

TOWN OF PARMA
ZONING BOARD OF APPEALS
March 17, 2016

Members Present: Dan Melville
Veronica Robillard
Stephen Shelley
Tim Thomas
Jim Zollweg

Others Present: Dennis Scibetta, Art Fritz, Dean Snyder, Kyle Mullen

Public Present: Janet Heinrich, George Heinrich, Mark Irwin, Lynette Irwin, Jeff LaChausse, Jim Smith, Len Demor, Dennis DeGraad, Jessie Voigt, Roger Odell, Jen Fitzgerald, Kennedy Fitzgerald, Adam Fitzgerald, Ben Mattern

The meeting was called to Order by Chairperson Robillard at 7:00 p.m. Chairperson Robillard explained the function of the ZBOA and the decision-making process. She also explained that this is a five member board and a quorum of three is required to pass a motion.

NEW BUSINESS

1. MARK IRWIN & LYNETTE MAUTE – 604 BURRITT ROAD

The application of Mark Irwin and Lynette Maute, owners, for an area variance at 604 Burritt Road. The applicants are proposing to erect a 6' privacy fence on the north property line and the east property line with a zero foot setback. They are requesting relief from Town Zoning, Article XVI, subsection 165-128.B.1 and 128.B.2 which state in part that fences may be erected up to a height of 4 feet within the rear or side yard and that 6 feet fences are subject to the side and rear setback requirements which, in this case, is 20 feet. This property is currently zoned Rural Residential (RR).

Mark Irwin, owner, explained that they are looking to install a 6' privacy fence along the east and north property line because of ongoing issues with the neighbor. They have no privacy and he leaves for work at 2 a.m. leaving his wife alone. The neighbor owns the property to the east and is currently negotiating to purchase the property to the north, which would run behind Mr. Irwin's property. The neighbor to the east has threatened him and his wife, their property and animals. He would like the fence so that they can enjoy their yard without being spied on and to keep his neighbor out of his yard. There is presently a court matter pending. He purchased the property back in March and because of the ongoing issues they have looked into selling the property but he would lose around \$20,000 by selling now. Mr. Irwin explained that he has installed \$1700 in security cameras around his property. There was discussion about placing this 3' off the east property line. The rear property line has a shed that sits 17" off the line so to be able to move around behind it the fence would need to sit on the property line to the north.

Board Discussion: Dennis Scibetta 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 action under SEQR and no further review is required. There were no letters in the file.

Tim Thomas asked if there would be any vegetation added. Mr. Irwin stated that he would be adding some to the front side and possibly to the east. Mr. Irwin stated that every time the flood lights go on in their back yard, the neighbor comes out. Mr. Beehler gave them permission to cut down some trees on the north side and that is how the feud started. There was discussion about the buildings directly behind the properties.

Tim Thomas asked why a 6' fence has a required 20' setback. Mr. Fritz stated that the minimum setback for everything in this district is 20'. Chairperson Robillard asked what the style of fence would be. Applicant stated it is a pressure treated dog eared cut. Chairperson Robillard clarified that the good side has to face the neighbors. Applicant stated he understood that and if he needed to move it in so it is not right on the

property line he is ok with that so that he can maintain the fence and mow. Chairperson Robillard asked if they had any dogs and if the fence would help contain them. The applicant responded they have two small dogs now that are always on a leash in the future if they got a larger dog the fence would help but currently the west side would not be fenced. Tim Thomas asked if there have been any attempts to try and reconcile. The applicant stated that the neighbor is not willing to let go the fact that the trees were cut down and with everything that has happened since there have been no attempts.

Jim Zollweg asked how many feet are between the east side of the house and the property line. Applicant stated 22'. Jim Zollweg felt that this would protect the privacy in both directions. Tim Thomas asked if the fence could be a foot off the north property line. The applicant stated that if that were the case he would not be able to get behind the shed to maintain it. Tim Thomas asked about putting this 3' off the east side. The applicant stated that would be good so he could maintain and mow. Dean Snyder asked if there were any drawings of the septic and leach field available. Art Fritz stated he does not think they have those. Dean Snyder stated he would like to see where those are. Chairperson Robillard asked if the shed could be moved. The applicant stated that it is on a concrete slab so he would have to take the shed down and break up the slab to remove it.

Public Comment: None
Public Hearing Closed

Chairperson Robillard asked if there were any comments from the Building Department and /or ZEO. Dennis Scibetta stated that there have been a couple visitors to the office that had concerns with trash and the view as well. He felt that this fence would also be a buffer to those neighbors as well.

There was discussion about the property to the north being used commercially. Art Fritz stated that it is residential not commercial. Dean Snyder felt that if that property to the north was a commercial property he would have no problem having a 6' fence up at a 0 foot setback; however, this fence is going to need maintenance and it is unreasonable for the board to expect the neighbor to maintain it. Though the shed being there is inconvenient he feels that the fence should be at least 3' off the north property line so that the applicant could maintain it and because it is possible someone could purchase the land to the north and build a house, then they would have this fence as their view. Dean Snyder's said the applicant could bring the fence up to the side of the shed with gates on one or both sides and then the shed would act as part of the fence. Dean Snyder is having a hard time approving this as an area variance and wondered if this could be accomplished with a special permit versus a variance that would remain with the property forever. He felt that while the need is there now in the future the need may go away. Tim Thomas stated that he is not a fan of fences but feels that there is a need here and there are some extraordinary circumstances. He also felt that putting this right on the north property line may cause more issues so he is in agreement of moving the shed in 3' so it can be maintained. They do not want to set a precedent going forward.

Dennis Scibetta stated that the property to the north is a closed landfill and it may not be able to be built on in the future. There was discussion surrounding Special Permits and what "other" was. Art Fritz felt that to be a Special Permit it must be listed in the ordinance. Dean Snyder felt that this should be tabled to allow the Building Department time to consult the Town Attorney about possible opportunities to grant relief while minimizing the impact on the future needs of the neighborhood. There was discussion about adding a condition or timeframe to the variance. Art Fritz felt that the attorney would have to be consulted if the board wanted to add a timeframe or condition to the variance. Dennis Scibetta stated he has seen variances with conditions before but he would like to have attorney input. Chairperson Robillard stated that even though there is some consensus about the layout of the fence there is a matter of the definition of how it would fall under the ordinance. She asked the Building Department when they thought they would have the information. They felt it could be ready by the April meeting.

The applicant stated that he does not want to give up the 3' on the north side of the property and he is not going to pay \$11,000 for a fence to take it down in three years. Even if someone else moved in he felt it would be nice to have some privacy. Chairperson Robillard clarified with him that he is not ok with putting

the fence 3' off the property line. Mr. Irwin stated that is unacceptable. Chairperson Robillard stated that there is no advantage of seeking legal counsel if the applicant is not willing to work with the board. Tim Thomas asked how he would maintain the back portion if it is right on the property line. The applicant stated he wouldn't, there are dead trees and poison ivy back there. Mr. Irwin asked if a special permit was issued who would determine if the need was still there or not and who pays for that if it needed to come down at that point. Dean Snyder asked if this was a 4' fence on the property line, would a variance be needed. Mr. Fritz said no. There was discussion surrounding if the property to the north was a commercial lot then would it would be ok to erect the fence as a buffer. Tim Thomas' concern with that is if dealing with the EPA it could take years. Dean Snyder felt that it is up to the applicant to decide whether 3' is worth giving up to have this fence.

Dean Snyder felt that he would like to have additional time to research this and would like this to be tabled until May. There are three things he would like researched. 1. 165-128.C.1.B where in a commercial or light industrial can this fence be put up in a residential area if the property behind it is not treated as a residential area, maybe there is some opportunity here. 2. Having a 6' fence possibly 3' off the property line to allow for maintenance of the fence on the north side, if there is an opportunity then this could be used for the east side possibly. 3. The last one which needs to be used in the balancing act, what benefit to the applicant is served by having a 4' fence on the property line that allows the applicant full use of every inch of his property but does not necessarily preclude visual. The applicant does not want to put a 4' chain-link fence up because that will not deter the neighbor from spying on them.

It was discussed with the applicant the options. 1. Moving forward with a decision tonight, 2. Withdrawing the application or 3. Having possible options looked at by the Building Department. Chairperson Robillard asked the applicant if she would like to have the Building Department look into this, withdraw the application or vote on this tonight. Mrs. Maute stated that she would like the Building Department to look into this. Dennis Scibetta stated that Mr. Irwin is willing to put the fence 3' off the property line to the north and east and he will take down the shed because he would rather have the fence. Dean Snyder felt that makes sense on the north and the 24' on the NE corner but he still would have a hard time approving the privacy fence on the east side unless conditions can be added that this would come down when the need no longer exists. Tim Thomas felt comfortable with 3' off the property lines but would like some guidance surrounding placing a condition on the variance. He also felt that this fence should not stay forever and could at least be modified down the east property line.

Chairperson Robillard asked who would decide or how would the Building Department determine when the need doesn't exist anymore, or would the applicant make that determination. Dean Snyder felt it could be like the board does with the in-law apartments and the name of the neighbor would be recorded and if he is no longer living next door then the need is gone but also felt more research is needed. Tim Thomas felt that legal documents like arrest reports and court documents could substantiate the need.

Chairperson Robillard wanted to go through the criteria and stated that there would not be an undesirable change to the neighborhood or surrounding properties. No neighbors have come to speak against this. Dean Snyder felt that looking forward the need would change and then there would be this tall fence. He felt that this is a tall fence and the Town does not allow this and that makes it an undesirable change, he felt that fact that neighbors have not come forward does not mean that the board should not do their due diligence. The board felt this was substantial and there would be no adverse physical or environmental effect. Chairperson Robillard felt that this was not self-created and she felt the board needed to look at whether this area variance could be approved under the circumstances and whether the balancing test can be achieved.

Dean Snyder does not want to set a precedent with this. Tim Thomas is comfortable with this, feels the need is there and that the applicant has done other things to mitigate this situation, as long as the Town has some mechanism to have this removed or altered when the need is gone. Dan Melville felt that conditions could be added to an area variance. Tim Thomas and Dean Snyder indicated they would like guidance from the Town Attorney. Art Fritz said that the condition has to be reasonable under a variance situation and would also like input from the attorney. Dennis Scibetta stated that normally a Special Permit is regulated not a variance, he

also would like attorney guidance. When polled, Dan Melville, Jim Zollweg and Stephen Shelley felt they could move forward with this tonight and Chairperson Robillard felt she could go forward or table tonight. Tim Thomas would like advice from the attorney and Dean Snyder felt that since the Building Department felt they would like to consult the attorney then that should happen to protect the board and department legally. Because of the seriousness of the situation it was decided that this should be tabled to April not May.

After discussion, a **Motion** was made by Tim Thomas to **table** the application of Mark Irwin and Lynette Maute, owners, for an area variance at 604 Burritt Road to the April 2016 meeting to allow the Building Department the opportunity to consult with the Town Attorney on the legality of putting a condition on an area variance relative to the fence in question.

Seconded by Stephen Shelley. **Motion carried to approve (5-0) (Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg).

2. GEORGE AND JANET HEINRICH – 450 BURRITT ROAD

The application of George and Janet Heinrich, owners, for an area variance at 450 Burritt Road. The applicants are proposing to construct a 3,072 square foot pole barn with a wall height of 14' and are requesting relief from Town Zoning Article V, subsection 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet and Town Zoning Article X, subsection 165-82.C.2 which states in part that the wall height shall not exceed 12 feet. This property is currently zoned Rural Residential (RR).

Board Discussion: Dennis Scibetta 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 action under SEQR and no further review is required. There are letters in the file.

Janet Heinrich, owner, explained that they are looking to build a 48' x 64' building to store a small camping trailer which they will be trading in for a larger one, an antique vehicle ('59 Cadillac) and other belongings that are depicted on a layout given to the board. They are currently paying to store one of the vehicles off site. Chairperson Robillard asked if the applicant currently had a large motor home. Applicant stated no, they are going to purchase one in the future. Chairperson Robillard is concerned about approving a storage building to store something that the applicant does not own yet. There was discussion surrounding the schematic provided and what would be stored there. Chairperson Robillard asked what is in the current garage. Applicant stated there is a mowing machine and gardening stuff.

Dean Snyder felt that there is a need for this without the motorhome by putting the basics in this and the antique car. They will need room to get around the belongings and would probably want work benches and shelving at some point. Tim Thomas asked how big their lot was. Applicant answered 5.3 acres. Tim Thomas asked what is in the smaller shed. Applicant stated there are gardening tools there as well but also gas cans are in their so they are stored away from the house. The septic is at the rear of the house. Chairperson Robillard asked if it was possible for them to go smaller. Tim Thomas asked the applicant what they have right now. Applicant stated that right now they have a 2 cab pickup truck, 3 trailers, including the camper, 2 cars, 3 ATV's and a snowmobile.

Tim Thomas asked why the need for the 14' wall height vs. 12' feet. Applicant stated it is because of the height of the future motor home. They showed the board what the siding and doors would look like. The colors would blend with the neighborhood. Tim Thomas felt that with what they have now, they could fill 65% to 70% of it. Dean Snyder felt that they really could not go any smaller and that the height is needed to accommodate the door and the motorhome plus having the capability to move around in there. This would hide all of the stuff from the neighbors. Chairperson Robillard stated that they have never in the past looked at what people might acquire in the future because that is not a given, the board's job is to grant the minimum amount of relief allowed based on need not on projected future expansion and she felt that this was not how this board normally operates. Chairperson Robillard feels that this application is all hypothetical. Tim Thomas felt that the board should allow for some expansion and with the size of this lot it does not seem too large. Tim Thomas feels that there are other buildings that have been built on this road similar to this.

Public Comment:

Hiram Johnson, 460 Burritt Road, stated that he lives to the west of the applicant and fully supports this application.

Chairperson Robillard read a letter from William and Shirley Hess, owners of 451 Burritt Road, who also stated they agree with this application.

Public Hearing: Closed

Stephen Shelley asked how far back from the house do the applicants intend to put this because there are no dimensions on the drawing or location on the map. The applicant stated the shed would be moved and it the structure would be behind the house where the current shed is. Chairperson Robillard is worried that they might be approving a structure that is bigger than the need. Jim Zollweg stated that this will be on the property forever and agreed that the board is required to grant the minimum relief necessary at the time of application not based on future need. Approving this without proper information leaves room for future applications like this. Dean Snyder stated that with the current equipment they have he is confident that the structure will be full. He felt that building a smaller building now and five years from now having to raise the roof or add to it would not make sense. Tim Thomas would like to see dimensions and have something for the record with specific information. Chairperson Robillard is not satisfied or comfortable with the provided information and stated that in the past dimensions have been required and others have had to come back with the information that substantiates the application. She feels there are no concrete dimensions or information and it is hypothetical. She explained that she wants to see why that size is needed. Stephen Shelley felt that the board needs to be consistent with what they have asked other applicants and it is important to have something for the record. There was discussion about the applicants coming back and bringing a layout with dimensions. The applicant stated that this is what came out after he put the measurements in the program. There was further discussion about the layout provided. Dan Melville felt that there needs to be room to move around and he is comfortable with the information provided.

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of George and Janet Heinrich, owners, for an area variance at 450 Burritt Road. The applicants are proposing to construct a 3,072 square foot pole barn with a wall height of 14' and are requesting relief from Town Zoning Article V, subsection 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet and Town Zoning Article X, subsection 165-82.C.2 which states in part that the wall height shall not exceed 12 feet. This property is currently zoned Rural Residential (RR).

In making this motion to approve:

- The benefit can be achieved by other means feasible to the applicant. The layout that was drawn to scale demonstrates that the size of the structure is required to accommodate two trailers, two cars, three ATV's, a dual wheel pickup truck, either a roll off flatbed truck or a recreational trailer. The purpose for the accessory structure is to allow the applicant to store these items inside in a safe environment thus improving the neighborhood view because they will not be stored outside. There was question about this size being appropriate. The applicant has future plans to purchase a fifth wheel or a full size RV and the time to build this structure to accommodate the need will be more appropriate and cost effective to do that now than later. In my opinion the applicant did a reasonable job using the scaling provided by the software application and has done an adequate job justifying the square footage needed with the current items that will be stored.
- There will be no undesirable change in neighborhood character or to nearby properties. This property is 5 plus acres. In the Burritt Road area there are other accessory structures, some that predate the current code and some that have been put up in the last ten years.
- The request is absolutely substantial. This is twice what is allowed however, as with our experience with other applications more and more families have toys and they want those things to be stored in a secure and safe location. The applicant has justified the space in the layout provided and the view will be more pleasing to the neighbors and people passing by.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created; however, using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

Seconded by Dan Melville. **Motion carried to approve (3-2)** (Ayes: Dan Melville, Stephen Shelley, Tim Thomas; **Nay**: Veronica Robillard, Jim Zollweg).

3. BENJAMIN AND REBEKAH MATTERN – 560 HAMLIN PARMA TOWN LINE ROAD

The application of Benjamin and Rebekah Mattern, owners, for an area variance at 560 Hamlin Parma Town Line Road. The applicants are proposing to construct a 1,200 square foot pole barn and are requesting relief from Town Zoning Article V, subsection 165-33.C.2 which limits the total area of accessory structures to 600 square feet. This property is currently zoned Medium Density Residential (MD).

Benjamin Mattern, owner, explained that he would like to build this structure to store his equipment inside. There is no garage on the house and the detached garage was built before he purchased the property. He has a trailer, a bobcat and attachments. The property is just over an acre. Tim Thomas asked how he would access the structure. The applicant stated he will be adding a stone driveway with a ten foot gate across the back. Chairperson Robillard asked if he had talked to the neighbors on the private drive. Mr. Mattern stated he did and that they were excited to not have to look at the equipment outside. Dennis Scibetta stated that one of the neighbors did contact them and stated he is in favor of this project, though he did not send in a letter. Stephen Shelley asked if he would be extending the arborvitaes. Applicant stated yes and other landscaping too.

Board Discussion: Dennis Scibetta 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 action under SEQR and no further review is required. There were no letters in the file.

Public Comment: None

Public Hearing: Closed

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of Benjamin and Rebekah Mattern, owners, for an area variance at 560 Hamlin Parma Town Line Road. The applicants are proposing to construct a 1,200 square foot pole barn and are requesting relief from Town Zoning Article V, subsection 165-33.C.2 which limits the total area of accessory structures to 600 square feet. This property is currently zoned Medium Density Residential (MD).

In making this motion to approve:

- The benefit can be achieved by other means feasible to the applicant. The applicant is in the masonry business and currently most if not all of his equipment is stored outside, which is in view of his neighbors to the northeast and south. The proposed structure and the provided layout shows him maximizing the space and provides him with security to store his equipment away from vandalism and the elements and provides the neighbors with a pleasing view of a structure designed to hold this equipment.
- There will be no undesirable change in neighborhood character or to nearby properties. In the immediate neighborhood there is an automotive repair shop across the street and other barns. The applicant mentioned that he has talked to the neighbors and they are supportive of this project.
- The request is substantial. It is twice what the code allows.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created; however, 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 carried to approve (5-0)** (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg).

SPECIAL PERMIT RENEWALS

4. JOSEPH SELVAGGIO – 765 BURRITT ROAD

The application of Joseph Selvaggio, owner, for renewal of a Special Permit at 765 Burritt Road for an accessory apartment located in an accessory structure.

There was a C of O inspection of the property by Dennis Scibetta and everything was found to be in compliance.

A **Motion** was made by Stephen Shelley to approve the application of Joseph Selvaggio, owner, for renewal of a Special Permit at 765 Burrirt Road for an accessory apartment located in an accessory structure for a period of two years, renewable in October 2017 with the same conditions.

Seconded by Tim Thomas. **Motion carried to approve (5-0)** (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg).

MINUTES OF FEBRUARY 18, 2016

The ZBOA minutes of February 18, 2016 were reviewed. **Motion** was made by Jim Zollweg to approve the February 18, 2016 minutes as presented. **Seconded** by Dan Melville. **Motion carried (3-0)** (Ayes: Dan Melville, Stephen Shelley, Jim Zollweg; **Abstain**: Veronica Robillard, Tim Thomas).

ADJOURNMENT

There being no further business, a **Motion** was made by Jim Zollweg, seconded by Dan Melville to adjourn the meeting at 10:17 p.m. **Motion carried to approve (5-0)** (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg).

Respectfully submitted,

Carrie Webster
Recording Secretary