

**TOWN OF PARMA  
ZONING BOARD OF APPEALS  
April 21, 2011**

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

**Members Excused:** Dean Snyder

**Others Present:** Jack Barton

**Public Present:** See attached list

Chairperson Robillard called the meeting to Order at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She explained that this is a five-member board, with one permanent member absent and the alternate board member present. She explained that a quorum of three is required to pass a motion. She offered hearing aid devices for anyone who required them.

**TABLED PUBLIC HEARINGS**

**1. JIM FITZMAURICE – 614 PECK ROAD**

Application of Jim Fitzmaurice, owner, for a special permit at 614 Peck Road. Applicant is proposing to renovate the interior of the existing home to have an accessory apartment. This property is zoned Agricultural/Conservation (AC) which allows this use with a special permit.

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

Jim reported that his wife's brother, Franklin Lewis, has been living with them for quite a while. They are looking to renovate the home to better accommodate him and provide a more private living area. He stated he has a building permit for renovations.

Chairperson Robillard read a letter from Mr. Lewis' physician, Dr. Patrick McGrath, which states that Mr. Lewis has difficulty functioning independently.

Jim stated he understood that once this accessory apartment is no longer needed, that the kitchen needs to be removed.

**Public Comment:**

**Laurie Cannon 1458 Hilton Parma Townline Road:** She questioned who keeps track of this. Art Fritz explained this is a special permit and is renewable after a two year period of time. If there are complaints, it may not be renewed. Laurie stated she did not have any objection to this accessory apartment for the family but would object if it were used as a rental.

The public hearing was closed.

**Board Discussion:** Art Fritz reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that 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 Jim Fitzmaurice, owner, for a special permit at 614 Peck Road to renovate the interior of the existing home to have an accessory apartment for Franklin Lewis. This property is zoned Agricultural/Conservation (AC) which allows this use with a special permit. This special permit to comply with all the conditions stated in zoning ordinance 165-76, for a period of two years, renewable in April of 2013. Seconded by Stephen Shelley. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder).

### **PUBLIC HEARINGS**

#### **2. LINDA STATT – 1161 HILTON PARMA CORNERS ROAD**

Application of Linda Statt, owner, for a Special Permit at 1161 Hilton Parma Corners Road. Applicant is proposing to construct an accessory apartment addition to the rear of the existing home. This property is currently zoned Agricultural/Conservation (AC) which allows this use with a Special Permit.

Linda Statt's contractor explained that her husband died and she now wants her son to live with her. She is looking to construct a 20' x 26', 520 square feet, one-bedroom apartment built onto the back of her home. This addition will be of traditional construction, not modular.

Stephen Shelley questioned how this addition will be converted back to a single family home when the accessory apartment will no longer be needed. The contractor explained that the area could be used as a family room with access through the garage. Another alternative to access this family room would be by constructing a hallway from the main house kitchen area to the addition, which would merge the two areas. He explained that they can't build this addition directly behind the house because of the location of the septic system.

#### **Public Comment:**

**Bill Smith – 440 Parma Center Road:** He stated he has no problem with this application. He did express concern with drainage issues that the addition might create.

The contractor stated this addition will be built on a crawl space, not a full basement and stated it would not create drainage problems.

The public hearing was closed.

**Board Discussion:** Art Fritz reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Jim Zollweg to approve the application of Linda Statt, owner, for a Special Permit at 1161 Hilton Parma Corners Road to construct an accessory apartment addition to the rear of the existing home. This property is currently zoned Agricultural/Conservation (AC) which allows this use with a Special Permit. This special permit is contingent on all requirements of zoning ordinance 165-76, for a period of two years, to be renewed in April of 2013. The person who is going to occupy the special permit apartment will be Linda Statt and her son will live in the main building. Seconded by Tina Brown. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder).

### 3. JONATHAN AND KELLY AYLWARD – 2 NORTHSIDE DRIVE

Application of Jonathan and Kelly Aylward, owners, for an area variance at 2 Northside Drive. Applicants are proposing to construct an accessory storage shed in the side yard and are requesting relief from Town Zoning Article 10, subsection 165-82.C.3 which requires sheds to be located in the rear yard. This parcel is a corner lot and by definition has two front yards, two side yards, and no rear yard. This property is currently zoned Medium Density Residential (MD).

Jonathan explained that they live on a corner lot and plan to construct a 10' x 12' shed in the southeast corner of the lot. The shed will be used to store items that are presently kept in the garage, such as a lawnmower, snow blower and other yard equipment.

**Public Comment:** None. The public hearing was closed.

**Board Discussion:** Art Fritz reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that 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 Jonathan and Kelly Aylward, owners, for an area variance at 2 Northside Drive to construct an accessory storage shed in the side yard and this grants relief from Town Zoning Article 10, subsection 165-82.C.3 which requires sheds to be located in the rear yard. This parcel is a corner lot and by definition has two front yards, two side yards, and no rear yard. This property is currently zoned Medium Density Residential (MD). In making the determination to approve:

- The benefit cannot be achieved by other means feasible to the applicant. The applicant is in a unique position of having a corner lot and many similar applications have been granted for corner lots. A shed is needed to store items that are now in the garage.
- There will be no undesirable change in neighborhood character or to nearby properties.
- The request is not substantial because it is a corner lot and, as defined by code, has no rear yard.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created because of the nature of a corner lot. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

Motion seconded by Stephen Shelley. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder).

### 4. JOHN DONATO III – 46 MARJORIE LANE

Application of John Donato III, owner, for an area variance at 46 Marjorie Lane. Applicant is proposing to erect an above ground pool and pool deck to the south of the existing home in the front yard and is requesting relief from Town Zoning Article 16, subsection 165-129.B.1 which states in part that pools and decks shall be located in the rear or side yard. This parcel is a through lot and by definition has two front yards and no rear yard. This property is currently zoned High Density Residential (HD).

John explained that they live on a through lot. The pool will be a 24 foot above ground pool behind the house with an 18' x 12' deck. He stated he was not sure if they will put up the deck this year.

**Public Comment:** None. The public hearing was closed.

**Board Discussion:** Art Fritz reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that 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 John Donato III, owner, for an area variance at 46 Marjorie Lane to erect an above ground pool and pool deck to the south of the existing home in the front yard and this grants relief from Town Zoning Article 16, subsection 165-129.B.1 which states in part that pools and decks shall be located in the rear or side yard. This parcel is a through lot and by definition has two front yards and no rear yard. This property is currently zoned High Density Residential (HD). In making the determination to approve:

- I don't believe the benefit can be achieved by other means feasible to the applicant. The applicant is in a unique position with this through lot, and many similar applications have been approved for through lots.
- There will be no undesirable change to the neighborhood character or to nearby properties. Adjoining properties have similar situations.
- The request is not substantial because it is a through lot and, as defined by code, no rear yard exists.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created because of the nature of the through lot. 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 (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder).

##### **5. JON KIRBY AND BRUCE MCNULTY – 5121 RIDGE ROAD WEST – CLARIFICATION OF USE VARIANCE APPROVED IN JULY 2002**

The Building Department is requesting clarification on a July 2002 approval of a use variance at 5121 Ridge Road West. Clarification is requested on the types of equipment that can be for sale and equipment that can be displayed outside for sale.

Jon recalled their variance which was approved in July of 2002. Their attempts to sell the property had been unsuccessful, due in part to the wetlands that are on this property and the poor road frontage. They decided to start a business there and obtained a use variance to display equipment and to do repairs. They are currently selling ATV's and snowmobiles. They are a Polaris dealership and there is a motorcycle they can start selling. He explained they have permission to service motorcycles, but questioned if they need to amend the variance because motorcycles are not specifically listed as an item they can display and sell. He stated he is here to ask if this is in the scope of what was approved. He stated that any motorcycles displayed would be in the designated display spots and will be brought into the building at night.

The ZBOA members referred to ordinance 165-17 recreational vehicles. Chairperson Robillard poled the Board members as to their opinion whether motorcycles registered for road use would fall within the domain of the Motion of 7/18/02 for a use variance at 5121 Ridge Road West:

Tim Thomas: Concurred that it should include motorcycles, based on the minutes where recreational vehicles were mentioned as ATV's and snowmobiles, and it is his opinion that motorcycles are a recreational vehicle.

Stephen Shelley: He agreed with Tim Thomas' explanation. When you look at the minutes and the description of recreational vehicles, it is not a long stretch to assume motorcycles are included.

Tina Brown: Agreed that motorcycles, in her opinion, is a recreational vehicle.

Jim Zollweg: Agreed, based on the minutes, that motorcycles are in the same recreational vehicle category.

Chairperson Robillard: A motorcycle is a limited use vehicle due to weather conditions and motorcycles can be understood as a similar type of equipment as cited in the 7/02 minutes. A motorcycle is of the same character as a recreational vehicle.

Chairperson Robillard stated that it is the unanimous opinion of the ZBOA members that sales and display of motorcycles should be included in the use variance approved in July of 2002 for Jon Kirby and Bruce McNulty at 5121 Ridge Road West.

#### **6. JON KIRBY AND BRUCE MCNULTY – 5121 RIDGE ROAD WEST**

Application of Jon Kirby and Bruce McNulty, owners, for modification of a use variance at 5121 Ridge Road West. Applicants are proposing to display and sell motorcycles and are requesting relief from Town Zoning Article 6, subsection 165-39.B which does not allow outdoor display and sales. This property is currently zoned General Commercial (GC).

Jon Kirby stated his request to withdraw this application.

#### **7. SCOTT AND KIM PEGGS – 1609 HILTON PARMA CORNERS ROAD**

Application of Scott and Kim Peggs, owners, for 3 area variances at 1609 Hilton Parma Corners Road. Applicants have constructed a 12 feet by 20 feet accessory storage shed in the side yard and are proposing to construct a 36' x 45' accessory storage building with a wall height of 14 feet in the front yard which will bring the total square footage of accessory storage buildings up to 1,860 square feet. Applicants are requesting relief from: (1) Town Zoning Article 10, subsection 165-82.C.2 which limits the wall height of an accessory building to 12 feet; (2) subsection 165-82.C.3 which states in part that all detached accessory buildings shall be located in the rear yard; and (3) Article 5, subsection 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet. This property is currently zoned Rural Residential (RR).

Scott stated he is looking to build a 36' x 45' storage structure 700 feet off the road. He noted his property is 100 acres, but the front, back and side of the house are considered wetlands. He explained it is impossible to build anything in the back as it is always wet. He noted the front is heavily wooded and the structure will not be visible from the road. The other barn is a portable Amish-built barn that they moved from their old property. Scott stated that he changed the wall height of the proposed structure to 12' and he requested that the variance request for a 14' wall height be withdrawn.

**Public Comment:** None. The public hearing was closed.

**Board Discussion:** Art Fritz reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Tim Thomas to approve application of Scott and Kim Peggs, owners, for 2 area variances at 1609 Hilton Parma Corners Road. He noted that the applicant has withdrawn the variance for the wall height. Applicants have constructed a 12 feet by 20 feet accessory storage shed in the side yard and are proposing to construct a 36' x 45' accessory storage building in the front yard which will bring the total square footage of accessory storage buildings up to 1,860 square feet. Applicants are requesting relief from: (1) subsection 165-82.C.3 which states in part that all detached accessory buildings shall be located in the rear yard and (2) Article 5, subsection 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet. This property is currently zoned Rural Residential (RR). In making the determination to approve:

- The benefit cannot be achieved by other means feasible to the applicant. The applicant has proven to my satisfaction that due to the wetlands on this property, it would be impractical to locate the structure in the rear of the property.
- There will be no undesirable change in the neighborhood character or to nearby properties. The two structures are at a minimum of 640 feet from the Hilton Parma Corners Road right-of-way.
- The request is somewhat substantial, in referring to the wording of the code, but this is heavily mitigated by the fact that this is on a 100 acre parcel that is heavily wooded and the structures are placed far off the road. The request for additional square footage is substantial, but is mitigated by his need to store the equipment listed (big tractor, 3 4-wheelers, garden tractor, brush hog, 16' boat, utility trailer, and other tools and equipment).
- There will be no adverse physical or environmental impact. In fact, by putting these two structures in the front yard, it will maintain the wetlands. This variance approved with the condition that the structures are to be located as per site plan.
- The alleged difficulty is somewhat self-created, but mitigated by the fact that the majority of this property is wetlands which limits placement in the rear. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Tina Brown. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder).

### SPECIAL PERMIT RENEWALS

#### **8. RUSSELL ANGELO – 5200 RIDGE ROAD**

Application was received from Russell Angelo for renewal of a special permit to sell automobiles at 5200 Ridge Road West. This property is zoned Highway Commercial (HC) which allows this use with a special permit.

Art Fritz referred to the inspection on March 30, 2011, which did not identify any violations. He reported no complaints were on file.

A **Motion** was made by Jim Zollweg to approve the application from Russell Angelo for renewal of a special permit to sell automobiles at 5200 Ridge Road West, with the following conditions:

- No more than 30 cars to be displayed for sale.
- No on-street parking. There must be adequate space for customer parking.
- Exit and entrance driveways are to be provided.
- All repairs to be performed within the existing structure, not outside.
- Hours of operation: 7:00 am to 8:00 pm, Monday through Sunday.
- Signs to conform to current zoning.
- Lighting to be directed away from the road.
- Special Permit for a period of two years, renewable in April, 2013.

Seconded by Tina Brown. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder).

### **MINUTES OF MARCH 17, 2011**

The ZBOA minutes of March 17, 2011 were reviewed. The following changes were recommended: page 3, last Para, line 6, change to "...achieve the benefit, for instance the applicant may be able to use the land behind the house." A **Motion** was made by Stephen Shelley to approve the March 17, 2011 ZBOA minutes with the recommended change. Seconded by Jim Zollweg. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Jim Zollweg; Abstain: Tim Thomas; Absent: Dean Snyder).

### **ADJOURNMENT**

There being no further business, a **Motion** was made by Stephen Shelley, seconded by Jim Zollweg, to adjourn the meeting at 8:35 p.m. **Motion unanimously carried (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder).

Respectfully submitted,

Diane Cook, Recording Secretary