

**TOWN OF PARMA
ZONING BOARD OF APPEALS
July 14, 2011**

Members Present: Dean Snyder
Stephen Shelley
Tim Thomas (Acting Chair)
Jim Zollweg (alternate)

Members Excused: Tina Brown, Veronica Robillard

Others Present: Jack Barton

Public Present: See attached list

Acting Chairperson Thomas called the meeting to Order at 7:15 p.m. He explained the function of the ZBOA and the decision-making process. He explained that this is a five-member board, with two permanent members absent and the alternate board member present. He explained that a quorum of three is required to pass a motion.

PUBLIC HEARINGS

1. BRYAN BOSCIA – 69 DEAN ROAD

Application of Bryan Boscia, owner, for four area variances at 69 Dean Road. The applicant is requesting relief of setback requirements to the southerly property line for the following existing structures: A privacy fence for the pool enclosure with a side setback of 4.3 feet. A covered storage area with a side setback of 4.3 feet. An accessory storage shed with a side setback of one foot. A garage addition with a side setback of nine feet. The applicant is requesting relief from Town Zoning Article 16, subsection 165-28.B.s which states in part that privacy fences are for the express purpose of enclosing or screening a pool or patio area, 165-128.A.6 which requires the finished or decorative side of the fence to face away from the applicant's yard, and schedule 1 which requires a minimum side setback of ten feet for privacy fences and all structures. This property is currently zoned Rural Residential (RR).

Jack Barton reported that the applicant has moved the shed. Bryan confirmed this and stated that the variance regarding the accessory storage shed for relief from the side setback requirement is withdrawn.

Tim Thomas recalled that this application was heard and approved in May of 2008, but the applicant never applied for the building permits and the variances have expired. Bryan noted that the denied variances at that time have come into compliance. He referred to the survey map that clearly indicates what he is requesting. He noted that all of the fences now surround his pool.

Jack Barton reported that he has applied for building permits for the following: the fence, covered storage area and bump out to the garage.

Bryan recalled a condition stated in the motion in May of 2008 that when the existing fence needs repair, the decorative side of the fence will be built to face his neighbor's property. Dean Snyder asked if pictures of the fence were available. Jack Barton shared pictures from the file. Dean Snyder asked when the fence was put up. Bryan stated that the fence was put up by the previous owner sometime in the 70's. Bryan stated he bought the house three years ago.

Public Comment:

Paul McLean – 73 Dean Road: Stated he lives south of Bryan's property and he has no problem with this application. He stated he was living there since 1989. He noted that the pool was replaced in 1995 but the owner never replaced the fence.

The public hearing was closed.

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

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Bryan Boscia, owner, for three area variances at 69 Dean Road. It was noted that the accessory storage shed variance was withdrawn due to the fact it was moved. This grants relief of setback requirements to the southerly property line for the following existing structures: (1) A privacy fence for the pool enclosure with a side setback of 4.3 feet; (2) A covered storage area with a side setback of 4.3 feet; and (3) A garage addition with a side setback of nine feet. This also grants relief from Town Zoning Article 16, subsection 165-28.B.s which states in part that privacy fences are for the express purpose of enclosing or screening a pool or patio area, 165-128.A.6 which requires the finished or decorative side of the fence to face away from the applicant's yard, and schedule 1 which requires a minimum side setback of ten feet for privacy fences and all structures. This property is currently zoned Rural Residential (RR). I recommend the following be approved:

- 1) A privacy fence for the pool enclosure with a side setback from the southerly property line of 4.3 feet. This includes approving relief from 165-128A.6, which states the finished or decorative side of the fence is to face away from the applicant's yard. The neighbor immediately to the south is present and has no issue with this provision. In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. Although it would be possible to move that portion of the fence into compliance, it would require elimination of existing shrubbery and a concrete patio area around the pool. That portion of the fence provides privacy from the neighbors. It is substantial. There will be no adverse physical or environment effects. The alleged difficulty is not self-created because it was existing when the applicant purchased the property. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.
- 2) A covered storage area with a side setback from the southerly property line of 4.3 feet. The benefit can not be achieved by other means feasible to the applicant. The storage area could be located in another area of the property, but because of the existing privacy fence, this covered storage area causes no adverse effect because it is hidden by the 6' high privacy fence. There will be no undesirable change in the neighborhood character or to nearby properties because the storage area is contained in the 6 feet high privacy fence. It is substantial. There will be no adverse physical or environmental impact. The difficulty is not self-created because it was existing when the applicant purchased the property. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

- 3) A bump out of the garage with a side setback from the southerly property line of 9 feet. In making this determination to approve, the benefit can not be easily achieved by the applicant. There will be no undesirable change in neighborhood character or to nearby properties. The request is not substantial. This is a 1 foot variance and from neighboring properties it would be difficult to see the difference between a 9 feet and 10 feet setback. There will be no adverse physical or environmental effects. The difficulty is not self-created because it was existing when the applicant purchased the property. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare to the community.

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

2. DARYL AND CAROL MASLANKA – 1010 CLARKSON PARMA TOWN LINE ROAD

Application of Daryl and Carol Maslanka, owners, for an area variance at 1010 Clarkson Parma Town Line Road. Applicant is proposing to construct an accessory storage structure and is requesting relief from Town Zoning Article 5, subsection 165-32.C which requires that the single family dwelling be constructed first. This property is currently zoned Rural Residential (RR).

Daryl stated they currently live in Rochester in Charlotte. He explained they purchased this property in 2007 and went through the planning board for site plan approval. Two months ago, they went back to the planning board with an updated plan. He explained they would like to construct an accessory storage building which will eventually be used as a 3-car garage. This structure will be detached from their planned 1 ½ story Cape Cod style home. The garage will share the character of the home. He explained that due to the financial climate, he would like to have the garage built first for secure storage for the property maintenance and items used while the home is being built. He described this 8+ acre property as being a flag lot. From the road, the garage will be approximately 900 feet back.

Tim Thomas noted the Board's concern if the house is never built, that this structure will be used for business purposes. He stated in this case, the garage would need to be removed. Daryl stated he is committed to living in Parma and now that his site plan has been approved, all his utilities are in place, cable, electric, etc, and they are planning to start building the house in the spring of 2013. They are planning a modular type construction for their home.

Public Comment: None. The public hearing was closed.

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

Jack Barton referred to a similar variance approved in 2001 which was completed in 2003. The Board discussed the concern about the length of time between the construction of the garage and the start time and anticipated completion of the home. In answer to a question, Daryl stated that he does not have any blueprint plans of the house yet.

Following discussion, a **Motion** was made by Dean Snyder to deny the application of Daryl and Carol Maslanka, owners, for an area variance at 1010 Clarkson Parma Town Line Road to construct an accessory storage structure and this denies relief from Town Zoning Article 5, subsection 165-32.C which requires that the single family dwelling be constructed first. This property is currently zoned Rural Residential (RR). The accessory building's primary purpose is to store equipment for maintaining the property until the house is constructed and to store equipment during the construction of the house. The house will be built by a contractor using a modular construction which will not require significant building materials to be stored on site. The applicant has stated that they have no final blueprint plans for the construction of the house and will not have these in the near future. In making the determination to deny:

- I believe the benefit can be achieved by other means feasible to the applicant. Undeveloped property requiring maintenance is not a concern. The applicant has stated he needs this accessory structure in order to provide a secure area for property maintenance equipment before the house is built. Also the applicant has stated that the house will be a modular-type building which will require minimal equipment storage during the construction.
- It may cause an undesirable change in neighborhood character or to nearby properties. Our code states that accessory structures are not to be built before the primary residence is constructed. If for some reason the primary structure is not constructed in a very short time after the accessory structure is built, the accessory structure should not be allowed.
- The request is substantial.
- The request will have adverse physical effects.
- The alleged difficulty is entirely self-created. 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 Stephen Shelley. **Motion unanimously carried to deny (4-0)** (Ayes: Dean Snyder, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Veronica Robillard).

Chairperson Thomas polled the Board for their reasons to deny:

Dean Snyder: stated his motion stated his reasons.

Jim Zollweg: There is too large a gap between the construction of this garage and the construction of the house for the purpose of this structure.

Stephen Shelley: There is too large a gap between the garage construction and the home. He also agreed with Dean Snyder's point that a modular home would not require a great deal of storage for building materials.

Tim Thomas: There is a significant risk due to the length of time between the proposed construction of the accessory building and the time the home would be granted a Certificate of Occupancy and, if the home were not constructed, it would put the Town in a very uncomfortable position which could take years to rectify. A modular construction of the proposed home mitigates the need for this structure.

3. ROBERT P. SOBB – 5497 RIDGE ROAD WEST

Application of Robert P. Sobb, owner, for an expansion of a non-conforming use at 5497 Ridge Road West. Applicant is proposing to construct an accessory storage structure on this property that is currently being used as a residence. The applicant is requesting this expansion of residential use on a commercially zoned property in accordance with Town Zoning Article 12, subsection 165-91. This property is currently zoned General Commercial (GC).

Robert explained that his house is on Ridge Road West next to his business and there is the possibility of his son moving in there. The house is non-conforming with zoning. He noted a vacant area on the side where he is looking to build an accessory structure to use for storage.

Dean Snyder noted that the size is not excessive and the building will meet all other criteria, size, setbacks, etc. The planned size is 36' x 60' x 10'.

Robert stated that the property to the east is vacant and the property to the west is his car business.

Public Comment:

Enzio Roman – 129 Ogden Parma TL Road: Asked for the location of the building. After he reviewed the sketch map, he stated he did not have a problem with this application.

Planning Board feedback: Tim Thomas read a letter from the planning board dated July 11th which reports that on July 7th they reviewed this application. They determined it will have a minimal impact on neighboring parcels. The building's appearance will match the style of the commercial structure directly to the west of this property.

The public hearing was closed.

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

Following discussion, a **Motion** was made by Jim Zollweg to approve the application of Robert P. Sobb, owner, for an expansion of a non-conforming use at 5497 Ridge Road West to construct an accessory storage structure on this property that is currently being used as a residence. This allows expansion of residential use on a commercially zoned property in accordance with Town Zoning Article 12, subsection 165-91. This property is currently zoned General Commercial (GC). The applicant is proposing to add another structure to this property. It is currently zoned GC which is, in concept, somewhat less restrictive in zoning than residential districts and therefore is not appropriate by definition. The proposed structure will be approximately 154 feet from the Ridge Road West right-of-way, approximately 35 feet from any property line, and as described by the applicant, it is not in the vicinity of any structures. This substantiates that it meets items 1-4 of 165-91.A. In reviewing ordinance 165-91.A., items 1-4, in my opinion, this proposed structure satisfies all four requirements for zoning to authorize this expansion. Based on these criteria, this should be approved. Seconded by Dean Snyder. **Motion unanimously carried (4-0)** (Ayes: Dean Snyder, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Veronica Robillard).

4. PATRICK AND KAREN KENNY – 5361 RIDGE ROAD WEST

Application of Patrick and Karen Kenny, owners, for an expansion of a non-conforming use at 5361 Ridge Road West. Applicants are proposing to construct an accessory storage structure on this property that is currently being used as a residence. The applicant is requesting this expansion of residential use on a commercially zoned property in accordance with Town Zoning Article 12, subsection 165-91. Applicant is also requesting a variance for a shed that was constructed in the front yard. They are requesting relief from Article 10, subsection 165-82.C.4 which states in part that detached accessory buildings be no closer to the street than the minimum front yard setback. This property is currently zoned General Commercial (GC).

Mark Gerringer stated he is a friend of the applicant and is speaking for this application tonight as the Kenny's are out of town.

Jack Barton reported the error made in the notice. He confirmed that the shed is in the side yard behind the front building line of the primary structure, not in the front yard as advertised. He referred to 165-82.C.4 which addresses accessory storage structures in commercial districts and states that no detached accessory buildings incidental to permitted uses in such districts shall be closer to the street or right-of-way line than the minimum front yard setback for the principal building. He noted this approximately 5' x 8' shed is on the east side. Mark explained that this structure was originally built as a playhouse for the Kenny's daughter. Dean Snyder noted that the structure is not obtrusive and is insignificant on this property.

Mark explained that their goal is to build an accessory structure to provide room to store items currently stored at the Kenny's mother's home. The mother recently died and they need additional room for these items. The building will be used for personal items and will fit well in this neighborhood. He referred to neighboring properties which have similar buildings. He noted the neighbor across the street has a similar structure.

Planning Board Comment: Chairperson Thomas read a copy of a letter from the planning board dated 7/11/11 regarding this application. The letter stated that the proposed building is shown to be located in the side yard, 40 feet from the front property line. The proposed front setback appears to meet the zoning schedule because of the location of the primary structure but impact to the neighborhood is significant. The accessory building takes up more frontage than the dwelling. The owner is trying to save trees on the site but consideration should be given to a greater setback from the property line by moving the building back or reducing its size.

Mark stated that the front setback meets zoning requirements. The house is 36 feet wide and they are proposing a building similar in width. This building will sit substantially back from the front property line as compared to neighboring structures. The plan is to add a building that will blend well in the neighborhood. A pole barn construction is planned with a color that will blend with the neighborhood. They are also planning landscaping.

Stephen Shelley referred to the picture of the building plan which indicated items to be stored. Mark stated that he was not sure which of the items were actually items they wish to store. He noted that that the Kenny's business is to purchase antiques. Mark stated that the location of the proposed structure is limited on the property due to the steep grade in back and the wetlands behind the house. It was noted that a minimal setback for a permitted principal use is 100 feet with the code referring to a rear and side setback for an accessory structure only. Dean Snyder referred to 156-82.C.4, which states the accessory building should be no closer to the street or right-of-way line than the minimum front yard setback for the principal building, therefore there are no front setback issues.

Public Comments:

Enzio Roman – 129 Ogden Parma TL Road: Asked where the building will be located relative to Ridge Road. He looked at the site map and stated he was satisfied.

The public hearing was closed.

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

Discussion ensued and 165-91.A.(1) was reviewed which listed standards applicable to authorizing the expansion of a nonconforming use and/or structure. It states that the location and size of the non-conforming use and/or structure the nature and intensity of the operations involves in or conducted in connection with it, the size and site in relation to it, and the location of the site in relation to it, and the location of the site with respect to streets providing access thereto. Conditions shall be in place such that the expansion will not be inconsistent with the orderly development of the district in which the use is located. These items were discussed relative to this application.

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Patrick and Karen Kenny, owners, for an expansion of a non-conforming use at 5361 Ridge Road West to construct an accessory storage structure on this property that is currently being used as a residence. This approves the expansion of residential use on a commercially zoned property in accordance with Town Zoning Article 12, subsection 165-91. This also approves a variance for a shed that was constructed in the side yard. This grants relief from Article 10, subsection 165-82.C.4 which states in part that detached accessory buildings be no closer to the street than the minimum front yard setback. This property is currently zoned General Commercial (GC). In making the determination to approve, I refer to Town Zoning Article 12, subsection 165-91 standards applicable to authorizing the expansion of a non-conforming use and/or structure, A 1-4. It is notable that this ordinance states that each case shall be considered on an individual basis. It is shown that the proposed size and location of this accessory building is consistent with the commercial area and has little impact on neighboring properties. The following standards were considered:

A (1): The location and size of the structure minimizes any impact on the surrounding area but maximizes the benefit to the applicant. It would be possible to locate the building further south but this would be a deterrent to the existing trees and the required fill in order to complete the structure would be significant.

A (2): No screening or other protective measures are required in this location. The proposed site provides a natural screen.

A (3): No off-street parking is required.

A (4): The ZBOA does not require any other condition to protect the interests of the community and adjacent properties.

This is a unique situation with the setback of the existing building at approximately 17 feet from the right-of-way. The proposed location of the accessory storage structure is 40 feet from the right-of-way, which is more than double that of the primary building. The setback puts it in an area which is considered the rear yard for the two buildings immediately to the west, further minimizing any impact to the neighborhood. Seconded by Stephen Shelley. **Motion unanimously carried (4-0)** (Ayes: Dean Snyder, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Veronica Robillard).

MINUTES OF JUNE 16, 2011

The ZBOA minutes of June 16, 2011 were reviewed. The following changes were recommended: Page 1, last Para, line 9, add "The Board informed the applicant via a letter..."; page 2, third bullet point, change to "The variance is for 3.0 feet from the required 40' setback and 3.5 feet setback ..."; page 3, under Mico, line 2, add "...Improvements that incorporate the approved variances." line 4, change "back" to "side." A **Motion** was made by Dean Snyder to approve the June 16, 2011 ZBOA minutes with the recommended changes. Seconded by Stephen Shelley. **Motion carried (3-0)** (Ayes: Dean Snyder, Stephen Shelley, Jim Zollweg; Absent: Tina Brown, Veronica Robillard; Abstain: Tim Thomas).

ADJOURNMENT

There being no further business, a **Motion** was made by Jim Zollweg, seconded by Stephen Shelley, to adjourn the meeting at 9:20 p.m. **Motion unanimously carried (4-0)** (Ayes: Dean Snyder, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Veronica Robillard).

Respectfully submitted,

Diane Cook, Recording Secretary