

**TOWN OF PARMA  
ZONING BOARD OF APPEALS  
April 20, 2006**

**Members Present:** Patrick Buskey (alternate)  
Stephen Shelley  
Dean Snyder  
Tim Thomas

**Members Excused:** Frank Lucisano  
Veronica Robillard

**Others Present:** Jack Barton

**Public Present:** See attached list

The meeting was called to Order by Alternate Chairperson, Tim Thomas, at 7:00 p.m. He explained the function of the ZBOA and the decision-making process. He stated that this is a five-member board, with two members absent, and alternate Board Member, Patrick Buskey in attendance. He noted that a quorum of three is required to pass a motion. Alternate Chairperson Thomas offered hearing aid devices for anyone who required them.

**TABLED PUBLIC HEARINGS**

**1. RICHARD AND DEBORAH DICESARE – 4992 RIDGE ROAD WEST**

Application was received from Richard and Deborah DiCesare, owners, for a use variance at 4992 Ridge Road West. Applicants are proposing to perform auto body repair and auto sales which are allowed uses only in the Highway Commercial (HC) zoning. The existing business currently operates under a use variance for a repair garage. This property is currently zoned General Commercial (GC).

Chairperson Thomas recalled that this application was tabled at the March ZBOA meeting to allow the applicant additional time to provide supportive financial evidence for each and every permitted use, which is required to consider a Use Variance in a General Commercial district.

Richard DiCesare presented a handwritten letter from Gerald Ross, CPA, dated February 20, 2006. This letter stated that since the inception of their business, JRD, revenue has declined from \$227,460 in 2004 to \$213,807 in 2005, with a 30% decrease in profit. Mr. Ross further reported that, unfortunately, this trend continues. Richard reiterated that his ability to sell cars would help increase his profit. He stated that he would have 4-6 cars “tops” for sale at a time. He recalled he relocated this business in 2002 when he purchased the property from Mr. Bausch. He received a variance to operate this business in 2002 but didn’t feel he needed auto sales at that time. He now feels that he needs this addition to his business to survive in his business. In answer to a question, he stated he does not live on the property. The existing house is rented.

**Public Comment:** None. The public hearing was closed.

**Board Discussion:** Dean Snyder referred to Zoning Ordinance 165.20.C.1.B., which states that we need evidence for each and every permitted use in this General Commercial property location. He recalled the discussion held at the March ZBOA meeting when this was explained to the applicants. Based on the information presented by the applicants tonight, Dr. Snyder stated that the Board cannot rule on this until this requirement is met. Deborah DiCesare stated that the uses listed on this ordinance are businesses that they do not do. She explained that they only do auto repair. Dr. Snyder again explained that written evidence by a CPA, or competent financial evidence must be provided.

Following discussion, a **Motion** was made by Dean Snyder to table the application of Richard and Deborah DiCesare, owners, for a Use Variance at 4992 Ridge Road West, without prejudice, to the May ZBOA meeting pending further information to support a Use Variance. Seconded by Stephen Shelley. **Motion Carried** (4-0) (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas; Absent: Frank Lucisano, Veronica Robillard)

## 2. MICHAEL ZILLIOUX – 573 PECK ROAD

Application was received from Michael Zillioux, owner, for area variances at 573 Peck Road. Applicant is proposing to construct a 1,820 square foot accessory storage building in the front yard with a front setback of 30 feet and is requesting relief from Town Zoning Article 10, subsection 165-82.C.3 which states in part that all detached accessory buildings shall be located in the rear yard, Article 5, subsection 165-32.C.2 which limits accessory storage area on the property to 1,500 square feet and schedule 1 which requires a 75 feet front setback. This property is currently zoned rural residential (RR).

Chairperson Thomas recalled that this application was tabled at the March meeting to provide the applicant an opportunity to explore other alternative locations that were discussed, or to provide a financial statement that demonstrates these alternative locations will not be financially feasible.

Michael stated that in reviewing the possible alternative locations, he has decided that an area in the side yard is the only feasible location. He referred to the original site map and pointed out the location of the septic system, driveway and sloped area. The location he has chosen is his only usable back yard but this is the best location for the proposed storage building. He stated there is better drainage in this location. He noted that the proposed location would require a 15 feet side setback variance, as 25 feet is required.

**Public Comment:** None. The public hearing was closed.

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

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Michael Zillioux, owner, for area variances at 573 Peck Road to construct a 1,820 square foot accessory storage building in the side yard with a side setback of 15 feet and to grant relief from Town Zoning Article 10, subsection 165-82.C.3 which states in part that all detached accessory buildings shall be located in the rear yard. This property is currently zoned rural residential (RR). In making this determination, I believe the benefit cannot be achieved by other means feasible to the applicant. The applicant has exhausted the search for other locations and this will minimize the impact to the neighborhood. There will be no undesirable change in the neighborhood character or to nearby properties. The request is substantial. There will be no adverse physical or environmental effect. The alleged 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 Stephen Shelley. **Motion Carried** (4-0) (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas; Absent: Frank Lucisano, Veronica Robillard)

### **3. JOHN TACHIN – 403 BURRITT ROAD**

Application was received from John Tachin, owner, for an area variance at 403 Burritt Road. Applicant is proposing to construct an accessory structure with a wall height of 25 feet. The structure will provide 960 square feet of accessory storage on the ground floor and 960 square feet above for a hay loft. Applicant is requesting relief from Town Zoning Article 10, subsection 165-82.C.2 which states in part that no detached accessory building in a residential district shall exceed 12 feet in height. This property is currently zoned Agricultural Conservation (AC).

Jim Inzigna stated he lives at 403 Burritt Road, presently leasing to own. When they moved to Parma, the property had an existing three stall horse barn. He currently uses this barn to store his jet skis and other equipment. He stated his plan to purchase 2 or 3 horses for his daughter and use this existing horse barn. He noted he will have to put up a fence. He stated he has no intention of boarding horses. This barn will be used for his own personal horses. He stated he is looking to build a new structure to store his equipment and to provide a hay loft to store hay. He noted this 8.9 acre property is bordered by woods and the barn can barely be seen from the road. He stated that both neighbors have similar buildings. William Pittman stated he will be the builder for this proposed structure. He explained that he helped design the proposed building and assured it will be structurally sound and not an eyesore. He noted that it will be located 300 feet from the road. He stated that the second story of the new structure will have an upper portion to be used as a hay loft for baled hay. He noted several huge barns on Burritt Road. He stated the upper portion of the barn will be 8 feet high and the lower portion will be 15 feet high. Grade to peak of the roof will be 27 or 28 feet with 24 feet high side walls. He explained he needs the height to allow for the door which will accommodate a large boat to be stored inside, along with jet skis, snowmobiles, and lawn mowers.. Jim stated that the boat is 13'2" and needs a 14 feet high door. The building will be 24 feet wide. He stated that the hay needs to be stored high and dry. Mr. Tachin estimated the house was built in the 1980's with the barn built 7 years later.

#### **Public Comment:**

**Mike Wyant – 399 Burritt Road:** Asked what side the door would face. The applicant reported it will be on the northwest side.

The public hearing was closed.

**Board Discussion:** Chairperson Thomas 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.

Jack Barton estimated that an average barn would be 18 feet high. Jim stated that this application is in keeping with an AC district. He explained that he wants to keep this property looking good and be able to store his boat inside. He stated that there are a lot of barns in the neighborhood. Mr. Tachin noted the slope of the property with the house on a hill and the barn location in an area that slopes back. It was noted that many of the large existing barns were built long before current zoning.

Discussion was held on possible alternatives to this plan for a 28 feet high barn. It was suggested to have 15 feet high walls all around, with the inside split with only ½ of the area with a loft overhead for hay storage and the other ½ used for storage. This would meet the need for a tall portion to house the boat and would provide high and dry storage for the hay. Chairperson Thomas asked the applicant if he would like to consider other options. The applicant stated he was not interested in coming back with an alternative plan. He stated that he should be able to build what he wants. He then walked out of the meeting room.

Following discussion, a **Motion** was made by Stephen Shelley to deny the application received from John Tachin, owner, for an area variance at 403 Burritt Road is construct an accessory structure with a wall height of 25 feet. The structure would provide 960 square feet of accessory storage on the ground floor and 960 square feet above for a hay loft. Also denied is relief from Town Zoning Article 10, subsection 165-82.C.2 which states in part that no detached accessory building in a residential district shall exceed 12 feet in height. This property is currently zoned Agricultural Conservation (AC). In making this determination to deny, the benefit can be achieved by modifying the plans to make the storage area large enough for a motor home and other equipment without increasing the total height over 15 feet. The proposed building would result in an undesirable change to the character of the neighborhood and to nearby properties, although it is away from the road. The request is substantial. There would be no adverse environmental impact. The alleged difficulty is self-created, and using the balancing test, the benefit to the applicant does not outweigh the detriment to the health, safety and welfare of the community. Approving this variance would create an undesirable change in this AC district. Seconded by Dean Snyder. **Motion Carried to Deny** (4-0) (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas; Absent: Frank Lucisano, Veronica Robillard)

Chairperson Thomas polled the Board to state their reason for denying this application:

Dean Snyder: The benefit could be achieved by other means feasible. The shorter wall height would have allowed storage of equipment and provide adequate storage for hay. The applicant was unwilling to consider a shorter side wall and therefore we are not able to approve the design that was twice as high as allowed by current code. This application would have an undesirable change in the character of the neighborhood.

Patrick Buskey: Stated he agreed with Dean Snyder. This excessive height is not needed to provide the storage needed.

Tim Thomas: We offered a reasonable alternative to the applicant which gave him an opportunity to replan his design for the structure. His demeanor in walking out of the meeting showed that he was unwilling to compromise. This application would be a substantial variance and very inappropriate for the neighborhood and may have set some precedence that we are unwilling to engage in.

Stephen Shelley: Stated his motion states his reason for denial.

#### **4. EDWARD WHITE – 813 BURRITT ROAD**

Application was received from Edward White, owner, for area variances at 813 Burritt Road. Applicant is proposing to subdivide the existing parcel to create a flag lot for a future home and is requesting variances for the frontage lot for lot width, depth and area. Applicant is proposing a lot width of 260 feet, a depth of 260 feet, and an area of 1.552 acres. Applicant is also requesting a side setback variance for an existing accessory structure of 24.5 feet. Applicant is requesting an area variance for the rear flag lot for a lot width of 297.25 feet. This property is currently zoned Agricultural Conservation (AC) which requires lots to have a minimum width of 300 feet, a minimum depth of 350 feet, and a minimum area of 3 acres. Accessory structures are to be setback a minimum of 25 feet.

Jim Glogowski, surveyor, stated that Ed White lives on 5 ½ acres. The lot is 297 feet wide. He proposes to create a 1 ½ acre lot where the existing house, which was built in 1875, is located and create a flag lot, where he plans to build a house in the future. He noted on the map, that there is a pond between the two proposed lots, and have divided the lot keeping the pond totally on the flag lot. He noted Ed's plan to shrub between the front and back lot and they allowed additional room for this. With this proposal, he requires a variance for width and area for the front lot and just the width for the back lot. The front lot is still larger than any lots in the area. He reiterated that Ed doesn't want to make the front parcel any deeper because of the pond, which he doesn't want to share. Ed stated he lives on lot A now and plans on building and living on lot B in the future.

**Public Comment:**

**Joel Hall – 803 Burritt Road:** Stated he lives directly to the east. He referred to the site map, noting his existing leach field extends into Ed White's yard. He stated if Mr. White makes any change over the top of his leach field it will basically destroy it. He noted the proposed driveway would go close to his lot. He provided pictures. Also, he stated that if any water line is placed to the back of the property, this would destroy the tree that is between him and the proposed driveway. He suggested that the driveway be put on the other side of the property. He provided another option for Mr. White to divide this property. He suggested it be split into 2.75 acres each with the driveway on the other side of the existing lot. He reported that this pond was not existing, that the pond and berm were built by Mr. White and felt these were self-created issues. He did not feel he has the right to bring a water line through and cut the roots off of the existing tree. He stated that the leach field for his house has been there before each of them bought their properties. He estimated this current proposal would cost him \$20,000 to put in a new leach field. He noted there are no other flag lots in the neighborhood. He wants to know what the history is of approving flag lots and felt that the 3 acre minimum should be upheld. He felt that running the water line would jeopardize his safety by weakening the tree. He stated that this proposal is not helping anyone but Mr. White and this would affect his health and safety.

Mr. White responded. He just recently realized that Mr. Hall's leach field is on his property and felt that this is a legal issue. He has not found anything in writing that this is allowed. He felt that this leach field is failing and draining into the storm drains. He has never given Mr. Hall permission to use his property for the leach field. He referred to a boundary line agreement signed by Mr. Hall (he provided a copy). He was led to believe that this is a gutter drain. He stated that he will force Mr. Hall to move his leach field whether he gets this variance or not. There is nothing recorded that he has permission to have anything on his property.

Chairperson Thomas recognized the septic system is a legal issue and asked that others keep the comments to the variance.

**Bill Hagan – 825 Burritt Road:** Stated they live on the west side of Mr. White on 60 acres total, some in the back. He stated that Ed buys and sells property for a profit. He felt that the 3 acre minimum is there for a reason. They don't want to see reduced lot sizes and a housing development. He stated they have 30-40 acres that he would like to do something with too. This property could be divided into almost two 3-acre lots. He recalled a previous discussion with Ed, when Ed stated that he wants to move to North Carolina. He felt he is just doing this for profit.

Ed responded that he wants to keep the pond on one property and that is the reason why he didn't propose two 3-acre lots.

Dean Snyder noted that 1.55 acres would result in a larger lot than the property next to Ed White.

**Richard Witkowski – 816 Burritt Road:** Stated he has lived across the street from the property owned by Mr. White for years. He stated it used to be one farm and the lot has been divided up over the years. He thought about doing this but thought you couldn't do this in an agricultural district. He didn't realize this could be done with a variance. He stated that Ed improved the house and property he is on.

Jack Barton presented a letter from Bob Prince which stated there are two open permits for 813 Burritt Road. A permit was issued In September of 2003, with a stop order issued in October 2003. Another permit was issued on May 26, 2004 for renovation of the barn. Neither permit has been closed with a final inspection. An electrical inspection is still needed on the barn. Mr. White responded that he hasn't had time to work on these.

The public hearing was closed.

**Board Discussion:** Chairperson Thomas 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.

Discussion was held on the leach field issue, which is a legal issue between the parties involved, not an issue for the Zoning Board.

Following discussion, a **Motion** was made by Dean Snyder to approve the application received from Edward White, owner, for area variances at 813 Burritt Road to subdivide the existing parcel to create a flag lot for a future home and variances for the frontage lot for lot width, depth and area. Applicant is proposing a lot width of 260.5 feet, a depth of 260 feet, and an area of approximately 1.552 acres. Also approved is a side setback variance for an existing accessory structure of 24.5 feet. Also approved is an area variance for the rear flag lot for a lot width of 297.25 feet. This property is currently zoned Agricultural Conservation (AC) which requires lots to have a minimum width of 300 feet, a minimum depth of 350 feet, and a minimum area of 3 acres. Accessory structures are to be setback a minimum of 25 feet. In making this determination, I don't believe the benefit can be achieved by other means feasible to the applicant. Because of the location of the existing pond, it would be difficult to move the south property line to an area which would appropriately divide the two properties. I don't believe there will be an undesirable change in neighborhood character or to nearby properties. The front lot would be closer to compliance than the neighboring 1.1 acre lot and other properties on the road. The existing structure predates any existing code. The rear property variance will not have any undesirable change to the neighborhood based on the rear property location, the variance is negligible from the road. The request is substantial. There will be no adverse physical or environment effect. The alleged difficulty is somewhat self-created, but based on the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. This approval is contingent on the application closing out the existing building permits with the Town of Parma. Seconded by Stephen Shelley. **Motion Carried** (3-1) (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder; Nays: Tim Thomas; Absent: Frank Lucisano, Veronica Robillard)

## **5. TODD BURLEY – 1512 HILTON PARMA CORNERS ROAD**

Application was received from Todd Burley, owner, for an area variance at 1512 Hilton Parma Corners Road. Applicant has constructed a home with 1350 square feet of living space and is requesting relief from Town Zoning Article 5, subsection 165-32.E.2.a, which requires 1400 square feet. This property is currently zoned Agricultural Conservation (AC).

The applicant, Todd Burley, stated he did not have the required notifications.

It was noted that there were no public present to speak for or against this application.

A **Motion** was made by Stephen Shelley to table until the May meeting, without prejudice, the application of Todd Burley for an area variance at 1512 Hilton Parma Corners Road, to allow him additional time to provide the required notifications. Seconded by Dean Snyder. **Motion Carried (4-0)** (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas; Absent: Frank Lucisano, Veronica Robillard)

## **SPECIAL PERMIT RENEWALS**

### **1. MICHAEL LANGEN – 5200 RIDGE ROAD WEST**

Application was received from Michael Langen for renewal of a special permit to sell automobiles at 5200 Ridge Road West. This property is zoned Highway Commercial (HC) which allows this use with a special permit.

Jack Barton referred to correspondence regarding structural and housekeeping issues for this property. A follow up inspection made on April 20<sup>th</sup> by the ZEO found all violations rectified. However, Jack requested that someone be present at this ZBOA meeting to answer any questions. Mike Langen stated he was here to answer questions. Mike described some repair work done to the building truss, with a whole new beam put in. He also put in an exit sign and removed two cars and some debris.

A **Motion** was made by Dean Snyder to approve the application from Michael Langen for renewal of a special permit to sell automobiles at 5200 Ridge Road West, with the following conditions:

- No more than 30 cars to be displayed for sale.
- No on-street parking. There must be adequate space for customer parking.
- Exit and entrance driveways are to be provided.
- All repairs to be performed within the existing structure, not outside.
- Hours of operation: 7:00 am to 8:00 pm, Monday through Sunday.
- Signs to conform to current zoning.
- Lighting to be directed away from the road.

Special Permit for a period of one year, renewable in April, 2007.

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

### **2. MICHAEL MERRILL – Choo-Choo's, 5138 RIDGE ROAD WEST**

Application was received from Michael Merrill, 5138 Ridge Road West, for renewal of the Special Permit allowing a portion of a children's train ride to extend into the R-2 zone.

Chairperson Thomas recalled that this application for renewal was approved in December 2005, with the condition that the applicant satisfy all Building Department issues with the inspector within 90 days. This Special Permit was subject to revocation by the Town of Parma if the Certificate of Compliance requirements are not met within the 90 day period. Of note, the cook shack currently was not to be in operation until the applicant has been issued a Certificate of Compliance. Jack Barton reported that Choo-Choo's 90 day extension, set at the December 2005 meeting is up. Chairperson Thomas recalled that at the March ZBOA meeting, the Board gave the applicant until this meeting to provide an update, and approved a 30 day relief period.

Jack Barton read a letter from Bob Prince, CEO, dated April 20, 2006. This correspondence listed 9 items still outstanding. Mr. Merrill explained he has other obligations and many of these issues go back to the foundation. He is still working with an architect to assure the foundation will be

sound. After this issue is resolved, he will tackle the other items. He recalled that they have completed a lot and they are not using the cook shack, as agreed. They have modified the food offered in the main building to utilize what is allowed.

Following discussion, a **Motion** was made by Dean Snyder to grant relief to Michael Merrill until the next scheduled ZBOA meeting, as stated, in the Motion in December, 2005. Seconded by Stephen Shelley. **Motion Carried** (4-0) (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas; Absent: Frank Lucisano, Veronica Robillard)

#### **MINUTES OF MARCH 16, 2006**

The following recommendations were made: page 3, Para 4, line 10, change safety.."issues" to "concerns."; page 8, last Para, line 3, change to "The applicant stated that all minor issues..." Several other grammatical errors were pointed out. A **Motion** was made by Dean Snyder to approve the March 16, 2006 ZBOA minutes with the recommended changes. Seconded by Patrick Buskey. **Motion Carried** (4-0) (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas; Absent: Frank Lucisano, Veronica Robillard)

#### **ADJOURNMENT**

There being no further business, a **Motion** was made by Dean Snyder, seconded by Stephen Shelley, to adjourn the meeting at 9:55 pm. **Motion Unanimously Carried** (4-0) (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas; Absent: Frank Lucisano, Veronica Robillard)

Respectfully submitted,  
Diane Grundon, Recording Secretary