

**TOWN OF PARMA**  
**ZONING BOARD OF APPEALS**  
**January 19, 2017**

**Members Present:** Dan Melville  
Veronica Robillard  
Stephen Shelley  
Dean Snyder  
Jim Zollweg

**Members Excused:** Tim Thomas

**Others Present:** Dennis Scibetta, Art Fritz, Dan Barlow

**Public Present:** Elizabeth Prokopienko, Todd Edgecombe, Stacy Edgecombe, Joseph D'Angelo

The meeting was called to Order by Chairperson Robillard at 7:00 p.m. Chairperson Robillard explained the function of the ZBOA and the decision-making process. She also explained that this is a five member board and a quorum of three is required to pass a motion. She noted that the December meeting was cancelled due to inclement weather.

**TABLED FROM THE NOVEMBER 17, 2016 MEETING**

**1. TODD & STACY EDGECOMBE – 28 MOUL ROAD**

The application of Todd and Stacey Edgecombe, owners, for 3 area variances at 28 Moul Road. The applicants are proposing to construct a 2,480 square feet addition with a 14' wall height and a front setback of 20.8 feet, to a pre-existing 3,225 square feet storage building. The property also has an existing 64 square feet shed which would bring the total area of accessory structures to 5,769 square feet. They are requesting relief from 1) Town Zoning Article X, subsection 165-82.C.2 which states in part that the wall height shall not exceed 12 feet, 2) Town Zoning Article V, subsection 165-32.E.1, Schedule 1, which states that the front setback is to be 75 feet and 3) Town Zoning Article 5, subsection 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet. This property is currently zoned Rural Residential (RR).

Stacy Edgecombe provided pictures of the current building with the view from Moul Road and Payne Beach Road. The view of the building is obstructed from both directions and there would be no change to that because the trees and brush would remain in place. There is a 52' clearance and the addition will extend 40'. She showed the turn around and new gravel that have been added so that trucks and trailers can pull into the driveway and turn around instead of loading and unloading in the road. They have added a berm and bushes for landscaping.

Chairperson Robillard read three letters from neighbors within the 500' notification area that gave their support for this application.

Letter from Robert Streb of Mary Jane Streb Trust, 157 Payne Beach Road. They support the proposed addition at 28 Moul Road. Their property borders both applicant's residence and said property. They have never had a complaint in regards to the appearance of upkeep of either property. They stated that the applicants take a proactive approach in regard to the environment and natural resources.

Letter from Diane Samons, David Samons, Shirley Callan and Ed Callan, residents of 109 and 113 Payne Beach Road. They have no objections to the expansion. They felt with the amount of large construction equipment they own it makes sense that they would expand the barn to allow for storage of all equipment so it is not outside during inclement weather, preserving the equipment and cutting down on unnecessary upkeep. This would also lessen the amount of run time needed to warm up the equipment. They stated that the Edgecombe's have always been respectful to the residents and fail to see that this would be a negative.

Letter from Robert C. Streb, Jr., 153 Payne Beach Road. He fully supports any and all efforts to maintain or improve the appearance of the neighborhood and believes that the proposed addition to the pole barn at 28 Moul Road would allow for more indoor storage which would ensure the longevity of the equipment and ensure a positive appearance of the property.

Jim Zollweg asked why the need for the 14' height. The applicant stated alot of the equipment including a large excavator needs to have a 14' height to clear the door. Currently the excavator is being stored in Henrietta. Chairperson Robillard asked if they looked into an offsite commercial location for storage and why not go that route. The applicants stated that they have not looked at offsite storage because they have this parcel and building and that it would be financially detrimental to rent commercial storage. Dean Snyder stated that the board has to look at how much of a detriment this application is. The building is already there and the attorney has stated that it is being used legally; they are just looking to make a change and expand. The Board has to look at what is going on now and compare it to what will happen after the change. His feeling is that in order to rent a commercial structure there would be a significant financial impact on the applicant plus the impact of trying to maintain two separate facilities. These modifications will actually improve the situation.

Chairperson Robillard stated that it is important as a Board to explore other options available to the applicant. Stephen Shelley stated that they should focus on the clause "feasible to the applicant." To rent someplace else would be more costly and more inconvenient which is not more feasible to them. Todd Edgcombe stated that insurance costs would be higher; commuting to two structures would be inconvenient and time consuming. The cameras they have on the property ensure that nothing is happening to their equipment. If they build another building and rent this one out then you are leaving it open that possibly there would be people on the property all day. Having to rent a place would add costs to the overhead that would have to be added to the bid when trying to get jobs. This is a write-off for taxes currently. If they were using a different storage place than they would have to leave jobs to oversee the equipment being picked up and dropped off.

Dean Snyder spoke to what the applicants have now compared to what the changes would bring while addressing concerns of the neighbors from the last meeting.

1. There was a concern about motor oil storage. There would be no change in the storage of motor oil with the proposed building.
2. The concern about roads being ruined. While before there were some cases where they could not get equipment in or turned around, with the new proposal the trailers will be able to pull into the facility so this will eliminate equipment being unloaded on the road. It is felt that this is a big benefit.
3. Mr. Christenson never notified neighbors that he was going to build a building. What he did was legal and he did not have to notify neighbors. Recently the question was addressed with our attorney who stated that what is currently happening at the building is legal. There would be no change with the addition.
4. That there will be more equipment. They have shown that they have equipment right now that needs to be stored.
5. Kids will be playing on the equipment sitting outside. This will be eliminated when the equipment is placed inside.
6. Noise and dust. There will be no difference with the addition except that with it being stored inside it will have to run less to warm up and it will take less time to clean the equipment off.

Being able to store the equipment inside makes this much safer for the community, minimizes the amount of noise that will be generated by this legal commercial operation. So looking at the specific questions from neighbors this application betters the current situation. Nothing being proposed is going to increase the impact on the neighboring community.

**Public Comment:**

**Joseph D'Angelo**, 40 Moul Road, stated that he is still concerned with the noise and felt that the letters read were from family members of the applicant and they are not near the property. He is still also worried about

loading and unloading on the road. He feels the property should not have a commercial business on it. Dennis Scibetta stated that all of the letters were from people notified in the 500' notification.

**Public Hearing:**

After discussion, a **Motion** was made by Jim Zollweg to **approve** the application of Todd and Stacey Edgecombe, owners, for 3 area variances at 28 Moul Road. The applicants would like to construct a 2,480 square feet addition with a 14' wall height and a front setback of 20.8 feet, to a pre-existing 3,225 square feet storage building. The property also has an existing 64 square feet shed which would bring the total area of accessory structures to 5,769 square feet. This motion will provide relief from 1) Town Zoning Article X, subsection 165-82.C.2 which states in part that the wall height shall not exceed 12 feet, 2) Town Zoning Article V, subsection 165-32.E.1, Schedule 1, which states that the front setback is to be 75 feet and 3) Town Zoning Article 5, subsection 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet. This property is currently zoned Rural Residential (RR).

In making this motion to approve, I considered the balancing test and its several components:

- The benefit cannot be achieved by other means feasible to the applicant. I do not believe there is any other alternative that is feasible to the applicant to achieve their objective. The applicant presented us with a clear financial discussion about why trying to find another site or other alternatives is unreasonable and also brought up an important point regarding supervision of their equipment and site which is easier to control at the current location.
- There will be no undesirable change in neighborhood character or to nearby properties, in fact, the evidence suggests that it will actually improve the condition of the neighborhood by allowing this equipment to be stored indoors instead of out in the open, protecting the equipment and providing safety. The applicants as part of this overall project are improving the driveway and adding landscaping and berms. There will be no negative alterations to the property such as trees being removed. There is enough open space to add this structure.
- The request is substantial. The square footage is more than 3 times the allowed square footage.
- There will be no adverse physical or environmental effects added by this structure.
- The alleged difficulty is self-created because over time the applicant has expanded his activity on this property; however, using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

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

The applicant acknowledged that he will be removing the small shed on the property. It was also noted that there was an equipment list provided with accompanying sketch in the record showing the large equipment which needs to have a 14' wall height to store these items.

## **NEW BUSINESS**

### **2. STEVEN & ELIZABETH PROKOPIENKO – 166 WEBSTER ROAD**

The application of Steven and Elizabeth Prokopienko owners, for an area variance at 166 Webster Road. The applicants are proposing to erect a 6 feet fence with a zero foot setback to enclose the backyard. The applicants are requesting relief from 1) Town Zoning Article 16, subsection 165-128.B.1 which states that fences may be erected up to a height of 4 feet within the rear or side yard. This property is currently zoned Medium Density Residential (MD).

Elizabeth Prokopienko, owner, explained that they have a 7 month old Great Pyrenes dog which is a large breed dog. She showed pictures of the dog and the dog's parents to the Board. She has some safety concerns with the dog being able to jump over a four foot fence. The breeder suggested that they get a 6' fence. She is worried that if she gets out she will get hit by a car or cause an accident. They have had two cats hit by cars on the road. They are about a half mile from Ridge Road and she would not want her to cause an accident on Ridge Road. Great Pyrenes dogs are a breed that wanders. They are looking to keep her safely contained so she is not wandering through the neighborhood and in their neighbor's yards. They would like to have a white fence made of wood so it will look nice.

**Board Discussion:** Dennis Scibetta 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. There were no letters in the file.

Stephen Shelley asked if they had considered invisible fence. The applicant stated that her understanding is that invisible fence would not work with a pyrenes because of the very thick coat and stubbornness the shock of it really does not work for them. She is worried that it would not be reliable and if they went through the expense of installing it and she just ran through it then it would be a waste. The breeder felt that this would not be a safe option. Dean Snyder asked if the applicant had talked to invisible fence to see what their experience has been with the larger breed dogs. The applicant stated she had not. Dean Snyder asked if there are limitations on a fence being on the property line with regards to maintenance. Dennis Scibetta stated that there would have to be a property line agreement. It is preferred that it is either on the property line or at least 18" off the line. It is encouraged to be at least 18" off so they can maintain it. The applicant is fine with it being 18" off the property line. The applicant acknowledged that she understood that the good side of the fence had to face the neighbor.

Chairperson Robillard asked if the dog would be outside all day. The applicant stated no. It was determined this will be about 800 linear feet. The applicant is also concerned that with the woods behind her property because she is large, if there were hunters back there they might accidentally shoot her.

Dean Snyder stated he has concerns with this because there are a lot of properties that have large breed dogs that might be able to clear a 4' fence. Art Fritz acknowledged that many dogs are not contained by a 4' fence. When people want to enclose a large area like this, they look to invisible fence. While it does not contain all dogs they do have different collars to work with any breed. The concern is if approved then 80% of dog owners could come to the board with the same information and want taller stockade fences. There is a provision already in the code that allows a dog run or pen which can be 6' in height up to 50 linear feet. This would be a huge increase at 800 linear feet. This is a very large breed dog and can probably put their feet to the top of a 6' fence. He felt this would be inappropriate. A lot of residences would like to enclose their yard with this kind of fence and if this is approved than it opens that up.

**Public Comment: None**  
**Public Hearing: Closed**

Chairperson Robillard asked why the 50 linear feet dog pen that is allowed by our code is not sufficient. The applicant stated that that would be too small and not enough room for the dog to run or exercise properly. This is a family dog and they do not want to keep her penned away from the family. It was felt that this provision would allow for some of the dogs activity and that another alternative would be invisible fence. There was discussion about giving the applicant time to talk to invisible fence and get their thoughts on how it would work for this breed or moving forward with a decision tonight.

Chairperson Robillard polled the board regarding voting on this tonight or allowing the applicant time to explore other options.

**Dan Melville**, felt this should be tabled to allow the applicant the opportunity to see if any other options might work.

**Jim Zollweg** stated he was going to leave his decision up to the applicant.

The applicant stated that she would like to table this to collect other information. The discussed that they would need information in writing at least 10 days before the meeting in February, which would be Feb. 6<sup>th</sup>. If that is not enough time then this can be tabled to the March meeting.

After discussion, a **Motion** was made by Jim Zollweg to **table** the application of Steven and Elizabeth Prokopienko owners, for the requested area variance at 166 Webster Road without prejudice to the February 2016 meeting to allow the applicants more time to investigate other options that may benefit their dog for

example, invisible fence. This information should be received by the Building Department in writing before February 6, 2017.

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

### MINUTES OF NOVEMBER 17, 2016

The ZBOA minutes of November 17, 2016 were reviewed. **Motion** was made by Jim Zollweg to **approve** the November 17, 2016 minutes as presented. **Seconded** by Dan Melville. **Motion carried to approve (3-0)** (Ayes: Dan Melville, Veronica Robillard, Jim Zollweg; **Abstain:** Stephen Shelley, Dean Snyder; **Excused:** Tim Thomas).

### OTHER BUSINESS

**1458 Hilton Parma Corners Road** – Dennis Scibetta recapped the application. The original application from October 2016 was for a 6' fence, on the property line, good side facing her yard not the neighbors, and approximately 20' was in front of the house. This was denied at that hearing. Part of this fence has since been removed and the applicant has come back to the Building Department to see if this can be reheard. Mr. Scibetta has talked to legal and the supervisor about the options and they have said that this can be reheard. Dean Snyder felt that the Board can unanimously say they want to rehear it, or outside of the Board the Building Department could determine that there is a significant change and they can accept a new application. Legally the Board does not have to rehear this unless there is a significant change or it's been 18 months. Dean Snyder felt that it is up to the Building Department to decide if there is enough of a significant change. Dennis Scibetta wanted the Chairperson to poll the Board to see how they felt about rehearing this matter. Stephen Shelley wanted to know what the difference would be. Mr. Scibetta stated that the applicant would like a 6' fence, no longer in front of the house with the good side facing the neighbors now. The applicant has planted arborvitaes in the front section. Dean Snyder would like to see the guidelines on the rehearing of an application that is significantly different and he is not able to do that tonight. Dean Snyder felt that this would be up to the Building Department and that is independent of the Board. Dennis Scibetta stated that this would not be a closed fence it would be more of a buffer from the view and he understands that there is a visual impact on this property. There have been complaints between the neighbors. He feels that there should be a buffer for properties between commercial and residential properties, Village and Town properties. It was stated that the applicant completely ignored the rules and regulations of the Town. Trees are a better alternative for a buffer between properties.

Dean Snyder stated that if the applicant was willing to move this off the property line then he might be more willing to rehear this but it was said at the hearing that they would not be able to do that. He felt the outcome would be the same. If the Building Department would like to bring it back to the Board then he will rehear it but felt that the outcome would not change. Dennis Scibetta felt that the Board can rehear it and then they could say they went to all lengths to try and work with her. Mr. Scibetta felt that her coming in asking for a privacy structure instead of a fence might be enough of a change to rehear. Dean Snyder felt that it does not matter what you call it it is still the same part of the code. Without some new information Dean Snyder felt his determination would not change. Chairperson Robillard stated that she does not feel like the applicant is making any concessions she is just complying, she was in violation to begin with and she also felt the new request would not be different. Dean Snyder stated that in order for this to be different, she should have a fence at a setback which is called out in the code and they would have a privacy structure. Leaving it on the property line would not be a significant change. Jim Zollweg feels that the Building Department should decide whether they think it is a substantial enough of a change to bring back to the Board and then the Board will decide if they felt it was. He felt that he would not approve it anyways. Dan Melville felt the same and if the Board is not going to decide differently whey rehear it. Stephen Shelley felt that there is not a significant enough of a change to rehear it.

**ADJOURNMENT**

There being no further business, a **Motion** was made by Dean Snyder, seconded by Jim Zollweg to adjourn the meeting at 8:40 p.m. **Motion carried to approve (5-0) (Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Dean Snyder, Jim Zollweg; **Excused:** Tim Thomas).

Respectfully submitted,

Carrie Webster  
Recording Secretary