4 x 8 equipment platform will be placed inside the existing fenced in area for placement of the equipment cabinet. The cable will run from the cabinet to the pole. He explained that the structural analysis determined that the pole was insufficient for their loading, but with modification at the base of the tower, it will be sufficient. Once this is done, they will place their antenna array on this tower.

Public Comment: None. The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Jack Barton reported this is as an unlisted SEQR and a negative declaration was determined when the existing tower was approved.

Chairperson Robillard questioned if the bonding needs to be modified with this additional antenna. Jack Barton replied that this would not be necessary.

Following discussion, a **Motion** was made by Dean Snyder to approve the application received from Global Signal, owners, for modification of an existing Special Permit at 1086 Ogden Parma Town Line Road. The applicant is proposing to place another antenna array along with an equipment cabinet at the tower base within the existing fenced in area. This property is currently zoned Medium Density Residential (MD). This approval must comply with the conditions of the original special permit, as per Zoning Ordinance 165-74. Seconded by Stephen Shelley. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

4. GLOBAL SIGNAL – 222 BURRITT ROAD

Application was received from Global Signal, owners, for modification of an existing Special Permit at 222 Burritt Road. The applicant is proposing to place another antenna array along with an equipment cabinet at the tower base. This property is currently zoned Rural Residential (RR).

Paul Castelli stated he represented Global Signal and Cricket Communications. He explained that they are proposing to co-locate on the existing cell tower located at 222 Burritt Road. This existing tower is 190 feet in height with Sprint as the only carrier on this tower. They are proposing to add a 6 antennae array at the 80 feet level. In addition, equipment will be placed within the existing fenced in area, on the northwest side. Cables will run from the equipment cabinet to the monopole. All conduit will be underground. He reported that it was determined that the tower is sufficient for another antenna loading.

Public Comment: The public hearing was closed.

William DePasquale – 190 Burritt Road: Stated he owns property to the east. Recalled he was opposed to the cell tower at the beginning but felt he was forced into an agreement to allow the cell tower and also for an access road to be on his property. He stated he is dissatisfied with the Sprint tower. He is totally opposed and will go to an attorney to fight this if he has to. He explained plans to build additional homes in the back of his property in the future for family members. This would place these homes within 400 feet of the tower. He felt that allowing a co-locator will increase traffic to the tower. He expressed concern that this new company will require the tower to stay up longer. He was told that it should only be required for ten years. This is a smaller company that will probably use the tower longer. He described traffic going in and out of the access road, which is on his property: RG&E, maintenance, propane company, and snow plow in the winter.

Paul replied that once the construction is completed, that maintenance will be done about six times a year, more if there is a problem. Other than that, this should not increase traffic.

Board Discussion: Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Jack Barton reported this is as an unlisted SEQR and a negative declaration was determined when the existing tower was approved.

Following discussion, a **Motion** was made by Dean Snyder to approve the application received from Global Signal, owners, for modification of an existing Special Permit at 222 Burritt Road. The applicant is proposing to place another antenna array along with an equipment cabinet at the tower base within the existing fenced in area. This property is currently zoned Rural Residential (RR). This approval must comply with the conditions of the original special permit, as per Zoning Ordinance 165-74. Seconded by Tim Thomas. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

5. ADS FAMILY - 531 PECK ROAD

Application was received from ADS Family, owners, for a Special Permit at 531 Peck Road. The applicant is proposing to install a second kitchen in the basement area of the home that is currently under construction. This property is currently zoned Rural Residential (RR).

Al Spaziano referred to the blueprint of the home he proposed to build, which will have a 3400 square feet upper level and a 3300 square feet lower level. He pointed out the layout of the walk-out basement area, which includes a living area, two bedrooms with closets, a bathroom and kitchen. He explained that he has a large family and his two daughters, who are in college, plan to sleep in this basement area. He noted the walk-out basement provides access to the in-ground swimming pool and deck in the backyard. He explained that they entertain a lot and this would provide easy access to a kitchen without having to go upstairs. He noted there are no separate utilities and no separate garage. He stated that this will not be used as a rental apartment. He noted that this basement area is accessed from the first floor by a wide open stairway.

Public Comment:

Ann and Steve Sepaniak – 72 Bailey Road: Stated they know several people who have a second kitchen in their basement and didn't think this was unusual. They questioned if an inspection would be required if this was approved.

Dave Almeter – 71 Parma Center Road: Stated he knows many people who have a second kitchen in their basement. He is for this application.

Earl Condry – 540 Peck Road: Stated he has no problem with this application. He knows of many homes that have basement kitchens.

The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Jack Barton reported this is a Type II SEQR with no further action required.

Jack Barton noted that in the plan review, they looked at how easy it would be to convert this to a rental apartment. Discussion was held on the intended use for this plan. It was noted it has no separate entrance. Dean Snyder referred to zoning ordinance 165-19.B(3) and questioned whether this would qualify as an administrative review.

Following discussion, a **Motion** was made by Dean Snyder that after review of the application received from ADS Family, owners, for a Special Permit at 531 Peck Road, and the proposed plan to install a second kitchen in the basement area of the home that is currently under construction, based on zoning ordinance 165-19.B (3), that the Zoning Board of Appeals interpreted the presented plans to provide unhindered access between the two subject living areas and, therefore, does not require a Special Permit. The applicant has stated that this area will not be used as any type of apartment. Seconded by Stephen Shelley. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

6. JOHN BRICKLER, JR. – 52 BAILEY ROAD

Application was received from John Brickler, Jr., owner, for an area variance at 52 Bailey Road. The applicant is proposing to construct a 50 feet by 60 feet accessory building with an additional 6 feet by 60 feet covered (overhang) area totaling 3,360 square feet and is requesting relief from Town Zoning Article 5, subsection 165-32-C.2, which limits accessory structures to 1,500 square feet. This property is currently zoned Rural Residential (RR).

John explained that he was building a home at 52 Bailey Road and is requesting an accessory building to keep his belongings inside to protect them from weather and to provide a secure place for them. He described the items to be kept inside this building, which includes a boat and trailer, personal trucks, wave runner, snowmobiles and equipment that he will use to maintain this 6 acre parcel of land. He stated he is a mason by trade and he has a construction trailer that he sometimes brings home and this building would provide an area for him to park it inside. He described the proposed accessory structure as 50 feet by 60 feet with an overhang which is part of the Morton building style.

Public Comment:

Jean Munroe – 1557 Parma Center Road: Questioned if the accessory building was going to be built before the home. She felt that 3360 square feet is excessive. She felt that it will create dust and noise. She was concerned about drainage problems.

Jack Barton explained that sometimes the house permit and accessory structure permit are given at the same time and the accessory structure is built first to allow a safe area for construction material. Chairperson Robillard stated that the drainage issues are addressed by the Planning Board.

Alan Auble – 68 Bailey Road: Expressed concern that the size is excessive for storing equipment for personal use and felt it may be used more for a commercial use.

Robert Byrd – 75 Parma Center Road: Stated concern that the actual size of the structure may impact the already poor drainage in this area. He felt a building this size is more of a commercial size.

Julie Auble – 68 Bailey Road: Questioned how large the house is. John replied that the house will be 2800 square feet, with the height within the zoning ordinance. She stated her concern that this large building will be for commercial use and felt it is inconsistent with other accessory structures in this neighborhood.

John stated that this accessory building would only be used for his own personal equipment. He noted he rents an area off-site for his business equipment. He explained that he could live with a smaller accessory building but felt he needs the size for his 34 feet boat with trailer, which is 40 feet long. John stated that the accessory building will not be visible to the neighbors as it is hidden by a lot of trees. He wants to have enough room to keep everything inside. He stated that he could live with a 50' x 50' building without the overhang. John noted that as an alternative, he could make his garage larger to provide additional storage space.

Jack Barton commented on the Planning Board addressing the drainage and it is an approved building lot. He recalled when they looked at this property, it was felt that building on this lot would not impact drainage.

Jean Munroe – Stated again her concerns and wanted assurance that there would be no commercial use.

The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Jack Barton reported this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Tim Thomas to approve the application received from John Brickler, Jr., owner, for an area variance at 52 Bailey Road to construct an accessory building, not to exceed 2000 square feet. This grants relief from Town Zoning Article 5, subsection 165-32-C.2, which limits accessory structures to 1,500 square feet. This property is currently zoned Rural Residential (RR). In making this determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. He has determined to my satisfaction that the boat, trailer, trucks, snowmobile and other miscellaneous equipment needs to be stored inside for safety and protection from the weather. There will be no undesirable change in the neighborhood character or to nearby properties. The structure will be placed on a 5.94 acres parcel and the setback from the road will be at a reasonable distance from view by the neighbors. The request is substantial. There will be no adverse physical or environmental effect. The alleged difficulty is self-created, but using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Dean Snyder. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

Chairperson Robillard called for a recess at 9:05 pm and the meeting was reconvened at 9:15 pm.

7. MARILYN HUNTER – 74 PEASE ROAD

Application was received from Marilyn Hunter, owner, for area variances at 74 Pease Road. Applicant is proposing to replace existing home with a 1,000 square feet manufactured home at a front setback of 40 feet from the road right-of-way and is requesting relief from Town Zoning Article 5, subsection 165-33-E.2.a, which requires 1,200 square feet of living space and schedule 1 which requires a 60 feet front setback. This property is currently zoned Medium Density Residential (MD).

Brian Dunning stated he is a friend of Marilyn Hunter and was speaking for her. He provided a picture of the existing trailer, which is 12 x 60 with a addition. He noted the poor condition of the existing trailer and described their plan to remove that structure and install a 1998 16' x 67' manufactured home that is currently at HGL Homes in Avon. He stated that the 40 foot variance is requested because placement of the new unit will be perpendicular to Pease Road, instead of parallel to Pease Road, which is the placement of the existing structure. He noted that the current structure is at 33 feet, so the new structure will be placed farther back. He explained that it would cost approximately \$750 to move the septic system to provide room to place the new structure with the required setback. He explained that the new structure and labor are donated and they are trying to work within their budget.

Public Comment: None. The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Jack Barton reported this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Tim Thomas to approve the application received from Marilyn Hunter, owner, for area variances at 74 Pease Road to replace the existing home with a 1,000 square feet manufactured home at a front setback of 40 feet from the road right-of-way and to grant relief from Town Zoning Article 5, subsection 165-33-E.2.a, which requires 1,200 square feet of living space and schedule 1 which requires a 60 feet front setback. This property is currently zoned Medium Density Residential (MD). In making this determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. The newer manufactured home will be an improvement to the area. There will be no undesirable change in the neighborhood character or to nearby properties. Although a 60 feet set back is required, the requested setback of 40 feet is consistent with other homes in this Pease Road area, as well as the square footage. The request is substantial, although it was determined that a financial hardship would result if the septic system was moved. There will be no adverse physical or environmental effect. The alleged difficulty is somewhat self-created, but using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Patrick Buskey. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

SPECIAL PERMIT RENEWALS

8. THOMAS AND ERIN BARBETO – 1914 NORTH UNION STREET

Application was received from Thomas and Erin Barbeto, owners, for renewal of a special permit to operate a home business at 1914 North Union Street in accordance with Town Zoning Article 9 subsection 165.79.1. The applicants are proposing to operate a pet grooming business in their home. This property is currently zoned Medium Density Residential (MDR) which allows this use with a special permit.

Jack Barton reported there were no complaints on file.

A **Motion** was made by Tim Thomas to approve the application of Thomas and Erin Barbeto, owners, for renewal of a special permit to operate a home business at 1914 North Union Street in accordance with Town Zoning Article 9 subsection 165.79.1, to allow them to operate a pet grooming business in their home, with the hours of operation to be consistent with current zoning laws. Contingent on inspection and approval by the fire marshal. To be renewable in two years, March, 2009. Seconded by Stephen Shelley. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

MINUTES OF JANUARY 18, 2007

The following change was recommended: Page 2, Para 3, line 3, change to “Jack Barton stated that the Town would not have the authority to grant relief....” A **Motion** was made by Stephen Shelley to approve the January 18, 2007 ZBOA minutes with the recommended change. Seconded by Tim Thomas. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Dean Snyder, to adjourn the meeting at 9:40 pm. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

Respectfully submitted,
Diane Grundon, Recording Secretary