

**TOWN OF PARMA
ZONING BOARD OF APPEALS
August 15, 2013**

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

Others Present: Jack Barton, Gary Comardo, Blake Keller

Public Present: Matt Hakes, Steve Worrall, Adam Doud, Alberto Aneses and Michael Meyer

The meeting was called to Order by Chairperson Robillard at 7:03 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. JAMES ZABAWSKY – 1769 HILTON PARMA ROAD

The application of James Zabawsky, owner, for an area variance at 1769 Hilton Parma Road. The applicant is proposing to construct a detached garage with a side setback of five feet from the southerly property line and is requesting relief from Town Zoning Article 11, subsection 165-87.A.1 which establishes a minimum side setback of ten feet. This property is currently zoned Rural Residential (RR).

Jack Barton explained he had a request from the applicant to table this until the September 2013 meeting to allow the applicant more time to obtain quotes.

A **Motion** was made by Tim Thomas to table, without prejudice, the application of James Zabawsky, owner, for an area variance at 1769 Hilton Parma Road until the September 2013 meeting to give the applicant more time to finalize his quotes.

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 an area variance at 190 Ogden Parma Town Line Road. Applicant is requesting an area variance to add 883 square feet to an existing 621 square feet shed to provide additional area for storage. The total area of accessory structure on this property will be 2,105 square feet. Town Zoning Article 5, subsection 165.33.C.2 limits the total area of accessory structures to 600 square feet. This property is currently zoned Medium Density Residential (MD).

Jack Barton explained he received a request to table this application until the September 2013 meeting to allow the applicant time to prepare drawings per the Zoning Boards request.

A **Motion** was made by Jim Zollweg to table, without prejudice, the application of Michael Eisele, owner, for an area variance at 190 Ogden Parma Town Line Road to the September 2013 meeting to allow the applicant time to prepare drawings per the Zoning Boards request.

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

NEW BUSINESS

3. JOSEPH SELVAGGIO – 765 BURRITT ROAD

The application of Joseph Selvaggio, owner, for two area variances and a Special Permit at 765 Burritt Road. The applicant has added a second floor to the existing pole barn increasing the area of the accessory structure to 3,036 square feet and is proposing to construct a 1,056 square feet accessory apartment on the second floor. The applicant is requesting relief from Town Zoning Article 5, subsection 165-31.C.2 which limits the area for accessory structures to 2,000 square feet and Article 9, subsection 165-76.E which limits an accessory apartment on this property to 560 square feet.

Accessory apartments are allowed in this district with a Special Permit. This property is currently zoned Agricultural/Conservation (AC).

James Phillipone, attorney for the applicant, explained that this application has been in front of the board previously and that the main reason for the application is that the applicant has a need to care for his aging parents and he is the only child in a position to help them. Currently the parents are living in a one bedroom apartment with their daughter because the main structure on this property is too small. The parents are physically and financially unable to support themselves and the applicant feels he can and wants to physically, financially and emotionally take care of them. Chairperson Robillard stated she is concerned with the steepness of the apartment with where it is located and how someone with physical concerns would be able to access it. Mr. Phillipone replied that this apartment is laid out so that their needs will be fully met, he further explained that right now they can manage the stairs and in the future if that were to be difficult for them a chairlift would be installed. If at some point a chairlift was not sufficient then he would move his parents into the main house and he would live upstairs.

Tim Thomas stated he is fine with the special permit portion of the application but is having trouble with the size of the accessory building. Mr. Phillipone explained why it is necessary to have the space consisting of two bedrooms, a bathroom with handicap accessibility, living room and handicap accessible kitchen to take care of them on a permanent basis and that all things that would be in a house would be needed in this structure because it is not part of the main house. Chairperson Robillard stated that this seems to be a second dwelling. Mr. Phillipone stated that it would be because there are two people who have to live there comfortably. There was discussion about the allowed square footage that was set by the Town Board. Chairperson Robillard stated that the Town Board generated a code that dictated the square feet and percentage and the Zoning Board works in that. The Zoning Board needs information showing why the Board should consider deviating from the code. There was discussion about the square footage of the house being 1800 sq. feet and the pole barn and apartment would be 3,036 sq. feet, which is substantially larger than the main structure. Tim Thomas asked what the three areas of storage on the plans are for. The applicant indicated those would be for his parents use. There was discussion about what was being stored on the first level. Chairperson Robillard asked if the accessory structure was being used for a business because when she was there, there was a tractor, a trailer, three cars, a golf cart and air-conditioning. Applicant stated no and explained it is sitting out there because the parent's belongings are all on the one side and if approved then the parents belongings would move upstairs and the stuff outside will be moved inside. Stephen Shelley asked if the truck and trailer would fit with a second floor. Applicant stated yes.

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.

Public Comment: None. Public Hearing Closed.

Dean Snyder said that 35% of the principal structure would be 630 square feet. Dr. Snyder asked Jack if the Town Board was aware of this application when they approved the code. Jack Barton responded yes but that they did not use this application to determine the change, they looked at how this would affect the Town as a whole. The Town Board also knew and discussed that if they kept the percentage at 35% then the Zoning Board could deviate from that at their discretion. Dr. Snyder said that the proposed 1,056 sq. feet is 59% of the main structure, which is significantly higher than the 35% that the code calls out. What hit home for Dr. Snyder is when the attorney asked if this were your parents what would you do? For him he does not feel that this is appropriate for older people. The apartment is 15' up and they need handicap accessibility. Even with a chair lift this is a horrible situation and not appropriate for an older couple. What if they needed to get out quick? He does not see anything in this application that would make him vote for it. Both Dr. Snyder and Chairperson Robillard feel that this is an accident waiting to happen and have safety concerns with the parents being in this accessory apartment. Stephen Shelley wanted to know what if the parents were in the main house and the son was to live in the accessory apartment. Dr. Snyder felt that then 35% of 630 sq. feet would be fine, it would be snug but it would be doable if there was not the need for the handicap accessibility. Chairperson Robillard felt that there is substantial land and that there could be an addition made to the primary structure. Dean Snyder stated that an addition seemed to be out of the question and it was felt that a smaller efficient structure added onto the house would seem better for handicap accessibility. Tim Thomas felt it is reasonable to expect that the parents would eventually be moved into the main house and he is on the fence with this application and feels future applications may be similar to this. Mr. Thomas is ok with the size of this because the footprint of the building is not increasing but understands that this is a very emotional situation

and that the size could be reduced. Chairperson Robillard is ok with the special permit portion of the application but once the variance is given that would stay with the property forever. Stephen Shelley stated that the building is still going to be the same size with the extra square footage inside for living space. Jack Barton explained that when the need for this goes away the Special Permit will go away and the accessory apartment will have to be converted back to storage.

Chairperson Robillard asked if the parents move into the main house can the applicant move into the structure is that allowed. Stephen Shelley stated the way the code reads as long as the owner lives on the property they could potentially flip flop which dwelling they live in. Jack Barton stated that this structure meets the code of an accessory apartment. Chairperson Robillard asked what would happen to this space after this use. Stephen Shelley said it could be used for storage or office space. Tim Thomas asked why it matters what the second floor is used for as long as the footprint of the building does not change. Jack Barton explained that it was determined years ago that as soon as permanent stairs are put in place the square footage is calculated. Mr. Phillipone stated that Joe, his wife and any kids would not be able to live in that small of a space; this space needs to be livable. The applicant had an estimate that stated a 1,100 sq. foot addition would cost \$120,000, not including building permits and HVAC, so if cutting that space in half it would cost about \$60,000. The board did not have a copy to look at. The attorney felt that these situations should be looked at as a case by case basis and that if the board decided that people should live there than the rest is easy. He did not feel that this would be precedent setting.

Dr. Snyder stated he cannot get past older people with physical problems walking up 15 feet to get into the apartment. He feels that an addition onto the house would be a larger house for his family and an investment when selling in the future than a temporary addition. He feels that there are wants and needs and that those need to be prioritized. Dr. Snyder would be for approving a Special Permit for an accessory apartment with an addition not to exceed the 35%. Mr. Thomas felt that if approving at a smaller size the parents still would have to go up the 15 feet. Dean Snyder feels that the smaller size would preclude the parents from living up there. Stephen Shelley thought the applicant could not afford an addition added to the residence. Chairperson Robillard said that there has not been any evidence that an addition would be prohibitive but that the accessory structure is the preferred method. Tim Thomas felt that this was probably not the best option but that medical personal do go up to the second floor if needed. Mr. Selvaggio stated that the second floor runs down the middle of the structure and the room is already there whether there is an apartment there or not and it is an integral part of the structure. Dean Snyder felt there were two options for tonight either the applicant can come back with information on the cost of an addition and an area variance would not necessarily be required if this were attached to the primary structure or the board can rule on this tonight.

Mr. Phillipone doesn't understand why if the 1,100 sq. feet is there why they can't use it and feels that the parents are being punished. Chairperson Robillard responded that the board is not punishing anyone. The applicant is asking for a variance which is asking the board to vary the law and also for a special permit which is to give permission for something that is would normally not be. Dean Snyder and Chairperson Robillard feel that this is very unusual circumstances that someone would want to put their elderly parents in the top of a pole barn. Mr. Phillipone feels that these parents can handle the stairs and he wants the board to look at what's best for the parents. Is it best to approve 550 vs. 1000, this can be limited to who lives in this house and this use will go away in the future? The only people who do not benefit are the parents. If the board wants they can wall it off but why not use the whole space.

Tim Thomas asked if the board agrees that the variance relative to the second story is kind of a given because it is an intricate part of the building. Chairperson Robillard has concerns over sanctioning an accessory apartment in a detached building for elderly people. Tim Thomas asked if this is more acceptable if the applicant lives in the building and they comply with the sq. footage. Tim Thomas and Stephen Shelley both feel that the way the code is written the owner can occupy either the primary or the accessory structure and the board cannot dictate who lives where. Tim Thomas asked if they could control who lives there through the special permit. Dean Snyder stated not according to the code. Stephen Shelley stated that the board does not want the town to police who is in the accessory apartment. Dean Snyder stated this is unusual. It is not unusual to have older folks in a second floor apartment but it is unusual to have them in an apartment that remains entirely above a barn or garage, an area which is prone to possible issues because of what it is with stairs on one end and an egress window that is 18' up as their only possible egress, no windows on the side for light.

Dean Snyder explained that when looking at the criteria for an area variance the first one can the benefit be achieved by other means feasible to the applicant and he has not seen anything yet that shows that an addition to the house is not

feasible, investing \$25,000 into something that is going to end up having no value seems kind of foolish when it could be built onto the house and they would not need as much room because there would be shared space. Until the board sees that that is not feasible, he does not feel he can get past the first criteria and that first criterion is a big one. If it was his parents he would want them right near him in case they needed help. Tim Thomas asked how Dr. Snyder would feel if this were on the first floor of the structure. Dean Snyder and Jim Zollweg both stated they would feel a lot different if this was on the first floor. Jim Zollweg wanted to know what would preclude this from being on the first floor. Mr. Phillipone stated there is no room in the original structure because of the vehicles and equipment, camper, trailer, lawnmower etc. that was in and still is in there which is why the original variance was given. Dean Snyder feels that this should be acted on because if there were alternatives the applicant would have looked into those by now and the first floor does not seem to be an option either. Chairperson Robillard also feels this could be acted on tonight and is concerned with the fact that the representative is saying that the parents are in good health when previously they were said to be in poor health. Stephen Shelley is ok with allowing the sq. footage because it is already there and there could be safety features put in. Dean Snyder stated that the board has to look at this as if the work has not already been done because there have been no permits issued.

A **Motion** was made by Dean Snyder to deny the application of Joseph Selvaggio, owner, for two area variances and a Special Permit at 765 Burritt Road. The applicant has added a second floor to the existing pole barn increasing the area of the accessory structure to 3,036 square feet and is proposing to construct a 1,056 square feet accessory apartment on the second floor. The applicant is requesting relief from Town Zoning Article 5, subsection 165-31.C.2 which limits the area for accessory structures to 2,000 square feet and Article 9, subsection 165-76.E which limits an accessory apartment on this property to 560 square feet. Accessory apartments are allowed in this district with a Special Permit. This property is currently zoned Agricultural/Conservation (AC).

In making this determination I used the balancing test to balance the benefit to the applicant with the detriment to the health, safety and welfare of the community:

- 1 I don't believe the benefit can be achieved by other means feasible to the applicant. We have reviewed several possibilities and I have found nothing that I would consider acceptable. The applicant has noted that his family cannot reasonably live in such a small apartment as would be located above this barn space if it were to meet the current code. I don't know if the option of considering a first floor design in the accessory structure has been considered by the applicant. Although this application has been in the works for several months I have seen no type of a plan making this a much more reasonable living location for elderly parents who require handicapped accessibility. Again the representative of the owner said the design of the second floor apartment required that it be handicapped accessible. I don't believe the feasibility of an addition onto the main structure that is less than the 1,100 square feet has been considered or fully examined. If that addition were within 35% of the principal building or 550 square feet it would require no area variance only a Special Permit. In my opinion the approval of that Special Permit would be no issue whatsoever. In my opinion the benefit can be achieved by other means feasible to the applicant.
2. There will be no undesirable change in neighborhood character or to nearby properties. I understand there would be some changes made to the building to allow natural light but I think that is very reasonable.
3. The request is very substantial. The request included an approximate 88% increase over the allowable size of the accessory apartment and also included a 52% increase over the size of an accessory structure in that area.
4. There will be no adverse physical or environmental effects.
5. The alleged difficulty is somewhat self-created. There are many factors beyond the control of the applicant, yet when reviewing some of the other possibly feasible designs it may make this design somewhat self-created. Using the balancing test, the benefit to the applicant does not outweigh the detriment to the health, safety and welfare of the community.

Seconded by Veronica Robillard. **Motion fails (2-3) (Ayes:** Veronica Robillard, Dean Snyder; **Nays:** Stephen Shelley, Tim Thomas, Jim Zollweg).

A **Motion** was made by Tim Thomas to approve the application of Joseph Selvaggio, owner, for two area variances and a Special Permit at 765 Burritt Road. The applicant has added a second floor to the existing pole barn increasing the area of the accessory structure to 3,036 square feet and is proposing to construct a 1,056 square feet accessory apartment on the second floor. The applicant is requesting relief from Town Zoning Article 5, subsection 165-31.C.2 which limits the area for accessory structures to 2,000 square feet and Article 9, subsection 165-76.E which limits an accessory apartment on

this property to 560 square feet. Accessory apartments are allowed in this district with a Special Permit. This property is currently zoned Agricultural/Conservation (AC).

In making this determination (relevant to the two area variances):

1. I don't believe the benefit can be achieved by other means feasible to the applicant. The answer to that is yes there are other means, the sticky point is whether they are feasible or not. In looking at the potential construction costs that were shared with us, it is my opinion that this is something that would not be feasible to the applicant to consider. The additional square footage that is being calculated in this application is actually an intricate part of this application and it was shared with us that these were storage trusses and flooring were put down as a function of putting those trusses down and the addition of the stairs creates more sq. footage but to me that it an inherent part of using that storage space and the building relevant to the sq. footage for the apartment. While I recognize that there could be some safety issues with the applicant's parents now or in the future, I believe the applicant knows his parent's best and what is best for them and will take the appropriate action at that time in the future if they are no longer able to negotiate the stairway to the second floor.
Relevant to the square footage of the apartment, while I recognize it is approximately 59% larger than what would be allowed, I think it is reasonable with two adults and a lifetime of furnishings, memorabilia and other items that 1,000 square foot is not unreasonable, especially since this is a separate structure with its own storage and mechanicals and cannot take advantage of the main house for those services.
2. There will be no undesirable change in neighborhood character or to nearby properties. The footprint of the building will not change. As the building department goes through the permit process there may be additional windows added to comply but overall there will be no negative effect on the neighborhood character or nearby properties.
3. The request is absolutely substantial. This is an exceptionally unique situation and the first since the town adopted a new code addressing accessory apartments in a separate building and looking at this particular building I cannot think of any other situation where we might run into a building as unique as this at this time.
4. There will be no adverse physical or environmental effects.
5. The alleged difficulty is 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 Stephen Shelley. **Motion fails (2-3) (Ayes:** Stephen Shelley, Tim Thomas; **Nays:** Dean Snyder, Veronica Robillard, Jim Zollweg).

Jim Zollweg stated that he does not feel he has enough information to vote either to deny or to approve this application. He is not ready to decide this matter with the information provided and does not feel that all other options have been considered. There was discussion among the board that the attorney for the applicant stated that all information has been given to the board and they do not know what else they could provide. It was felt that there could be a motion to table and then it would be up to the applicant and his representative to provide or not to provide the information. Mr. Phillipone would like specific requirements from the board so they know what to provide and there was discussion over what had already been provided to the board.

A **Motion** was made by Jim Zollweg to table, without prejudice, the application of Joseph Selvaggio, owner, for two area variances and a Special Permit at 765 Burritt Road until the October 2013 meeting to allow time for the applicant to provide the following additional information to the Board regarding this request by September 27, 2013.

1. The applicant should be prepared to present the costs of three possible alternatives to achieve the desired benefit:
 - A. Building an attachment onto the current primary residence on the property.
 - B. Develop an accessory apartment on the ground floor of the accessory structure.
 - C. All costs already spent and that will be spent pertaining to finishing the upper floor of the accessory structure.

These should all be total costs which include breaks downs of what the costs are.

2. The applicant should discuss other inconveniences which might not necessarily be dollar costs which are associated with each of the three alternatives.
3. Prepare a plan of the floor space use of the downstairs of the accessory building which should include the anticipated locations of the major items and inventory of what will be stored in the ground floor of the accessory structure.
4. Be ready to discuss what the pieces of equipment are used for income generation or a business.
5. Consider possible other locations that could be used for storage spaces on the property or outside but within the realm of Town regulations.

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

There was discussion with the applicant about the importance of getting this information to the Board for review as soon as possible and further discussion on what the board is looking for to make their determination. There was also discussion about the Board going out to the site and looking at the inside of the structure. The Board also discussed the meeting being tabled until the October meeting instead of the September meeting so that all board members present tonight will be at the meeting. There was discussion with the Board and Mr. Phillipone about what the Board is looking for from the applicant.

4. MICHAEL MEYER – 63 LAKESIDE BOULEVARD

The application of Michael Meyer, owner, for a Special Permit at 63 Lakeside Boulevard. The applicant is requesting this Special Permit to continue keeping five dogs on the property in accordance with Town Zoning Article 10, subchapter 165-82-AA.3. This property is currently zoned Waterfront Residential (WF).

Michael Meyer explained that the two dogs currently in questions were purchased in 2011 with the intent to breed. At about the same time a moratorium was placed on purebred licenses and subsequently a change in the Town Code. The female dog was unable to be bred and they have since been spayed and neutered so the applicant is asking that they be able to keep the current dogs until they live out their natural lives and as they pass on they will not be replaced. One of the dogs is a beagle and the other four are Miniature Dotson's. The beagle is 13 years old and the others range from 3 to 10 years old. They are just family pets. Tim Thomas asked if they were primarily house dogs. The applicant stated they do have a fence in the backyard but they are mostly inside. There was discussion about the change in the Town Code and the State no longer issuing licenses.

Dean Snyder feels there is a big difference between five dogs the size of St. Bernards and five dogs that are Dotson's and does not see an issue with this. Even if the applicant had a pure bred license it would have run out and the applicant still would have been in front of the board. Jack Barton gave background into the change of the code and the purebred licenses.

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.

Public Comment: None. Public Hearing Closed.

A **Motion** was made by Jim Zollweg to approve the application of Michael Meyer, owner, for a Special Permit at 63 Lakeside Boulevard. The applicant is requesting this Special Permit to continue keeping five dogs on the property in accordance with Town Zoning Article 10, subchapter 165-82-AA.3. This property is currently zoned Waterfront Residential (WF). This special permit is for only these five dogs that were born in the years 2002, 2003, 2007, 2009 and 2010, named Ollie, Cassie, Smokey, Oscar and Abby and allows them to be kept for the rest of the dog's lives. Seconded by Dean Snyder. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

SPECIAL PERMIT RENEWAL

5. GOOD NEWS COMMUNITY CHURCH – 4797 RIDGE ROAD

Application was received from Good News Community Church, owner, for renewal of a Special Permit at 4797 Ridge Road West to operate a church. Article 5.3.D.2 requires a Special Permit to operate a church in a Medium Density Residential (MD) district.

Matt Hakes, Good News Community Church, explained that they are applying for a renewal of a Special Permit and was told that being here at the meeting would be a good idea. There was discussion about this not being on the Agenda. Jack Barton explained that Good News Community Church had a Special Permit years ago and when it was time for the renewal there were modifications being done and because of those modifications there were some violations so the special permit was held until everything was put in order. The special permit expired in 2005. Plans have been submitted within the last few weeks and the violations have been corrected, inspections were done. It was talked about that because of the

confusion on both parts if they could get in here within 30 days they would consider this a renewal. Mr. Hakes would like to get the Special Permit in order and make sure that they do not lapse again. Dean Snyder said that in the future as this is established ask for more time because the Board cannot give more than what is asked for.

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Good News Community Church, 4797 Ridge Road West, for renewal of a Special Permit to operate a church with the following conditions:

1. Limited outside activity such as camping with a maximum number of campers to be 16 campers, including adults. Camping would include only tents, and not to exceed two or three nights in duration. Limited to an average of twice a month. Camping locations to be limited to the area indicated on the map provided by the applicant.
2. Also included as an outside activity would be the opportunity to have a live nativity scene at Christmas time. Hours of the nativity scene to be 6 pm to 9 pm for just one weekend during the month of December. This nativity scene would be placed behind the church. Animals would be permitted if penned or corralled. Any lighting for scenes would not impinge on neighboring property or behind the church property. The number of spectators is limited to 25 to 35 people at one time. The animals used for this nativity scene will currently not be housed year-round at the facility and only are there at the time of the nativity scene.
3. Any other activities on the premises shall be within the normal zoning ordinance.
4. All necessary inspections to be made by the Building Department and the Fire Marshal to assure the health, safety and welfare of the community.
5. Special Permit for a period of one year, renewable in August, 2014.

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

MINUTES OF JULY 18, 2013

The ZBOA minutes of July 18, 2013 were reviewed a **Motion** was made by Stephen Shelley to approve the July 18, 2013 minutes as presented. Seconded by Jim Zollweg. **Motion carried (4-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Jim Zollweg; Abstain: Tim Thomas).

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Dean Snyder to adjourn the meeting at 10:18 p.m. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

Respectfully submitted,

Carrie Webster, Recording Secretary