

**TOWN OF PARMA
ZONING BOARD OF APPEALS
MARCH 19, 2009**

Members Present: Veronica Robillard
Stephen Shelley
Dean Snyder
Tim Thomas
Jim Zollweg (alternate)

Members Excused: Tina Brown

Others Present: Jack Barton

Public Present: See attached list

The meeting was called to Order by Chairperson, Veronica Robillard, at 7:00 p.m. She explained the function of the ZBOA and the decision-making process. She noted that this is a five-member board, with one board member absent who previously heard the tabled applicant's request. 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 HEARINGS

1. 1220 HILTON PARMA CORNERS ROAD #1 AND 1220 HPCR #2, LLC

Application of 1220 HPCR #1, LLC and 1220 HPCR #2, LLC, owners, for 3 area variances at 1220 Hilton Parma Corners Road. Applicants are proposing to construct a 2,884 square feet addition on the south side of the existing building with a front setback of 61.9 feet from the Parma Center Road right-of-way, 8 parking spaces along Parma Center Road with a 17.4 feet setback and provide a total of 18 parking spaces for the property. Applicants are requesting relief from: (1) Town Zoning schedule 1, which requires buildings to have a front setback of 75 feet; (2) Article 16, subsection 165-125.A.9 which requires parking spaces be set back no less than 25 feet from the Parma Center Road right-of-way, and (3) schedule 2 which, based on building size, requires 44 parking spaces. This property is currently zoned Highway Commercial (HC).

Chairperson Robillard recalled that this application was tabled at the February meeting to allow the applicant additional time to consider the recommendations of the ZBOA as discussed at that meeting.

Mindy Zoghlin, attorney, stated she represented the applicants. She provided documentation of her presentation in a letter dated March 6, 2009, addressed to Lara Bedain, Esq, of Sercu & Sercu, which supported this application. She provided a history of the subject property and a description of the area, which is mixed residential and commercial. She provided a business history of the applicants, which included their major and minor automotive repair shop in Greece since 1975. She noted in the Greece location, they had 10,000 square feet of building space and 8 lifts, 5 empty stalls and 42 parking spaces. She explained that the applicants purchased the Parma property in order to downsize and relocate their business closer to their home. This property is zoned highway commercial, where automotive repair is permitted.

She recalled concerns expressed at the previous meeting regarding property maintenance. She explained that some vehicles will be left overnight, waiting for parts to complete repair work, but no situation will occur with dismantled vehicles or unsightly conditions of the property.

She referred to photographs that were intended to show the Greece location as being unsightly. She stated these photos were taken when Mike was in the process of moving. She felt that the location was not that unsightly. However, due to the extent that the Board has for visual concerns, she felt that the parking issue, with reduced parking, will actually keep the property looking better, as it would limit the number of cars.

She recalled that the original application heard in September of 2008 was tabled to give the applicant an opportunity to clarify the building design and visual impact on the neighborhood, and diagram of the interior layout sufficient to determine if the requested building dimension is required to meet the applicant's needs. The applicant requested additional tabling of this application due to pending changes in parking and for health reasons. In January, the applicant advised the ZBOA that he was unable to provide the information requested because of issues with the location of the building due to the septic system. The ZBOA then denied the applicant's request to continue tabling the application to the February meeting.

On January 27, 2009, a new application to construct an addition to the existing structure was made. The new application proposed the construction of a 2884 square foot addition on the south side of the existing building, farther away from the north and east lot lines than the initial application. The proposed addition consisted of a new building that would be approximately 66' x 42' which would be connected to the existing structure, with the two buildings sharing a common roofline and exterior façade. Proposed were 2 lifts in the existing structure and 3 or 4 lifts in the addition. Variances were sought for a 61.9 front setback and 8 parking spaces with a 17.4 setback. A total of 18 parking spaces were proposed, based on the size of the building. At the February ZBOA meeting, the Board tabled the application to allow the applicant time to provide an alternative plan that would better comply with zoning.

Mrs. Zoghlin reported that after further evaluation, the applicant has decided not to offer an alternative plan and wishes to proceed based on the January 2009 application. She stated that the application should be granted because the applicant is entitled to the area variances requested under New York Town Law and the Parma Zoning Code.

Mike Colakoglu reviewed the sketch of the interior of the building, comparing how it would look if they complied with zoning. He noted if they complied with zoning, it would be impossible to provide enough room in the building to accommodate a 42 feet long flat bed truck, which is necessary for his business. He stated they considered having the lifts going west to east, but the building is not wide enough. He stated this plan is the best possible use of the property.

Chairperson Robillard asked if they anticipated all parking spaces being utilized for cars waiting for parts, which would force customers to park on the road. Mrs. Zoghlin replied that the analysis of the projected business and the required parking spaces in proportion to this business, the requested amount of parking should be more than adequate. They base this on more than 30 years of experience. Mike stated that most cars are dropped off. Customers do not wait because it takes 1-2 days for a transmission to be replaced. They also do other small engine work, such as oil changes, which might result in customer's waiting. He stated they do sell tires and do NYS inspections, replace batteries, etc. Mike stated they do not do body work. Tim Thomas suggested that some parking spaces be designated for customer parking only. Dean Snyder expressed his concern about parking at the previous business versus the proposed.

Chairperson Robillard asked about waste disposal. Mike stated that NYS regulates waste material and they will fully comply using a waste management company.

Mrs. Zoghlin noted that the property has a deed restriction preventing many other uses.

Public Comment:

Doug Flood – 1215 Hilton Parma Corners Road: Stated the intersection of Rt. 259 and Parma Corners Road is a key intersection and he stated he would like to keep the small town appearance. He stated he wanted to see something new. Based on the current addition, 44 parking spaces are required and the applicant requests to reduce parking by 40% to 18. He noted that 15 to 20 unlicensed vehicles were on the property in Greece. He stated he took pictures of the Greece property on more than one occasion. Historically, every time he visited the site, a large number of unlicensed vehicles were there plus people dropping off unlicensed vehicles in Tops parking lot. If this business has numerous vehicles on the property and looks commercial, it would ruin the look of the Town. He stated he is interested in seeing that corner developed in a way that would be attractive to the town. He questioned that this business will provide that.

Dean Snyder questioned Doug if he has any plans for his property that surrounds this corner property. Doug replied he doesn't at the current time have any plans for this vacant land.

Mike asked Doug whether or not the land he owns is maintained. Doug stated that neighbors consistently put garbage on his property. He stated he does not maintain it.

Dean Snyder referred to the photographs provided by Mr. Flood. He asked if the ZEO officer of Greece had any issues with the cars on this property. Mike stated he did receive a summons for the vehicles on his property in Greece, and complied with the summons. Mike noted it was in the middle of winter and he did not get the problem cited resolved until June. Nancy Colakoglu recalled that they received the summons and then got hit with a snowstorm. She stated that they were in the process of moving then, which was in 2008. She stated they explained the reason for the vehicles and they cleaned the property up. Dean Snyder stated that this was in 2007. She stated it took three 3 years to move. Dean Snyder noted it took them 5 months to comply to the summons. Chairperson Robillard asked why there are unlicensed cars on the property. Mike explained that cars are purchased and repaired and then sold without being licensed. Mike explained that some cars will be parked outside waiting for repairs, maybe 7 or 8 at a time. There won't be any junk cars.

Mrs. Zoghlin noted that parking issues will be addressed by the planning board and monitoring of unlicensed vehicles on the property is a zoning enforcement issue.

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. Jack Barton 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 1220 HPCR #1, LLC and 1220 HPCR #2, LLC, owners, for 3 area variances at 1220 Hilton Parma Corners Road to construct a 2,884 square feet addition on the south side of the existing building with a front setback of 61.9 feet from the Parma Center Road right-of-way, 8 parking spaces along Parma Center Road with a 17.4 feet setback and provide a total of 18 parking spaces for the property. This grants relief from: (1) Town Zoning schedule 1, which requires buildings to have a front setback of 75 feet; (2) Article 16, subsection 165-125.A.9 which requires parking spaces be set back no less than 25 feet from the Parma Center Road right-of-way, and (3) schedule 2 which, based on building size, requires 44 parking spaces. This property is currently zoned Highway Commercial (HC).

In making this determination to approve all three variances:

- I believe the benefit cannot be achieved by other means feasible to the applicant. The applicant, to my satisfaction, has determined that the setback for the building is needed to access vehicles around the lifts. This is a substandard lot and a larger building is needed for passenger vehicles and larger trucks. The parking space setback is negligible when compared to other businesses in the area. 44 parking spaces are required and the proposed number is 18. The limited parking will make it more feasible for the Town of Parma in being able to monitor this property and reduce the risk of cars being repaired and stored outside.
- There will be no undesirable change in neighborhood character or to nearby properties. This is a substandard lot. Upon completion, there still will be only a 12% lot coverage in a HC district. This property has been in a disorderly, messy shape since 2003 and this will be a welcome change to that corner. Sensitive use restrictions on this property do rule out other opportunities for development of this property.
- The request is substantial. All three variances are substantial, as they pertain to how the code is written. The setbacks are substantial but not out of character with neighboring residential properties. The variance for the number of parking spaces is substantial but having fewer parking spaces is more feasible to the applicant and the Town. The location of the septic system limits the number of parking spaces.

The alleged difficulty is self-created but mitigated due to this substandard lot and that in order to conduct this type of business, the building needs to be the size proposed. 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 approved (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown)

NEW PUBLIC HEARINGS

2. KRISTOPHER OAKS – 202 HINKLEYVILLE ROAD

Application of Kristopher Oaks, owner, for an appeal at 202 Hinkleyville Road. Pursuant to Town Zoning Article 4, subsection 165-19.B, which states, in part, that the Zoning Board of Appeals shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative officer or body in the enforcement of this chapter. The owner has proposed a detached garage that is larger than the principal building (home). The Building Department has determined that the proposed structure does not comply with current zoning regulations. The owner is requesting an appeal of this determination. This property is currently zoned Medium Density Residential (MD).

Chairperson Robillard reported that Mr. Oaks has requested a review of the Building Department's determination and the Motion made in December, 2008 that Mr. Oaks' proposed structure does not comply with current zoning regulations. Chairperson Robillard asked the applicant to share with the Board his reasoning behind this request.

Kristopher provided a handout on how he derived his interpretation. He referred to zoning subsection 165-17.B, which defines an accessory building or structure as a term applied to a building which:

- A. Is customarily incidental and subordinate to and services a principal building;
- B. Is subordinate in area, extent or purpose to the principal building served;
- C. Contributes to the comfort, convenience or necessity of occupants of the principal building use; and
- D. Is located on the same parcel as the principal building.

Kristopher stated his opinion that his proposed structure should be allowed, based on "B" because it is subordinate in purpose to his primary structure. He stated the use of the word "or" indicates

that subordinate in area or extent does not need to apply also. He referred to his documentation that explains that his proposed structure would be subordinate in purpose.

Dean Snyder stated that this proposed structure should be considered a garage, as the principal building does not have a garage and the definition of a private garage in subsection 165-17 is “an accessory building which provides for the storage of motor vehicles or household items by the occupants on the lot on which it is erected, with no provision for repairing or servicing such vehicles for profit.” He stated it is subjective that the Building Department feels the size should be smaller than the principal structure.

It was noted that the applicant requested a garage when he filled out the building permit. Discussion was held that an accessory structure is requested when storage of much larger household items and vehicles is needed. Discussion was held on whether this structure is truly a garage, with items listed for storage included two pickup trucks, an enclosed trailer, backhoe and snowmobile. Kristopher responded that the primary structure is his house and the secondary purpose of the proposed building will be to store personal belongings. He explained he uses the backhoe for work in his yard. He stated his belief that this purpose is subordinate and falls under the definition of an accessory structure.

Bob Prince explained that the Building Department does not ask what is going to be stored in a garage when a building permit is issued, only what they are building. He did not recall any garage being approved in the past for a building permit that was larger than the principal structure without going to the Zoning Board. Dean Snyder recalled that the Zoning Board has approved accessory structures that are larger than the principal structure. The applicant now states it is a garage, but considering the items being stored, it makes it look more like an accessory structure.

Dean Snyder stated that after reviewing this application, the application for the proposed garage should be denied due to inappropriate use of the proposed structure. He has plans for a detached building but misrepresented this as a garage because of his interpretation of article 165.17. He plans a 2,268 square foot garage to store large items such as a backhoe and enclosed trailer. A private garage is a subset of an accessory building and based on the size and proposed storage use, it is more like an accessory building than a detached garage. Jim Zollweg noted that in the Town of Parma, this proposed structure does not look like a garage, but like an accessory structure. Tim Thomas stated that this garage structure does not comply with the definition of a garage. It is an accessory structure.

The board has determined that the proposed structure, since the size and use of the proposed garage does not fall into the category of a garage, it is an accessory structure. It was the consensus that the applicant misrepresented this structure as a garage, based on use.

Following discussion, a **Motion** was made by Dean Snyder to uphold the motion made at the February 19, 2009 ZBOA meeting to deny the application of Kristopher Oaks, owner, for an area variance at 202 Hinkleyville Road to construct a 2,268 square foot detached garage which denied relief from Town Zoning which states by definition that accessory structures shall be subordinate in area to the principal building, which is 1,562 square feet. The Zoning Board determined that the proposed structure does not comply with current zoning regulations. The ZBOA agrees with the applicant that the proposed structure is an accessory building but they disagree that it is a garage. The applicant has proposed plans for a proposed building structure but has misrepresented the application as a garage, per definition. The applicant requests a 2,268 square foot building to store items such as a backhoe and trailer and these fall into the definition of an accessory structure. Seconded by Tim Thomas **Motion unanimously approved (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown)

SPECIAL PERMIT RENEWALS

3. RICHARD FERRETT – 5570 RIDGE ROAD WEST

Application was received from Richard Ferrett, 5570 Ridge Road West, for renewal of a special permit to allow the display and sale of 55 vehicles, as well as motorcycle sales and repair.

Jack Barton reported no complaints on file and there were no violations reported of the special permit.

A **Motion** was made by Tim Thomas to approve the application of Richard Ferrett, 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:

- No more than 55 cars for sale at one time and this includes the entire property.
- Adequate handicapped parking and customer parking, as determined by the planning board.
- Hours of operation: 9:00 am to 9:00 pm, Monday through Thursday; 9:00 am to 6:00 pm Friday and Saturday; 12 noon to 5:00 pm on Sunday.
- No on-street parking.
- Existing lighting to be directional toward the building and not to face the road.
- Sign to be within zoning laws.
- Sales of automobiles and motorcycles only – no repairs, no dismantling of cars, no junk cars, no storage of automobiles not for sale.
- Annual inspection and approval by the fire marshal
- Proper disposal of oil and batteries, as per application.
- For a period of two years, renewable in March, 2011.

Seconded by Stephen Shelley. **Motion unanimously approved (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown)

4. JOHN AND CAROL VELTRE – 120 DUNBAR ROAD

Application was received from John and Carol Veltre, owners, for a special permit to allow an in-law accessory apartment at 120 Dunbar Road in the 654 square feet addition to the rear of their existing home. This property is currently zoned Medium Density Residential (MD) which allows this use with a Special Permit.

Jack Barton stated there were no complaints on file and no violations reported.

A **Motion** was made by Tim Thomas to approve the renewal of a special permit for John and Carol Veltre, owners, for a special permit to allow an in-law accessory apartment at 120 Dunbar Road to be compliant with zoning ordinance 165.76. This Special Permit is for two years, to be renewed in February of 2011. Seconded by Stephen Shelley **Motion unanimously approved (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown)

5. SALVATORE VIAPIANO – 983 MANITOU ROAD

Application was received from Salvatore Viapiano for renewal of a special permit to allow an accessory apartment at 983 Manitou Road for his mother.

Jack Barton reported no complaints on file and no violations.

A **Motion** was made by Stephen Shelley to approve the application from Salvatore Viapiano for renewal of a special permit to allow an accessory apartment at 983 Manitou Road for a period of two years, to be renewed January 2011, under the conditions of Zoning Ordinance 165.76.I. Seconded by Jim Zollweg. **Motion unanimously approved (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown)

MINUTES OF FEBRUARY 19, 2009

The February 19, 2009 ZBOA minutes were reviewed. The following changes were recommended: page 5, Para 4, change “He” to “She”; page 6, Para 1, line 6, change “He” to “It”; Para 6, line 6, change “..in by the owner,” she stated that the conversion...”; and change “now” to “not”. A **Motion** was made by Tim Thomas to approve the February 19, 2009 ZBOA meeting minutes as submitted. Seconded by Jim Zollweg. **Motion to approve (4-0)** (Ayes: Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Abstain: Veronica Robillard; Absent: Tina Brown)

ADJOURNMENT

There being no further business, a **Motion** was made by Stephen Shelley and seconded by Tim Thomas to Adjourn the meeting at 10:40 p.m. **Motion unanimously approved (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown)

Respectfully submitted,
Diane Grundon, Recording Secretary