

**TOWN OF PARMA
ZONING BOARD OF APPEALS
March 15, 2012**

Members Present: Veronica Robillard
Stephen Shelley
Dean Snyder
Jim Zollweg

Members Excused: Tim Thomas

Others Present: Jack Barton

Public Present: Mary Lou Clifford, Jeremiah Clifford, Mike Leonard, Mike Eisele, Marciano Chinappi, Laura Eisele, Robert Rapone, Karen Rapone, Joseph S. Frosini, Nicole Vincelli, Ashlee Charbonneau, Christine Wallace, Gary Comardo, Michael Kirchgessner, Todd Dunn and Jill Foxhall.

The meeting was called to Order by Chairperson Robillard at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She explained that a quorum of three is required to pass a motion.

PUBLIC HEARINGS

1. ROBERT AND KAREN RAPONE – 654 PARMA CENTER ROAD

The application of Robert and Karen Rapone, owners, for an area variance at 654 Parma Center Road. The applicants are requesting that the farm stand in their front yard be allowed to stay in place at a front setback of 8 feet and are requesting relief from Town Zoning Article 5, subsection 165-31.B.c which states in part that permanent buildings used to sell farm products must comply with principal setbacks. The minimum setback is 75 feet from the road right-of-way. This property is currently zoned Agricultural/Conservation (AC).

Robert Rapone, owner, explained that the original intent was to have the farm stand in the front during the summer months but during the winter months it would be moved to the rear yard. Because of a back injury and recent back surgery he is unable to move the stand to the rear yard. The stand sits between trees, is on 10 acres of land and is usually open from May 1 until mid October. They sell pies, flowers and garlic. Mr. Rapone stated that the building is moveable and explained the process of moving the stand.

Public Comment:

Christine Wallace, 678 Parma Center Road, stated that she is not opposed or in favor of this stand, but wonders why there are more requirements for her stand than for Mr. Rapone's stand. Ms. Wallace said that the trees would eventually grow causing the stand to have to be moved at some point. Mr. Rapone replied that he has those trees cut back so that they do not get any bigger.

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 action under SEQR and no further review is required.

Dean Snyder asked Jack why he would have to have lighting. Jack said that if it was a bigger building maybe he would need lighting. Dean Snyder considers this a moveable structure, the applicant has shown that it can be moved and there is no permanent foundation. He does not agree with giving an area variance that would remain with the property and thinks that maybe a special permit with conditions could also be an option. There was further board discussion about this being a movable structure. Jack Barton felt that to be considered moveable then it would be being moved not left in the same place. Dean Snyder felt that because the stand is small and can be moved even though it is not being moved, the code

reads like it should be considered moveable. Veronica Robillard agrees with this and making conditions for this structure as it sits on the property today and is not made into a more permanent structure. Stephen Shelley also feels that this is a moveable structure because of the size of it and the fact it is sitting on blocks of wood.

A **Motion** was made by Dean Snyder to table the application of Robert and Karen Rapone, owners, for an area variance at 654 Parma Center Road until the April 19, 2012 meeting without prejudice. The tabling will allow the board to obtain further information on how do we define a moveable structure in our code, the applicant has demonstrated that the structure is able to be moved and if the code calls out a moveable structure to limit the size then his stand may meet the code as it is written and also to find out if it is possible for the board to grant an area variance with conditions that limit it to a particular applicant's physical situation and if so that gives us another opportunity to grant relief to the applicant. Seconded by Stephen Shelley. **Motion carried (4-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Jim Zollweg; Absent: Tim Thomas).

2. MARCIANO CHINAPPI – 12 HAMLIN PARMA TOWNLINE ROAD

The application of Marciano Chinappi, owner, for an expansion of a nonconforming structure and five area variances at 12 Hamlin Parma Town Line Road. The applicant is proposing a second story addition over the existing home with a side setback from the southerly property line of 2.8 feet and a front setback of 52 feet from the road right of way. The existing home has a front setback of 33.6 feet. Applicant is also proposing to construct an accessory storage shed with a rear setback of 2 feet and a side setback from the northerly property line of 2 feet and is requesting relief from Town Zoning schedule 1 which requires a side and rear setback of 10 feet. Applicant is also requesting relief from schedule 1 which limits the maximum building coverage on a lot to 30 percent. Proposed lot coverage is 34 percent. This property is currently zoned Waterfront Residential (WF).

Marciano Chinappi, owner, explained that he tried selling the house but has been unable to so they would like to build an addition onto the house. He and his wife have three children and the house is a 2 bedroom with a den on the lower level. Because the children are little, they would like to be on the same floor. The addition would not extend out any further than the current footprint of the original structure. The addition would add a master bedroom. He also explained that he would like to have the shed to store bikes, lawnmower and snow blower, currently there is no basement or garage and so these items are being stored outside, in the house and down the street.

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 action under SEQR and no further review is required.

Jack Barton read an email from David L. Herring, P.E. Capital Facilities Regional Manager 1, Allegany and Genesee State Park Regions, stating that the property owner has encroached onto State Park Property, which is part of the Lake Ontario State Parkway. This encroachment includes, but is not limited to mowing and storing property on parks land to the south and east of their property.

Jack Barton gave a letter to the Board from the Planning Board stating that the non-conforming structure consists of a single family dwelling located on a parcel that is 50 feet wide and 100 feet deep which is typical in that area of Waterfront Residential. The proposed additions do not appear to have any adverse effect on drainage as there is no increase in impervious surface on the site.

Public Comment: None

A **Motion** was made by Dean Snyder to approve the application of Marciano Chinappi, owner, for an expansion of a nonconforming structure and five area variances at 12 Hamlin Parma Town Line Road to construct a second story addition over the existing home with a side setback from the southerly property

line of 2.8 feet and a front setback of 52 feet from the road right of way, the existing home has a front setback of 33.6 feet and to construct an accessory storage shed with a rear setback of 2 feet and a side setback from the northerly property line of 2 feet and to grant relief from Town Zoning schedule 1 which requires a side and rear setback of 10 feet and to grant relief from schedule 1 which limits the maximum building coverage on a lot to 30 percent, the proposed lot coverage is 34 percent.

In making this determination:

- I don't believe the benefit can be achieved by other means feasible to the applicant; the addition falls within the existing footprint of the house therefore, doesn't affect any further encroachment into the required setback. The location of the shed is appropriate for that area, since it does back up to state property, it will have no affect on other neighbors in the neighborhood. The lot coverage is an issue but for safety sake, this house needs to have someplace to store lawnmowers, snow blowers and gasoline to run those pieces of equipment. Because of the unique nature of this small 100x50 feet lot and the fact the house has no basement, the applicant needs some minimum storage area to safely store these pieces of equipment. I believe that the proposed shed is appropriate.
- There will be no undesirable change in neighborhood character or to nearby properties. The footprint of the structure is not changing and the proposed changes are very consistent with other buildings in that neighborhood.
- The request is incredibly substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created; however, using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community.

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

3. MICHAEL AND LINDA KIRCHGESSNER – 26 DELAVERGNE DRIVE

The application of Michael and Linda Kirchgessner, owners, for area variances at 26 Delavergne Drive. The applicants are proposing to demolish an existing 20 feet by 50 feet garage and construct a new 20 feet by 50 feet garage in the same location with a front setback of 18 feet from the road right of way and a side setback of 3 feet from the westerly property line. The applicants are requesting relief from Town Zoning Article 5, subsection 165-35.C.2 which requires a principal structure on the parcel and limits the accessory structure to 400 square feet subsection 165-35.C.7 which requires a minimum 25 feet front setback and 10 feet side setback and schedule 1 which also requires a 10 feet setback. This property is currently zoned Waterfront Residential (WF).

Michael Kirchgessner, owner, explained that he would like to demolish the existing garage which is about 50 to 60 years old and the sides walls are kicking out, there is a 6 inch bow in the walls. He has done everything to try and repair the garage. The contractor hired gave him an estimation of repairing the garage and replacing the garage and the cost was only slightly higher and more cost effective to replace.

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 action under SEQR and no further review is required.

Jack Barton read an email from David L. Herring, P.E. Capital Facilities Regional Manager 1, Allegany and Genesee State Park Regions, stating that the property owner has encroached onto State Park Property, which is part of the Lake Ontario State Parkway. This encroachment includes, but is not limited to a storage building located off the south west corner of their property on parks land.

Public Comment: None

Chairperson Robillard read two letters in the file.

Dr. Nat Goodhartz, 34 East Wautoma Drive, feels that the project will be consistent with the other structures in the neighborhood.

John L. Degenhardt, 48 East Wautoma Drive, feels that the proposed replacement will be consistent with the home and property and an overall asset to the neighborhood.

A **Motion** was made by Dean Snyder to approve the application of Michael and Linda Kirchgessner, owners, for area variances at 26 Delavergne Drive, to demolish an existing 20 feet by 50 feet garage and construct a new 20 feet by 50 feet garage in the same location with a front setback of 18 feet from the road right of way and a side setback of 3 feet from the westerly property line and also to grant relief from Town Zoning Article 5, subsection 165-35.C.2 which requires a principal structure on the parcel and limits the accessory structure to 400 square feet, subsection 165-35.C.7 which requires a minimum 25 feet front setback and a 10 feet side setback and schedule 1 which also requires a 10 feet side setback.

In making this determination:

- I don't believe the benefit can be achieved by other means feasible to the applicant; the current foundation consists of blocks in the ground, although considered an acceptable building practice in the 50's, it has proven to be inadequate over time for this structure with such a high aspect ratio, the base of the side walls is creeping laterally causing an unsafe condition which will eventually lead to collapse. The applicant has attempted to shore up the building, but without a suitable foundation, it has been an exercise in futility. Complete building replacement is the most cost effective method to repair or replace the structure as presented by the builder contracted to try and save the structure.
- There will be no undesirable change in neighborhood character or to nearby properties. This structure predates our previous three codes from 1998, 1972 and 1963 and has remained within the same immediate family during that time. This includes Article 5 Section 165-35.C.2 and 165-35.C.7 in addition to Schedule 1.
- The request is substantial.
- There will be no adverse physical or environmental effects since it is replacing a structure that has been there since the 50's.
- The alleged difficulty is not self-created; the applicant is simply resolving a safety issue that has occurred through no fault of his own.

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

4. MICHAEL EISELE – 190 OGDEN PARMA TOWN LINE ROAD

The application of Michael Eisele, owner, for a Special Permit to operate a Home Business at 190 Ogden Parma Townline Road repairing lawn and garden equipment. The applicant is also requesting relief from Town Zoning Article 9, subsection 165-79.1.F which does not allow outside storage of materials used in the Home Business. This property is currently zoned Medium Density Residential (MD).

Michael Eisele, owner, explained that this is his livelihood and over 50 percent of his income. He explained that from the road you cannot see the building and that the outside storage area is fenced in by a stockade fence and pine trees near the shop. This area is the place where equipment sits while waiting to be worked on. He explained that it would be a hardship to get all of the equipment into the building because the building is small and the repair equipment is stored there along with the pieces of equipment he is working on.

Chairperson Robillard asked about the outside storage, where it is, what it is and why it is outside. She wanted to know why not build a shed to store those items, extend the current building or the possibility of enclosing the current area so that things will not be stored outside. Mr. Eisele explained that there is a stockade fence and trees surrounding the area. Chairperson Robillard explained that that is still considered an outside area. Jack Barton explained that only one detached structure can be used for a business. Along with the workshop, he has a small shed to store personal belongings and also a picnic

pavilion on the property. Dean Snyder explained that the outside storage is a big request and also wondered if the owner could add an addition to the existing building so that would alleviate the outside storage. The outside area is a 30x30 area. Stephen Shelley wondered if he could build a small shed to hold things being stored outside. Jack Barton explained that Mr. Eisele is currently at the limit for accessory structures. The property is 4.2 acres. Any additional buildings would need a variance. He could store some machines in the current building but they would have to be brought in and out.

Public Comment:

Chairperson Robillard read the following letters:

Jim Oberlin, 31 Winding Country Lane, stated in a letter that he supports the application of Mr. Eisle.

Peter Mancuso, 34 Winding Country Lane, stated in a letter that he is a customer of Mr. Eisle and he supports this application and finds it to be a convenient location to get his repairs done.

Michael Vinci, 202 Ogden Parma Town Line Road, in a letter stated he does not have an issue with the Town granting this Special Permit.

Jeremiah Clifford, 198 Ogden Parma Town Line Road, stated that Mr. Eisle has been operating this business without a Special Permit. He handed out a packet for the board to review including pictures taken of the outside storage area. He would like the request denied because of past performance, this business operates 7 days a week, all hours of the day and night. He would like there to be conditions on time and days if the Board is going to approve the Permit. Citing the pictures, Mr. Clifford would like the outside storage area denied. He spoke of a hearing in July 2000 where Mr. Eisle was told he could get a Special Permit but he never did.

Michael Lennard, 185 Ogden Parma Town Line Road, stated that Mr. Eisele is a good neighbor, but there is noise on Saturday evenings and Sundays and he would also like set hours because of the noise.

Laura Eislie, owner, 190 Ogden Parma Town Line Road, explained that there has been noise because they are in the process of finishing up an addition to the house, not because of the business or lawnmower equipment.

Jill Foxhall, 7 Winding Country Lane, stated she has no problem with the business but would also like restrictions on the hours because of noise. She also had questions regarding outside storage of personal property. Jack Barton explained that that is different than outside storage for business purposes.

Mr. Eisle explained that on weekends he is working on his own equipment, mowing, weed whacking, and chipping wood, and feels that all the neighbors mow their lawn on nights and on weekends and that there is always noise. Lawnmowers are not ever just running to run.

Chairperson Robillard asked if he ever had a Special Permit and why he never applied for the Special Permit before this. Mr. Eisle explained that he was in a long time ago to get a variance and was denied, so he asked the neighbors if they were ok with him keeping the business and they were ok with it so he continued to operate without the permit.

Mary Lou Clifford, 198 Ogden Parma Townline Road, stated that they are trying to keep the neighborhood in a way reasonable to keep all happy. They just cannot be tolerant of the collection of junk, lights on until 10 or 10:30 at night in the shed. Oil and gasoline leaking out the machines and the heating of the building with flammable products inside. She explained that the house addition has been ongoing for 5 years. She would like strict conditions for the hours of operation and a time limit to have to come back and renew. She stated there is extra traffic in the area because of delivery trucks.

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 action under SEQR and no further review is required.

Following discussion, a **Motion** was made by Jim Zollweg to table the application of Michael Eisele, owner, for a Special Permit to operate a home business at 190 Ogden Parma Town Line Road for repairing lawn and garden equipment which also includes a request for relief from Town Zoning Article 9, subsection 165-79.1.F which does not allow outside storage of materials. We are tabling this matter because we need substantially more information before we can make a decision on this matter. The board would like to see all available information on the year 2000 action that was before this board that we only learned about this evening. The board would also like to see a business plan that would indicate the turn around time for equipment repairs, waste disposal, hours of operation and other typical components of a business plan. We would also like to find out if other alternatives could be possibly made to outside storage, whether it could be minimized or eliminated completely, possible extension of the building and also a complete site plan drawing that shows all the aspects of this project. This tabling is without prejudice until the April 19, 2012 meeting. The tabling will also allow time to look into the impact on the character of the neighborhood. The applicant should address the requirements that are specified in section 165-79.1.C and also they should address the General Provisions in section 165-55 (c). Seconded by Stephen Shelley. **Motion carried (4-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Jim Zollweg; Absent: Tim Thomas).

Dean Snyder recused himself from the Board.

TABLED FROM THE FEBRUARY 16, 2012 MEETING

5. DEAN SNYDER – 514 NORTH AVENUE

Appeal of a building department decision on expansion of a nonconforming use. Dean Snyder, owner, has requested that the Zoning Board of Appeals review a determination made by the Building Department that proposed renovations at the Veterinary Hospital and boarding facility are classified as an expansion of a nonconforming use.

Chairperson Robillard stated that this matter was tabled to give the board time to review the information provided.

Chairperson Robillard stated that after her review of the information she felt that the footprint of the building is identical between the old map and new map provided. After reviewing the minutes from the original meeting, the common concern then was the noise from the kennel and she believes that the proposed modifications will decrease the impact on the neighbors. The variance given said that there could be a medical office and kennels, the proposed change is just a redistribution of component parts. She does not see it as an enlargement of nonconforming use. Chairperson Robillard asked if there would be an increase in staff. Dr. Snyder replied no. Chairperson Robillard feels that the business is remaining the same and that the original intent was to grant the combined use.

Dr. Snyder stated that he has to meet the same conditions as laid out in the original Use District Exception and that there will be no change in use.

Jim Zollweg visited the site. He thinks that the entire footprint all goes together as a kennel and a medical office, the original concept should be grandfathered as one unitary cohesive business and does not see it as an expansion since the footing remains the same. The business is not expanding, the services are the same. He views it as one footprint, one operation and feels that it should be continued.

Stephen Shelley also feels that it is a combined operation not two independent business' and that the footprint is remaining the same. He feels that where there is no precedent you should try and figure out

what the governing board's original intent was. In the original minutes, the notes reflected that the amount of kennels could not be increased and Stephen Shelley feels that this is going in the exact opposite direction.

Chairperson Robillard asked Jack what was the reasoning for the denial from the Building Department. Jack said that they were not viewing the business as combined but as two separate business'. The Building Department viewed it as an increase in the intensity of the nonconformity. They were looking at them as two separate footprints not as one.

Chairperson Robillard feels that it is not the applicant's intent to expand but to modernize.

Chairperson Robillard read a letter from ZBOA Member Tim Thomas, explaining his support for the project and he does not consider it an expansion of a nonconforming use as proposed. He believes the nature of the neighborhood will actually benefit from the proposed project and the appearance of the building will improve substantially. The nature and intensity is not changing. This project will allow the applicant the ability to update the practice and bring it into compliance with New York State Building Code and position the applicant to meet or exceed the best practices for veterinary clinics. Tim Thomas also thanked the Building Department for their due diligence in reviewing this request.

Dr. Snyder read a letter that he handed out to the board citing criteria taken directly from "James A. Coon Local Government Technical Series-Guidelines for Applicants to the Zoning Board of Appeals" that will be made a part of the file.

Following discussion, a **Motion** was made by Stephen Shelley to reverse the decision of the Building Department regarding 514 North Avenue. It is not an expansion of a nonconforming use. Modifications to the Animal Hospital and Animal Kennel located at 516 North Avenue shall be allowed by the enforcement officer providing that:

1. Under no circumstances will the modifications take place outside of the "Outline of Area of Nonconformance" which specifically envelopes the areas approved for the Use District Exception on April 27, 1995.
2. All building modifications will be consistent with Schedule I, Zoning Schedule, Town of Parma, Monroe County, New York and current New York State Building Codes.
3. All activities taking place within the facility shall be consistent with the combined mixed use as an "Animal Hospital and Animal Kennel" granted in 1995 and/or with current Parma Zoning Law.

The 1995 Zoning Board of Appeal's original intent was to allow the combined mixed use as an "Animal Hospital and Animal Kennel" while minimizing the possibility of danger and detriment to neighboring properties.

Seconded by Jim Zollweg, **Motion carried (3-0)** (Ayes: Veronica Robillard, Stephen Shelley, Jim Zollweg; Absent: Tim Thomas).

Jack Barton wanted to know how to handle these cases in the future. Chairperson Robillard felt that these should be handled on a case by case basis. Jim Zollweg thought that a key indicator would be if the footprint was changing. Dean Snyder felt that if there is a use change then it could be considered an expansion of the nonconforming use, but not only if the frequency or the intensity of the business is increasing. There was further discussion about what changes could be made to help decide these cases going forward.

Dean Snyder rejoined the board for the remainder of the meeting.

MINUTES OF FEBRUARY 16, 2012

The ZBOA minutes of February 16, 2012 were reviewed and the following recommended changes were made: Page 3, Para 1, line 2 add change "Mr. to Mrs."; page 5, Para 3, line 5, change to "In making this

determination”; Page 5, Para 8, line 2, change to “far outweighs”; Page 5 and Page 6, throughout, change “Mr. to Dr. Snyder”; Page 5, last Para, line 2 change to “Veterinary Hospital and Boarding Kennels”; Page 6, Para 1, line 15 add “hospital roof”; Page 6, Para 3, line 2 change “is to be”; Page 7, Para 2, line 2 “Remove Dean Snyder from the Motion”. A **Motion** was made Jim Zollweg to approve the February 16, 2012 minutes as amended. Seconded by Stephen Shelley **Motion carried (3-0)** (Ayes: Stephen Shelley, Jim Zollweg, Dean Snyder; Abstained: Veronica Robillard; Absent: Tim Thomas).

OTHER BUSINESS

None

ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Jim Zollweg, to adjourn the meeting at 10:25 p.m. **Motion carried (4-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Jim Zollweg; Absent: Tim Thomas).

Respectfully submitted,

Carrie Webster, Recording Secretary