

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

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

Others Present: Jack Barton, Blake Keller, Gary Comardo

Public Present: Chuck Guzzetta, Eileen Mostek, John Mostek, Tim Wandtke

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. It was explained that a quorum of three is required to pass a motion.

NEW BUSINESS
SPECIAL PERMIT RENEWAL

1. GREG STAHL PROPERTIES – 4621 RIDGE ROAD WEST

Application was received from Greg Stahl Properties, owner, for renewal of a Special Permit at 4621 Ridge Road West to construct a sales and showroom building and expand the area of outside display vehicles east of existing display area. This property is currently zoned Highway Commercial (HC) which allows this use with a Special Permit.

Jack Barton read a letter from Arthur J. Fritz, Zoning Enforcement Officer that a fire and safety inspection was completed on November 28, 2012 and identified minor safety issues that will be brought into compliance within 30 days and there were no complaints on file.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of Greg Stahl Properties, owner, for renewal of the Special Permit at 4621 Ridge Road West, with the following conditions set forth that apply to properties, the eastern portion of 4615 Ridge Road West, now known as 4621, and the western portion of 4621 Ridge Road West, as follows:

1. No more than 140 display spaces total.
2. All display areas will be paved.
3. No repairs or storage of junk cars.
4. No outside speakers.
5. No on-street parking.
6. Lighting will be directed away from Ridge Road West and neighboring properties.
7. Hours of operation: Monday through Friday, 9am – 9pm, Saturday, 9am to 5pm, no Sunday hours.
8. For a period of two years, to be renewable December 2014.

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

TABLED BUSINESS

2. TIMOTHY AND MICHELLE WANDTKE – 43 DELAVERGNE DRIVE

The application of Timothy and Michelle Wandtke, owners, for 2 area variances at 43 Delavergne Drive. Applicants are requesting to place a 14 feet by 20 feet tent structure at a 0 foot setback from the easterly side property line and a 0 foot setback from the rear property line. Applicants are requesting relief from Town Zoning schedule 1 which requires a minimum side and rear setback of 10 feet. This property is currently zoned Waterfront Residential (WF).

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.

Because the applicant was running late, after discussion the Public Hearing was opened.

Public Comment:

Chuck Guzzetta, owner of 41 Delavergne Drive explained that he is the neighbor adjacent on the east side to the applicant. The survey map provided is of the 41 Delavergne Drive property.

Dean Snyder asked if the applicant provided a survey, tape map or topographical map of his property. Jack Barton stated that the applicant had not.

Chairperson Robillard read the email dated December 19, 2012 sent from Mr. Guzzetta to the Board stating his concerns about this application. Although Mr. Guzzetta does not object to a variance closer to the 43 Delavergne Drive property line, he does object to this structure being placed on his property as it is now, approximately 10 feet of the 14 feet is in Mr. Guzzetta's property. Mr. Guzzetta explained that there is an access easement to allow Mr. Wandtke access to his driveway and his garage but that that easement does not extend behind the garage where this structure is currently sitting. Along with being on his property this structure is also sitting on state land.

Mr. Wandtke joined the meeting and Chairperson Robillard explained that the Public Hearing has been opened and that he could now present his application to the Board. Mr. Wandtke explained that his understanding is that the access easement continues beyond the garage. Chairperson Robillard asked if he had documents showing that the easement continues past the garage. The applicant explained that there is a drainage swale and because of this his yard is under water four months of the year and that it is not feasible to put a structure anywhere else on the property except for behind the garage. Chairperson Robillard asked if he had a building permit for this structure. The applicant stated he does not because the Town does not require one for a temporary structure. Chairperson Robillard asked then if denied would he be willing to take it down. The applicant stated he is not willing to take it down, he would have to move it. Mr. Wandtke stated he would be happy to move it on the lot line.

Tim Thomas asked if the Town recognizes easements. Jack Barton stated that the Town does recognize easements, not deed restrictions. Stephen Shelley said that the easement is not itself pertinent since the applicant wants to move the structure to the west the easement would not be a factor. Stephen Shelley stated that the structure would encroach on the state land and the Board cannot give him an easement into that land. The applicant said that his understanding was as long as they maintain the land the state does not care. Dean Snyder stated that is not the case and the state does many times send letters against these requests.

Chairperson Robillard explained that they have to review this as if the structure was not there and the board can only give you at the most what you ask for. The Board wants to know what the structure is for, what your needs are, what is being stored in there. Mr. Wandtke stated that yard equipment, patio furniture, children's outdoor toys, and a four wheeler are being stored inside. Chairperson Robillard asked what the front shed is used for. Mr. Wandtke stated that that stores mainly tools and would not fit his needs.

Tim Thomas asked if the applicant had looked at the cost of putting a permanent structure on crushed stone. The applicant responded that financially that would be difficult for him to do and he would like to be able to put the structure up or take it down, he stated that this is a temporary structure. The board asked how long it has been up. The applicant said it has been up since before last winter, 2011.

Tim Thomas does not feel comfortable with this application but would at least like there to be a 5' set back from the property lines.

John Mostek, owner of 39 West Wautoma Beach stated that he does not agree with this application and that this structure is an eye sore, it is just a big grey tent. The applicant has a lot of room and could put it somewhere else.

Chairperson Robillard asked the applicant if he has explored alternative methods. Mr. Wandtke stated that all other structures would be permanent and even if he moved the structure it would still be visible. He also stated that it is financially beyond his means to put a permanent structure up. Chairperson Robillard explained the criteria that the Board needs to follow.

Tim Thomas asked Jack Barton if the Town allow for these types of structure. Jack Barton explained that the Town could not issue a building permit because it does not meet the snow load and wind load requirements. Initially the Town contacted the applicant to get a building permit but it cannot meet the building code but whether a permanent or temporary structure it still needs to meet setback requirements. Tim Thomas asked Jack Barton if there is a termination date for this structure. Jim Zollweg stated that if this is temporary it would need a termination date if not then it is considered permanent. Mr. Wandtke added that this is a portable structure. Dean Snyder asked how long has it been up. The applicant stated since summer last year, 2011. Dean Snyder wanted to know why the applicant did not move it before when he found out that it was on the neighbor's property. Mr. Wandtke stated he thought all along he could use the property. Dean Snyder wanted to know when he found out it was on the neighbor's property.

Chairperson Robillard stated that looking at the code there is no such thing as a portable structure; however the code does define temporary as an activity conducted for a specific limited amount of time which may not otherwise be permitted by the town ordinance laws or regulations. Examples of such uses are structures incidental to new construction which shall be removed after the completion of the construction work. Chairperson Robillard asked if he has any intent to remove the structure and if the board granted this until May would the applicant be ok with that? The applicant stated no that would not be ok and he can't afford to put a more permanent structure that complies with the code.

Dean Snyder does not feel that this big of a shed is necessary when there is also a shed and a garage. So what else is being stored in there? Is this being used for a business? The applicant stated that there are some business items for the DEC, some cages and sometimes animals. Dean Snyder asked if large animals are being stored in there, the applicant said that no large animals are on the property the largest animals he handles are fox. He said most of what he does is off site. Dean Snyder asked if there are possibly rabid animals on the property. The applicant stated no that those animals are quarantined for 14 days off site at this present time, but he is rabies vectors certified. There is a 24 hour clinic and triage area in the garage. Dean Snyder stated that he is surprised that he does not have a permit for that.

Tim Thomas stated it would be better for everyone if he would just move the structure to 10 feet from the lot lines. Mr. Wandtke stated that he wants to have this approved so that it can stay tucked behind the garage. Tim Thomas stated that the Boards mission is to try to grant relief that benefits all. Dean Snyder explained that there is only 13 feet between the existing shed and lot line. Chairperson Robillard clarified that this application is not even conceivable, it can't even be turned sideways because it is 14 feet wide.

Jim Zollweg wanted to know if the applicant had checked other sites because there is a lot of green space. The applicant stated there is too much flooding. Stephen Shelley suggested bringing in soil to raise the base.

Mr. Guzzeta stated that this is being used on a permanent basis and that he notified the applicant as soon as it went up that it was on his property. The structure is very secured and cannot be easily moved.

Eileen Mostek, owner of 39 Delavergne Drive, she has some concerns over the rehabilitation clinic and the possibility of rabid animals in the neighborhood. Dean Snyder said that the Zoning Board has no jurisdiction over that, and suggested going to the town or the DEC for that information, the Board just inquires so they can determine the need for the structure.

Public Hearing Closed.

A **Motion** was made by Dean Snyder to deny the application of Timothy and Michelle Wandtke, owner, for two area variances at 43 Delavergne Drive to place a 14 feet by 20 feet tent structure at a 0 setback from the easterly

side property line and a 0 foot setback from the rear property line. This property is currently zoned Waterfront Residential (WF).

In making this determination:

- I believe the benefit can be achieved by other means feasible to the applicant. The applicant stated he could build a permanent structure that does not require variances but that its beyond his financial means, he stated that the neighbors might not like it as much because its permanent and it wouldn't be taken down several months of the year but that is a possibility, although financially it isn't feasible that is another means that is available to the applicant.
- There will be an undesirable change in neighborhood character or to nearby properties. This is a large building that is proposed to be right on a property line, driving by it today he got more of a feeling that this is a gypsy structure because its movable and has fabric sides and does not feel that that is consistent with the properties down there. To have a structure that is going to be up year round as this one has been, he feels that it is an inappropriate structure to be located at a 0 feet setback. If the town allows it at 10 feet that is beyond the board's control, but to have a relatively high sidewall structure with fabric construction located directly on the neighboring property does cause a very undesirable change in the neighborhood character.
- The request is substantial. The property has four setbacks, front, back, left, right and the applicant is asking for a 0 setback on two of those where 10 feet is required. This is a very substantial request.
- There will be no adverse physical or environmental effects. The property as the applicant has described it has very poor drainage and he does not think that this structure would add to the drainage problems. He believes that the drainage problems were there when the applicant purchased the property and those issues have not improved.
- The alleged difficulty is self-created, the applicant bought the property knowing what the storage capabilities on the property were, and the applicant bought the property knowing what the drainage considerations were and the limitations. The applicant has proposed to build a structure in an inappropriate area when it is possible to build a permanent structure that does not require a variance, so the request for this variance ends up being self-created. One of the issues in trying to find an acceptable agreement between the neighbors and the applicant are limited because there is only 13 feet between the existing shed and the state property, the state requires a 5 foot setback and so that only leave 8 feet for a shed which also shows that this is a completely inappropriate placement for the structure so using the balancing test the benefit to the applicant is far outweighed by the detriment to the health, safety and welfare of the community.

Seconded by Tim Thomas. **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:

Dean Snyder: My motion stands.

Tim Thomas: It is absolutely feasible that this could be achieved by other means available to the applicant such as adding stone or fill to bring the temporary structure into compliance and meet the setback regulations. At a 0 foot setback this structure would create an undesirable change to the neighborhood character, while he thinks it is recognized that these structures are not the most sightly to begin with being at a 0 foot setback only exasperates the issue for the neighbor and neighborhood. The request is not only substantial it is extremely significant and he can't remember a time when he has been on the board that a 0 foot setback was granted, especially with this kind of structure. While the drainage issues that were mentioned are preexisting, there are remedies that exist that the applicant can pursue but has chosen not to at this point in time. The alleged difficulty is absolutely self-created. The applicant has not shown any willingness to mitigate the 0 foot setback.

Stephen Shelley: The benefit in my opinion can be obtained by other means by locating it to another area on the lot and doing something to raise the elevation. He agreed with the motion that given the location and style of structure that it will bring an undesirable change to the neighborhood. The request is certainly substantial going from 10 feet to 0 feet, which is a 100% reduction. The alleged difficulty is certainly self-created.

Jim Zollweg: The applicant has shown no evidence that this benefit could not be achieved by other means. He believes there are possibilities that have not been explored by the applicant. Based upon the neighbors comments and the pictures provided he believes that with this placement at 0 foot setbacks it will create an undesirable change in the neighborhood character. The request is very substantial, as stated before it is 100% reduction from a 10 foot setback to 0 feet. This difficulty is self-created, it was entirely the choice of the applicant to create the need for this

structure and to meet the need in this way, so applying the balancing test he finds that the negatives outweigh the positives for this.

Chairperson Robillard: Relating to the balancing test, she mentioned the fact that this was referred to as a storage structure but in the applicant's request to the Board he has described it as a temporary storage structure and she does not feel that this follows the temporary definition as defined in our ordinance. So using the balancing test, it was indicated that there are other means feasible to the applicant that were reasonable and discussed. The neighbors have expressed their displeasure with the structure. The request is substantial. The adverse physical or environmental impact is not evident. The alleged difficulty is self-created by reason of the applicant's explanation regarding the placement of this structure and his needs to the board. Therefore, in balance the benefit to the applicant with the detriment to the health, safety and welfare of the community denial is appropriate.

MINUTES OF OCTOBER 18, 2012

The ZBOA minutes of October 18, 2012 were reviewed. A **Motion** was made by Tim Thomas to approve the October 18, 2012 minutes as submitted. Seconded by Stephen Shelley. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

MINUTES OF NOVEMBER 15, 2012

The ZBOA minutes of November 15, 2012 were reviewed. A **Motion** was made by Tim Thomas to approve the November 15, 2012 minutes as submitted. Seconded by Blake Keller. **Motion carried (3-0)** (Ayes: Blake Keller, Veronica Robillard, Tim Thomas; Abstain: Stephen Shelley, Dean Snyder, Jim Zollweg).

OTHER BUSINESS

Chairperson Robillard read a letter to the Board from Mr. and Mrs. Michael Crawford, owners of 78 Delavergne Drive, dated October 26, 2012 regarding 67 Delavergne Drive.

Jack Barton told the Board that there is a complaint that has been made to the Town through the Supervisor's office regarding the name of Delavergne Drive/East Wautoma and trying to make the name uniform to eliminate confusion with the two names.

There was some discussion about a fence setback at 69 Dean Road and Jack Barton told the Board that one of the applicants on the Agenda for next month will be 5408 Ridge Road, Peck Collision.

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Stephen Shelley to adjourn the meeting at 8:47 p.m. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

Respectfully submitted,

Carrie Webster, Recording Secretary