

**TOWN OF PARMA
ZONING BOARD OF APPEALS
OCTOBER 18, 2018**

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

Others Present: Dennis Scibetta, Art Fritz

Public Present: Paul Acito, Debra Acito, John Brickler, Kyle Christodaro, Stephen Connolly, Jim Read, Sylvia Terpstra, Andrew Terpstra, Jamie McMullen, Jennifer Banker, Tyler Banker, Aaron Wisniauski, Carlie Minnehan, Justin Arlotta, Ryan O'Mara, AJ Kubitz, Diane Brickler, Cynthia Arneson, Candice Gomes, Linda, Judd

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

CONTINUING BUSINESS

1. PAUL & DEBRA ACITO - 1228 CLARKSON PARMA TOWN LINE ROAD

Application of Paul and Debra Acito, owners, for a Special Permit at 1228 Clarkson Parma Town Line Road. The applicants currently have 9 dogs on this property and are requesting a Special Permit in accordance with Town Zoning Article 10, subsection 165-82.AA.3. A Special Permit is required to have more than three dogs on a property. This property is currently zoned Agricultural/Conservation (AC).

Paul Acito, owner, asked to amend the application to include 15 dogs not 9. The 6 dogs they would like to add to the application are not currently licensed through the Town. It was explained that the Board can only rule on the application as advertised, they could grant less than what was advertised but not more.

The Board discussed the options for the application with the applicant. The Board can look at the request as it stands tonight and make a ruling or the applicant can withdraw this application and come back with a new request for 15 dogs. Dan Melville explained that if this is denied tonight they will have to remove all but three dogs from the property. Chairperson Robillard stated that nine dogs seem like a lot and 15 dogs is a lot more. Chairperson Robillard asked if any of the dogs are currently pregnant. The applicant stated no and they don't plan on having them get pregnant. Debra Acito stated that the dogs are taken care of. They are groomed and trained. They have invisible fence and all of their vaccines. Chairperson Robillard asked if they are spayed or neutered. The applicant stated they are not.

Dr. Snyder felt that the Board should determine how the applicant would like to proceed before going any further with questions. Chairperson Robillard stated that the Board can either continue with the application as it stands or the applicant can withdraw their application and the applicant will need to bring the amount of dogs into compliance. Dr. Snyder read 165-29-B.3 which states "No person shall be issued a Special Permitted Use for a property where there is an existing violation of the chapter". So because the applicant is currently in violation the Board cannot issue the permit. 165-82.AA.3(c) "A property owner or resident requesting a Special Permit must have had no violations of Chapter 9 of the Parma Town Code during in the prior 12 months of the application". The Zoning Board's job is to grant relief where possible. If you are allowed three dogs and have four dogs there is a high probability that this would be approved if conditions were good; however, because of those two sections of the code the Board cannot rule in favor of this tonight because they are in violation and there is no legal opportunity for the Board to grant the applicant relief. The other concern is that the application asked for nine dogs and when inspected there were 15 dogs, which leave 6 unlicensed dogs in violation of Chapter 9. Which also means that for the next year the Board cannot grant relief of the code even if there were only 4 dogs, which is a normally straightforward request. Dr. Snyder felt it might be better to withdraw, regroup, review the code and then come back. If the applicant would like to proceed to a ruling, if it is denied then the applicant can come back at some point but the application would have to be different.

The applicants said they would come license the other 6 dogs. Dan Melville asked if the Town can license the dogs even if they are in violation. Art Fritz said that state law says the Towns have to license the dogs and then the Zoning kick in. The applicant asked if they should have an attorney. Dr. Snyder stated that he would never suggest that getting an attorney would be a bad idea and that an attorney might be able to help the applicant understand the code and come to the Board with an application that will give the Board a better opportunity to approve it. She feels that they have provided all the information that is needed for the Board to approve this.

Chairperson Robillard explained that without the Board's approval the applicant needs to start reducing the number of dogs on the property. The applicant asked how long they would have to reduce the number. Art Fritz stated they are usually given 30 days to comply with an inspection after 10 to 15 days to see where the applicant is at.

The applicant's stated that they would like to withdraw their application at this time.

Tim Thomas clarified for the applicant that if they reduce the number of dogs to three than they will not need to come back to the Zoning Board, unfortunately because the applicants are currently in violation the Boards hands are tied.

Chairperson Robillard asked if notifications are in Order for the remaining applications. Dennis Scibetta reported that notifications on application #3 are not in order. The notifications were postmarked October 13, 2018 and they needed to be postmarked no later than October 11, 2018. Per 165-20 (7) of Variance and Appeals procedure states

“No action shall be taken by the Zoning Board of Appeals on a request for a variance until after public hearing and notice. The Board shall fix a reasonable time for the hearing of a request for a variance and shall give due notice of the time set for the hearing to the applicant. Public notice shall be established by the publication of a notice in the official newspaper of the Town in accordance with the provisions of Town Law. Said notice shall briefly describe the nature of the appeal and the time and place of the hearing. In addition, the applicant shall, at least seven days prior to the date of the hearing, give notice in writing to all property owners within 500 feet of the property to be affected by said variance request or to all property owners of contiguous land or properties adjoining such property. Such notice shall be by certified mail, or shall be documented with a certificate of mailing provided by the post office.” The notifications are in order but were not postmarked timely. Dr. Snyder stated that there is no opportunity for the Board to hear this today because if just one person says they did not get notified in a timely manner as prescribed by code than there could be an Article 78 and the Board would lose on procedure. Dr. Snyder recommends the Board table without prejudice; notices would not need to be sent out again because there is no maximum time just a minimum.

NEW BUSINESS

2. JOHN BRICKLER –52 BAILEY ROAD

The application of John Brickler, owner, for an area variance at 52 Bailey Road. The applicant is proposing to construct a 2,560 square feet accessory building, which would bring the total square footage of accessory structures on this property to 4,560 square feet, and is requesting relief from Town Zoning, Article V, section 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet. This property is currently zoned Rural Residential (RR).

After discussion, a **Motion** was made by Dean Snyder to **table** the application of John Brickler, owner, for an area variance at 52 Bailey Road to the November 15, 2018 meeting without prejudice. This will afford the applicant time to get notifications in order and to comply with the required timeline.

Seconded by Dan Melville. **Motion carried to table (5-0) (Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas).

Chairperson Robillard stated that she took this out of order for both the audience and the applicant's benefit so that they are not waiting here for the application and the Board is unable to hear it.

CONTINUING BUSINESS

3. JOHN SHARPE –44 LAKE SIDE BOULEVARD

The application of John Sharpe, owner, for an area variance at 44 Lake Side Boulevard. The applicant is proposing to install a generator with a side setback of 8 feet and is requesting relief from Town Zoning Schedule 1 which states that the side setback is to be 10 feet. This property is currently zoned Waterfront Residential (WF).

Cynthia Arneson, daughter of the owner, stated that this application is for a whole house generator because her father is oxygen dependent. It is being put in by Anderson Water and will be 18" from the house and approximately 8' from the lot line behind the house. Dr. Snyder asked why they cannot comply with the setback of 10 feet. Ms. Arneson stated that this had to be in a very specific spot for safety reasons; it could not be near a window or the septic tank. They did look at other places but there was not a space to safely put it. Dennis Scibetta stated that state code allows a setback of 5 feet. Because the lot line is on an angle at one point the dimension is 7.9.

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 an unlisted action under SEQR and no further review is required. This is a requirement because of the fact that the generator has to be located away from ventilating windows and there are only so many places it can be on the property.

Public Comment:

Dave Wegman, 39 Lakeside Boulevard mailed a letter to the Town stating that they support the application for an area variance at 44 Lakeside Boulevard.

Public Hearing: Closed

After discussion, a **Motion** was made by Dean Snyder to **approve** the application of John Sharpe, owner, for an area variance at 44 Lake Side Blvd to install a generator with a side setback of 8 feet and granting relief from Town Zoning Schedule 1 which states that the side setback is to be 10 feet. This property is currently zoned Waterfront Residential (WF).

In making my determination:

- The benefit cannot be achieved by other means feasible to the applicant. The applicant has exhaustively searched all other appropriate locations and has found no other safe place to locate this generator.
- There will be no undesirable change in neighborhood character or to nearby properties. In these neighborhoods it is very common to encroach in the 10 foot side setback and in this case it is much less of an obtrusion than the deck which is located right next to it. From the road there will be no significant obtrusion.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

The applicant asked for 8 feet so the small deviation in the dimension is less than 3 inches at one point and then decreases as it goes down the lot line and should be fine because it is so slight.

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

NEW BUSINESS..continued

4. KYLE CHRISTODARO – 631 PARMA CENTER ROAD

Application of Kyle Christodaro, owner, for a Special Permit at 631 Parma Center Road. The applicant currently has 5 dogs on this property and is requesting a Special Permit in accordance with Town Zoning Article 10, subsection 165-82.AA.3. A Special Permit is required to have more than three dogs on a property. This property is currently zoned Agricultural/Conservation (AC).

Kyle Christodaro, owner, explained that he and his girlfriend moved here approximately a year ago and she had 2 dogs and he had 3 dogs. All of the dogs are licensed with the Town and they have a fenced in yard to maintain them. They do not leave them outside and if they start barking they bring them right in. Approximately a month ago, they had a house fire and he rescued all of the dogs from the house; they are currently all in a kennel because the house is uninhabitable. Tim Thomas asked him to review the ages and the breeds. Mr. Christodaro said he has the following dogs; all of the dogs are rescues:

1. Mastiff Mix, age 8 ½ years old.
2. Jack Russel, age 6 ½ years old.
3. Hound Mix, age 5 years old.
4. Terrier Mix, age 5 years old; and
5. Pit Mix, age 3 years old.

Dr. Snyder asked Art if these are all licensed and if he has all the information including names, ages, and rabies information. Art Fritz said that the Town does have that information and it is readily available.

Board Discussion: Dennis Scibetta reported that notifications were in order, the request was returned by Monroe County as a matter of local determination. There are no letters in the file. Dennis Scibetta reported that he was at the fire and that the dogs are very well behaved and taken care of.

Tim Thomas asked what the life expectancy of the Mastiff is. Dr. Snyder said 8 to 10 years. He stated that life expectancy of a dog is inversely proportionate to their size. Larger dogs have a shorter life expectancy. Dr. Snyder stated the reason why this is important is because the Special Permit is for these dogs only and as these dogs pass away they cannot be replaced and eventually the applicant will be down to the three dogs allowed. The applicant stated he understood this.

Public Comment:

Sylvia Terpstra, 635 Parma Center Road, said that she has no issues with this application and she never hears his dogs barking.

Public Hearing: Closed

A **Motion** was made by Dean Snyder to **approve** the application of Kyle Christodaro, owner, for a Special Permit at 631 Parma Center Road. The applicant currently has 5

dogs on this property and is requesting a Special Permit in accordance with Town Zoning Article 10, subsection 165-82.AA.3. A Special Permit is required to have more than three dogs on a property. This property is currently zoned Agricultural/Conservation (AC). In making this determination for a Special Permit, the Parma Town Code applicable to Special Permits has been reviewed and all sections of that code have been met. The code requires that we specify the five dogs and the Building Department is expected to have the specifics on those five dogs in the file and those records are available at the Parma Town Hall.

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

5. TYLER AND DEBORAH BANKER –4798 RIDGE ROAD WEST

The application of Tyler and Deborah Banker, owners, for an area variance at 4798 Ridge Road West. The applicants are proposing to erect a 6' fence to partially enclose the yard and are requesting relief from Town Zoning Article XVI, subsection 165-128.B.1 which limits the height of fences to 4 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 Type II under SEQR and no further review is required. There are no letters in the file.

Jennifer Banker, mother of the owner spoke on behalf of the applicant. She explained that they are looking to erect a 6' fence because Tyler and his wife have a 4 year old autistic daughter who does not respond to her name being called and is very active and runs. They are looking to place the fence parallel to the house to protect her from running into 104 (Ridge Road). They have a ravine and a wooded backyard as a boundary line on the remaining part of the property they are not fencing and are hoping to use them as a natural barrier. They may have to fence that at a future date. Ms. Banker explained that they cannot go with a four or five foot fence because a 6 foot fence will be harder for her to climb as she gets older. They would like a stockade fence instead of a chain-link because she will be unable to climb the fence. She provided a letter from her Doctor stating the importance of this fence to keep the daughter safe in her yard which will be included in the file. There was discussion about the style of fence. It will be natural wood.

Dennis Scibetta asked if there was a creek at the bottom of the ravine. Ms. Banker stated there is not. Chairperson Robillard advised the applicants that the good side of the fence has to be facing the outside. They said they understood.

There was discussion about how the applicant could proceed if they decide they need to finish fencing the yard. There would be the possibility of waiving the filing fee if approved by the Town Board or screening the area in. The applicant should defer to the Building Department if that is needed in the future to see how to proceed.

Public Comment: None
Public Hearing: Closed

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of Tyler and Deborah Banker, owners, for an area variance at 4798 Ridge Road West. The applicants are proposing to erect a 6' fence to partially enclose the yard and are requesting relief from Town Zoning Article XVI, subsection 165-128.B.1 which limits the height of fences to 4 feet. This property is currently zoned Rural Residential (RR). In making the motion to approve the application:

- It is very clear that the benefit cannot be achieved by other means feasible to the applicant. As was stated and documentation provided by medical professionals, the four year old daughter has severe autism and has shown tendencies to run towards Ridge Road.
- There will be no undesirable change in neighborhood character or to nearby properties. This is a natural looking stockade fence.
- The request is substantial; however, the necessity for the autistic daughter is extremely substantial and warranted.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created due to the medical needs of the autistic daughter. The Zoning Board sees a lot of fence applications but in this particular one there is an extraordinary need to keep their child safe as she grows up in this neighborhood. 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 (5-0) (Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas).

6. STEPHEN CONNOLLY – 1235 HILTON PARMA CORNERS ROAD

Application of Stephen Connolly, lessee, for a Special Permit at 1235 Hilton Parma Corners Road. The applicant is proposing to operate an automobile sales business with the ability to display 5 automobiles for sale. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit.

Stephen Connolly, lessee, explained that he is looking to put a small used car lot with only 3 to 5 cars to display. There will be no car repairs on site. He does not want this to be an eyesore. Laura Chinappi is the owner of the property. The office portion will be operating out of the gray building on the premises. There will be no vehicles stored inside.

Tim Thomas asked if there will be dedicated spaces for the cars since it is a shared lot. The DMV will oversee that there are. Tim Thomas asked if there is a site plan showing where the parking will be, which is typically provided. Ms. Chinappi stated the parking will be next to the building and she can provide a site plan easily. The parking will not be on the front by 259. Dr. Snyder would like to see the site plan before making a ruling so he would like this tabled until that can be provided. Dennis Scibetta stated that this request will be easy to fill with the information the Town already has.

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.

Dennis Scibetta would like to hear more about the business. There have been discussions with the DMV because of the former tenant about the applicants licensing for this. Mr. Connolly would like to have as few cars on the lot as possible. He has been in the car business for 28 years. There would only be washing and cleaning of the vehicles on site. Ms. Chinappi's husband, who owns Galaxy Auto Parts, will be involved in this business also.

Public Comment:

Linda Judd, Moul Road, in her personal opinion she is concerned with what this corner looks like. She understands they do not want a bunch of cars on the premises and appreciates that the Zoning Board wants to see a site plan. She does not think it looks good for the Town or the Village to have automotive business on the corners. She feels the owner did a beautiful job with the building and it is something to be proud of. She hopes that the Zoning Board will be very strict with what is required so it is enforceable to keep this property looking nice because of the issue on the other corner. The applicant agrees and does not want their parcel looking like the other corner. Ms. Chinappi stated that as the landlord they would not allow that to happen.

Jim Read, Hilton Parma Corners Road, explained that when he first heard about a car dealer next door he was not happy. He would like to know if there are restrictions on advertising. Chairperson Robillard explained when the Board is further along there will be restrictions on signage, hours, lighting, amount of cars, noise and parking. She would encourage anyone with concerns about those to come to the future meetings to share your comments and concerns. He also asked if this Special Permit is transferrable. It was explained that this will come up for renewal and it can be revoked if there are complaints and issues. He asked if the five cars would be a hard limit. Dr. Snyder stated the amount of cars approved would be the limitation.

Dr. Snyder stated that for the other property that does not look so nice, the Zoning Board fought to keep this corner clean using the argument that this corner is the gateway to our community and it was not approved by us. The Court overruled what this Board wanted on this corner. The Zoning Board did everything to protect the Town and lost.

Roger Odell, Burritt Road was unable to attend and mailed a letter to the Board. He is opposed to this request. He is concerned that this parcel can hold more than the 5 cars requested and feels that this will be the beginning of an ever increasing request. He is concerned with the ability to be able to enforce this with all of the cars on the lot for the other business and who will bear the cost to enforce it. Dennis Scibetta stated that this is an approved use for this property with a Special Permit and feels that the cars being brought in for this will be in better condition than what is allowed there now.

Public Hearing: Closed

A **Motion** was made by Tim Thomas to **table** the application of Stephen Connolly, lessee, for a Special Permit at 1235 Hilton Parma Corners Road to the November 2018 meeting to afford the applicant time to provide the Zoning Board with a site plan for the proposed use in accordance with Town Code 165-29 without prejudice.

Seconded by Stephen Shelley. **Motion carried to table (5-0)** (**Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas).

MINUTES OF AUGUST 16, 2018

The ZBOA minutes of August 16, 2018 were reviewed. **Motion** was made by Tim Thomas to **approve** the August 16, 2018 minutes as presented. **Seconded** by Stephen Shelley. **Motion carried to approve (5-0)** (**Ayes:** Dan Melville, Veronica Robillard, Tim Thomas, Stephen Shelley, Dean Snyder).

MINUTES OF SEPTEMBER 20, 2018

The ZBOA minutes of September 20, 2018 were reviewed. **Motion** was made by Tim Thomas to **approve** the September 20, 2018 minutes as amended. **Seconded** by Dean Snyder. **Motion carried to approve (4-0)** (**Ayes:** Veronica Robillard, Tim Thomas, Stephen Shelley, Dean Snyder; **Abstain:** Dan Melville).

OTHER BUSINESS

ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Dan Melville to adjourn the meeting at 8:50 p.m. **Motion carried to approve (5-0)** (**Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas).

Respectfully submitted,

Carrie Fracassi
Recording Secretary