

**TOWN OF PARMA
ZONING BOARD OF APPEALS
DECEMBER 17, 2009**

Members Present: Tina Brown
Veronica Robillard
Stephen Shelley
Tim Thomas
Jim Zollweg (alternate)

Others Present: Jack Barton, Bob Prince, James Roose (Board Liaison)

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.

TABLED PUBLIC HEARINGS

1. 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).

Chairperson Robillard recalled that this application was tabled until the January 2010 ZBOA meeting, without prejudice, in order to allow the applicant an opportunity to provide proof of continuous occupancy since 1940.

2. MARK EVANS – 5461 RIDGE ROAD WEST

Application of Mark Evans, as applicant, for a modification of an existing use variance for property located at 5461 Ridge Road West. Applicant is requesting that the existing use variance, which allows the tenant to operate a “custom and specialty motor vehicle paint and repair shop” be modified to allow an auto body repair shop. Applicant is requesting relief from Town Zoning Article 165-39 which does not allow auto repair as a permitted use. Property is currently zoned General Commercial (GC).

Chairperson Robillard recalled that this application was tabled until the January ZBOA meeting to allow the applicant ample time to provide the ZBOA with the required information to determine, based on use variance criteria, the hardship with the current use and each and every permitted use.

3. MICHAEL MATTIA – 1195 WEST AVENUE

Application of Michael Mattia, owner, for four variances at 1195 West Avenue. Applicant is proposing to merge this parcel with 1201 West Avenue and then construct a 1,984 square feet accessory storage building in the front yard with a wall height of 14 feet and is requesting relief from (1) town Zoning Article 5, subsection 165-32-C.2 which limits the total area of all permitted accessory structures to 1,500 square feet. The total area of accessory structures for this property is proposed to be 2,085 square feet; (2) Article 10, subsection 165-82.C.3 which states in part that detached accessory buildings shall be located in the rear yard.; (3) Article 10, subsection 165-82.C.2 which limits the wall height to 12 feet; and (4) Town Zoning which defines an accessory structure as being subordinate in area to the primary structure (home), which has a footprint of 1,545 square feet. This property is zoned Rural Residential (RR).

Chairperson Robillard recalled that this application was tabled since his original presentation in August.

Michael provided a photo of the revised plan for this accessory storage building, noting it is now 36 x 40 totaling 1400 square feet. The 14' side walls and setback request still remain. He explained that a 14 feet side wall is needed because of the style of the building he prefers. He noted that 1440 square feet is within variance. He stated if he were to build a square building using a 12 feet high side wall, the roofline would not look the same. He wants it to look like a horse barn. He noted on the drawing that the side wall is not 14 feet; the interior wall of the building is 14 feet due to the style. He showed a comparison of a building with 12 feet high side walls and the 14 feet side wall, noting that the 12 feet side wall building looked square and appeared larger. He noted that no windows will be in the upper portion. In looking at the drawing provided, it was noted that the center side wall is 17 feet. Michael stated that the 17 feet is needed to keep the two rooflines at the same pitch. Jack Barton confirmed that we cannot approve a 17 feet high wall because only 14 feet was advertised. Michael responded that he could use a 14 feet side wall instead of changing it to 17 feet and will make a different pitch on the two rooflines. Michael reiterated that the 14 feet request is purely for esthetics. He doesn't like the look of other buildings. Jack Barton noted that if the motion stipulates a 14 feet side wall, this would assure that is what will be built. Michael noted that the two exterior walls will be 10 feet high; only the interior walls will be 14 feet high.

Public Comment:

Bob Prince: Questioned the total square footage. Jack Barton replied that with the existing shed, it comes to just under 1542 square feet, which is allowed.

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 SEQOR with no further action required.

It was noted that, referring to the modified application as presented, negates the request for variance #4.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of Michael Mattia, owner, for three variances at 1195 West Avenue. Applicant is proposing to merge this parcel with 1201 West Avenue and then construct a 1,440 square foot accessory storage building in the front yard with a wall height of 14 feet and this grants relief from (1) town Zoning Article 5, subsection 165-32-C.2 which limits the total area of all permitted accessory structures to 1,500 square feet. The total area of accessory structures for this property is proposed to be 1542 square feet; (2) Article 10, subsection 165-82.C.3 which states in part that detached accessory buildings shall be located in the rear yard.; and (3) Article 10, subsection 165-82.C.2 which limits the wall height to 12 feet. This property is zoned Rural Residential (RR). In making this determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. The location of the house and creek and the very steep drop off leaves no other feasible location for this building. Relative to the side wall height, I believe that the requested 14 feet side wall height, which encompasses 10 feet side walls and 4 feet side wall dormers, is an esthetically pleasing design compared to the alternative structure that was presented to the board. Relative to total area of accessory structures for this property, I don't believe that the difference of 1500 versus 1542 is negligibly larger. There will be no undesirable change in neighborhood character or to nearby properties. The applicant has done a satisfactory job in trying to plan a structure with curb appeal and to have it blend with the surrounding area. The request is substantial but is unique with the location of the creek. The side wall is warranted because of esthetics. There will be no adverse physical or environmental impact. The alleged difficulty is somewhat self-created but this is mitigated by the geography of the 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 carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

4. JOHN CHART – 969 HILTON PARMA CORNERS ROAD

Application of John Chart, owner, for an area variance at 969 Hilton Parma Corners Road. Applicant has placed a temporary free speech sign in his front yard at a zero foot setback and is requesting relief from Town Zoning Article 14, Subsection 165-111D which states in part that all free standing signs shall be set back a minimum of 15 feet from all lot lines. Applicant is also requesting that this variance be allowed to remain for any signs that he may erect in the future. This property is currently zoned Rural Residential (RR).

Chairperson Robillard recalled that this application was tabled until the January ZBOA meeting at the request of the applicant to allow him time to seek counsel and prepare his presentation.

NEW PUBLIC HEARINGS

5. DENNIS SCHULER II – 78 WEST BEACH ROAD

Application of Dennis Schuler II, owner, for two area variances at 78 West Beach Road. Applicant is proposing to construct a 6.5 feet high privacy fence with a zero foot side setback from the westerly property line and is requesting relief from Town Zoning Article 16, subsection 165-128.B.2 which limits privacy fences to six feet in height and a minimum side setback of 10 feet. This property is currently zoned Waterfront Residential (WF).

Dennis explained he originally had a privacy fence for his deck which existed when he bought the house. The privacy fence fell down and when replacing it, they discovered they needed a variance. He noted on a sketch map the location of the fence. He explained that this fence protects the hot tub area from winds. A solid wall fence of 2 x 4's protects the hot tub on two sides. He stated the cement pad that the hot tub is on is a couple feet from the property line. He noted measuring from the ground up, the fence wouldn't be higher than 6 feet.

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 of Dennis Schuler II, owner, for an area variance at 78 West Beach Road to construct a 6 feet high privacy fence with a zero foot side setback from the westerly property line and this grants relief from Town Zoning Article 16, subsection 165-128.B.2 which limits privacy fences to six feet in height and a minimum side setback of 10 feet. This property is currently zoned Waterfront Residential (WF). The applicant indicated that the 6 feet high fence is adequate, which zoning allows. In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. Considering the nature of lakefront properties with the pre-existing, non-conforming homes and setbacks, this is the best option to provide privacy for the hot tub. There will be no undesirable change in neighborhood character or to nearby properties. The lakefront properties are unique with non-compliant structures and close proximities of homes. The request is substantial but mitigated by the unique nature of lakefront properties. There will be no adverse physical or environmental impact. 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 Jim Zollweg. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

6. JOSEPH DIOGUARDI – 4606 RIDGE ROAD WEST

Application of Joseph Dioguardi, owner, for an area variance at 4606 Ridge Road West. Applicant is proposing to erect a freestanding sign with a zero foot front setback and is requesting relief from Town Zoning Article 14, subsection 165-111.D which states in part that all freestanding signs shall be set back a minimum of 15 feet from all lot lines. This property is currently zoned Highway Commercial (HC).

Joseph stated they are trying to put up a sign to identify their business. In 1999, the sign was hit by a car and he purchased the building and wants to put up a sign where the old sign was. He explained he used to lease the building. He provided a photograph of the building. Tim Thomas asked if he considered putting a sign on the building. The applicant stated he preferred the freestanding sign. Other alternative locations were discussed but his proposed location provides the best visibility of the sign by passing motorists.

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 of Joseph Dioguardi, owner, for an area variance at 4606 Ridge Road West to erect a freestanding sign with a zero foot front setback and this grants relief from Town Zoning Article 14, subsection 165-111.D which states in part that all freestanding signs shall be set back a minimum of 15 feet from all lot lines. This property is currently zoned Highway Commercial (HC). In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. He presented a good explanation that because of the unique location of the house and location of the right of way, he doesn't have a visible sign if he conforms to zoning. A 0 foot setback is needed for a visible sign for his business. There will be undesirable change to neighborhood character or to nearby properties because this is located in a commercial area and there are a number of similar signs in the area. The request is substantial. There will be no adverse physical or environment affects. The alleged difficulty is self-created, however, using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare to the community. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

7. VICTOR AND PATRICIA ROBINSON – 413 TRIMMER ROAD

Application of Victor and Patricia Robinson, owners, for an area variance at 413 Trimmer Road. Applicants are proposing to merge a portion of 397 Trimmer Road, which includes a barn, into 413 Trimmer Road. The barn will be located in the side yard. Applicants are requesting relief from Town Zoning Article 10, subsection 165-82.C.3 which states in part that all detached accessory structures shall be located in the rear yard. This property is currently zoned Medium Density Residential (MD).

Victor explained they plan to merge a portion of this property to avoid moving the house or barn, which are currently on both pieces of property, which totals 10 acres. The result of merging the property is that the barn setback is not far enough from the house. The barn setback is 75 feet and the house is 108 feet. He stated it is difficult to maintain all this property and with this merge he can keep the barn and sell the remaining land. He stated that he rents out the house on 397, but not the barn. He stores antiques in the barn. The 397 property does not have a garage. He stated he has always owned 200 feet of the property, but after his mother passed, he bought the rest of the property.

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 of Victor and Patricia Robinson, owners, for an area variance at 413 Trimmer Road to merge a portion of 397 Trimmer Road, which includes a barn, into 413 Trimmer Road. The barn will be located in the side yard. This grants relief from Town Zoning Article 10, subsection 165-82.C.3 which states in part that all detached accessory structures shall be located in the rear yard. This property is currently zoned Medium Density Residential (MD). In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. As stated by the applicant and evidenced by the history of this property, it has been there for at least a century. Removing the barn would be a detriment to the property. There will be no undesirable change in neighborhood character or to nearby properties. The barn has been there longer than some of the homes in the neighborhood. The request is substantial but this barn was built prior zoning code. There will be no adverse physical or environmental impact. The alleged difficulty is not self-created because of the longevity of the barn – at least a century. Merging these properties will not result in any visual impact. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Jim Zollweg. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

SPECIAL PERMIT RENEWALS

1. DONALD AND NANCY TOWN – 18 CLEARVIEW AVENUE

Application of Donald and Nancy Town, owners, for a Special Permit at 18 Clearview Avenue. Applicants are proposing to use their home as a tourist home (bed and breakfast) which is allowed with a Special Permit. This property is currently zoned Waterfront Residential (WF).

Chairperson Robillard recalled that this application was tabled until the February ZBOA meeting, due to the fact that this special permit was allowed to expire and that the property is now non-compliant with the newly erected fence.

OTHER

2010 Calendar: The only change to the preliminary dates is to change the April date to Monday, April 12th due to the absence of the recording secretary.

Workshop Review: Chairperson Robillard provided an overview from a zoning workshop she recently attended.

Sign Issue: Jack Barton reported that Lara Badain, Town Attorney, researched town law and procedure and was unable to provide justification to require John Chart to remove the sign in his front yard until the application is heard and a determination is made. She reported that the only reason cited was if there was imminent peril to public safety, which is very difficult to prove and would involve law enforcement and others. A dangerous situation cannot be proven in this case, which would be a subjective opinion.

MINUTES OF NOVEMBER 19, 2009

The November 19, 2009 minutes were reviewed. The following changes were recommended: page 1, Para 2, line 2, change to “that all criteria must be met”; page 4, Para 2, change “Patrick Buskey” to “Tina Brown”; Para 3, line 2, change to “She stated that an application to the ZBOA is a stay of enforcement until the application is decided by the zoning board.” Para 5, line 9, change to “The zoning board cannot release the stay of endorsement and require the sign be removed until a decision is made on the application for variance. This could possible be done at the December meeting.” Remove “but she was unsure whether a motion is required. This can be done at the December meeting. If a motion is not...”; page 5, last Para, last line, change to “...when the setback requirement was only 5 feet.”; page 6, Para 3, last line, change “complaints” to “compliance.” Last Para, line 10, change..An addition of 12” over the allowed, as stated in Article 165.80.E.1, article 10.; page 7, change applicant’s names to “Donald and Nancy Town – 18 Clearview Avenue; page 8, add “renewal of” to Jansen application. Following review, a **Motion** was made by Stephen Shelley to approve the December 17, 2009 ZBOA minutes with the recommended changes. Seconded by Tim Thomas. **Motion approved (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas; Absent: Dean Snyder)

ADJOURNMENT

There being no further business, a **Motion** was made by Jim Zollweg, seconded by Tim Thomas, to adjourn the meeting at 8:35 pm. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

Respectfully submitted,
Diane Grundon, Recording Secretary