

**TOWN OF PARMA
ZONING BOARD OF APPEALS
FINAL MINUTES OF NOVEMBER 18, 2010**

- Members Present:** Veronica Robillard
Dean Snyder
Tim Thomas
Jim Zollweg (alternate)
- Members Excused:** Tina Brown, Stephen Shelley
- Others Present:** Lara Badain, Esq. (town attorney), Jack Barton,
Jim Roose (board liaison)
- Public Present:** See attached list

Chairperson Robillard called the meeting to Order at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She noted that this is a five-member board, with three Board members present and an alternate board member. She explained that a quorum of three is required to pass a motion. She offered hearing aid devices for anyone who required them.

TABLED PUBLIC HEARING

1. DANIEL D'ANGELO – 1835 NORTH UNION STREET

Application of Daniel D'Angelo, owner, for a use variance at 1835 North Union Street. Applicant is proposing to renovate the second floor of this commercial building and create a 496 square foot studio apartment, a 637 square foot one bedroom apartment and a 724 square foot one bedroom apartment. This property is currently zoned General Commercial (GC) which does not allow apartments as a permitted principal use. This application has been tabled until the November 18, 2010 meeting.

Chairperson Robillard read a letter dated 11/5/2010 from Daniel D'Angelo in which he requested that his application be withdrawn. He explained he is attempting to rent this space as an office again. A **Motion** was made by Tim Thomas to accept the withdrawal of Daniel D'Angelo for a use variance at 1835 North Union Street, without prejudice. Seconded by Jim Zollweg. **Motion carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

2. REHEARING OF 1220 HPCR #1LLC AND 1220 HPCR #2LLC – 1220 HILTON PARMA CORNERS ROAD

A rehearing for the application of 1220 HPCR #1LLC and 1220 HPCR #2LLC, owners, for three area variances at 1220 Hilton Parma Corners Road. Applicants are proposing to construct an addition on the south side of the existing building with a front setback of 57 feet from the Parma Center Road right of way, locate eight parking spaces along Parma Center Road with a 12.9 feet setback from the right of way, locate ten parking spaces along Hilton Parma Corners Road with a 5 feet setback from the right of way and provide a total of 26 parking spaces for the property. Applicants are requesting relief from: (1) Town Zoning Schedule One which requires buildings to have a front setback of 75 feet; (2) Article 16, subsection 165-125-A.9 which requires parking spaces be set back no less than 25 feet from the road right of way; and (3) Schedule Two which based on building size requires 45 parking spaces. This property is currently zoned Highway Commercial (HC).

Chairperson Robillard recalled that this application was tabled in order to have the applicant answer questions posed by the ZBOA members at the October meeting.

Mindy Zoghlin, attorney, stated she was representing the applicants. She referred to the November 3, 2010 letter she provided to the Board which responded to the Board's questions posed at the October meeting. She reviewed the application and the requested variances. She addressed the questions as follows:

1. Describe the plan for snow removal. She stated the applicant proposes to push snow from the asphalt covered area to the grassy area behind the building to the east. If the volume of snow exceeds what can be placed east of the building, it will be removed from the property.
2. Potential town liability for damage to cars parked near the right-of-way. Jack Barton reported that he spoke with the Town Highway Department superintendent, Brian Speer, and he felt that there will not be a liability issue with the setback of vehicles because the plows would be stopped at the intersection and as they head north, they would not be traveling very fast as they passed the property. In addition, the NYS DOT reported no concerns.
3. Whether the owner considered a smaller design that would require fewer parking spaces. Ms. Zoghlin stated that she thought the ZBOA thinks that more parking spaces were requested because the building was larger. She stated that a smaller building is not required and no variance is needed for the building that is proposed. There is no maximum size, just maximum lot coverage, which is 35%. The proposed building would result in just over a 12% lot coverage. A smaller building would not require less parking. The Town Zoning Board requires a minimum number of off street parking, not maximum. The area variance asked for reduces this required minimum. There is no relation between the building size and the number of parking spaces.

Dean Snyder stated that if the building were half the size, it would require fewer parking spaces. A building one-half the size of the proposed would require a lesser minimum of parking spaces. Mrs. Zoghlin reported that the planning board could address the maximum. Dean Snyder stated if a building takes up a large portion of the property, there is an issue if the lot size cannot accommodate the minimum number of parking spaces. Three factors that determine acceptable size of a building on a lot: (1) the maximum lot coverage of the building allowed on the property – not an issue; (2) setback – if the building is so large it encroaches on the parking area – this is an issue; and (3) does it provide enough parking area to meet the minimum number of parking spaces – this is an issue. The existing building requires a minimum of 14 parking spaces and the proposed larger building requires a minimum of 45 parking spaces.

Ms. Zoghlin stated that this business is not the type that has a lot of customers coming and going at the same time. People arrive to drop their cars off for service and then leave. Work is being done and sometimes a car is being worked on and then the car repair is stopped because of a need for a part and then another car comes in. The business needs extra parking spaces to allow for this flow. Sometimes a car needs a part that requires some time to get and requires the car to stay on the premises for a period of time, perhaps a couple of days, and has to sit in the parking area. The number of parking spaces is dictated by the type of business, not the size of the building. What is the size of the business and what type of business is being held here is the issue. The applicants have been in this business for 30 years and have downsized their business here. They have an understanding of what type of parking is needed for their business. This is why the applicant is here to get relief from zoning and continue their business.

Tim Thomas pointed out that if they kept the building the same size it is now, they could accommodate more cars. Dean Snyder recalled that the applicants have 30 years experience and read the February, 2009 and March, 2009 ZBOA meeting minutes where the applicants stated that 18 parking spaces would be more than adequate and stated they based this on more than 30 years of experience. Dean Snyder recalled the numerous citations ever since then for up to 36 cars parked at this business consistently. The business analysis must be significantly different than what was described previously. Dean Snyder stated that he is having a very difficult time believing the accuracy of the numbers here. The applicant has shown a habitual ignoring of the code. How can we believe what they are asking for now?

Ms. Zoghlin explained how the applicants were so wrong. She stated there was no formal business analysis. The applicants looked at how far they were moving from their previous business in Greece and felt that one-half of their clientele would not come to them in Parma. They were wrong. Many more of their clients were willing to drive to their business in Hilton. They have tried to move things around to handle the parking, even by driving each other to work and parking some cars in their home driveway. They are trying to do the best they can to be successful. They don't want to be bad neighbors. They want the building to be more attractive. This outdated structure has been vacant for a number of years and they want to improve and enlarge the building. The reason they keep coming back to the Zoning Board is to make everyone happy and not get citations.

Mr. Colakoglu stated they have changed the way they park the cars. Chairperson Robillard reported that she saw a very significant effort to try to change the parking configuration recently, but noted that cars were parked on the corner of the lot even though it was stated at the last meeting that they would not park on the corners. Chairperson Robillard stated that the Zoning Board is trying to meet the business concerns and requests and to find a balance.

Tim Thomas stated that he felt the Board did find a balance when they gave the 18 spaces in July. He stated he felt that when a business gets larger many businesses move to another location. The Zoning Board is looking out for the benefit of the community. This business has changed over the past six months and the violations have not been addressed or resolved over the past six months since the variance was granted. Mr. Colakoglu stated that 22 parking spaces would be acceptable. Chairperson Robillard stated that if we give three additional parking spaces for a total of 22, could this be a ceiling that he could adhere to? She states she is reflecting on what she has heard at the ZBOA meetings from the applicant and the community. She asked would 22 parking spaces work?

Mr. Colakoglu stated that 22 parking spaces would be acceptable, which would include their work vehicles. Chairperson Robillard recalled that extra bays were planned in the enlarged building. Mrs. Colakoglu stated her point of view that 22 parking spaces may not be enough during busy times, such as a snow storm. She stated that allowing 26 cars would give them more flexibility and that most of these 26 spaces would not always be used. She stated that it is very stressful trying to keep to the number of parked cars granted. Dean Snyder referred to the comment about having a little bit of trust. He recalled in the Town of Greece, in March, 2007, it took five months for the applicant to respond to summons. The ZBOA had a lot of trust that the Greece incident was isolated but there have been habitual violations in Parma. The public has spoken that the conditions of this property were unacceptable. Now the applicants are asking us to trust them again but so many people have taken an issue about how this business looks. Ms. Zoghlin asked at the last meeting if they wanted her to answer to the violations in Greece. Dean Snyder stated that the violation mentioned at the October meeting was the March 19th violation and the applicant's response is what he is referring to as habitual. He did not want this to be expanded on. Ms. Zoghlin stated that the applicant is not misleading anybody, they just made a mistake in estimating their business. Chairperson Robillard suggested that "continual" rather than "habitual" is a better descriptive word.

Ms. Zoghlin stated that they have built in a little “wobble room” to allow the applicant more spaces so they can manage the numbers. Chairperson Robillard asked if 22 cars were customer cars. She noted her observation that many of the vehicles are unlicensed. She stated she understands this is part of the business but wanted confirmation that the 22 spaces were for customers. Ms. Zoghlin stated that customer, employee and cars being worked on would be included in the 22 spaces. Mr. Colakoglu explained that some unlicensed cars are worked on for dealerships. He stated he has worked in the existing building for a year now and determined he needs a larger building and additional parking. He stated there are certain times of the day when there may be more than 22 cars on the lot. When he says “trust us,” he feels that their experience helped him make this decision. Tim Thomas asked if he would continue with the project if he were granted 22 parking spaces. Tim questioned if this can be approved with a probationary period. Ms. Badain explained that because this is a rehearing, this has to be approved or denied.

A brief recess was called at 8:04 pm and the meeting reconvened at 8:07 pm.

4. What is the proposed interior layout for the new building? A site plan for the proposed building interior was provided. It was noted that the possibility of parking cars inside the building was considered by the applicant in connection with this request to reduce the minimum number of parking spaces from 45 to 26.
5. Whether the applicant considered the possibility of offsite parking. Ms. Zoghlin reported that no suitable location for off site parking has been identified. Dean Snyder stated that one of their comments was how do they stop people from dropping off cars. He suggested this option to provide more consistency with the number of cars on the property. An off site, not off street, parking option was how the question was worded but was answered based on “off street” parking code. Off site parking would provide storage for vehicles kept longer term. Ms. Zoghlin stated that off site would be off street. Mr. Colakoglu stated that transporting cars to another site would not be feasible. Mrs. Colakoglu agreed, noting that insurance issues would be difficult. Mr. Colakoglu recalled how he has been working with the ZEO to keep the number of cars parked on his property down. Dean Snyder noted that with the current business model, with people coming in and limited parking, they will have to turn customers away. He felt this suggestion may help find a way for a buffer, to have another location for the cars. Tim Thomas stated that they will need to find a way to manage their cars better. Mr. Colakoglu stated that between 22 and 25 cars has been working.

Public Comment:

A letter from Will Falcheck, 1215 Hilton Parma Corners Road, was read. He stated he was unable to attend this meeting. He stated that as an adjacent property owner, he had serious concerns regarding the use and appearance of the site currently occupied by MicroTransmissions. He believes there are too many cars and that they are parked too close to the road. He asked the Zoning Board to uphold the requirement of article 16, section 165-125.A.9 and maintain the setbacks for parking at a minimum of 25’ from the right of way. By not granting relief and enforcing this setback, it would greatly ease his concerns for safety and appearance at this location. It would also serve to minimize the liability issues as it currently exists.

The public hearing was closed.

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

Chairperson Robillard asked the Board to consider the information presented tonight and to present a motion. She explained that the public hearing was closed.

Ms. Badain stated that the public hearing was closed and the next step for the Board is to ask questions of the applicant and the public if they wished. It is not necessary to reopen the public hearing to accomplish this. Chairperson Robillard asked if any Board member required any further information or had questions for the applicant or the public. It was the consensus of the Board to just continue.

Dean Snyder stated he had serious concerns. He wants to see the applicant continue with their business and have customers but not be obtrusive to the community. This is a very busy intersection and since March of 2009 there have been serious issues. He asked, "what do we owe to the neighbors and the community?" We are looking to approve enlargement of the building but perhaps another use for this building would be feasible. If we approve enlarging the building, it leaves less parking area. He referred to the drawings of the building provided. The company that will build the addition will be putting up a large pole barn right in the middle of the gateway to Parma. He recalled the original drawing with an engineering firm. The plan looks like a big industrial building with a short overhang. It is a great plan for an industrial site, such as on Ridge Road. He would like to see a better looking building. Regarding the business plan, Dean apologized for the use of the word "habitual," not meaning anything to do with the applicant's character. He just meant the violations have been happening over and over and over and over and over. This is a business plan issue. It is very difficult for these business owners to say "no." They treat their customers like family. The problem is in this location it just doesn't work. I don't see how we can approve the current plan. He restated the three criteria for determining the size of a building. He asked how can we increase the number of cars significantly and enlarge the building by 200%. He recalled back in March we referred to the analysis of the business plan which was not accurate. How can we enlarge the building and take away from the available parking and prevent a continual violation situation. Tim Thomas stated that looking at the site plan, the parking is not in proportion to the lot area. He suggested another rendering be provided.

Mr. Colakoglu stated this is a pole barn construction but it will be a good looking building. He felt this would improve the existing building. Tim Thomas stated that if this building enlargement was not approved and they go back to their original plan, what would happen to the handicapped accessible bathroom. Dean Snyder stated he felt that there would be ways to make this occur. For example, if the number of bays were decreased, the east-west area would allow room for a handicapped bathroom.

Lara Badain recalled that this is a rehearing and the ZBOA members were to reverse, nullify or approve the previous motions.

A **Motion** was made by Tim Thomas to **reaffirm the approval** of two fence variances, as per the July 15, 2010 ZBOA meeting as follows: A Motion was made by Tim Thomas to approve 2 of the requested variances in the application of 1220 HPCR #1 and 1220 HPCR #2 LLC, owners, at 1220 Hilton Parma Corners Road to erect two 6 feet high vinyl fences in the front yard. The fence along the easterly property line will meet minimum setbacks and the fence along the northerly property line is proposed to have a setback of 15 feet. This grants relief from Article 16, subsection 165-128.A.2 which states in part that fences between the front setback line and the highway right-of-way shall not be higher than three feet above the adjacent ground level and open style. This property is currently zoned Highway Commercial (HC). The Planning Board apparently determined that six foot privacy fences would best shield adjacent properties from any visual impacts associated with the parking areas. This is something that not only can be achieved but will benefit adjacent properties to provide screening. There will be no undesirable change in the neighborhood character or to nearby properties. The request is substantial, however, looking at this substandard lot in conjunction with other characteristics of the property is what mitigates this. There will be no adverse physical or environmental effects. The 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 Jim Zollweg. **Motion unanimously carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

Discussion was held on the requested variance of a 61.9 setback for the building. Dean Snyder stated that we need to determine how many parking spaces can this parking lot accommodate. Jack Barton stated that the fire lanes were established after the July 15th meeting. The current drawing shows 26 parking spaces and 1 handicapped parking space. Dean stated we are not looking to limit parking, just to identify a reasonable amount for the area. Dean questioned Jack Barton if the parking configuration was reasonable with room to move cars around. Jack responded that there was 25' between the double row of cars and building and 20 feet from the right of way to the street. Dean questioned Jack if the Zoning Board approves a number of cars and the planning board determines less than that can fit on the lot, whose responsibility is it to adjust. We don't have the expertise to determine what a safe number is. Jim Zollweg suggested that if there is adequate enough setbacks, that will determine how many cars will fit. Jack Barton stated that the planning board has the authority to change the site plan. If they determine less cars are safe than what is approved by the ZBOA, they can reduce the number that the Zoning Board approved.

A **Motion** was made to **reaffirm** the motion of July 15, 2010, for the application of a variance in the application of 1220 HPCR #1 and 1220 HPCR #2 LLC, owners, at 1220 Hilton Parma Corners Road, by continuing to **deny** the request for variance to locate ten parking spaces along Hilton Parma Corners Road with a five feet setback from the right-of-way. This denies relief from Article 16, subsection 165-125.A.9 which requires parking spaces be set back no less than 25 feet from the road right-of-way. This property is currently zoned Highway Commercial (HC). In making this determination, it is my belief the benefit can be achieved by other means feasible to the applicant. The 5' setback will create an undesirable change in neighborhood character and to nearby properties. The requested setback of 5 feet for 10 parking spaces along Hilton Parma Corners Road will create a change in the neighborhood character. This is a high profile corner and the main gateway to the Village of Hilton. It is the Zoning Board's job to assure that the character is maintained. The request is substantial. This will create an adverse physical not environmental effect, as evidenced by violations noted by the Building Department and the public comments. The alleged difficulty is self-created. Using the balancing test, the benefit to the applicant does not outweigh the detriment to the health, safety and welfare to the community. Seconded by Jim Zollweg. **Motion unanimously carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

A **Motion** was made by Tim Thomas to **reverse** the motion of July 15, 2010, by approving the variance in the application of 1220 HPCR #1 and 1220 HPCR #2 LLC, owners, at 1220 Hilton Parma Corners Road to locate eight parking spaces along Parma Center Road with a 12.9 feet setback from the right-of-way. This Motion **grants relief** from: (1) Article 16, subsection 165-125.A.9 which requires parking spaces be set back no less than 25 feet from the road right-of-way. This property is currently zoned Highway Commercial (HC). In making the determination, it is my belief the benefit cannot be achieved by other means feasible to the applicant. The request will not create an undesirable change in neighborhood character or to nearby properties. The requested setback of 8 parking spaces along Parma Center Road with a 12.9 feet setback from the right of way will not create a change in the neighborhood character. The request is substantial. This will not create an adverse physical not environmental effect. The alleged difficulty is self-created but using the balancing test, the benefit to the applicant does outweigh the detriment to the health, safety and welfare to the community. Seconded by Jim Zollweg. **Motion unanimously carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

A **Motion** was made by Tim Thomas to **modify** the motion of July 15, 2010 to **deny the request** for a variance the application of 1220 HPCR #1 and 1220 HPCR #2 LLC, owners, at 1220 Hilton Parma Corners Road to provide a total of 26 parking spaces for the property, by allowing 23 parking spaces. This property is currently zoned Highway Commercial (HC). In making the determination to modify this variance, the primary reason to deny the 26 parking spaces is that there is an alternative means to achieve the desired number of parking spaces. I believe that the applicant's dialogue that they can meet their business needs now and in the future and help maintain the character of the neighborhood relative to the visual appearance and with the number of cars approved, will make it more manageable, in this gateway to the community. This compromise will benefit the community. Seconded by Jim Zollweg. **Motion unanimously carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

Chairperson Robillard polled the Board for their reasons for the 2 denials:

Dean Snyder: The applicant has requested 26 spaces instead of 45 called out by code. 26 spaces are shown not to be feasible on this proposal. 23 is the maximum number that appears to fit on the property. The 5' setback is not necessary. There are alternative parking layouts that would allow parking without the need for a setback variance.

Jim Zollweg: identical reasons as stated by Tim Thomas.

Tim Thomas: his motions stand for his reasons

Veronica Robillard: denial for 26 spaces based on 23 approved spaces seems to be sufficient and most feasible for applicant's needs. The setback denial is based on alternate concepts which fit parking needs and do not require a variance.

Dean Snyder referred to the sketch provided of the interior of the proposed building. He questioned the lifts, expressing concern about a building that is proposed that is too large for the lot with required parking spaces. He stated he was also very concerned about the style of building which looks like an industrial building. This should look more like the old K&K across the street or a commercial type building. A pole barn construction would be a disservice to the community. So very few parking spaces accommodated to support the enlarged building. A building increase of 200% leaves less area for parking spaces. The setback could be changed by removing a bay on the southwest corner. The other two lifts which are located on Parma Center Road would shift back. The large truck could be parked in the bay which currently is in the center bay on route 259 because it would extend through the area which is not a lift. If the bathroom needs to be extended, there is room. What this does it shifts the whole building back farther from the right of way with less encroachment on the right of way by 10 feet. In my perception, we have this very large building with a parking area not large enough to support this building. This building should meet the applicant's needs without encroaching on the community. This plan would lose one lift. The

building that is going up will be there a long time. In 10-15 years, it is anticipated it will change hands. Tim Thomas questioned if the building style were changed to a more commercial building would he approve the size. Dean Snyder stated that he probably would consider it. Dean suggested we table this part of the motion to allow the applicant an opportunity to present more details on what the building is going to look like. A more commercial rendering is requested. Mr. Colakoglu stated that he needs more room around each lift to do his work. Dean Snyder stated he suggested that this portion be tabled because the submitted drawing is inaccurate and the rendering is a very industrial looking building.

Ms. Badain stated that this part of the motion is also being reheard, because the entire application was decided to be reheard. Dean Snyder reiterated that a lot of new information was presented tonight and now he wants to look at the design of the building. The interior design provided was inaccurate and the outside rendering was not attractive.

Ms. Zoghlin suggested that asking for a rendering of the building and interior layout is a planning board issue. Dean Snyder stated that if this building is going to encroach on the setbacks, it is important that an appropriate appearing building will be built. He noted two ends of the spectrum: (1) pole barn industrial, or (2) design similar to former K&K which is very attractive. If it is the ZBOA's responsibility to approve, we need to know what it is going to look like. If we were to approve a building without knowing what the exterior is going to look like, we would not have done our job. Tim Thomas stated that we need to assure that we keep with the character of the neighborhood.

Following discussion, a **Motion** was made by Tim Thomas to table until the December ZBOA meeting the component dealing with the setback to afford the applicant time to address the exterior design of the building, including the finishes and siding, to make it less industrial looking, a softer appearance, and have it fit in better with the character of the neighborhood. We are looking for a rendering for the Board to view at the next meeting. Also a detailed interior layout with dimensions of the building is requested. Seconded by Jim Zollweg. **Motion unanimously carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

Ms. Zoghlin asked when the next meeting is. She was informed it would be December 16h. Dean Snyder asked that a copy of the rendering be submitted by December 2nd or the application should be extended to the January, 2011 meeting.

NEW PUBLIC HEARINGS

1. FRANK MUSSO – 261 HUFFER ROAD

Application of Frank Musso, owner, for area variances at 261 Huffer Road. Applicant is proposing to construct a 2,700 square feet accessory storage building with a wall height of 14 feet and is requesting relief from Town Zoning Article 54, subsection 165-31.C.2 which limits the area of this building to 2,000 square feet and Article 10, subsection 165-82.C.2 which limits the wall height of this building to 12 feet. The applicant is also requesting a use variance to allow the open storage of a dump truck and equipment on this property which is not allowed in a residential district by Town Zoning. This property is currently zoned Agricultural/Conservation (AC).

Frank stated he has lived on this 16 acre property for 10 years. He described his proposed storage building that he needs to store personal equipment. He stated until now, he has parked his dump truck outside on his property and had no idea that he was offending the Town by doing this. He described his need for the 14 feet wall height because of the dump truck, but thought that maybe he could use the 12 feet that is allowed. He reiterated that all his equipment is his personal equipment and no one comes to buy anything on the property. He keeps gravel and topsoil on his

property and he shares it with his neighbors. The dump truck is parked behind the house with many trees that screen it. He explained he has a construction company and the majority of time his equipment is on the job sites, but he also parks them on his property. Dean Snyder asked that the application should consider not withdrawing the 14 feet wall height, but reconsider the use variance, as he would have to prove financial hardship if he can't store his dump truck outside.

Frank stated that the dump truck will be parked inside the proposed storage building. He felt that a 12 foot wall height would be sufficient to allow this. Tim Thomas asked what other equipment he would be storing in this building. Frank listed the following: John Deere tractor with attachments, brush hog, rototiller, 4-way bucket, 2 excavators, a 19' bass boat, 1 bobcat loader and tracks, 1 small 2.5 ton dump truck, two trailers, a 27' and 20'. He stated he wasn't sure if all this equipment would fit in the proposed building. The building is 36' x 48' with the roof line extending to 75 feet. The part that is not enclosed will face to the rear of the property. In order for anyone to see this open area, neighbors would have to walk back 800 feet. The reason for the open area is to back the truck inside. He is requesting a use variance to protect his right to store his construction equipment in his barn. Chairperson Robillard explained the criteria to consider approving a use variance. Following discussion, Mr. Musso decided to keep the 14' wall height and withdraw the request for the use variance.

Public Comment:

Chairperson Robillard read a letter dated November 18, 2010, as follows:

Terry Mikolaichik – 271 Huffer Road: Stated he had no problem with the equipment and is in favor of the building but suggested the location of the building should take in consideration the noise resulting from the equipment.

John Taber -250 Huffer Road: Lives directly across the street. Reported that Frank keeps his property up and he is in favor of this application.

Bill Palma – 224 Huffer Road: Stated he is in favor of this application.

The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order. Jack Barton reported that the request was returned by Monroe County as a matter of local determination. Jack reported that 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 Frank Musso, owner, for area variances at 261 Huffer Road to construct a 2,700 square feet accessory storage building with a wall height of 14 feet and this grants relief from Town Zoning Article 54, subsection 165-31.C.2 which limits the area of this building to 2,000 square feet and Article 10, subsection 165-82.C.2 which limits the wall height of this building to 12 feet. The applicant is also requesting a use variance to allow the open storage of a dump truck and equipment on this property which is not allowed in a residential district by Town Zoning. This property is currently zoned Agricultural/Conservation (AC). In making this 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 neighborhood character or to nearby properties. In fact it will improve the character because it will allow the applicant to store equipment inside. The equipment listed by the applicant includes: a 27' and a 20' trailer, a 19' bass boat, 2 excavators, 1 bobcat and track accessories, a 2.5 ton dump truck, and a John Deere tractor with brush hog, rototiller and 4-way bucket. The request is substantial. The side height of 14 feet is necessary to allow flexibility in storage location and to provide room to perform repair work to the dump truck. There will be no 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 Tim Thomas. **Motion carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

2. THOMAS AND CRISTINA LOVERDE – 229 DEAN ROAD

Application of Thomas and Cristina LoVerde, owners, for an area variance at 229 Dean Road. Applicants are proposing to construct an accessory storage building with a portion of the building having a wall height of 18 feet and are requesting relief from Town Zoning Article 10, subsection 165-82.C.2 which states that no detached accessory building in a residential district shall exceed 12 feet in height. This property is currently zoned Rural Residential (RR).

Chairperson Robillard explained that in order to continue with this application, the required notifications must be in order. Jack Barton reported that notifications were not able to be made by the applicant. Chairperson Robillard asked the applicant if we could table the application to December. The applicant agreed with the December hearing.

A **Motion** was made by Jim Zollweg to table the application of Thomas and Christina Loverde for an area variance at 229 Dean Road, without prejudice, in order for the applicant to complete the required notifications. Seconded by Tim Thomas. **Motion carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

3. DAVID CRUMB – 307 CURTIS ROAD

Application of David Crumb, owner, for an area variance at 307 Curtis Road. Applicant is rebuilding a portion of the barn that has collapsed and is proposing to increase the wall height of the building from 18 feet to 20 feet. The applicant is also proposing to increase the south wall height of the existing building by 2.5 feet, bringing it up to 20 feet to match up roof lines. This proposal is also identified by Town Zoning as an expansion of a non-conforming structure which requires Zoning Board of Appeals approval. This property is currently zoned medium Density Residential (MD).

David explained that last February, the east barn on his property collapsed from the snow. He hired a demolition company to remove the part that collapsed and in obtaining the building permit he thought it would be a good idea to raise the roof line, which required a variance. He explained he wants to make the new and existing part of the barn to look like one structure. The barn that collapsed was about 60 years old. He noted that he and his family have owned this property since 1946.

Public Comment: None. The public hearing was closed.

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

A letter dated November 16, 2010 from the Planning Board was read which stated that a decision by the Planning Board at the November 15th meeting is that the additional 2 feet of wall height is a minor change to the original structure and does not appear to be a negative impact on the neighborhood.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of David Crumb, owner, for an area variance at 307 Curtis Road to rebuild a portion of the barn that has collapsed and to increase the wall height of the building from 18 feet to 20 feet. The applicant is also proposing to increase the south wall height of the existing building by 2.5 feet, bringing it up to 20 feet to match up roof lines. This proposal is also identified by Town Zoning as an expansion of a non-conforming structure which requires Zoning Board of Appeals approval. This property is currently zoned medium Density Residential (MD). In making the determination to approve both the area variance and the wall height, I don't believe the benefit can be achieved by other means feasible to the applicant. The barn collapsed due to a heavy snow load and the applicant is attempting to make a more uniform appearance and the wall height will make it a better looking and more structurally sound barn. The applicant's family ownership predates all zoning law limitations. There will be no undesirable change in neighborhood character or to nearby properties. The old barn has been there for a number of years and has been part of the neighborhood since 1946. The request is somewhat substantial compared to code but the wall height is minimal. There will be no adverse physical or environmental effects. The alleged difficulty is somewhat self-created, however, that is mitigated by the nature of the project and the age of the barn. 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 carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

4. PARMA CHRISTIAN FELLOWSHIP – 590 NORTH AVENUE

Application of Parma Christian Fellowship, owners, for a Special Permit at 590 North Avenue. Applicants are proposing to construct a new 11,000 square feet multi-use building which will include a Church, Pre-Kindergarten school, and daycare services for students. Outdoor facilities will include an outdoor play area for students, softball field, and picnic pavilion. This property is currently zoned High Density Residential (HD) which allows this use with a Special Permit.

Brian Sorochty, engineer, stated he was present to provide answers to questions about the construction of the proposed building. Pastor Merrill referred to the extensive written description of the church and its activities, dated November 18, 2010, which was provided to the ZBOA members. Brian referred to zoning ordinance 165-55, General Provisions, and 165-61, listing items A-G, and how their facility meets these requirements.

- A. The minimum land will be three acres. This property has 5 acres.
- B. There will be only a single point of access to the public street.
- C. Off street parking is 87 spaces, which meets requirements.
- D. The parking area will be illuminated with security lights landscaped and buffered from neighbors
- E. The bus will drop off in the back portion of the parking area, with no on-site parking storage
- F. Lighting will meet requirements
- G. Referred to the extensive explanation provided in the November 18th document
- H. The trash elimination area is indicated in the November 18th document
- I. Sewer and water are available
- J. Landscaping and traffic patterns were provided

He noted that a neighbor asked if a berm could be put up and they added this to the plan. He pointed out that the headlights of outgoing cars at night will not shine into the neighboring house due to the placement of the driveway. He described the building, noting that the bottom portion will be constructed of stone with a middle band of color, and then siding. He provided a colored architectural drawing of the church and landscaping. He stated that everything will be handicapped accessible. Pastor Merrill stated that none of the facility will be rented out. It will only be used by the church members. Also, no one will reside in this church nor is this planned in the future. Brian stated that approximately 17 homes could be built on this property. He stated that the storm water drainage is modeled from the DEC and they are required to maintain the drainage according to a 100 year standard. There will be no more water run off from this property than there is today. Jim Zollweg asked where the location is for the retention basin. Brian pointed out how the water will flow.

Public Comment:

Dave Keech – 42 Dunbar Road: He stated his property won't be directly affected by this. He stated he would prefer a plan like this than a housing subdivision. He fully supports that the drainage will not affect the neighbors. He sees that in the future this project could be surrounded by residential houses. He would be concerned about the parking lights then. He expressed his huge concern about the pond and lack of security. He also was concerned about activities and traffic. What happens to the building if the church becomes financially unable to support it?

It was noted that a church and school are allowed in a HD residential area. Brian noted that there are several other zoning districts that allow churches. Pastor Merrill stated that a church is considered a residential not a commercial use. Dave questioned how a church with a daycare and school fits in with a residential area. Brian explained that all these activities are allowed in this district and others with a special permit. Pastor Merrill stated this is a not-for-profit church. Numerous churches are located in this type of district. He noted that the church of the Nazarene owned this property and has not changed since 1975. The houses built on the south were built

knowing the church property was there. Pastor Merrill noted that the church owns the property and there is no mortgage. Everything will be paid in cash with no debt incurred.

Dave Keech referred to churches in Hilton and he felt this belongs in a different area, not residential. He state he is not in favor of this proposal.

Chairperson Robillard reiterates that this is a permitted use with a special permit.

Dave Keech stated that he feels that this is a fundamental difference from homes, as it is twice as large.

Melanie Andrews – 205 Lake Avenue: She stated that looking at the architectural drawing, there is less parking in the front than in the back.

The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order. Jack Barton reported that the request was returned by Monroe County as a matter of local determination. Jack reported that 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 Parma Christian Fellowship, owners, for a Special Permit at 590 North Avenue to construct a new 11,000 square feet multi-use building which will include a Church, Pre-Kindergarten school, and daycare services for students. Outdoor facilities will include an outdoor play area for students, softball field, and picnic pavilion. This property is currently zoned High Density Residential (HD) which allows this use with a Special Permit. In approving this application, the following line items were considered: zoning ordinances 165.55, 165.61 and 165.64 which are the applicable sections of the code dealing with this application:

- 165.55: General Provisions. The proposed application is consistent with Article 9, 165.55, paragraphs A-G.
- 165.61: The proposal is consistent with paragraph G of this section. “all activities of the special permitted use shall be stated in the terms and conditions of the approval that may be granted by the ZBOA. If the applicant proposes outdoor use of the property, the site plan should identify that portion of the site where such activities are to occur. Prior to the approval of any outdoor use of the property, the ZBOA shall consider how such outdoor use will impact on neighboring areas. The ZBOA shall evaluate such concerns as noise, traffic congestion, traffic safety, off street parking and neighborhood security as part of its process of deliberation. All these specifics are called out by the letter submitted by the applicant dated November 18, 2010.
- 165.64: Adult day care, child care, nursery schools, schedule 1, HD residential. The application is consistent with 165.64.

As stated in 165.55.C, the operation of the proposed special permitted use is no more objectionable to the uses of nearby properties, by reason of dust or smoke emission, noise, odors, fumes, pollution of air or water, including subsurface waters, unsightliness or similar conditions, than would be the operation of any permitted use in a HD residential district. There is no expiration date on this special permit. Seconded by Jim Zollweg. **Motion carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

SPECIAL PERMIT RENEWALS

5. DAVID AND KATHLEEN KEECH – 42 DUNBAR ROAD

Application was received from David and Kathleen Keech, owners, for renewal of a Special Permit at 42 Dunbar Road for an accessory apartment used as an in-law residence. This property is currently zoned Medium Density Residential (MD) which allows this use with a Special Permit.

Jack Barton reported no complaints on file.

A **Motion** was made by Dean Snyder that the application of David and Kathleen Keech, owners for renewal of a special permit at 42 Dunbar Road to allow an accessory apartment to be used as an in-law residence for Kathleen's mother, Ethel Monks, be approved in accordance with Zoning Article 9, subsection 165.76.A.-I. This special permit will be for a two year period, renewable 10/2012. Seconded by Jim Zollweg. **Motion carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

6. JOHN AND TRACY SONOGA, JR. – 5760 RIDGE ROAD WEST

Application was received from John and Tracy Sonoga, Jr., contract vendees, for renewal of a special permit at 5760 Ridge Road West to allow an accessory apartment as part of their proposed new home. This property is currently zoned Agricultural/Conservation (AC).

Jack Barton reported there were no complaints on file.

Following discussion, a **Motion** was made by Dean Snyder to approve the application received from John and Tracy Sonoga, Jr., contract vendees, for renewal of a special permit at 5760 Ridge Road West to allow an accessory apartment as part of their home, as per Zoning Article 9, subsection 165-76.A-I, for a period of two years, renewable 11/2012. This property is currently zoned Agricultural/Conservation (AC). Seconded by Tim Thomas. **Motion carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

**7. RICHARD AND TAMMY HEFFRON AND MARY ANN ROETHEL –
1429 MANITOU ROAD**

Application was received of Richard and Tammy Heffron and Mary Ann Roethel, owners, for renewal of a Special Permit to allow an in-law apartment. The property is currently zoned Rural Residential (RR) which allows this as a special permit.

Jack Barton reported there were no complaints on file.

Following discussion, a **Motion** was made by Dean Snyder to approve the renewal of a Special Permit to Richard and Tammy Heffron and Mary Ann Roethel, owners, at 1429 Manitou Road to allow an accessory apartment in the existing garage for Tammy's mother, which has been converted into an in-law apartment, per Zoning Article 9, subsection 165.76.A-I and with the following conditions:

- Approval is granted for two years, to be renewed October 2012.
- If title to the property changes or the family member requiring extended care no longer occupies the accessory unit, the permit shall not be renewed and the facilities that provide for independent occupancy (i.e., kitchen and bath facilities) shall be removed. As an alternative to the removal of these facilities, the occupant of the principal residential unit shall submit plans to show that there is unhindered internal access to the entire dwelling as a condition of the continuation of the Certificate of Occupancy. The applicant is to inform the Town when the accessory apartment is not needed.

Motion carried (4-0) (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

8. GARY AND SUSAN CARTER – 204 PINE HILL ROAD

Application was received of Gary and Susan Carter, owners, for renewal of a Special Permit to allow an accessory apartment at 204 Pine Hill Road. Applicants are proposing to continue using an addition as an in-law apartment. The property is currently zoned Medium Density Residential (MDR) which allows this as a special permitted use.

Jack Barton reported there were no complaints on file.

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Gary and Susan Carter, owners, for renewal of a Special Permit to allow an accessory apartment at 204 Pine Hill Road, in a Medium Density Residential zone for an in-law apartment in accordance with Zoning Article 9, subsection 165.76.A.-I. Approval granted for two years, renewable in 9/2012. Seconded by Tim Thomas. **Motion carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

9. DONALD AND NANCY TOWN – 18 CLEARVIEW AVENUE

Application of Donald and Nancy Town, owners, for renewal of 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. This property is currently zoned Waterfront Residential (WF).

Jack Barton reported no complaints were on file.

A **Motion** was made by Tim Thomas to approve the application of Donald and Nancy Town, owners, for renewal of 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, per Zoning Articles 165-55 and 165-66. This property is currently zoned Waterfront Residential (WF). This approval is given with the following conditions:

- Maximum of three guest rooms
- For a two year period, renewable in 9/2012.

Seconded by Jim Zollweg. **Motion carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

10. GREG STAHL - 4621 RIDGE ROAD WEST

Application was received from Greg Stahl, owner, for renewal of a Special Permit at 4621 Ridge Road West to construct a sales and showroom building and expand the area of outside display vehicles east of existing display area. This property is currently zoned Highway Commercial (HC) which allows this use with a Special Permit.

Jack Barton reported that inspection did not identify any violations. Jack reported there were no complaints on file.

Following discussion, A **Motion** was made by Tim Thomas to approve the application of Greg Stahl, owner, for renewal of the Special Permit at 4621 Ridge Road West, with the following conditions set forth that apply to properties, the eastern portion of 4615 Ridge Road West, now known as 4621, and the western portion of 4621 Ridge Road West, as follows:

- No more than 140 display spaces total
- All display areas will be paved
- No repairs or storage of junk cars
- No outside speakers
- No on-street parking
- Lighting to be directed away from Ridge Road West and neighboring properties
- Hours of operation: Monday through Friday, 9 am – 9 pm, Saturday, 9 am to 5 pm, no Sunday hours
- For a period of one year, to be renewable 12//2011

Seconded by Dean Snyder. **Motion carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Tina Brown, Stephen Shelley)

MINUTES OF OCTOBER 21, 2010

The ZBOA minutes of October 21, 2010 were reviewed. The following changes were recommended: page 1, last Para, line 6, add “5 feet setback..”; page 2, Para 2, last bullet point, change to “A 5’ and 12.9’ setback..”; page 3, last Para, line 3, change “Dean Snyder” to “Donna Curry read..”; page 4, last Para, line 15, change “custom vehicles to customer vehicles...”; page 5, line 2, change “Jim noted to Dean noted...”; page 6, add: “Don Green – West Avenue – He feels this is a southern gateway to the town.”; Para 5 under board discussion, change “Chairperson Robillard to Dean Snyder..”; page 8, Para 5, line 1, change to “Mike Meyer stated...”; page 9, Para 1, line 13, change to “...completed in two months.” A **Motion** was made by Dean Snyder to approve the October 21, 2010 ZBOA minutes with the recommended changes. Seconded by Tim Thomas. **Motion carried (3-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Tina Brown, Stephen Shelley; Abstain: Jim Zollweg)

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Jim Zollweg, to adjourn the meeting at 1:20 a.m., November 19th. **Motion unanimously carried (4-0)** (Ayes: Veronica Robillard, Dean Snyder, Tim Thomas, Jin Zollweg; Absent: Tina Brown, Stephen Shelley).

Respectfully submitted,

Diane Cook, Recording Secretary