

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

Members Present: Tina Brown
Veronica Robillard
Stephen Shelley
Dean Snyder
Tim Thomas

Others Present: Lara R. Badain (Town Attorney), Jack Barton, Jim Zollweg (alternate)

Public Present: See attached list

The meeting was called to Order by Chairperson, Veronica Robillard, at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She noted that this is a five-member board and a quorum of three is required to pass a motion.

(Note: The application of John Chart was heard prior to the tabled items, due to the large number of public in attendance for this application. However, the applications are transcribed in the order they were printed on the agenda for continuity.)

Chairperson Robillard offered hearing aid devices for anyone who required them.

TABLED PUBLIC HEARINGS

1. WAYNE NEWMAN – 134 COLLAMER ROAD

Application of Wayne Newman, owner, for expansion of a non-conforming use at 134 Collamer Road. The applicant has renovated the second floor of an existing garage and converted it to living space. Town Zoning Article 12, subsection 165-91 states, in part, that the expansion of a non-conforming use or structure shall be subject to approval by the Zoning Board of Appeals. Applicant is also applying for the following variances: (1) relief from Article 5, subsection 165-33-E.2a, which requires a minimum living area of 1,200 square feet. The existing second floor is 1,036 square feet. (2) relief from Town Zoning schedule 1 which requires a ten feet side setback from property lines. The structure is 2.8 feet from the southerly property line and 1.8 feet from an easterly property line. and (3) applicant is proposing to rebuild the rear portion of the barn on the property which will increase the storage area on this property by 1,281 square feet, bringing the total storage area to 2,900 square feet and is requesting relief from Town Zoning Article 5, subsection 165-33.C.2, which limits the area of accessory buildings to 600 square feet. This property is currently zoned Medium Density Residential (MD).

Chairperson Robillard recalled that this application was tabled until the January 2010 ZBOA meeting, without prejudice, in order to allow the applicant an opportunity to provide proof of continuous occupancy since 1940.

2. MARK EVANS – 5461 RIDGE ROAD WEST

Application of Mark Evans, as applicant, for a modification of an existing use variance for property located at 5461 Ridge Road West. Applicant is requesting that the existing use variance, which allows the tenant to operate a “custom and specialty motor vehicle paint and repair shop” be modified to allow an auto body repair shop. Applicant is requesting relief from Town Zoning Article 165-39 which does not allow auto repair as a permitted use. Property is currently zoned General Commercial (GC).

Heather explained that she could not get the information to the Zoning Board very much in advance of this meeting and questioned if they had enough time to review it. She provided a comparative market analysis done on this property by Thomas Broikou, of Oakridge Realty, stating that this addresses the hardship factor. Dean Snyder again noted that the information provided to the Zoning Board regarding the hardship is only shown for one use, not each and every permitted use, which is needed to consider a variance. Heather responded that the property has been for sale and has not been sold. The only interest expressed by buyers is for auto repair and a collision shop. No other interest has been shown. The Board reviewed all the permitted uses, listed in zoning article 165-39. Heather stated her opinion that each and every permitted use should not be considered because no one has shown any interest in using this property for anything other than auto repair. She stated that it was listed in Craig's list for \$195,000 and did not sell. The Board noted that Craig's list is not a realtor. Dean Snyder explained that he would like to look at the 3 listings she referred to. Tina Brown explained that the CMA proves that the listed price is an accurate amount to sell the property for. Dean Snyder suggested that a realtor should be involved in determining the hardship for each and every permitted use.

Dean Snyder read the October minutes and referred to zoning ordinance 165.20.C.1.(b). He noted that all 4 criteria must be met to approve a use variance. He reiterated that the Zoning Board is looking for financial evidence from an accountant or realtor. Heather asked if the Board is establishing a new precedent with their application. She felt the current variance did not have to prove this. Dean Snyder stated he would like to review that application. Jack Barton stated that the Board has to follow code, regardless of what was done in the past. The Board agreed that they are looking for financial evidence for each and every permitted use. The Board felt it was stated very clearly in the Motion what they are looking for before they can approve or deny this application. Dean Snyder stated that without the required information requested at the last meeting, the Board could not approve or deny this application and recommended that the applicants postpone rather than use information that is inadequate to develop a motion.

Chairperson Robillard read a letter dated November 16, 2009 from Art Fritz, ZEO, regarding the zoning violations on this property. The letter confirms that all maintenance violations have been brought into compliance.

The applicant requested that their application be tabled until the January 2010 ZBOA meeting.

Public Comment: None. The public hearing was closed.

Board Discussion: Chairperson Robillard recalled 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 table the application of Mark Evans, as applicant, for a modification of an existing use variance for property located at 5461 Ridge Road West, without prejudice, until the January 2010 ZBOA to allow the applicant ample time to provide the ZBOA with the required information to determine, based on use variance criteria, the hardship with the current use and each and every permitted use. He referenced codes 165-20-C.1 and 165-39.b. Seconded by Dean Snyder. **Motion unanimously approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

3. MICHAEL MATTIA – 1195 WEST AVENUE

Application of Michael Mattia, owner, for four variances at 1195 West Avenue. Applicant is proposing to merge this parcel with 1201 West Avenue and then construct a 1,984 square feet accessory storage building in the front yard with a wall height of 14 feet and is requesting relief from (1) town Zoning Article 5, subsection 165-32-C.2 which limits the total area of all permitted accessory structures to 1,500 square feet. The total area of accessory structures for this property is proposed to be 2,085 square feet; (2) Article 10, subsection 165-82.C.3 which states in part that detached accessory buildings shall be located in the rear yard.; (3) Article 10, subsection 165-82.C.2 which limits the wall height to 12 feet; and (4) Town Zoning which defines an accessory structure as being subordinate in area to the primary structure (home), which has a footprint of 1,545 square feet. This property is zoned Rural Residential (RR).

Chairperson Robillard recalled a motion made to table this application to enable the applicant time to revisit the size, location and structure and mitigate encroachments in the front yard and to pursue possible alternatives.

Jack Barton reported that the applicant informed him that they wanted this application to be tabled again because they are still making changes, but he could not locate their written request.

A **Motion** was made by Tim Thomas to table the application of Michael Mattia, owner, for four variances at 1195 West Avenue to the December ZBOA meeting without prejudice, based on the fact that the applicant was not present and verbalized to the building department that he wanted to have this tabled until the December meeting. Seconded by Stephen Shelley. **Motion unanimously approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

NEW PUBLIC HEARINGS

4. JOHN CHART – 969 HILTON PARMA CORNERS ROAD

Application of John Chart, owner, for an area variance at 969 Hilton Parma Corners Road. Applicant has placed a temporary free speech sign in his front yard at a zero foot setback and is requesting relief from Town Zoning Article 14, Subsection 165-111D which states in part that all free standing signs shall be set back a minimum of 15 feet from all lot lines. Applicant is also requesting that this variance be allowed to remain for any signs that he may erect in the future. This property is currently zoned Rural Residential (RR).

John stated he has decided to seek an attorney to represent him with regard to this application and requested his application be tabled. Chairperson Robillard asked if he wanted to table it to December or January. John stated he wished to table his application until January.

Public Comment:

Several attendees asked if they were allowed to speak at this meeting. Chairperson Robillard replied that a written document would be allowed and instructed them to provide these to Jack Barton for the record.

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.

A **Motion** was made by Tim Thomas to table the application of John Chart for an area variance at 969 Hilton Parma Corners Road until the January 21, 2010 ZBOA meeting, without prejudice, at the request of the applicant to allow him time to seek counsel and prepare his presentation. Seconded by Stephen Shelley.

Chairperson Robillard asked Mr. Chart if he has any written documentation available prior to the January meeting, it would be helpful to provide that to the Board prior to the January meeting to give them ample time to review it.

Motion unanimously carried (5-0) (Ayes: Tina Brown, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

Rick Lemcke noted that the sign has been out of compliance for 8 months and this will extend it to 10 months. Chairperson Robillard asked Lara Badain, town attorney, to respond. She stated a variance application to the ZBOA is a stay of enforcement until the application is decided by the zoning board. However, the sign is out of compliance and she stated she was willing to investigate the possibility of making the applicant remove the sign until the request for variance is heard. Lara stated she will report her findings at the December ZBOA meeting. Rick Lemcke stated that the applicant knew for two months that he was out of compliance and now he is manipulating the Board to extend this non-compliant situation for more than two months. Chairperson Robillard responded that once it is determined if the Zoning Board can make him take down the sign, the Board will act on it. It was asked if the applicant could be forced to take down the sign prior to the December meeting. Chairperson Robillard replied that the attorney will also determine if a motion is required to force him to take down the sign or if this process could occur immediately without a motion by the Board.

Aaron Camp – 1031 Hilton Parma Road: Stated he had a sign out of compliance and was told he would be fined if it wasn't removed. He asked why there is a double standard here.

Jack Barton explained that the same letter was sent to the applicant and that he needed a variance to put the sign back up. Chairperson recalled that the application for this variance was made on October 1st, too late to be included in the October meeting. A stay of enforcement was then in effect. Rick Lemcke provided letters that were sent to the applicant, dated April 9, May 26, September 11 and September 28. He questioned why nothing was done prior to this meeting. Chairperson Robillard stated that all these letters were sent prior to the application for a variance and the Zoning Board was not involved. Lara noted that the applicant has been in violation since April. He got a "free pass" when he applied for a variance on October 1st. The Zoning Board cannot release the stay of enforcement and require the sign be removed until a decision is made on the application for variance. This could possibly be done at the December meeting. She stated she would promptly look into whether there is a process to have him take down the sign immediately.

Carol D – Parma Center Road: stated that the enforcement of the letters sent to the applicant was not the zoning board's job. Chairperson Robillard stated that is correct.

Virginia Kimball – 124 Rolling Meadow Dr: States she had a letter for the file which she provided.

Jerry Oakden – 6 Shirleen Drive: Presented a signed petition for the record.

Sue Yolevich – 1035 Parma Hilton Road: Questioned who does the enforcement when someone doesn't comply.

Jack Barton responded that the zoning enforcement officer sent out the letters. The sign came down with each letter, but the sign went back up subsequently, and more letters were sent out.

It was questioned that if the sign reappeared, why he wasn't fined. Chairperson Robillard again stated that the Zoning Board has nothing to do with enforcement, and until the applicant came into the building department on October 1st, the Zoning Board had no dealings with the sign.

Chairperson Robillard stated that the attorney will proceed with the investigation. She noted that December will not have a full board and tabling it until January seemed to be the best situation.

A recess was called at 7:30 pm. The meeting reconvened at 7:43 p.m.

5. K & K PROPERTY VENTURES, LLC – 4618 RIDGE ROAD WEST

Application of K & K Property Ventures, LLC, owner, for 3 area variances at 4618 Ridge Road West. Applicant is proposing to remove 3 existing signs and replace with 3 new freestanding signs totaling 74 square feet in area at a front setback of 5 feet from the road right of way. Applicant is requesting relief from Town Zoning Article 14, subsection 165-111.D and subsection 165-113.B.4.b which limits that property to 1 freestanding sign not exceeding 32 square feet in area. This property is currently zoned Highway Commercial (HC).

Kris Schultz, survey engineer, provided photos of the sign as it is existing and what it will look like after the requested changes are made. He stated that the square footage of the existing sign was 8 square feet less than what is being proposed. Kris stated that Mr. Doug Miller has a large program planned at this property that involves lots of kids. He is turning it into a family activity facility. He stated that the sign will have lighting at the base and will be landscaped. Kris noted the 99 feet right of way, which is unusually large on Ridge Road, at that point. He pointed out that the grass between the sign and the road is 46' but it is only 5' from the right of way. Kris noted that the barbershop building on the corner of Ridge Road West and Manitou Road is 6 feet from the right of way. He provided a picture of the Saturn Dealership sign and Sullivan's Charbroil sign which are larger than what is proposed. He noted that on an aerial view of the area, that the right-of-way varies along this stretch of Ridge Road West. Kris explained that this proposal allows use of the components of the existing sign, and stated he felt this new sign is not a significant change. He stated that this is a self-created difficulty but is an important part of the business plan to make the business a success. He noted that the 3 signs being removed are on the existing sign.

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. 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 K & K Property Ventures, LLC, owner, for 3 area variances at 4618 Ridge Road West. Applicant is proposing to remove 3 existing signs and replace with 1 new freestanding sign with 3 components totaling 74 square feet in area at a front setback of 5 feet from the road right of way. This grants relief from Town Zoning Article 14, subsection 165-111.D and subsection 165-113.B.4.b which limits that property to 1 freestanding sign not exceeding 32 square feet in area. This property is currently zoned Highway Commercial (HC). This approval with the condition that the sign lighting is to remain the same. In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. In this area of Ridge Road, the right of way, as stated by the applicant and demonstrated by photos, is an unusually large right of way. This is an existing sign that was erected prior to 1998 when the setback requirement was only 5 feet. Therefore, I believe this is a "wash" as far as location. They are taking advantage of an existing location. There will be no undesirable change in neighborhood character or to nearby

properties. This sign is not out of character with other signs on Ridge Road West. This has been demonstrated with a photo of other signs which are in the right of way or close to it. The request is substantial from our code requirements but I believe the need for additional signage to advertise the additional aspects of this business justifies it. There will be no adverse physical or environmental effects. The sign will not obstruct any view. The alleged difficulty is certainly self-created, but the evidence presented by the applicant soundly substantiates the request. 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: Tina Brown, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

6. AARON CAMP – 1031 HILTON PARMA CORNERS ROAD

Application of Aaron Camp, owner, for an area variance at 1031 Hilton Parma Corners Road. Applicant is requesting that an existing deck on the front of the home be allowed to remain with a front setback of 64 feet from the road right of way. Applicant is requesting relief from Town Zoning schedule 1 which requires a 75 feet front setback. This property is currently zoned Agricultural/Conservation (AC).

Aaron stated he purchased this home 7 years ago. He explained that when he bought this home, the deck was existing and he was not sure if it had been inspected. He found out it was not in compliance when he applied for a permit for a pellet stove. An inspection determined it was built too close to the lot line but the previous homeowner did not call for the final inspection. Subsequently, an inspection in 1995 determined it was not in compliance. On November 13, 2008, the final inspection determined it was still not in compliance.

Public Comment:

Susan Yolevich – 1035 Parma Hilton Road: Stated she was a neighbor on the south. She confirmed that the previous owner built the deck. When they sold the house, they were completely ignorant about it being out of compliance. She felt that the deck should remain as it does not change the neighborhood character.

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 Dean Snyder to approve the application of Aaron Camp, owner, for an area variance at 1031 Hilton Parma Corners Road to allow an existing deck on the front of the home to remain with a front setback of 64 feet from the road right of way. This grants relief from Town Zoning schedule 1 which requires a 75 feet front setback. This property is currently zoned Agricultural/Conservation (AC). In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. The applicant purchased the house with a non-conforming deck. Although it is the responsibility of the owner to determine that before purchasing the house, at that time this was not researched as efficiently as it is today. There will be no undesirable change in neighborhood character or to nearby properties. An additional 12" to the deck over the allowed, as stated in Article 10, 165.80.E.1., with a 64' setback is indistinguishable from the street. The request is not substantial. There will be no adverse physical or environmental effects. Although the alleged difficulty is self-created, using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

7. PHILIP AND FRANCIEN TRUBIA – 14 JAMES MOORE CIRCLE

Application of Philip and Francien Trubia, owners, for an area variance at 14 James Moore Circle. Applicants are proposing to construct an accessory storage shed in their side yard and are requesting relief from Town Zoning Article 10, subsection 165-82.C.3 which states, in part, that all detached accessory buildings shall be located in the rear yard. This property is a corner lot and by definition has two front yards, two side yards, and no rear yard. This property is currently zoned High Density Residential (HD).

Philip explained that he wants a storage shed that will be located 2 feet more than the setback requirement. This shed will appear as if it is in the back yard, on his corner lot. He stated the shed will look similar to others in his neighborhood. It will be painted the same as his house and shingled. He explained his need for more storage area other than his garage. He noted that his disabled mother lives with him and this will provide more storage area for lawn maintenance equipment.

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. Jack Barton reported this is a Type II SEQR with no further action required.

A **Motion** was made by Tim Thomas to approve the application of Philip and Francien Trubia, owners, for an area variance at 14 James Moore Circle to construct an accessory storage shed in their side yard and this grants relief from Town Zoning Article 10, subsection 165-82.C.3 which states, in part, that all detached accessory buildings shall be located in the rear yard. This property is a corner lot and by definition has two front yards, two side yards, and no rear yard. This property is currently zoned High Density Residential (HD). In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. This is a corner lot and is defined as having two front yards, two side yards and no rear yard, therefore, the ability of putting the shed in the rear yard is not feasible. The setbacks will be compliant with code. There will be no undesirable change in the neighborhood character or to nearby properties. The request is not substantial, as this is a corner lot. There will be no adverse physical or environmental effects. The alleged difficulty is not self-created because of the unique nature of a corner lot. 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 unanimously carried (5-0)** (Ayes: Tina Brown, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

A recess was called at 9:05 pm. The meeting reconvened at 9:12 pm.

SPECIAL PERMIT RENEWALS

1. DONALD AND NANCY COWN – 18 CLEARVIEW AVENUE

Application of Donald and Nancy Cown, owners, for a Special Permit at 18 Clearview Avenue. Applicants are proposing to use their home as a tourist home (bed and breakfast) which is allowed with a Special Permit. This property is currently zoned Waterfront Residential (WF).

Chairperson Robillard read a letter to the owners informing them that a fence was erected without a building permit and that a special Permit cannot be renewed where there is an existing violation. Discussion was held on the fact that this special permit was allowed to expire and that the property is now non-compliant with the newly erected fence.

A Motion was made by Dean Snyder to table the application of Donald and Nancy Cown for a special permit at 18 Clearview Avenue, without prejudice, to the February ZBOA meeting. Seconded by Tim Thomas. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

2. MARK JANSEN – 675 MANITOU ROAD

Application was received from Mark Jansen, owner, for renewal of a special permit at 675 Manitou Road to allow an accessory apartment for in-law use. This property is currently zoned High Density Residential (HD) which allows this use with a special permit.

Chairperson Robillard reported no complaints on file.

Following discussion, a **Motion** was made by Stephen Shelley to approve the application of Mark Jansen, owner, for renewal of a special permit at 675 Manitou Road to allow an accessory apartment for in-law use. All conditions as per zoning ordinance 165.76 for a period of two years, renewable in November, 2011. This property is currently zoned High Density Residential (HD) which allows this use with a special permit. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

3. JAMES ROSSETTI – 33 PARMA CENTER ROAD

Application was received of James Rossetti – 33 Parma Center Road, for renewal of a Special permit to operate a hair styling salon.

Chairperson Robillard reported no complaints on file. Jack Barton reported that inspection of this property revealed no violations.

A **Motion** was made by Tim Thomas to approve the request for renewal of a Special Permit for James Rossetti to operate a hair styling salon at 33 Parma Center Road with the following conditions:

1. Hours of operation until 8:00 p.m. (no Sunday operation)
2. Special permit granted for a period of 3 years, for renewal in October 2012.
3. No on-street parking
4. No retail sales
5. Limited to a one-chair operation
6. Town of Parma Fire Marshal be notified for appropriate action

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

4. JOSEPH AND BARBARA RYEN – 376 NORTH AVENUE

Application was received from Joseph and Barbara Ryen, 375 North Avenue, for renewal of a Special Permit to allow the boarding of no more than ten (10) horses.

Chairperson Robillard reported no complaints on file. Jack Barton reported a recent inspection revealed no violations.

Following discussion, a **Motion** was made by Tina Brown to approve the application of Joseph and Barbara Ryen, 376 North Avenue, to allow the boarding of horses with the following conditions:

1. Maximum of 10 horses boarding.
2. Parking is to be self-contained to the designated areas.
3. Activities to end at 9:30 pm
4. Lighting to be contained to the property.
5. Proper disposal of waste without hazard to the property.
6. Signs to conform to local ordinance.
7. Notification of the Special Permit to the Fire Marshal.
8. For a period of 2 years, to be renewed 8/2011

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

OTHER

Waterfront properties: The issue of changing the orientation of waterfront properties and consideration of switching the front yard and the rear yard was discussed. The Town Board is requesting input from the Zoning Board members.

Sign Ordinance. Based on complaints, Town Board review is underway.

MINUTES OF OCTOBER 15, 2009

The October 15, 2009 minutes were reviewed and a typo was noted. Following review, a **Motion** was made by Tim Thomas to approve the October 15, 2009 ZBOA minutes with the recommended correction. Seconded by Stephen Shelley. **Motion unanimously approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Stephen Shelley, to adjourn the meeting at 10:15 pm. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Dean Snyder, Stephen Shelley, Tim Thomas)

Respectfully submitted,
Diane Grundon, Recording Secretary