

**TOWN OF PARMA  
ZONING BOARD OF APPEALS  
FEBRUARY 18, 2010**

**Members Present:** Tina Brown  
Stephen Shelley  
Dean Snyder  
Chairperson Thomas  
James Zollweg

**Members Excused:** Veronica Robillard

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

**Public Present:** See attached list

The meeting was called to Order by Acting Chairman, Chairperson Thomas, at 7:05 p.m. He explained the function of the ZBOA and the decision-making process. He noted that this is a five-member board and a quorum of three is required to pass a motion. He offered hearing aid devices for anyone who required them.

**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 Thomas recalled that this application was tabled until the February ZBOA meeting, without prejudice, at the request of the applicant and his attorney.

Scott Chatfield, attorney, stated that Mr. Newman has asked him to present this unusual case to the zoning board. He recalled that Mr. Newman was told that in order to occupy the existing structure, it was necessary to obtain a variance. He stated he disagrees with this.

Mr. Newman's property at 134 Collamer Road contains a residence which is partly located within the right-of-way of Collamer Road. This has existed in this manner since long before zoning came into existence in the Town. Likewise the southerly setback from the property line either predates the code or was established to satisfy a former encroachment.

Mr. Chatfield stated that the existing foundation of the old barn has nothing to do with Mr. Newman's house. He obtained a demolition permit and asked if he could rebuild it and he was told he could. Mr. Newman took down the old barn and a year later was told he couldn't rebuild the barn. He was told it was too large. Mr. Newman stated he is a farmer and his land is considered agricultural. Mr. Newman feels he can rebuild anything he needs for agriculture.

Mr. Chatfield handed out selected portions of the Town of Parma code. He stated that this structure predates current zoning and does not comply. It could not be built today. He referred to code 165.17 non-conforming buildings or structures, noting no use is stated, just location. He noted that this code was amended on 4/18/2000. The code differentiates between non-conforming structures and non-conforming uses. This is a non-conforming structure but the use is conforming. He referred to the permitted uses, principal uses and prohibited uses. Section 165-91 and Section 165-92 apply only to non-conforming uses, not non-conforming structures except that section 165-91 prohibits the expansion of a non-conforming structure only where that expansion does not comply with the Code. Here, other than the deck, no expansion was proposed, and the deck is in full compliance with the code. Chairperson Thomas stated that this structure was used as temporary housing for farm help. This is an accessory building that our code allows to use as temporary housing for farm labor. Mr. Chatfield stated that its uses in the past are not relevant, that they are looking for a use as a single family dwelling. Mr. Chatfield stated his opinion that a structure is use neutral. You can use a structure for a legal use or illegal use. If the use is a permitted use, then a variance is not necessary. A non-conforming use variance is needed if the use is to be substantial. Mr. Chatfield stated that the law can't take away an existing non-conforming structure if it does not meet with the geometric requirements. A structure never loses its non-conformity. Because only non-conforming use of land buildings and structures is subject to the abandonment provision of section 165-92 and because Mr. Newman's building has never contained a non-conforming use, Section 165-92 is inapplicable.

Mr. Chatfield recalled that when Mr. Newman purchased this property in 1994 it had a 3 car garage, with a bathroom with a toilet, shower and sink. Upstairs were 3 bedrooms, a living room, kitchen and a bathroom. He stated he cleaned up the structure, as it was outdated. Mr. Newman came to the building department and asked if he changed the inside, does he need a building permit. He was told as long as he didn't change the outside structure, a permit wasn't needed. Mr. Newman stated he has stayed there intermittently since 1994. Mr. Chatfield stated his contention that expansion is considered enlarging the structure. Dean Snyder asked for a definition of "expansion." Mr. Chatfield replied to expand was that you physically increase its size or dimension. This plays a role because Mr. Newman added a deck to the rear of the structure, but denies an expansion that makes the degree of non-conformity increase, which is prohibited.

Mr. Chatfield referred to zoning Article XII, 165.89 Continuous use. He reviewed "B": degree of non-conforming use. He compared conditions for a non-conforming structure versus a non-conforming use. A non-conforming structure does not go away; a non-conforming use can be lost by not continual use for a year. He referred to 165.93, which states that a building damaged by fire or other causes can be rebuilt, but no structure shall increase the degree of non-conformity.

Dean Snyder referred to 165.91, Para A, 1), questioning: If we authorize expansion of a non-conforming structure, does this part of the code require the Board to review the expansion of a non-conforming use? Chairperson Thomas reiterated that the use was for temporary housing. Mr. Chatfield stated that this is a residential dwelling. Chairperson Thomas questioned that if this structure was never used for farm help, could it be converted to a residence? Mr. Chatfield stated "yes," but within the building codes and requiring a building permit. It is right to occupy this as a residential dwelling. A single family dwelling is a permitted use.

Dean Snyder stated that he felt that the Board needs to confer with the Town attorney to review the information provided by Mr. Chatfield. Chairperson Thomas questioned the Board if they would like to hear any more points or to confer with the Town attorney. Dean Snyder stated that he was willing to hear the additional points but based on our attorney's advice. The Board needs to process the information after seeking counsel.

Mr. Chatfield stated that he agrees with the case that Lara Badain, Town Attorney, cited in her letter to him dated February 16, 2010, but disagrees with her statement, as follows: "However, it is the Town's position that the intent is the same and that your client's substantial alteration of the premises to convert it to living space would be considered an "expansion" within the meaning of 165-91 and would therefore need to comply with the other code requirements before a permit could be issued." Mr. Chatfield provided printed pages of several cases that he felt supported his case.

Chairperson Thomas thanked Mr. Chatfield for presenting the information and for the documentation he provided. Dean Snyder stated that we need some guidance from the Town Attorney before we can continue with this application. Mr. Chatfield noted that this was advertised as an area variance, asking what possible criteria could the Board use to deny an area variance, which would render the property valueless. He stated his opinion that this is why you don't need an area variance to continue the use in a non-conforming structure. In answer to a question regarding the agriculture use, Mr. Newman stated he leases 20 acres of land to John Hanna who farms it. Mr. Newman stated he does not farm himself.

Mr. Chatfield reviewed the various variances listed in the public hearing notice:

- 1) Mr. Newman stated he has resubmitted square footage and he feels he complies
- 2) This will be addressed after the Town attorney's counsel
- 3) Not needed in this agricultural property.

**Public Comment:** None.

Following discussion, a **Motion** was made by Dean Snyder to adjourn the application of Wayne Newman, owner for expansion of a non-conforming use at 134 Collamer Road, without prejudice, to the March meeting. Seconded by Stephen Shelley. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard)

## NEW PUBLIC HEARINGS

### **2. HEIDI SCHWENK – 80 BAILEY ROAD**

Application of Heidi Schwenk, executrix, for an area variance at 80 Bailey Road. Applicant is requesting relief from Town Subdivision regulations Article 4, Subsection 130-15.D.; 4 which states in part that backland lots may be approved provided that there is a right of way access strip at least 20 feet in width, owned in fee with the lot, which extends from a public street to the lot. This parcel currently owns a 19.5 feet wide strip to Bailey Road. This property is currently zoned Rural Residential (RR).

Gordy DiBattisto stated he is in the process of purchasing this 9 acre property for a single family residence, not for a subdivision. He noted that the access to this property originally was 18 ½ feet. He explained that the property was recently surveyed by Schultz Associates and new dimensions were discovered, leaving the access road just an inch short. Therefore, he is asking for a 1.68" variance. He provided a copy of the survey map. Chairperson Thomas provided two photos of the property and Gordy verified it was 80 Bailey Road. Gordy noted the dimension holds true down the entire access road. Chairperson Thomas noted that just south of the lot there was a gated property. Gordy explained that the driveway is the only access to this property.

**Public Comment:**

**William Kearney – 90 Bailey Road:** He questioned the #80 address. He stated he lives next door to the access road and he is #90 and the neighbor on the other side of the access road is #88. Jack Barton explained that sometimes lots are numbered this way for back lots.

**Ken and Janet Sechrist – 76 Bailey Road:** As to look at the location of the access road. After reviewing the map, they stated they were okay with the location.

**Steve Sepaniak – 72 Bailey Road:** Questioned how this survey was wrong initially. Jack Barton explained that a survey wasn't required until now.

**William Kearney – 90 Bailey Road:** Asked what the property will be used for. It was reiterated that Gordy will be building a single family home on this property. It was explained that if anything other than a single family home is requested then a variance would be required for the access road and also the planning board would need to review it

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.

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Heidi Schwenk, executrix, for an area variance at 80 Bailey Road to grant relief from Town Subdivision regulations Article 4, Subsection 130-15.D.; 4 which states in part that backland lots may be approved provided that there is a right of way access strip at least 20 feet in width, owned in fee with the lot, which extends from a public street to the lot. This parcel currently owns a 19.5 feet wide strip to Bailey Road. This property is currently zoned Rural Residential (RR). In making the determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. I assume that in the 60's when this lot was subdivided, the appropriate amount of land was left in order to access it at a future date. There will be no undesirable change in the neighborhood character or to nearby properties. In fact, this will grant relief for 6" which will not change anything whatsoever. The request is not substantial. There will be no adverse physical or environmental effect because it is such a small percent of the required access road width. The alleged difficulty is not self-created. 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, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard)

### OTHER

**March "Christmas Party"** Jack Barton reminded the ZBOA members that we will hold our annual Holiday party following the meeting in March.

**SEQR update** Jack Barton provided a handout that described a recent decision by the NY Appellate Division regarding SEQR.

**MINUTES OF JANURY 21, 2010**

The January 31, 2010 minutes were reviewed. The following changes/additions were recommended: Page 1, last Para, line 3 change to "...and his attorney and the Town attorney." Page 3, under Richard Vance, change to "...sign up for 8 months."; Page 6, under (2) change to "...this is a garage and there is a site limitation." Last Para of motion, add "only" after SUV vehicles. Page 8, Para 2, line 4, change to ..built a "two story garage and they have.." A **Motion** was made by Stephen Shelley to approve the January 21, 2010 ZBOA minutes with the recommendations changes. Seconded by Tina Brown. **Motion carried (4-0)** (Ayes: Tina Brown, Stephen Shelley, Dean Snyder, Tim Thomas; Abstain: Jim Zollweg; Absent: Veronica Robillard)

**ADJOURNMENT**

There being no further business, a **Motion** was made by Dean Snyder, seconded by Jim Zollweg, to adjourn the meeting at 9:00 pm. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard)

Respectfully submitted,  
Diane Grundon, Recording Secretary