

**TOWN OF PARMA  
ZONING BOARD OF APPEALS  
April 19, 2012**

**Members Present:** Blake Keller  
Tim Thomas  
Stephen Shelley  
Dean Snyder  
Jim Zollweg

**Members Excused:** Veronica Robillard

**Others Present:** Jack Barton

**Public Present:** Gary Dimora, William Schneider, Melissa Schneider, Bill Chatterson, Gloria Chatterson, Robert Rapone, Karen Rapone, Ryan Brosi, David Herbster, Marlene Herbster, Harold Van Bortle, Marial Ophardt, Laura Chinappi, Gary Comardo, Maria Chinappi, Bethany Ames, and Mindy Zoghlin, Esq.

The meeting was called to Order by Acting Chairman, Chairperson Thomas at 7:06 p.m. Chairperson Thomas introduced new Zoning Board of Appeals Member Blake Keller. He explained the function of the ZBOA and the decision-making process. He explained that a quorum of three is required to pass a motion.

**TABLED PUBLIC HEARINGS**

**1. ROBERT AND KAREN RAPONE – 654 PARMA CENTER ROAD**

The application of Robert and Karen Rapone, owners, for an area variance at 654 Parma Center Road. The applicants are requesting that the farm stand in their front yard be allowed to stay in place at a front setback of 8 feet and are requesting relief from Town Zoning Article 5, subsection 165-31.B.c which states in part that permanent buildings used to sell farm products must comply with principal setbacks. The minimum setback is 75 feet from the road right-of-way. This property is currently zoned Agricultural/Conservation (AC).

Chairperson Thomas recalled this application was tabled at the March ZBOA meeting to allow the Board Members and Building Department to review that specific element of the code and some definitions of moveable structures.

Dean Snyder read definitions of moveable that were found online. There is no definition of moveable in the Town Code. McMillan Online Dictionary states something that can be moved from one place or position to another.

Counseling English Dictionary states something that is able to be moved or rearranged, not fixed. Dean Snyder stated that this one helps to distinguish this stand from the stand of the resident who spoke against the stand. Her stand is larger, can be walked into and has a permanent foundation.

Merriam -Webster Dictionary states capable of being moved. Dean Snyder explained that not only is this stand capable of being moved, it is approximately 6x10 in size, the applicant showed it can be moved and fully intended to move it until his injury. The code says temporary or moveable, it does not specify temporary and moveable.

Dean Snyder stated he would argue against an area variance because if approved then anyone who has a moveable stand could come to the board for this same request because a precedent would be set. He prefers to find a way to grant relief without approving the area variance. His feeling is the code is inefficient as written and recommends the Town Board modify the code to add a seasonal component. Dean Snyder recommends that the board do an administrative interpretation of the code to give the ZBOA's interpretation of the code. This would give the applicant the opportunity to leave the stand where it is and then he would be grandfathered in.

Stephen Shelley agrees with Dean Snyder. He feels that larger permanent stands need to operate under different rules. He feels that no variance is required because the code does not specify that farm stands must be moved. Tim Thomas asked Jack Barton if there would be any liability for the Town. Jack Barton replied that there would not be.

Tim Thomas also looked up some definitions and feels there are no unique circumstances about this situation to approve this and the code is somewhat loose. He feels that the code does mean to imply that farm stands would be put back at the end of the season, and that the owner would have time to figure out how move the stand at that time. He is also not comfortable with approving an area variance because of the fear of precedent. Dean Snyder feels that the variance should be scrapped, and if the Board tells him he has to find a way to move the stand by November then the Board has not done anything for the applicant.

Jack Barton went on to explain that if the Board does an administrative review then even if there is a code change down the road, the applicant would be grandfathered. The Town Attorney felt that it would be a reasonable condition if approving the area variance to add that the structure be used only as a farm stand. Dean Snyder said that the code already addresses this.

Jim Zollweg stated he is also unwilling to approve an area variance as it has been requested because of the significant precedent it would set. An Administrative Review would be the better way to go.

Blake Keller recused himself because he was not on the ZBOA when this was first heard and he is not familiar with the application.

Mr. Rapone, owner, reiterated his stance and why he is unable to move the stand back at the end of the season, he also clarified that the stand is 6x8. He also stated that they sell garlic, herbs, vegetables, pies and flowers which are all grown on his property.

**Public Comment:** None. Public Hearing was closed.

**Board Discussion:** Since the last meeting, Jack Barton reviewed the code and the Building Department's interpretation is that the stand can remain in place during the selling season but then would have to be moved to the rear of the property.

A **Motion** was made by Dean Snyder through an administrative review, the Zoning Board of Appeals will reverse the decision made by the Building Department under Paragraph 165-19 and allow the applicant to use his farm stand under Paragraph 165-31.B.c and that this farm stand is considered moveable therefore consistent with current zoning.

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

## 2. MICHAEL EISELE – 190 OGDEN PARMA TOWN LINE ROAD

The application of Michael Eisele, owner, for a Special Permit to operate a Home Business at 190 Ogden Parma Town Line Road repairing lawn and garden equipment. The applicant is also requesting relief from Town Zoning Article 9, subsection 165-79.1.F which does not allow outside storage of materials used in the Home Business. This property is currently zoned Medium Density Residential (MD).

**Board Discussion:** Jack Barton reported that the owner has requested to table the matter until the May 17, 2012 meeting so that the applicant can do further research to address the issues appropriately.

**Public Comment:** None

A **Motion** was made by Jim Zollweg to table the application of Michael Eisele, owner, for a Special Permit to operate a home business at 190 Ogden Parma Town Line Road until the May 17, 2012 meeting without prejudice.

Seconded by Stephen Shelley. **Motion carried (5-0)** (Ayes: Blake Keller, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard).

### **NEW BUSINESS**

#### **3. MARIAL OPHARDT – 451 PARMA CENTER ROAD**

The application of Marial Ophardt, owner, for a use variance at 451 Parma Center Road. The owner is requesting to restore the property use to two family. The property has been vacant for over one year and has lost its preexisting nonconforming status in accordance with Town Zoning Article 12, subsection 165-92 titled "Abandonment", which states in part that whenever a nonconforming use of land, premises, building or structure has been discontinued for a period of one year, such nonconforming use shall not thereafter be reestablished. This property is currently zoned Agricultural/Conservation (AC) which limits Permitted Principal uses to one single family dwelling and customary agricultural operations.

Anthony Iacovangelo, attorney for Mrs. Ophardt, explained that they feel they have met the hardship requirements for this application. Mrs. Ophardt held the mortgage for her son and his friend who purchased the property. Her son has since gone into the military and the other gentleman has been incarcerated. Since then the payments fell behind and the property fell into disrepair. Mrs. Ophardt accepted a deed in lieu of foreclosure in November 2011. Their position is that if the property is unable to be restored back to a two family she will suffer significant hardship, if it is able to be restored then she would be able to recoup some of her losses by selling the property or renting it. The process to repair would take about 4 to 6 months. Mr. Iacovangelo stated that the owner has really no other use for the property and the hardship was not created by her. They want to restore it back to its original use and correct the situation.

Tim Thomas went on to explain that with a use variance the standard is quite high to satisfy. Mr. Iacovangelo stated he understood that. Tim Thomas asked how long the property has been vacant. Jack Barton said it has been over a year and the C of O was pulled after 6 months of vacancy. Tim Thomas also stated that although Mr. Iacovangelo feels that the criteria have been met, he feels that that may not be the case.

Mr. Rich Orzek, Realtor, stated he has met with Jack and the owner and has seen the property. He gave some ranges of what the value of the house is in the current condition as a single family house as being between \$25,000 and \$30,000. As a two family house without repairs, it could be worth \$60,000 and \$65,000. If it were to be fixed up and sold as a two family it would be between \$90,000 and \$100,000. Dean Snyder wanted to know if he had a written statement of all of these numbers. Mr. Orzek stated he did not. The cost of expected repairs would be between \$35,000 and \$50,000, depending on the condition of the septic. Jim Zollweg asked what home (back or front) needs less repairs.

Dean Snyder recommended that the hearing go no further because the numbers are not firm, without firm numbers there is no way to evaluate it. Stephen Shelley also wants a hard copy of the numbers from the Realtor. It was recommended that the applicant and her advisors follow the Town Code 165-20.C.1 – Use Variances. Mr. Iacovangelo stated that he met the hardship but he never stated he met the Town Code. Tim Thomas agreed with tabling the issue and explained that the standards are much higher for a use variance than with an area variance. It was explained that the attorney should pull the needed information to meet the criteria for review. Tim Thomas asked if the applicant or her representative were unclear with what needs to be done, to ask now so that the Board could advise them.

Ms. Ophardt stated that she feels the Board is suggesting the house be condemned. Tim Thomas explained that no one on the Board feels that the house should be condemned but that the criteria needs to be met. If they were to take action now, then it would be denied. This way they have time to gather information, the board can review it and then relief could be granted. Dean Snyder explained that the attorney can read the code and then he would be able to fulfill the requirements, by providing numbers and evidence for each of the criteria. The

Board needs all of the information to be able to use as reasons why they either denied or approved. Dean Snyder read the part of the code to the applicant so she could also review.

**Board Discussion:** Jack Barton 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 action under SEQR and no further review is required.

**Public Comment:**

Laura Chinappi, 441 Parma Center Road, explained that she owns many rentals in the Town and keeps them in great shape. They have lived next to this for 17 years and it has slowly digressed. There are rats around the property; the cops were called to the premises regularly. She feels it is unacceptable to have a two family rental property there. She would rather see it approved as a single family. Dean Snyder explained that the Board cannot require what the owner builds. Dean Snyder explained that the owner will be getting numbers to show what the cost would be to repair and also what the cost would be to raze it and build fresh. His hope is that there will be a significant change for the better for the neighborhood.

Harold Vanbortel, 446 Parma Center Road, stated he has lived at his property for 30 years. He has had stuff stolen from him and lawn jobs done to his property by the tenants at the houses. He is displeased with a two family house because it attracts unfavorable tenants.

David Herbster, 455 Parma Center Road, wanted to know what would happen if the application is denied.

Bill Chatterson, 459 Parma Center Road, feels that the front house should be torn down. There are two septic tanks and the back house could probably be salvaged. There are rats, birds, and woodchucks going in and out.

Marlene Herbster, 455 Parma Center Road, who will care for the property, currently her husband mows the lawn because they live next door and have to look at it. The owners are not there a lot and do not maintain it. She wondered why the Town does not mow it.

Mrs. Ophardt wanted to clarify that she only held the mortgage for the last owners, they were not tenants, and she legally could not go onto the property. She explained that the property is now locked and secured and it will be maintained. She knows that there are mice, birds, feral cats and squirrels on the property.

Tim Thomas read a letter from

Violet and Terry Inschio, 448 Parma Center Road, stated they have serious objections to the application and that in the past 10 years the house has declined into deplorable conditions. The property is overcrowded with 2 houses and a large building, they feel the Town has done what they legally could do up to this point to help clean this up. This has affected their quality of life in their own home and they are asking that the ZBOA not grant the application as a two family house but keep it as a single family house.

Jack Barton explained that the Building Department would continue to monitor the grass height, garbage and rodent infestation but that if the grass is being mowed by the neighbor then the Town would not mow. The Town did try and get compliance from the owners. At one point they were in court with the owners but they were both unavailable.

Dean Snyder asked Marial Ophardt to verify when she became the owner of the house. She explained that she accepted a Deed in Lieu of foreclosure in November 2011. Before that she acted as the bank for the owners.

Tim Thomas asked the applicant again if they understand what the Board is requesting and they responded yes.

**A Motion** was made by Dean Snyder to table the application of Marial Ophardt, owner for a use variance at 451 Parma Center Road until the May 17, 2012 meeting in order to give the applicant an opportunity to get appropriate documentation to satisfy the requirements of Parma Town Code 165-20 C.1(b) without prejudice.

Seconded by Stephen Shelley. **Motion carried (5-0)** (Ayes: Blake Keller, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard).

Jim Zollweg wanted to clarify that he would like to see actual quotes for all the repairs listed by Art Fritz because unless the whole list is addressed he does not feel that the Building Department would issue the C of O. Jack Barton also wanted to add that the information should be provided to the Building Department by May 3, 2012 to allow it to go to the Board for their review. Dean Snyder stated that if that date is unacceptable then the Building Department could be notified and that date could be changed.

#### 4. MATCO CONSTRUCTION – 74 SUMMERTIME TRAIL

The application of Matco Construction, owner, for a Special Permit for an accessory apartment at 74 Summertime Trail. The owner is proposing to build a single family dwelling with an accessory apartment which is allowed with a Special Permit. This property is currently zoned Medium Density Residential (MD).

Marco Mattioli, owner of Matco Builders. The DeMora's approached him about building a home with an in-law apartment for their mother-in-law. They currently live in Greece and the mother-in-law lives in Brockport. The house is a corner lot with the in-law portion on Fallwood Terrace and the main house on Summertime Trial.

Gary DeMora, 196 Dewey Avenue, his mother-in-law lives alone since her husband passed away. His two children have special needs, including an autistic daughter. They thought that eventually their daughter would be able to continue to live in the house as she gets older and further still down the road, that they could live in the in-law section while one of their children would live in the main house.

Dean Snyder asked what the total square footage would be. Mr. Mattioli stated the main house would be 2330 sq. ft. and the in-law would be 1080 sq. ft. The resident of the apartment would be Frances Kent. The owners will be Gary and Julie DeMora. It was explained to the owners that if there is a change of resident in the accessory apartment they would have to revisit the Board.

Stephen Shelley said that they normally request that the applicant show how it will be converted back to a single home in the future when the use expires. Mr. Mattioli said that the Kitchen could be removed. Dean Snyder wanted to comment that there would be a way without removing the kitchen, if the applicant can show unhindered access to the accessory apartment.

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

**Board Discussion:** Jack Barton 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 action under SEQR and no further review is required.

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Matco Construction, owner, for a Special Permit for an accessory apartment at 74 Summertime Trail, to build a single family dwelling with an accessory apartment which is allowed with a Special Permit. The applicant will be required to meet all conditions of Paragraph 165-76, Accessory Apartments within the Parma Zoning Code consistent with that code the permit will be good for a 2 year period, subject to 2 years renewals as long as the same conditions are in effect and as long as the property is owned by the same person or persons. Frances Kent will be living in the Accessory Apartment.

Seconded by Stephen Shelley. **Motion carried (5-0)** (Ayes: Blake Keller, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard).

#### 5. WILLIAM AND MELISSA SCHNEIDER – 9 COUNTRY VILLAGE LANE

The application of William and Melissa Schneider, owners, for 3 area variances at 9 Country Village Lane. The owners are proposing to construct an accessory storage shed in their side yard with a setback of 5 feet from their

southerly property line and a side setback of 5 feet from their easterly property line and is requesting relief from Town Zoning schedule 1 which requires a 10 feet setback and Article 10, subsection 165-82.C.3 which states in part that all detached accessory buildings shall be located in the rear yard. This property is a corner lot and by definition has two front yards. This property is currently zoned High Density Residential (HD).

William Schneider, owner, explained that they currently have a two car garage with two cars in it. He is looking for additional storage for seasonal outdoor equipment and a motorcycle.

Tim Thomas asked why the 5 feet setback. Mr. Schnieder stated where they want to put the shed in the side/back yard there is a valuable tree that prevents them from placing the shed further from the lot lines and they do not want to take the tree down.

**Board Discussion:** Jack Barton 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 action under SEQR and no further review is required.

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

A **Motion** was made by Jim Zollweg to approve the application of William and Melissa Schneider, owners, for three area variances at 9 Country Village Lane, to construct an accessory storage shed in their side yard with a setback of 5 feet from their southerly property line and a side setback of 5 feet from their easterly property line. They request relief from Town Zoning schedule 1 which requires a 10 feet setback and Article 10, subsection 165-82.C.3 which states in part that all detached accessory buildings shall be located in the rear yard. This property is a corner lot and by definition has two front yards. This property is currently zoned High Density Residential (HD).

In making this determination:

- I don't believe the benefit can be achieved by other means feasible to the applicant; they have described having a valuable tree which precludes them from placing the structure more in the interior of the property. There is no backyard.
- There will be no undesirable change in neighborhood character or to nearby properties because it is on a substantially sized property and he considers the shed well located.
- The request is substantial because of the 5 foot setback instead of a 10 foot setback.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is only slightly self-created due to the fact it is a corner lot; however, using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community.

Seconded by Dean Snyder. **Motion carried (5-0)** (Ayes: Blake Keller, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard).

## 6. JOSEPH SELVAGGIO – 765 BURRITT ROAD

The application of Joseph Selvaggio, owner, for an area variance at 765 Burritt Road. The applicant is proposing to construct a 2,000 square feet accessory storage building with a wall height of 15 feet and is requesting relief from Town Zoning Article 10, subsection 165-82.C.2 which limits the wall height to 12 feet. This property is currently zoned Agricultural/Conservation (AC).

Louie Hauck, contractor for the owner, explained that the need for the increased wall height is to house a camper. They showed a picture to the Board of the camper and the trailer that is used to pull the camper. Both the fifth wheel and the tractor trailer exceed the 12 foot wall height. The fifth wheel is 13.3 to 13.6 feet tall and the tractor trailer is 13.6 feet tall. Both the tractor trailer and the fifth wheel will be stored in the storage building.

**Board Discussion:** Jack Barton 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 action under SEQR and no further review is required.

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

A **Motion** was made by Stephen Shelley to approve the application of Joseph Selvaggio, owner, for an area variance at 765 Burritt Road, to construct a 2,000 square feet accessory storage building with a wall height of 15 feet. This requests relief from Town Zoning Article 10, subsection 165-82.C.2 which limits the wall height to 12 feet. The property is currently zoned Agricultural/Conservation (AC).

In making this determination:

- I don't believe the benefit can be achieved by other means feasible to the applicant because of the height of the tractor and camper.
- There will be no undesirable change in neighborhood character or to nearby properties, the building would be erected a substantial distance back from the roadway and it is very much shielded by the vegetation.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created; however, using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community .

Seconded by Jim Zollweg. **Motion carried (5-0)** (Ayes: Blake Keller, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard).

## 7. BONNIE THOMAS – 8 CLEARVIEW AVENUE

The application of Bonnie Thomas, owner, for a use variance at 8 Clearview Avenue. The owner purchased this property as a three family dwelling in 2010 and is requesting to continue the same use. This property is currently zoned Waterfront Residential (WF) which does not allow three family dwellings.

Tim Thomas explained that the Board had heard this application and did take action on it. He asked if the Board had time to review all of the information including the most recent email from Mindy Zoghlin, Esq. Tim Thomas explained that as he compared the previous application to the new application that it struck him that he did not see a substantive changes in the facts or circumstances. He is unsure whether the Board should proceed with the current application.

Dean Snyder said that he has not seen anything thing in the written information that would lead him to a different decision than the previous application but he would like to hear from the applicant.

Jim Zollweg wants to hear from the applicant about the changes and why they would be meaningful. Stephen Shelley also wanted to hear from the applicant.

Mindy Zoghlin, attorney for the owner, explained why they brought a new application for the same relief. The Courts in the State have upheld that if there is a change in circumstances or new information then the Board could rehear the application. Since the application there has been additional information.

Mindy Zoghlin stated that Bonnie Thomas is the sole owner. Ms. Thomas' previous attorney misstated that she was a co-owner with her brother-in-law and sister. Ms. Thomas made the application pro se and in her mind the hardship occurred when she bought the property and had to make the repairs. But in a legal aspect the hardship actually occurred when the brother-in-law and sister reneged on the deal to go in on the purchase, which happened before she knew the problem with the zoning. Ms. Zoghlin stated that Ms. Thomas did not participate in the original hearing and Dean Snyder disagreed with that statement. Dean Snyder stated that he appreciated the applicant's candid remarks that corrected her attorney's misinformation.

Ms. Zoghlin also wanted to clarify that the building contractors were not the family members but were referred by the family members.

Ms. Zoghlin stated the second piece of information that was misstated previously was that the hardship did not occur because of the money needed for house repairs but from the renegeing by the sister and brother-in-law. At the time of acquiring the property she believed that the sister and brother-in-law were going to sell their home and invest that money into this house, which did not happen. If they had, then Ms. Thomas would have been able to repay the bridge loan in a timely fashion.

The third new piece of evidence was something that happened after the ZBOA hearing with regards to the bridge loan to the friend. Since the hearing, the private lender has agreed to modify and extend the terms of the bridge loan so that the payments can be made up going forward. But she is only willing to do that if the use variance is granted.

The final thing not before this Board last September are the efforts that Ms. Thomas has made to sell the property since the Board denied the use variance. The listing price was reduced again from \$367,000 to \$349,000 and again from \$349,000 to \$339,000. The courts have made it clear that to try and sell property as a single family residence after the Board denial is a new piece of evidence that would justify the Board to arrive at a different decision. Mindy Zoghlin went through the history and the layout of the property. In 1967 there was a permit issued to construct a garage/A frame house. In 1972 there was a permit issued to build an efficiency unit, and then a permit issued in 1990 to remodel. In 1997 there was a permit issued to build a 2 story garage addition, which she believes is the nautical unit. There is no way to get from the A frame house to the efficiency unit, the nautical unit or garage without going outside. There is also a second story walkway that physically connects the A frame house and the nautical unit but there are locked doors on both ends. The house is not set up for a single family use because the structures do not connect and there are no interior stairways to get from area to area. Building Department records show it being a 2 or 3 family house and neighbors also testified at the prior hearing that there have always been 2 or 3 families that have lived there.

The property cannot yield a reasonable return as a single family home. This was a unique circumstance that this family would live there and could have privacy but could also be living together. This is not your typical family living situation and this house is not set up for a typical single family house, most families would not want to live in a house with this set up. Ms. Thomas is unable to pay the mortgage unless she can rent out the sections of the house. If she were able to rent then the income would cover the mortgage, taxes, maintenance and other fees, there would be a small operating profit. If she is denied she will not be able to cover the expenses, refinance the debt or sell the property and then it will be foreclosed on and go back into disrepair. There has not been a single offer to purchase as a single family but there has been a little interest if able to use as a multi family.

The unique circumstance is the configuration of the house. The property is too big for a single family use, there are 7 bedrooms and 4 ½ bathrooms with no access without going outside.

This hardship was not created by Ms. Thomas, the hardship arose when the sister and brother-in-law reneged on purchasing the house with her, not from the repairs or anything she did or didn't do. This will not cause any undesirable changes to the neighborhood, you can only access by a private drive, there is a town park east of the property and a vacant lot to the west, you can't see the property without being in the drive. There are a lot of big houses on Clearview Drive. The application is for the minimum relief that Ms. Thomas needs. It could not be used as a two family even if you wanted to, that is why they are asking for a three family. They are not asking for a change of the previous decision but to take a fresh look at the new information.

Tim Thomas thanked Ms. Zoghlin for her remarks and asked for a clarification of numbers the house is listed for, which is about a 12% drop from before.

Blake Keller asked what the amount was that Ms. Thomas spent to refurbish the property. Ms. Thomas replied about \$132,000.

Tim Thomas stated that he does not feel the information provided is enough for him to say that there has been a substantive change.

Dean Snyder thinks that the new information on the return does not have a significant effect, in the previous hearing the realtor then could not give the board what the house was worth as a single family house and could only say to keep lowering the price. The Board appreciates the severe economic devastation this has caused for the owner. Being a use variance all four criteria have to be met, he agrees that the Lender's Offer to Modify and Extend the Mortgage per #3 of Mindy Zoghlin's letter is new information because it had not happened yet. But #1 is such a soft reason. Dean Snyder stated that the previous hearing was not a quick hearing and there were a lot of questions asked. Anytime the Board asked questions, Ms. Thomas answered and answered very openly and the Board wanted to help her but could not grant the relief. After purchasing the house for \$175,000.00 that she thought she was going to get some economic relief from her sister and brother-in-law, and before starting the improvements, she learned from the Town that the house was not zoned properly for a three family. At that point, she was in for \$75,000.00 dollars, which was beyond her control, she then could have sold the house, as is, as a single. Then she could get back what she had invested in it, instead she continued to make renovations even after her partners reneged, which put her at a higher liability and raised her risk significantly, but those were decisions she made. Ms. Zoghlin stated that that happened after the hardship happened, because the hardship happened when the sister and brother-in-law reneged. Dean Snyder concurred that that was a hardship but a very limited one compared to where she is right now. At that point the difference was the amount of what she had paid and what it was worth had she put it right back on the market.

Tim Thomas stated that she continued to compound the hardship after it occurred and continued to pour money into it. Ms. Zoghlin stated that the property was in such poor condition that she could not have even gotten out of it what she paid for it. Dean Snyder stated that is where the liability could have ended, it would not have gone higher. Ms. Zoghlin stated that this Board could look at this again though because of the new facts and has enormous discretion to consider new issues, notwithstanding the first hearing. Tim Thomas explained that no one is disputing that there are new facts, the question is, are they significant enough to look at the new application for identical relief. Tim Thomas stated that even though some of the facts have been clarified the application is basically identical. Ms. Zoghlin explained that this is a new application and she is only asking the Board to look at the hardship that was caused when the sister and brother-in-law reneged, not the amount of money that was put into the house for repairs. Tim Thomas stated they spent a lot of time at the previous hearing looking at the hardship, Mrs. Zoghlin said that the Board was looking at the wrong hardship.

Dean Snyder went on to explain, when Ms. Thomas purchased the house, she had \$175,000 invested with closing costs. If she stopped right there, the initial hardship, if she had sold right then as a single as is she would have gotten a certain amount of money, even if the property was just bought and the buildings were bulldozed, there is some kind of value to that. The liability at that point would have been only the amount of the difference between those two. Somehow she had \$132,000 to make renovations to the property. If she had used that money to pay off the initial hardship she would have been set. So if she had that money to invest why didn't she get out. Apparently there was money to get out but instead she compounded the liability. At that point she had only spent \$175,000 approximately and at that point when the relatives reneged there was some value to that property and if the property was sold whatever the difference is that was what her liability was. After this point, she was able to spend \$132,000 in renovations, had that cash been used to get out of the hardship she would have been able to. The \$132,000 is more than what the relatives were going to pay. Ms. Zoghlin said the property was not sellable because of condition and zoning. Dean Snyder wanted to know why she did not get out of it, but instead kept investing money into it. She had cash available. At the time that the renege happened she had \$132,000 to pay the bridge loan. She could have mitigated the hardship. Mindy Zoghlin stated that that was her entire life savings and then she would have had no where to live and could not live there without repairs. Dean Snyder stated that her liability was really only half, because she had planned to split those expenses.

Stephen Shelley was willing to give the benefit of the doubt for the first three but on the fourth what bothers him is this is basically a business deal gone bad and it could be precedent setting. Ms. Zoghlin said that these are distinct facts to this case only and could be distinguished from any other cases.

Dean Snyder read his comments and a motion for discussion:

It is clear that the ZBOA has the opportunity to rehear or accept a new application for identical relief of a case if the applicant produces evidence in addition to that introduced at the previous hearing. The basis for considering a rehearing or agreeing to hear a new application with identical relief would be that new information would be presented that materially changes the case.

Proposed new evidence (please reference letter from Mindy Zoghlin, Esq. to the Town of Parma ZBOA dated April 18, 2012):

1. Although the applicant's previous attorney stated that the applicant purchased the property with her family members, the applicant made it quite clear that she was solely responsible for the mortgage. Since her attorney did not dispute her comments, it was clear to the ZBOA that her family members did not share any of the financial liability associated with the purchase. There was no reason to doubt the applicant's word on this issue and therefore it did not factor into the ZBOA decision. This was therefore a harmless error.
2. The applicant's first hardship may have first arisen when her sister and brother-in-law reneged on their promise to purchase one half interest in the property. At that point her liability was limited to the difference between her costs associated with acquiring the property and the current value of the property. The applicant apparently had access to an additional \$132,000.00 and could have left this poor business deal at this time. After being made aware of the current zoning restriction of the town of Parma, the applicant proceeded at her own peril to invest a significant amount of money into this property with the hopes of selling or renting it at a significant profit. This increased the applicant's initial liability by the costs associated with the improvements. The applicant apparently made this investment, not through a thoroughly researched business plan developed by professionals, instead by the seat of her pants. The results have clearly been devastating for her.

The hardship associated with her family members was again due to a decision the applicant made at her own peril. The applicant made an unnecessary risk by accepting this critical investor's work that they would follow through with their commitment; instead of having an agreement drafted in advance stating the repercussions if this party reneged on the commitment. This hardship could have been avoided if the applicant followed the recommendations of any competent attorney on this matter.

3. The information presented regarding the lenders proposal, although adds to the sympathy the ZBOA has for the applicant and her situation, does not change any of the four basis used to make its determination.
4. The owner stated she had a total of \$305,000 invested in this property. This is largely due to her decision to make improvements in the property AFTER being made aware of this critical zoning issue. I have a difficult time accepting that a reduction in the price of \$30,000 constitutes any financial hardship other than that which was self-created by her decision to proceed with this investment in improvements at her own peril. This "new information" does not provide any significant information that would impact the ZBOA's previous decision.

**Summary:**

As shown above, the new facts do not materially change the aspects of the case. Although the Lender's offer to modify and extend the mortgage is new information, it has no bearing on the outcome since it has no bearing whatsoever on the question of whether the alleged hardship is self-created. Town Zoning Code 165-20,C.1.(b)[4] states in part, that in order for an applicant to prove such unnecessary hardship, the applicant shall demonstrate that the alleged hardship has not been self-created.

The motion passed on September 15, 2011 explicitly states on page 5 of the minutes, paragraph (4) why this difficulty has been self-created. There has been no information presented regarding this request for a new

application for identical relief that would negate any one of the five reasons cited that support facts leading to the ZBOA decision that this indeed is a self-created hardship. Only one of the five is required to deny the application.

A **Motion** was made by Dean Snyder to deny the applicant's request to hear a new application for identical relief based on additional information since the additional information failed to present new facts which either materially change the request or materially change the aspects of the case. The reasons stated in the motion to deny the previous application dated September 15, 2011 still stand in the face of this purported new information. Seconded by Jim Zollweg. **Motion unanimously carried to Deny (5-0)** (Ayes: Blake Keller, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard).

Chairperson Thomas polled the Board for their reasons to deny:

Blake Keller: After reviewing the information there was no substantial change.

Stephen Shelley: No substantial new information.

Dean Snyder: My previous statement supports the motion.

Tim Thomas: Nearly identical application. No substantial or material change to pursue any action further.

Jim Zollweg: New information not substantial enough to change the previous ruling.

Bonnie Thomas stated that her purchase contract stated a three family and the title policy says three units. She is currently being assessed for a three family, paying taxes on three units, but she can't sell it or use it as a three family and building and zoning show it as a single family. She made it a better place and fixed it up.

Tim Thomas explained that the Board cannot undo the decision but advised her to speak with the assessor about the assessment. There is nothing that he or the Board can say to make her feel better but the Board does sympathize with her.

### MINUTES OF MARCH 15, 2012

The ZBOA minutes of March 15, 2012 were reviewed and the following recommended changes were made: Page 4, Para 4, line 3 add "aspect"; Page 7, Para 7, line 3, change from 1955 to 1995. A **Motion** was made by Stephen Shelley to approve the March 15, 2012 minutes as amended. Seconded by Jim Zollweg. **Motion carried (3-0)** (Ayes: Stephen Shelley, Dean Snyder, Jim Zollweg; Abstain: Blake Keller, Tim Thomas; Absent: Veronica Robillard).

### OTHER BUSINESS

None

### ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Stephen Shelley, to adjourn the meeting at 10:25 p.m. **Motion carried (5-0)** (Ayes: Blake Keller, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard).

Respectfully submitted,

Carrie Webster, Recording Secretary