

**TOWN OF PARMA
ZONING BOARD OF APPEALS
APRIL 18, 2019**

Members Present: Dan Melville, Stephen Shelley, Dean Snyder, Tim Thomas, Corinne Zajac

Members Excused: Veronica Robillard

Others Present: Dennis Scibetta, Linda Judd

Public Present: Ken Lalonde, Renee Lalonde, Bridget O’Toole, Esq., Jessica Mulholland, Adam Alliet, Andre Belpanno, Melissa Belpanno, Kris Schultz, Steve Zajac, Richard Vance, Patricia Henry, Dorothy Shultz, Richard Shultz, William Hitt, Bonnie Hitt, Joshua Kovacs, Rick Palumbo, David Palmer, Diane Palmer, Deborah Oliveri, Edward Oliveri, Laura Smith, Mark Bonin, Roseann Bonin, Lynn Gongwer, Richard Fran, Pat Basset, Brad Quatart

The meeting was called to Order by Acting Chairperson Thomas at 7:00 p.m. He explained the function and decision-making process of the Zoning Board of Appeals and noted this is a five member board with a full board present tonight. A quorum of three is required to pass a motion.

CONTINUING BUSINESS FROM MARCH 18, 2019

1. ADAM ALLIET AND JESSICA MULHOLLAND – 133 BAILEY ROAD

The application of Adam Alliet and Jessica Mulholland, contract vendees, for an area variance at 133 Bailey Road. The applicants are proposing to erect a house where the width of the property is 175 feet and are requesting relief from Town Zoning Schedule 1 which states that the minimum lot width is to be 300 feet. The property is currently zoned Agricultural/Conservation (AC).

Board Discussion: Dennis Scibetta reported that notifications were in order, the request was returned by Monroe County as a matter of local determination. This is a Type II action under SEQR and no further review is required. There were no letters in the file.

Kris Schultz, representing the applicants stated that this 8.8 acre parcel is being purchased from a larger piece of property and they would like to build a house on it 175 ft. off the road. To meet the 300 ft. they would have to build 500 ft. off the road doubling the cost to build. Before

the code changed in 1989 you could build 100 ft. off the road and many houses are at that set back and others have been approved for similar variances by this Board.

Acting Chairperson Thomas asked if this meets the criteria of a flag lot. Dennis Scibetta noted that this is a non-traditional flag lot which is narrower in the front and gets wider in the back. Not moving this closer to the road keeps it in character. The Planning Board did review this property and was good with the plans.

Dean Snyder asked if they could have purchased the additional 4.4 acres to the South. Kris Shultz said they did not because the owner of that piece wanted to own up to the hedgerow which divides the properties nicely. When all is said and done, there will be two new lots and a resub of the current lot.

Public Comment: None

Public Hearing: Closed

Dean Snyder looked at other properties on the road and of the 12 lots, 8 were under the standard lot size called out by code at this time and even with approval tonight this lot would still be larger than 7 of the properties. It was felt that this fits the character of the neighborhood and is proposed in the perfect location.

A **Motion** was made by Dean Snyder to **approve** the application of Adam Alliet and Jessica Mulholland, contract vendees, for an area variance at 133 Bailey Road to erect a house where the width of the property is 175 feet and are requesting relief from Town Zoning Schedule 1 which states that the minimum lot width is to be 300 feet. The property is currently zoned Agricultural/Conservation (AC).

In making this determination:

- The benefit cannot be achieved by other means feasible to the applicant. The applicant tried and was going to purchase additional frontage but it was unavailable due to a previous agreement with the owners.
- There will be no undesirable change in neighborhood character or to nearby properties. It improves the character based on aesthetics related to the size and placement of adjacent structures. The proposed lot width will be larger than 2/3 of the existing neighboring lots.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created but the applicants appear to have done everything in their power to meet the code while maintaining a non-obtrusive design. Using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community.

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

2. KENNETH and RENEE LALONDE – 110 CRIMSON WOODS COURT

The application of Kenneth & Renee Lalonde, contract vendees, for 3 area variances at 110 Crimson Woods Court. The applicants are proposing to erect a 3,520 sq. ft. accessory building with a wall height of 16 feet in the front yard. This property currently has a 690 square foot accessory building which would bring the total square footage of accessory buildings on the property to 4,210 square feet. They are requesting relief from 1) Town Zoning Article V, subsection 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet, 2) Town Zoning Article X, subsection 165-82.C.2 which limits the wall height to 12 feet and 3) Town Zoning Article X, subsection 165-82.C.3 which states in part that all accessory buildings shall be located in the rear yard. This property is currently zoned Rural Residential (RR).

Acting Chairperson Thomas asked if everyone on the Board received the additional information that has been coming in during the past 24 hours. Dan Melville did not receive all of the new information. A letter emailed to the Town Clerk by an attorney after business hours was not able to be distributed before tonight's meeting. After polling the Board, Dan Melville did not feel he was ready to vote on this tonight. The other members were ready to move forward with the application. Acting Chairperson Thomas reviewed the Motion from the last meeting and asked that when the Public Hearing opens only new and relevant information be stated.

Renee Lalonde, applicant, stated that 2 parcels are being merged which will make this property 32 acres not 10. The outbuildings will cover only .88% of the lot. The layout of the belongings to be stored was shown as directed by the Town because they already own those items; they are not buying new items to fill the building. She said the need for 16 ft. sidewalls is because they need 14 ft. doors to get their boat and trailer in the building. The location that they chose was in an effort to reduce the amount of asphalt on the property and so not to encroach on the wetlands. She stated that this is in the side yard, not the front. It will be tucked into the trees and any trees that have to be taken down they would replant new trees to keep the building inconspicuous. They are not looking to devalue anyone's property, including their own. The location is more than 300 ft. from a neighboring garage and 400 ft. from the entrance of the neighbor's driveway.

Acting Chairperson Thomas said this sounds like the original application and the Board was looking for information on ways to reduce the size, change the location and design. Mrs. Lalone felt this is the best location for it and they have the belongings to fit in the building. While they could go a little smaller, they could not go half the size. The design was provided to the Board and they felt this will keep it in character with the house.

Public Comment:

Laura Smith, Esq., represents the Oliveri's. She provided a letter to the Board and explained they are opposing the size and location of this because of the rural character and open space in the neighborhood. The fact that this is 3x's the size contradicts with the neighborhood's character, is imposing and unreasonable. She felt they could achieve their benefit through other methods. They could look at other locations; make the building smaller, lower the height of the structure. While she understood they have "stuff" this is self-created and that is not a reason to approve. She felt there would be an adverse effect on the neighborhood. This would be visible and impair the views. There would be aesthetic impacts on the environment. She felt that since they have not closed on this house they are not in a bind to do this. She stated that she read through the code and while she was unaware that they intended to merge the two properties she felt there were additional variances needed.

Dr. Snyder noted that the percentages provided by the attorney in her letter were incorrect. The letter stated the applicant proposes to increase the density of accessory structures by 280% when it is actually 180% and the side walls are only 33% higher than what the code allows, not 133%. The letter stated that the impact of the variances on the neighborhood is substantial because the pole barn proposed would need at least three variances demonstrating how out of character this would be. Dr. Snyder stated that when the Board has an application they do not look at the number of variances to determine how substantial the request is; they look at the overall application to determine that. Counting variances is not an accurate determination of how substantial a request is. The letter stated that the code says it is required that the entire yard should remain open and unoccupied by buildings; however, than no one could build anything. Buildings can be in the yard, they cannot be in the required yard which is in the setback; however there are exceptions to that. He wanted to make sure that the information being presented was as accurate as possible for the Board to be able to use the relevant information when making their decision.

Dennis Scibetta provided a map to the Board to show that this is not proposed in the front yard but more the side yard. The legal was written to be the most restrictive by adding the language that it is in the front yard. Dr. Snyder felt that whether the legal said this was to be in the front, side or back does not change the visual aspect from neighbors who are using the co-joined driveway or their yards. It is up for interpretation if this is in the front or side yard. Dennis Scibetta said that the Planning Board tabled the merge of these properties until after the applicant came to the Zoning Board and took care of the variances.

Bridget O'Toole, Esq., provided a letter to the Board and represents Mr. and Mrs. Laudisi. Because of the lateness of her letter, there was discussion about whether this should be

admitted into the hearing. Dr. Snyder felt that if she is giving an oral presentation on what her letter reads than it is in the best interest of the Board to hear it. It was noted that the Board, the applicant and the Executive Secretary were not given the information prior to the meeting. The letter was distributed to the Board. Acting Chairperson Thomas provided a copy of the letter to the applicant to review and said that if they see anything in the letter that was inconsistent or would make them want to table the application to let him know.

Ms. O'Toole stated that her letter is similar to Ms. Smith's letter and also had the incorrect percentages. They are concerned with the visual impacts of this building and that it does not conform to any of the restrictive covenants in regards to out buildings, which even though they are not governed by this Board, the applicants do have to follow and if the variances are granted will become an issue. She felt that the applicant would not be harmed if this is denied but the neighborhood would be if it is built. She felt this is a very substantial request. They had concerns with run off because of the low permeability of the soil and the addition of hard surface areas. She felt that this is wholly self-created and they could find another property.

Dr. Snyder stated that her comments about the increased hard surfaces area and run off are negated by the fact that there is a giant retention pond on the property which would decrease the threat of run off. Ms. O'Toole did not feel they are completely negated and there could be some DEC issues. Mr. Scibetta stated that permeability tests of soil are mainly for septic systems and the disposal of waste and very little to do with runoff.

There was discussion that if the applicants merged the property with the Manitou Road address and used that as the property address this would become a flag lot and a lot of the variances could go away. Dean Snyder thought because 109, 110, 111 each have 20' of a 60' driveway, that makes it a flag lot. Dennis Scibetta stated he was not here when the concept of this was done and whether that is the case. He said that could be possible or they could have a shared easement so as not to be considered a flag lot.

Mr. Lalonde felt that they had to have their information in on time and the attorney should have also because this was the first they have seen this. He is concerned with all the talk about the Deed Restrictions. Dr. Snyder stated that the Board has no jurisdiction over the Deed Restrictions and they have no impact on their decision. Mr. Lalonde stated they looked at the permits on file for other structures in the neighborhood and some of them exceed those restrictions and variances also. Acting Chairperson Thomas gave the option to the applicant to table this because of the lateness of the information. The applicant wanted to continue. Mrs. Lalonde wanted to address a comment in the letter about the neighbor's view of the building. She stated it will match the house and that the Oliveri's will not see it from their house.

Lynn Gongwer, 1483 Manitou Road, is concerned with runoff into the retention pond and potential flooding of the pond that is co-owned between the applicant and her property.

Pat Bassett, 111 Crimson Woods, stated he went over and met with the applicants and he is very agreeable to what they would like to do. He felt this would affect him more than anyone else because of the proximity to his property. This property has been vacant for over a year and what the applicants are trying to do will look good. He felt that the applicants are trying to work with the neighbors, are very agreeable to doing what needs to be done and the neighbors are not interested in talking to them. 22 acres of this parcel are not included in the deed restrictions on the property and he felt no one pays attention to them anyways. He doesn't know why there is a difference between building this or putting a huge addition onto the back of the house like one of the other neighbors did.

Dave Palmer, 138 Bailey Road, asked what the sq. footage of the house was. Dennis Scibetta said it is just under 7,000 sq. feet. Because of the size of the house Mr. Palmer did not feel this structure was going to look huge or out of place.

Public Hearing: Closed

Board Discussion: Dennis Scibetta reported that notifications were in order, the request was returned by Monroe County as a matter of local determination. This is a Type II action under SEQR and no further review is required. There were no letters in the file.

Dean Snyder said part of the Boards job is to not only look at the application for the existing need but to consider what the next occupant might use it for. Some of these large pole barn type buildings even if dressed up real nice end up being used for a business, and although there is only one employee, somehow trucks come and go every day and equipment is brought in on trailers. It is the Boards job to protect the public. He feels the structure would be in clear view of the neighbors and while it doesn't bother some people, it will bother others. He would have liked the accessory building to look like it was just another house and was not satisfied with the new design or information provided.

Corinne Zajac visited the property and feels the structure is very large compared to what is allowed by code and will be very visible even from Manitou Road. She has concerns with the future use.

A **Motion** was made by Dean Snyder to **deny** the application of Kenneth and Renee Lalonde, contract vendees, for three area variances at 110 Crimson Woods Court to erect a 3,520 sq. ft. accessory building with a wall height of 16 feet in the front yard. This property currently has a 690 sq. ft. accessory building which would bring the total sq. footage of accessory buildings on the property to 4,210 sq. feet. They are requesting relief from 1) Town Zoning Article V,

subsection 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet, 2) Town Zoning Article X, subsection 165-82.C.2 which limits the wall height to 12 feet and 3) Town Zoning Article X, subsection 165-82.C.3 which states in part that all accessory buildings shall be located in the rear yard. This property is currently zoned Rural Residential (RR).

In making my determination:

- The benefit can be achieved by other means feasible to the applicant. The applicant can secure off site storage for some of the larger pieces not commonly used onsite. There are other accessory structures in the neighborhood that provide additional storage without being obtrusive.
- There will be an undesirable change in neighborhood character and to nearby properties. This proposal would represent a tremendous undesirable change to the local character of the neighborhood. The proposed building is 1) in visual proximity to other buildings and shared driveways causing it to be obtrusive 2) the large size of 3,520 sq. feet with 16 ft. sidewalls represents a 235% increase of the maximum allowed size 3) the design and construction are inconsistent with the buildings so prominently located. The design is much more consistent with a commercial building.
- The request is very substantial.
- There will be adverse physical or environmental effects. The applicants attempted to mitigate the impact of neighboring properties but were inadequate based on No. 2 above.
- The alleged difficulty is somewhat self-created. Using the balancing test, the benefit to the applicant is outweighed by the detriment to the health, safety and welfare of the community.

Seconded by Corinne Zajac. Motion carried to **deny the application (4-0) (Ayes:** Stephen Shelley, Dean Snyder, Tim Thomas, Corinne Zajac; **Abstain:** Dan Melville; **Excused:** Veronica Robillard).

Acting Chairperson Thomas polled the Board:

Dean Snyder: My motion stands for my reason to deny.

Tim Thomas: While the applicants attempted to address the size, location, and design they fell short of what the Board was expecting. He feels they could store items not needed every day offsite. This structure would be obtrusive to nearby neighbors and create an undesirable change to the neighborhood. The provided design is commercial in nature and does not compliment the residence. The request is absolutely substantial; the requested size is way more significant than what the code would allow. The difficulty is absolutely self-created.

Corinne Zajac: This application goes against the code in size, wall height and is not in the backyard. This is self-created and would be obtrusive and a detriment to the neighbors.

Stephen Shelley: The total area would be 2.8 times what the code allows which is extremely substantial. The design does not compliment the house and would be an undesirable change in the neighborhood. This is self-created and there are other means available for the applicant to store their belongings.

NEW BUSINESS

3. CRAIG and PATRICIA HENRY– 56 HILL ROAD

The application of Craig and Patricia Henry, owners, for three area variances at 56 Hill Road. The applicants are proposing to construct a 1,421 sq. ft. pole barn, which includes a 200 sq. ft. loft area, with a wall height of 14 feet, 7.5 feet from the side property line. This property currently has a 145 sq. ft. accessory building which would bring the total sq. ft. of accessory structures on the property to 1,566 sq. ft. They are requesting relief from 1) Town Zoning Article V, subsection 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet, 2) Town Zoning Article X, subsection 165-82.C.2 which limits the wall height to 12 feet and 3) Town Zoning Schedule 1 which states that the side setback for an accessory structure shall be 10% of the lot width which, in this case, is 15 feet. This property currently zoned Rural Residential (RR).

Patricia Henry, applicant, explained that this is the only place to put the barn because Salmon Creek runs behind the property and floods. They also have a septic system on the property and an existing shed. She explained that they need the height to store a camper and an SUV. In the loft area they would store basement items to free up space in the basement. Acting Chairperson Thomas asked if she had a floor layout of belongings to be stored. The applicant did not. There was discussion that if she went 66 ft. smaller she would fall under the allowed sq. footage alleviating one of the variances. Stephen Shelley asked the applicant is she would be willing to eliminate the shed to be within the allowable size. The applicant stated she would be willing to eliminate the small shed.

Acting Chairperson Thomas read a letter from Mr. Valenti, 48 Hill Road, dated April 14, 2019. He has concerns with how the structure will be built without damaging his property if it is only 7.5 ft. from the property line. He also has concerns with possible drainage and runoff issues. His view of Salmon Creek would be limited because of the size and height of the building. He would like the Board to deny this application.

Public Comment:

Richard Shults, 66 Hill Road, stated he is in favor of this building.

Anthony Frauda, 51 Hill Road, felt the way it is laid out the building looks like it will be nice and he would be in favor of this.

Josh Covax, 55 Hill Road, stated that she maintains her yard nicely and the building will look good. He would rather an RV be inside a structure than sitting in the driveway.

Public Hearing: Closed

Dan Melville has no issue with this application. Dr. Snyder said the size is of no concern for him but he is concerned with the proximity to the lot line and the height of the building. He would

like to see a topographical map to see if there are other opportunities on the property before making a decision. He did not feel she needed it surveyed but that Dennis would have numbers they could use as long as they have it in time to review.

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

Stephen Shelley said there are tracks available to reduce the overhead that the builder might be able to look at which would reduce that by at least a foot.

A **Motion** was made by Stephen Shelley to **table** the application of Craig and Patricia Henry, owners, for three area variances at 56 Hill Road to the May 2019 Zoning Board of Appeals meeting without prejudice to afford the applicant time to secure a topographical map and to talk to the builder about reducing the overhead of the building.

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

Dean Snyder asked Dennis if he could print a picture with approximate lot lines of this property and the property next to it where there seems to be an issue, or a copy of a survey map of both properties.

4. ANDRE AND MELISSA BELPANNONE – 37 JAMES MOORE CIRCLE

The application of Andre and Melissa Belpanno, owners, for an area variance at 37 James Moore Circle. The owners are proposing to construct a 192 sq. ft. accessory building with a rear setback of 5 feet and are requesting relief from Town Zoning Article 1 which states that the rear setback for an accessory structure shall be 10 feet. This property is currently zoned High Density Residential (HD).

Andre Belpanno, stated that the proposed location is the only place to put this structure. His property is on a hill with a walk-out basement and he has a paver patio with a pool in the yard. They will have landscaping done around the building. He thinks he will be 3' into the setback but he is asking for 5'. Visually it will look in line with the neighbors shed. He is looking to store pool stuff and a lawn mower. Currently he is storing things outside.

Board Discussion: Dennis Scibetta reported that notifications were in order, the request was returned by Monroe County as a matter of local determination. This is a Type II action under SEQR and no further review is required. There were no letters in the file.

Public Comment: None

Public Hearing: Closed

A **Motion** was made by Stephen Shelley to **approve** the application of Andre and Melissa Belpanno, owners, for an area variance at 37 James Moore Circle to construct a 192 sq. ft. accessory building with a rear setback of 5 feet and requesting relief from Town Zoning Article 1 which states that the rear setback for an accessory structure shall be 10 feet. This property is currently zoned High Density Residential (HD).

Using the balancing test:

- The benefit cannot be achieved by other means feasible to the applicant. He has given sufficient information as to why he cannot place this anywhere else on the property without significant difficulty.
- There will be no undesirable change in neighborhood character or to nearby properties.
- The request is substantial but considering it borders on an unoccupied and forever wild area to the rear it is not extremely substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created because of the lot size. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

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

MINUTES OF MARCH 21, 2019

The ZBOA minutes of March 21, 2019 were reviewed. **Motion** was made by Stephen Shelley to approve the March 21, 2019 minutes as corrected. Seconded by Dan Melville.

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

OTHER INFORMATION

Dennis Scibetta discussed possible applications with the Board. He has two parties interested in operating a dog daycare and boarding facility at two different locations on Ridge Road. They are both zoned Highway Commercial which does not allow for that type of business. It was agreed that there is a deficit in our code for that and as written there is no opportunity for the Board to help them even though these locations were a good choice for this type of business.

There is interest from someone with a location on Ridge Road that would like to harvest auto parts. The business would be located wholly inside the building. There are concerns with leakage and the dismantling of automobiles add this site turning into a junk yard. It was felt this would become an ongoing issue for code enforcement.

Another property on Ridge Road in General Commercial would like to display and sell sheds from the property. Under the code there would be no opportunity to approve this because of the zoning and there is no outside storage allowed in General Commercial.

Lastly, there is interest from an applicant on Ridge Road near Dollar General who would like to open an Italian Deli. Most of the property is wetlands. They would like to erect a 30x40 building and there might be some setback issues with parking. They might also look at shared parking with Dollar General. Dr. Snyder asked if there are other properties along the district that have existing short setbacks, if so then he would be willing to hear this. Dennis Scibetta said there are. Acting Chairperson Thomas said of all of these this one is the only one they might be able to help.

ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Stephen Shelley to adjourn the meeting at 9:40 p.m. **Motion carried to approve (5-0) (Ayes:** Dan Melville, Stephen Shelley, Dean Snyder, Tim Thomas, Corinne Zajac; **Excused:** Veronica Robillard).

Respectfully submitted,

Carrie Fracassi
Recording Secretary