

**TOWN OF PARMA
ZONING BOARD OF APPEALS
JANUARY 17, 2008**

Members Present: Patrick Buskey
Veronica Robillard
Dean Snyder
Stephen Shelley
Tim Thomas

Members Excused: Mark Kalen (Alternate)

Others Present: Carm Carmestro (Board liaison), Jack Barton

Public Present: See attached list

The meeting was called to Order by Chairperson, Veronica Robillard, at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She stated that this is a five-member board, with a quorum of three is required to pass a motion. Chairperson Robillard offered hearing aid devices for anyone who required them. Chairperson Robillard welcomed the new Board liaison, Carm Carmestro.

PUBLIC HEARINGS

1. MARK GREENWELL – 750 CURTIS ROAD

Application of Andrew and Mark Greenwell, owners, for area variances at 750 Curtis Road. Applicants are proposing to subdivide the property, reducing the lot to an area of 2.546 acres. The proposed new property line will run between the two existing barns. Applicants are requesting relief from Town Zoning schedule 1 which requires a minimum lot size of 3 acres. The northerly barn, which will be split off this parcel and merged with 720 Curtis Road, will have a setback of 23.1 feet and applicants are requesting relief from Town Zoning Article 5 subsection 165-31.B.2.a which states that no building in which farm animals are kept or agricultural products are handled shall be closer than 100 feet to a side or rear property line. This property is currently zoned Agricultural/Conservation (AC).

Rich Maier stated he represented Mark Greenwell in presenting this application. He reported that he performed two surveys on this property, one done years ago. He explained that Andrew and Mark are in the business of farming. They have been trying to sell off this 5 acre lot, but have had no one interested. They decided to split off a 2.546 acre parcel to better their chances of selling it. He explained that the property line is dictated by the two existing barns, noting one barn is used for storage, not farming. Using this property line results in the lot being just short of the 3 acre requirement. He felt this would not be a detriment to the neighboring property, pointing out that across the road is a high density area and this will fit in with the look of the neighborhood. He stated that one of the brothers has a child who is interesting in buying this property with the house, which was built in the 1850's. He noted that this property was 5 times the minimum required when this property was established.

Public Comment: None. The public hearing was closed.

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

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Andrew and Mark Greenwell, owners, for area variances at 750 Curtis Road to subdivide the property, reducing the lot to an area of 2.546 acres and this grants relief from Town Zoning schedule 1 which requires a minimum lot size of 3 acres. The proposed new property line will run between the two existing barns. The northerly barn, which will be split off this parcel and merged with 720 Curtis Road, will have a setback of 23.1 feet and this grants relief from Town Zoning Article 5 subsection 165-31.B.2.a which states that no building in which farm animals are kept or agricultural products are handled shall be closer than 100 feet to a side or rear property line. This property is currently zoned Agricultural/Conservation (AC). In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. There will be no undesirable change in the neighborhood character or to nearby properties. These are existing buildings and the proposed lot far exceeds any minimum requirement that were in force when the property was established. The request is substantial. There will be no adverse physical or environmental effects. The alleged difficulty is self-created, but 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 unanimously carried (5-0)** (Ayes: Patrick Buskey, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

2. RICHARD LEMCKE – 293 PECK ROAD

Application of Richard Lemcke, owner, for variances at 293 Peck Road. Applicant is proposing to construct a 48 feet by 104 feet storage barn with a 16 feet wall height and an additional 20 feet by 104 feet lean-to attached to the new structure. This property currently has 16,300 square feet of storage and will be increased to 18,272 square feet. Applicant is proposing to remove a 5,100 square feet building and replace it with this new structure. Applicant is requesting relief from Town Zoning Article 5, subsection 165-32.C.2 which limits the square footage of accessory structures to 1,500 square feet and Article 10, subsection 165-82.C.2 which limits accessory building wall height to 12 feet. This application is considered an expansion of a non-conforming use per Town Zoning Article 12, subsection 165-91 which requires Zoning Board of Appeals approval. This property is currently zoned Rural Residential (RR).

Rick explained that 2 ½ - 3 ½ years ago, he built a house and at that time received a variance to build an accessory storage structure. When he came to get the building permit, he found out the time limit had expired. He explained he this is the same application with an addition of a 24 feet lean-to. He would like to add this lean-to to the east side of the building. He recalled that he purchased this property in 1979. The 5100 square feet building was placed there from another location. He reported that he is now back to the tree business and needs this structure for his equipment. He stated he recently tore down this 30-year-old 5100 square foot structure and this new accessory storage barn and lean-to will be added. Rick stated that the plans submitted to the Building Department are just for the building with plans to add the lean-to in the future. He noted that without the lean-to, this would actually be a reduction in square footage with the removal of the 5100 square feet structure.

Jack Barton noted that Rick's original request was in November of 2003 and he received an area variance to construct a 48 feet by 104 feet storage barn with 16 feet high walls, with the removal of the existing 30-year-old 5,100 square feet building.

Rick explained the need for the 16 feet high side walls to accommodate his equipment, including loaders, tree spades, tractor-trailer, and other landscaping equipment. A 14 feet high door is needed for this equipment, which requires 16 feet high walls be constructed to accommodate a 14 feet high door. Dean Snyder asked if there are any other changes to his original application, in addition to the lean-to. Rick replied that the lean-to is the only change.

Public Comment:

A letter dated January 4, 2008, from the Planning Board, was read which referred to comments made regarding this application. The letter stated that removing the 5100 square foot building and replacing it with a 4992 square foot building with a lean-to will result in an increase in 1,972 square feet which will create an increase in storm run off and should be directed toward the pond. It was noted that this additional run off is proposed to be directed to the existing pond located south of the new structure and does not appear to have any sizeable impact to the drainage site or the surrounding properties.

Ed Arnold – 85 Burritt Road: He stated he has a problem with the commercial use of this property and felt it was not agricultural. He stated this application has not been published correctly because the 5100 square foot building is already down and taken down without a permit to demolish it. He felt that the original square footage should be adequate for landscape equipment.

Rick explained that he got the paperwork for the demolition but didn't fill them out. He noted that he could not get a demolition permit without a building permit. He stated that the building was in too poor condition to leave it up and he felt he had to take it down for safety reasons and could not wait for this variance to be approved. Rick stated that the original building was 12-14 feet high and didn't accommodate all of his equipment.

Dean Snyder noted that he is looking at this application as how it looked before and how it will look if this variance was approved and what impact this application will have on the property. Chairperson Robillard explained that the Board will look at this application as if the building was still there. The fact that it isn't there really isn't relevant to whether or not this application should be approved.

Ed Arnold insisted that this application should not have been advertised as if the building was there.

Chairperson Robillard questioned Jack Barton if this should be tabled and readvertised. Jack questioned the benefit of doing this.

Rick stated that the building was taken down last week, on the 8th or 9th.

The consensus of the Board was that his application should be continued.

Ory Mee – 295 Peck Road: Questioned if this is a landscaping business or a commercial business in this Rural Residential area. He noted the sign stated "R & M Landscaping." He noted Mack trucks are parked on this property makes it look like a commercial business. He stated one other existing building on this property has the height that is required. If he is replacing a 5100 square foot building to include a lean-to, he should consider moving this business to another location. He stated his opinion that this is not an agricultural business. He stated that this is the fourth time that Rick Lemcke has asked for variances and questioned how many variances will be required for this property.

Rick responded that this was a commercial landscaping business and tree nursery, and he has always kept his commercial vehicles on the property for security reasons. He noted that he lives on this property because he likes to keep an eye on the property. The other buildings on the property are for other uses. The tree business requires this new building. Rick stated that the large vehicles parked on the property can be moved to another location. He stated that this tree business is strictly agricultural.

Dean Snyder commented that this application is not to change the use; it is to look at the building. He noted that other agricultural businesses use tractor trailers.

Chairperson Robillard commented that the vehicles described might justify the use of the building. She noted that the Board when approving an application can list conditions to put "teeth" in an approval so that the Building Department can have direction on what is allowed and what is not allowed.

Richard Vance – 253 Peck Road: Expressed concern about this commercial business and this may set a precedence. He noted that the neighbors who purchased the property next door are also putting up a large building to do auto work. He felt that allowing this would encourage others to do the same in the neighborhood.

Ed Arnold: Stated the real issue goes back to the landscaping business. This is not the same as growing and harvesting trees.

Rick stated that he never intended to be in the tree business. He now has 20 acres of trees and now needs to remove these trees. He explained that he and his brother have split their landscaping business and he now has more property with more trees.

Joseph Reinschmidt -336 Ogden Parma Town Line Road: He mentioned other operations that were going on there, such as snowplowing, etc. He noted that the business on this property has expanded over the years.

Rick stated that the landscaping business is no longer a part of this property. This will be a tree business. He explained that he needs to clear the land and harvest trees and plant new trees. The business there was far more than a tree business in the past. It was a landscaping business with snowplowing and lawn mowing. Rick stated that his request is only for a tree business, not a landscaping business any more. He will only grow, harvest and sell trees. He explained the need for the lean-to, which will be used exclusively for this tree business. This will provide a storage area for the equipment needed to remove trees. This equipment has tracks which would ruin the floor of the barn. He explained that during the harvesting of the trees, from May 15 to September or October, this lean-to will provide a shelter for the harvested trees from the sun until they are sold. The floor of the lean-to will be stone; the floor of the barn will be concrete. The roof line of the lean-to will come from the existing roof line down with no variation from the 16 feet height.

The public hearing was closed.

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

Following discussion, a **Motion** was made by Dean Snyder to approve the application for variances to Richard Lemcke, owner, at 293 Peck Road to construct a 48 feet by 104 feet storage barn with a 16 feet wall height. This application is considered an expansion of a non-conforming use per Town Zoning Article 12, subsection 165-91 which requires Zoning Board of Appeals approval. Also, this grants relief from Town Zoning Article 5, subsection 165-32.C.2 which limits accessory building wall height to 12 feet. This property is currently zoned Rural Residential (RR). In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. The applicant's tree business requires larger equipment than has been required in the past in order to have a successful business. There will be no undesirable change in the neighborhood character or to nearby properties. There was an existing building with a larger footprint which has been removed and will be replaced by this building. Although the side walls are taller than the original building, there will be no effect on drainage or effect on

visual impact to adjacent properties. The request is substantial. There will be no adverse physical or environment impact. Approximately the same water shedding area will result, as determined by the planning board. Although the alleged difficulty is self-created, the applicant wants to improve the structure on the property. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. This approval is made with the following conditions:

- 1) This structure will be exclusively used for the tree farm operation.
- 2) There should be no other vehicles parked on the property other than the applicant's.

Seconded by Tim Thomas. **Motion unanimously carried (5-0)** (Ayes: Patrick Buskey, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

A **Motion** was made by Tim Thomas to approve the application of Richard Lemcke, owner, for a variance at 293 Peck Road construct a 20 feet by 104 feet lean-to attached to the new 48 feet by 104 feet storage structure. This property currently has 16,300 square feet of storage and will be increased to 18,272 square feet. Applicant is proposing to remove a 5,100 square feet building. This grants relief from Town Zoning Article 5, subsection 165-32.C.2 which limits the square footage of accessory structures to 1,500 square feet. This application is considered an expansion of a non-conforming use per Town Zoning Article 12, subsection 165-91 which requires Zoning Board of Appeals approval. This property is currently zoned Rural Residential (RR). In making the determination to approve, I believe the benefit cannot be achieved by other means feasible to the applicant. The applicant has demonstrated the need for a lean to provide protection for tree plants and to store associated equipment. There will be no undesirable change in the neighborhood character or to nearby properties. The lean-to will be attached to the building and set back substantially from the main street and will have no significant impact to the property. The request is substantial. There will be no adverse physical or environment impact. The alleged difficulty is self-created, but using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare to the community. The approval is made with the following conditions:

- 1) This structure will be exclusively used for the tree farm operation.
- 2) There should be no other vehicles parked on the property other than the applicant's.

Seconded by Dean Snyder. **Motion unanimously carried (5-0)** (Ayes: Patrick Buskey, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

A 10 minute recess was called at 8:40 p.m. The meeting reconvened at 8:50 p.m.

3. GATTI ENTERPRISES, LLC – 5017 RIDGE ROAD WEST

Application of Gatti Enterprises, LLC, owner, for an area variance at 5017 Ridge Road West. Applicant is proposing to develop site, construct a 7,920 square feet commercial building and create 39 parking spaces and is requesting relief from Town Zoning schedule 2 which requires 60 spaces. This property is currently zoned General Commercial (GC).

John Schreiber, surveyor, stated he was representing John Gatti and his father. He described the property which is on the south side of Ridge Road West and 300 feet east of Union Street on 1.2 acres which is zoned commercial. They are proposing to construct a 7,920 square feet commercial building on this site. This property has access to public water and gas but not sanitary sewer. John recalled that this application received a favorable response when presented to the Planning Board. He pointed out on the site plan an existing bar/restaurant to the west and an existing church to the east. He reported that an existing leach field for the neighbor's business is on this property. He stated that they have talked with the neighbor to work with him, since there is an easement that the leach field cannot be touched until sewers are put in. John reported that the only deficit for this project is the lack of parking spaces. They are proposing 39 parking spaces but 60 spaces are required. John referred to the building size, explaining that this size is needed for enough leased spaces and a take-out restaurant in order to make it profitable. The proposed building will be a

single story structure, similar to the new building in Greece across from Lowe's plaza. He referred to the parking situation, noting that the neighboring bar/restaurant's peak hours are in the evening and this building will be busy during the day. They are looking at a legal agreement to share parking spaces with this bar/restaurant to assure parking is available for both. He stated that the proposed parking is in character with the neighborhood. He noted that this plan allows more green space and will enhance the look of the property from the road. He stated that if the restaurant facility were not part of the package, the available parking would be adequate. The proposed restaurant is what is driving the parking requirement up. The proposed restaurant would be a fast food type business, not a sit down restaurant. He noted that the requirement for a leach field prevents anything larger.

Public Comment:

Chairperson Robillard read letters of support from the following neighboring business:

- Don and Holly's Mobile
- Mr. Nick's
- Liberty Hollow
- John Bucciarelli – Pizza Shack
- Brewsky's – Mike Ziobrowski

Donna Hicks – 1836 North Union Street: Stated she owns property behind this project. She questioned if any of the proposed plan is on her land. She was not satisfied after reviewing the site map that this does not encroach on her property.

Joseph Reinschmidt – 336 Ogden Parma Town Line Road: Questioned how close the proposed building will be to the church property.

John replied that it will be just under 65 feet, with an additional 5 feet for the parking lot. He noted they are working with the church on fencing between the two properties. He noted the access road will take out a few parking spots at Brewsky's.

Mike Ziobrowski: Stated that he is in favor of a mutual use for the parking.

John stated that the parking easement would be legally bound and reviewed by the Town Attorney.

The public hearing was closed.

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

The Board questioned John how much smaller would the building have to be to allow more space to accommodate 60 parking spaces. John replied that he did not have this calculation, but estimated 1 ½ units would need to be eliminated.

The Board referred to zoning ordinance 165-125 A. (8). Discussion was held on the concern for adequate parking for these two businesses and the need for a legal agreement to assure parking. The Board discussed the need for a clear analysis of the parking requirement for Brewsky's and the proposed parking requirements for this application.

John stated that he understood the Board's concern. He requested that this issue go to the Planning Board, recalling that they gave preliminary approval for this project with the requirement for Zoning Board variance approval. He felt the Planning Board could handle the parking issue.

Following discussion, a **Motion** was made by Tim Thomas to table the application of Gatti Enterprises, LLC, for an area variance at 5017 Ridge Road West to provide the applicant additional time to comply with the Board's requirement that the applicant bring before the Board an analysis of a mutual use agreement for parking. Seconded by Dean Snyder. **Motion unanimously carried (5-0)** (Ayes: Patrick Buskey, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

4. JAMES AND SHARI PEARCE – 9 JUDD LANE

Application of James and Shari Pearce, owners, for an area variance at 9 Judd Lane. Applicants are proposing to construct a 5 feet by 16 feet addition to the garage with a 9 feet side setback from the southerly property line and are requesting relief from Town Zoning schedule 1 which requires a 10 feet setback. This property is currently zoned High Density Residential (HD).

Shari described their plan to put a 5 x 16 feet addition to the south side of their garage. She explained that this placement for the addition is the only possible location, noting the drainage ditch in the back yard which would not allow placement of a storage shed there. The addition will be flush with the front of the garage and accessed through the garage or through a door that is located behind the addition. She explained their need for additional storage space for a lawnmower, grill and their children's bicycles.

Public Comment: None. The public hearing was closed.

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

Following discussion, a **Motion** was made by Tim Thomas to approve the application of James and Shari Pearce, owners, for an area variance at 9 Judd Lane to construct a 5 feet by 16 feet addition to the garage with a 9 feet side setback from the southerly property line and this grants relief from Town Zoning schedule 1 which requires a 10 feet setback. This property is currently zoned High Density Residential (HD). In making this determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. The applicant stated that one option to put a shed in the back yard is not possible due to a drainage ditch. There will be no undesirable change in neighborhood character or to nearby properties. The request is not substantial. The application will not have adverse physical or environmental effects. Although 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. Seconded by Dean Snyder. **Motion unanimously carried (5-0)** (Ayes: Patrick Buskey, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

SPECIAL PERMIT RENEWALS

5. FRANK AND LUIGI SANTONASTASO – 5070 RIDGE ROAD

Application was received from Frank and Luigi Santonastaso, owners, for renewal of a special permit at 5070 Ridge Road West to operate an auto sales and repair service. This property is currently zoned Highway Commercial (HC) which allows this use with a special permit.

Chairperson Robillard referred to a letter dated January 3, 2008, from Art Fritz, ZEO, that listed violations for this property. Art noted that the owner was addressing these violations and making the required repairs.

Following discussion, a **Motion** was made by Dean Snyder to approve the application received from Frank and Luigi Santonastaso, owners, for renewal of a special permit at 5070 Ridge Road West, to operate an auto sales and repair service. This property is currently zoned Highway Commercial (HC) which allows this use with a special permit. This approval is given with the original conditions, as follows:

- Hours of operation: Monday through Friday, 9 am to 7 pm; Saturday, 9 am to 5 pm; Sunday, 11 am to 4 pm.
- The fire marshal to inspect and approve the waste removal.
- Signs per zoning ordinance.
- No outside speakers.
- Lighting to be directed away from Ridge Road West.
- No junk cars on the premises.

For a period of one year, to be considered for renewal in January, 2009. Seconded by Tim Thomas. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

MINUTES OF DECEMBER 20, 2007

The December 20, 2007 minutes were reviewed. There being no changes or additions, a **Motion** was made by Dean Snyder to approve the December 20, 2007 minutes as submitted. Seconded by Patrick Buskey. **Motion unanimously carried (5-0)** (Ayes: Patrick Buskey, Dean Snyder, Veronica Robillard, Stephen Shelley, Tim Thomas)

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas and seconded by Stephen Shelley to Adjourn the meeting at 10:15 p.m.

Respectfully submitted,
Diane Grundon, Recording Secretary