

**TOWN OF PARMA
ZONING BOARD OF APPEALS
November 16, 2006**

Members Present: Patrick Buskey
Veronica Robillard
Dean Snyder
Tim Thomas

Members Excused: Stephen Shelley

Others Present: Jack Barton

Public Present: See attached list

The meeting was called to Order by Chairperson, Veronica Robillard, at 7:00 p.m. She explained the function of the ZBOA and the decision-making process. She stated that this is a five-member board, with one member absent, and that a quorum of three is required to pass a motion. Chairperson Robillard offered hearing aid devices for anyone who required them.

TABLED PUBLIC HEARINGS

1. ALEX DINICOLA – 1121 WEST AVENUE

Application was received from Alex DiNicola, owner, for a use variance at 1121 West Avenue. The property currently has 3 apartments and the applicant is requesting relief from Town Zoning Article 4, subsection 165-33-B which lists only single family dwellings and customary agricultural operations as permitted principle uses. This property is currently zoned medium Density Residential (MD).

Chairperson Robillard recalled that this application was tabled at the September ZBOA meeting after a review of the conditions for approving a use variance. The applicant was asked to provide additional information in order to satisfy the requirements of code 165.20.C.1.B. It was recommended that the applicant submit evidence answering: (1) how long the units have been occupied as 4 separate units; and (2) any other information which would describe the history of the rentals. It was suggested that the owner review the application for the property at Burritt Road and Route 259, which may help him draw parallels which would satisfy the requirements of our code. Chairperson Robillard reported that the applicant appeared at the October meeting but did not have the information that was requested by the Board. Therefore, this application was again tabled until this meeting.

Franklin D’Aurizio, attorney, stated he was representing Alex DiNicola in presenting this application. He referred to an October 23rd letter he sent to the Zoning Board requesting that this application be tabled to provide him time to prepare. Mr. D’Aurizio provided one copy of a packet of information that he felt addressed the issues requested by the Board. Chairperson Robillard explained to Mr. D’Aurizio that it would be beneficial for the Board to review this information at length before acting on this application. She offered Mr. D’Aurizio the option of tabling this application until the December meeting to provide the Board sufficient time to review this packet. Chairperson Robillard polled the Board and it was the consensus that, due to the complexity of this request, reviewing the information prior to acting on this application was preferred. Mr. D’Aurizio responded that he would like to table this application, and stated he would provide enough copies for each Board member to review prior to the December meeting. Jack Barton requested that these copies be provided prior to December 4th, when the Board packet would be mailed. Chairperson Robillard noted the criteria for granting a use variance. Mr. D’Aurizio stated he was familiar with the criteria and he planned to address these issues.

A **Motion** was made by Tim Thomas to table the application of Alex DiNicola, owner, for a use variance at 1121 West Avenue, without prejudice, based on the letter dated October 23, 2006, from the applicant's attorney, which requested this application be tabled. Seconded by Patrick Buskey. **Motion Carried (4-0)** (Ayes: Patrick Buskey, Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Stephen Shelley)

NEW PUBLIC HEARINGS

2. GARY MADISON – 40 PEASE ROAD

Application was received from Gary Madison, owner, for an area variance at 40 Pease Road. Applicant is proposing to erect 72 lineal feet of 6 feet high privacy fence along the northerly property line at a 0 foot setback in the rear yard and is requesting relief from Town Zoning Article 16, subsection 165-128.B.2, which states, in part, that closed fences up to a height of 6 feet may be permitted for the express purpose of enclosing or screening a swimming pool or patio area. Such fences shall be subject to a side setback of 10 feet, as set forth in Schedule 1. This property is currently zoned Medium Density Residential (MD).

Jerry Kirwin, attorney, stated he represented Gary in presenting this application. He explained that Gary is requesting a 6' high fence to provide privacy for his invalid parents when they are sitting on the patio in his back yard. The neighborhood is comprised of single family homes. The land is vacant behind Gary's house and across the street. Mr. Kirwin stated that the proposed fence is not objectionable to the neighbors. It will not result in any negative environmental impact. Jerry described the existing patio and porch attached to Gary's house, which is exactly 10 feet from the edge of the porch to the property line. The windows on the porch are jalousie type windows. This results in the neighbors looking directly into the porch and patio. Gary stated he put the porch up 20 years ago. Gary explained that his parents are on oxygen and use crutches and because they wanted privacy, he put up this 6 foot high fence, at least two years ago. He stated that the neighbors also like the privacy it provided. He explained that this is not a complete fence. It is attached to the chain link fence and it is just panels. He stated they considered planting flowers and greenery around the porch and patio as an alternative, but this would block the view looking out the windows of the porch. Gary stated there are no other alternate means to provide privacy for his parents when they are on the patio. Tim Thomas suggested that the fence could be redesigned to an "L" shape, 1 foot off the lot line and then wrap around the patio.

Public Comment: None. The public hearing was closed.

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

Following discussion, a **Motion** was made by Dean Snyder to approve the application received from Gary Madison, owner, for an area variance at 40 Pease Road to erect 40 lineal feet of 6 feet high privacy fence along the northerly property line at a 0 foot setback in the rear yard. This grants relief from Town Zoning Article 16, subsection 165-128.B.2, which states, in part, that closed fences up to a height of 6 feet may be permitted for the express purpose of enclosing or screening a swimming pool or patio area. Such fences shall be subject to a side setback of 10 feet, as set forth in Schedule 1. This property is currently zoned Medium Density Residential (MD). The westerly most portion of the fence is not to exceed 5 feet to the west of the rear line of the building. The fence will then extend in an easterly direction up to 40 feet. In making this determination, I believe the benefit can not be achieved by other means feasible to the applicant. The location of the applicant's porch and patio is in very close proximity to the neighbor's picture window. Because of the unique location of the property, there are no other feasible means to achieve the privacy that the applicant desires. There will be no undesirable change in the

neighborhood character or to nearby properties, since this fence will be less of an obstruction than the existing fence. There will be no adverse environmental or physical effect. The request is substantial. The alleged difficulty is self-created, but using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Tim Thomas. **Motion Carried**

(4-0) (Ayes: Patrick Buskey, Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Stephen Shelley)

3. JEFFREY RODGERS – 238 NORTH AVENUE

Application was received from Jeffrey Rodgers, owner, for an area variance at 238 North Avenue. Applicant is proposing 30 feet by 24 feet addition to the existing detached garage with a proposed side setback of 10.5 feet from the southerly property line and is requesting relief from Town Zoning Schedule 1, which requires a side setback of 25 feet. This property is currently zoned Agricultural/Conservation (AC).

Jeff explained his need for an addition to the garage on this home that was built in the early 1900's. The lot is 80 feet x 212 feet. He provided a drawing of the proposed garage. He stated that the septic runs on the opposite side of the garage, which prevents placement there. He explained that he is going to use this garage for a car that he doesn't drive much. His roommate has two cars. He needs indoor storage for his boat. He stated his hobby is working on cars for racing. He stated the new garage will be sided the same as the existing garage.

Public Comment: None. The public hearing was closed.

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

Following discussion, a **Motion** was made by Tim Thomas to approve the application received from Jeffrey Rodgers, owner, for an area variance at 238 North Avenue to construct a 30 feet by 24 feet addition to the existing detached garage with a proposed side setback of 10.5 feet from the southerly property line. This grants relief from Town Zoning Schedule 1, which requires a side setback of 25 feet. This property is currently zoned Agricultural/Conservation (AC). In making this determination, the benefit can not be achieved by other means feasible to the applicant. He has determined that he needs the additional space for boat storage and to work on his collection of cars. There will be no undesirable change in the neighborhood character or to nearby properties. The request is somewhat substantial, but the lot is 80 feet wide, with the lot and the house being established in the early 1900's. This is mitigated by the 80 feet wide lot. There will be no adverse physical or environmental effect. The alleged difficulty is somewhat self-created, but due to the width of the lot and the age of the house, this is a pre-existing condition. 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: Patrick Buskey, Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Stephen Shelley)

4. MICHAEL AND PAULA CRAWFORD – 75 DELAVERGNE DRIVE

Application was received from Michael and Paula Crawford, owners, for an area variance at 75 Delavergne Drive. Applicants are proposing to construct an attached garage on the west side of the existing home with a front setback of 30 feet from Hamlin Parma Town Line Road and are requesting relief from Town Zoning Schedule 1, which requires a 40 feet setback. This property is currently zoned Waterfront Residential (WF).

Kris Schultz, survey engineer, recalled he presented an application for Michael and Paula Crawford in September and received a variance from the garage requirement for this lot. It was stated at that time that there was no garage on this lot and there is no room for a garage. If placed in front, it would block the view, but on the side would require a variance. He noted at that time that a garage may be considered after the leach field placement was determined. Since September, the Crawford's have decided to include a two car garage on this lot; after considering the close proximity to the lake, they felt it would be better to have a garage. Kris noted there is only 20 feet on the south side of the house, which makes placement there impossible. The proposed placement on this corner lot is the best location, considering the peak of the house and how it would fit with the look of the house. Also, there is only one neighbor to the south and part of the garage will be shielded by the existing fence. He stated that this request was substantial, but not when considering this waterfront property and its substandard lot sizes. He explained that these lots were created in 1925 as part time cottages. Now, many of the homes have been turned into year around homes, with the need for a garage.

Public Comment: None. The public hearing was closed.

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

Following discussion, a **Motion** was made by Dean Snyder to approve the application received from Michael and Paula Crawford, owners, for an area variance at 75 Delavergne Drive to construct an attached garage on the west side of the existing home with a front setback of 30 feet from Hamlin Parma Town Line Road which grants relief from Town Zoning Schedule 1, which requires a 40 feet setback. This property is currently zoned Waterfront Residential (WF). In making this determination to approve, I do not believe that the benefit can be achieved by other means feasible to the applicant. Although they are requesting a reduced setback, that setback is consistent with the property to the immediate south of them. Also, this satisfies the requirement to have a garage on the property. There will be no undesirable change in the neighborhood character or to nearby properties, since the setback even exceeds several properties in that lakefront area. The request is substantial. There will be no adverse physical or environmental effect. The alleged difficulty is somewhat self-created, but using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Patrick Buskey. **Motion Carried (4-0)** (Ayes: Patrick Buskey, Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Stephen Shelley)

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

Application was received from John and Tracy Sonoga, Jr., contract vendees, for a special permit and area variance at 5760 Ridge Road West. Applicants are requesting a special permit to allow an accessory apartment as part of their proposed new home. Applicants are also requesting an area variance for relief from Town Zoning Article 9, subsection 165-76.E, which limits the size of the accessory apartment to 951 square feet. They are requesting to construct a 1392 square feet apartment. This property is currently zoned Agricultural/Conservation (AC).

John explained that they want Tracy's mother to live with them. Her mother is retired and lives alone. He stated that Tracy's mother lives in a 1500 square foot home at present, and they are requesting a 1392 square foot in-law apartment, requiring her to downsize. They provided a drawing of the proposed home, noting from the outside you can not tell there is an in-law apartment. John pointed out that the apartment will be attached to their home and will share a common laundry area. The apartment consists of a kitchen, dining area, living room, two bedrooms and two bathrooms. John stated that their home will be 2760 square feet with the garage and porches, and the in-law apartment will be 1392 square feet, including the garage and porch. He stated that Tracy's mother is the only intended person to live there. Chairperson Robillard asked what they would do when their mother no longer needed to live there. John stated that they know they can't use the in-law apartment for anyone else and, at that time, they would either make their home larger or sell the home.

Public Comment: None. The public hearing was closed.

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

Following discussion, a **Motion** was made by Tim Thomas to approve the area variance application for 5760 Ridge Road West, received from John and Tracy Sonoga, Jr., contract vendees, for relief from Town Zoning Article 9, subsection 165-76.E, which limits the size of an accessory apartment to 951 square feet. They are requesting to construct a 1392 square feet apartment. This property is currently zoned Agricultural/Conservation (AC). In making this determination, the benefit can not be achieved by other means feasible to the applicant. It has been determined to my satisfaction that the mother moving in has medical needs now and in the future, necessitating the additional footage. The construction of the apartment will not create an undesirable change in the neighborhood character or to nearby properties. The apartment will be unknown from the road and goes well with the overall architectural layout. The request is substantial, 46% above the allowable 35% requirement, however, I believe the current medical needs of the mother justify this. There will be no adverse physical or environmental effect. The difficulty is self-created, but using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Dean Snyder.

Dean Snyder stated that he felt that this is a double home. The size and lay-out of the in-law apartment would make it difficult to change it back to a single family home. The main part of the house needs to be larger or the in-law apartment needs to be made smaller.

Tim Thomas stated that he would like to afford the applicant an opportunity to re-present this application.

Motion denied (0-3) (Ayes: 0; Nays: Patrick Buskey, Veronica Robillard, Dean Snyder; Abstain: Tim Thomas; Absent: Steven Shelley).

Chairperson Robillard polled the Board regarding their reason for denying this application:
Dean Snyder: The application was very similar to building a double unit, as opposed to an accessory apartment. The 35% requirement has been exceeded by approximately 46%, which is excessively outside the code. There was no supporting evidence that would warrant this significant increase of allowable area.

Patrick Buskey: Stated he would have liked to see this tabled. The percentage of the size of the apartment is significant compared to the size of the house itself. The way it is laid out, it would make it difficult to bring it back to a single family dwelling.

Chairperson Robillard: The application for an accessory apartment exceeds the allowable area by a significant amount resulting in a request that was significantly over the code and difficult to grant.

The application for a Special Permit was then addressed. Dean Snyder referred to zoning code 165.76.E, which listed the conditions for a special permit for an accessory apartment, noting that the special permit is for a two year period and may be renewable at that time.

Following discussion, a **Motion** was made by Dean Snyder to approve the application received from John and Tracy Sonoga, Jr., contract vendees, for a special permit at 5760 Ridge Road West to allow an accessory apartment as part of their proposed new home, as per Zoning Article 9, subsection 165-76.E. This property is currently zoned Agricultural/Conservation (AC). In making this determination, the benefit can not be achieved by other means feasible to the applicant, due to the physical needs of their relative. The applicant is identifying a significant need and this proposal will fit this need. Seconded by Tim Thomas. **Motion Carried (4-0)** (Ayes: Patrick Buskey, Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Stephen Shelley)

Chairperson Robillard explained to the applicants that they need to reduce the apartment to no more than 35% of the main structure. A significant difference must be presented in order for another application to be considered.

SPECIAL PERMIT RENEWALS

6. JAMES ROSSETTI – 33 PARMA CENTER ROAD

Application was received of James Rossetti – 33 Parma Center Road, for renewal of a Special permit to operate a hair styling salon.

Chairperson Robillard reported no complaints on file. It was noted Marjorie Rossetti, named on the original application, is deceased.

A **Motion** was made by Tim Thomas to approve the request for renewal of a Special Permit for James Rossetti to operate a hair styling salon at 33 Parma Center Road with the following conditions:

1. Hours of operation until 8:00 p.m. (no Sunday operation)
2. Special permit granted for a period of 3 years, for renewal in October 2009.
3. No on-street parking
4. No retail sales
5. Limited to a one-chair operation
6. Town of Parma Fire Marshal be notified for appropriate action

Seconded by Dean Snyder. **Motion Carried (4-0)** (Ayes: Patrick Buskey, Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Stephen Shelley)

7. 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.

Chairperson Robillard reported no complaints on file.

Following discussion, a **Motion** was made by Tim Thomas 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, under the following conditions:

- Approval granted for two years, to be renewed in September 2008.
- If title to the property changes, if the parent is deceased or the resident 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 this accessory apartment is not needed.
- Town of Parma fire marshal to be notified for appropriate action.

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

8. 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.

Chairperson Robillard reported no complaints on file.

Following discussion, a **Motion** was made by Tim Thomas 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 which has been converted into an in-law apartment, with the following conditions:

- Approval is granted for two years, to be renewed September 2008.
- 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.
- Town of Parma fire marshal to be notified for appropriate action.

Seconded by Patrick Buskey. **Motion Carried (4-0)** (Ayes: Patrick Buskey, Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Stephen Shelley)

9. ANNE ANDOLINA AND MELISSA VELLA – 26 WEBSTER ROAD

Application was received from Anne Andolina and Melissa Vella, contract vendees, for a special permit to allow an accessory apartment at 26 Webster Road. This property is currently zoned Medium Density Residential (MD) and allows this use with a special permit.

Chairperson Robillard reported no complaints on file.

Following discussion, a **Motion** was made by Tim Thomas to approve the application received from Anne Andolina and Melissa Vella, contract vendees, for a renewal of a special permit to allow an accessory apartment at 26 Webster Road, with no building additions. Conditions of this special permit are to be consistent with zoning laws. The period we are approving will be for two years, with renewal considered in July, 2008, under the conditions of zoning ordinance 165-76-I. Seconded by Dean Snyder. **Motion Carried (4-0)** (Ayes: Patrick Buskey, Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Stephen Shelley)

MINUTES OF OCTOBER 19, 2006

There being no recommended changes, a **Motion** was made by Dean Snyder to approve the October 19, 2006 ZBOA minutes as submitted. Seconded by Tim Thomas. **Motion Carried (4-0)** (Ayes: Patrick Buskey, Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Stephen Shelley)

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Patrick Buskey, to adjourn the meeting at 9:35 pm. **Motion Carried (4-0)** (Ayes: Patrick Buskey, Veronica Robillard, Dean Snyder, Tim Thomas; Absent: Stephen Shelley)

Respectfully submitted,
Diane Grundon, Recording Secretary