

TOWN OF PARMA
ZONING BOARD OF APPEALS
May 17, 2012

Members Present: Veronica Robillard
Stephen Shelley
Dean Snyder
Tim Thomas
Jim Zollweg

Others Present: Jack Barton, Blake Keller

Public Present: Tim Zigarowicz, Thomas Roach, Challiss Roach, Glona Chatterson, Bill Chatterson, Joseph S. Frosini, Jeremiah Clifford, Frances Scholand, Mike Eisele, Erica Wydra, Cody Whiting, Ragan Orga, Jason Brown, Rick Wohlers, Gary Comardo, Danika Hendricks, Dylan Schepler.

The meeting was called to Order by Chairperson Robillard at 7:04 p.m. She explained the function of the ZBOA and the decision-making process. She explained that a quorum of three is required to pass a motion.

TABLED PUBLIC HEARINGS

1. MARIAL OPHARDT – 451 PARMA CENTER ROAD

The application of Marial Ophardt, owner, for a use variance at 451 Parma Center Road. The owner is requesting to restore the property use to two-family. The property has been vacant for over one year and has lost its preexisting nonconforming status in accordance with Town Zoning Article 12, subsection 165-92 titled “Abandonment”, which states in part that whenever a nonconforming use of land, premises, building or structure has been discontinued for a period of one year, such nonconforming use shall not thereafter be reestablished. This property is currently zoned Agricultural/Conservation (AC) which limits Permitted Principal uses to one single family dwelling and customary agricultural operations.

Board Discussion: Jack Barton stated that he received a call from the Realtor regarding the matter and that they are requesting this matter be tabled until the June meeting so that they can obtain additional information.

Chairperson Robillard read a letter from the Realtor dated May 11, 2012, stating his request for an additional month to obtain all of the information and estimates to properly apply for this use variance at 451 Parma Center Road.

Tim Thomas asked Jack Barton if he talked to the applicant or the attorney before receiving the above mentioned letter. Jack Barton explained that he had talked to the realtor. Tim Thomas agrees that because of the criteria and material needed for this application it would be appropriate to table. Dean Snyder asked if the Board had set a deadline to provide such information. Jack Barton stated the applicant was given a timeline to submit to the board for review but not to postpone.

A **Motion** was made by Tim Thomas to table the application of Marial Ophardt, owner, for a use variance at 451 Parma Center Road to the June 2012 meeting to obtain information as outlined by the Board at the April 2012 ZBOA meeting and to provide that information to the Building Department by June 5, 2012 without prejudice. Seconded by Jim Zollweg. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

2. MICHAEL EISELE – 190 OGDEN PARMA TOWN LINE ROAD

The application of Michael Eisele, owner, for a Special Permit to operate a Home Business at 190 Ogden Parma Town Line Road repairing lawn and garden equipment. The applicant is also requesting relief from Town

Zoning Article 9, subsection 165-79.1.F which does not allow outside storage of materials used in the Home Business. This property is currently zoned Medium Density Residential (MD).

Board Discussion: Jack Barton 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.

Michael Eisele, owner, said he submitted all requested information with current pictures of the property. He wanted to clarify that he spoke to Donna K. Curry, Town Clerk, and it was found that Mr. Eisele was not at the Town Board Meeting on July 18, 2000 that was mentioned in the March 2012 ZBOA meeting. Dean Snyder clarified that that Town Board Meeting was to define what the code was, it did not have any bearing on this applicant. Jack Barton explained that the Town Board passed a resolution to create the Home Business Special Permit at that meeting.

Mr. Eisele wanted to clarify that all hours of the day/night is an exaggeration. He explained that he may have worked late but was careful about the noise during those times and that he has left the lights on accidentally but was not working during those hours. He also explained that the pictures shown at the March meeting were 7 years old. At that time he had a back injury and those pictures were true but when he recovered, that area was cleaned up. He further explained that there is no gas or oil leaking onto the property from his machines. There are usually only deliveries made to the house every other week, only occasionally once a week. With that statement, he would like to rescind his application for outside storage. He would like to be able to use his pavilion located directly to the north of the shop for storage instead. He also is asking the board that in the future at a different venue to consider an application for a variance and an addition to the current building to comply with the current regulations.

Chairperson Robillard clarified that he wants to withdraw the request for outside storage and now is just looking for a special permit to operate his business. Mr. Eisele responded yes. Tim Thomas asked Jack what constitutes outside storage. Jack Barton explained that in sections of the code where it refers to outside storage it would be defined as an enclosed structure. Dean Snyder explained that in Section 165-79.1 F Medium Density, High Density and Waterfront districts no outside storage shall be permitted. The next sentence says Agricultural and Rural, any outside storage shall be adequately screened from any outside view or neighboring property (ex. vegetation, screening). This property is zoned medium density.

Mr. Eisele explained that he uses temporary hard shell walls in the winter and that it is 280 feet from the road. Tim Thomas thought possibly with a special permit it could condition the permanent use of walls, unless taking things in and out.

Chairperson Robillard explained to the applicant that a special permit is for a specific amount of time and is renewable and if violations occur then it might not be renewed. Stephen Shelly asked if he does any sales. Mr. Eisele explained that he only does service.

Jack Barton wanted to reference 165-79.1(e) – Floor area – the shop is one area and the pavilion is a separate area. Dean Snyder stated that only one detached structure can be used and this would be two. Tim Thomas asked what the service is. Mr. Eisele answered that business plan states it. There was discussion about opening this back up to public comment. Dean Snyder explained that any comment should cover the baseless comments that were brought up by the applicant earlier as far as lights on, pictures being 7 years old being meant to deceive the board, grinding noise that was discussed.

Public Comment:

Jeremiah Clifford, 198 Ogden Parma Town Line Road, wanted to say that Mr. Eisele never received a special permit before and that this has been going for 20 years. He stated that the pictures were taken in the past 2 years. The lights for him are not the issue. He is using lawn mowers late into the night, through the dinner hour. He has reviewed the code and feels that this should be denied. The code states that there should be no noise or light noticeable at anytime. He doesn't feel they should have to listen to this all the time. Dean Snyder

questioned how old the pictures were and Mr. Clifford replied that they are possibly 3 to 5 years old and it has been that way for years.

Francis Scholand, 144 Ogden Parma Town Line Road, this is a residential area and Mr. Eisele has been violating this for 12 years and has never applied for a Special Permit. Mr. Eisele wanted to point out again that he was not at the Town Board Meeting in 2000.

Chairperson Robillard asked the applicant if he knew he needed a Special Permit at any time during the past 12 years. Michael Eisele said he did know. Chairperson Robillard asked why he never received one then. Mr. Eisele stated that he had an off the record conversation with a Town Official who stated that if no one is complaining than don't worry about getting the permit.

Dean Snyder had pictures taken from Google Earth showing the property of the applicant. In those pictures there are stacks of lawn mowers. Mr. Eisele stated those were personal machines. Dean Snyder showed the Google Earth pictures to Mr. Eisele that show about 14 machines lying around and these pictures are dated May 12, 2011. Dean Snyder stated that that is still a significant amount of machines. Mr. Eisele stated that he brings machines out during the day and puts them back at night.

Tim Thomas feels that noise is the big issue. He asked Mr. Eisele if he ever considered relocating the business. Mr. Eisele said that that was cost prohibitive and that the business is only seasonal. Tim Thomas asked where he tests the machines. Mr. Eisele stated that he does that inside but sometimes he will mow his lawn with them. Chairperson Robillard is concerned about the number of hours and those hours going until 8 pm some nights. Mr. Eisele stated that he does not run machines during all of those hours. Tim Thomas wondered if there were any remedies that could be used to mitigate the noise, because due to the nature of the business there will be noise. Chairperson Robillard asked if there were any employees. Mr. Eisele stated no that he is the sole operator. Dean Snyder stated that under neighborhood character it says that the appearance of the structure shall not be altered and the business shall not be conducted in a manner that would cause the premises to differ from the others in the neighborhood either by colors, emissions, lights, sounds or vibrations.

Dean Snyder stated that this business violates the code and that there has been a history of violations with the outside storage. The pavilion cannot be used as a storage area because you can only use one accessory storage building. Dean Snyder stated that there is no way to grant this Special Permit because it cannot be approved consistent with the code and it will negatively impact the neighboring properties.

Public Hearing Closed.

A **Motion** was made by Dean Snyder to deny the application of Michael Eisele, owner, for a Special Permit to operate a home business at 190 Ogden Parma Town Line Road repairing lawn and garden equipment. This property is currently zoned Medium Density Residential (MD). In making this determination, I refer to Town Code 165-79.1 – Home Business. Part of the intention of the code is that business' established pursuant to the section are expected to blend in with the existing character of the area in which they are located. Paragraph C calls out that no lights or noise from the home business shall be noticeable from the public street or neighboring property. Given the nature of this business, the applicant has to spend a significant amount of time testing the equipment that he has repaired to make sure that it is suitable to be returned to the owner in the appropriate condition, testing of lawnmowers requires outdoor operation which certainly will cause noise that will be noticeable from a public street or neighboring property. Citing E – Floor Area, paragraph 2 - states that no more than one accessory structure may also be permitted for use in a home business in addition to space in the dwelling. The applicant's business plan tries to eliminate the outdoor storage issue by using two accessory structures and that is prohibited by our code. There were pictures submitted of unknown date showing a haphazard junk yard like condition of the property, and although the applicant contends these pictures were taken 7 years ago during the short period of time when he had back surgery and that it was resolved as soon as he healed, the neighbors still contend that these were taken not more than five years ago and that is somewhat supported by the Google Earth photograph taken in May of 2011, which appears to show several vehicles

scattered around the building. These portions of our existing Zoning Code preclude the opportunity for the Zoning Board of Appeals to grant the requested relief to this applicant.

Seconded by Stephen Shelley. **Motion unanimously carried to Deny (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

Chairperson Robillard polled the Board for their reasons to deny:

Dean Snyder: My motion describes the reasons supporting the decision.

Stephen Shelley: Focusing on 165-79.1 Paragraph C states no lights or noise from the home business shall be noticeable at any time from the public street or neighboring property. The nature of this business would have to create noise and cannot be contained in the building. In addition, 165-79.1 Paragraph E (2) states no more than one detached accessory structure may also be permitted for use in a home business in addition to space in the dwelling and the applicant has demonstrated that he cannot operate in only one detached structure.

Tim Thomas: 165-79.1 Paragraph A – states the intention of the code is that businesses established pursuant to the section are expected to blend in with the existing character of the area in which they are located. 165-79.1 Paragraph C – no lights or noise from the home business shall be noticeable at any time from the public street or neighboring property. These two specific sections of the code lay out that if approved this business would be detrimental to the neighborhood and this is not meant to alter the character of the neighborhood and their right to enjoy their property.

Jim Zollweg: The Board may approve the application if the applicant meets the code. 165-79.1 Paragraph C and E make it impossible for the board to approve. The business plan shows two detached structures being used for the business and per the code it is restricted to one.

Veronica Robillard: The motion provides rationale for the denial of the applicant's request in relation to the Parma Town Code. The Town Code indicates the requested home business is not acceptable with reference to Town Code Section 165-79.1. The noise and lights from the home business are significant considerations regarding this denial as well as the floor area.

Part of the applicant's request was for outside storage of materials. In a letter from the applicant in an email dated May 10, 2012 and read at tonight's meeting by the applicant, the applicant is rescinding asking relief for outside storage.

NEW BUSINESS

3. STEPHANE SMITH – 118 WEST BEACH ROAD

The application of Stephanie Smith, owner, for an area variance at 118 West Beach Road. The applicant is proposing an addition with the first floor (lowest floor) elevation of 251.0 North America Vertical Datum (NAVD) to match the existing floor of the home. The applicant is requesting relief from Town Code Chapter 59 – Flood Damage Prevention, subsection 59-16.A which states in part that new construction and substantial improvements shall have the lowest floor elevated to or above the base flood level. This substantial improvement requires that the owner raise the existing home so that the lowest floor is 252.0 NAVD or higher. This property is currently zoned Waterfront Residential (WF).

Tim Zigarowicz, applicant and architect for the project. He distributed drawings with plans to the board. Tim Hughes, General Contractor and Tim Roach, co-owner were also present for this application. The owner wants to create a horizontal addition as well as vertical to create more space for the family. If they have to jack up the house then personal affects (flag stone fireplace, post and beam structures) made by family members that hold sentimental value, they would not be able to be saved. They are currently 1 foot above the flood plain and if they had to go up another foot for the addition, there would be stairs everywhere. They would like to keep the elevation at the current level because financially it would be expensive.

Tim Thomas asked if there would be a mortgage on the property. They answered no. Dean Snyder stated that under 59-19 – Flood Damage, the Appeals Board could make a comment that the owners would be responsible. Because they are currently a foot above the flood plain there would be little opportunity to be washed away or

for death to occur. If it did get to the flood plain they would have some water to clean up. He sees no issue approving the application and the applicant has shown that if they could jack the house up they would.

Public Comment: None. Public hearing was closed.

Board Discussion: Jack Barton 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.

A **Motion** was made by Dean Snyder to approve the application of Stephanie Smith, owner, for an area variance at 118 West Beach Road to build an addition to match the existing floor of the home requesting relief from Town Code Chapter 59 – Flood Damage Prevention, subsection 59-16.A which states in part that new construction and substantial improvements shall have the lowest floor elevated to or above the base flood level. This substantial improvement requires that the owner raise the existing home so that the lowest floor is 252.0 NAVD or higher. This property is currently zoned Waterfront Residential (WF).

In making this determination:

Town Code Section 59-19. Appeals Board Paragraph D

In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:

1. The existing floor height is already 1 foot above the flood plain, this minimizes any opportunity for flooding to cause the materials to become dislodged or to come off the foundation so this minimized any opportunity for injury to others.
2. Flooding is the issue, the height would have no bearing on erosion. Any danger to life and property is minimized since there is a swamp area south of the road which acts as a large reservoir if water has been spilled onto this property from the waves of a noreaster.
3. The owner has come forth with this application fully understanding the risks associated with building at this lower level. The applicant has done an exhausted effort of trying to find a mechanism to raise the existing home which has structures of sentimental value and has not been able to do that.
4. n/a
5. n/a
6. This is a flat property and has no areas which would be of benefit to the applicant to eliminate the need for this variance.
7. n/a
8. n/a have not been made aware of any impact of the Comprehensive Plan and floodplain management program that would affect the approval of the application.
9. The change in height would have no bearing whatsoever because it is independent of the driveway leading to the property.
10. There is no significant difference between the existing property and the proposed structure.
11. There is no change in the susceptibility of the proposed structure and the existing structure.
12. There is no difference between the proposed structure as compared to the existing structure.

- I don't believe the benefit can be achieved by other means feasible to the applicant; the applicant has exhausted other opportunities to approve the property while meeting the existing code, so there is no opportunity identified.
- There will be no undesirable change in neighborhood character or to nearby properties, this will improve the neighborhood and absolutely has no undesirable change. Flood plain height affected the original building and will have the same effect on the new structure.
- The request is certainly substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created; however, using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community.

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

Jack Barton noted to the applicant that the lowest floor of the addition cannot be below the existing grade.

OTHER BUSINESS

There was some discussion about possible training opportunities here and in Buffalo.

8 Clearview Avenue – Chairperson Robillard read an email correspondence from Bonnie Thomas, the owner of 8 Clearview Avenue.

MINUTES OF SPECIAL MEETING APRIL 5, 2012

The minutes of the ZBOA Special Meeting of April 5, 2012 were reviewed. A **Motion** was made by Dean Snyder to approve the April 19, 2012 minutes as amended. Seconded by Tim Thomas. **Motion carried (4-0)** (Ayes: Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Abstain: Veronica Robillard).

MINUTES OF APRIL 19, 2012

The ZBOA minutes of April 19, 2012 were reviewed and the following recommended changes were made: Page 7, Para 10, line 7 add “Dean Snyder appreciated the applicant’s candid remarks that corrected her attorney’s misinformation”; Page 11, Para 3, line 4, change from undue to undo. A **Motion** was made by Tim Thomas to approve the April 19, 2012 minutes as amended. Seconded by Jim Zollweg. **Motion carried (5-0)** (Ayes: Blake Keller, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Abstain: Veronica Robillard).

ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Jim Zollweg, to adjourn the meeting at 8:56 p.m. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

Respectfully submitted,

Carrie Webster, Recording Secretary