

**TOWN OF PARMA  
ZONING BOARD OF APPEALS  
MAY 15, 2008**

**Members Present:** Patrick Buskey (arrived at 8:45 p.m.)  
Veronica Robillard  
Stephen Shelley  
Dean Snyder  
Tim Thomas

**Members Excused:** Carm Carmestro (Board Liaison), Mark Kalen (Alternate)

**Others Present:** Bob Prince

**Public Present:** See attached sheet

The meeting was called to Order by Chairperson, Veronica Robillard, at 7:04 p.m. She explained the function of the ZBOA and the decision-making process. She stated that this is a five-member board, with one Board member absent. She explained that a quorum of three is required to pass a motion. Chairperson Robillard offered hearing aid devices for anyone who required them.

**TABLED PUBLIC HEARING**

**1. GATTI ENTERPRISES, LLC – 5017 RIDGE ROAD WEST**

Application of Gatti Enterprises, LLC, owner, for an area variance at 5017 Ridge Road West. Applicant is proposing to develop site, construct a 7,920 square feet commercial building and create 39 parking spaces and is requesting relief from Town Zoning schedule 2 which requires 60 spaces. This property is currently zoned General Commercial (GC).

Chairperson Robillard recalled that this application was tabled at the March and April meetings to allow the Planning Board to provide their feedback.

Bob Prince provided a copy of a letter addressed to Jack Barton, dated May 2, 2008, from John Sciarabba, of Land Tech. This letter requested that their application be withdrawn. He explained that revisions to the current site plan have negated the need for a variance.

**NEW PUBLIC HEARINGS**

**2. BRYAN BOSCIA – 69 DEAN ROAD**

Application of Bryan Boscia, owner, for area variances at 69 Dean Road. The applicant is requesting relief for the following existing structures: a 6 feet high privacy fence on the north side of the home with a side setback of 2.3 feet; a 6 feet high privacy fence along the southerly property line with a side setback of 0.1 feet; a privacy fence for the pool enclosure with a side setback from the southerly property line of 4.3 feet; a covered storage area with a side setback from the southerly property line of 4.3 feet; a 6.9 feet by 5.1 feet shed with a side setback from the southerly property line of 1 foot; a bump out of the garage with a side setback from the southerly property line of 9 feet. The applicant is requesting relief from the following: Town Zoning Article 16, subsection 165-128.B.2, which states, in part, that privacy fences are for the express purpose of enclosing or screening a pool or patio area; 165-128.A.6, which requires the finished or decorative side of the fence to face away from the applicant's yard; Schedule 1 which requires a minimum side setback of 10 feet for the privacy fences and all structures. This property is currently zoned Rural Residential (RR).

Bryan explained that when they purchased this property in October, all these non-conforming situations were pre-existing. They were informed that the shed area for the pool was not compliant about a day before the closing for the purchase of this house. Since that time, they have learned that they are in violation for all of the items listed in their application. Bryan stated he spoke with the neighbors, who informed him they had no problem with the current situation and could not identify any safety issues or environmental issues. Bryan stated that most of the violations are aesthetic. He noted that the fence is in need for repair and they are planning to repair it, but are not in a financial position to do so right now. Jennifer Boscia explained that Bryan's income has decreased since they purchased the house. Bryan and Jennifer explained their need for each variance, as follows:

- 6 feet high privacy fence on the north side of the home with a side setback of 2.3 feet: Jennifer explained that the previous owner put this fence up years ago to provide privacy for the daughter's bedroom. This fence does provide privacy for their bedroom. Bob Prince noted there is no record of a building permit for this fence. He explained that a 4' high fence can go right on the property line or landscaping shrubs, such as arborvitae, could be used to provide privacy which does not require a variance.
- 6' x 32' southerly property line fence with a side setback of .1 feet: Bryan stated this is not around a pool and not around a patio. This is not a necessity but does provide privacy. Bryan estimated they could remove this fence within 60 days if required. It was explained that this fence is not in line with other properties in the town. The property is not unique, and this would set precedence.
- Privacy fence for the pool enclosure with a side setback from the southerly property line of 4.3 feet: Jennifer explained that a planter box and established trees prevents moving this fence. She explained this provides a safety fence for the pool. Bob Prince stated there was a building permit for the fence at 10 feet from the pool. Jennifer stated it would be a financial hardship for them to repair the fence. She stated that it would be very difficult to move this fence to a 10 feet side setback because of the concrete around the pool. It was noted that the good side of the fence is facing towards the pool, not facing outward. Jennifer suggested that she could plant vegetation to hide the fence on the outside. It was suggested that moving the fence 3 feet to the north would bring it closer to 10 feet. The offset is appropriate and the location is appropriate. The outside of the fence needs to be better looking to the neighbors, perhaps with vegetation.
- Covered storage area with a side setback from the southerly property line of 4.3 feet: Bryan stated this shed was made out of the fence. They use it to store their lawnmower and yard equipment. It was noted that the 6 feet high fence hides this structure. If it were moved into compliance, it would be more visible.
- 6.9 x 5.1 feet shed with a side setback from the southerly property line of 1 foot: Bryan explained that they would have to hire someone to move this shed. It is used to store pool equipment and chemicals. Bob Prince stated there was no building permit issued for this shed and they would have to make changes to have it comply with fire regulations. Bryan stated there is no electricity in this shed. It was noted that with the removal of the hot tub, there will be an opportunity to move this shed closer to compliance. Moving it 3.3 feet inside the stockade fence would be more desirable.
- Bump out of the garage with a side setback from the southerly property line of 9 feet: Bryan stated this is part of the garage and he thought it may be part of the original structure. Bob Prince reported that the permit for the garage does not indicate a bump out. Bryan noted that there is a concrete pad in this bump out. He explained he uses it for tool storage. Metal pipes set into the concrete hold a shelf for a work area.

Bryan stated that the north fence is newer with the remainder of the fence old and in need of repair. The fence around the pool would need to be partially replaced if moved. Jennifer stated they would be willing to bring the pool fence down to 4 feet.

**Public Comment:**

**Don Carpenter - 384 Wilder Road:** Stated he felt the Board should consider that these violations have been in existence for a long time. He questioned what the zoning laws were when these were created. Chairperson Robillard explained that none of these structures were built with a building permit; therefore, it would be speculative to guess at what time they were created. Bryan asked if it would be helpful to ask the neighbors how long the fence has been there. He stated that the variance is not hurting anyone and none of the neighbors object. Chairperson Robillard explained that these variances go with the property and this house or the neighbors' homes may be sold in the future.

The public hearing was closed.

**Board Discussion:** Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Bob Prince reported this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Dean Snyder concerning the application of Bryan Boscia, owner, for area variances at 69 Dean Road. The applicant is requesting relief for the following existing structures:

- 1) A 6 feet high privacy fence on the north side of the home with a side setback of 2.3 feet. This portion of the application is **denied**. In making this determination to deny, the benefit can be achieved by other means feasible to the applicant. The fence could be replaced with shrubbery to provide privacy. I do believe that this will cause an undesirable change in the neighborhood character or to nearby properties. The request is substantial. It will not have any adverse physical or environmental effects. The request is not self-created because it was existing when the applicant purchased the property. Using the balancing test, the benefit to the applicant is outweighed by the detriment to the health, safety and welfare of the community.
- 2) A 6 feet high privacy fence along the southerly property line with a side setback of 0.1 feet This portion of the application is **denied**. In making this determination to deny, the benefit can be achieved by other means feasible to the applicant. If the applicant requires a fence on this property line, it can be a 4 feet high fence in the same location. A 6 feet high fence will cause an undesirable change in the neighborhood character or to nearby properties. The request is substantial. It will have an adverse physical effect. The difficulty is not self-created because it was existing when the applicant purchased the property, but using the balancing test, the benefit to the applicant is outweighed by the detriment to the health, safety and welfare of the community.
- 3) A privacy fence for the pool enclosure with a side setback from the southerly property line of 4.3 feet. This portion of the application is **approved**. In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. Although it would be possible to move that portion of the fence into compliance, it would require elimination of existing shrubbery and a concrete patio area around the pool. That portion of the fence provides privacy from the neighbors. It is substantial. There will be no adverse physical or environment effects. The alleged difficulty is not self-created because it was existing when the applicant purchased the property. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.
- 4) A covered storage area with a side setback from the southerly property line of 4.3 feet. This portion of the application is **approved**. The benefit can be achieved by other means feasible to the applicant. The storage shed could be located in another area of the property, but because of the existing privacy fence, this covered storage

area causes no adverse effect because it is hidden by the 6' high privacy fence. There will be no undesirable change in the neighborhood character or to nearby properties because the storage area is contained in the 6 feet high privacy fence. It is substantial. There will be no adverse physical or environmental impact. The difficulty is not self-created because it was existing when the applicant purchased the property. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

- 5) A 6.9 feet by 5.1 feet shed with a side setback from the southerly property line of 1 foot. This portion of the application is **approved with modification**. The side setback from the southerly property line is approved at 4.3 feet. At the 4.3 feet setback, that portion of the shed will be in line with the 6' high fence and will minimally impact the neighboring property. The benefit can be achieved and will be incorporated into this motion. There will be no undesirable change in neighborhood character or to nearby properties. In fact, by changing the setback from 1 foot to 4.3 feet, it is an improvement. The request is substantial. There be no adverse physical or environmental impact. The alleged difficulty is not self-created because it was existing when the applicant purchased the property. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.
- 6) A bump out of the garage with a side setback from the southerly property line of 9 feet. This portion of the application is **approved**. In making this determination to approve, the benefit can not be easily achieved by the applicant. There will be no undesirable change in neighborhood character or to nearby properties. The request is not substantial. This is a 1 foot variance and from neighboring properties it would be difficult to see the difference between a 9 feet and 10 feet setback. There will be no adverse physical or environmental effects. The difficulty is not self-created because it was existing when the applicant purchased the property. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare to the community.

This Motion grants relief from the following:

- 7) Town Zoning Article 16, subsection 165-128.B.2, which states, in part, that privacy fences are for the express purpose of enclosing or screening a pool or patio area. This portion of the application is **approved**.
- 8) Subsection 165-128.A.6, which requires the finished or decorative side of the fence to face away from the applicant's yard. This portion of the application is **approved with the following condition**: whenever the fence is repaired or replaced, that this portion of the fence have the decorative side face away from the applicant's yard. The benefit can not be achieved by other means feasible to the applicant. There will be no undesirable change in neighborhood character or to nearby properties. In fact, when this fence is replaced, it will improve the character of the neighborhood. The request is substantial. There will be no adverse physical or environmental impact. The request is not self-created because it was existing when the applicant purchased the property. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.
- 9) Schedule 1 which requires a minimum side setback of 10 feet for the privacy fences and all structures. This portion of the application is **approved**.

Seconded by Tim Thomas. **Motion carried (4-0)** (Ayes: Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas; Absent: Patrick Buskey)

Chairperson Robillard asked the Board why they voted to modify this application:

Dean Snyder: stated his motion explains his reasons.

Stephen Shelley: The 6' fence and setbacks are too substantial to allow.

Tim Thomas: No reasonable justification for the north fence and there are other viable options. There is no justification for the fence on the south and other options are feasible.

Chairperson Robillard: Other options for resolution are feasible. The alternatives would satisfy their needs. There are feasible alternatives for the south fence to meet their needs.

A 10 minutes recess was called at 8:40 p.m. Board Member Patrick Buskey arrived at 8:45 p.m.

### 3. RANDY DEVOS – 450 MOUL ROAD

Application of Randy DeVos, owner, for an area variance at 450 Moul Road. The applicant is proposing to construct an accessory storage structure prior to constructing a single family dwelling and is requesting relief from Town Zoning Article 5, subsection 165-31.C.2, which requires a principal structure (home) first. This property is currently zoned Agricultural Conservation (AC).

Randy stated he purchased this property with the intention of building a house. He stated he would like to build a secondary structure to secure the site and equipment during construction of the primary structure. This home will be built within two years, by May of 2010. The primary structure will be started in the spring of 2009.

Chairperson Robillard asked Randy if he had any intention of living on the property prior to the home being finished. Randy replied that this secondary structure will not be used for living space, only equipment. The size will be under 24' x 40'. Randy stated they are in the process of selling their current home. Tim Thomas noted that if for some reason the home is not built, this secondary structure would have to come down.

**Public Comment:** None. The public hearing was closed.

**Board Discussion:** Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Bob Prince reported this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of Randy DeVos, owner, for an area variance at 450 Moul Road to construct an accessory storage structure prior to constructing a single family dwelling and this grants relief from Town Zoning Article 5, subsection 165-31.C.2, which requires a principal structure (home) first. This property is currently zoned Agricultural Conservation (AC). This approval is with the condition that the commencement of the principal structure take place on or before June 1, 2009 with completion on or before June, 2010, in this owner-builder situation. In making this determination to approve, I believe the benefit can not be achieved by other means feasible to the applicant. The accessory structure is needed in this owner-builder situation to provide a safe and secure area during construction for equipment. There will be no undesirable change in the neighborhood character or to nearby properties. The request is substantial only in that this is not allowed but there are more than adequate plans. There will be a principal structure completed by 2010. There will be no adverse physical or environmental effects. The alleged difficulty is self-created, however, using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Stephen Shelley. **Motion unanimously carried (5-0)** (Ayes: Patrick Buskey, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

#### 4. DONALD CARPENTER – 384 WILDER ROAD

Application of Donald Carpenter, owner, for area variances at 384 Wilder Road. The applicant is proposing to erect 191 lineal feet of 6 feet high privacy fence at a 0 foot side setback from the westerly property line and is requesting relief from Town Zoning chapter 16, subsection 165-28.B.2, which states, in part, that privacy fences may be permitted for the express purpose of enclosing or screening a pool or patio area and schedule 1, which requires a 10 feet side setback. Applicant is also requesting relief from subsection 165-128.A.2, which does not allow closed fences between the front setback line and the highway right of way. This property is currently zoned High Density Residential (HD).

Don explained that his need for a variance is based on a quality of life and privacy issues. He described an existing 20 feet high hedge which goes along the entire length of where he wants to put up the fence. This hedge is dense but the new neighbors have been trimming the hedge and he is concerned that it will die. He noted that part of this hedge is on his property. He described the 6 feet high privacy fence which will be placed east of the hedge towards his house. The fence will be invisible to anyone else but him, with the existing hedge in place. He would bring the fence in to .9 to keep the hedge in place in the front where it is on his property. He stated that the traffic along Manitou Road is very noisy and the back portion of his property is the only place his family can enjoy quiet. He recalled some vandalism and people who cut through his yard. This fence will prevent this. He noted that the neighbor uses a chainsaw on a regular basis. He stated his opinion that this fence will provide a sound barrier to this noise. He explained that this fence will not be detrimental to the neighborhood or create an undesirable change. With the existing hedge, the fence will be almost invisible. He stated there is no other way to achieve privacy and a sound barrier. Although this fence will be self-created, it will not create an adverse environmental effect. Whether it is substantial, is an objective opinion.

**Public Comment:** None. The public hearing was closed.

**Board Discussion:** Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Bob Prince reported this is a Type II SEQR with no further action required. Bob Prince described his concern for blocked visibility when backing out of the driveway when the fence is put up. The hedge already blocks the view. Don noted that he uses a turn-around so they do not have to back out of the driveway.

Following discussion, a **Motion** was made by Tim Thomas to deny the application of Donald Carpenter, owner, for area variances at 384 Wilder Road to erect 191 lineal feet of 6 feet high privacy fence at a 0 foot side setback from the westerly property line and to deny relief from Town Zoning chapter 16, subsection 165-28.B.2, which states, in part, that privacy fences may be permitted for the express purpose of enclosing or screening a pool or patio area and schedule 1, which requires a 10 feet side setback. This also denies relief from subsection 165-128.A.2, which does not allow closed fences between the front setback line and the highway right of way. This property is currently zoned High Density Residential (HD). In making this determination to deny, the benefit can be achieved by other means. We discussed some of these alternatives. It will create an undesirable change in this high density residential district and this would change the character. The request is substantial. The request would have a physical effect by impairing the line of sight and visual landscape. It would have no environmental effect. The alleged difficulty is self-created. Using the balancing test, the benefit to the applicant does not outweigh the detriment to the health, safety and welfare of the community and thus justifies this denial. Seconded by Stephen Shelley. **Motion unanimously carried to deny (5-0)** (Ayes: Patrick Buskey, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

Chairperson Robillard asked the Board to explain their reason for denying this application:

Dean Snyder: The applicant needs to accept agricultural sounds in this country setting. A 4' high fence with shrubs would provide visual and access barriers. A 6' high privacy fence would be more visible as the hedge dies off, according to the applicant.

Patrick Buskey: I believe there are other alternatives available. There is already a significant deviation from zoning. I do not believe a 6' high fence would relieve the noise of a chainsaw or stop access to his property. With a corner lot on two busy streets there is going to be noise. This is self-created.

Stephen Shelley: I confer with the other Board members. The benefit can be achieved by other means by using shrubs and a smaller fence or changing the variety of the hedge. Approval would have created an undesirable change in neighborhood character and to nearby properties. The request is substantial. A 6' high fence all the way to the right-of-way where zoning doesn't even allow a 4' high fence is unjustified. Installing a solid fence would eventually kill the existing hedge. The difficulty is self-created in that the owner purchased his house on this corner lot on two busy streets.

Tim Thomas: Stated his motion explains his reasons.

Chairperson Robillard: Other feasible means, options or alternatives are possible to satisfy the applicant's needs. One option is to use 4' fencing and additional shrubbery.

### SPECIAL PERMIT RENEWALS

#### 5. THERESA TROYER – 899 PECK ROAD

Application was received from Theresa Troyer for renewal of a special permit to board up to 8 horses at 899 Peck Road.

Bob Prince reported no complaints on file. He reported that a recent inspection identified several violations which required updated fire extinguishers and removal of extension cords, which have been corrected.

Following discussion, a **Motion** was made by Stephen Shelley that the application of Theresa Troyer for a special permit at 899 Peck Road to board up to 8 horses be approved with the following stipulations:

1. A minimum of four parking spaces to be provided in front of the barn as close to the barn as possible and away from the road. These spaces are to be accessible and plowed free from snow.
2. Hours of operation: winter 8 am to 8 pm; summer 8 am to 9:30 pm, 7 days a week.
3. No outdoor storage of animal waste. Accumulation of manure will not exceed the standard set forth in ordinance 165-57.
4. Any additional lighting shall not shine over the property line.
5. No outdoor storage of feed.
6. No deceased animals buried on the property.
7. No dumpster permitted.
8. Any signage in accordance with Town ordinance and permits.
9. Subject to Fire Marshal inspection and approval.
10. Permit to be renewed February 2010, for a period of two years.

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

**6. THERESA TROYER – 893 PECK ROAD**

Application was received from Theresa Troyer, 893 Peck Road, for renewal of a special permit to allow public boarding of up to 6 horses on the premises. This property contains 11.6 acres and is located in a rural residential zone.

Following discussion, a **Motion** was made by Stephen Shelley to approve the renewal of a special permit to allow Theresa Troyer to board up to 6 horses at 893 Peck Road with the following conditions:

1. Hours of operation to be 7 am to 9:30 pm in the summer, and 8 am to 6:30 pm in the wintertime.
2. No on-street parking.
3. Town of Parma Fire Marshal is notified for appropriate action.
4. To be renewed February 2010, for a period of two years.

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

**MINUTES OF APRIL 17, 2008**

The April 17, 2008 minutes were reviewed. There being no changes or additions, a **Motion** was made by Stephen Shelley to approve the April 17, 2008 minutes as submitted. Seconded by Tim Thomas. **Motion unanimously carried (5-0)** (Ayes: Patrick Buskey, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

**ADJOURNMENT**

There being no further business, a **Motion** was made by Stephen Shelley and seconded by Tim Thomas to Adjourn the meeting at 9:42 p.m. **Motion unanimously carried (5-0)** (Ayes: Patrick Buskey, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

Respectfully submitted,  
Diane Grundon, Recording Secretary