

**TOWN OF PARMA
ZONING BOARD OF APPEALS
JANUARY 21, 2010**

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

Others Present: Lara R. Badain (Town Attorney), Jack Barton, Bob Prince, James Roose
(Board Liaison), 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.

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.

Jack Barton stated that both the town attorney and applicant have requested this application be tabled until the February meeting.

A **Motion** was made by Dean Snyder to table the application of Wayne Newman, owner, 134 Collamer Road until the February 18, 2010 ZBOA meeting, without prejudice, at the request of the applicant, his attorney and the town attorney. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

2. 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).

Chairperson Robillard recalled that this application was tabled until the January ZBOA meeting at the request of the applicant to allow him time to seek counsel and prepare his presentation.

John stated he bought this house 22 years ago and has recently been involved in several issues important to the Town of Parma. He described the trees which were planted on his property and the neighbor's property to the south that makes it physically impossible to have a sign in his yard without the need for a variance. He provided photos which showed the view from the south and north of his property, noting the vegetation prohibits any other placement of the sign. He described himself as a constitutionalist and he stated the 1st amendment, freedom of speech, is important. Chairperson Robillard explained that the Board is looking at the sign in terms of location not the content. John stated that it was not his intention. He then explained that the 1st amendment gives everyone the right to speak their position. He stated there was no difference between political signs and free speech signs according to zoning. His free speech sign is set back 15 feet, while political signs are set back 10 feet. He questioned why his sign needs a variance; this requirement is not according to the Constitution. Dean Snyder explained that the Building Department and Zoning Board interprets the zoning code; they don't give reasons for the code. Dean Snyder stated that this is an issue that should go to the Town Board, not the Zoning Board.

John asked Jack Barton to describe the policy of enforcing sign violations. Chairperson Robillard stated that the Zoning Board is here to make a decision on placement of the sign. She explained that if he has questions regarding zoning ordinance and enforcement to take them to the Building Department. She stated that it is not appropriate for discussion at this meeting. John responded that the policy enforcement for the sign is not documented. Dean Snyder again noted that the Town Board makes those regulations and going to the Town Board would be the appropriate place to ask these questions. Chairperson Robillard asked the applicant to speak on his reasons for the location of his sign. John replied that he felt that the enforcement of his sign was arbitrary. Chairperson Robillard explained that this is his opportunity to ask the Zoning Board to grant relief from the zoning code that applies to the location of his existing sign. Chairperson Robillard asked the applicant to keep his focus on this.

Lara Badain, town attorney, questioned the applicant why he didn't have counsel in attendance tonight, recalling this was the reason he requested at the November 2009 ZBOA meeting to table his application until this meeting. She suggested that an attorney could address the issues he has questioned.

He provided numerous photographs of political signs and realtor signs in the Town of Parma that have similar or less set backs from the right-of-way. He questioned why these are allowed and his is not. Dean Snyder explained that if any of these signs are still in place, these signs have never come to the Zoning Board. If there is an issue with any sign, the building department follows up on it. John listed other signs that he felt were similar: political signs, Christmas trees for sale signs, realtor signs, Beehler Construction sign, farm signs, etc. John offered to drive around the Town to show the building department the signs that were similar to his that exist in the Town.

John stated it is impossible to have a sign at the required setback and still be seen. Because of the location of the driveway and placement of trees in his yard and neighbor's yard, the sign couldn't be seen in any other location. Dean Snyder noted that a sign placed perpendicular to the road is a possibility, so he couldn't understand why he thinks he is not legally able to place a sign in his yard. Also, the sign could be moved over to the north facing directly out. On his 100 feet wide lot, 15 feet from the side lot there is 70 feet available to legally see the sign.

Public Comment:

Chairperson Robillard reviewed a petition that was provided to the Zoning Board that had 150 signatures. The petition stated that "we the undersigned residents of Unionville Station request the Town of Parma enforce the zoning laws and deny this application.

A letter was read from **Virginia Kimball – 124 Rolling Meadows Drive:** She requested that this variance not be granted for the following reasons: it gives a negative nature to the Village of Hilton, it is depressing, it is a deterrent to the community. She stated she has lived in Hilton for 40+ years and feels this is an extreme expression of free speech.

Susan Yolevich – 1035 Parma Hilton Road: She requested that the Zoning Board deny the variance to John Chart for the current sign or any signs in the future for the following reasons: First, the sign changes and degrades the character of the neighborhood. Second, the sign is large and has a lot of printing on it which poses a distraction for anyone driving by. Third, I recognize everyone's right to freedom of speech, but 24/7, 365 days a year for over 2 years now – that is overkill to the point of brainwashing. John has made his point, get over it and move on. Finally, John has no degree in environmental science from any University or institution of higher education, therefore, what he says and writes is highly questionable and not credible. She stated that she lives 6 houses away from Mr. Chart. She stated that the opinions she expressed tonight are mine and mine alone, not my mother, father, sister, brother, neighbor or my husband's opinion, but only mine.

Aaron Camp – 1031 Hilton Parma Road: Referred to Mr. Chart's comment about being singled out. Aaron stated he lives one-quarter mile from Mr. Chart. Mr. Camp stated he received a letter informing him to take down a sign he had on his property. He stated that he did accordingly.

Rick Lemcke – 293 Peck Road: Stated the sign is uncharacteristic for this neighborhood and his hardship is self-created. He could remove some trees and bring the sign into compliance. It has taken him 8 months for the Town to make him take this to the Zoning Board, then the Board gives him two months to table his application because he requested counsel and he is now here without an attorney.

Richard Vance – Peck Road: Stated that the 15 feet requirement is not excessive. He had this sign up for 8 months. He felt it is time to take it down. It should have been taken down before.

Don Green – 58 West Avenue: Regardless of content, the setbacks for signs are established for reasons – distraction, etc. in the right-of-way.

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.

Dean Snyder explained why he felt that this particular sign is so out of character. The reflective tape makes this sign jump out and he felt it is a distraction to drivers and considers it a hazard. Tim Thomas stated he doesn't consider this free speech – it is a community concern.

Lara Badain, town attorney, explained that she was not chastising Mr. Chart for not having an attorney but encouraged him to refocus his presentation to the location of the sign, not the content. This is a hearing and while there is a right to have an attorney present, it is not required. Lara stated that the letter read into the record from Mrs. Kimball and other comments voiced at this meeting regarding the content of the sign, although it was heard by everyone at this meeting and recorded, this hearing is not focused on the content. The focus of the Board is the location. Chairperson Robillard reiterated that the Board was looking at the location, as is stated in the public notice.

Dean Snyder stated that he agreed that the letter sent and other concerns voiced at this meeting regarding the content of the sign, is not a basis for his motion and not relevant to this case.

A **Motion** was made by Dean Snyder to deny the application of John Chart, owner, for an area variance at 969 Hilton Parma Corners Road to place a temporary free speech sign in his front yard at a zero foot setback, which is in violation of Town Zoning Article 14, subsection 165-111.D, which states in part that all free standing signs shall be set back a minimum of 15 feet from all lot lines. Included is the additional denial of the applicant's request that this variance be allowed to remain for any signs that he may erect in the future.

In making this determination to deny:

- The benefit can be achieved by other means feasible to the applicant: Although the applicant's property has mature landscaping, the applicant has the opportunity to weigh the privacy and natural beauty currently enjoyed by this landscaping against his need to display a legal sign which does not distract traffic, nor detract from neighboring property values, nor adversely affect the physical appearance of the community.;
- This proposed variance will cause an undesirable change in neighborhood character or to nearby properties: The current sign is both distracting and obtrusive to both neighbors and motorists passing by the property. Although indirect illumination is allowed for non-commercial speech signs, Article 165-11.G. Sign illumination, glare precludes approval of any sign which creates a public or private nuisance. Any illuminated sign must be designed and shielded so that the light sources do not constitute a possible hazard to traffic and cannot be seen from any adjacent residential district. The proposed location of this sign, with its close proximity to the headlights of traffic in both the northerly and southerly directions, does not lend itself to this type of shielding. Even the existing sign, without reflective properties, caused a significant distraction to vehicles in each direction in this residential area. Its close proximity to the road is offensive to neighbors because of the detriment of the natural beauty of the road side. Allowing this sign certainly would not enhance and protect the physical appearance of the community. The proposed location is not consistent with Article 14, 165-105 Purpose, which, in part, says, "The purpose of this article is to promote and protect the public health, welfare and safety by regulating existing and proposed signs of all types. It is intended to protect property values, ...enhance and protect the physical appearance of the community, and to preserve the scenic and natural beauty of designated areas. It is further intended to reduce sign...distraction that may contribute to traffic accidents...and to curb the deterioration of natural beauty." 150 signatures asking the Zoning Board to deny this application and the public who spoke at this meeting confirms this.
- The request is substantial: The current placement makes it obvious that a setback less than the required 15 feet has a significant impact on the safety and welfare of the community.

- This request will have adverse physical effects: Again, anyone who passes by this sign, in either the day or night, will appreciate the startling negative impact this sign currently has on this residential area.
- The alleged difficulty is entirely self-created: The applicant perceives a need to place this sign in this inappropriate location. This need is entirely self-created. There are alternative legal sites to locate this sign, and although they may not have the shock value currently enjoyed by the applicant, they will be less obtrusive and more consistent with the character of this neighborhood.

In using the balancing test, the benefit to the applicant is far outweighed by the detriment to the health, safety and welfare of the community. Seconded by Tim Thomas. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

Chairperson Robillard polled the Board for their reasons for denying this application:

Dean Snyder: stated his motion stands for his reasons.

Tim Thomas: The benefit can be achieved by other means feasible. The applicant stated it would be impossible to keep the required setback but there are other options: removal of vegetation or different placement of the sign. It will absolutely create an undesirable change in the neighborhood character. The sign is a distraction to drivers and has a negative impact on community visitors and residents. The request is substantial. Zero foot setback versus 15 feet setback that is required. It will have an adverse physical impact, as stated by the motion. It is absolutely self-created, The application chose this location to get the most benefit from it.

Stephen Shelley: Agreed with Dean Snyder and Tim Thomas. The benefit can be achieved by other means by a different placement or removal of vegetation. It will cause an undesirable change to neighborhood character. The request is substantial. There will be an adverse physical effect. The difficulty is self-created.

Tina Brown: Concurs to deny based on balancing test.

Veronica Robillard: The area variance has been adhered to with the intention to balance the benefit to the applicant with the detriment to the health, safety and welfare of the community. She thanked the community for input in helping us to make this decision. Certainly all aspects have been considered. The content was not an issue. Step by step considerations have been dutifully considered in the motion. The Board considered everything presented before making the decision: the audience, the applicant and the photos presented, the letters and petition.

John Chart announced that he planned to appeal this decision.

A recess was called at 8:10 p.m. The meeting reconvened at 8:24 p.m.

3. 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).

Chairperson Robillard recalled that this application was tabled until the January ZBOA meeting 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.

She referred to a letter dated January 13, 2010 from Oakridge Realty that was provided to the ZBOA members prior to this meeting, which allowed ample time for review. This letter addressed each and every permitted uses of the property under its current General Commercial zoning. Thomas Broikou, who signed the letter, stated his opinion that this building/property has very limited perspective uses. He provided a detailed analysis for each allowed use.

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.

Discussion was held that the applicant has proven that the property could not realize a reasonable return. Jack Barton stated that some conditions for this business might be addressed, specifically outside storage. He noted the conditions for this use variance were documented in September of 2000.

Following discussion, a **Motion** was made by Tim Thomas to approve the 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. This grants relief from Town Zoning Article 165-39 which does not allow auto repair as a permitted use. Property is currently zoned General Commercial (GC). In reviewing the four criteria for a use variance:

- (1) The applicant cannot realize a reasonable return. The document from Oakridge Realty dated January 13, 2010 shows this for each and every permitted use. This proves to my satisfaction as to why the use variance should be modified to include an auto body repair shop.
- (2) The alleged hardship is unique and does not apply to a substantial portion of the district or neighborhood. When you look at the building, it is evident that each and every permitted use is not possible because basically this is a garage.
- (3) The requested variance will not alter the essential character of the neighborhood. The property has been there for 20+ years and has not had any substantial change to the property or use. So to those driving by, the change will be negligible.
- (4) The alleged hardship has not been self-created. The original use variance was very specific for custom and specialty motor vehicles paint and repair shop. In my opinion, the change to include an auto body repair shop is not a substantial change.

Using the four criteria, I approve the modification of the existing use variance with the following conditions: All required building and fire inspections are completed and conditions adhered to. A maximum of 25 vehicles on the property based on the site plan approved by the planning board. Outdoor overnight parking of passenger, pick up trucks, and SUV vehicles only to be in the rear of the building behind the fenced area. The applicant confirmed that there will be no need to allow large trucks now or in the future. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

4. DONALD AND NANCY TOWN – 18 CLEARVIEW AVENUE

Application of Donald and Nancy Town, owners, for an area variance at 18 Clearview Avenue. Owners have erected a 7 feet high fence and gate in the front yard and are requesting relief from Town Zoning Article 16, subsection 165-128.A.2 which states in part that open fences in the front yard shall not be higher than three feet. This property is currently zoned Waterfront Residential.

Donald stated that he and his wife bought this property that includes a lighthouse, which is a historic treasure, of value to the community, and they plan to open it to the public. They described their shock at how many people climbed the original fence and walked around their property uninvited. A new fence was placed 25 feet back from the road and they then put up a gate to assure privacy. He cited numerous trespassing incidents before this new fence and gate were put up. He recalled many of their neighbor's positive comments about the new gate which was felt to be an enhancement to the property. He provided a photograph of the gate, which was made by a local craftsman at the cost of \$10,000. He explained that this gate provides security but is never locked and their property can be accessed by emergency equipment at any time. Tim Thomas asked if there was any plan to continue the fence around the perimeter of the property. Donald replied "no" but if they considered this in the future, they understand they would need to come to the zoning board for approval.

Public Comment:

Chairperson Robillard read a letter from the Village of Hilton Town Historian, David Crumb, who recalled this property was in disrepair but has been renovated. He urged approval of this variance to assure security and stated that a high quality gate was needed.

Wayne Beaney – 22 Clearview Avenue: Stated this property is now a great asset to the community. Stated the uniqueness of the waterfront property and stated his support of approval of this variance.

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 Donald and Nancy Town, owners, for an area variance at 18 Clearview Avenue. Owners have erected a 7 feet high fence and gate in the front yard and are requesting relief from Town Zoning Article 16, subsection 165-128.A.2 which states in part that open fences in the front yard shall not be higher than three feet. This property is currently zoned Waterfront Residential. In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicants. As stated, the intent of the gate and fence is a deterrent to uninvited visitors and to protect this historic lighthouse landmark. This fence and gate allows people to enjoy the lighthouse from afar and keeps the property secure. There will be no undesirable change in neighborhood character or to nearby properties. The fence and gate enhances the historic appearance of the property and blends in with the landscaping. Considering the historic nature of the property, this fence and gate contributes architecture esthetic enhancement, as well as providing security, to its overall appearance. The request is substantial but substantially mitigated because of the historic nature of the property and to preserve it for generations to come. There will be no adverse physical or environmental impact. The location of the fence and gate allows people to pull off to the side of the road and doesn't impede traffic. The alleged difficulty is self-created, however, taking into account the historic value of the property, in 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, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

NEW PUBLIC HEARINGS

5. DANIEL AND JODIE WELCH – 74 WEST BEACH ROAD

Application of Daniel and Jodie Welch, owners, for 2 area variances at 74 West Beach Road. Applicants are proposing to demolish existing garage and construct new detached garage in the front yard with a front setback of 7 feet and a side setback from the easterly line of 3.33 feet. Applicants are requesting relief from Town Zoning Article 10, subsection 165-82.C.3 which states in part that detached garages shall be located behind the front building line of the principal building and schedule 1 which requires a side setback of 10 feet. This property is currently zoned Waterfront Residential (WF).

Daniel reported they have lived at this address since 1976. He explained that this property had an existing garage when he purchased it. He noted that waterfront residents consider the lake the front yard but their front yard is towards the street and they are not allowed to construct a garage in the front yard. He noted that a neighbor recently built a two story garage and they have agreed with each other to have their garages placed as close to each other as possible, since this is just “dead” space. He stated that the existing garage will be demolished and the new garage, which will be 20’ x 24’, will be a little larger than the existing garage and will be built on the same footprint.

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 Daniel and Jodie Welch, owners, for 2 area variances at 74 West Beach Road. Applicants are proposing to demolish existing garage and construct new detached garage in the front yard with a front setback of 7 feet and a side setback from the easterly line of 3.33 feet. This grants relief from Town Zoning Article 10, subsection 165-82.C.3 which states in part that detached garages shall be located behind the front building line of the principal building and schedule 1 which requires a side setback of 10 feet. This property is currently zoned Waterfront Residential (WF). In making the determination to approve, I don’t believe the benefit can be achieved by other means feasible to the applicant. The existing garage and new garage will essentially be built on the same footprint but a little larger. A lakefront property limits the opportunities for placement of a garage. There will be no undesirable change to the neighborhood character or to nearby properties. The garage location and proximity to the easterly and front setbacks and variance requested is similar to other garages in this lakefront property. The request is substantial. This criteria is somewhat mitigated by the nature of lakefront properties and limited options and septic areas. There will be no adverse physical or environment effect. The alleged difficulty is somewhat self-created but the new garage will be in almost the same footprint as the existing garage. Using the balance 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, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

SPECIAL PERMIT RENEWAL

1. DONALD AND NANCY TOWN – 18 CLEARVIEW AVENUE

Application of Donald and Nancy Town, owners, for renewal of a Special Permit at 18 Clearview Avenue 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 recalled that this application was tabled at the November ZBOA meeting, due to the fact that this special permit was allowed to expire and that the property was non-compliant with the newly erected fence. She recalled the previous hearing for a variance for this fence which was approved earlier at this meeting.

Jack Barton reported no complaints were on file.

A **Motion** was made by Tim Thomas to approve the application of Donald and Nancy Town, new owners, for renewal of a Special Permit at 18 Clearview Avenue to use their home as a tourist home (bed and breakfast) which is allowed with a Special Permit, per Zoning Articles 165-55 and 165-66. This property is currently zoned Waterfront Residential (WF). This approval is given with the following conditions:

- Maximum of three guest rooms
- For a one year period, renewable in 9/10.

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

OTHER

Zoning code changes: Jack Barton reported that he will share the recent zoning code changes proposed by the Town Board with ZBOA members.

MINUTES OF DECEMBER 17, 2009

The December 17, 2009 minutes were reviewed. The following changes were recommended: page 5, line 8 change to "0 foot setback"; page 6, change special permit renewal applicant's name to "Donald and Nancy Town." A **Motion** was made by Tim Thomas to approve the December 17, 2009 ZBOA minutes with the recommended changes. Seconded by Tina Brown **Motion carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas; Abstain: Dean Snyder)

ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Tim Thomas, to adjourn the meeting at 9:36 pm. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

Respectfully submitted,
Diane Grundon, Recording Secretary