

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

**Members Present:** Tina Brown  
Veronica Robillard  
Stephen Shelley  
Dean Snyder (7:10 pm)  
Tim Thomas

**Others Present:** Jack Barton, Art Fritz, Bob Prince, Jim Zollweg (alternate),  
James Roose (Board Liaison)

**Public Present:** See attached list

The meeting was called to Order by Chairperson 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. She 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).

Wayne asked if he could tape the meeting, per his attorney's request. Chairperson Robillard stated he could.

Chairperson Robillard referred to the February minutes, recalling that this application was adjourned at that time.

Tim Thomas noted there might be one variance that is not necessary in this application due to the property being zoned agricultural. Wayne stated he has a letter from the building department that states his property is zoned agricultural. Jack Barton responded he would have to confirm that this property is an agriculture district. Dean Snyder questioned the applicant if his property is taxed as agricultural. Wayne noted that he rents part of his land to a farmer but has never filled out any paperwork for tax purposes to identify it as an agricultural district.

Chairperson Robillard read a letter dated March 17<sup>th</sup> to Scott Chatfield, the attorney representing Mr. Newman, from Lara Badain, the Town of Parma's attorney. Lara stated she reviewed the enclosures and the letter, as well as the copies of materials provided at the Zoning Board meeting on February 18<sup>th</sup>. She stated that after discussing this with her client, it is her position that she respectfully disagrees with this interpretation and analysis of the relevant code sections. She stated that the zoning Board will be proceeding with Mr. Newman's application at the next ZBOA meeting.

Chairperson Robillard read Mr. Chatfield's letter dated March 18<sup>th</sup>, and then polled the Zoning Board if they had any contact with the Town of Parma Board. Each Zoning Board member stated they had no communication with the Town Board. It was agreed that the discussion of "client" was with the Town of Parma building department.

Jack Barton reiterated that Lara stated she read all the letters and viewed all the materials including handouts at the February 18<sup>th</sup> meeting and the ZBOA minutes. She had discussions with Tim Thomas and Jim Zollweg regarding their questions and clarification. Jack reported that Lara has had no contact with the Town Board whatsoever regarding this application.

Tim Thomas stated that we should continue with the application as advertised as a pre-existing, non-conforming use in a preexisting non-conforming structure. He expressed concern regarding the non-conforming use. The applicant has produced some information to show of and on use over the years since he purchased the property. Tim recalled the extensive information presented by the attorney at the February 18<sup>th</sup> meeting and the difficulty in reviewing all of it the same evening.

Tim referred to the structure being in the right of way. He stated the Board needs to look at this application as an extraordinarily unique circumstance. Living space in the right of way is a major concern.

Wayne explained that the house was built in 1850 and people lived there over all these years. The road was originally 30 feet wide and gravel. Later it was widened to 66 feet and the property owners were never notified that the building was non-compliant after this widening of the road. He questioned how this building was approved originally and there has been no problem until last year. He stated that the only change he made to the building was done inside.

Wayne questioned what the width of county roads is. Jack Barton stated it varies, but 66 feet is the narrowest road. He stated that the 1918 City Record State Highway Department showed Collamer Road as a 3 rod road. Wayne questioned why it was made a 66 feet wide road.

Tim Thomas stated that for the record, there was never any approval for this building.

Wayne stated that when the property was purchased, the survey map was accepted by the Town of Parma. Wayne stated he requested records for this property but some were lost in a fire a long time ago.

Jack Barton noted that the State residential building code does not allow living space within the right of way. Living space in the right of way is not in the Zoning Board's jurisdiction. A building permit could not be issued based on this fact and the applicant would have to go to the State to get approval.

Dean Snyder stated that he felt that the Zoning Board should address only the zoning board issues, not issues that are not in our jurisdiction.

**Public Comment:**

**Mike Weldon – 245 Dunbar Road:** Recalled the history of the structure, noting he remembers a washer and dryer downstairs, a living room, kitchen, bedroom and bathroom upstairs. This was 20 years ago, in the early 90's.

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.

Dean Snyder stated he did not feel educated enough to make this decision without the Town attorney here. He stated he felt much more comfortable looking at this application in terms of zoning portions, not State issues. He recalled the letters that were produced in the previous meeting about use. He noted that no one has come forward that they are concerned about this situation. He referred to the fact that there may be some records not being available, possibly being destroyed in the Town fire. He stated he felt comfortable saying this is a preexisting nonconforming use. It was used as a migrant housing and the road was enlarged since it was built. It is not a heavily traveled road, and they possibly decided not to take down the structure when the road was widened. He felt the applicant should have been concerned before renovating this structure, given this fact. Dean referred to the support received from the neighbors to look at this as a pre-existing, non-conforming use.

Tim Thomas asked if we go in that direction, do these variances fall into this. Dean Snyder stated that each variance would fall into a non-conforming use. Tim brought up the agricultural district issue. Jack Barton stated this is yet to be determined. Jack Barton stated that there is 1426 square feet per the new floor plan, with 390 square feet added from the first floor which has a laundry room, bedroom and downstairs rec room. It is not used as a garage. This is one unit making #1 in the application not necessary. Chairperson Robillard suggested that the building department might go in and measure this space and verify the dimensions. Tim stated that in lieu of not having a blueprint of the living space, could this satisfy documentation. Dean Snyder stated that with this information, #1 is not necessary. If this turns out to be incorrect, then they can come back to the Zoning Board.

Wayne recalled that he received a permit to take down the barn in back and was told he could rebuild or repair it. The building was red tagged as unsafe. After he took it down, he was then told he couldn't rebuild. Jack Barton stated that they did not look at it as an agriculture building. Tim Thomas recalled the foundation footprint is still there. If he wants to rebuild it, he is just putting things back the way they were. Wayne reported that a barn is used as living area on the corner of Curtis Road. Jack Barton stated that the Town is trying to eliminate preexisting non-conforming structures as they are taken down, and not allow them to be rebuilt as non-conforming. Chairperson Robillard read code 165.89.b., which stated non-conforming structures were not to be enlarged. Dean Snyder stated that this is only relevant if the actual structure was being enlarged, which is not the case. Dean referred to code 165.91 which covers expansion.

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Wayne Newman, owner, for area variances listed below based on the structure being considered a pre-existing, 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 is approved 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) 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 this grants 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).

I believe the building meets the criteria for a pre-existing, non-conforming structure. Although the applicant has not been able to prove continuous occupancy since zoning regulations have come into effect, there are several convincing facts: Records prior to 1966 may have been lost due to the Town of Parma fire. Letters provided by the following neighbors support creditability that there has been continuous use: Dale Platt dated August 20, 2009; Peter and Carol Urgola dated June 12, 2009; Henry Dudy dated January 29, 2009; Jeff Forberg dated April 16, 2009 and Bud Hendershott dated May 21, 2009. None of these letters were in opposition to the proposed variances, in fact, each of them strongly supported the pre-existing, non-conforming criteria. In our discussions, there has been a lack of public concern over these area variances. Again, there were no letters in opposition from neighbors or residents that I am aware of. A resident this evening shared with us that 20 years ago he was in the building and his report is consistent with a pre-existing, non-conforming use. This is a unique structure, built in the 1850's before current code and has been used as migrant worker's housing. The road has been significantly enlarged since the house was built in the 1850's and the right of way probably has been increased over the years.

In making this determination to approve:

- I don't believe the benefit can be achieved by other means feasible to the applicant. The applicant purchased the property that had a pre-existing non-conforming use. The applicant had bought a storage building and residence that were in dire need of repair. The applicant has done everything in his means to improve this property. The applicant has not followed code but I don't believe these errors take away his right to use his property.
- There will be no undesirable change in neighborhood character or to nearby properties. By replacing the storage barn, it will improve the property and also any improvements on the building will help the overall character.
- The request is certainly substantial.
- There will be no adverse physical or environment effects.
- Although the alleged difficulty is somewhat self-created, the majority of the difficulty is pre-existing with the property. Using the balancing test to make this determination, I believe the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community. In making this motion, it is understood that the applicant needs to satisfy other requirements by the State of New York and the Town of Parma. These will include, but are not limited to: building codes and fire codes and encroachment into the highway right of way. The Zoning Board of Appeals does not imply that by granting these variances that it negates the need to satisfy these other requirements. Seconded by Tina Brown. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

**NEW PUBLIC HEARINGS**

**2. THOMAS FLEMING – 5210 RIDGE ROAD WEST**

Application of Thomas P. Fleming Enterprise, owner, for a Special Permit at 5210 Ridge Road West. The applicant is proposing to display for sale up to 6 vehicles which would include motorcycles. The display area will be located in front of the building located on the west side of the property. The display and sale of vehicles is allowed with a Special Permit. This property is currently zoned Highway Commercial (HC).

Arthur Pfund explained he did not realize they would need a special permit to sell six vehicles at a time. He provided a map of the property which indicates customer parking and where the vehicles for sale will be displayed. He reported that currently they do auto repairs and run a retail auto parts center. He stated they are looking for a special permit to sell vehicles in addition to this. Thomas stated that they have been in business for over 20 years at this location and this is the first time they have asked for something. He stated there would be no additional outdoor lighting required other than what is currently there. He explained they will be selling a combination of autos and motorcycles and occasionally boats with trailers. At any time, they will only have a maximum of 6 vehicles on display for sale.

**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.

Bob Prince noted this application will be presented to the planning board, where fire and safety issues that may be identified on inspection may have to be resolved. Bob also noted that an existing auto repair facility shares the same address.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of Thomas P. Fleming Enterprise, owner, for a Special Permit at 5210 Ridge Road West to display for sale a total of up to 6 motor vehicles to include motorcycles and boats with trailers. The display area will be located in front of the building located on the west side of the property. The display and sale of vehicles is allowed with a Special Permit. This property is currently zoned Highway Commercial (HC). This is pending Planning Board approval. The Special Permit is to be renewed in one year, March of 2011. Seconded by Stephen Shelley. **Motion unanimously carried (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

It was suggested to the applicant, that when his Special Permit is due for renewal, he could request a 3 year renewal.

**SPECIAL PERMIT RENEWALS**

**3. THERESA TROYER – 899 PECK ROAD**

Application was received from Theresa Troyer for renewal of a special permit to board up to 8 horses at 899 Peck Road.

Jack Barton reported no complaints on file. Art Fritz reported that a recent inspection found no violations.

Following discussion, a **Motion** was made by Tim Thomas that the application of Theresa Troyer for a special permit at 899 Peck Road to board up to 8 horses be approved with the following stipulations:

1. A minimum of four parking spaces to be provided in front of the barn as close to the barn as possible and away from the road. These spaces are to be accessible and plowed free from snow.
2. Hours of operation: winter 8 am to 8 pm; summer 8 am to 9:30 pm, 7 days a week.
3. No outdoor storage of animal waste. Accumulation of manure will not exceed the standard set forth in ordinance 165-57.
4. Any additional lighting shall not shine over the property line.
5. No outdoor storage of feed.
6. No deceased animals buried on the property.
7. No dumpster permitted.
8. Any signage in accordance with Town ordinance and permits.
9. Permit to be renewed February 2012, for a period of two years.

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

**4. THERESA TROYER – 893 PECK ROAD**

Application was received from Theresa Troyer, 893 Peck Road, for renewal of a special permit to allow public boarding of up to 6 horses on the premises. This property contains 11.6 acres and is located in a rural residential zone.

Jack Barton reported no complaints on file. Art Fritz reported no violations were identified on a recent inspection.

Following discussion, a **Motion** was made by Tim Thomas to approve the renewal of a special permit to allow Theresa Troyer to board up to 6 horses at 893 Peck Road with the following conditions:

1. Hours of operation to be 7 am to 9:30 pm in the summer, and 8 am to 6:30 pm in the wintertime.
2. No on-street parking.
3. To be renewed February 2012, for a period of two years.

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

**OTHER**

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

**May 14<sup>th</sup> Workshop:** Chairperson Robillard asked Board members to sign up for this workshop if anyone is interested.

**MINUTES OF FEBRUARY 18, 2010**

The February 18, 2010 ZBOA minutes were reviewed. The following changes were recommended: page 4, line 12 in the motion, a wording change as follows: “There will be no adverse physical or environmental effect because it is such a small percent of the required access road width. The alleged...” A **Motion** was made by Tim Thomas to approve the February 18, 2010 ZBOA minutes with the recommended change. Seconded by Stephen Shelley. **Motion carried (4-0)** (Ayes: Tina Brown, Stephen Shelley, Dean Snyder, Tim Thomas; Abstain: Veronica Robillard)

**ADJOURNMENT**

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

Respectfully submitted,  
Diane Grundon, Recording Secretary