

**TOWN OF PARMA
ZONING BOARD OF APPEALS
JUNE 17, 2010**

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

Others Present: Jack Barton, Jim Roose (Board Liaison), Jim Zollweg

Public Present: See attached list

The meeting was called to Order by Chairperson 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. She offered hearing aid devices for anyone who required them.

TABLED PUBLIC HEARINGS

1. 1220 HPCR#1 LLC and 1220 HPCR #2 LLC – 1220 HILTON PARMA CORNERS ROAD

Application of 1220 HPCR #1 and 1220 HPCR #2 LLC, owners, for three area variances at 1220 Hilton Parma Corners Road. Applicants are proposing to construct an addition on the south side of the existing building with a front setback of 57 feet from the Parma Center Road right-of-way, locate eight parking spaces along Parma Center Road with a 12.9 feet setback from the right-of-way 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 45 parking spaces. This property is currently zoned Highway Commercial (HC).

Chairperson Robillard read a letter dated June 3, 2010, from Mindy Zoghlin, attorney representing the applicant, explaining that because the site plan was not delivered to the building department until this morning, they requested this application be tabled to allow the ZBOA members to review it.

A **Motion** was made by Dean Snyder to table the application of 1220 HPCR#1 and 1220 HPCR #2 LLC, owners, for three area variances at 1220 Hilton Parma Corners Road, without prejudice, per the applicant's request. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

2. LINDA MARY JUDD – 423 MOUL ROAD

Application of Linda Mary Judd, contract vendee, for two area variances and a Special Permit at 423 Moul Road. Applicant is proposing to construct a 1,296 square foot stable with six outside horse run areas that will be partially covered (the covered area of 864 square feet), a 7,200 square foot riding arena and two 432 square foot lean-to's for horses in the pastures. The aggregate area of structures for horses is 10,244 square feet and the applicant is requesting relief from Town Zoning Article 10, subsection 165-82.CC.2 which states in part that no structure or combination of structures used in the housing, storage or exercising of horses shall exceed 6,000 square feet in area. Applicant is proposing to locate paddock areas on each side of the stable and is requesting relief from Town Zoning Article 10, subsection 165-82.CC.3 which states in part that any exercise/building pens shall be located to the rear of the stable. Applicant is also requesting a Special Permit to allow horse boarding facilities in accordance with Town Zoning Article 9, subsection 165-57 which is allowed with a Special Permit. This property is currently zoned Agricultural/Conservation (AC).

Chairperson Robillard recalled this application was tabled at the May meeting to allow the applicant time to consider other options or alternatives to bring this into compliance and attempt to get the square footage closer to the ordinance.

Chairperson Robillard read a letter dated June 10, 2010 from the applicant, who requested additional time to prepare the requested information.

A **Motion** was made by Tim Thomas to table the application of Linda Mary Judd, contract vendee, for two area variances and a Special Permit at 423 Moul Road, without prejudice, until the July ZBOA meeting per the applicant's request. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

3. AARON WEINSTEIN – ONE EDWARD LANE

Application of Aaron Weinstein, owner, for an area variance at One Edward Lane. Applicant has constructed a detached garage with a side setback of seven feet from the southerly property line and is requesting relief from Town Zoning schedule 1, which requires a minimum setback of 10 feet. This property is currently zoned Medium Density Residential (MD).

Jack Barton provided copies of the July 30, 2008 instrument survey map. The applicant explained that they could not locate the updated instrument map. Jack stated it is 6'3" to the fence and a 6'8" side setback variance is needed. He reported that a Town Building Department employee went to the property and measured the distance and confirmed that a 6'8" variance is needed.

Public Comment: None. The public hearing was closed.

Board Discussion: Following discussion, a **Motion** was made by Dean Snyder to approve the application of Aaron Weinstein, owner, for an area variance at One Edward Lane. Applicant has constructed a detached garage with a side setback of 6'5" from the southerly property line and this grants relief from Town Zoning schedule 1, which requires a minimum setback of 10 feet. This property is currently zoned Medium Density Residential (MD). In making this determination to approve, the proposed detached garage is located above the previous existing concrete pad and was extended approximately 1' south of the metal shed shown on the instrument survey map. I don't believe the benefit can be achieved by other means feasible to the applicant. The applicant could move the shed further north but has chosen to locate it right above the existing concrete structure. This location appears appropriate in my opinion. There will be no undesirable change in neighborhood character or to nearby properties. The request is substantial. There will be no

adverse physical or environment 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. Jack Barton noted that no concerns were identified by the ZEO or the fire marshal. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

PUBLIC HEARINGS

4. DAVID REID – 126 BAILEY ROAD

Application of David Reid, owner, for seven area variances at 126 Bailey Road. Applicant is proposing to subdivide property into eleven lots thereby creating nine building lots. The variance requests are as follows: lot 1 is proposed to have a width of 216.93 feet, lot 8 is proposed to have a lot width of 183.11 feet, lot 9 is proposed to have a lot width of 168.47 feet and lot 10 is proposed to have a lot width of 160.49 feet. Relief is requested from Town Zoning Schedule 1 which requires a minimum lot width of 260 feet. Lot 2 is proposed to have a lot depth of 199.52 feet, and relief is requested from Town Zoning Schedule 1 which requires a minimum depth of 300 feet. Lot 1 as proposed will have a detached garage in the front yard at a setback of twenty feet from the new town road and relief is requested from Town Zoning Article 10, subsection 165-82.C.3 which states in part that detached garages shall be located to the rear of the front building line of the principal building and may be located in the side yard. Lot 1 is proposed to be a corner lot which by definition has 2 front yards, two side yards, and no rear yard. This property is currently zoned Rural Residential (RR).

Kris Schultz provided blueprint plans, noting the difficulty in accessing Bailey Road from this subdivision with minimal impact to the neighbors. He explained he came up with this configuration, which results in splitting lot 1. He noted this is a joint application with Daniel and Elizabeth Brozak, who own lot 11, 134 Bailey Road. He provided an aerial photo which indicated the new configuration of the road. He explained this plan eliminates a lot of concerns. He pointed out that the cul-de-sac makes it difficult to maintain the required width at the road. He stated the actual width at the front line of the house does meet the required code width. He explained that the lots go narrower the closer you get to the road with the cul-de-sac. Kris noted that all lots meet acreage requirements. He stated that drainage issues have been addressed. He explained the next step after the Zoning Board approval, is to go to the planning board with the current plan and the drainage plan and leach fields locations will be presented for approval.

Public Comment:

Chairperson Robillard read a letter as follows:

Gordy DiBattisto – 80 Bailey Road: Stated he was opposed to granting this application. He stated his opinion that the lots were too small for the neighborhood. There is ample room to have proper lot sizes. He suggested that the lots could be resized to specification and still obtain the overall objective. He expressed concern about water run off as a result of multiple sites. He asked the Board to carefully review the listed criteria. He felt that none of them passed.

Nick DiFeo – 100 Bailey Road: Concerned about water on his property to the north. He described the water run off, stating his house has been there since 1940 and now it is lower than the surrounding property. Kris responded that they have worked with the planning board and the water will be directed to a natural course to the main road.

Dean Snyder referred to the February 18, 2010 ZBOA meeting and Heidi Schwenk/Gordy DiBattisto's application for 80 Bailey Road, which was a similar situation.

Rick Holder - 164 Bailey Road: Referred to the presentation to the planning board recently. Kris explained that this has been done in two phases. Rick stated he felt the board should consider the open space in Parma before approving lots this small. He noted farm activity around this subdivision. He agreed with lot 1 and plans to keep the barn intact. He asked the Board to turn down lots 8, 9 and 10 for width variance and lot 2 for the depth. He felt this would set precedences. Kris noted the similarity of this to a flag lot where the front was narrower and the width gets larger as you go back on the property. Rick suggested there be larger houses put on larger lots. Does not feel these variances are required.

Dean Snyder suggested that lots 8, 9 and 10 be changed to 2 lots instead of 3 which would significantly impact the sizes. Discussion was held that there are too many lots on this property. Kris stated that he would be able to come back with a revised plan.

Carol VanBuren – 107 Bailey Road: Stated she shares the same concern about the lot sizes and wants to keep the rural character of the area. She noted that a flag lot is one property. This is too many lots. She also cited issues with drainage problems.

David Palmer – 138 Bailey Road: Expressed concern about drainage and the effect it will have on his pond. The lower the level of the road will have an impact.

Board Discussion: Chairperson Robillard reported that notifications were in order. Jack Barton reported that 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 David Reid, owner, for seven area variances at 126 Bailey Road, without prejudice, to the July ZBOA meeting to afford the applicant time to readdress the proposed variances for lots 8, 9 and 10 and 2 and provide some alternatives to bring them into compliance. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

5. JAMES MUSZAK – 160 PINE HILL ROAD

Application of James Muszak, owner, for an area variance and special permit to operate a home business at 160 Pine Hill Road. Applicant is proposing to give golf lessons and is requesting relief from Town Zoning Article 9, subsection 165-79.1.D.1 which states that the operator of the home business shall reside in the single family dwelling located on the same lot as the home business. The applicant lives on an adjacent property. If the variance is approved, this use would be allowed with a special permit. This property is currently zoned Medium Density Residential (MD).

James recalled that at last month's ZBOA meeting, he received a variance approval for a shed that he will use for golf lessons. He provided photographs of the property at the last meeting. He explained that he has 10 open acres and has maintained this property for years. The adjacent land is currently owned by his sister, sister-in-law and himself. 12 of these 32 acres is on the market currently to be sold. Once it is sold, the remaining 20 acres will be given to him. He has used this adjacent land to give golf lessons to his daughter and now wants to give lessons to others.

Public Comment:

Mark Thomas – 195 Pine Hill Road: He has no problem with this request. He did express concern what might be put in there if Mr. Muszak moved. Jack Barton explained that the special permit does transfer to the new owner but under the same conditions as dictated in the special permit. Mr. Thomas also expressed concern that with more people coming to this property for lessons, it might cause the neighbor's dogs to bark more.

The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order. Jack Barton reported that 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 James Muszak, owner, for an area variance to operate a home business at 160 Pine Hill Road. Applicant is proposing to give golf lessons and this grants relief from Town Zoning Article 9, subsection 165-79.1.D.1 which states that the operator of the home business shall reside in the single family dwelling located on the same lot as the home business. The applicant lives on an adjacent property. This use is allowed with a special permit. This property is currently zoned Medium Density Residential (MD). 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 unique property recognizing that the code doesn't cover this because he lives on an adjacent property, which is jointly owned by the applicant and relatives. There will be no undesirable change in neighborhood character or to nearby properties, considering the unique nature of the property and the fact that the applicant has been using this property for personal use up to this point. The request is not substantial. The nature of the property and appearance from the road will remain the same. There will be no adverse physical or environment effect. The alleged difficulty is somewhat self-created, but 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)

A **Motion** was made by Tim Thomas to approve the application of James Muszak, owner, for a special permit to operate a home business at 160 Pine Hill Road. Applicant is proposing to give golf lessons and is requesting relief from Town Zoning Article 9, subsection 165-79.1.D.1 which states that the operator of the home business shall reside in the single family dwelling located on the same lot as the home business. The applicant lives on an adjacent property. This use is allowed with a special permit. This property is currently zoned Medium Density Residential (MD). This special permit has the following conditions:

- 1) Lessons will be given to a maximum of two clients at a time
- 2) Each lesson will last approximately 30 minutes
- 3) Parking will be at the home driveway with one client's car in the driveway at one time
- 4) Lessons will be given Tuesday through Saturday, 9 am to 6 pm (refer to applicant's letter, items 2, 3, 4, and 5)
- 5) No outdoor lighting will be allowed
- 6) No speakers
- 7) Renewable in June of 2011.

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

6. PHILIP WEGMAN – 77 CLEARVIEW AVENUE

Application of Philip Wegman, owner, for 6 area variances at 77 Clearview Avenue. Applicant has constructed a 10.2 feet by 31.4 feet addition to the existing pool house with a front setback of 32 feet from the Lakeside Boulevard road right of way and is requesting relief from Town Zoning Schedule 1 which requires a minimum front setback of 40 feet and Article 10 subsection 165-82.C.3 which requires that detached accessory buildings be located in the rear yard. Applicant is also proposing to construct a 32 x 23 gazebo in the front yard at a front setback of 26.2 feet from the Lakeside Boulevard road right of way, construct a 12 feet by 12 feet stone barbeque structure in the front yard and install a 6 feet high decorative fence in the front yard as part of the pool enclosure and is requesting relief from Town Zoning Schedule 1 which requires a minimum front setback of 40 feet and Article 10, subsection 165-82.C.3 which requires that detached accessory buildings be located in the rear yard. This property is currently zoned Waterfront Residential (WF).

John Scirabba, Land Tech, stated he was presenting this application for Mr. Wegman. He provided a site plan of the property showing the proposed changes. He explained this is on two parcels: 77 Clearview Avenue and Lakeside Boulevard. When the house came down on Lakeside, the two properties were merged. In 2006, a variance was given for the pool house. He reported that Philip's cousin, Dave, lives next door. He noted this is a waterfront district with a cottage atmosphere with houses in close proximity. He noted the proposed fence goes into the pool area and barbeque pit and continues around the playground to the tennis court fence.

Public Comment: None. The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order. Jack Barton reported that 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 noted the extensive requests in this application and the need for more specific information, i.e., construction materials, and explanation on how it is going to impact the neighbors. Jack Barton suggested that a condition of this variance should be inspection by the ZEO and fire marshal.

Following discussion, a **Motion** was made by Tim Thomas to table the application of Philip Wegman, owner, for 6 area variances at 77 Clearview Avenue, without prejudice, to allow the applicant the opportunity to provide the following information:

- Detailed drawings of the structures, including: gazebo, pool house, barbeque structure, 6' high decorative fence, and playground.

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

At 9:10 pm a recess was called. At 9:20 the meeting reconvened.

7. DAVID GREEN – 23 CAREFREE LANE

Application of David Green, owner, for an area variance at 23 Carefree Lane. Applicant has erected a security gate across his driveway at the location where there are 2 existing brick pillars. The height of the gate is 5.75 feet and the applicant is requesting relief from Town Zoning Article 16, subsection 165-128.A.2 which states in part that fences along any front line or along side lot lines between the front setback line and the highway right of way shall not be higher than 3 feet above adjacent ground level. This property is currently zoned Rural Residential (RR).

Jack Barton reported one missing notification. It was the consensus to table this application until the required notification is completed.

A **Motion** was made by Tim Thomas to table the application of David Green, owner, for an area variance at 23 Carefree Lane until the notifications are complete. Seconded by Stephen Shelley. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

8. GREGORY BENNETT – 34 LAKESIDE BOULEVARD

Application of Gregory Bennett, owner, for an area variance at 34 Lakeside Boulevard. Applicant is proposing to extend the covered porch along the rear (east) of his home and is proposing a 3.5 feet setback from his northerly side property line and is requesting relief from Town Zoning Schedule 1 which requires a minimum side setback of 10 feet. This property is currently zoned Waterfront Residential (WF).

Chairperson Robillard reported the applicant has requested his application be put on hold until he can produce a survey map.

A **Motion** was made by Dean Snyder to table the application of Gregory Bennett, owner, without prejudice, for an area variance at 34 Lakeside Boulevard, per the applicant's request. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

9. SCOTT CESSNA – 155 BENNETT ROAD

Application of Scott Cessna, owner, for an area variance at 155 Bennett Road. Applicant is proposing to subdivide this property which would reduce the lot width to 206.80 feet and is requesting relief from Town Zoning Schedule 1 which requires a minimum lot width of 300 feet. The piece of land that is being split off would be merged with 153 Bennett Road. This property is currently zoned Agriculture/Conservation (AC).

Nick Rodak explained that he lives at 153 Bennett, adjacent to 155 Bennett. He described a natural barrier separating the two lots. He stated he has lived there for 8 ½ years. He stated there is a drainage problem from 155 Bennett. Approval of this variance to subdivide 155 Bennett would benefit him because by owning the ditch and area where the water runs off would allow him to maintain this area. He stated he thought he had purchased this area when he purchased the property but he was mistaken. He stated this is a useless slice of the land that has not been maintained. He has started to mow this strip of land with the 155 Bennett Road owner's permission. He stated this just flip-flops the width variance from 155 to 153 Bennett and visually will not have any impact.

Public Comment: None. The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order. Jack Barton reported that 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. Jack Barton reported no concerns from the ZEO or fire marshal.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of Scott Cessna, owner, for an area variance at 155 Bennett Road to subdivide this property which would reduce the lot width to 206.80 feet and this grants relief from Town Zoning Schedule 1 which requires a minimum lot width of 300 feet. The piece of land that is being split off would be merged with 153 Bennett Road. This property is currently zoned Agriculture/Conservation (AC). In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. Essentially, the two parcels will be swapping 65 feet of road frontage which is an indistinguishable change. There will be no undesirable change in neighborhood character or to nearby properties. There will be no visible change to the property. The request is not substantial. There will be no noticeable difference. There will be no adverse physical or environmental impact. As the applicant stated, it will help him improve drainage in that area. Although the alleged difficulty is self-created, using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

SPECIAL PERMIT RENEWALS

1. FRANK AND LUIGI SANTONASTASO – 5070 RIDGE ROAD

Application was received from Frank and Luigi Santonastaso, owners, for renewal of a special permit at 5070 Ridge Road West to operate an auto sales and repair service. This property is currently zoned Highway Commercial (HC) which allows this use with a special permit.

Jack Barton reported that the Town of Parma sent a letter to the Santonastaso's stating they may apply for a special permit modification and informing him of the required information. The special permit has expired. The letter requested the applicant appear at the June meeting to provide intent and provide a site plan and new application. To date, nothing has been submitted by the applicant.

MINUTES OF MAY 20, 2010

The May 20, 2010 minutes were reviewed. The following changes were recommended: in addition to several typographical errors, on Page 5, Para 7, line 3, change to "town report from the ZEO..."; page 7, Para 7, line 3, remove "agricultural market law to take effect" and replace with "proposed zoning changes to take effect."; page 8, page 5 under Board Discussion, add "Jack Barton read a letter from the fire marshal and ZEO departments that a building permit was issued on 8/6/09 for this detached garage. The survey map indicated a 10' setback form the south property line. During the frame inspection it was noted the setback to be 6'." Page 10, under Other, line 2, change to "Town" and take out the word "Board." Also, Dean Snyder was listed as abstaining on several motions, and this needs to be corrected as he was present and voted. A **Motion** was made by Dean Snyder to approve the May 20, 2010 minutes with the recommended changes. Seconded by Stephen Shelley. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder; Abstain: Tim Thomas)

OTHER

Migirdic Colakoglu – HPCR #1 LLC and 1220 HPCR #2: Jack Barton reported that a letter was sent to Mr. Colakoglu on June 17th stating violations at this address. 36 vehicles were parked outside, some blocking the required fire and emergency access lane. The letter stated they have 16 days to remove all but 18 vehicles and park these vehicles as shown on the approved site plan.

ADJOURNMENT

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

Respectfully submitted,
Diane Cook, Recording Secretary