

**TOWN OF PARMA
ZONING BOARD OF APPEALS
JUNE 18, 2009**

Members Present: Tina Brown
Veronica Robillard
Stephen Shelley
Dean Snyder
Tim Thomas

Others Present: Jack Barton, Jim Roose (Board liaison), Jim Zollweg (alternate)

Public Present: See attached list

The meeting was called to Order by Chairperson, Veronica Robillard, at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She noted that this is a five-member board and 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. JAMES KESSELRING – 20 CLEARVIEW AVENUE

Application of James Kesselring, owner, for area variances at 20 Clearview Avenue. Applicant is proposing to construct an accessory storage shed in the front yard with a side setback from the easterly property line of 3 feet and a front setback from the southerly property line of 12 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 and schedule 1 which requires a 10 feet side setback and a 40 feet front setback from property lines. Applicant is also requesting that a 4 feet high closed style fence be allowed to remain in the front yard. He is requesting relief from Article 16, subsection 165-128.A.2 which states in part that closed fences shall not be permitted along any front lot line and that fences along the front lot line shall not be higher than 3 feet above the adjacent ground level. This property is currently zoned Waterfront Residential (WF).

Chairperson Robillard recalled that this application was tabled at the May meeting to allow the applicant additional time to provide the following information:

- An elevation view location of the proposed shed relative to the existing berm, the low point of the swale, and the fence on the easterly property line, and the existing leach field taper.
- Consideration of other alternative location options.

James provided a survey map and photos of the property, looking east and north. He also provided a sketch map noting the elevation location of the existing leach field and septic taper to the proposed shed, which was prepared by Mr. Caswell who installed the septic system. James noted that the pictures demonstrate the proposed shed won't block the view of the lake. James explained that the shed floor will be constructed with a 7/16" plywood floor, which will be placed on 1 1/2" blocks. He noted that 8" cinder blocks will be used to level the back corners with the front. James stated that if he placed the shed elsewhere on the property, it will be in someone's view of the lake. He stated that the other side of the yard has worse drainage. He addressed the concern about gasoline odors from the shed, noting that the northerly winds would take any smell away from the neighbors.

Public hearing:

Jack Wade – 6 Lighthouse Beach Road: He questioned if placing this shed 10' off the property line would work. He also questioned the total height of the shed, recalling that in August of 2008, he asked for a 12 x 12' shed with the height no higher than 8' grade to peak of the roof. He is now asking for 12 x 16' with a 12' high walls on two sides.

Chairperson Robillard asked why he is asking for a larger shed now. James stated that the 8' high walls with a higher peak at 12' is needed for extra area to store a lawn tractor.

Mary Ann Wade – 6 Lighthouse Beach Road: Stated she remains concerned about the closeness of this shed to their property line and stated she wants to see it 10' off the property line.

Chairperson Robillard asked James if he could place the shed at 10'. James responded that he couldn't place it there because of the leach field. He recalled that Mr. Caswell stated the shed cannot encroach on the leach field.

The public hearing was closed.

Board Discussion:

Discussion was held on the alternative location in the northwest corner along the driveway.

Following discussion, a **Motion** was made by Tim Thomas to deny the application of James Kesselring, owner, for an area variance at 20 Clearview Avenue to construct an accessory storage shed in the front yard with a side setback from the easterly property line of 3 feet and a front setback from the southerly property line of 12 feet, and this denies 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 10 feet side setback and a 40 feet front setback from property lines. This property is currently zoned Waterfront Residential (WF). In making this determination to deny:

- I believe the benefit could possibly be achieved by other means feasible to the applicant. It was clearly stated at the May meeting that one of our criteria be consideration of other alternative locations. This was requested by the Board and has not been provided by the applicant. In my opinion, there are other options to look at. Concerns were expressed for the proposed location by the neighbors. As a result, an elevation view location of the proposed shed relative to the existing berm, the low point of the swale, and the fence on the easterly property line, and the existing leach field taper was also requested, and this was not provided to my satisfaction.
- There will be an undesirable change in neighborhood character and to nearby properties. This criteria is not applicable because the applicant has not explored other locations to consider. The proposed location could create water drainage problems for the neighbors to the south.
- The request is substantial.
- There would be adverse physical and environmental effects. The proximity to the neighbors and line of sight relative to the neighbors could possibly result in an adverse effects, including drainage problems for the neighbors.
- The alleged difficulty is certainly self-created. In using the balancing test, the benefit to the applicant does not outweigh the detriment to the health, safety and welfare of the community. Based on this criteria, I deny the application. Seconded by Stephen Shelley.

Motion unanimously carried to deny (5-0) (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

Chairperson Robillard polled the Board for their reason to deny this application:

Tim Thomas: Stated his motion speaks for his reasons.

Stephen Shelley: I believe there may be other means feasible to the applicant to obtain the objective and I believe there will be a change to the neighborhood character.

Veronica Robillard: Based on our special requests for the applicant to look at other possible locations and this did not happen. Also, I believe this placement will negatively impact the neighbors.

Tina Brown: Based on the balancing test, the benefit does not outweigh any detriment to the health, safety and welfare of the community.

Dean Snyder: The applicant elected not to provide information on alternative locations and instead wanted the current proposal to be considered. The proposed placement blocks a major swale between the neighbor's property and to the east and the question of how the drainage would be maintained on their property was not answered. Other locations may impact neighboring properties, but this information was not provided, therefore I was unable to determine if this location minimizes the impact on neighboring properties.

Public hearing for the fence: None. The public hearing was closed.

Following further discussion, a **Motion** was made by Tim Thomas to approve the application of James Kesselring, owner, for an area variance at 20 Clearview Avenue to allow a 4 feet high closed style fence to remain in the front yard. This grants relief from Article 16, subsection 165-128.A.2 which states in part that closed fences shall not be permitted along any front lot line and that fences along the front lot line shall not be higher than 3 feet above the adjacent ground level. This property is currently zoned Waterfront Residential (WF). In making this determination to approve:

- I believe the benefit cannot be achieved by other means feasible to the applicant. This is lakefront property which is unique and typically the front yard and back yard is reversed. If this were a back yard, the fence would be acceptable. This should be treated differently because of the uniqueness of the lakefront property. This fence is replacing a chain link fence.
- There will be no undesirable change in neighborhood character or to nearby properties.
- The request is substantial as it pertains to the way the code is written, but mitigated by the uniqueness of this waterfront property.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created, but mitigated by the uniqueness of lakefront property. 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 approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

NEW PUBLIC HEARINGS

2. WAYNE NEWMAN – 134 COLLAMER ROAD

Application of Wayne Newman, owner, for expansion of a non-conforming use at 134 Collamer Road. The applicant has renovated the second floor of an existing garage and converted it to living space. Town Zoning Article 12, subsection 165-91 states, in part, that the expansion of a non-conforming use or structure shall be subject to approval by the Zoning Board of Appeals. Applicant is also applying for the following variances: (1) relief from Article 5, subsection 165-33-E.2a, which requires a minimum living area of 1,200 square feet. The existing second floor is 1,036 square feet. (2) relief from Town Zoning schedule 1 which requires a ten feet side setback from property lines. The structure is 2.8 feet from the southerly property line and 1.8 feet from an easterly property line. and (3) applicant is proposing to rebuild the rear portion of the barn on the property which will increase the storage area on this property by 1,281 square feet, bringing the

total storage area to 2,900 square feet and is requesting relief from Town Zoning Article 5, subsection 165-33.C.2, which limits the area of accessory buildings to 600 square feet. This property is currently zoned Medium Density Residential (MD).

Wayne stated that he had a demolition permit to take down a barn on this property but never got a building permit to renovate the second floor of the existing garage, which he uses to access the house.

Chairperson Robillard referred to zoning code 165.92. Abandonment. In any district, whenever a non-conforming use of land, premises, building or structure, or any part or portion thereof, has been discontinued for a period of one year, such non-conforming use shall not thereafter be re-established and all future uses shall be in conformity with the provisions of this chapter.

Wayne explained that he never abandoned the building and has been working on the property since he purchased it in 1994 or 1995. He referred to the Town records and inspections. Chairperson Robillard asked if he has lived at this address since he purchased it. Wayne replied he replaced the old electric meter in 1997 and put in brand new services. He noted that he never used gas; instead he always used Kerosene heaters. Wayne stated that the meter is listed for 142 Collamer Road. He had two electrical services on the property, one at 137 and one at 142. When he ordered the new electric service, he gave them the wrong address. Wayne recalled that when he purchased the property from the Macks, the apartment was rented. He cleaned out the building and the property and made it acceptable to him. He remodeled the upstairs and moved up there. He didn't know he needed a building permit to remodel the inside of his house. He stated he has worked a lot of years on this property but didn't change the footprint.

Chairperson Robillard asked if he could provide documentation to prove he lived there continuously since he purchased it. Wayne stated he could provide RG&E bills from 1995. He stated he did cancel his phone because he uses a cell phone. He listed names of people who owned the property previously who might have phone bill records. He stated he has mail delivered there.

Chairperson Robillard explained that Wayne needs to provide documentation that he has lived there continuously.

Public Comment:

Chairperson Robillard read the following letters regarding this property from:

Henry Dude, Custom Cabinets – 133 Colamer Road: In a letter dated 1/29/09, he recalled the history of the property since the early 50's.

Jeffrey Forberg – 206 Dunbar Road: In a letter dated 4/16/09, he stated that 134 Collamer Road was used to house migrant workers in the 1970's. The workers lived in the dwelling next to the road and in a trailer located behind the barn.

Bud Hendershott – Recalled 134 Collamer Road as a farm when he was 16 years old. When he returned from the service in 1945, the house was used as a residence by a farm worker who maintained the equipment and worked the farm land.

Dean Snyder explained that we can't approve the use of this property until we establish that it has been used continuously as a residence without more than a 12 month period of inoccupancy.

Wayne asked when the code went into effect regarding the 12 month period. Dean Snyder read code 33-27.B, which went into effect in 1984. Jack Barton offered to research this.

Wayne stated that from 1992 to 1994, the farm was unoccupied. When he purchased the property, there was a furnace, shower, kitchen, bedroom and bathroom. This looked like a house to him.

Dean Snyder explained that this structure is non-conforming because it didn't meet building codes.

Wayne stated that since he bought the property in 1994, he has stayed there most of the time. He never stayed away for more than 2 months. Chairperson Robillard suggested that he provide a timeline of residency. She explained that the ZBOA needs convincing information that this has been used as a residence ongoing for a long time. She suggested documentation be obtained from the utility companies, the post office, taxes paid, written documentation from neighbors, income tax records, etc. to show there hasn't been a 12 month period of vacancy.

Wayne stated he understood the documentation that was required and requested this application be tabled to the August meeting to allow him additional time to obtain it.

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 explained that the Building Department has no record of any renovation of living space for this property. The applicant needs to provide documentation that he has been a resident continuously since 1940, when it became a non-conforming use. Jack noted there are issues to be resolved regarding building code violations.

Following discussion, a **Motion** was made by Dean Snyder to table the application of Wayne Newman, owner, for expansion of a non-conforming use at 134 Collamer Road, without prejudice, in order to allow the applicant an opportunity to provide proof of continuous occupancy since 1940. Seconded by Tina Brown. **Motion unanimously approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

3. ANATOLIY AND POLINA PRUS – 129 UNDERWOOD AVENUE

Application of Anatoliy and Polina Prus, owners, for an area variance at 129 Underwood Avenue. Applicants are proposing to erect a six feet high privacy fence along their rear property line with a setback of 0 feet. The fence will extend to both side property lines. Applicants are requesting relief from Town Zoning Article 16, subsection 165-128.B.2 which states, in part, that fences up to a height of six feet may be permitted on a lot for the express purpose of enclosing or screening a swimming pool or patio area. Such fences shall be subject to side and rear setback requirements. Town Zoning Schedule 1 requires a ten feet setback from the side and rear property lines. This property is currently zoned High Density Residential (HD).

Mr. Prus stated that they purchased this house last July and the builder promised to plant arborvitae bushes to separate the commercial area behind their house from this property. He explained they have 3 children and have concerns for their safety. The commercial area behind them includes three businesses with a lot of traffic, noise and emissions. He explained they decided a 4' high fence would not provide protection. They want a fence high enough to prevent anything from falling over the fence. He stated he talked to the neighboring businesses and no one had a problem with a higher fence. The proposed fence would be 85 feet in length, which is the entire rear width of his property. He stated that the neighbors on both sides rent and weren't interested in improving the property.

Dean Snyder questioned why they wanted a 6' high fence instead of the allowed 4' high fence. Mrs. Prus explained they wanted to hide the commercial view. They felt this would increase the value of their property. Dean noted that the builder never put in the arborvitae bushes as promised, and this would provide the privacy they desired.

Mr. Prus listed his reasons for a 6' high fence:

- Minimize noise and emissions from cars and commercial equipment
- Act as a barrier from high dust clouds due to gravel in the driveway
- Minimize effects from high traffic due to three different businesses
- In the winter, snow piles from the businesses would crush the allowed 4' fence
- Act as a screen from the eyesore of the businesses. This includes a huge dumpster containing hazardous material, large piles of scrap metal and huge equipment.
- Not having a 6' high fence would result in a safety issue for their children.
- Act as a barrier from garbage that blows around into their yard.

Public Comment:

Jack Barton read letters in the file as follows:

Milchmatt Inc – 650 Lake Avenue: Asked to allow a fence between the applicant's property and Milchmatt. This fence would allow privacy.

Kevin Clark – 127 and 131 Underwood: Stated they are in favor of a higher fence. This would increase the value and safety for the applicants and only result in a benefit from this action.

A brief recess was called at 8:55 p.m. The meeting reconvened at 9:05 p.m.

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 deny the application of Anatoliy and Polina Prus, owners, for an area variance at 129 Underwood Avenue to erect a six feet high privacy fence along their rear property line with a setback of 0 feet. The fence would extend to both side property lines. This denies relief from Town Zoning Article 16, subsection 165-128.B.2 which states, in part, that fences up to a height of six feet may be permitted on a lot for the express purpose of enclosing or screening a swimming pool or patio area. Such fences shall be subject to side and rear setback requirements. Town Zoning Schedule 1 requires a ten feet setback from the side and rear property lines. This property is currently zoned High Density Residential (HD). In making the determination to deny:

- It is very evident that there are other means available to the applicants to achieve the outcome. These were discussed with the applicant.
- The proposed fence would create an undesirable change in the neighborhood character and to nearby properties. The code specifically states that fences up to a height of six feet may be permitted on a lot for the express purpose of enclosing or screening a pool or patio area. My concern is that subsequently down the road, other residents will request this type of fence, and we want continuity.
- The request is substantial. There is no pool or patio to warrant this 6 feet high fence.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is 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. The application should be denied.

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

Chairperson Robillard polled the board to explain their reason for denying this application:

Tim Thomas: stated his motion speaks for his reasons.

Stephen Shelley: There are other means available to achieve the desired privacy. A smaller fence is allowed and planting arborvitae would result in the desired privacy.

Veronica Robillard: The benefit that the applicant seeks can be achieved by other means feasible, which are reasonable and would improve the neighborhood.

Tina Brown: Using the balancing test, the benefit may be achieved by other feasible means.

Dean Snyder: There is no pool or patio on this property; therefore there is no reason for allowing the 6' high fence. There are other means, such as arborvitae and a 4' fence which is allowed. A 6' high fence on the property line would preclude the owner from planting the arborvitae. The arborvitae would provide much more protection. A 6' high fence would create a negative environmental impact. The arborvitae can be planted on the property line and this would allow the maximum use of the property and maximum protection with good visual impact.

MINUTES OF APRIL 16, 2009

Chairperson Robillard noted that these minutes were 35 pages and were just recently received. Several Board members requested additional time to review them. There was a consensus to postpone discussion and approval of these minutes until the July ZBOA meeting, to allow the Board members additional time to review the minutes.

MINUTES OF MAY 21, 2009

The May 21, 2009 ZBOA minutes were reviewed. The following changes were recommended: page 1, item 1, Para 2, change "attorney" to "engineering firm"; page 4, item 5, Para 2, line 1, change to "...is 100 feet wide and has a total of 2 acres"; page 5, two typos, page 6, 1 typo, page 8, add to "Other" "The Board agreed with this interpretation." A **Motion** was made by Stephen Shelley to approve the May 21, 2009 ZBOA minutes with the recommended changes. Seconded by Tina Brown. **Motion unanimously approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

OTHER

Training sessions handout. Jack Barton provided information on Planning and Zoning Summer School programs sponsored by the Association of Towns of the State of New York.

Employee Handbook. Jack Barton reported that review of the Employee Handbook is required and following the review, he asked the Board members to sign and return the acknowledgment form. He offered copies by e-mail or paper copies. Veronica Robillard and Dean Snyder requested paper copies.

New Town Board Liaison. Jack Barton introduced Jim Roose, the new Town Board Liaison.

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Stephen Shelley, to adjourn the meeting at 9:30 pm.

Respectfully submitted,
Diane Grundon, Recording Secretary