

**TOWN OF PARMA
ZONING BOARD OF APPEALS
MAY 17, 2018**

Members Present: Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas,

Others Present: Dennis Scibetta, Art Fritz

Public Present: Tyler Gage, Russ Angelo, Chad Flansburg, Cassandra Maxim, David Maxim, Donald Town, Nandy Town, Larissa Town, Steve Trombley, Janet Hess, Harleigh Hess, Debbie Williams, Kelly Reisig, James Kesselring, and other members of the public.

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

NEW BUSINESS

1. STEVEN AND ALYSSA TROMBLEY – 1298 WEST AVENUE

The application of Steven and Alyssa Trombley, owners, for 2 area variances at 1298 West Avenue. Applicant is proposing to construct a 10' x 18' addition to the west side of the house with a side setback of 8.75 feet and a front setback of 34.46 feet. They are requesting relief from Town Zoning Article XI, subsection 165-87.A.1 which requires a minimum side yard setback to be equal to 10% of the lot width which, in this case, is 12.5 feet and from Town Zoning Schedule 1 which requires the front setback to be 75 feet. This property is currently zoned Rural Residential (RR).

Steven Trombley, owner, explained that he would like to put an addition on the west side of the house. The addition would consist of a master bathroom and a closet off the master bedroom. Tim Thomas asked if there was a drawing. Mr. Trombley stated that there was not yet. Dennis Scibetta stated that the applicant will have to provide drawings for the permit. Mr. Trombley explained that the addition will be set between the 2 windows on the side of the house. The house was built in the 50's which is well before the zoning code changed. Mr. Trombley purchased the house in 2017.

Board Discussion: Art Fritz 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 Steven and Alyssa Trombley, owners, for 2 area variances at 1298 West Avenue. Applicants are proposing

to construct a 10' x 18' addition to construct a master bathroom and closet to the west side of the house with a side setback of 8.75 feet and a front setback of 34.46 feet. They are requesting relief from Town Zoning Article XI, subsection 165-87.A.1 which requires a minimum side yard setback to be equal to 10% of the lot width which, in this case, is 12.5 feet and from Town Zoning Schedule 1 which requires the front setback to be 75 feet. This property is currently zoned Rural Residential (RR).

In making the motion to approve the application:

- The benefit cannot be achieved by other means feasible to the applicant. The home was constructed in the 50's and predates the zoning changes that took place in 1989.
- There will be no undesirable change in neighborhood character or to nearby properties. The front setback will be 6' beyond the current front setback of the house which is 28.46 ft., the addition will be behind the SW corner of the home. Relative to the side setback the difference is negligible and to the average passerby they will not notice that the addition has been constructed closer than the code requires.
- The request is not substantial due to the age of home and its pre-existing condition relative to West Avenue.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created only as related to the west side setback, but that is very minimal in nature. 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, Veronica Robillard, Stephen Shelley, Tim Thomas).

2. KASSANDRA AND DAVID MAXIM – 14 CARRIE MARIE LANE

Application of Cassandra and David Maxim, owners, for 2 area variances at 14 Carrie Marie Lane. The applicants are proposing to erect a 5' chain link fence and a 6' privacy fence, to screen the patio area, on the property line and are requesting relief from Town Zoning Article XVI, subsection 165-128.B.1 which limits the height of fences to 4 feet and subsection 165-128.B.2 which states that privacy structures are subject to the side setback requirements which, in this case, is 10 feet. This property is currently zoned High Density Residential (HD).

Kassandra Maxim, owner, provided a letter from the Husky Education and Rescue Team that explained why they feel the higher fence would be beneficial for the applicant to obtain to keep their dog safe and on the property. Their feeling is that a 4' fence can easily be jumped by a Husky they tend to escape enclosures. Mrs. Maxim explained that they would like to put this in to screen their yard and they would like the extra height due to the breed of their dog.

Chairperson Robillard explained that a vinyl fence is used usually for privacy either around a pool or a patio area and complete enclosure is not permitted. Tim Thomas explained that the Code says that this is for the express purpose of shading or screening a patio or pool area. Tim Thomas explained that typically these types of fences would come off the corner of the house and provide the privacy to what you are looking to screen, not on the property line. Chairperson Robillard asked the applicant why they cannot follow the setback requirement and if they would consider moving the fence. The applicant felt that because of the way her yard is situated it would not be very appealing and then they could not maximize their yard. Tim Thomas asked the Building Department if the applicant had a 4' fence could it be right on the property line. Art

Fritz said yes. Tim Thomas stated that he felt like there are other ways to accomplish what they are trying to do.

Stephen Shelley stated that there is an easement for a storm sewer on the SW side of the property under where the proposed fence would be. Art Fritz stated that there is a form that the Highway Superintendent can sign off on to allow the construction in the easement. That form has already gone to that Department.

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.

Chairperson Robillard read a letter in the file from Mr. and Mrs. Reisig, 12 Carrie Marie Lane. They stated that while their preference would be no fence, however, if approved, they would prefer that the 6' fence be placed at the edge of the patio versus on the property line. They would prefer the chain link be a 4' fence so that it will not detract from their view from their house/yard or detract from the neighborhood.

Tim Thomas asked if the applicants had considered Invisible Fence. The applicants stated that they did at their old house but that did not work very well and they put in a fence similar to what they are looking to do now. They have used a cable tie out but they worry that their kids and/or the dog will get tangled up in the cable. There was discussion that they applicants could have a 50 linear foot pen without a permit with 6' walls. There was discussion about a 5' fence around the whole yard; however that would also require a height variance that will have to meet the criteria. Dan Melville asked if they had considered a 4' fence. The applicant felt the dog will be able to jump it and it might not be worth it. There was discussion about maintaining the fence if it sits on the property line.

Public Comment:

Debbie Williams, 16 Carrie Marie Lane, stated that she is opposing this being on the property line and is concerned with how they will maintain the other side of the fence. She stated that she has a fence around her pool that meets the code and feels this should to. It was explained that a chain link fence can be placed on the property line.

Dennis Scibetta stated that if the applicants choose to have a 4' or 5' fence they can put it on the property line, they do not need permission for that. Our attorneys have stated that a fence should go on the property line or at least 18" off the property line because when these houses go up for sale there becomes a property line dispute and the seller and the neighbors will have to sign Agreements to close. Dan Melville stated that he deals with real estate and if the neighbors don't like each other there is a real problem getting these agreements signed.

Kelly Reisig, 12 Carrie Marie Lane, stated that she is opposed to the height and would like them to keep it at 4' and because their houses are really close to each other she would prefer that it not be on the property line. She did not feel that the reason for this should be because they have a dog.

Public Hearing: Closed

Chairperson Robillard explained the five criteria that are needed in order for the Board to approve this. Tim Thomas felt that this application does not meet the five criteria for approval. The applicant asked if they put a 4' fence up can they put trees all around the property. They were told they can.

After a brief break to allow the applicants to talk about what they would like to do and discussion, a **Motion** was made by Tim Thomas to **deny** the application of Kassandra and David Maxim, owners, for 2 area variances at 14 Carrie Marie Lane to erect a 5' chain link fence and a 6' privacy fence, to screen the patio area, on the property line and are requesting relief from Town Zoning Article XVI, subsection 165-128.B.1 which limits the height of fences to 4 feet and subsection 165-128.B.2 which states that privacy structures are subject to the side setback requirements which, in this case, is 10 feet. This property is currently zoned High Density Residential (HD).

In looking at the balancing test and the five criteria:

- The benefit can be achieved by other means feasible to the applicant. There was adequate discussion of other options available to the applicant not including invisible fencing, which was somewhat discounted by a professional but there are other options the applicant can pursue.
- There would be an undesirable change in neighborhood character or to nearby properties. The Code does allow for a 4' fence and this would have represented a 25% increase over what is allowed for the fence height. The fence at the requested height would alter the neighborhood character.
- The request is substantial. It was a 25% increase in the height.
- There will be a physical adverse effect.
- The alleged difficulty is absolutely self-created due to the need to contain the dog. Even though he called out for the two variances, the applicant had decided not to ask for the privacy fence and wanted to fence the whole yard with a 5' chain link fence. When applying the legal criteria this failed on all five criteria. Using the balancing test, the benefit to the applicant does not outweigh any detriment to the health, safety and welfare of the community.

Seconded by Stephen Shelley. **Motion carried to deny (3-1)** (Ayes: Veronica Robillard, Stephen Shelley, Tim Thomas; Nays: Dan Melville).

Chairperson Robillard polled the Board as to their reasons to deny:

Tim Thomas: My motion stands for my reason to deny.

Stephen Shelley: Agrees that almost all of the criteria that the Board has at their discretion have not been met.

Chairperson Robillard: Based on the criteria there are other feasible options for the applicants. The nearby neighbors expressed disapproval of such fence. This was a substantial request because it is a 25% increase in height. There would be a physical effect on the neighborhood and nearby neighbors. The difficulty was self-created since other options could be explored.

3. DONALD AND NANCY TOWN – 18 CLEARVIEW AVENUE

The application of Donald and Nancy Town, owner, for a Special Permit at 18 Clearview Avenue. Applicants are proposing to use their home as a tourist home (bed and breakfast) which is allowed with a Special Permit. This property is currently zoned Waterfront Residential (WF).

Donald Town, owner, explained that they were issued a Special Permit on this property 10 years ago, since then they have operated as a seasonal B&B. He explained about the Lighthouse. This is one of the only working lighthouses that is still lit and is maintained by the Coast Guard, which is rare. They have hosted thousands of guests and celebrities. They hold small intimate affairs like charity events and small tours on the property. They have had a Fire Inspection completed every summer by the Town. There have been various circumstances that have caused some confusion between the Town, the family and the lighthouse community in recent years and they look forward to starting over. They were previously operating only seasonally; however, their daughter and her husband will be operating this year round. They feel that having this open year round will eliminate any miscommunication and limited access. They are hoping to be able to operate as a B&B as they have for the last 10 years and clear up any questions on the operations.

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.

Chairperson Robillard stated that this is considered a new hearing/application and any decision will not be based on past information or decisions. The decision made in 2015 was based on the information that the Board had at that time. Chairperson Robillard would like clarification on how many bedrooms are being used and the current operations going on. She also had a concern with the no trespassing sign on the property. Mr. Town stated that that sign is sanctioned by the Coastguard and they have it up because up until now this property was not operating full time and people would go on the property to the beach and the lighthouse which causes a liability for them. This sign will not be needed with the year round operation of the lighthouse. Tim Thomas feels that this is an asset to the community and he wants to make sure that the Special Permit is done correctly and put in place.

Chairperson Robillard asked them to describe the operations. The applicants stated that this is a 3 bedroom bed/breakfast and in 2008 it was approved as a 3 bedroom. They try and keep it historically appropriate. They have hosted historical events, vow renewals, tours, charity events and school group events. They are not looking to be in the wedding event business at this location. There is no alcohol allowed and no large events. The Coastguard does yearly inspections of the property and because this is a privately held lighthouse people can stay overnight.

There was discussion about modifying the Special Permit to allow 4 bedrooms in case they want to add a fourth down the road. The Board felt that it could be modified at a later time when they are ready to do that. As one of the requirements of the Special Permit it is owner occupied and

the applicant's daughter, Larissa and son-in-law, Casey will be residing in the premises year round.

Because of the misconceptions concerning the activities on site and the number of bedrooms, none of which were founded, Dennis Scibetta feels like he has been challenged and the integrity of his inspections were questioned.

There was discussion about the length of time of the Special Permit, whether it would be one or three years. The applicant would like more time because they have been in the community for so long and they have invested a lot into this business. Tim Thomas would be comfortable with 3 years.

There was discussion about parking on the street. The applicants stated that they have plenty of parking on the property available and they have a garage which houses their vehicles. There will be no catering or DJ's on the property. There have been no complaints about the property. The applicants stated that this property is more known globally than locally and they would like to become a bigger part of the community.

Public Comment:

James Kesselring, 20 Clearview Avenue. He is the caretaker and checks on the house when no one is up here. He stated that he is ok with this operation and that no one parks on the streets.

Public Hearing: Closed

A **Motion** was made by Dan Melville to **approve** the application of Donald and Nancy Town, owner, for a Special Permit at 18 Clearview Avenue to use their home as a tourist home (bed and breakfast) which is allowed with a Special Permit in accordance with Town Zoning 165-66 Tourist Homes with the following conditions:

1. There will be three bedrooms.
2. No on street parking pertaining to the business.
3. This will allow ancillary events pertinent to the business.
4. This will be renewable in three years.

This property is currently zoned Waterfront Residential (WF).

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

4. RUSS ANGELO – 5200 RIDGE ROAD WEST

The application of Russ Angelo, Lessee, for a Special Permit at 5200 Ridge Road West. The applicant is proposing to operate an automobile sales business with the ability to display 80 automobiles for sale. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a special permit.

Art Fritz asked the applicant if he has his notifications. Mr. Angelo said he did not know he had to mail them out since he had done it once, he does not remember receiving a packet in the mail with the list again. Without notifications the Board was not able to proceed with this application tonight. It was suggested that Mr. Angelo go to the Planning Board for site plan approval to keep things moving along before the next Zoning meeting. Dennis Scibetta said that the applicant has been compliant with all things to date.

Chad Flansburg, Esq. wanted to give information to the Board and it was decided that all paperwork and letters should be sent to the Building Department and then they will be passed along to the Board.

A **Motion** was made by Tim Thomas to table the application of Russ Angelo, Lessee, for a Special Permit at 5200 Ridge Road West to the June 2018 meeting without prejudice to afford the applicant time to send out the proper notifications.

Seconded by Dan Melville. **Motion carried to table (4-0)** (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas).

MINUTES OF MARCH 15, 2018

The ZBOA minutes of March 15, 2018 were reviewed. **Motion** was made by Stephen Shelley to **approve** the March 15, 2018 minutes as presented. **Seconded** by Veronica Robillard. **Motion carried to approve (4-0)** (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas).

MINUTES OF APRIL 19, 2018

The ZBOA minutes of April 19, 2018 were reviewed. **Motion** was made by Tim Thomas to **approve** the April 19, 2018 minutes as presented. **Seconded** by Dan Melville. **Motion carried to approve (3-0)** (Ayes: Dan Melville, Stephen Shelley, Tim Thomas; **Abstain:** Veronica Robillard).

OTHER BUSINESS

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Dan Melville to adjourn the meeting at 9:20 p.m. **Motion carried to approve (4-0)** (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas).

Respectfully submitted,

Carrie Webster
Recording Secretary