

**TOWN OF PARMA
ZONING BOARD OF APPEALS
September 20, 2012**

Members Present: Veronica Robillard
Stephen Shelley
Dean Snyder
Tim Thomas
Jim Zollweg

Others Present: Jack Barton, Blake Keller

Public Present: Richard DiCesare, Deborah DiCesare, Tom Barbeto, Erin Barbeto, Amy Cross, Larry Cross, Elizabeth Richardson, Ben Gustafson, Paul Vindigni, Daniel Schum, Kris Schultz, Gary Cross, Gary Coia, Gary Comardo, Dick Vance, Ray Helfrich, Jerry Santangelo, Keith O'Toole, John Zamiara, Eric Soprano, Diane Soprano, Greg A. Perna.

The meeting was called to Order by Chairperson Robillard at 7:00 p.m. She explained the function of the ZBOA and the decision-making process. It was explained that a quorum of three is required to pass a motion.

TABLED BUSINESS

1. RICHARD AND DEBORAH DICESARE – 4992 RIDGE ROAD WEST

The application of Richard and Deborah DiCesare, owners, for an area variance 4992 Ridge Road West. The applicants are proposing to construct an 11'x50' addition to the west side of the existing repair facility with a side setback of 6 feet from the west property line. This property is currently zoned General Commercial (GC) and operates under an existing use variance.

Chairperson Robillard explained that this matter was tabled from the last meeting to allow the applicant time to provide further information, sketches and dimensions. There was discussion about the updated maps that Jack Barton handed out to the Board.

Tim Thomas asked for clarification of the two maps and what is being done to the property. Deborah DiCesare explained that they are asking for 8 feet instead of the 11 feet originally asked for. Richard DiCesare explained the project and the necessity of the shell. The proposed shell is needed so that they can continue operating the business. There was discussion over how it was advertised now that there has been a change to the dimensions and whether the board can move forward because the project has changed. Stephen Shelley stated that there has been a shift not a change, the building will not be any wider. Tim Thomas and Chairperson Robillard felt that the nature of the project has changed. Jack Barton stated that if the board feels this is a minor variation then the board can continue but if the board doesn't agree they can stop.

Dean Snyder stated that the original building that the board was looking at was 36 feet by 50 feet and now they are proposing to add 11 feet, making it 47 feet by 50 feet. It looks like they split it a little bit so they are only going a foot wider with the total building but there has been a shift in the building. His concern at the last hearing was what the front of the building would look like after the project was finished and they have satisfied that concern. He thinks when looking at the scope of the project, the difference that we are talking about is going to be minimal, even if it sounds like a big number. But looking at the property and the concerns of the neighbors, so far there is not a big concern and he sees no problem moving forward. Dr. Snyder feels like this will be a huge improvement and a much nicer facility and because of the shell it allows them to continue their business.

Chairperson Robillard clarified that we are looking at dimensional changes and conceptual changes so she will poll the board about whether the changes are diminimus or significant enough that this should be re-advertised or voted on tonight.

Tim Thomas asked Jack if because this is operating under a use variance, does the board have to evaluate this under the use variance criteria. Jack Barton stated that he has asked counsel that question and that the town attorney felt that the business itself is not growing, it is an equipment upgrade and she does not see this as an expansion of the variance granted.

Dean Snyder stated that the addition the board is looking at is 8.2 feet instead of 11 feet. The proposal will leave 5.5 feet from the property line. This is less of an addition but closer to the property line then previously noted which is why the board required a new map with the dimensions. This is nearly 3 feet less than originally asked for. Dean Snyder recommends the board continue based on two factors: Although the original setback was inaccurate, the applicant is asking for less of an addition then what was originally proposed, it would be 8.2 feet instead of 11 feet. After reading the attorney for the Town's recommendations, I believe it would be appropriate to move forward as far as the addition to the building with an existing use variance.

Jim Zollweg agrees that we should move forward. He does not think that the difference of what is being considered tonight and what was in the original advertisement is that significant. Primarily as this board examines setbacks as well as the impact of any change on the vicinity of the building, that has changed in a modest amount. The fact that the project has changed from an addition to more of an overall renovation is less important and is an issue for the building department and inspector.

Stephen Shelley also feels that it is ok to proceed. The heart of the original application was focused on the side setback and since there will be a larger side setback with this change then we had originally thought that is not a reason to halt this application. He doesn't think it's unusual for the board to request that the design of the building be changed in the course of an application.

Tim Thomas is comfortable moving forward with the application and doesn't see any value being gained by the Town or the applicant by re-advertising the application and going through the process again. He feels that when the project is done it will be hard to see from the road the change that is happening.

Chairperson Robillard stated that based on what she has heard that this application would continue.

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.

Public Comment: None. Public Hearing Closed.

A **Motion** was made by Dean Snyder to approve the application of Richard and Deborah DiCesare, owners, for an area variance at 4992 Ridge Road West. The applicants are proposing to construct an 8.2' x 58' addition to the west side of the existing repair facility with a side setback of 5' from the west property line. This property is currently zoned General Commercial (GC) and operates under an existing use variance. As per submitted drawings by Landtech Surveying submitted and dated September 17, 2012 and the second map by ALA Architects dated September 2012 as submitted to the Zoning Board.

In making this determination:

- I don't believe the benefit can be achieved by other means feasible to the applicant. The applicant has an existing facility that is in a current level of disrepair. The proposed modifications will significantly improve the look of the property. The applicant has apparently gone through many directions trying to find a way to improve the property without damaging their business and this proposal of building a shell over the existing facility is the minimum they can do to satisfy their needs.
- There will be no undesirable change in neighborhood character or to nearby properties. There will be a significant improvement to the neighborhood due to the look of this building and that it is significantly away from Ridge Road, this small difference in setback from the application will not be significantly noticed.
- The request is certainly substantial.

- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created, in that the property owner was aware that the building was in disrepair but the property owner has done everything within their means in order to improve the property while minimizing any impact on the neighborhood. 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 (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

2. GREG PERNA – 67 DELAVERGNE DRIVE

The application of Greg Perna, owner, for four area variances at 67 Delavergne Drive. The applicant is proposing to construct a new single family dwelling on a substandard lot that does not meet preexisting, nonconforming status, with a side setback of 6.5 feet from the east property line, a 10'x10' shed with a side setback of 4 feet from the west property line and is requesting to not construct a garage. Applicant is requesting relief from Town Zoning Article 11, subsection 165-85 A.1.a.1 which states that the minimum lot size shall be 20,000 square feet in area and 110 feet wide, Town Zoning schedule 1 which requires a side setback of 10 feet for a home and an accessory structure and Town Zoning Article 5, subsection 165-35.E.3 which states in part that each dwelling unit shall have a garage with a minimum area of 280 square feet. This property is currently zoned Waterfront Residential (WF).

Ben Gustafson from Hunt Engineering, representing Greg Perna in this application stated that this matter was previously tabled because the plans were being updated, resubmitted, the garage modified and the building size reduced. He explained that the applicant owns two parcels of land. We are concentrating on the parcel on the south side of the street away from the lake. There was a structure there previously that was removed four years ago along with the septic system. The new construction would be a 50 x 23 ½ foot structure with 36 x 23 ½ foot livable space and a garage in front. The applicant needs a variance because the size of the lot does not comply with the zoning, it is an existing nonconforming lot. They also need a variance for a side setback so that there can be 23 ½ feet livable space. Tim Thomas and Chairperson Robillard clarified that the shed variance is being dropped, there will be a garage and no shed.

Dean Snyder feels that there has been quite a bit of information that has changed and he would like more time to review the information and plans. Dean Snyder asked Jack Barton if it would be appropriate to table this to next month. Jack Barton stated that he feels the board does not have much choice but to table the application because the legal notice was not revised or re-advertised with the changes. Dean Snyder felt that if the board went through it quickly there would be more of a chance something could be missed. Tim Thomas felt that there were a lot of changes and that the board would need more time to review. Chairperson Robillard stated that notifications were not necessary tonight because with a new legal new notifications would have to be provided. Jack Barton stated that there will be a new legal and a new list of notifications provided to the applicant. Mr. Barton currently does not have a confirmation of the notifications that went out. Without the notifications the board cannot move any further.

Ben Gustafson on behalf of his client wanted it on the record that he is fairly certain that they did submit all of the information to the town that was required.

A **Motion** was made by Jim Zollweg to table the application of Greg Perna, owner, for several area variances at 67 Delavergne Drive to allow time to see a revised legal notice, obtain individual copies of the most current plan for this site and to verify that notifications are in order to the October 18, 2012 meeting without prejudice. Seconded by Stephen Shelley. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

3. PAUL VINDIGNI – 1920 NORTH UNION STREET

The application of Paul Vindigni, owner, for an area variance at 1920 North Union Street. A lot subdivision is being proposed for this property. The applicant is requesting an area variance for Lot 1 of this subdivision. This

lot is proposed to have a width of 140.99 feet and a depth of 158.28 feet. An area variance is also requested for the existing house on this lot that has a front setback of 48.4 feet. Per Town Zoning schedule 1, the minimum lot depth is to be 175 feet and the front setback for the principal structure is to be 75 feet. This property is currently zoned Medium Density Residential (MD).

Daniel Schum, Esq., attorney for the applicant talked about what he referred to on the map as P.R. 1, which was the first of 3 proposed lots. Mr. Vindigni lives at that house at 1920 North Union Street, which is an existing structure. He bought the whole parcel. The house was built in 1968, which predates the current ordinance. At that time the setback from the existing street was 75 feet and the house was granted a C of O. Since then North Union Street's alignment has changed and now there is a 48.4 feet setback to the front corner of the house. At some point the house was in compliance with the way the road was constructed at that time. His feeling is because the house predated the change of the road that this should be considered a pre-existing non-conforming setback. He went on to explain that this house is in-line with the house to the south and fairly in-line with the house to the north. With regards to the lot depth if you look at the entire house it is located at least 175 feet of average depth. The lot depth is to make sure that a house is not too small or too close to the road, there is more than enough area and average depth, the front setback keeps in line with other houses on the road. When the proposal was presented to the Planning Board, the house on Lot 1 already faced North Union Street, the houses on Lots 2 and 3 are on a private road. Mr. Schum explained that at some point in time, the building department decided that their interpretation of a front setback varied depending on whether or not it is a public road or a private drive. If this was a public road the houses would face the road but because it is a private road, they must face Union Street.

Dean Snyder wanted to know why they are not asking for relief from the code that requires them to face the main road instead of the private road. Mr. Schum said that because there has never been a definitive decision about that interpretation, if the application does not pass tonight they will be going back to the planning board to ask that the original plans be approved and then when that interpretation is given they would come back to the Zoning Board for review of that interpretation. Because of that interpretation right now the houses on Lots 2 and 3 face west and as such they fit the code, no variances required. Lot 1 requires the variance. Mr. Schum explained that this is not adverse to the neighboring properties and will not have a significant impact because the house already exists. Mr. Schum gave a couple of examples of subdivisions where the houses face the private drive. Because the houses have to face Union Street, Lot 3 will be looking directly into the back yard of Lot 2. Mr. Schum stated that the applicant did approach the farmer in the rear, Mr. Ziegler who was not willing to let him purchase land to meet the setback.

Mr. Schum stated that Mr. Schultz, the engineer and Mr. Vindigni are present to answer questions. There was discussion about what if the applicant only created 1 lot instead of 2 lots. The applicant would lose money financially by doing that. Chairperson Robillard stated that this is a matter of profitability. Mr. Schum explained that even if creating only 1 lot, they would still need the variance for the house on the front and if the Town had not changed its interpretation of the front setback then the applicant would not be here at all. Tim Thomas asked Jack Barton what drove that change. Jack Barton explained that there is no requirement that the house face the road or drive, as far as the front yard it is not an interpretation it is the definition. Mr. Schum stated that the definition of a front yard does not specify private or public road.

Dean Snyder said that part of the responsibility of the board is to look and see what makes sense. They aren't asking for relief. If they had just one lot they don't need to come to the board because it is existing, if they only put two lots then they don't need to come because they could make it work but using the balancing act, looking at the interpretation that has been used consistently up to this time, the only variance they are looking for is the location of the house, which typically is approved very easily. In this case they have looked and tried to comply with the code, 175 feet back and have taken the average across that, if the street went straight across there would be a 6 foot difference, no one is going to perceive that from the road. It is not the Boards job to insist that they have one lot instead of two. Tim Thomas also feels that this makes sense. Stephen Shelley felt that the board has used these interpretations in the past and have seen them applied.

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.

Chairperson Robillard thinks that the building department has their reasons for determining on the orientation of the structures depending upon the difference of a private driveway, road or street and that the board should be respectful and support within reason. She feels that if the applicant did two lots not three, than except for the existing setback issue all else would be in compliance and does not feel that the board is here to maximize the profitability of the owner. She feels there is a difference between profitability and severe financial hardship. Looking over the Planning Board minutes Chairperson Robillard felt that they also had some issues with this and would like their feedback.

Tim Thomas stated that this really boils down to 20 feet because the front setback is irrelevant, the house has been there for many years and feels that that 20 feet is going to be unnoticeable to the everyday passerby. Is there a profitability issue sure, but he is not looking at that as the end all of the application.

Dean Snyder commented on Bailey Road. When the board looked at that one, there were other opportunities there and there were significant setbacks required in order to fit these extra house. That was significantly different than this application. Our charge is to balance the benefit to the applicant with the detriment to the health, safety and welfare of the community. In this case the applicant does not have to come to the board and prove they are in financial hardship, to Dr. Snyder financial hardship does not even play into this. What plays into it is the applicant is asking for something and how does granting it affect the rest of the neighborhood. In this application if we use the interpretation that has been used for years, there is no reason for any setbacks except for this setback on Lot 1, financial gain does not matter. This matter was advertised and if members of the Planning Board wanted to come in tonight they could have or they could have sent a letter. Dr. Snyder does not agree that this should be held up to invite them to come and invite an issue. Chairperson Robillard asked about the existing shed and well. Kris Schultz explained that the existing shed on Lot 2 will be removed and the well will be abandoned and capped.

Public Comment:

Tom Barbeto, 1914 North Union Street, explained that he lives to the north of this property. Mr. Barbeto is against this application, he is concerned about losing his privacy and drainage issues, he already has an issue with flooding. Mr. Barbeto stated he never received a notification letter. Dean Snyder stated that drainage is typically a Planning Board issue not Zoning Board, but he wanted everyone to keep in mind, they are not talking about what is currently there and if a house were there, they are talking about the 20 feet, so even if there were one house back there, which would require no variance at all, you would still be in the same situation and he would hope the Planning Board would find a way to resolve drainage issues because that is a serious concern, but not a concern handled here. Kris Schultz, site engineer, stated that this was brought up at Planning Board meeting and after development there will be a reduction in drainage issues because the water is going to be pulled out to North Union Street.

Erin Barbeto, 1914 North Union Street, she is also against this application. At all of the Planning Board meetings all four neighbors were present and against this application. She feels that having a subdivision does change the properties.

Chairperson Robillard explained that this is a public hearing but the board is required to follow the balancing test as stated earlier in the meeting, such as whether the benefit can be achieved by other means feasible to the applicant, is there an undesirable change to the neighborhood character or other properties, whether the request is substantial, if it will have adverse physical or environmental effects and whether the alleged difficulty is self-created. Those criteria are what the board has to follow in making their determination.

Jack Barton said that he has a confirmation list, notifications were mailed on August 6, 2012 and 1914 North Union Street is on that list. Jack Barton went on to explain that once notification letters are mailed out, if a matter is tabled, it does not get re-advertised. Anyone who wanted to be at that meeting would have been at the

first one and would know that it was tabled. A signature is not required. The meeting will continue as if notifications went out. Tim Thomas asked Mr. Barbeto if he would feel different about this if it were one house instead of two. He replied that he is still against it but would feel better about it.

Public Hearing Closed.

A **Motion** was made by Dean Snyder to approve the application of Paul Vindigni, owner, for an area variance at 1920 North Union Street and to grant relief from the front setback and the depth of lot setbacks. In dealing with the front setback, it is an existing structure that has been located there for several years and there will be no change in the setback of that building compared to what is existing. The second variance is for the depth of lot. The applicant is asking for a variance for depth of lot for 16.72 feet, less than 20 feet. Lots 2 and 3 require no variances based on current Town Code, if the previously accepted interpretation of Town Code which allows the front of the property to face a private road were allowed the only variance required in this case would be for the existing house. Due to this change, the applicant has taken an average depth from the right of way of North Union Street and has located the back lot line such that it is consistent with the minimum setback of 175 feet. In making this determination:

- I don't believe the benefit can be achieved by other means feasible to the applicant. The design of the property has been consistent with the manner that Town Code has been interpreted for several years.
- There will be no undesirable change in neighborhood character or to nearby properties. We are not comparing the nearby properties to just having green space back there that someone else is paying taxes on, we are comparing it to around a 16.72 feet variance in the depth of front existing lot. The proposed Lot #1 represents more than a 20% increase in the minimum lot size for that zoning district.
- The request is substantial.
- There will be no adverse physical or environmental effects. Drainage is a very serious concern in this area and it is outside our jurisdiction to dictate what the drainage requirements are, although we have heard from the designer of the subdivision that after this is built an improvement of the drainage should be expected for the property at 1914 North Union Street on the northeast corner.
- The alleged difficulty is self-created, but when 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 carried (4-1)** (Ayes: Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg, Nay: Veronica Robillard).

4. LYNN SADOWSKI – 437 TRIMMER ROAD

The application of Lynn Sadowski, contract vendee, for a Special Permit to operate a home business at 437 Trimmer Road in accordance with Town Zoning Article 9, subsection 165-79.1. The applicant is requesting to operate a dog grooming business. This property is currently zoned Medium Density Residential (MD).

Keith O'Toole, attorney for the applicant, explained that the Sadowski's have purchased 437 Trimmer Road as their new residence. The home business is dog grooming. His client has experience as a dog groomer for over 20 years, she is operating a business in the Town of Clarkson, known as Doggy Days Inn, which consisted of grooming, as well as dog boarding. Now that she has relocated she is leaving the dog boarding aspect of business behind but wishes to continue with the grooming. There will be no changes to the structure, no lighting or signage, or additional buildings added. There will be no employees so she can only have and groom one dog at a time. She will meet the clients at the door, and the grooming will take place in the basement of the home, two hours later the client will come and retrieve their dog. She will groom between 3 to 5 dogs a day. There is plenty of parking considering the driveway is 150' long and there will only be one client at a time. Chairperson Robillard asked if they anticipate any overnight stays. Mr. O'Toole stated no.

Jim Zollweg asked where the entrance would be. Ms. Sadowski stated it is on the north side of the building. Chairperson Robillard explained the special permit process. Tim Thomas asked if the ratio of 1 to 5 day would be accurate and if there would be any employees. Ms. Sadowski stated that she is cutting back and she would not be having any employees. Dean Snyder asked if any pesticides would be used or disposed of. Ms. Sadowski stated that she uses all natural products and for fleas she uses Dawn.

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.

Public Comment: None. Public Hearing Closed.

A **Motion** was made by Tim Thomas to approve the application of Lynn Sadowski, contract vendee, for a Special Permit to operate a home business at 437 Trimmer Road in accordance with Town Zoning Article 9, subsection 165-79.1. The applicant is requesting to operate a dog grooming business. This property is currently zoned Medium Density Residential (MD) with the following conditions:

1. Hours of operation to be Monday to Friday – 9am to 4pm and occasional Saturdays 9am to Noon.
2. There will be no dog boarding.
3. One dog at the facility at a time.
4. One visitor's car at a time
5. No Pesticides will be used or disposed of.
6. For a period of one year, to be renewable September 2013.

Seconded by Dean Snyder. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

5. ERIC AND DIANE SOPRANO – 4 COUNTRY VILLAGE LANE

The application of Eric and Diane Soprano, owners, for an area variance at 4 Country Village Lane. The applicants are proposing to keep 3 pheasants on this property and are requesting relief from Town Zoning 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 three acres or less. This property is currently zoned High Density Residential (HD).

Eric Soprano, owner, explained they would like to have three pheasants and would be building a living center that would be covered for the pheasants. It would be 3'x3'x6' with a top, made from wood and painted to match the color of the house. Chairperson Robillard asked what the lifestyle of a pheasant is and if they are noisy. Mr. Soprano stated that they purr and cluck like a turkey but they do not gobble. Tim Thomas asked if they are currently at the house. Mr. Soprano stated no they are currently at his mother-in-laws house in Livonia.

Chairperson Robillard asked if the pheasants would be walking around outside. Mr. Soprano stated no that they would only be in the pen, house or garage. He has one male and two females. Chairperson Robillard asked if they would be bred. Mr. Soprano said no. Dean Snyder asked if he had a State Permit. Mr. Soprano said he did not. Chairperson Robillard asked if they nip at children. Mr. Soprano stated that they are not hostile.

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.

Public Comment:

Elizabeth Richardson, 2 Country Village Lane, would like to see a picture of the structure because it will be most visible from her property. She is concerned with containment because she has a dog and if they wander into her yard, would she be liable if her dog attacked the pheasant. She has invisible fence. She has general concerns with them being in a high density residential neighborhood. Mr. Soprano responded that the pheasants would not be running around outside and the dogs probably will not even see them. As far as the smell, they would keep them clean, and he had pictures of the house, which he is buying not building. Dean Snyder stated that the maintenance is like caring for a chicken only they are quieter.

There was discussion about having to have a permit from the State to have pheasants. Tim Thomas asked if the board could even move because there is no permit. He also feels that this is a High Density neighborhood and

the code is very specific when it comes to these animals and approving this would open the door to requests for other animals. Chairperson Robillard asked how big the lot is. Jack Barton stated it is 84 feet wide by 160 feet on the short depth side and 200 ¼ feet on the east side.

Dean Snyder thinks that the licensing is outside of the board's jurisdiction. He feels that the code has a definite intent because if someone has two roosters, it would be very detrimental to the neighborhood, so the code calls out to having no animals and the board reviews them on a case by case basis. Certain dogs have a very strong instinct to be drawn to these types of animals and they will go crazy to try and get them, with a leash law that shouldn't really matter but there are a number of coyotes in that particular area so the area would have to be coyote proof, which would make it dog proof.

Chairperson Robillard pointed out that they are asking for an area variance because the property is less than 3 acres so by giving the area variance if it does not work out then the boards hands are tied. Dean Snyder asked Jack Barton if a special permit could be allowed. Jack Barton explained that this is not a special permitted use under the High Density Residential. Chairperson Robillard stated this is a small lot not even close to the three acres. Tim Thomas stated there is the potential for this to go bad.

Blake Keller, 7 Country Meadow Way, stated he lives across the creek from this family and while he does not have an opinion about a pheasant one way or the other, his concern is that this will set a precedent for people asking for chickens and other animals. Jim Zollweg stated the area variance is a big concession because it will stay with the property.

Public Hearing Closed.

Stephen Shelley stated he has a hard time thinking of pheasants any differently then he would chickens and the board has been unwilling to approve chickens in recent times. Dean Snyder agrees that this property is small, he was thinking a special permit, not a variance. With a three acre lot there is a way to centralize the pheasants as to not attract other animals but this is on 1/10th of the land required. Because they are asking for a variance, if it is not working out there is no way to take it back.

A **Motion** was made by Tim Thomas to deny the application of Eric and Diane Soprano, owner, for an area variance at 4 Country Village Lane. The applicants are proposing to keep 3 pheasants on this property and are requesting relief from Town Zoning 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 three acres or less. This property is currently zoned High Density Residential (HD).

In making the motion to deny:

- I believe the benefit can be achieved by other means feasible to the applicant. The applicant has been taking care of these pheasants at an offsite location at his mother-in-laws house; he also could have the option to house the pheasants at a suitable approved location within the confines of the Town within an allowable district.
- There will be an undesirable change in neighborhood character or to nearby properties. The risk of the pheasants getting loose and the other animals they could attract, both domestic and wild, could create a risk for other domestic animals in the area as well as small children.
- The request is absolutely substantial. The required 3 acres that is in our code is there for a reason because of the nature of having animals on a property. This property is 1/10th of the land required and this is the most significant factor in making my motion to deny.
- There could be adverse physical or environmental effects. The waste from the pheasants and perhaps other waste from wild animals that may venture near the pen that was proposed to be constructed.
- The alleged difficulty is definitely self-created. The applicant's desire to bring these to a high density residential area puts this in the self-created category. The aforementioned reasons support my reason to deny this application.

Seconded by Stephen Shelley. **Motion unanimously carried to deny (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

Chairperson Robillard polled the Board for their reasons to deny:

Tim Thomas - My motion stands for my reason for Denial.

Stephen Shelley – Feels that pheasants are similar to chickens and the board has been pretty steadfast in not allowing chickens on a lot of this size.

Jim Zollweg – Feels the denial is appropriate because of the property size being 1/10th of the size of what the minimum required lot size would be and he is concerned about setting a precedent for the future and wants to continue with the precedent already set in the past in not allowing animals of this type on this size lot.

Dean Snyder – The proposed property is only 10% of the minimum required by 165-82.BB. The limited size of the property precludes appropriate placement which would buffer the neighbors from these birds.

Chairperson Robillard – Using the balancing criteria the benefit to the applicant versus the expressed concerns of the board members and neighbors support the fact that a denial to the applicant is in order. The minimum lot size in contrast to the required lot size is significant. The potential impact on the neighbors and character of the neighborhood is a major concern.

Chairperson Robillard read applications 6, 7 and 8 together.

6. DANNIC HOLDINGS, LLC – 5044 RIDGE ROAD WEST

The application of Dannic Holdings, LLC, for a Special Permit to store vehicles for display and sales at 5044 Ridge Road West. Applicant is also requesting relief from Town Zoning Article 9, subsection 165-78.B.1 which states in part of the Special Permit requirements that accessory to a sales office building for the sales of vehicles, an unenclosed area may be used provided that such area is on the same or an adjacent lot to such building. If the building is on an adjacent lot, the lot shall be not more than 200 feet from the lot with the building and shall further be in the same ownership as said building. This property is located across the street from the sales office building. This property is currently zoned Highway Commercial (HC).

Kris Schultz, representing Ray Helfrich, a/k/a Dannic Holding, LLC, stated that this project ties into the Doan project. They are looking at getting a special permit for a period of time while the construction at Doan is being completed and to stage the cars on these properties. They are looking to get the most cars as possible in here. They will be using stone and millings for the lot. For any long time permanent use they would need to get Planning Board approval. They are not proposing any kind of lighting or signage. Tim Thomas asked if customers will be allowed on the property. Kris Schultz said that customers were not going to be encouraged to cross Ridge Road, if they were going to go there it would be by car with a sales agent. Tim Thomas asked why not put up a trailer to sell cars out of. Kris Schultz said that at this kind of dealership you don't want to be selling cars out of a trailer and there is more than just one person involved with the process of selling a car. Mr. Helfrich stated that this will be mainly for storing of extra cars, they were going to continue selling out of the dealership.

Chairperson Robillard asked how many cars. Mr. Schultz stated all striped out about 162 cars. There was question about the address of the properties. Mr. Schultz stated that the parcels are all contiguous and there is no need to merge the lots at this time. Tim Thomas wanted to know how long this will be for. Mr. Schultz said typically a special permit is for a year and they were hoping to have this project done in that time.

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.

Building Department Comments – Is there a way to prevent customers from accessing this lot. Mr. Schultz said that typically cars are used to block all access points in a car dealership. Gates are not typically used because they could be missed and hit. Blocking the access points also makes it harder to steal cars. Tim Thomas asked if they considered signage. Mr. Schultz said they have not and there would be no lights to attract people.

Public Comment:

John Zamiara, 5058 Ridge Road, asked if they would be paving the property. Mr. Schultz stated they would be using stone and milling, there is no plan to pave it. Mr. Zamiara asked about the excess water on the property. Mr. Schultz stated there will be swales on both sides which will move the water away from the property. Mr. Zamiara asked what will happen to the property at the end of this time period. Mr. Schultz stated that any future use would have to get approval.

Dean Snyder asked about the drainage to the east of Mr. Zamiara's building. Mr. Schultz stated that the drainage will continue northerly and along the edges so it will not migrate onto the neighbor's property. John Zamiara stated that this property is wet to begin with before all of these changes. Jack Barton asked how far the pipe end is from the north line. Mr. Schultz stated about 100 feet and there are woods and trees for a couple thousand feet.

Public Hearing Closed.

Jack Barton asked if any sales would be carried out at this lot. Mr. Helfrich stated there would be no sales at this property. Dean Snyder feels that this is a well-established dealership that has a lot to protect and they are not about to put their employees or customers at risk. He would rather not preclude them from having any sales over there. Dr. Snyder does not think there is anything you can put in the motion that will protect the Town completely.

A **Motion** was made by Tim Thomas to approve the application of 5050 Ridge Road LLC at 5050 Ridge Road West for a Special Permit for primarily storage of new and used vehicles as per the layout submitted to the board on September 20, 2012 for a period of 1 year and waiving the requirement that a building be on the same or adjacent lot as the vehicle display area. Relevant to this application and concern that the board has expressed, it will be the responsibility of the applicant to ensure the health, safety and welfare of the employees and customers.

Seconded by Dean Snyder. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

7. 5050 RIDGE ROAD, LLC – 5050 RIDGE ROAD WEST

The application of 5050 Ridge Road LLC, owner for a Special Permit to store vehicles for display and sales at 5050 Ridge Road West. Applicant is also requesting relief from Town Zoning Article 9, subsection 165-78.B.1 which states as part of the Special Permit requirements that accessory to a sales office building for the sales of vehicles, an unenclosed area may be used provided that such area is on the same or an adjacent lot to such building. If the building is on an adjacent lot, the lot shall be not more than 200 feet from the lot with the building and shall further be in the same ownership as said building. This property is located across the street from the sales office building and ownership is under a different name. This property is currently zoned Highway Commercial (HC).

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.

A **Motion** was made by Tim Thomas to approve the application of 5050 Ridge Road LLC at 5050 Ridge Road West for a Special Permit for primarily storage of new and used vehicles as per the layout submitted to the board on September 20, 2012 for a period of 1 year and waiving the requirement that a building be on the same or adjacent lot as the vehicle display area. Relevant to this application and concern that the board has expressed, it will be the responsibility of the applicant to ensure the health, safety and welfare of the employees and customers.

Seconded by Stephen Shelley. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

8. 5050 RIDGE ROAD, LLC – 5052 RIDGE ROAD WEST

The application of 5050 Ridge Road LLC, for a Special Permit to store vehicles for display and sales at 5052 Ridge Road West. Applicant is also requesting relief from Town Zoning Article 9, subsection 165-78.B.1 which states as part of the Special Permit requirements that accessory to a sales office building for the sales of vehicles, an unenclosed area may be used provided that such area is on the same or an adjacent lot to such building. If the building is on an adjacent lot, the lot shall be not more than 200 feet from the lot with the building and shall further be in the same ownership as said building. This property is located across the street from the sales office building and ownership is under a different name. This property is currently zoned Highway Commercial (HC).

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.

A **Motion** was made by Tim Thomas to approve the application of 5050 Ridge Road LLC at 5052 Ridge Road West for a Special Permit for primarily storage of new and used vehicles as per the layout submitted to the board on September 20, 2012 for a period of 1 year and waiving the requirement that a building be on the same or adjacent lot as the vehicle display area. Relevant to this application and concern that the board has expressed, it will be the responsibility of the applicant to ensure the health, safety and welfare of the employees and customers.

Seconded by Jim Zollweg. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

Dean Snyder asked Mr. Helfrich if the ownership of 5050 Ridge Road LLC and Dannic Holdings LLC are an identical entity. Mr. Helfrich answered yes.

9. MARK ACKER – 112 DUNBAR ROAD

The application of Mark Acker, for a Special Permit to construct a 700 square feet accessory apartment at 112 Dunbar Road. Applicant is also requesting relief from Town Zoning Article 9, subsection 165-76.E which limits the size of the accessory apartment to 35% of the total floor area of the principal building, which equals 561 square feet, or 550 square feet, whichever is greater. This property is currently zoned Medium Density Residential (MD).

Jack Barton explained that he has a request from the owner to withdrawal his application for 112 Dunbar Road.

A **Motion** was made by Tim Thomas to accept the request to withdraw the application for a Special Permit at 112 Dunbar Road at the request of the applicant through communication with the building department.

Seconded by Jim Zollweg. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

10. STEVEN APRILANO – 304 BURRITT ROAD

The application of Steven Aprilano, owner, for an area variances at 304 Burritt Road. The applicant is proposing to construct a 40 feet by 60 feet accessory storage building with a wall height of 14 feet. The total area of accessory storage with the existing shed will be 2,640 square feet. The applicant is requesting relief from Town Zoning Article 10, subsection 165-82.C.2 which states in part that no detached accessory building in a residential district shall exceed 12 feet in height and Article 5, subsection 165-32.C.2 which states in part that the total area of accessory structures shall not exceed 1,500 square feet. This application was previously approved but has expired. This property is currently zoned Rural Residential (RR).

Steven Aprilano, owner, explained that he was previously in front of the board in November 2011, lost track of time and did not pull the permit before the variance ran out so he is here to get approval again. Nothing has

changed with the application from before. Tim Thomas asked if he was in a position to pull the permit now. Mr. Aprilano stated that he already has the paperwork filled out.

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.

Public Comment: None. Public Hearing Closed.

A **Motion** was made by Tim Thomas to approve the application of Steven Aprilano, owner, for area variances at 304 Burritt Road to construct a 40 feet by 60 feet accessory storage building with a wall height of 14 feet. The total area of accessory storage with the existing shed will be 2,640 square feet. This grants relief from Town Zoning Article 10, subsection 165-82.C.2 which states in part that no detached accessory building in a residential district shall exceed 12 feet in height and Article 5, subsection 165-32.C.2 which states in part that the total area of accessory structures shall not exceed 1,500 square feet. This property is currently zoned Rural Residential (RR).

In making the motion to approve both the square footage and wall height:

- I don't believe the benefit can be achieved by other means feasible to the applicant. I believe that the applicant has done a solid job of determining the need for space and considered the need to move around items. The 14 feet high walls are needed to accommodate 2 12-foot high overhead doors to store the 5th wheel camper without the risk of damage to the camper. The square footage is approved because putting items inside will provide a safe area from vandalism and weather.
- There will be no undesirable change in neighborhood character or to nearby properties. This building will be 500 feet from the road. The applicant has planted trees to create a buffer to the neighbors to the west. Other structures on Burritt Road are similar to the one proposed.
- The request is substantial, for both the wall height and square footage. However, the applicant has done a commendable job of justifying the 14 feet wall height and square footage.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is 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 (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

11. GARY COIA – 5083 RIDGE ROAD WEST

The application of Gary Coia, owner, for an expansion of a non-conforming use at 5083 Ridge Road West in accordance with Town Zoning Article 12, subsection 165.91. The applicant is proposing to construct an accessory storage shed for use with a single family dwelling. The property use is non-conforming because the property is zoned General Commercial (GC) but is being used for residential.

Stephanie Coia, owner, stated that they are looking to build an 8'x8' shed behind the house. Chairperson Robillard asked what the barn currently on the premises is used for. Ms. Coia stated it is for commercial use.

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.

Public Comment: None.

Amy Cross, 5071 Ridge Road West, stated she would like to see the plan. Jack Barton showed her the plans and structure.

Public Hearing Closed.

Tim Thomas asked if there was a shed previously. Ms. Coia explained that there was a shed attached to the house that was removed because it was rotting and falling apart.

A **Motion** was made by Tim Thomas to approve the application of Gary Coia, owner, for an expansion of a non-conforming use at 5083 Ridge Road West in accordance with Town Zoning Article 12, subsection 165.91. The applicant is proposing to construct an accessory storage shed for use with a single family dwelling. The property use is non-conforming because the property is zoned General Commercial (GC) but is being used for residential. This shed will replace another shed that was demolished due to its poor condition and as a result this application should be approved. The application is consistent with the criteria of 165.91- Expansion of nonconforming uses and/or structures, Section A, 1 through 4.

1. The location and size of the nonconforming use and/or structure, the nature and intensity of the operations involved 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. This is an 8'x8' shed and as such it is consistent with this criterion and will not have a negative impact.
2. Screening or other protective measures shall be adequate to protect any adjacent properties from objectionable aspects of any such expansion of the nonconforming use. This is a shed where items will be stored which will improve the area from having these items stored outside.
3. Off-street parking areas shall be of adequate size for the particular use, and access drives shall be laid out so as to achieve maximum safety and minimum inconvenience to adjacent properties. This item is not applicable to this application.
4. The Zoning Board of Appeals may prescribe any condition that it deems necessary or desirable to aid it in making a determination on the application and to protect the interests of the community and adjacent properties. This item is also not applicable. This is a storage shed which will be used in a residential manner.

Seconded by Dean Snyder. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg)

SPECIAL PERMIT RENEWAL

12. DONALD AND NANCY TOWN – 2 LIGHTHOUSE BEACH ROAD

Application was received from Donald and Nancy Town, owners, for renewal of a Special Permit at 2 Lighthouse Beach Road to use their home as a tourist home (bed and breakfast) which is allowed with a Special Permit. This property is currently zoned Waterfront Residential (WF).

Jack Barton reported there were no complaints on file and that the property was inspected on August 27, 2012 by Bob Prince, Fire Marshal and Building Inspector, and no violations were found. The applicant is requesting a five year renewal.

Dean Snyder has some concerns because they live out of Town and would be more comfortable with approving a two year renewal.

A **Motion** was made by Jim Zollweg to approve the application of Donald and Nancy Town, owners, for renewal of a Special Permit at 2 Lighthouse Beach Road to use their home as a tourist home or bed and breakfast which is allowed with a Special Permit under 165.55 and 165.66. The property is zoned Waterfront Residential (WF). This approval is given with the following conditions:

1. Maximum of three guest bedrooms.
2. For a two year period, renewable in September 2014.

Seconded by Tim Thomas. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg)

MINUTES OF AUGUST 16, 2012

The ZBOA minutes for August 16, 2012 will be reviewed and acted on at the October 18, 2012 meeting.

OTHER BUSINESS

There was discussion about future training and zoning revisions to the Town Code.

ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Stephen Shelley to adjourn the meeting at 11:03 p.m. **Motion carried (4-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

Respectfully submitted,

Carrie Webster, Recording Secretary