

**TOWN OF PARMA
ZONING BOARD OF APPEALS
September 15, 2011**

Members Present: Tina Brown
Veronica Robillard
Stephen Shelley
Dean Snyder
Tim Thomas

Others Present: Jack Barton, Jim Zollweg

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 and that a quorum of three is required to pass a motion.

PUBLIC HEARINGS

1. DANNIC HOLDINGS, LLC – 5049 RIDGE ROAD WEST

Application of Dannic Holdings, LLC, owners, for a special permit at 5049 Ridge Road West. Applicant is proposing to subdivide property and construct a new auto sales business for new and used vehicles along with a repair and service facility. In accordance with Town Zoning Article 9, subsection 165-78, the applicant is requesting a special use permit for the display and sale of motor vehicles. This applicant is also requesting an area variance. The applicant is proposing 34 parking spaces for customers, 75 parking spaces for employees, and is requesting relief from Town Zoning schedule 2 which calculates the minimum number of parking spaces for customers and employees to be 288. This property is currently zoned Highway Commercial (HC).

Patrick Laber, of Schultz Associates, referred to the current Chevrolet dealership and the adjoining house. He explained their plan to merge the existing lots to one. The house will be torn down and an additional building will be located there. Per code, 288 parking spaces are required. The total spaces provided will be 321: 34 spaces for customer parking, 75 spaces for employee parking (based on 75 total employee), and 212 spaces for vehicle display. He stated this is a better and more realistic use of the parking and customer spaces for the site. He referred to the survey map provided to the Board. Chairperson Robillard questioned what will be the use of the existing dealership building. Patrick explained that the dealership will be “rebranded” and possibly another car dealership will be located there. Dean Snyder questioned how they determined the 212 vehicle display for this size building. Patrick stated that this meets GM’s requirement. Pat explained that currently 7 parcels will be merged into 3 parcels. Kris Schultz explained that financial issues is the reason why these seven lots were not merged into one. Jack Barton stated that the existing business does not require a special permit but any expansion would require a special permit.

Public Comment: None. The public hearing was closed.

Board Discussion: Jack Barton reported that notifications were in order, the request was not returned by Monroe County, and that this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of Dannic Holdings, LLC, owners, for an area variance at 5049 Ridge Road West. The applicant is proposing 34 parking spaces for customers, 75 parking spaces for employees, and this grants relief from Town Zoning schedule 2 which calculates the minimum number of parking spaces for customers and employees to be 288. This property is currently zoned Highway Commercial (HC). This approval contingent on review and approval by Monroe County department of planning. In making the determination to approve,

- I don't believe the benefit can be achieved by other means feasible to the applicant. The applicant is proposing 212 parking spaces for display of vehicles, 34 customer parking spaces, and 75 employee spaces. The Town Code calls for 288 spaces for employees and I believe that this is an unacceptable requirement in this case for this car dealership and this recalculation of the required number of parking spaces is appropriate.
- There will be no undesirable change in neighborhood character or to nearby properties. The applicant has done a great job in designing this plan to support this business.
- The request is substantial but I don't believe this applies to this situation.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created but I believe that there is some room for variance in the code in this situation. 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: Tina Brown, Stephen Shelley, Dean Snyder, Tim Thomas, Veronica Robillard).

Discussion was held on how to determine the duration of the requested special permit and when it should be up for renewal. The applicant stated that a 5 year renewal may jeopardize financing for this project. Chairperson Robillard suggested that we consult with our Town Attorney about what our options are. The applicant felt that the special permit is written for a small business, not a large one, and perhaps the Town should look at a different recommendation.

Dean Snyder suggested we look at the terms of the Saturn dealership special permit which was granted several years ago.

The meeting was called to recess at 7:55 pm. The meeting was reconvened at 8:07 pm

Chairperson Robillard recalled the Saturn dealership and, in the code at that time, a conditional use permit was an option. The Saturn permit that was given to this property was a conditional use permit and did not specify a time limit. Dean Snyder questioned why this conditional use permit was eliminated from the code. Dean felt that in this case, we should remove the time frame because this business has been in place since the 1960's and predates the code. This was done for the Saturn dealership and the Board needs to look at this for this application and in the future. Jack Barton felt that the Town Board needs to know the specific circumstances of this application and why a special permit doesn't satisfy covering the needs of a large business.

Following a lengthy discussion, a **Motion** was made by Tim Thomas to approve the application of Dannic Holdings, LLC, owners, for a special use permit at 5049 Ridge Road West to construct a new auto sales business for new and used vehicles along with a repair and service facility. In accordance with Town Zoning Article 9, subsection 165-78, the applicant is requesting a Special Permit for the display and sale of motor vehicles. This property is currently zoned Highway Commercial (HC). This special permit will not have a specific timeframe, as the Board views this property as an expansion which dates back prior to the 1960's of the use of an existing property. The Board views this as an extraordinarily unique situation warranting these conditions which are consistent with the former Conditional Use Permit that was in place prior to 1998. Seconded by Stephen Shelley. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Stephen Shelley, Dean Snyder, Tim Thomas, Veronica Robillard).

2. BONNIE THOMAS – 8 CLEARVIEW AVENUE

Application of Bonnie Thomas, owner, for a use variance at 8 Clearview Avenue. The owner purchased this property as a three family dwelling in 2010 and is requesting to continue the same use. This property is currently zoned Waterfront Residential (WF) which does not allow three family dwellings.

Richard Olson, Attorney, stated he represents Bonnie in providing the information required for the criteria for approval of a use variance. He explained that Bonnie is originally from this area and has recently moved back after living in California. He reported that, together, Bonnie, her brother-in-law, sister and mother have purchased this home at 8 Clearview Drive, which was going into foreclosure. He noted that Bonnie lived in California when she purchased this property sight unseen from information on the internet. He noted that every document Bonnie saw referred to this as a 3-family home, and the assessment records and school tax listed it as a 3-family dwelling. They purchased this home for \$169,900, with \$3,000 in closing costs for a \$173,052 investment. The house needed a lot of work and she has spent \$132,000 to update the house, for a total investment of \$305,000. He provided pictures of the house, noting the split between the two parts of the house. It has one single family unit on the first floor, with the 2nd and 3rd floor for another unit. The "A" frame that is split from the main house is another unit. He stated there is one water meter, three gas meters with two electric meters. Mr. Olson stated there was no way to connect the two homes. The northeast corner of the property has a view of the lighthouse and park. He stated they don't know the full history of the property. A title search was done and this report stated it was a 3 family house. In answer to Dean Snyder's question, Mr. Olson reported that the title company does not guarantee zoning is correct. Mr. Olson noted that Bonnie bought this property sight unseen and everything she looked at indicated it was a 3-family home. Each unit has an entrance and exit. Bonnie stated it was a very unique home but fixing it up has been a nightmare. She stated was notified by the town shortly after purchasing the house that the property is not zoned for a 3-family dwelling.

Jim Kibby, of Nothnagle Realtors, provided documentation of the efforts to sell this property as a 2-4 family home and single family home. On June 11, 2010, Bonnie purchased this property sight-unseen for \$169,000. She hired Remax to put it on the market to sell as a single family home on November 7, 2010 for \$389,000. It was on the market for 187 days with no buyers. In summary, this property is difficult to sell. He noted that most people looked at the property as a single family home but found it unsuitable due to its unique layout.

Bonnie described the bad contractors who she hired to renovate the house. She noted they are family members. She ended up spending \$132,000 on improvements. One of the contractors even stole the furnace. She stated she would like to rent at least one of the units to recover some of her money. She stated she is living in the house by herself. She provided a financial calculation of money she could get in return by renting it out as a 3 family home. A conversion to a two family home was not considered. The main house is 4 bedrooms. All 3 units have a laundry room and

kitchen. Jim reiterated that it doesn't appeal to a single family. Dean Snyder asked what the value is as a single compared to a 3 family home. Jim stated that because of the uniqueness, the only way to determine this is to keep lowering the price until someone buys it.

Richard referred to the criteria for approval of a use permit and how he felt their application applied, as follows:

- The hardship is not self-created. There was a lot of representation to her by Fannie Mae and others that this was a 3 family home.
- This will not alter the essential character of the neighborhood. He referred to the Lighthouse next door with 4 bedrooms. You can't see this house from the road. This has been used as a 3-family home for many years. Nothing is changing.
- This is the most unique property in the area. There is a hardship due to circumstances and incorrect information provided by Fannie Mae.
- The applicant cannot realize a reasonable return. The property cannot be sold. He referred to the documentation provided of their efforts to sell this property as a 3-family and as a single family home.

Tim Thomas noted that Nothnagle has never listed it as a multi-family home. Jim stated this is true.

Public Comment:

Donald Smith – 74 Clearview Avenue: He stated that in 1975, he rented the A-frame portion as a studio apartment. It was a two family home at that point. In 1980, he bought his house. He recalled how it changed hands over the years but has always had 2-3 families living there. He stated that at that time, the place was a disaster. He noted that Bonnie has done an excellent job of fixing it up.

Chairperson Robillard read a letter dated 9/15/11 which was not signed. The letter voiced concerns and recalled the history of the property. It recalled in the past 12 years, no deed, mortgage, tax lien, transport of ownership or notice of residency has listed it as a multi-family. The letter expressed concern for use as a 3 family home.

Tim Thomas asked Don Smith if from 1975 to 1995 it was actively rented. Don stated that after that, it was occupied but he was unsure if it was a 1, 2 or 3 family home.

Chairperson Robillard asked Bonnie why she put so much money into the place as a 3-family home when she realized shortly after purchasing it that it was zoned only for a single family. Bonnie stated she thought there was a permit for a two family. Bonnie stated that she wasn't trying to add to the house when she first started fixing it up. She was just trying to make it livable.

Dean Snyder noted that if this were an area variance, he would not have any problem with it. This was all in place before other homes were in the area and Bonnie has greatly improved the house. The problem is that a use variance which requests permission to continue to rent this property requires a pre-existing non-conforming use, which we do not have proof of. Also the alleged hardship is self-created. There is no way we can approve this, as all criteria for a use permit must be met. The family members are building contractors and they should have known to check the zoning with the Town. Although the house has been improved, investing a large amount of money without investigating the zoning requirements should not have occurred. Her decision was based on the title company that stated it was a 3 family home, but Mr. Olson stated they are not responsible for this zoning determination. Bonnie knew about the zoning right after purchasing the property but started investing in it anyway.

Richard stated that the records that are available from the Town of Parma states this property is a 3 family home. He stated that this property is not acceptable as a one family.

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 deny the application of Bonnie Thomas, owner, for a use variance at 8 Clearview Avenue. The owner purchased this property as a three family dwelling in 2010 and this denies continuation of the same use. This property is currently zoned Waterfront Residential (WF) which does not allow three family dwellings. In making the determination to deny, in reviewing this application, the applicant has made significant improvements to the property. The improvements have resulted in a desirable change in the neighborhood relative to what it was prior to purchase. The issue is that they applied for a use variance which does not involve a balancing act. All four criteria must be demonstrated, as follows:

- (1) Can not realize a reasonable return – substantial as shown by competent financial evidence. Significant evidence was shared with us that when the property was listed as a single family relative to a 2-4 family dwelling, the price was only decreased by 6%. This represents only an insignificant difference in the asking price.
- (2) The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood. I completely agree with this item.
- (3) The requested variance will not alter the essential character of the neighborhood. Again I have no issue with this and the character over the years has been defined by this multi-family dwelling, although illegal, the changes the applicant has made to it has nothing but improved it.
- (4) The alleged hardship has not been self-created. This is the item I have the most difficulty with. The applicant admits their choice to ignore several red flags when they should have been questioned:
 - The applicant purchased the property without researching zoning. Information was available from the Town of Parma if they were asked
 - The applicant's family is in construction and they should have known that permits are required and zoning for multi-family dwellings can be a very sensitive issue
 - The applicant invested a large amount of money without researching the final value relative to cost. The applicant proceeded with no business plan which is fine if the investor can afford it but also involves a significant amount of risk.
 - As stated by the attorney, the applicant relied on the title company for the zoning designation but it has been presented that this is not the responsibility of the title company.
 - The owner stated she knew about the zoning issues just after purchasing the property but yet continued to invest money into the project.

For these reasons, I feel it is impossible to grant the applicant the requested relief for a use variance. Seconded by Tina Brown. **Motion unanimously carried to Deny (5-0)** (Ayes: Tina Brown, Stephen Shelley, Dean Snyder, Tim Thomas, Veronica Robillard).

Chairperson Robillard polled the Board for their reasons to deny:

Dean Snyder: stated his motion stands for his reasons

Tina Brown: The request was based on alleged hardship which was self-created

Tim Thomas: The rationale to demonstrate for a use variance has a very high bar that the applicant must obtain and has been stated in a number of applications for use variance criteria is all or nothing. It is my feeling that the applicant did not question the local zoning codes after purchasing this property and continued to exacerbate the situation by investing more money into the property without consulting with the Building Department.

Stephen Shelley: Looking at the four criteria that need to be met for a use variance: (1) can not realize a reasonable turn – I can accept; (2) alleged hardship is unique – I can accept; (3) will not alter the essential character of the neighborhood – I can accept. (4) the alleged hardship has not been self-created. Referring to the motion, the situation was self-created due to lack of research before purchasing and continued to follow the same path after purchase.

Veronica Robillard: I feel that we are compelled by the use variance criteria to look at every point and act accordingly, as all 4 criteria must be met and this has not been substantiated. The explanation details of the motion substantiate this denial.

MINUTES OF JULY 14, 2011 AND AUGUST 18, 2011

The ZBOA minutes of July 14, 2011 were reviewed and the recommended changes were made at the August meeting but, due to a lack of quorum, the minutes were not approved. A **Motion** was made by Dean Snyder to approve the July 14, 2011 ZBOA minutes with the recommended changes. **Motion carried (4-0)** (Ayes: Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Abstain: Tina Brown, Veronica Robillard).

The ZBOA minutes of August 18, 2011 were reviewed and the following changes were recommended: page 3, 5th bullet change “crated” to “created”; page 4, Para 4, line 6, change to “...land and over three acres...”; page 5, note that Moriarty’s comments were in a letter; page 7, Para 2, #2 change to “..back of the house so that it will create...”; first bullet, line 2, change to “2 1/2 years so they have become”; last bullet, remove “approximately”. A **Motion** was made by Stephen Shelley to approve the August 18, 2011 ZBOA minutes with the recommended changes. Seconded by Tim Thomas. **Motion carried (4-0)** (Ayes: Tina Brown, Stephen Shelley, Tim Thomas, Veronica Robillard; Abstain: Dean Snyder).

OTHER

35 Huffer Road: Jack recalled the approval of an area variance in May of 2005 for Eunice Muniz to construct an accessory storage shed to be located in the side yard. He reported that the owners are looking to move the shed farther back on the property. He noted the proposed location on the sketch map of the property. Following discussion, it was the consensus of the ZBOA members that this would be an acceptable location for the shed and it was not necessary for the owner to come back to the Board.

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Dean Snyder, to adjourn the meeting at 10:35 p.m. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Stephen Shelley, Dean Snyder, Tim Thomas, Veronica Robillard).

Respectfully submitted,

Diane Cook, Recording Secretary