

**TOWN OF PARMA
ZONING BOARD OF APPEALS
FEBRUARY 20, 2020**

Members Present: Dan Melville, Stephen Shelley, Tim Thomas

Members Excused: Veronica Robillard, Dean Snyder, Corinne Zajac

Others Present: Dennis Scibetta, Councilperson Judd

Public Present: Mike Wyant, Joe Indovia, Rick Lupinetti, Cindy Lupinetti, Phil Smith (Town Of Parma), Robert Christ, Dick Vance.

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 three seated board members. A quorum of three is required to pass a motion.

NEW BUSINESS

1. TOWN OF PARMA – 1300 HILTON PARMA CORNERS ROAD

The application of the Town of Parma, owner, for an area variance at 1300 Hilton Parma Corners Road. The owner is proposing to construct a 6 ½ feet fence and is requesting relief from Town Zoning Article 16, section 165-128.B.1 which limits the height of fences to 4 feet in a residential district. This property is currently zoned Agricultural/Conservation (AC).

Phil Smith, Town of Parma Park Foreman, explained that the Town would like to install a fence to box in the area behind the Morton Building to keep the equipment stored outside from being vandalized and for safety concerns if someone were to climb on the equipment or being playing around it. This would be a 6' white vinyl fence which would be easier to maintain. They are asking for 6 ½ ft. to account for the fact it would not sit flush with the ground to make maintenance easier. The fence will sit at least 1,000 ft. off the road. A trailer, lawn aerator, and buckets for the tractor are currently stored outside.

Acting Chairperson Thomas asked if the Town considered adding onto the current building. Phil Smith said that would be great but it is not in the budget. Acting Chairperson Thomas noted that while he usually opposes 6' fences, this one will sit over 1,000 ft. off the road and not in a housing tract. He gives the Town accolades

for coming to the Board for approval because a lot of Town's exempt themselves. It is a safety issue to have the equipment sitting in the open and will protect the Town assets in light of the vandalism that has occurred in the Park.

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 are no letters in the file.

Public Comment:

Michael Wyatt, Burritt Road, stated that he is not opposed or for the fence; however, he would be concerned with the gap between the ground and the fence being a safety issue if a ball or a small child tried to climb under it. Mr. Smith noted that a ball or child would be unable to climb under it because the inside of the fence will be built up with stone and millings to the bottom of the fence.

Public Hearing: Closed

A **Motion** was made by Dan Melville to **approve** application of the Town of Parma, owner, for an area variance at 1300 Hilton Parma Corners Road to construct a 6 ½ feet fence granting relief from Town Zoning Article 16, section 165-128.B.1 which limits the height of fences to 4 feet in a residential district. This property is currently zoned Agricultural/Conservation (AC).

In making this motion to approve:

- The benefit cannot be achieved by other means feasible to the applicant. The fence is the best option at this time and the least expensive way to protect the assets of the Town.
- There will be no undesirable change in neighborhood character or to nearby properties. For the most part you will not even see this from the road.
- The request is substantial but is needed to protect the equipment.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is If-created; however, the Town needs to protect the equipment and this ensures the safety of people or children playing in the area. 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 approved (3-0) (Ayes:** Dan Melville, Stephen Shelley, Tim Thomas: **Excused:** Veronica Robillard, Dean Snyder, Corinne Zajac).

2. ROBERT CHRIST – 1060 HILTON PARMA CORNERS ROAD

The application of Robert Christ, owner, for 3 area variances at 1060 Hilton Parma Corners Road, as well as modification of the existing use variance. The applicant is proposing to erect a 14.2 square foot sign and is requesting relief from Town Zoning Article XIV, section 165-112.F which states in part that a sign may not exceed 2 sq. feet. The applicant is also proposing to construct a 3,600 square feet accessory structure and is requesting relief from Town Zoning Article V, section 165-31.C.2 which limits the size to 2,000 square feet and which also does not allow this structure without a primary structure. The proposed building will be constructed no closer than 350 feet to the road right-of-way. The existing use variance states that the buildings are to be 400' from the road right-of-way. This property is currently zoned Agricultural/Conservation (AC).

Acting Chairperson Thomas clarified that the existing structure on the premises is a pre-existing legal standing building. The original approvals were in 1983 before the code changed in 1998. There was not a requirement at that time for a primary structure to build and there was no requirement for size in 1983.

Robert Christ, owner, explained that he was asked by the Town a couple years ago to take down the sign because they did not have the proper permits. He is requesting to put it back up. The sign is comparable to the signs put up by two other properties near him. He feels that the sign locates where the property is and makes the road safer because people slam their brakes on when coming to the property as they are sometimes unaware of where the property is because it sits so far back. Acting Chairperson Thomas asked if he had considered a smaller sign. Mr. Christ stated that he already has the sign from before and is just trying to get the proper approvals to install it again. The sign is not illuminated and will not obstruct anyone's views trying to pull out of their driveway as the state requires the sign to not be in the right-of-way which is 33' from the center.

Mr. Christ explained that they are looking to erect a 50' x 70' structure NW of the original structure that is 40' x 48' with a leanto that was added and permitted. The leanto is not added into the square footage. The addition of this structure would change the setback approved under the use variance from 400' to 350'. It will sit at least 100 ft. from any property line and would not be visible from the road. Acting Chairperson Thomas asked if the building could be located to the east of the metal barn. Mr. Christ said that it sits low back there, is wet and might encroach on the rear setback.

Acting Chairperson Thomas asked what the purpose of the building is. Mr. Christ explained it is to store equipment and vehicles to keep them out of the elements,

the current building stores smaller equipment and tools. The way the business is conducted is not changing. There will not be any more trucks or equipment than what is there now. The building will need to have impervious flooring to store vehicles. The original application was approved through the Planning Board and the Zoning Board back in 1983. The DEC does regulatory checks at this site and the Building Department also keeps an eye on this site to make sure there is nothing spilling into the creek and soil.

Acting Chairperson Thomas noted at the time of approval by the Planning Board for the use variance in 1983 it was commented that the piles of stone/material should not exceed 10' high. Those piles are beyond 10' now. Robert Christ stated that the business has grown causing the piles to be higher than 10'. It was not clear if this was a condition of the use variance or just a comment at the time. While the material storage piles are not part of the application, it was a part of the approved use variance that the Board is being asked to modify. Dan Melville asked if this would need Planning Board approval also. Dennis Scibetta stated the applicant may be required to go back to the Planning Board with regards to the use variance and the height of the piles but not for the variances. Stephen Shelley is concerned with modifying the use variance; if the Board modifies the use variance would the current criteria kick in, which will complicate the problem because there is so much more criteria meet. Maybe the setback could be looked at as an area variance instead of modifying the use variance.

Public Comment:

Rick Lupinetti, Hilton Parma Corners Road, noted that he attended the meeting two years ago when Mr. Christ was looking to expand the building. He is worried about oil leaching into the creek. He has concerns about this expanding further; only so much equipment can fit. In the 80's this was supposed to be a small family business. He is opposed to the sign; his dad had a business for 30 years and never had a sign. A small address sign he could understand. He is worried this will bring additional car and truck traffic. He came to the Board two years ago to add an addition to the original building, why does he already need more room. He is concerned with the environmental impact and would like copies of the environmental paperwork from the DEC showing that they are inspecting the property. He was told he could FOIL the DEC for those reports. He is also concerned that with more expansion there will be more business and he feels the business has gotten way to big. He feels that the applicant was not complying with the existing variance and he should comply with that before he gets another one.

Cindy Lupinetti, Hilton Parma Corners Road, she is also concerned with the piles. Acting Chairperson Thomas noted that the Board is not here to deal with the piles; the Board is charged to deal with the three requested variances. She asked if the applicant recycles the tires. Mr. Christ said that they had a large truck take out load in the last month; they are working on it.

Joe Indovia, Hilton Parma Corners Road. He is directly across the street from the property and hears truck noise all the time on the road. He is concerned with whether a commercial business fits under the Agricultural/Conservation Zoning District. He has no issue with the pre-existing business and building that is there but now he is asking for something more and bigger. He expressed that Mr. Christ has never come to him as a neighbor to discuss any of this and he wants to make sure that this is done right. Acting Chairperson Thomas feels that the Board may need legal counsel present to work through this action. Mr. Scibetta understands that the Code does not state a commercial business is allowed here but the use variance approved in 1983 gave him the ability to have this business here; at one time the paving and landscaping business were considered agricultural uses.

Michael Wyant, Burritt Road, asked about the width of the driveway and the size of the property. The driveway width is 20' and the lot is 5.75 acres.

Public Hearing: Closed

Acting Chairperson Thomas stated that this application has some very unique characteristics and the Board always runs the risk of setting a precedent and the Board needs specific information and reasons to approve any application. He is uncomfortable modifying a use variance.

Stephen Shelley feels that if they are modifying a use variance the Board should have to use the current rules. He would like to confirm with the attorney if this can be considered an area variance instead. Acting Chairperson Thomas felt it would be more advantageous to have a full Board present. The Board is leaning towards tabling this and would like legal counsel; they are pro-business but they want to do it right. There was talk in the past about having an attorney present at all meetings and these applications are why.

Mr. Christ asked if he would have to wait on approval for the sign. Acting Chairperson Thomas would like to keep the application together and not separate out the actions.

A **Motion** was made by Stephen Shelley to **table** application of Robert Christ, owner, for 3 area variances at 1060 Hilton Parma Corners Road, as well as modification of the existing use variance to the March 2020 Zoning Board of Appeals meeting to allow the Town to get further information regarding modifying the use variance or whether this can be done by an area variance.

Seconded by Dan Melville. **Motion carried to table (3-0)** (Ayes: Dan Melville, Stephen Shelley, Tim Thomas: **Excused**: Veronica Robillard, Dean Snyder, Corinne Zajac).

TABLED SPECIAL PERMIT RENEWALS

3. KAREN LEONARDI – 1110 OGDEN PARMA TOWN LINE ROAD

Application of Karen Leonardi, owner, for renewal of a Special Permit at 1110 Ogden Parma Town Line Road for an accessory apartment used as an in-law residence in accordance with Town Zoning Article 9, subsection 165-76. This property is currently zoned Medium Density Residential (MD) which allows this use with a Special Permit.

A letter was provided to the Board from Karen Leonardi explaining that she is unable to attend the meeting in February for her Special Permit and that she should be able to make the March meeting or send her husband in her place. She works out of Town and does not have her March schedule yet. The Board felt that since this is already a year past due she should reapply for a new Special Permit.

After discussion, the Board is asking Mr. Fritz to send a Cease and Desist letter to Ms. Leonardi advising her that her Special Permit is null and void. If she would like to continue the use she will need to reapply for a Special Permit and if not she will have to prove to the Town that the space has unhindered access to the house.

4. CRAIG BRYCE – 645 MANITOU ROAD

Application of Craig Bryce, owner, for renewal of a Special Permit at 645 Manitou Road, pursuant to Town Zoning Article 9, subsection 165-79.1 (Home Businesses), to allow the outside storage of eight pieces of construction equipment and the repair of the equipment in the existing garage. This property is currently zoned Rural Residential (RR).

Mr. Scibetta stated that the application was picked up for signature but that Mr. Bryce is currently still in Florida and has not signed yet.

A **Motion** was made by Dan Melville to **table** the application of Craig Bryce, owner, for renewal of a Special Permit at 645 Manitou Road to the March 2020 Zoning Board of Appeals meeting pending the signature of the property owner on the Special Permit Renewal Form. If this is not completed by the next meeting the Special Permit will become null and void. There will be no further extensions.

Seconded by Stephen Shelley. **Motion carried to table (3-0) (Ayes:** Dan Melville, Stephen Shelley, Tim Thomas: **Excused:** Veronica Robillard, Dean Snyder, Corinne Zajac).

SPECIAL PERMIT RENEWALS

5. RICHARD FERRETT – 5570 RIDGE ROAD

Application was received from Richard Ferrett, owner, for renewal of a Special Permit to allow the display and sale of 55 vehicles, as well as motorcycle sales and repair at 5570 Ridge Road West. This property is currently zoned Highway Commercial (HC) which allows this use with a Special Permit.

Art Fritz submitted a letter to the Board stating that he inspected the property on February 14, 2020 regarding the conditions of the Special Permit and there were no violations at the time of inspection. The Special Permit use has not changed and there are no complaints in the file.

A **motion** was made by Stephen Shelley to **approve** the application of Richard Ferrett, owner of 5570 Ridge Road West, for renewal of a Special Permit to operate sales and service business for motor vehicles out of a rear one-story building and to operate sales of motorcycles in the front building with service and storage of motorcycles on the lower floor of the same structure. This property is currently zoned highway commercial (HC) which allows this use with a special permit. Approval with the following original conditions:

1. No more than 30 cars to be displayed for sale.
2. No on-street parking. There must be adequate space for customer parking.
3. Exit and entrance driveways are to be provided.
4. All repairs to be performed within the existing structure, not outside.
5. Hours of operation: Monday through Sunday, 7 am to 8 pm.
6. Signs to conform to current zoning.
7. Lighting to be directed away from the road.
8. Renewable March 2022.

Seconded by Dan Melville. **Motion carried to approved (3-0) (Ayes:** Dan Melville, Stephen Shelley, Tim Thomas; **Excused:** Veronica Robillard, Dean Snyder, Corrine Zajac).

6. VICTOR ROBINSON – 413 TRIMMER ROAD

The application of Victor Robinson, owner, for renewal of a Special Permit for an accessory apartment at 413 Trimmer Road. This property is currently zoned Medium Residential (MD) which allows this use with a Special Permit.

Art Fritz submitted a letter to the Board stating that he inspected the property on February 14, 2020 regarding the conditions of the Special Permit and there were no violations at the time of inspection. The Special Permit use has not changed and there are no complaints in the file.

A **Motion** was made by Dan Melville to **approve** the application of Victor Robinson, owner, for renewal of a Special Permit at 413 Trimmer Road for an accessory apartment in accordance with Town Zoning Article 9, subsection 165-76. The accessory apartment will be occupied by Victor Robinson. This property is currently zoned Medium Density Residential (MD) which allows this use with a Special Permit. This Special Permit is renewable in May 2022.

Seconded by Stephen Shelley. **Motion carried to approved (3-0) (Ayes:** Dan Melville, Stephen Shelley, Tim Thomas; **Excused:** Veronica Robillard, Dean Snyder, Corrine Zajac)

7. GOOD NEWS COMMUNITY CHURCH – 4797 RIDGE ROAD

Application was received from Good News Community Church, owner, for renewal of a Special Permit at 4797 Ridge Road West to operate a church. Article 5.3.D.2 requires a Special Permit to operate a church in a Medium Density Residential (MD) district.

Art Fritz submitted a letter to the Board stating that per the Fire Marshal, Dennis Scibetta, the annual Fire Safety Inspection has been completed and there were no violations cited. There were no complaints in the file.

The minutes provided to the Board were from 2015; however, this was renewed in 2018 and those minutes were not received by the Board. The 2018 minutes revealed this was to be renewed in March 2019, making this a year overdue. There have been issues in the past trying to get the applicants to renew on time and trying to complete inspections so that is why it was only renewed for one year in 2018.

Following discussion, A **Motion** was made by Stephen Shelley to **table** the application of Good News Community Church, 4797 Ridge Road West, for renewal of a Special Permit to operate a Church to the March 2020 meeting. The Board is requesting the applicant and Mr. Fritz attend the March meeting. There will be no further extensions for this Special Permit.

Seconded by Dan Melville . **Motion carried to table (3-0)** (Ayes: Dan Melville, Stephen Shelley, Tim Thomas; **Excused:** Veronica Robillard, Dean Snyder, Corrine Zajac)

MINUTES OF JANUARY 16, 2020

The ZBOA minutes of January 16, 2020 were reviewed. **Motion** was made by Stephen Shelley to approve the January 16, 2020 minutes as amended. **Seconded** by Dan Melville.

Motion carried to approved (3-0) (Ayes: Dan Melville, Stephen Shelley, Tim Thomas; **Excused:** Veronica Robillard, Dean Snyder, Corrine Zajac).

ADJOURNMENT

There being no further business, a **Motion** was made by Stephen Shelley, **seconded** by Dan Melville to adjourn the meeting at 8:50 p.m. **Motion carried to approved (3-0)** (Ayes: Dan Melville, Stephen Shelley, Tim Thomas; **Excused:** Veronica Robillard, Dean Snyder, Corinne Zajac).

Respectfully submitted,

Carrie Fracassi
Recording Secretary