

**TOWN OF PARMA
ZONING BOARD OF APPEALS
October 20, 2011**

Members Present: Tina Brown
Veronica Robillard
Stephen Shelley
Dean Snyder (arrived at 8:30 pm)
Jim Zollweg

Members Excused: Tim Thomas

Others Present: Jack Barton

Public Present: See attached list

Chairperson Robillard called the meeting to Order at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She reported that two regular Board members were absent, with the alternate Board member present. She explained that a quorum of three is required to pass a motion.

PUBLIC HEARINGS

1. HUGH MURPHY – 413 BURRITT ROAD

Application of Hugh Murphy, owner, for modification of an existing use variance that was granted on August 29, 1980 at 413 Burritt Road. The existing use variance requires that the owner live in one of the apartments on the property and the applicant is requesting to remove that requirement and allow the owners to live off premise. This property is currently zoned Agricultural Conservation (AC).

Dan Cooke explained that he and Hugh Murphy have owned this property since 1973/1974. He recalled the use variance granted in 1980 that requires one owner to live in the unit. Dan provided a copy of the Deed. He explained that Hugh has lived on this property since they purchased it. Dan stated that he is 77 years old and Hugh is 72. They are unable to maintain this property and have two people interested in purchasing this property jointly. The prospective buyers are a 26 year old man and the buyer's father-in-law. These buyers are handy and will be able to maintain this property but are unable to live on the property because of their current business commitments. This is the reason for the request for modification of their existing use variance. Dan explained how they felt their situation meets the 4 criteria to approve a use variance:

- (1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. Dan stated that they do not hold a mortgage on this property and plan to hold the mortgage for these buyers, who will pay them \$1423 a month for 5 years, with a balloon payment due after that. He provided a financial listing of anticipated payments from the buyers and renters and expenses. Dan noted that the new owners can not realize a profit without all the apartments being rented. If the buyers were to live there and not pay rent, they would not realize a profit from the ownership of these units. Dan noted that Hugh will continue to live there but once the property is sold, he will no longer be the owner as specified in the original use variance. He referred to the site map which indicated the buildings and apartments that are rented. It was noted that there were 9 apartments.
- (2) The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. The original use variance dictates that Hugh has to live on this property. As an owner in charge of maintaining this property, he is unable to do this, due to his age.

- (3) That the requested use variance, if granted, will not alter the essential character of the neighborhood. Dan stated there will be no visual change with this change of ownership.
- (4) That the alleged hardship has not been self-created. Health, family and age are the reasons they can't take care of this property any more.

Dan provided a copy of the list of required notifications for this application. He noted 7 families do not live on the properties listed and that their mail was forwarded to another address. He also noted there are two other rental properties close by.

Dan referred to the site map, listing the following as the apartments that are rented:

- The milk house has two apartments (established in 1972)
- The main house (farm house) has six apartments (established in 1973)
- The barn/garage has one apartment (established in 1980)

Chairperson Robillard questioned if any commercial business is held on this property. Hugh and Dan stated no commercial business is located on this property. It is only used as residential.

Public Comment: None.

The public hearing was closed.

Board Discussion: Jack Barton reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II SEQR with no further action required.

The Board discussed this unique situation but expressed concern if the property is sold to someone who isn't living there and does not keep up the property. The prospective buyers may take care of this property, but there is no guarantee who they might sell the property to in the future. Jack Barton recalled the property maintenance code which covers tall grass, overgrown trees, shrubs, etc.

Jim Zollweg asked for clarification of the financial evidence. Dean Snyder suggested that the Board give the owner an opportunity to obtain competent financial evidence.

Following discussion, a **Motion** was made by Jim Zollweg to table the application of Hugh Murphy for modification of an existing use variance that was granted on August 29, 1980 at 413 Burritt Road, without prejudice, to allow the applicant time to develop more substantial competent financial evidence that clearly demonstrates he can't realize a reasonable return from the property without selling this property. A realtor or accountant could provide this financial evidence, which must be demonstrated for each and every permitted use under the zoning regulations for this district. Seconded by Tina Brown. **Motion carried (4-0)** (Ayes: Tina Brown, Stephen Shelley, Veronica Robillard, Jim Zollweg; Absent: Dean Snyder, Tim Thomas).

MINUTES OF SEPTEMBER 15, 2011

The ZBOA minutes of September 15, 2011 were reviewed and the following recommended changes were made: page 1: Para 1, remove reference to hearing devices offered; Para 3, line 1, change to Patrick Laber of "Schultz Associates"; change "Chevy" to "Chevrolet"; last Para, change to "...the request was not returned by Monroe County, and that this is a type II SEQR..". Page 2: Para 1, line 6, change to "Monroe County department of planning."; Page 3: line 2, change to "special use permit at 5049 Ridge Road West to construct a new auto..."; Para 3, line 15, change to "At Dean Snyder's request, Mr. Olsen stated that the title company does not guarantee zoning is correct." Page 4: line 1, change to "single compared to a 3 family home."; Para 7, line 4, change to "requires a pre-existing non-conforming use." "also, the alleged hardship is self-created." Line 9, change to "but, Mr. Olsen stated that they are not responsible for

this zoning determination.” Page 6: line 4, change to “..motion, the situation was self-created.” Several typographical errors were also corrected. A **Motion** was made by Stephen Shelly to approve the September 15, 2011 ZBOA minutes with the recommended changes. Seconded by Tina Brown. **Motion carried (4-0)** (Ayes: Tina Brown, Stephen Shelley, Dean Snyder (arrived at 8:30 pm), Veronica Robillard; Absent: Tim Thomas; Abstain: Jim Zollweg).

ADJOURNMENT

There being no further business, a **Motion** was made by Tina Brown, seconded by Stephen Shelley, to adjourn the meeting at 9:05 p.m. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Stephen Shelley, Dean Snyder, Veronica Robillard, Jim Zollweg; Absent: Tim Thomas).

Respectfully submitted,

Diane Cook, Recording Secretary