

**TOWN OF PARMA
ZONING BOARD OF APPEALS
March 21, 2013**

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

Others Present: Jack Barton, Blake Keller, Gary Comardo

Public Present: Peter McMann, Roger Odell, Martin Phillipone, Esq., Dick Vance

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. PETER McMANN – 5408 RIDGE ROAD WEST

The application of Peter McMann, owner, for area variances at 5408 Ridge Road West. The applicant is requesting to keep an 8 feet by 46.5 feet tractor trailer body to use for storage. The trailer is set back one foot from a northerly (side) lot line. The applicant is requesting relief from Town Zoning Article 10, subsection 165-82.EE which states in part that no lot shall be used for the open storage of unlicensed or unregistered vehicle(s) or their parts. Relief is also requested from schedule 1 which requires a 20 feet setback from side property lines. This property is currently zoned Highway Commercial (HC).

Dan Schum, Esq., attorney for the applicant explained the history of the property, the business, how the property lines came to be how they are and how the applicant acquired the property. He also explained that there is vacant land to the north, Ridge Road to the south, another business to the west and rental property to the east on Ridge Road. Stored in the building is a tractor and other equipment to maintain the property. Mr. Schum did explain that this could be moved to the back parcel but then it would be in full view of Ridge Road, where it sits now it is hidden by the buildings and has been in its current location since late 2000, early 2001. The owner at that time was the applicant's father. It was put in place without a permit but prior to the 2003 amendment to the Town Code.

Mr. Schum submitted various pictures of the metal storage building, one located at Sail on Carpets, which he felt was similar and various other metal storage containers in Parma of which none of them have area variances. Dean Snyder commented on the container at Sail on Carpets and the fact that it is an ISO Container which is not similar, it has never been a trailer or a vehicle unlike the one the applicant is using which at some point was a vehicle, making it a car part, though he feels if he is able to keep this container, it is placed well on the property and is well shielded.

Tim Thomas asked if there is any place in the code that deals with storage containers. Jack Barton explained that there is a new portion of the code that was approved a couple months ago that states in the commercial district there can be a storage container in the rear of the property for one year, subject to setbacks, then the container has to leave for the year and then the owner would need to reapply to have such container. Mr. Schum asked if it is subject to renewal. Mr. Barton stated no.

Tim Thomas asked if the applicant was able to put some numbers together about the cost to move this container. Mr. Schum stated he had no firm numbers but a phone estimate from a client which puts the cost at 2 to 3 thousand dollars. Mr. Schum explained that this container could be moved further north but unable to move it south because of the septic system, size of container and other buildings. There was discussion with the applicant, Jim Zollweg and Stephen Shelley about the ability to move this container south and there would be enough room. Mr. Schum stated that the container could be moved but that he did not feel that the

cost to do this is worth it to the applicant. Tim Thomas stated he does not take issue with the container itself but like the rest of the board he is looking to see if there is an opportunity to come into compliance.

Jack Barton asked about the other structures on the property. Mr. Schum stated that the box from the box truck will be removed from the property as soon as the ground hardens since it is out of compliance and is not being used. That structure is 12x14 and they will use a flat-bed tow truck to remove. Stephen Shelley asked for clarification on where the septic system is. Mr. Schum stated it goes from the rear of the front building to the rear of the back building.

Public Comment: None. Public Hearing was closed.

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

Dean Snyder stated that this is a unique property. Normally this would be a big deal but based on the circumstances this is not so bad here. If he were to move this container 19 feet to the south which would make it compliant, how much is that benefitting the neighbor to the north of him, if it was a small property that would be a big deal but for a large property like this there is not a significant difference, it makes the yard more usable where it is placed. He feels that this container cannot be compared to an ISO Container because this was at one point a trailer but that fact that it is dropped down on Ridge Road behind the buildings he would rather it be there than in the open field.

Tim Thomas agrees that moving it is negligible compared to the overall benefit to the applicant.

Chairperson Robillard agrees with both but is having a hard time with the balancing act because three of the criteria are answered with a yes. Dean Snyder explained that it is dependent on how each criterion is balanced. Tim Thomas stated that in a non-unique situation the board would look at this totally different.

A **Motion** was made by Dean Snyder to approve the application of Peter McMann, owner, for area variances at 5408 Ridge Road West to keep an 8 feet by 45 feet tractor trailer body to use for storage. The trailer is set back one foot from a northerly (side) lot line and also to grant relief from Town Zoning Article 10, subsection 165-82.EE, which states in part that no lot shall be used for the open storage of unlicensed or unregistered vehicle(s) or their parts, addition to grant relief from schedule 1 which requires a 20 feet setback from side property lines. This property is currently zoned Highway Commercial (HC).

In making this determination it has been identified as a unique pair of properties. These two properties were one, they were a single commercial business that was divided. In that division, there were property lines that disrupt what would be considered the normal lines of this property. Due to this unique nature and looking at the balancing test:

- The benefit can be achieved by other means feasible to the applicant. Yes it can, it appears the metal storage building could be moved 19 feet to the south to bring it into compliance.
- There will be no undesirable change in neighborhood character or to nearby properties. By moving the metal storage building 19 feet at a considerable cost to the applicant, I do not believe that changes any of the undesirable change. It is still going to look the same from the road and as far as the view from the neighboring property there will not be a substantial difference between where it is proposed and where it would meet the zoning criteria.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created; the former owner placed this metal storage building on the property before this owner acquired the property. Making this determination, I believe the proposed location one foot off the property line is the best location for this metal storage container. The other option that we have not discussed would be to put it in the northern area of the property which would put it in full view of Ridge Road and that would be more obtrusive. 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).

There was discussion about the applicant having to lock the container. Chairperson Robillard asked if the Town would have some responsibility if someone were to get into the container and get hurt. Dean Snyder was uncomfortable with defining what locking is or what a proper enclosure is. The applicant stated that he does keep it pad locked. Tim Thomas and Stephen Shelley felt that this is not the Zoning Boards responsibility.

Stephen Shelley is concerned about setting a precedent. Dean Snyder stated that this would not be acceptable for most spots.

2. JOSEPH SELVAGGIO – 765 BURRITT ROAD

The application of Joseph Selvaggio, owner, for a Special Permit and two area variances at 765 Burritt Road. The applicant is requesting an interpretation of the Building Department's decision that a use variance is required for an apartment over an existing pole barn for his elderly parents. The applicant is requesting a Special Permit for an accessory apartment in accordance with Town Zoning Article 9, subsection 165-76. The applicant is planning to have the 1,122 square feet accessory apartment above the existing pole barn and is requesting relief from 165-76.E which limits the accessory apartment to 752 square feet and 176-76.A which states in part that the accessory apartment be within the same structure as the occupants of the principal residence. This property is currently zoned Agricultural/Conservation (AC).

Chairperson Robillard explained that this is a five member board and at the last meeting when this matter was tabled two members (Chairperson Robillard and Dean Snyder) were absent and the alternate was seated. She went on to explain that if either of them would like to recuse themselves the alternate could be seated since he was at the last meeting. Chairperson Robillard stated that she reviewed the minutes, did an inspection, went through the material and feels comfortable moving forward. Dean Snyder stated that he reviewed the minutes and that there was a limited amount of work done, he has read the letter in the file and has reviewed the town code and sees no reason to recuse himself and feels confident that he could make a ruling. Chairperson Robillard stated that the alternate is in the audience.

Martin Philippone, attorney for the applicant, explained the applicant is looking to create an independent living space for his elderly parents who are suffering financially and with health problems. Chairperson Robillard asked if the applicant is interested in pursuing the use variance or proceeding with the special permit. Mr. Philippone stated they believe the proper application is the special permit and two area variances, one for the barn generally and one for the size of the apartment use. It was determined that the applicant would withdraw the use variance application in lieu of the amended application.

A **Motion** was made by Tim Thomas to accept the applicant's request to withdraw their application for a use variance for the property at 765 Burritt Road.

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

Martin Philippone explained that the upper level would contain 1,122 square feet living space so the parents could continue to live independently while being watched over health wise and financially, also allowing the applicant to live independently himself and raise his family and be cost effective for him. Chairperson Robillard explained that traditionally in the Town the occupancy is within the same structure of the principal residence. Chairperson Robillard asked why that is not being pursued. Mr. Philippone explained that the applicant's residence is small and that to do an addition the cost would be around \$120,000, while only costing him \$20,000 to fix up the barn.

Dean Snyder's concern is that there is no provision in the Town Code for an accessory structure to house an apartment unless there is unrelated farmworkers, but there must be a working farm operation. Mr. Phillipone stated that he feels there is a hole in our code. Dean Snyder stated that if it is not in our code that the board cannot approve it. Dean Snyder stated that Mr. Phillipone is asking the board to approve an accessory living dwelling which is not in the code. There was discussion about accessory apartments being used for immediate family but within the single structure. Stephen Shelley stated that dwelling units does not mean two or more buildings but within one building.

Chairperson Robillard stated that this structure is 1 ½ stories above ground level, which is not usually where you would normally put elderly parents. So when the Town has approved these and they have numerous times it is within in the same building. Mr. Phillipone explained they are using the accessory structure because it is less cost to the applicant to renovate.

Dean Snyder called out 165-76 A –I . It states that this can be done if the following standards and conditions are maintained. A includes "live in an apartment in the same structure as the occupants of the principal residents in quarters which are accessory to the principal residence. If it can't fit subsection A, the other conditions do not matter. Based on subsection A, there is no way to call this an accessory apartment. So the question is can we go someplace else in the code. Mr. Phillipone stated that if the board does not have the latitude to change the code then he would like this matter tabled to look at further options and go to the Town Board.

There was discussion about pre-existing nonconforming use and a property that was originally used for farming and changed to a two family use before zoning in the Town was enacted, because there has not been a lapse in use they are still able to use it that way. If it lapsed then they would lose the use.

Dean Snyder stated there are two ways the board could go. They could rule tonight or the board could table this to save the applicant the application fee, the applicant could go to the Town Board and then come back to the Zoning Board.

Tim Thomas asked Jack Barton how much latitude does the Town Board have to do this. Jack Barton explained that the Town Board does not have the authority to bend the Town Code. Really it comes down to an interpretation and this board would do that. Mr. Phillipone would like it tabled until the May 2013 meeting. Chairperson Robillard asked them to let the Board know if they need additional 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.

Public Comment: None

A **Motion** was made by Tim Thomas to table the application of Joseph Selvaggio, owner, for a Special Permit and two area variances at 765 Burritt Road until the May 2013 meeting to afford the applicant the opportunity to present this situation to the Town Board for direction on how they would like to proceed in the future and to review any and all other options without prejudice.

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

SPECIAL PERMIT RENEWALS

3. THOMAS AND ERIN BARBETO – 1914 NORTH UNION STREET

Application was received from Thomas and Erin Barbeto, owners, for renewal of a special permit to operate a home business at 1914 North Union Street in accordance with Town Zoning Article 9 subsection 165.79.1.

The applicants are proposing to operate a pet grooming business in their home. This property is currently zoned Medium Density Residential (MD) which allows this use with a special permit.

Jack Barton reported there were no complaints on file and an inspection on March 14, 2012 by Bob Prince and Arthur Fritz did not identify any violations.

A **motion** was made by Stephen Shelley to approve the application of Thomas and Erin Barbeto, owners, for renewal of a special permit to operate a home business at 1914 North Union Street in accordance with Town Zoning Article 9 subsection 165.79.1, to allow them to operate a pet grooming business in their home, with the hours of operation to be consistent with current zoning laws. Contingent on inspection and approval by the fire marshal. To be renewable in three years, February 2016. Seconded by Tim Thomas. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

MINUTES OF FEBRUARY 21, 2013

The ZBOA minutes of February 21, 2013 were reviewed. A **Motion** was made by Tim Thomas to approve the February 21, 2013 minutes as submitted. Seconded by Jim Zollweg. **Motion carried (3-0)** (Ayes: Stephen Shelley, Tim Thomas, Jim Zollweg; Abstain: Veronica Robillard, Dean Snyder).

OTHER BUSINESS

69 Dean Road – There was discussion regarding a variance for a fence on the property line. The new owner has supplied a current survey map which does not match the old map that said variance was based on.

ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Tim Thomas, to adjourn the meeting at 8:57 p.m. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

Respectfully submitted,

Carrie Webster, Recording Secretary