

TOWN OF PARMA
ZONING BOARD OF APPEALS
April 21, 2016

Members Present: Dan Melville
Stephen Shelley
Tim Thomas
Jim Zollweg

Members Excused: Veronica Robillard, Dean Snyder

Others Present: Dennis Scibetta, Art Fritz, Kyle Mullen

Public Present: Michael Flowerday, Esq., Catherine Mendola, Jim McAfee, Mary Lynn Demarco, Janet Heinrich, George Heinrich, Doug Flood, Tom Greiner, Theresa Reed, Jeff Lachausse, Aaron Camp, Julie Camp, Kris Schultz, Dan Kuchta, Brian Flint.

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

TABLED 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).

Acting Chairperson Thomas explained that this was tabled from the March meeting and the Public Hearing was closed. This was tabled to allow the Building Department the opportunity to speak to the Town Attorney regarding the legality of putting a condition on an area variance relative to the fence in question.

Dennis Scibetta explained that it is within the Boards purview to grant the 6' fence without any conditions, if there were conditions put on this then it would be more of a Special Permit not a variance and that could open up legal issues with other fences. The attorney's opinion was the Board should either grant or deny the application. She also further explained boundary line agreements. If the fence is on the property line when anyone sells an adjoining property there is no question as to who owns that property. If you pull it in from zero to 12" there has to be a boundary line agreement signed by both parties. So it is suggested it either be put on the property line or at least 18" off the line. She felt that the applicant should be able to choose whether they wanted it on the property line or 3' off the line.

Michael Flowerday, Esq. was here on behalf of the applicant. The Board decided that even though the Public Hearing was closed because he was here representing the applicant they would hear Mr. Flowerday. Mr. Flowerday stated that the reason for this is because of a disagreement surrounding the boundary line and there was a past altercation. He further explained that there has been another altercation as recent as two days before this meeting. He felt that this is more of a need than a want.

After discussion, a **Motion** was made by Jim Zollweg to **approve** the application of Mark Irwin and Lynette Maute, owners, for an area variance at 604 Burritt Road. The applicants wish 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).

In making this motion I considered the balancing test which has several components:

- The benefit cannot be achieved by other means feasible to the applicant. After significant discussion, testimony, lots of evidence presented and my conclusion based on legal advice and other input is that there is no other way to achieve the benefit desired by the applicant.
- There will be no undesirable change in neighborhood character or to nearby properties.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty as stated is not self-created. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

Based on the information presented he would encourage the applicant to build the fence on a currently defined property boundary because this is being offered at a zero foot setback. The legal advice presented did distinguish between placing this at a 0', 12" and an 18" setback.

Seconded by Stephen Shelley. **Motion carried to approve (4-0)** (Ayes: Dan Melville, Stephen Shelley, Tim Thomas, Jim Zollweg; **Excused:** Veronica Robillard).

NEW BUSINESS

2. VERIZON WIRELESS – 1150 CLARKSON PARMA TOWN LINE ROAD

The application of Verizon Wireless for a Special Permit to erect a 170' wireless communication tower with a 4' lightning rod at 1150 Clarkson Parma Town Line Road. This use is allowed in accordance with Town Zoning Article IX, subsection 165-74.V which states in part that the Zoning Board of Appeals is authorized to approve a special permitted use permit for communication towers in any zoning district. This property is currently zoned Agricultural/Conservation (AC).

Tom Greiner, Esq. with Theresa Reed and Catherine Mendola, representing Verizon Wireless for this Special Permit for a communication tower. They were in front of the Planning Board which issued a concept plan approval with some issues that they have since answered. They are now in front of this Board regarding the Special Permit before going back to the Planning Board for final approvals. He explained that the need for this is that there is coverage gap and capacity issues in the area and as there is more and more usage the coverage area shrinks. Towers used to be 400' and have gotten shorter; because they are shorter they make a smaller footprint.

Tim Thomas asked the attorney to explain the Federal Law. Mr. Greiner explained that back in 1993 the highest court in the state said that wireless telephone is a public utility for zoning purposes. As long as the entity can show a need and that in doing so they are trying to cause the least detriment there was an easy path to approval. In 1996 Federal Telecommunication Act, stated that it is the Federal Governments desire to have good wireless communications and that it is in the best interest of the nation to have good telecommunication. So restrictions were set up on state and local authorities standing in the way. They still have to show the need, be in the right place and be as least obtrusive as possible. He further explained that 30 years ago people were worried about health issues but the 1996 Act also stated as long as they are operating within FCC guidelines these applications cannot be denied for health issues. Acting Chairperson Thomas asked the Building Department to explain why it is in front of the Zoning Board. Dennis Scibetta explained that there is a requirement from the Planning Board that any cell tower in a Residential District must have a Special Permit from the Zoning Board. One of the reasons is to give the town some teeth if something is not going right.

Acting Chairperson Thomas asked if they had met with the owners of the property. Mr. Greiner explained that he has a lease with the owner's contingent on approvals. Mr. Thomas asked if there would be an access road. Mr. Greiner explained that there would be an access road, a free standing tower and platform. There would be no building and the only lighting would be around 8' off the ground for security purposes. There would be no trash or traffic. A technician would go there approximately once a month or so to check on things. He showed on the map the current cell phone coverage in the area and the proposed cell coverage

after the tower is in place. Dan Melville asked if there would be fencing. Mr. Greiner said there would be an 8' fence around the tower and equipment. There was discussion that the board is unable to act on the matter tonight until after the Planning Board finishes the SEQR and then the applicant will come back. The Planning Board is looking to have input from the Zoning Board.

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.

Public Comment:

Maureen Kuchta, owner, 1108 Clarkson Parma Town Line Road, has a couple questions. She wondered how long it will take to put this up and if they will be on their property while erecting it. Mr. Greiner stated about 6 or 7 weeks, the first step will be putting in the gravel driveway. He stated they will never be on their land. She also wondered if the lights could be on a motion detector because they have a pond in the back of their property that they have spent time building and they spend a lot of time back there. Her husband is also an astronomer and any light could interfere with that. He stated that he could check on that. This tower will be 271' from the property at 1108 Clarkson Parma Town Line. This will also be over 200' from any wetlands. Mr. Kuchta also wondered if this could be moved to the west. Mr. Greiner stated he will check with Verizon and the landowner to see if it can move anymore to the west. Dennis Scibetta stated that there is a fall zone which would affect where this could be placed. She feels they are being very proactive to protect the neighborhood.

Brian Flint, owner, 1170 Clarkson Parma Town Line Road. He wanted to see the site plan on this and to see where this will be relative to his property.

Dan Melville asked if there could be other carriers located on the tower. Mr. Greiner said these are built to sustain up to three carriers, whether anyone elects to use it they do not know yet. Kyle Mullen asked if they had any feedback from the FAA. Mr. Greiner stated that the FAA does not need any lighting; they have looked at the location being requested. It was discussed that most small aircraft fly up the roads and they would be ok. This would be far from the road.

Jeff Lachausse, owner 326 Parma View Drive, asked if the FAA would require this to be on a sectional chart. It was discussed that records of these towers are in a database.

Public Hearing: Closed

After discussion the Board had the following feedback for the Planning Board.

1. The possibility of moving this a little to the west.
2. Mitigating the lighting at platform level, possible motion detector.
3. Any possible aviation issues, possible notifications.

All Board members were in favor and Acting Chairperson Thomas stated that he is in favor also as long as these three issues are looked at.

Acting Chairperson Thomas encouraged anyone else who might have further questions or concerns to attend the Planning Board meeting.

3. ROLAINE HOMES, INC. – 500 HAMLIN PARMA TOWN LINE ROAD/749 CURTIS ROAD

The application of Rolaine Homes, Inc., owner, for 3 area variances for West Hill Subdivision, section 4, located at 500 Hamlin Parma Town Line Road and 749 Curtis Road. The applicant is requesting area variances for proposed lots 401, 410, and 416 for front setbacks of 40 feet. He is requesting relief from Town Zoning Article V, subsection 165-33.E.1, Schedule 1 which states that the front setback shall be 60 feet. This property is currently zoned Medium Density Residential (MD).

Kris Schultz, Engineer, explained that this subdivision was originally part of a larger development which spanned Town Line, Dunbar and Collamer Roads. It was started in the early 80's. It was subsequently sold

because of sewers. When this was initially approved it was under the old zoning code and corner lots could have a 40' setback but that has since changed and now it requires 60' from both roads. There have been other variances obtained in this subdivision for the same reason. The main reason to do this is so that the houses could have a usable backyard. They could change the direction of the house but by doing that the owner would be looking directly into the neighbor's house. He understands that 20' is a substantial amount but with the history of the land and how this was originally set up he feels that it is mitigated.

Dan Melville asked if this is on sewers. Mr. Schultz stated it is on sanitary sewers. Mr. Melville asked if there will be any other issues with other corner lots. Mr. Schultz stated that some already exist and 2 other properties already have a variance. There was further discussion about corner lots not having a back yard. He does not expect to be back in front of this Board asking for relief for anything else in this track.

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 Jim Zollweg to **approve** the application of Rolaine Homes, Inc., owner, for 3 area variances for West Hill Subdivision, section 4, located at 500 Hamlin Parma Town Line Road and 749 Curtis Road. The applicant is requesting area variances for proposed lots 401, 410, and 416 for front setbacks of 40 feet. This grants relief from Town Zoning Article V, subsection 165-33.E.1, Schedule 1 which states that the front setback shall be 60 feet. This property is currently zoned Medium Density Residential (MD).

In making this motion applying the balancing test:

- The benefit cannot be achieved by other means feasible to the applicant. As evidence I refer to the testimony from the engineering consultant who has described several factors one being the need to place the house in a logical and appropriate orientation on the lot. Another is that there is a history of this overall property and the layout of this was already in motion before the current code was in place.
- There will be no undesirable change in neighborhood character or to nearby properties. The properties are all adjacent to interior local neighborhood roads not a main road in the Town.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created. Plans were made and the layout was set in motion before the current code was in place. 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 (4-0)** (**Ayes:** Dan Melville, Stephen Shelley, Tim Thomas, Jim Zollweg; **Excused:** Veronica Robillard).

4. JAMES McAFEE AND MARYLYNN DeMARCO – 5383 RIDGE ROAD WEST

The application of James McAfee and Marylynn DeMarco, owners, for an area variance at 5383 Ridge Road West. The applicants are proposing to erect a 40' long by 6' high privacy fence on the west property line with a 4 feet 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 permitted for the express purpose of enclosing or screening a swimming pool or patio area and are subject to the side setback requirement which, in this case is 16.7 feet. This property is currently zoned Highway Commercial (HC).

James McAfee, owner, explained that he put the fence up not knowing that he needed a permit. He put it up 4' from the property line instead of the 10'. He did this so that people at the car lot next door could not run through his property anymore. They throw rocks in his pool and they push the snow into his yard. Acting Chairperson Thomas asked if they looked at putting arborvitaes in. They did not feel that this would stop

people from running through. It was discussed that both of these properties are commercial even though one of them is being used as residential. If this was a residential property adjoining a commercial property then the commercial property would have to install a buffer. Acting Chairperson Thomas asked when the house was built. The applicant stated around 1870. Acting Chairperson Thomas asked how this application came to be. Art Fritz stated that the Building Department noticed the fence and notified them that they needed a permit. The applicant stated that he stopped building after he was notified. Dan Melville feels that with the business next door this is needed and at the 10' setback it would be in the driveway.

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 Stephen Shelley to **approve** the application of James McAfee and Marylynn DeMarco, owners, for an area variance at 5383 Ridge Road West. The applicants are proposing to erect a 40' long by 6' high privacy fence on the west property line with a 4 feet 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 permitted for the express purpose of enclosing or screening a swimming pool or patio area and are subject to the side setback requirement which, in this case is 16.7 feet. This property is currently zoned Highway Commercial (HC). In making this motion:

- The benefit cannot be achieved by other means feasible to the applicant. Because of the location of the commercial car lot next door, the applicant has shown that he needs a 6' fence in order to maintain any kind of privacy.
- There will be no undesirable change in neighborhood character or to nearby properties. In my mind I do not feel that there will be an undesirable change given the commercial areas in this neighborhood.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not 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 Jim Zollweg. **Motion carried to approve (4-0)** (Ayes: Dan Melville, Stephen Shelley, Tim Thomas, Jim Zollweg; **Excused:** Veronica Robillard).

MINUTES OF MARCH 17, 2016

The ZBOA minutes of March 17, 2016 were reviewed. **Motion** was made by Stephen Shelley to approve the March 17, 2016 minutes as presented. Seconded by Dan Melville. **Motion carried to approve (4-0)** (Ayes: Dan Melville, Stephen Shelley, Tim Thomas, Jim Zollweg; **Excused:** Veronica Robillard).

ADJOURNMENT

There being no further business, a **Motion** was made by Dan Melville, seconded by Jim Zollweg to adjourn the meeting at 8:37 p.m. **Motion carried to approve (4-0)** (Ayes: Dan Melville, Stephen Shelley, Tim Thomas, Jim Zollweg; **Excused:** Veronica Robillard).

Respectfully submitted,

Carrie Webster
Recording Secretary