

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

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

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

**Others Present:** Jack Barton, Gary Comardo

**Public Present:** Alaina Attili, Angela Seeley, Richard Ferretti, Gary Gartz, Jim Perry, Jennifer Perry, Tim Case, Lori Case, Roger O'Dell, Mike Schaffron, Kris Schultz.

The meeting was called to Order by Acting Chairperson Thomas at 7:00 p.m. He explained the function of the ZBOA and the decision-making process. He also explained that a quorum of three is required to pass a motion.

**TABLED PUBLIC HEARING FROM THE OCTOBER 17, 2013 MEETING**

**1. TIMOTHY CASE – 765 EAST AVENUE**

The application of Timothy Case, owner, for two area variances at 765 East Avenue. The applicant is proposing to construct a 3,072 square feet pole barn with a wall height of 14 feet and is requesting relief from Town Zoning Article 5, subsection 165-34.C.2 which limits the total area of all accessory structures to 400 square feet and Article 10, subsection 165-82.C.2 which limits the wall height of detached accessory structures to 12 feet. This property is currently zoned High Density Residential (HD).

Acting Chairperson Thomas explained that this matter was tabled to allow the applicant time to address further information requested by the Board at the October 17, 2013 meeting. Timothy Case, owner, provided plans for the layout of the equipment that will be stored in the structure. He has downsized his request to 2,000 square feet and would be ok with a 12 foot wall height instead of the 14 feet requested to eliminate the one variance. He further explained that the building would be 12' from the lot line and behind some trees facing north. It will not be visible from the road. There was discussion about how this property is surrounded by Village property but this is still located in the Town. Jack Barton explained that over the years since 1998 some of the surrounding properties annexed into the Village leaving this property in the Town surrounded by Village.

Acting Chairperson Thomas reestablished with the applicant that the equipment being stored is personal and it is currently being stored outside. Applicant stated yes. There was discussion about a drainage easement that runs through the property because of Salmon Creek. Jack Barton explained that before a permit is issued the applicant would have to talk to Brian Speer at the Highway Department to make sure they do not have an issue with this. The applicant stated he has never seen Salmon Creek come up that high onto his property. The Board is concerned about the building size because it is surrounded by the Village. Stephen Shelley stated that this is a unique property size at almost 3 acres. Acting Chairperson Thomas asked if the applicant had looked at off-site storage. The applicant responded no because it would be less expensive to store at the house. Blake Keller felt that this was not an unusual request. There was discussion about other means feasible. There might be an undesirable change possibly to the neighbors to the west. Jim Zollweg asked if the Village gets notified of this application. Jack Barton explained that the Village would get notified and then it would be up to them to notify the property owners, at the Town something like this gets posted, not sent out. Jim Zollweg feels this request is proportional because of the lot size. Blake Keller asked what would be permitted if this property was in another district. Jack Barton said an Agricultural District would be 2,000 sq. feet and a Rural Residential would be 1,500 sq. feet, 600 sq. feet in Medium Density.

**Board Discussion:** Jack Barton reported in a previous meeting 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 Closed.

A **Motion** was made by Jim Zollweg to approve the application of Timothy Case, owner, for one area variance at 765 East Avenue. The applicant is proposing to construct a 2,000 square foot pole barn with a wall height of 12 feet and this motion grants relief from Town Zoning Article 5, subsection 165-34.C.2 which limits the total area of all accessory structures to 400 square feet. This property is currently zoned High Density Residential (HD).

In making this motion, this is a unique property and even though it is in a High Density Residential area the character both by the isolation and the size of this property is more similar to one of our more rural districts, the 400 square foot limitation is most valuable to restrict accessory structures on smaller properties which would be more typical in High Density Residential areas. This structure would be inappropriate on a small sized lot; however the relative scale and proportion of this structure and its ability to be isolated from its surroundings for the most part are mitigating factors.

1. I don't believe the benefit can be achieved by other means feasible to the applicant. Although the applicant has not given specific information about being able to achieve this benefit by any other means, it is relatively self-evident that storing equipment on site where many of them will be used and where there is no need to pay a rental fee to store off site which would be expensive to the applicant.
2. There will be no undesirable change in neighborhood character or to nearby properties. It will put a new structure with 12 feet side walls and an approximate roof line of 15 feet in view of the neighbors to the west; however, those structures are already substantially higher and larger than this structure. This equipment is already on the property and there is no increase of equipment. The equipment will be protected from the environment and vice versa making this equipment less unsightly to surrounding neighbors.
3. The request is substantial. It is technically 5 times as large as allowed by the code.
4. There will be no adverse physical or environmental effects.
5. The alleged difficulty is not self-created and this situation of this property being more isolated to currently surround has developed over the 25 years that the person has owned the property. 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:** Dean Snyder, Veronica Robillard).

## **NEW BUSINESS**

### **2. GARY GARTZ – 107 SPENCER ROAD**

The application of Gary Gartz, owner, for an area variance at 107 Spencer Road. The applicant is proposing to construct an accessory storage structure with a setback of ten feet from the southerly side property line and is requesting relief from Town Zoning schedule 1 which requires a 20 feet side setback. This property is currently zoned Agricultural/Conservation (AC).

Gary Gartz, owner, explained that his lot is 3 acres and he is looking to erect a 24x28 barn with 10 foot high walls. This would be used to store a lawnmower and four-wheeler. Acting Chairperson Thomas asked the applicant why with a property this large the structure cannot be put at the proper setback. The applicant stated that he wants it to hug the lot line so that it frees up the space in the middle of the yard. Acting Chairperson Thomas stated there is no reason to have this near the lot line and asked the applicant if the property to the south is residential or farmland. The applicant stated that it is farmland. Acting Chairperson Thomas stated that there is no compelling reason to grant this because it can be satisfied without the variance. The Board would need more information, pictures or an elevation map to consider granting this. Acting Chairperson Thomas explained that the Board could table this to be fair to the applicant and allow him time to provide additional information unless the applicant would rather just comply. Mr. Gartz said he does not know if he can prove that the structure needs to be in this location it is a convenience thing. Acting Chairperson Thomas stated the Board cannot grant a variance because someone wants one without a substantive reason. Blake Keller also felt there were other means feasible.

**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 Closed.

A **Motion** was made by Blake Keller to deny the application of Gary Gartz, owner, for an area variance at 107 Spencer Road. The applicant is proposing to construct an accessory storage structure with a setback of ten feet from the southerly side property line and requesting relief from Town Zoning schedule 1 which requires a 20 feet side setback. This property is currently zoned Agricultural/Conservation (AC).

In making this determination referring to the criteria that we are required to satisfy:

1. I do believe the benefit can be achieved by other means feasible to the applicant. By the applicant's own admission the request is one of convenience and there is ample property to place the accessory storage structure at the required setback. There are other means feasible to the applicant to satisfy this request other than through an area variance. The other criteria are not as significant in this matter.
2. There will be no undesirable change in neighborhood character or to nearby properties.
3. The request is substantial. The request is half of what is required in that area.
4. There will be no adverse physical or environmental effects.
5. The alleged difficulty is certainly self-created.

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

**Acting Chairperson Thomas polled the Board:**

**Jim Zollweg:** My reason for denial is primarily because we did not receive evidence that there was no other way that the applicant could achieve the benefit by other means feasible.

**Blake Keller:** As stated in the motion, there are other means feasible to achieve the desired request.

**Tim Thomas:** My reason for voting for a denial is primarily due to the fact that benefit could have and can be achieved by other means feasible. The most significant factor was the fact that the applicant did readily concede that this was strictly for convenience. There was no data or other substantive information provided that would have caused me to have looked at this as anything other than a convenience variance. As for the other criteria: It would not have created an undesirable change in the neighborhood. The request would have been substantial; it is a 50% difference. There would be no adverse physical or environmental effects. The alleged difficulty is certainly self-created. In my opinion the first criteria is the most significant in this application.

**Stephen Shelley:** I voted to deny because there was not enough information given to us to show that this variance is necessary.

**3. BRUCE AND MARSHA MOSKOWITZ – 8 ALDER BEACH**

The application of Bruce and Marsha Moskowitz, owners, for two area variances at 8 Alder Beach. The applicants are proposing to demolish an existing 10 feet by 18 feet accessory structure and construct a new 12'x18' accessory structure in its place with a side setback of .2 feet from the easterly property line and a front setback of 7.9 feet from the southerly property line. The applicants are requesting relief from Town Zoning schedule 1 which requires a 10 feet side setback and Article 5, subsection 165-35.C.7 which states in part that accessory structures maintain a minimum setback of 25 feet from the street (property) line. This property is currently zoned Waterfront Residential (WF).

James and Jennifer Perry, Sundance Remodeling LLC, agent for the owner, explained that the owner is looking to remove the existing shed and build a bigger structure that would fit their car. Currently they have a shed that has a 8' opening with a swing out door and the owner would like to have a standard size overhead door to store their vehicle inside. It was explained that this structure would not encroach any more than it currently does. There was discussion about the structure being 5' from the property line and the need for this to be fire rated. Jack Barton stated that they have already talked to Bob Prince about this. Acting Chairperson Thomas asked if there are any possible opportunities to move this structure another foot in and if they were using the current slab or tearing this up and starting over. Mr. Perry said they would be tearing up the slab and starting over and also explained that the area is really narrow and moving this over would put the structure in front of the house and in the way of the driveway that currently exists.

**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 Closed.

A **Motion** was made by Stephen Shelley to approve the application of Bruce and Marsha Moskowitz, owners, for two area variances at 8 Alder Beach. The applicants are proposing to demolish an existing 10 feet by 18 feet accessory structure and construct a new 12'x18' accessory structure in its place with a side setback of .2 feet from the easterly property line and a front setback of 7.9 feet from the southerly property line. The applicants are requesting relief from Town Zoning schedule 1 which requires a 10 feet side setback and Article 5, subsection 165-35.C.7 which states in part that accessory structures maintain a minimum setback of 25 feet from the street (property) line. This property is currently zoned Waterfront Residential (WF).

In considering granting this application:

1. I don't believe the benefit can be achieved by other means feasible to the applicant. With the unique nature of these lakeside properties that were set up many years ago before zoning was in effect there have been many situations similar to this where properties do not meet the existing code. The applicant was able to demonstrate that there would be an impact on the driveway if moved any further to the west plus would impede the view of the house. Moving this to the north would infringe upon the septic system.
2. There will be no undesirable change in neighborhood character or to nearby properties. Cosmetically it will be an improvement.
3. The request is substantial compared to the code but compared to other existing properties in the neighborhood it is very similar.
4. There will be no adverse physical or environmental effects.
5. The alleged difficulty is not self-created because this situation has been in existence for 60 or more years. 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 (4-0) (Ayes:** Blake Keller, Stephen Shelley, Tim Thomas, Jim Zollweg; **Absent:** Dean Snyder, Veronica Robillard).

#### **4. ROCHESTER GAS & ELECTRIC – 1880 NORTH UNION STREET**

The application of Rochester Gas & Electric, owner, for a Special Permit to construct a metal building with open bays within the existing fenced area to house vehicles and equipment at 1880 N. Union Street. This use is allowed in accordance with Town Zoning Article 6, subsection 165-39.D.2 and Article 9, subsection 165.59 with a Special Permit. This property is currently zoned General Commercial (GC).

Mike Sheffron from Labella Associates explained on behalf of RGE that they are looking to erect a building on this property located at 1880 North Union Street. This property has been used as a service center for 50 years and he explained that using this site reduces travel and response time for employees. He explained that this building will be 150' from the centerline of Route 259. The current buildings are used for storage of equipment and vehicles and some offices. This building would have a roof with sides on the north and south, no garage doors and would be used to load trucks in dry conditions as well as keep snow and ice off of them in the winter. The building will be unmanned and unheated. There will be no repairs done and this will not result in any more traffic because the vehicles already exist. Acting Chairperson Thomas asked if there are any other service centers like this in the area. Mr. Sheffron stated that there are other service centers but not sure if they have garages like this. All lighting would be inside and there will be no more exterior lighting than what already exists.

**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. Jack Barton also said that this is within 500 feet of an Agricultural District and those notifications also were mailed out.

#### **Public Comment:**

Kris Schultz asked what the height of the building will be. Mr. Sheffron stated 25 feet, 3 inches high with metals clad walls on the north and south.

A **Motion** was made by Jim Zollweg to approve the application of Rochester Gas & Electric, owner, for a Special Permit to construct a metal building with open bays within the existing fenced area to house vehicles and equipment at 1880 N. Union Street. This use is allowed in accordance with Town Zoning Article 6, subsection 165-39.D.2 which that portion of the code states that it is possible for the board to give a Special Permit for this type of activity if it supports essential services including structures, maintenance facilities or storage yards for area utility services, which is exactly what this

does and Article 9, subsection 165.59 which provides the guidelines for this type of activity with a Special Permit which are currently being met and will continue to be met according to the plans presented for a period of 3 years to be renewed in November 2016. This property is currently zoned General Commercial (GC).

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

#### **5. R2F2, INC. – 5570 RIDGE ROAD WEST**

The application of R2F2, Inc., owner, for two area variances at 5570 Ridge Road West. The applicant is proposing an addition onto the existing back building with a side setback of 10 feet, 6 inches from the easterly property line and a front setback of 99 feet, 6 inches from the road right-of-way. The applicant is requesting relief from Town Zoning schedule 1 which requires a 20 foot side setback and a 100 foot setback from the road right-of-way. This property is currently zoned Highway Commercial (HC).

Richard Ferretti, owner, explained he is requesting this because he needs more storage and this addition will make the building look more balanced. This is going to be at the same setback as it is now to the rear. There was discussion about the property line being at a diagonal towards the back of the property. There will be five bays and each of them will have a window, door, and overhead door. Acting Chairperson Thomas has a concern about the fire lane. Jim Zollweg asked about snow removal. The applicant stated he plows the snow and that you can drive around the whole building. Acting Chairperson Thomas asked what the fire lane regulations are. Jack Barton explained that fire lanes are 30 feet wide if required, and that the Fire Marshal would look into that and that this also has to go through Planning Board review.

**Board Discussion:** Jack Barton reported that notifications were in order but the comments from Monroe County have not been returned yet. There was discussion that because the comments have not been returned the Board cannot act.

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

A **Motion** was made by Blake Keller to table the application of R2F2, Inc., owner, for two area variances at 5570 Ridge Road West without prejudice to the December 19, 2013 meeting because the board was unable to act because Monroe County comments have not been returned.

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

#### **6. PAVS LLC – 4704 RIDGE ROAD WEST**

The application of PAVS LLC, owner, for two area variances at 4704 Ridge Road West. The applicant is proposing to create a building lot for a single family home that will have a street address of 212 Dean Road. This proposed flag lot will be 320.63 feet wide, 212.08 feet deep and 1.582 acres in area. The applicant is requesting relief from Town Zoning schedule 1 which requires a minimum lot depth of 300 feet and a minimum area of two acres. This property is currently zoned Rural Residential (RR).

Kris Schultz, engineer on behalf of the owner explained that this lot is being cut out. The lot is a T shape area and is actually 2.156 acres with a lot depth of 460 feet but per Town Code the area of the post is not included in the advertised size. Mr. Schultz showed the Board maps from Dean Road showing that most of the lots up and down the road from Ridge Road to Peck Road do not meet the current code. The only way to get the required size would have been to cut land out of the golf course. The house will be in the back with existing vegetation. This is a great lot for them to develop because they own the golf course. Acting Chairperson Thomas stated that in all reality the post is as big as some of the smaller lots. There was discussion about the Nothnagle signage referring to an approved lot.

**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 Closed.

A **Motion** was made by Jim Zollweg to approve the application of PAVS LLC, owner, for two area variances at 4704 Ridge Road West. The applicant is proposing to create a building lot for a single family home that will have a street

address of 212 Dean Road. This proposed flag lot will be 320.63 feet wide, 212.08 feet deep and the flag portion of this proposed new lot will be 1.582 acres in area. The motion will grant relief from Town Zoning schedule 1 which requires a minimum lot depth of 300 feet, this is 212.08 feet deep, however, that does not include the distance from the road to the back of the lot it only includes the flag portion of the premises not the distance and width of the post of this flag shaped lot. The 1.582 acres is also smaller than the actual size which also does not include the post, when adding the post in it does meet the minimum two acres required. All of the characteristics of this meet the spirit and intention of the code, lots are deep and homes are spacious. This property is currently zoned Rural Residential (RR).

In making this determination:

1. I don't believe the benefit can be achieved by other means feasible to the applicant. The applicant's representative has explained to the board that these shapes and remainders have evolved over a period of time and really leave the applicant no means to find any other possible arrangement.
2. There will be no undesirable change in neighborhood character or to nearby properties. The proposed location of the home is very unobtrusive.
3. The request is somewhat substantial by numerical division but that is due to how these measurements have to be calculated.
4. There will be no adverse physical or environmental effects.
5. The alleged difficulty is not self-created; it is a historical artifact of the previous development in the area. 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:** Dean Snyder, Veronica Robillard).

### MINUTES OF OCTOBER 17, 2013

The ZBOA minutes of October 17, 2013 were reviewed a **Motion** was made by Jim Zollweg to approve the October 17, 2013 minutes as presented. Seconded by Blake Keller. **Motion carried (3-0)** (Ayes: Blake Keller, Tim Thomas, Jim Zollweg; **Absent:** Veronica Robillard, Dean Snyder; **Abstain:** Stephen Shelley).

### ADJOURNMENT

There being no further business, a **Motion** was made by Jim Zollweg, seconded by Stephen Shelley to adjourn the meeting at 9:04 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