

**TOWN OF PARMA
ZONING BOARD OF APPEALS
June 15, 2006**

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

Members Excused: Frank Lucisano

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 alternate Board Member, Patrick Buskey in attendance. She noted 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. TODD BURLEY – 1512 HILTON PARMA CORNERS ROAD

The application of Todd Burley, owner, for an area variance at 1512 Hilton Parma Corners Road. Applicant has constructed a home with 1350 square 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).

Chairperson Robillard recalled that this application was tabled at the May meeting due to lack of required notifications.

Dan Schum, attorney, stated he represented Todd Burley in presenting his application for an area variance for his new home. He explained that Todd contracted to buy a modular home and submitted plans to the Building Department. Todd was made aware at that time that he was required to put a garage on the house. In pursuing a revised house plan to include a garage, it was estimated that an additional \$18,000 would be required. Mr. Schum stated that financially, Todd isn't able to comply at the present time. He stated that Todd had to make a choice between finishing the upper portion of the home or to build the required garage and he decided on the garage. He noted that his home is 96% of the structural requirement. Todd fully anticipates finishing the upper portion of the home in the future, which will bring him into compliance with the square footage. Until this upstairs is finished, the look of the house will not affect the character of the neighborhood, as it will not be visible from the outside. Todd's mortgage loan is set. He has a young child and he can't afford to finish the upstairs to compliance. The upstairs will add another 782 square feet when finished.

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.

Jack Barton noted that the cape style home has an 1800 square feet requirement.

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Todd Burley, owner, for an area variance at 1512 Hilton Parma Corners Road for a home constructed with 1350 square feet of living space. This grants 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). In making this determination, I do not believe that the benefit can be achieved by other means feasible to the applicant. The structure is already completed. When the upstairs is finished, this building will exceed the minimum square footage requirement by approximately 20%. There will be no undesirable change in the neighborhood character or to nearby properties. From the outside, it looks the same as a building that is compliant. The request is substantial. There will be no adverse physical or environmental effects. Although the alleged difficulty is somewhat self-created, in 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 Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas, Veronica Robillard; Absent: Frank Lucisano)

2. JENNIFER KESSLER – 1641 HILTON PARMA CORNERS ROAD

Application was received from Jennifer Kessler, owner, for area variances at 1641 Hilton Parma Corners Road. Applicant is proposing to subdivide the existing 43.33 acre parcel into 5 lots and is proposing a lot depth of 270 feet for lots 1, 3 and 4, and 272.42 feet for lot 2, and is requesting relief from Town Zoning schedule 1 which requires a minimum depth of 300 feet. These lots as proposed will meet lot width and area requirements. This property is currently zoned Rural Residential (RR).

Chairperson Robillard recalled that this application was tabled at the May meeting due to lack of required notifications.

Nick Montanaro stated he represented Jennifer Kessler in presenting this application. He referred to the map, noting that they came to the Planning Board for two lots. The intent was always to have two additional lots between the two houses but now propose 3. All the lots more than exceed the required acreage, but the lot depth falls short. He stated that this variance to allow 5 houses would not change the look of what is already approved. Driving by, all you can see is the front house. He stated that the lot lines could be shifted over, which would allow 5 houses without a variance, but this would significantly impact Mr. Kessler's lot where he planned to build. The lots will be occupied by relatives.

Public Comment: Chairperson Robillard read a letter from:

Ron and Laurie Way – 1657 Hilton Parma Corners Road: They stated several concerns if this variance were approved:

How will a subdivision next door affect the value of their property?

What water drainage problems that might result for nearby residents.

Additional housing will increase noise and traffic.

Health hazards have been created by the existing dirt driveway. This driveway was supposed to be finished with stone or asphalt and hasn't been.

Concerned over general disregard for the neighbors by Mr. Kessler, including lack of notifications for the May zoning meeting.

The addition of three housing lots is excessive and could create many problems.

They expressed their hope that the Town will be diligent in addressing and monitoring these issues.

Bob and Kay Twentymon – 1636 Hilton Parma Corners Road: Stated they wanted to know why the Kessler's don't have to put a driveway in. They stated that they have "eaten dirt for a year" from dust from his driveway. They also expressed concern about drainage problems that could result from this variance.

Chairperson Robillard explained that if this variance is approved, this is an issue for the Planning Board.

Alysia Bradley – 1645 Hilton Parma Corners Road: Questioned why they can't move the lot lines.

Don Kessler, owner, pointed out on the map that he purchased the adjoining property where his house is proposed to be built. He noted that the pond on the property and the creek and wetlands prevent placement of his house anywhere else. If the house was shifted back, he couldn't see the pond. Don stated that the property is too wet to build anywhere else on the property. Nick stated this is the only area that perked. He stated that a lot of expense has gone into this plan.

Alysia Bradley suggested that maybe they should go back to only 4 lots instead of 5. Her house is right in front of all of these houses. She preferred to see 4 houses, not 5.

Chris Monahan – 1633 Hilton Parma Corners Road: Stated the original notice stated two lots. He felt that they knew the rules for the Town. Why didn't they keep with the rules? Questioned why it was originally advertised for two lots and now it is 5. He felt this is a self-created difficulty.

Craig Neubauer – 1691 Hilton Parma Corners Road: Questioned the environmental impact, such as drainage into the pond. He stated that they already have drainage problems. He wanted to know what guarantee will be provided that additional studies will be done to explore potential problems.

Stephen Shelley explained that the Conservative Board and the Planning Board deal with these issues.

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.

The Board discussed the potential impact that would result from dividing these 43.3 acres into 5 lots versus 4. Five houses could be put in without any variance required. Don Pascarella stated that he has spent a lot of money in engineering and time to design this plan. He plans to have his two children and mother live in these houses.

Following discussion, a **Motion** was made by Dean Snyder to approve the application received from Jennifer Kessler, owner, for area variances at 1641 Hilton Parma Corners Road to subdivide the existing 43.33 acre parcel into 5 lots and with a lot depth of 270 feet for lots 1, 3 and 4, and 272.42 feet for lot 2. Also approved is relief from Town Zoning schedule 1 which requires a minimum depth of 300 feet. These lots as proposed will meet lot width and area requirements. This property is currently zoned Rural Residential (RR). In making this determination, I do not believe the benefit can be achieved by other means feasible to the applicant. The applicant has proposed a modified plan whereby the area variance would not be required but in following that plan, I don't believe that there is a significant benefit to the neighboring properties as compared

to the cost of changes by the owner. There will be no undesirable change in neighborhood character or to nearby properties. The owner has the opportunity to place 5 houses on this property by making other changes. If he would do that, it would have the exact same impact on the neighbors. It is substantial: a 10% shortcoming over minimum dimensions. There will be no adverse physical or environmental effect. Again, because it is possible for the owner to place 5 houses on the property without an area variance from the Zoning Board. 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 Stephen Shelley. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas, Veronica Robillard; Absent: Frank Lucisano)

3. JOSEPH RODRIGUES – 135 LIGHTHOUSE ROAD

Application was received from Joseph Rodrigues, owner, for area variances at 135 Lighthouse Road. Applicant is proposing to construct a 25 feet by 80 feet structure to house captive birds of prey in the side and rear yard with a side setback from the southerly property line of 1 foot 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 and schedule 1 which requires a 20 feet side setback. This property is currently zoned Rural Residential (RR).

Chairperson Robillard recalled that this application was tabled at the May meeting to allow the applicants time to consider the neighbor's comments.

Paul Schnell recalled that he and his fiancée, Anne Terninko, were in the process of purchasing the property from Mr. Rodrigues at 135 Lighthouse Road. He reported that they are requesting approval for their original plan for a 98 feet long and 14 feet wide structure. Paul stated that they reviewed the option of placing the structure on the south side of the property, but the neighbors felt that this would be a larger visual impediment. All the neighbors who originally opposed placement on the southerly property line are now in agreement with this plan. He noted that part of this building will go into their back yard, but with the wall of vegetation, it won't be visible to the neighbors. He stated he would maintain this vegetation. The deck on the house will stay. He noted that two of the actual structures will not have the 50 feet netting; they will be small structures. The netted pens will be beyond the decking. 50-70% of the flight pen will be behind the house.

Public Comment:

Chairperson Robillard read a letter from:

Tim Donovan – 139 Lighthouse Road; Stated that he no longer objects to the structure being built on the south side of the property at the 1 foot set back.

The public hearing was closed.

Following discussion, a **Motion** was made by Dean Snyder to approve the application received from Joseph Rodrigues, owner, for area variances at 135 Lighthouse Road to construct a 14 feet by 98 feet structure to house captive birds of prey in the side and rear yard with a side setback from the southerly property line of 1 foot. Also approved is 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 and schedule 1 which requires a 20 feet side setback. This property is currently zoned Rural Residential (RR). In making this determination, I do not believe the benefit can be achieved by other means feasible to the applicant. The applicant has gone to significant lengths to discuss this with neighbors and came to a reasonable compromise. There will be no undesirable change to the neighborhood character or to nearby properties. The applicant has gone to

significant lengths to minimize the impact to the neighbors and present information to us to show that these birds have a minimal impact on the neighbors. The request is substantial. There will be no adverse physical or environmental effect. Although the alleged difficulty is completely self-created, in 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 Unanimously Carried** (5-0) (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas, Veronica Robillard; Absent: Frank Lucisano)

NEW PUBLIC HEARINGS

4. ERIC AND CYNTHIA BOSTLEY – 120 SPENCER ROAD

Application was received from Eric and Cynthia Bostley, owners, for an area variance at 120 Spencer Road. Applicants are proposing to construct a 40 feet by 60 feet storage building in the rear yard and are requesting relief from Town Zoning Article 5, subsection 165.31.C.2, which limits accessory structures to 2,000 square feet. This property is currently zoned Agricultural Conservation (AC).

Eric explained that he came to the Zoning Board approximately one year ago and was granted this variance. His plan to build this storage building was postponed and the variance has now expired. He stated he is now resubmitting this application. He stated that the location of this storage building is compliant, he is just looking for relief from the size requirement. He stated he plans to place this structure farther behind the house. He stated the items to be stored are identical to those listed in the packet of information he provided at the September 2004 Zoning Board of Appeals meeting.

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 Eric and Cynthia Bostley, owners, for an area variance at 120 Spencer Road to construct a 40 feet by 60 feet storage building in the rear yard and to grant relief from Town Zoning Article 5, subsection 165.31.C.2, which limits accessory structures to 2,000 square feet. This property is currently zoned Agricultural Conservation (AC). In making this Motion to approve, I do not believe that the benefit to the applicant can be achieved by other means feasible. The list of various equipment that he needs to store and are currently stored off site warrants this size building. There will be no undesirable change in the neighborhood character or to nearby properties. Other buildings of similar size and construction are in the vicinity. The request is substantial. However, taking into account the size of the parcel somewhat mitigates that. There will be no adverse physical or environmental effect. Although the alleged difficulty is self-created, in 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 Unanimously Carried** (5-0) (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas, Veronica Robillard; Absent: Frank Lucisano)

5. JENNIFER MANCUSO – 88 PEASE ROAD

Application was received from Jennifer Mancuso, owner, for an area variance at 88 Pease Road. Applicant is proposing to erect a 6 foot high privacy fence in the rear yard, along the northerly property line with a side setback of 3 feet and is requesting relief from Town Zoning Article 16 subsection 165-128.B.2, which states, in part, that open and closed fences up to a height of 6 feet may be permitted for the express purpose of screening a swimming pool or patio area and schedule 1 which requires that fences of this height be set back a minimum of 10 feet from the property line. This property is currently zoned Medium Density Residential (MD).

Jennifer referred to the map of her property. She stated there is a housing development planned behind her property. She explained that a partial road was put in behind her and a dirt pile has been left which is visible from her yard. She stated that before this road was put in, there were just trees.

Jack Barton stated that 3-4 years ago, a development was planned but because of the high rock content of the land, the development has been abandoned. Eventually, down the road, when sewers are put in, the development will be restarted.

Jennifer stated that she is requesting a privacy fence to screen this visual pollution and construction vehicles. Although there currently aren't any construction vehicles, she anticipates there will be in the future.

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 Jennifer Manucso, owner, for an area variance at 88 Pease Road to erect a 6 foot high privacy fence in the rear yard, along the northerly property line with a side setback of 3 feet and to grant relief from Town Zoning Article 16 subsection 165-128.B.2, which states, in part, that open and closed fences up to a height of 6 feet may be permitted for the express purpose of screening a swimming pool or patio area and schedule 1 which requires that fences of this height be set back a minimum of 10 feet from the property line. This property is currently zoned Medium Density Residential (MD). In making this determination, the benefit can not be achieved by other means feasible to the applicant. The possibility of future development of the parcel behind this property, as well as the access road is quite high and this is a reasonable request to maintain some privacy for this property in what will become a main access road to this property. There will be no undesirable change in the neighborhood character or to nearby properties. There will be a sufficient amount of vegetation to hide the fence. The request is substantial. The Board has been very strict regarding a 6 foot fence approval, however, in this particular case, we do have other applicants prior to this come here where we allowed a fence for privacy. There will be no adverse physical or environmental effect. The alleged difficulty is somewhat self-created, however, it is mitigated by the fact that this will become an access point at some point in the future. In 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 Denied.** (1-4) (Ayes: Tim Thomas; Nays: Patrick Buskey, Stephen Shelley, Dean Snyder, Veronica Robillard; Absent: Frank Lucisano)

Chairperson Robillard polled the Board regarding their reason to deny:

Dean Snyder: The applicant did not show immediate need for the fence. I believe that future shielding could be satisfied by planting vegetation. The fence currently is not proposed to shield a pool or a deck.

Patrick Buskey: I agree with Dean Snyder. No immediate need was described. It will be quite a while before the property behind the applicant is developed.

Stephen Shelley: No immediate need was given. The benefit can be achieved by alternate means, such as planting vegetation.

Veronica Robillard: Concurred with colleagues. No convincing need was given. Alternatively, shielding with vegetation is a viable alternative at this point in time.

6. SPENCERPORT BIBLE CHURCH – 1948 NORTH UNION STREET

Application was received from Spencerport Bible Church for an area variance at 1948 North Union Street. Applicants have constructed an addition with a side setback of 40.5 feet from the northerly property line and are requesting relief from Town Zoning schedule 1 which requires a side setback of 50 feet. This property is currently zoned Medium Density Residential (MD).

Mark Gerhardt explained that in 1987 they received the original plot plan approval for building three buildings. They were recently ready to start the third building and in reviewing the plans decided to go larger. The architect designed a larger building, not thinking about the 50 feet setback. The final tape map was submitted for the certificate of occupancy and it was discovered then that they were not in compliance with 50 feet side setback requirement. He stated that this only impacts one neighbor, who has no problem with this.

Jack Barton noted that the building is 130 feet x 70 feet and was reviewed and approved by the Planning Board. No survey map is required, only a site plan. They talked to the Planning Board about enlarging the building and they proceeded. No survey is required for start of construction.

Mark stated that there is an accessory building 12 feet off the property line and complies with zoning. No one realized that the addition was out of compliance.

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 Stephen Shelley to approve the application received from Spencerport Bible Church for an area variance at 1948 North Union Street. Applicants have constructed an addition with a side setback of 40.5 feet from the northerly property line. This grants relief from Town Zoning schedule 1 which requires a side setback of 50 feet. This property is currently zoned Medium Density Residential (MD). In making this determination, the benefit can not be achieved by other means feasible to the applicant. The building can not be deconstructed or changed. There will be no undesirable change to the character of the neighborhood or to nearby properties. The request is substantial. There will be no adverse physical or environmental effects. Although the alleged difficulty is self-created more or less due to lack of information, in 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 Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas, Veronica Robillard; Absent: Frank Lucisano)

7. ROBERT PRINCE – 37 ZELLWEGER BEACH

Application was received from Robert Prince, owner, for area variances at 37 Zellweger Beach. Applicant is proposing an addition to the front of the existing home with a front setback of 20 feet from the right-of-way easement. Applicant is also proposing to construct a detached garage with a side and rear setback of 4 feet and is requesting relief from Town Zoning schedule 1 which requires a front setback of 40 feet for the addition and a side and rear setback of 10 feet for the garage. This property is currently zoned Waterfront Residential (WF).

Bob provided a sketched drawing of his property, pointing out where his addition and detached garage will be located. He explained he wants to come forward to the lake side 15 feet closer to take more advantage of the lake view. He stated plans are currently being developed. He wants to have the detached garage located so he can continue his driveway and have minimal impact to his septic system. He stated that the tree in front of the garage would need to be removed. He has a proposed plan to add to the west of the house also. The foundation is in bad shape and needs to be rebuilt. He stated he plans to have this garage framed in by winter.

Public Comment:

Pete McCann – 3 Zellweger Beach: He questioned if the square footage of the garage exceeds that allowed for accessory buildings. Jack Barton explained that this is a garage and there is no maximum limit for a garage.

Frank Kozlowsky - 36 Zellweger Beach: Questioned if the metal on the garage is too close to the neighbors. Jack Barton stated that if it is closer than 3 feet then a fire shield must be used.

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 Robert Prince, owner, for area variances at 37 Zellweger Beach for an addition to the front of the existing home with a front setback of 20 feet from the right-of-way easement. Applicant cant is also proposing to construct a detached garage with a side and rear setback of 4 feet and is granted relief from Town Zoning schedule 1 which requires a front setback of 40 feet for the addition and a side and rear setback of 10 feet for the garage. This property is currently zoned Waterfront Residential (WF). In making this motion to approve, the benefit can not be achieved by other means feasible to the applicant. In reference to the garage, it was stated that to move that structure anywhere else than was is proposed would interfere with the septic system. Also, the applicant's future plan is to add to the west side of the house. There will be no undesirable change in the neighborhood character or to nearby properties. This is waterfront property and several homes in the area are much closer to the road than the proposed structure and other metal structures are as close as this is proposed. The request is substantial, but waterfront property is unique and other similar variances have been granted. There will be no adverse physical or environmental impact. Although the alleged difficulty is self-created, in 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 Unanimously Carried** (5-0) (Ayes: Patrick Buskey, Stephen Shelley, Dean Snyder, Tim Thomas, Veronica Robillard; Absent: Frank Lucisano)

MINUTES OF MAY 18, 2006

Review of the May 18, 2006 minutes was postponed until the June meeting.

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Stephen Shelley, to adjourn the meeting at 9:15 pm. **Motion Unanimously Carried (5-0)** (Ayes: Patrick Buskey, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas; Absent: Frank Lucisano)

Respectfully submitted,
Diane Grundon, Recording Secretary