

**TOWN OF PARMA
ZONING BOARD OF APPEALS
March 17, 2011**

Members Present: Tina Brown
Veronica Robillard
Stephen Shelley
Jim Zollweg (alternate)

Members Excused: Dean Snyder
Tim Thomas

Others Present: Jack Barton, Jim Roose (board liaison)

Public Present: See attached list

Chairperson Robillard called the meeting to Order at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She explained that this is a five-member board, with 2 permanent members absent and the alternate board member present, leaving one vacant voting position for tonight's meeting. She explained that a quorum of three is required to pass a motion.

TABLED PUBLIC HEARINGS

1. JAMES AND LISA PANFIL – 2 CONNIES LANE

Application of James and Lisa Panfil, owners, for area variances at 2 Connies Lane. Applicants have constructed a four feet high picket style fence in the front yard and an accessory storage shed in the side yard and are requesting relief from Town Zoning Article 16, subsection 165-128.A.1 which states in part that fences in the front yard are limited to a height of three feet and Article 10, subsection 165-82.C.3 which requires sheds to be located in the rear yard. This property is a corner lot and by definition has two front yards, two side yards, and no rear yard. This property is currently zoned Medium Density Residential (MD). Area variances were granted for these structures in 2010 but expired before the applicants obtained building permits.

Chairperson Robillard recalled this application was tabled at the February ZBOA meeting to allow the applicants additional time to meet the 7 day notification requirement.

Lisa recalled that they received a variance for the fence on their corner lot, but were unaware they needed to obtain a building permit. The variance had expired when they became aware of the requirement for a building permit.

Public Comment: None. The public hearing was closed.

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

Following discussion, a **Motion** was made by Stephen Shelley to approve the application of James and Lisa Panfil, owners, for area variances at 2 Connies Lane to erect a 4 feet high picket fence in the front and side yards and this grants relief from Town Zoning Article 16, subsection 165-128.A.2 which states in part that fences in the front yard are limited to a height of 3 feet and subsection 165-128.B.2 which states in part that privacy structures up to a height of 6 feet may be permitted for the express purpose of enclosing or screening a swimming pool or patio area. This also approves construction of an accessory storage shed in the side yard, as indicated on the site plan, and this grants relief from Town Zoning Article 10, subsection 165-82.C.3 which requires sheds to be located in the rear yard. This property is a corner lot and by definition has two front yards and two side yards and no rear yard. This property is currently zoned Medium Density Residential (MD). In making this determination to approve, the benefit cannot be achieved by other means feasible to the applicant. This is a corner lot and if it were a typical lot, this would be allowed. The applicants changed their request from a 6' solid fence to a 4' picket fence. There will be no undesirable change in neighborhood character or to nearby properties. The request is somewhat substantial, 33% greater than what would be allowed but mitigated by the corner lot. There will be no adverse physical or environmental effect. It is not self-created, because this is a corner lot. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare to the community. It was explained that a building permit should be obtained before constructing this fence. Seconded by Tina Brown. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

PUBLIC HEARINGS

2. DAVID AND MARGARET REVELLE – 573 BURRITT ROAD

Application of David and Margaret Revelle, owners, for area variances at 573 Burritt Road. Applicants are proposing to house 12 chickens in an accessory building at the rear of the property. The building is located on a 1.377 acre parcel and is set back 21.4 feet from the rear property line, 95.3 feet from the easterly property line, and 91 feet from the westerly property line. Applicants are requesting relief from Town Zoning, Article 5, subsection 165-31.B.2a, which states in part that no building in which farm animals are kept shall be closer than 100 feet to a side or rear property line and Article 10, subsection 165-82.BB which states in part that no animals, other than ordinary household pets, shall be kept on any residential lot of 3 acres or less in any zone district. This property is currently zoned Agricultural/Conservation (AC).

Margaret explained they want to raise chickens for egg production for personal use only. They decided to file for an area variance since they don't have the required three acres.

Chairperson Robillard recalled her conversation with Tim Thomas, absent ZBOA member, regarding this application. He noted the neighbors' support but expressed concern that the lot is small. He had concern about the precedent this could create and felt the applicants have the option of purchasing home grown eggs rather than raising their own chickens.

Margaret explained that this is not just about buying eggs. She stated they want to raise the chickens themselves. Her husband grew up on a farm and they want to raise chickens. They plan to use a pre-existing building on the back of their lot to house the chickens. She stated they requested 12 chickens, just to be safe. They are planning to get 6 chickens, only hens. She noted that NYS stated they need to have 6 chickens. No rooster is planned. She stated that only one of her neighbors can see the shed. She stated the chickens will be kept in the building but they are considering an enclosed outside area. The chickens will not have the run of the yard.

Margaret referred to the pictures that she provided, noting the rear of her lot backs to a 150 acre farm, and there are many pine trees that surround her house on either side. She stated the property behind them is not available because they have winter and summer crops and it is used for a snowmobile trail. Margaret referred to a written letter of support from her neighbors for their chickens.

Public Comment:

A letter was read from Chet and Kathy Edsall – 570 Burrirt Road: Stated they are in support, and noted they live directly across the street and are the only ones who can see the shed.

The public hearing was closed.

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

Jim Zollweg stated he is very sympathetic to this request but felt there are zoning laws that need to be upheld.

A **Motion** was made by Jim Zollweg to deny the application of David and Margaret Revelle, owners, for area variances at 573 Burrirt Road to house 12 chickens in an accessory building at the rear of the property. The building is located on a 1.377 acre parcel and is set back 21.4 feet from the rear property line, 95.3 feet from the easterly property line, and 91 feet from the westerly property line. This denies relief from Town Zoning, Article 5, subsection 165-31.B.2a, which states in part that no building in which farm animals are kept shall be closer than 100 feet to a side or rear property line and Article 10, subsection 165-82.BB which states in part that no animals, other than ordinary household pets, shall be kept on any residential lot of 3 acres or less in any zone district. This property is currently zoned Agricultural/Conservation (AC).

In making the determination to deny, I call up the balancing test:

- Can the benefit be achieved by other means feasible to the applicant? As suggested, a portion of the benefit (not all the benefit) can be obtained by visiting other agricultural operations in the area to purchase eggs.
- It will not create an undesirable change in the neighborhood character or to nearby properties, considering it will not be visible to the neighbors.
- The request is substantial. The variance is more than 100% of the area required to have this operation.
- The request will have no adverse physical or environmental effect.
- The alleged difficulty is self-created. It is a choice to try to do this. Using the balancing test, the benefit to the applicant is outweighed by the detriment to the health, safety and welfare of the community.

Seconded by Tina Brown. **Motion to deny carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

Chairperson Robillard polled the Board for their reasons to deny:

Jim Zollweg: stated his motion supports his reasons.

Tina Brown: Using the balancing test, the benefit can be achieved by other means and the request is substantial.

Stephen Shelley: Stated his reasons are similar to the motion. The request is substantial by <50%. There is an alternative means to achieve the benefit, for instance the applicant may be able to use additional land behind the house.

Chairperson Robillard: The request is substantial. Granting this request could potentially have an adverse physical effect. The benefit can be achieved by visiting other operations to obtain eggs and/or operate on a parcel that allows such an operation. There are alternative means.

3. KATHLEEN PETERSON – 751 PECK ROAD

Application of Kathleen Peterson, owner, for an area variance at 751 Peck Road. Applicant constructed a detached garage with a side setback of 4.5 feet from the westerly property line. Applicant is requesting relief from Town Zoning Article 11, subsection 165-87.A.1 which requires a 17 feet side setback. This property is currently zoned Rural Residential (RR).

John Sweeney stated he is a co-owner of the property. He explained the garage was erected 6-8 years ago. The building location was chosen because of the existing driveway. He stated the property is now up for sale and this building is on the westerly side and borders the property of the family owned farm. He explained that in order to sell this property, they need to obtain a variance for the setback on this subdivided property. This garage was built where it is because both parcels were owned by the family. Jack Barton stated that the building permit was issued and the site plan showed where it was to be located, but it wasn't clear where the side property line was. Jack noted that the building department does not require a location of the building.

Public Comment:

Janet Campbell – 1234 Washington Street: Noted that all the neighbors are in favor of this application.

Brenda Avedison – 917 Peck Road: Stated she is the neighbor on the west side. She expressed concern with the 4.5 feet side setback. She currently has no problem with this now but is worried there might be a problem in the future, especially with the door that faces her.

The public hearing was closed.

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

A **Motion** was made by Tina Brown to approve the application of Kathleen Peterson, owner, for an area variance at 751 Peck Road to construct a detached garage with a side setback of 4.5 feet from the westerly property line. This grants relief from Town Zoning Article 11, subsection 165-87.A.1 which requires a 17 feet side setback. This property is currently zoned Rural Residential (RR). In making this determination to approve:

- The benefit cannot be achieved by other means feasible to the applicant.
- This will not necessarily create an undesirable change in neighborhood character or to nearby properties.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- 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 Stephen Shelley. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

4. JOHN AND ANGELA GEBBIE – 107 BAILEY ROAD

Application of John and Angela Gebbie, owners, for area variances at 107 Bailey Road. Applicants are proposing additions to the existing home that will create a front setback of 19 feet for the garage addition and 28 feet for the addition to the north side of the home. Applicants are requesting relief from Town Zoning schedule 1 which requires a 60 feet front setback for the road right of way. This property is currently zoned Agricultural/Conservation (AC).

John recalled he received a variance from the zoning board last year to construct a pole barn. He explained he spent approximately \$8000 to determine what to do with these two parcels and decided to merge the two properties. The garage entrance was changed to a side entrance. He stated that when changing the garage they are considering making it a two car garage. He felt this would be a safer situation. The house has one bathroom with a shower only. This is not an acceptable situation with kids, so they decided to change the kitchen to a bathroom and add on a kitchen and sunroom to the west. He noted the septic tank to the north. Putting the addition to the north would require moving the septic tank, not the leach field. He stated he can't do anything in the back with the house because it is all crawl space on the back of the house. It is more cost effective to add to the west. He looked at going up but the old house is not built well enough. The house is just less than 1400 square feet. The addition on the side will add 600 square feet. He explained that the main thing with the garage is to have a larger area with a storage area overhead. He noted they looked at moving the garage back farther. He could do 20 feet back but this is not large enough. This request is the best possible solution for these additions with the existing layout of the house. He noted the existing kitchen is 8' x 10', which will be the perfect size for the bathroom. The new kitchen will be 12' x 12'.

Public Comment:

William Kearney: 90 Bailey Road: He asked to look at the plans. Stated he has lived there for 35+ years. The house has been in disrepair for years and commended the efforts of the applicant on this ambitious project.

The public hearing was closed.

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

Jack Barton opened discussion on how the merging of the properties will affect the setbacks. The county will not recognize this merger until after January 2012. Chairperson Robillard questioned whether we are looking at this property as a pre-merged or merged property. It was decided to consider this property as pre-merged since it was not official yet.

A **Motion** was made by Jim Zollweg to approve the application of John and Angela Gebbie, owners, for area variances at 107 Bailey Road for additions to the existing home that will create a front setback of 19 feet for the garage addition and 28 feet for the addition to the north side of the home. This grants relief from Town Zoning schedule 1 which requires a 60 feet front setback for the road right of way. This property is currently zoned Agricultural/Conservation (AC). In making the determination to approve:

- The benefit cannot be achieved by other means feasible to the applicant, based on the existing location of the house and the existing configuration of the property.
- There will be no undesirable change in neighborhood character or to nearby properties. Based on the testimony tonight and surrounding properties as well.
- The request is substantial, but constrained due to limitations of the property.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is to some degree self-created. The owner has decided to work with this somewhat difficult property. Using the balancing test, the benefit to the applicant outweighs any deficit to the health, safety and welfare of the community.

Seconded by Stephen Shelley. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

5. JOSEPH MORGIGNO – 440 MOUL ROAD

Application of Joseph Morgigno, owner, for an area variance at 440 Moul Road. Applicant is proposing to construct a single family dwelling with an attached garage that is 17 feet wide and 475 square feet in area and is requesting relief from Town Zoning Article 5, subsection 165-31.E.3 which states that each principal dwelling unit shall have, at a minimum, one two-car garage at least 20 feet in width and containing an area of not less than 480 square feet. This property is currently zoned Agricultural/Conservation (AC).

Joseph explained his plan to complete this home in phases. He provided a drawing of the house, noting that phase I includes a 475 square feet garage that is 17 feet wide. He explained that in phase II, a larger garage will be built that will be 32 feet wide. He estimated there would be three years between phases I and II. He stated that building the smaller garage and then building the larger garage later saves him a lot of money. He noted that if the phase I garage was built to meet code initially, it would take away from the appearance of the house. Joseph reported that he has full site plan approval by the planning board.

Jack Barton explained that a building permit must be obtained within 6 months time or the variance expires.

Public Comment: None. The public hearing was closed.

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

A **Motion** was made by Jim Zollweg to approve the application of Joseph Morgigno, owner, for an area variance at 440 Moul Road to construct a single family dwelling with an attached garage that is 17 feet wide and 475 square feet in area and this grants relief from Town Zoning Article 5, subsection 165-31.E.3 which states that each principal dwelling unit shall have, at a minimum, one two-car garage at least 20 feet in width and containing an area of not less than 480 square feet. This property is currently zoned Agricultural/Conservation (AC). In making the determination to approve:

- I don't believe the benefit can be achieved by other means feasible to the applicant. Based on the applicant's testimony and experience, I determined that he is a reasonable judge of what is feasible. This is a reasonable request.
- There will be no undesirable change in neighborhood character or to nearby properties.
- The request is somewhat substantial, 3 feet less than the 20 feet required.
- There will be no adverse physical or environmental effects.
- The difficulty is self-created. It is the choice of the applicant to phase his building plans. Based on the criteria, using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

Seconded by Tina Brown. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

6. JIM FITZMAURICE – 614 PECK ROAD

Application of Jim Fitzmaurice, owner, for a special permit at 614 Peck Road. Applicant is proposing to renovate the interior of the existing home to have an accessory apartment. This property is zoned Agricultural/Conservation (AC) which allows this use with a special permit.

Jack Barton reported that the required notifications were not obtained by the applicant. Jim Fitzmaurice stated he did not realize he needed to notify the neighbors.

A **Motion** was made by Jim Zollweg to table without prejudice the application of Jim Fitzmaurice, 614 Peck Road, for a special permit, to the April 2011 ZBOA meeting to allow the applicant additional time to provide the required notifications. Seconded by Tina Brown. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

SPECIAL PERMIT RENEWALS

7. ANTHONY CAPUANO – 5248 RIDGE ROAD

Application was received from Anthony Capuano, owner, for renewal of a special permit for the display and sale of used motor vehicles at 5248 Ridge Road West. This display area for these vehicles will be in front of the existing mini-storage units located on the property. This property is currently zoned Highway Commercial (CH) which allows this use with a special permit.

Chairperson Robillard recalled that this application for a special permit renewal was tabled to obtain an inspection report.

Jack Barton reported that the ZEO and fire marshal inspected this property in February 2011 and found no violations.

A **Motion** was made by Tina Brown to approve the application of Anthony Capuano, owner, for a special permit for the display and sale of used motor vehicles at 5248 Ridge Road West. The display area for these vehicles will be in front of the existing mini-storage units located on the property. This property is currently zoned Highway Commercial (HC) which allows this use with a special permit. Approval with the same conditions as originally set, as follows:

- Up to, but not to exceed, 26 display vehicles per plan provided.
- No lighting directed towards Ridge Road and away from neighboring properties.
- All signage according to zoning ordinance.
- No on street parking.
- No un-drivable vehicles or repairs on site.
- Hours of operation: Monday through Friday, 9 am to 8 pm; Saturday, 9 am to 5 pm; Sunday by appointment only.
- For a period of one year, renewable in 6/2012.

Seconded by Stephen Shelley. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

8. GIUDITTA VIAPIANO – 983 MANITOU ROAD

Application was received from Giuditta Viapiano for renewal of a special permit to allow an accessory in-law apartment at 983 Manitou Road.

Chairperson Robillard recalled that this application for renewal of a special permit was tabled to verify the name of the mother and to confirm that there is a need for this apartment. Jack Barton reported the name of his mother is Gina Viapiano and that there is still a need for this apartment.

A **Motion** was made by Stephen Shelley to approve the application from Salvatore Viapiano for renewal of a special permit to allow an accessory apartment for his mother, Gina Viapiano, at 983 Manitou Road for a period of two years, to be renewed January 2013, under the conditions of Zoning Ordinance 165.76.I. Seconded by Jim Zollweg. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

9. JOHN VELTRE – 120 DUNBAR ROAD

Application was received from John Veltre, owners, for a special permit to allow an in-law accessory apartment at 120 Dunbar Road in the 654 square feet addition to the rear of their existing home. This property is currently zoned Medium Density Residential (MD) which allows this use with a Special Permit.

Chairperson Robillard recalled that this special permit renewal was tabled to verify the name of the mother and to confirm that there is still a need for this apartment. Jack Barton reported that there is still a need for this apartment and the mother's name is Shirley Kraft.

A **Motion** was made by Tina Brown to approve the renewal of a special permit for John Veltre, owner, for a special permit to allow an in-law accessory apartment for her mother, Shirley Kraft, at 120 Dunbar Road to be compliant with zoning ordinance 165.76. This Special Permit is for two years, to be renewed in February of 2013. Seconded by Stephen Shelley **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

MINUTES OF FEBRUARY 17, 2011

The ZBOA minutes of February 17, 2011 were reviewed. The following changes were recommended: page 1: Para 4, rewording starting on line 4 to “This was noticed in December 2009 on the instrument survey that was submitted for the final inspection. Jack noted that the Town doesn’t receive an instrument survey until the end of the construction phase. He explained that this is a flag lot and not easily noticeable that it did not meet code. The contractor built the house at 54.4’ because he used the footprint of the home that was on the approved site plan; last Para change “plot markers” to “setback lines” and add “site plan and check list.”; page 2, Para 1, under The request is substantial. Remove “and the subsequent error in front setback as made by measuring 75’ back from the road right-of-way instead of the rear lot line of the neighbor in front.” A **Motion** was made by Stephen Shelley to approve the February 17, 2011 ZBOA minutes with the recommended changes. Seconded by Tina Brown. **Motion carried (3-0)** (Ayes: Tina Brown, Stephen Shelley, Veronica Robillard; Abstain: Jim Zollweg; Absent: Dean Snyder, Tim Thomas)

OTHER

Timeframe for variance: Jack Barton reported the Board is looking to extend the time required to obtain a building permit after a variance is granted to 9 months.

ADJOURNMENT

There being no further business, a **Motion** was made by Tina Brown, seconded by Jim Zollweg, to adjourn the meeting at 9:15 p.m. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

Respectfully submitted,

Diane Cook, Recording Secretary