

**TOWN OF PARMA  
ZONING BOARD OF APPEALS  
February 21, 2013**

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

**Members Excused:** Veronica Robillard, Dean Snyder

**Others Present:** Bob Prince, Gary Comardo

**Public Present:** Ken McClure, Ken Bianchi, Thomas Rzepka, Esq., Timothy L. Shadders, Roger Odell, Duane Eshelman, Dick Vance, Kris Schultz, Joseph Selvaggio, Martin A. Philippone, Esq.

The meeting was called to Order by Acting Chairman, Chairperson Thomas at 7:02 p.m. 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.

**PUBLIC HEARINGS**

**1. TIMOTHY SHADDERS and PETER KIMMES – 44 LAKESIDE BOULEVARD**

The application of Timothy Shadders and Peter Kimmes, owners, for two area variances at 44 Lakeside Boulevard. The applicants have placed a shed in their front yard and are now requesting to relocate the shed further east to have a front setback of five feet and a side setback from the northerly property line of 7.3 feet. Applicants are requesting relief from Town Zoning schedule 1 which requires a 25 feet front setback and a 10 feet side setback from property lines. This property is currently zoned Waterfront Residential (WF).

Thomas Rzepka, attorney for the applicant spoke on the owners behalf and explained that the shed was put where it was because of the layout of the road. Asking for the variance allows them to place the shed in line with most of the sheds/buildings on the road and also out of the view of the neighbors. Chairperson Thomas asked what the purpose of the shed was. The applicant explained it is for storage of items such as patio furniture, lawnmower, outside maintenance items. Chairperson Thomas asked if there was at one time a garage. The applicant explained that the garage is across the street but they did not purchase that land, which is why they have no storage. The applicant purchased the shed before realizing that he needed a variance and when they delivered the shed; the applicant picked a spot that he thought was ok. Bob Prince stated that he was on the street doing an inspection and realized there was a new shed on the street. The applicant then came in and made application for the shed.

Stephen Shelley had a Google map that shows that the shed would be similarly placed like the other neighbors. The applicant explained that the shed actually sits 18 feet from the roadway. Chairperson Thomas asked if it was on a concrete pad. The applicant stated no that it is on 4x4's.

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

**Board Discussion:** Bob Prince 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.

A **Motion** was made by Jim Zollweg to approve the application of Timothy Shadders and Peter Kimmes, owners, for two area variances at 44 Lakeside Boulevard. The applicants are requesting to relocate a shed to its final location. It will have a front setback of five feet and a side setback from the northerly property

line of 7.3 feet. This grants relief from Town Zoning Schedule 1 which requires a minimum side set back of 10 feet and front setback of 25 feet. This property is currently zoned Waterfront Residential (WF).

In making this determination:

- I don't believe the benefit can be achieved by other means feasible to the applicant.
- There will be no undesirable change in neighborhood character or to nearby properties as was observed the proposed location is consistent with other sheds on other properties along this street.
- The request is substantial. Five feet is a fraction of 25 feet.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is moderately self-created because of limited storage on the property, however, 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 carried (4-0)** (Ayes: Blake Keller, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard, Dean Snyder).

## 2. EDITH SCHNEIDER – 8 AMPOR BEACH

The application of Edith Schneider, owner, for an expansion of a non-conforming structure in accordance with Town Zoning Article 12, subsection 165-91 at 8 Ampor Beach. The home is considered non-conforming because it does not conform to current zoning regulations. The setback distance from the easterly property line is less than the required ten feet. Applicant is proposing a 5.67 feet by 27 feet addition on the second floor. The setback from the westerly property line will remain 21.2 feet. This property is currently zoned Waterfront Residential (WF).

Duane Eshelman of Fitch Construction explained that the owner is looking to add a 2<sup>nd</sup> floor addition on top of the existing first floor. There would be no change in the footprint of the house. Chairperson Thomas asked what the addition would include. Mr. Eshelman said the addition will be used for an exercise room and storage space. The siding will match the existing house and all overhangs will match the existing structure.

**Board Discussion:** Bob Prince 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. They building department has had conversations with the contractor.

Chairperson Thomas read a letter from the Town of Parma Planning Board dated February 19, 2013. The letter stated that the Planning Board has reviewed the application and there will be no change in the footprint of the structure and no change in impervious surface area on the property and they have not recognized any adverse impacts in regards to drainage.

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

A **Motion** was made by Stephen Shelley to approve the application of Edith Schneider, owner, for an expansion of a non-conforming structure in accordance with Town Zoning Article 12, subsection 165-91 at 8 Ampor Beach. The home is considered non-conforming because it does not conform to current zoning regulations. The setback distance from the easterly property line is less than the required ten feet. Applicant is proposing a 5.67 feet by 27 feet addition on the second floor. The setback from the westerly property line will remain 21.2 feet. This property is currently zoned Waterfront Residential (WF).

In making this recommendation:

- I don't believe the benefit can be achieved by other means feasible to the applicant. Given the small size of these lots there is no other area that they could expand into without encroaching onto some other required setback. The current building is extremely small and this addition will allow for extra storage space and an exercise area.
- There will be no undesirable change in neighborhood character or to nearby properties. The footprint of the building does not change and they are only adding to the second floor.
- The request is moderately 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 outweighs any detriment to the health, safety and welfare of the community.

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

### 3. AMY BIANCHI – 151 FERGUSON DRIVE

The application of Amy Bianchi, owner, for an expansion of a non-conforming structure in accordance with Town Zoning Article 12, subsection 165-91 at 151 Ferguson Drive. The home is considered non-conforming because it does not conform to current zoning regulations. The setback distance from the easterly property line is less than the required 40 feet. The applicant is proposing an addition with a front setback of 12 feet from the road right-of-way and is requesting relief from Town Zoning schedule 1 which requires a 40 feet front setback. This property is currently zoned Waterfront Residential (WF).

Ken Bianchi, owner, explained that this house is a raised ranch and they have two kids. There is very little storage space and a small kitchen. He explained that the plan is to convert the existing garage into the kitchen and then there would be a living area and garage addition. The current square footage of the house is 2100 sq. feet and the addition will be 1800 sq. feet. The applicant also purchased the land at 147 Ferguson Drive to the south and merged it with 151 Ferguson Dr. The applicant explained that there is a pool and patio to the west and past that is a foot or two until the lot line. To the north is the septic system. Adding to the south is really the only area to put that addition in.

There was discussion with the applicant about the placement of the garage. The applicant is trying to keep the garage as small as possible but having the ability to store things. Chairperson Thomas clarified that the new garage will be in front of the current garage and would be a side load garage. The applicant also explained that this house is pretty secluded from the neighbors.

**Public Comment:** None. Public Hearing Closed.

**Board Discussion:** Bob Prince 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. Building department wanted to clarify that because this is a side load garage the cars will not be parking in the right-of-way instead of with a front load garage.

Chairperson Thomas read a letter from the Town of Parma Planning Board dated February 19, 2013. The Planning Board has reviewed the plans for this and recommends because of the new impervious area and its proximity to the right-of-way, storm water runoff will be naturally directed towards Ferguson Drive. At a minimum, roof downspouts should be directed to the south where the grade drops off. The Boards has not recognized any other adverse impacts. Chairperson Thomas clarified that the Planning Board would like the water to shed off to the south instead of onto Ferguson Dr.

A **Motion** was made by Blake Keller to approve the application of Amy Bianchi, owner, for an expansion of a non-conforming structure in accordance with Town Zoning Article 12, subsection 165-91 at 151 Ferguson Drive. The home is considered non-conforming because it does not conform to current zoning regulations. The setback distance from the easterly property line is less than the required 40 feet. The applicant is proposing an addition with a front setback of 12 feet from the road right-of-way and is requesting relief from Town Zoning schedule 1 which requires a 40 feet front setback. This property is currently zoned Waterfront Residential (WF).

In making the determination to approve:

- I don't believe the benefit can be achieved by other means feasible to the applicant given the fact there is a septic system to the north and the close proximity of the house to the westerly property line, expanding to the south is the only option.

- There will be no undesirable change in neighborhood character or to nearby properties. This addition is consistent with other properties in Waterfront Residential. The side load garage prevents cars from being parked in the right-of-way.
- The request is substantial given that the setback will only be 12 feet and less than a third of the requirement.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created, however, using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

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

#### **4. JOSEPH SELVAGGIO – 765 BURRITT ROAD (This was moved to the end of the meeting)**

The application of Joseph Selvaggio, owner, for a use variance and area variance at 765 Burritt Road. The applicant has started construction of an apartment above an accessory storage building and is requesting a use variance for the apartment and an area variance to increase the square feet of the accessory structure to 3,102 square feet. Town Zoning Article 5, subchapter 165-31.B limits the permitted principal uses to one single family dwelling and customary agricultural operations. Subchapter 165-31.C.2 states in part that the total area of all accessory structures associated with a single family residence shall not exceed 2,000 square feet. This property is currently zoned Agricultural/Conservation (AC).

Martin Phillipone, attorney for the applicant explained he has reviewed his application and that he would like to amend the application so that the board can consider a special use permit. He believes that the use variance is less applicable under the law with this matter. Mr. Phillipone stated that the purpose for this application is Mr. Selvaggio is creating additional living space so his parents can move onto the property with him. He is not looking at changing the use of this property; it would still be single family. Chairperson Thomas wanted to know why the applicant has already started construction. Mr. Phillipone stated that the applicant was under the impression that as soon as he got permission for the barn he could build what he wanted inside as long as he had inspections done. Chairperson Thomas asked if the applicant is doing the work himself. Applicant responded he has done some and so have some contractors. Mr. Phillipone went on to explain that the parents have experienced economic and health issues and by doing this the parents could still be independent but close by, also allowing for the applicant to have a family and some privacy. The applicant has been in contact with code enforcement who has inspected the property and made recommendations to the applicant. It was explained that there would be no change to the outside of the structure except for the addition of a deck for a safety exit and windows.

Chairperson Thomas asked if Bob could give some history of a use variance and how the building department came to the conclusion that this was a use variance. Bob Prince explained a use variance is permission to establish use of a property for what is otherwise not permitted in that zoning district. For a use variance to be approved all four conditions were read and must be met and if one or more cannot be proved than the Zoning Board must deny. Mr. Phillipone stated he thought the special use permit would be better because the town would be able to control who lives there. Chairperson Thomas stated that if amended to a special use permit then the board probably could not entertain the application tonight because this would have to be re-advertised. Chairperson Thomas explained that historically an in-law apartment is attached to the footprint of the home, not a separate structure. Neighbors are usually concerned with it being used for income and rented out and what control would the Town have.

Chairperson Thomas asked Mr. Phillipone to explain why he feels a use variance would not be applicable in this particular instance. Mr. Phillipone explained that the applicant is not seeking to change the zoning or the nature of the use. He still wants the property to remain single family. If the parents were no longer living there than this would go away. The applicant is only asking to use the barn in a manner that is consistent with the zoning but perhaps not consistent with the structure.

Chairperson Thomas asked Mr. Phillipone to explain the area variance. The area variance is based on the square foot issue, because they are expanding the size of the floor space inside the structure.

Chairperson Thomas wanted to know what the living space size is. The applicant stated the structure is 2000 sq. foot on the bottom floor for storage the upstairs living space is 1102 sq. foot.

There was discussion about an in-law apartment being in the main structure versus a detached structure. Jim Zollweg commented to the applicant that after this occupancy ends then this living space would have to be disabled (ex. the kitchen removed). Mr. Phillipone stated the applicant would be willing to do that. Chairperson Thomas asked where the parents are living now. The applicant responded at his sister's one bedroom apartment.

**Public Comment:**

Roger Odell, 274 Burrirt Road, is concerned about a precedent being set with this application if approved.

Chairperson Thomas stated he is inclined to table this matter and speak to the Town attorney because of the complex nature of this matter. He is also concerned about setting a precedent. Stephen Shelley stated that looking at the use variance he doesn't see how the board could approve this because all the conditions cannot be met, possibly a special permit and would like to see alternative options. Jim Zollweg would like to see other plans, a possible addition or conversion in the main house. Blake Keller understands the need but unfortunately there needs to be a delay in this process to allow the board to get a proper understanding of this. Chairperson Thomas believes that tabling is to do the right thing for the Town and the applicant. The Town does not want these to start popping up all over.

Bob Prince clarified that the attorney would like an interpretation done on the building departments ruling. Mr. Phillipone confirmed that he would like the interpretation done. Bob Prince also stated that the applicant has worked with the building department since this matter has come to light and allowed them to do an inspection and give some recommendations.

A **Motion** was made by Blake Keller to table the application of Joseph Selvaggio, owner, for a use variance and area variance at 765 Burrirt Road to the March 21, 2013 meeting without prejudice. Seconded by Jim Zollweg. **Motion carried (4-0)** (Ayes: Blake Keller, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard, Dean Snyder).

**5. DANNIC HOLDINGS, LLC – 5049 RIDGE ROAD WEST**

The application of Dannic Holdings, LLC for four area variances at 5049 Ridge Road West. Applicants are proposing to erect two free standing signs. The first sign will be 76 square feet in area and 28 feet above the ground. The second sign will be 41 square feet in area and 21 feet above the ground. They are also proposing three building mounted signs comprising of 99 square feet in area. The total area of signage is proposed to be 216 square feet. Applicants are requesting relief from Town Zoning Article 14, subsection 165-113.B which limits this business to one building mounted sign, one 32 square feet free standing sign not to exceed 16 feet above ground and a total sign area of 150 square feet. This property is currently zoned Highway Commercial (HC).

Kris Schultz explained that they are basically taking the two existing freestanding signs and shifting them west so they will be in front of the new building. The color and font will be slightly different but the height and size will be the same as the current ones. Chairperson Thomas asked if the signage is a requirement of GM. Mr. Schultz explained that these signs and placement of the signs are all required including the signage on the buildings so that all the buildings across the country are consistent. Chairperson Thomas asked about the signs on the building around the corner. Mr. Schultz said that those are on a separate lot.

**Public Comment:**

Roger Odell, owner of 274 Burritt Road, wanted clarification on the height of the freestanding signs. Mr. Schultz explained that the height is going to be the same as now. Mr. Odell wanted to know if the three building mounted signs are new. Mr. Shultz said yes, they will be new and will only be in front of the new building. Mr. Odell is concerned that the corner is being overrun with signs. He also wanted to know why this was not all done at the beginning and they keep coming back to the board for signs. Mr. Schultz explained that while they knew they needed the signs and they were on the site plans, they did not know exactly where the placement would be. Bob Prince also explained that the signs cannot be accurately seen on the site plan until the premises is more developed and they know where they are going to go.

Public Hearing Closed.

**Board Discussion:** Bob Prince 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. Bob Prince questioned why the plans show 23 feet but it was advertised as 28 feet. Kris Schultz stated they wanted to make sure there is enough room, so they advertised bigger.

A **Motion** was made by Jim Zollweg to approve the application of Dannic Holdings, LLC, for four area variances at 5049 Ridge Road West. Applicants are proposing to erect two free standing signs. The first sign will be 76 square feet in area and 28 feet above the ground. The second sign will be 41 square feet in area and 21 feet above the ground and those two heights are considered maximum installed heights that the signs can be when installed. These two signs will be moved from their current location so there is no additional signage in the vicinity. They are also proposing three building mounted signs comprising of 99 square feet total in area. The total area of signage is proposed to be 216 square feet. Applicants are requesting relief from Town Zoning Article 14, subsection 165-113.B which limits a business to one building mounted sign, one 32 square feet free standing sign not to exceed 16 feet above ground and a total sign area of 150 square feet. This property is currently zoned Highway Commercial (HC).

In making this determination:

- I don't believe the benefit can be achieved by other means feasible to the applicant. This signage is required by the Chevy/GM Franchiser.
- There will be no undesirable change in neighborhood character or to nearby properties. The signage is being relocated from another area within the complex.
- The request is somewhat substantial. It exceeds 50% greater than the general guidelines.
- There will be no adverse physical or environmental effects as it is already a very heavily used and signed area already.
- The alleged difficulty is not self-created because this is a requirement of running this type of business and 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 carried (4-0)** (Ayes: Blake Keller, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard, Dean Snyder).

## 6. BRIAN AND JOSEPHINE STEWART – 736 PARMA CENTER ROAD

The application of Brian and Josephine Stewart, owners, for an expansion of a non-conforming structure at 736 Parma Center Road. The home is considered non-conforming because it does not conform to current zoning regulations. The setback distance from the front property line is less than 75 feet. The applicants are proposing to construct an 8 feet by 32 feet front porch with a setback of 38 feet from the road right-of-way and are requesting relief from Town Zoning schedule 1 which requires a 75 feet front setback. This property is currently zoned Agricultural/Conservation (AC).

Ken McClure of Quality Homes spoke on the owners behalf. He explained that there is already an 8 foot pad in front of the house so they are putting a front porch on that slab. The porch will be along the front side of the house and fully covered. Bob Prince explained that if they went to seven feet they would not even be in front of the board. Chairperson Thomas asked when the house was built. Mr. Stewart said it

was built in 1880 and moved to its current location in 1960. Chairperson Thomas asked when the owner acquired the home. Applicant replied 1997.

**Public Comment:** None. Public Hearing Closed.

Chairperson Thomas read a letter from the Town of Parma Planning Board dated February 19, 2013. The Board, in its review, has not recognized any adverse impacts.

**Board Discussion:** Bob Prince 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. The building department has had numerous conversations with the owner and the contractor.

A **Motion** was made by Stephen Shelley to approve the application of Brian and Josephine Stewart, owners, for an expansion of a non-conforming structure at 736 Parma Center Road. The home is considered non-conforming because it does not conform to current zoning regulations. The setback distance from the front property line is less than 75 feet. The applicants are proposing to construct an 8 feet by 32 feet front porch with a setback of 38 feet from the road right-of-way and are requesting relief from Town Zoning schedule 1 which requires a 75 feet front setback. This property is currently zoned Agricultural/Conservation (AC).

In making this motion:

- I don't believe the benefit can be achieved by other means feasible to the applicant. Given there is already an existing foundation it seems unreasonable to make the structure smaller. The house was built in 1880 and moved in 1960 so this structure predates our existing zoning code.
- There will be no undesirable change in neighborhood character or to nearby properties. This is pretty much shielded from the east by foliage and trees and there were no other buildings in close enough proximity to be affected.
- The request is not substantial because they are only adding one foot from the allowable seven feet, which is only a 12% increase.
- There will be no adverse physical or environmental effects. The letter from the Town Planning Board explains that they have reviewed this and see no adverse physical or environmental effects.
- The alleged difficulty is not self-created but created by a previous owner who built the slab on the front of the house and using the balancing test; the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

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

The Board went back to Public Hearing No. 4.

### **MINUTES OF JANUARY 17, 2013**

The ZBOA minutes of January 17, 2013 were reviewed. A **Motion** was made by Jim Zollweg to approve the January 17, 2013 minutes as submitted. Seconded by Stephen Shelley. **Motion carried (4-0)** (Ayes: Blake Keller, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard, Dean Snyder).

### **ADJOURNMENT**

There being no further business, a **Motion** was made by Jim Zollweg, seconded by Stephen Shelley, to adjourn the meeting at 8:52 p.m. **Motion carried (4-0)** (Ayes: Blake Keller, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard, Dean Snyder).

Respectfully submitted,

Carrie Webster, Recording Secretary