

**TOWN OF PARMA
ZONING BOARD OF APPEALS
SEPTEMBER 21, 2017**

Members Present: Dan Melville
Veronica Robillard
Stephen Shelley
Tim Thomas
Jim Zollweg
Dean Snyder, Alternate

Others Present: Dennis Scibetta, Art Fritz, Dan Barlow

Public Present: Matthew Fumia, Richard Vance, Jack Barton, Epifanio Profeta, Debra A. Bischoping, Nancy Alton, Alfred Alton, Wayne Swanger

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 explained that this is a five member board and a quorum of three is required to pass a motion.

NEW BUSINESS

1. MATTHEW FUMIA – 120 MOUL ROAD

The application of Matthew Fumia, owner, for 2 area variances located at 120 Moul Road. The applicant is proposing to keep chickens on a 2.9 acre lot with a chicken coop located at a side setback of 82 feet and is requesting relief from Town Zoning Article X, subsection 165-82.BB which states that except for riding horses, no animals, other than ordinary household pets, shall be kept on an residential lot of three acres or less in any zone district and Town Zoning Article V, subsection 165-32.B.2.a which states in part that no building in which farm animals are kept shall be closer than 100 feet to a side property line. This property is currently zoned Rural Residential (RR).

Matthew Fumia, owner, explained that the biggest reason for wanting the chickens is because he has a son with food allergies that cannot have soy in any amount. These eggs would be ok because the chickens would not be fed soy. His wife is teaching their sons the 4H poultry curriculum and his oldest son has expressed an interest in doing an IB Project through school. He takes eggs to work and co-workers purchase some of the eggs paying what they want and he donates the money to the cadet cupboard.

He stated that the reason for the side setback is that the lot is long and narrow and he could never make the side setback for the coop. The coop is currently fully enclosed but not yet covered. It will be depending on the outcome of this hearing. The coop is 8x10 and not currently heated. The enclosed area is 20x10. There are currently 17 chickens, all hens no roosters. Tim Thomas asked the age of the chickens. The applicant stated they are not the same age. They had some predators get the chickens so they have replaced those.

Tim Thomas asked if there have been any complaints. Art Fritz stated that there was a phone complaint about chickens roaming in the neighbor's garage and flowers and concern for odor. Chairperson Robillard asked if they would be getting any more. The applicant stated that the goal would be to have 10-12 chickens in order to provide enough eggs.

Chairperson Robillard asked the applicant why they didn't get an area variance. The applicant stated that he didn't know he needed one. He stated the previous owners had chickens and the neighbor to the east had chickens. Jim Zollweg asked if the person who made the complaint is in the notification area. Art Fritz stated yes.

Board Discussion: Art Fritz 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.

Public Comment:

Debbie Bischopping, owner at 110 Moul Road, stated that she enjoys the chickens and keeps a good relationship with the neighbors. She stated that the property is kept clean and has not noticed an odor.

Chairperson Robillard asked how the waste would be disposed of. The applicant said it would be composted in the vegetable garden and in the winter stay in the coop.

Nancy Alton, 124 Moul Road, stated that she never smells them and when they have come into her yard they have not bothered here. She felt the applicant put up the pen as fast as possible.

Wayne Swindle, 16 Moul Road, stated that he enjoys seeing them because he was brought up on a farm.

Tim Thomas asked if there was anything in the works at the Town to allow chickens on properties under 3 acres. Art Fritz stated there isn't and the current changes were made in 1998.

Richard Vance, of Peck Road asked how many of these type of variances have been issued in the past and would not want to see a precedent happen. Tim Thomas stated there was one on Dean Road approved with strict conditions and when the chickens passed that was it. Tim Thomas was also worried that there would be more people asking.

Public Hearing: Closed

Stephen Shelley asked if there was a way to keep them off site. The applicant stated he doesn't know where he would. Dean Snyder asked if the coop was insulated. The applicant stated that this is a 2x4 construction out of wonder board and fiberglass insulation. Tim Thomas would like to see less chickens, which would provide the same benefit and an end date added to the conditions. Dean Snyder does not agree with an end time. Chairperson Robillard felt that 17 chickens was a lot. There was discussion about the amount of chickens.

Dean Snyder stated that the code calls out 3 acres as the minimum to have chickens, horses, etc. without coming to the Board. Roosters would be the biggest concern with neighborhoods. He stated that chickens should be in a penned area at all times and kept safe from predators. When you research chickens these are not just animals they are pets. He does not have any issues with the size of the property as long as there are no roosters but he does think they should be humanely treated even though they can survive in harsh conditions. Tim Thomas is concerned with the number of chickens. There was a discussion about possible conditions being placed on this. Chairperson Robillard felt that where the coop is placed it is actually going to be closer to the neighbor than his own house. Because of the size of the property it cannot meet the setback. Each chicken produces approximately one egg every other day. Dean Snyder felt that they should not limit the chickens to less than six so that they can maintain the heat they will need through the winter.

Dennis Scibetta felt that if they wanted to move in the direction of approving then a change to the Zoning Law should be looked at. He does not feel that these are pets. He is concerned about creating a variance that will go with the property. He hoped that this could be tabled to receive more information from Ag & Markets. Dean Snyder felt that a precedent would not be set as long as the Board does their job properly and if more people start asking for chickens than the Town Board will have to look at changing the Law. Dr. Snyder thinks if there is more information available than they should look at that before making a decision giving a variance that will run with the property. Tim Thomas felt that if there is more information to be fair to the process than the Board should look at it before deciding.

Chairperson Robillard asked how many chickens the applicant has to have to do what he needs to do. The applicant stated he would like to have between 10-12.

After discussion, a **Motion** was made by Tim Thomas to **table**, without prejudice, the application of Matthew Fumia, owner, for 2 area variances located at 120 Moul Road regarding the chickens and the coop area and setback requirements to the October 2017 meeting to allow the Building Department time to disseminate the information that was just identified today allowing the Board time to review the information and to determine its potential impact on this application and for the general knowledge on any future applications. This information will be provided to the Board and the applicant.

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

Chairperson Robillard read the following applications together.

2. EPIFANIO PROFETA – 145 DEAN ROAD

The application of Epifanio Profeta, owner, for an area variance located at 145 Dean Road. Applicant is requesting to reduce his access strip to Dean Road from 25 feet wide to 16.5 feet wide and is asking for relief from Town subdivision regulations Article 4, subsection 130-15.D.3 which requires flag lots and back lands to have a minimum 20 feet wide strip of land to a public street. This property is currently zoned Rural Residential (RR).

3. EPIFANIO PROFETA – 145A DEAN ROAD

The application of Epifanio Profeta, owner, for an area variance located at 145A Dean Road. Applicant is requesting to reduce his access strip to Dean Road from 25 feet wide to 16.5 feet wide and is asking for relief from Town subdivision regulations Article 4, subsection 130-15.D.3 which requires flag lots and back lands to have a minimum 20 feet wide strip of land to a public street. This property is currently zoned Rural Residential (RR).

4. EPIFANIO PROFETA – 149 DEAN ROAD

The application of Epifanio Profeta, owner, for an area variance located at 149 Dean Road. Applicant has a land locked parcel of land and is proposing to provide a 16.5 feet wide strip of land to Dean Road. Applicant is asking for relief from Town subdivision regulations Article 4, subsection 130-15.D.3 which requires flag lots and back lands to have a minimum 20 feet wide strip of land to a public street. This property is currently zoned Rural Residential (RR).

Epifanio Profeta, owner, explained he owns the above properties and they have been there for 25 years. They live at 145 Dean Road, the property next to them is 145A Dean Road and the back land is 149 Dean Road, this is currently a landlocked parcel. He is asking for the variance so that they can use the land in the back. He has applied for this twice before and both were approved but at that

point his kids were not ready to move forward. His daughters would like to build now on the lot next to him and in the back. Chairperson Robillard asked how wide the current driveway is. The applicant stated the driveway is 12 feet. Nothing at the roadway will change, it would have a 12' entrance and then there would be veins going off of that drive leading back to the two parcels. This will be almost a mirror image of what they did at 143 Dean Road.

Jim Zollweg stated that the property boundary of 149 Dean does not reach the road so there is not any frontage to give to 149. In order to approve each property will have to have land that touches the road. Mr. Scibetta stated that currently 149 Dean Road is landlocked and that this variance is needed to create that. The boundary lines will be changed at the Planning Board.

Board Discussion: Art Fritz reported that notifications were in order, that all three legal notices went to each property owner, 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.

There was discussion about the Cross-Access Easement that was placed as a condition in the past approval. This would make sure that all owners can use the common driveway for ingress and egress. Cross-Access Easements are used commonly in businesses where they share a driveway. Jim Zollweg felt that this was essential because the day will come when the people living on these parcels will not be related. There was discussion about the timeline for when things need to be completed so this will not expire again. Dennis Scibetta felt this was a good thing because it will clear up a landlocked parcel.

Public Comment:

Public Hearing: Closed

After discussion, a **Motion** was made by Jim Zollweg to **approve** the 3 applications of Epifanio Profeta, owner, for 3 area variances located at 145 Dean Road, 145A Dean Road, and 149 Dean Road. These variances will provide relief from Town subdivision regulation Article 4, subsection 130-15.D.3 which requires flag lots and back lands to have a minimum 20 feet wide strip of land to a public street, that public street being Dean Road. This relief will allow the applicant to reduce his access strip to Dean Road from 25 feet to 16.5 feet wide strip access to Dean Road for each of the properties mentioned. All three properties are currently zoned Rural Residential (RR).

In making this determination the balancing test was considered:

- The benefit cannot be achieved by other means feasible to the applicant. There is no other way to provide access to a currently landlocked parcel at 149 Dean Road.
- There will be no undesirable change in neighborhood character or to nearby properties. There will not be a physical change to the neighborhood.
- The request is substantial because 16.5 is less than the current minimum of 20 feet.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created.
- Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

Each of these three properties shall have a Cross-Access Easement granted to each other for accessibility. These variances will actually take effect when these changes are proposed and filed with the Planning Board so that the new plot boundaries are filed.

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

SPECIAL PERMIT RENEWAL

5. 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 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.

There was an inspection completed on September 11, 2017 by Art Fritz and there were no violations found. There are no complaints on file.

Discussion took place surrounding the lateness of the renewal. Dennis Scibetta felt that the lateness of this was not the applicants issue; they are not getting letters from the Building Department. Dean Snyder felt that this is not the applicants issue and that they should get letter from the governing agency. Chairperson Robillard and Dan Melville felt that some of the burden is the applicant's responsibility. A better method of tracking these renewals needs to be put into place and will be discussed with the Department.

There was discussion surrounding the hours of operation.

After discussion, a **Motion** was made by Jim Zollweg 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 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 with the following conditions.

1. The hours of operation to be consistent with 165-79.1-J.
2. Contingent on inspection and approval by the fire marshal.
3. To be renewable February 1, 2019.

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

MINUTES OF AUGUST 17, 2017

The ZBOA minutes of August 17, 2017 were reviewed. **Motion** was made by Tim Thomas to **approve** the August 17, 2017 minutes as presented. Seconded by Stephen Shelley. **Motion carried to approve (5-0)** (**Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg).

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Jim Zollweg to adjourn the meeting at 8:35 p.m. **Motion carried to approve (5-0)** (**Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg).

Respectfully submitted,

Carrie Webster
Recording Secretary