

**TOWN OF PARMA
ZONING BOARD OF APPEALS
SEPTEMBER 16, 2010**

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

Others Present: Jack Barton, Jim Zollweg (alternate)

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. 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 read a letter received by Jack Barton dated 9/10/10 from Linda Mary Judd requesting that her application be dismissed. She explained that the application is no longer necessary.

A **Motion** was made by Stephen Shelley to accept the withdrawal by the applicant, Linda Mary Judd, contract vendee, for two area variances and a special permit at 423 Moul Road. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

NEW PUBLIC HEARINGS

2. TODD BURLEY – 1512 HILTON PARMA CORNERS ROAD

Application of Todd Burley, owner, for area variances at 1512 Hilton Parma Corners Road. Applicant is proposing to construct a 40 feet by 60 feet accessory storage building with an additional 12.5 feet by 60 feet lean-to bringing the total area of the accessory structure to 3,150 square feet. The wall height of the proposed structure is 14 feet. The applicant is requesting relief from Town Zoning Article 5, subsection 165-32.C.2 which states in part that the total area for all permitted accessory structures shall not exceed 1,500 square feet and article 10, subsection 165-82.C.2 which states in part that no detached accessory building in a residential district shall exceed 12 feet in height. This property is currently zoned Rural Residential (RR).

Mr. Schum, attorney, stated he represented Mr. Burley in presenting this application. He reviewed the history of the code back to 1988. He provided several examples of other accessory storage buildings that were approved and built on Hilton Parma Corners Road that are similar in size to the applicant's proposed structure. He noted all the examples were within visual distance of the applicant's property. He noted that proving hardship is not necessary in this case, only the applicant's difficulty. He stated that using the balancing test, this application represents no detriment to the health, safety and welfare of the community. He described the 2 variances requested. He noted that inside storage of Todd's equipment is preferred over outside storage on this property. He provided a picture of a neighbor with inside storage and felt this is an asset. He showed pictures of neighboring property with outside storage. He felt that this is not desirable. He stated that Todd has an existing garage but with two cars and a growing family, there is no room for the items he needs to store inside this proposed building without making it the size requested. The applicant works for a tool and die company. Go-karts and race cars are his hobby. He stated that items to be stored include a 46 feet hauler for his race cars which he plans to place under the lean-to. The height precludes storage inside, as it is 15'4" tall, His Farmall tractor will also fit under the lean-to. The 14 feet wall height will allow the lean-to to be constructed and these two items to be stored there. He has 2 race cars which will take up one-half the building (7 x 6' each car with room needed to work around them), a shop to maintain his cars, including a pit bull which is 10 x 12' and opens to 10 x 20 when opened. The structure will be professionally constructed and not a pole-barn construction. It will have insulated walls with 2 windows on the east side. It will be sided. It will be buffered by trees on the west side. The south and east sides will have an entrance. The structure will be the same color as the house with a metal roof. Without this variance, all his items will have to be stored outside. He felt that inside storage is preferable. Todd's father currently provides storage and his 24 x 48' garage is used presently for this equipment but that will no longer be available. Mr. Schum noted that Todd's property has 6 acres. The proposed building will be northeast of the existing house and approximately 450' from the road. Mr. Schum noted that the request is substantial, as it is 50% larger than the code allows and the 14' feet height is 14% more. The size is similar to other accessory building which were listed. This proposal provides storage of the large hauler.

Discussion was held on the total land coverage if this application is approved. The total square footage was corrected and it was determined that the house is 1884 square feet and the proposed building will be 3150 square feet for a total of 5034 square feet. Mr. Schum noted that if he wanted to put up a horse barn he could put up a 6,000 square feet building. Mr. Schum noted there will be no environment impact. It will be an attractive building with no hazardous materials used, and will cause no drainage issues. The physical benefit is inside storage. Mr. Schum stated this is a self-created, as Todd continues his race car hobby. Mr. Schum stated that this structure will have a positive impact on the neighborhood. Architectural plans were provided to the Board.

Public Comment:

Chairperson Robillard read a handwritten note that was delivered to the Building Department but not signed and no identification of the author was indicated. The letter stated objection to the size of the building being twice as large as allowed and the placement of the building which would be in the middle of the property at the top of a hill. Concern was expressed about the possibility of possible commercial use of this building.

Dean Snyder noted the plan to buffer the building with evergreen trees which would provide a visual screen.

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 there were no comments from the building department or the ZEO.

A **Motion** was made by Dean Snyder to approve the application of Todd Burley, owner, for area variances at 1512 Hilton Parma Corners Road to construct a 40 feet by 60 feet accessory storage building with an additional 12.5 feet by 60 feet lean-to bringing the total area of the accessory structure to 3,150 square feet. This grants relief from Town Zoning Article 5, subsection 165-32.C.2 which states in part that the total area for all permitted accessory structures shall not exceed 1,500 square feet and article 10, subsection 165-82.C.2 which states in part that no detached accessory building in a residential district shall exceed 12 feet in height. This property is currently zoned Rural Residential (RR). The wall height of the proposed structure will be 14'. In making the determination to approve, I believe the benefit can not be achieved by other means feasible to the applicant. The applicant has several large items that need to be stored inside. This is the only opportunity to store these items in a building that can accommodate them. These items could be stored off site but I see no need for that, given the placement of the proposed building on this property which is 6 acres. The items listed to be stored include: a tractor and 2 race cars, and items to support his race car hobby including a "pit bull" that requires a significant amount of area around it to function. There will be no undesirable change in neighborhood character or to nearby properties. It will improve the character of the neighborhood since the applicant has an opportunity to store his items out of sight. This will be purely for personal use and not for a business or commercial use. The request is 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 Stephen Shelley. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

3. TRACY AND BRYAN SCHOLZE – 246 DEAN ROAD

Application of Tracy and Bryan Scholze, owners, for an area variance at 246 Dean Road. Applicants are proposing to construct a second story shed dormer addition on the south side of the home with a front setback of 42 feet from the road right-of-way and are requesting relief from Town Zoning schedule 1 which requires a minimum setback of 75 feet. The existing first floor of the home has a front setback of 39.7 feet. This property is currently zoned Rural Residential (RR).

Scott Fiske, architect, stated he represented Tracy and Bryan in presenting this application. He noted Tracy and Bryan purchased the house on Dean Road which was constructed in the mid-20's. They have several children and the dormers will make this house more livable. They are also considering an addition. The current house is 40 feet from the road right-of-way. The second floor has a very low ceiling and does not meet building code. This dormer will bring the house into code. New insulation and wiring are currently being worked on and they are on a very tight schedule. Bryan stated that at the time of his application, his purchase was pending. He now owns the house. He provided a blueprint and described the dormer.

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 comments from the building department or the ZEO.

A **Motion** was made by Tim Thomas to approve the application of Tracy and Bryan Scholze, owners, for an area variance at 246 Dean Road to construct a second story shed dormer addition on the south side of the home with a front setback of 42 feet from the road right-of-way and this grants relief from Town Zoning schedule 1 which requires a minimum setback of 75 feet. The existing first floor of the home has a front setback of 39.7 feet. This property is currently zoned Rural Residential (RR). In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. The home was constructed in the mid-1920's and is similar to other homes built during that time with similar setbacks. The shed dormer will provide more living space and meet building codes. There will be no undesirable change in neighborhood character or to nearby properties. This 1920's home predates current codes and the shed dormer will enhance the character of the home and provide the applicant with additional living space. It is not really substantial because of the age of the home. There will be no adverse physical or environmental effects. The alleged difficulty is not self-created, again because of the age of the home with current setbacks from the 1920's. 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.

Discussion was held on the plan to widen the north dormer no more than 2 feet to accommodate the stairway and the Board deemed this to be a diminimus.

Tim Thomas stated he amends his Motion to approve the diminimus of the cross gable on the north side not to exceed 2 feet. Seconded by Stephen Shelley. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

4. FRANK SANTONASTASO – 48 PINE HILL ROAD

Application of Frank Santonastaso, owner, for an area variance and a Special Permit at 48 Pine Hill Road. Applicant is proposing to construct a detached garage in the front yard and is requesting relief 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. Applicant is also requesting a Special Permit to allow an accessory apartment which will be accomplished by converting the existing attached garage to living space. This property is currently zoned Medium Density Residential (MD).

Frank explained the existing garage has been demolished. He stated that his mother is terminally ill and he is moving his father in with them. He explained he cannot locate the new detached garage behind the house due to the location of the septic tank. On the east side it drops down 8' and that is where the leach fields are. An attached garage will not look right. He is proposing a garage to be located where the turnaround is in his driveway. He provided pictures of the house noting you can't see much of the house. The new garage will be 31 feet from the house and 28 feet from the side.

Frank explained that the in-law apartment is for his father. He stated his mother is terminally ill. He is planning a small kitchen in this apartment. He stated that this will always be used for his family and will never be used as a rental. Dean Snyder read the code which indicates an apartment is intended for elderly residents or infirmed relatives but not requiring constant care. It was explained that this apartment can be opened up to the main residence when it is no longer used as an in-law apartment. Otherwise, the bathroom and kitchen need to be removed. The applicant stated he understood the code.

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 comments from the building department or the ZEO.

A **Motion** was made by Tim Thomas to approve the application of Frank Santonastaso, owner, for an area variance at 48 Pine Hill Road to construct a detached garage in the front yard and this grants relief 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. This property is currently zoned Medium Density Residential (MD). In making this determination to approve this area variance, the driver behind this area variance is to provide an in-law apartment for his father, and this benefit cannot be achieved by other means feasible to the applicant. Looking at the site plan, no other options are feasible for this in-law apartment due to the septic, pool and leach field locations. There will be no undesirable change in neighborhood character or to nearby properties. The garage will be located at the required setback. There is ample natural vegetation that screens the garage from the street. The request is substantial but mitigated relative to the need for an in-law apartment for his father. There will be no adverse physical or environmental effects. The alleged difficulty is somewhat self-created but 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, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

A **Motion** was made by Tim Thomas to approve the application of Frank Santonastaso, owner, for a Special Permit at 48 Pine Hill Road to allow an accessory apartment to be used as an in-law apartment for his father, Luigi Santonastaso. This will be accomplished by converting the former garage to living space. This Special Permit is to be compliant with zoning ordinance 165.76 and is renewable in two years, to be renewed in September of 2012. Seconded by Stephen Shelley. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

5. DANIEL D'ANGELO – 1835 NORTH UNION STREET

Application of Daniel D'Angelo, owner, for a use variance at 1835 North Union Street. Applicant is proposing to renovate the second floor of this commercial building and create a 496 square foot studio apartment, a 637 square foot one bedroom apartment, and a 724 square foot one bedroom apartment. This property is currently zoned General Commercial (GC) which does not allow apartments as a permitted principal use.

Chairperson Robillard read a letter from Daniel D'Angelo requesting a postponement of his hearing to the November 18, 2010 ZBOA meeting. He explained he is in the process of making a last attempt at keeping the space as it is currently being used.

A **Motion** was made by Tim Thomas to table the application of Daniel D'Angelo for a use variance at 1835 North Union Street, without prejudice, to the November 18, 2010 ZBOA meeting, 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)

6. STERLING AND CARMA MASON – 4846 RIDGE ROAD WEST

Application of Sterling and Carma Mason, owners, for area variances at 4846 Ridge Road West. Applicants are proposing to construct a single family home in the front portion of this parcel where the lot width is 195 feet with a proposed front setback of 47.5 feet from the Ridge Road right-of-way and are requesting relief from Town Zoning schedule 1 which requires a minimum lot width of 260 feet and a minimum front setback of 75 feet. This property is currently zoned Rural Residential (RR).

Kris Schultz, surveyor, stated he represented the applicant in presenting this application. He explained that the parcel was originally created in 1977 by a subdivision. There are 45 acres left. He stated that the best placement for the house is midpoint in line with the other houses on both sides. He provided an aerial photo of the area noting that all the houses were built close to Ridge Road due to the drop off, and that a lot of fill is required to bring the property up to grade. From an engineering standpoint, this placement works out the best. He noted only a few homes have the required 260 feet lot width in this area. A substandard width is not unique. The proposed placement of the house makes sense. He explained the garage access will be around in the back. He noted they could put the house back to 75 feet but this is not easy due to the drop off. He noted the house is 2200 square feet.

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 recalled comments by the Building Department and ZEO regarding this home construction, which is a manufactured home, and explained that modifications will be necessary. Kris Schultz stated that he will be working with the building department on this issue.

A **Motion** was made by Tim Thomas to approve the application of Sterling and Carma Mason, owners, for area variances at 4846 Ridge Road West to construct a single family home in the front portion of this parcel where the lot width is 195 feet with a proposed front setback of 47.5 feet from the Ridge Road right-of-way and this grants relief from Town Zoning schedule 1 which requires a minimum lot width of 260 feet and a minimum front setback of 75 feet. This property is currently zoned Rural Residential (RR). In making this determination to approve, I don't believe the benefit can be achieved by other feasible means. The property in question has a significant change in elevation and if placed behind the two neighboring houses would require substantial fill. There will be no undesirable change in neighborhood character or to nearby properties. Many of the homes in the immediate area of the proposed home do not meet the current setback requirement or lot width requirement and as such will not be out of character. The request is substantial but mitigated by the fact that to put the home in compliance with code would be costly due to the required fill and would also be out of line with other homes on both sides. There will be no adverse physical or environmental effect. The alleged difficulty is somewhat self-created but some of the actions that would be required to meet the front setback and width mitigate this. 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)

MINUTES OF AUGUST 19, 2010

The August 19, 2010 minutes were reviewed and the following changes/additions were recommended: Page 1, Para 4, line 2, change to "Parma Town Board tabled a decision on the zoning revision to further investigate definitions." Two typos were pointed out on page 2. A **Motion** was made by Stephen Shelley to approve the August 19, 2010 minutes with the recommended changes. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

OTHER BUSINESS

Zoning revisions: Jack Barton handed out the zoning revisions approved by the Parma Town Board as of 9/7/2010.

Application of David Green – 23 Carefree Lane: A letter was received from Andy and Patty Phelps, 1435 Manitou Road, who referred to this application which was approved at the July ZBOA meeting. They stated they had no issue with this variance but expressed concern that they were not notified of this application. They questioned the notification process and if Mr. Green skirted the notification procedure. Jack Barton reported that he responded to this letter and explained the notification process to Andy and Patty Phelps. He stated that David Green submitted proof of his notifications but in rechecking the records, Jack reported that he checked their name off the list as being received but he has been unable to locate the postal form which he thinks may have been misplaced. Dean Snyder noted that this is the first time this has happened.

Jack and Mary Ann Wade – 6 Lighthouse Road: Jack provided an envelope containing a letter and photographs for the ZBOA's review from Jack and Mary Ann Wade to each Zoning Board member regarding the application of James Kesselring, 20 Clearview Avenue, whose application was partially approved in June of 2009. This will be discussed at the October meeting.

Direct Payroll Deposit: Jack reminded Board members to complete the required form if they choose to change to direct payroll deposit.

The Board called a recess at 9:05 pm and reconvened at 9:15 pm.

Jack Barton recalled his recent discussion with Lara Badain, Town Attorney, regarding the request of Mike Colakoglu, applicant for 1220 HPCR#1 and 1220 HPCR #2 LLC at 1220 Hilton Parma Corners Road (Mico Transmissions) for the Zoning Board to consider a rehearing of his application which was partially denied at the July, 2010 meeting.

A **Motion** was made by Dean Snyder for the ZBOA members to go to Executive Session at 9:15 pm to discuss a matter of litigation with the Town of Parma attorney. The Board included Jim Zollweg, Jack Barton and Diane Cook, non-voting members. 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 reconvene the ZBOA meeting at 9:55. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

A **Motion** was made by Tim Thomas to rehear the application of 1220 HPCR#1 LLC and 1220 HPCR #2 LLC, 1220 Hilton Parma Corners Road, per Town Law 267-12-A, based on information that the ZBOA received at the Executive session. Seconded by Dean Snyder. **Motion unanimously carried (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 Tina Brown, to adjourn the meeting at 10:05 pm. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

Respectfully submitted,
Diane Cook, Recording Secretary