

TOWN OF PARMA
ZONING BOARD OF APPEALS
August 21, 2014

Members Present: Dan Melville
Dean Snyder
Stephen Shelley
Tim Thomas
Jim Zollweg

Members Excused: Veronica Robillard

Others Present: Dennis Scibetta, Art Fritz, Kyle Mullen

Public Present: Frank Heglund, Shelby Letta, Jean McCagg, Steve McCagg, Robert Crandell, Kathy Crandell, Joanne Knapp, Tedd Knapp

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

TABLED BUSINESS

1. FRANK HEGLUND – 264 NORTH AVENUE

The application of Frank Heglund, owner, for a Special Permit at 264 North Avenue. The applicant currently has 4 dogs on this property and is requesting a Special Permit in accordance with Town Zoning Article 10, subsection 165-82.AA.3. A Special Permit is required to have more than three dogs on a property. This property is currently zoned Agricultural/Conservation (AC).

Acting Chairperson Thomas explained that this was tabled to obtain further legal clarification on a part of the code and the public hearing had been closed in last month's meeting. The Town Attorney has sent a memo to the members of the Board. The Board reviewed the memo. Stephen Shelley asked Mr. Heglund if the dog that is considered dangerous is still at the site and Tim Thomas asked which dog it is. Mr. Heglund said it is still at the house and it is the small Rottweiler.

Dean Snyder stated that last month legally the Board was trying to figure out if there was an opportunity to approve this application. The question was if we go back into the Code it says in order for us to approve anyone keeping more than three dogs in 165-82.AA.3 (d). This states that in the event a permit is issued by the Zoning Board of Appeals, the permit will terminate upon the death or removal from the property owner or residence any dog for whom the permit is issued. This application is for four dogs. The next section is the troubling one. The permit can be revoked if a property owner is convicted of two violations of chapter 9 of the Parma Town Code within a twelve month period or if any dog owned by the property owner or resident is considered to be a dangerous dog pursuant to chapter 9 of the Parma Town Code or New York State Agricultural and Markets Law. We knew there had been a court case but did not know if that officially made one of these dogs and dangerous dog which would make us unable to approve this or if we did approve it, it would have had to have been immediately revoked because the owner would own a dangerous dog. So the attorney clarified for the Board that shows on the 24th day of June, 2013 one of the owners dogs was considered a dangerous dog and there was a fine for that. Because of this the Board is unable to approve this. We waited a month to get clarification on this and it is pretty clear now. Tim Thomas after speaking to the attorney and with the dog being classified as a dangerous dog this falls under the category and leaves no opportunity to approve. Tim Thomas agrees with the characterization of a dangerous dog. Stephen Shelley stated that the 12 month clause is superseded with the dangerous dog classification and does not see where this can be approved. Dan Melville stated that because of this not being approved Mr. Heglund will have to get rid of a dog but there is nothing saying he will have to get rid of a dog that is considered dangerous, the board cannot specify which one.

A **Motion** was made by Dean Snyder to **deny** the application of Frank Heglund, owner, for a Special Permit at 264 North Avenue. The applicant currently has four dogs on his property and is requesting a Special Permit in accordance with Town Zoning Article 10, subchapter 165-82-AA.3. A Special Permit is required to have more than three dogs on the property. This property is currently zoned Agricultural/Conservation (AC).

In making my determination I reference Parma Code as previously noted in the motion and the code says “the permit may be revoked in the event that the property owner is convicted of two violations of Chapter 9 of the Parma Town Code within a twelve month period or if any dog owned by the property owner or residents is determined to be a dangerous dog as pursuant to Chapter 9 of the Parma Town Code or the New York State Agricultural and Markets Law. In this case, one of the four proposed animals has been designated a dangerous dog by Paul Rath, Town Justice on June 24, 2013. Since one of the four dogs has been considered a dangerous dog there is not opportunity to provide a Special Permit to allow four dogs including that previously deemed dangerous dog.

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

Acting Chairperson Thomas polled the Board:

Dean Snyder: My motion stands for my reason for denial.

Jim Zollweg: I voted to deny because of the element in the code that says that this permit would be invalidated if any dog is determined to be a dangerous dog and one of the dogs is, so if this were granted it would have to be immediately revoked according to 165-82-AA.3 (d).

Stephen Shelley: I voted to deny for much the same reason more specifically the code 165-82-AA.3 (d) states that a dangerous dog pursuant to Chapter 9 of the Parma Town Code or the New York State Agricultural and Markets Law would cause the Special Permit to be revoked if allowed.

Dan Melville: For much of the same reasons I voted to deny based on the previous conviction for the dangerous dog and the section of the code does not really allow the board to approve this because of this.

Tim Thomas: My reason for denial and similar to my colleagues pursuant to 165-82-AA.3 (d) whereby the adjudication of a dangerous dog on June 24, 2013 prohibits us from issuing the permit and even if we did issue the permit it would have to be revoked the way the code is written because of the dangerous dog.

Mr. Heglund wanted to speak to the Board and question this decision but because the public hearing had been closed last month and the motion has been made he was encouraged at this point that he not speak further to the Board about this, Tim Thomas explained that he understands that this is an emotional issue but at this time it would be inappropriate to talk further and he could stop and speak to the Building Department tomorrow. Dean Snyder asked the Building Department to give Mr. Heglund a copy of the information from the attorney so he can read it and maybe this would help clarify to him why the board had to make the decision it did.

NEW BUSINESS

2. ROBERT and KATHY CRANDELL – 103 PARMA CENTER ROAD

The application of Robert and Kathy Crandell, owners, for an area variance 103 Parma Center Road. The owners are proposing to construct an addition to a garage with a side setback of 9.1 feet from the east property line. Applicants are requesting relief from Town Zoning Article XI, subsection 165-87.A.1 which states in part minimum side setback shall not be less than 10 feet. This property is currently zoned Rural Residential (RR).

Robert Crandell, owner, explained that his hobby is old cars and he wants to bring home a 72 Chrysler which is a big car and he needs more storage space. He also needs storage for some snowmobiles which are antiques. Tim Thomas clarified that this would give him the adequate space to store this stuff. The applicant explained that he put a shed on this same side and Mr. Speer had to sign off on the easement. He is unable to put a storage building in the backyard because it fills up with water. Dan Melville asked how this would affect the drainage easement in the property. The applicant stated that that is the easement that Mr. Speer had signed off on for the shed to be installed. The applicant stated that the Town had just replaced some

pipin in that easement and that there would still be four to five feet between the addition and the easement. There is plenty of room in between the two houses.

Public Comment:

Bill Turnquist – 99 Parma Center Road, explained that he is the closest neighbor to this addition and feels there is more than enough room to build this and he is fine with it.

Public Hearing Closed.

Board Discussion: Art Fritz reported that notifications were in order, there are no letters in the file, 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. Dennis Scibetta would like Brian Speer to sign off on the plans before this is started.

A **Motion** was made by Jim Zollweg to **approve** the application of Robert and Kathy Crandell, owners, for an area variance 103 Parma Center Road. The owners are proposing to construct an addition to a garage with a side setback of 9.1 feet from the east property line. This grants relief from Town Zoning Article XI, subsection 165-87.A.1 which states in part that the minimum side setback shall not be less than 10 feet. This property is currently zoned Rural Residential (RR). The applicant is proposing to construct this for the storage, restoration and maintenance of large classic vehicle and because of the extreme size of vehicles of this era he needs to have slightly more size in the garage than is allowed by code.

In making this determination:

- The benefit cannot be achieved by other means feasible to the applicant due to the construction needs and the wetness conditions in the backyard and the difficulty in access to the main road from where the driveway is.
- There will be no undesirable change in neighborhood character or to nearby properties and there has been testimony from the next door neighbor on the effected property line that there is no issue with this request.
- The request is not substantial. It is a relatively minor percentage of the prescribed setback.
- There will be no adverse physical or environmental effects because the location of it.
- The alleged difficulty is self-created and is the choice of the owner to take this on; however, using the balancing test, the benefit to the applicant exceeds any detriment to the health, safety and welfare of the community.

This is conditioned on the approval of the construction in the drainage easement by the responsible municipality.

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

3. JEAN AND STEVE McCAGG – 116 WEBSTER ROAD

The application of Jean McCagg and Steve McCagg, owners, for an area variance at 116 Webster Road. The owners are proposing to construct an addition to the north side of the dwelling with a front setback of 40.8 feet. Applicants are requesting relief from Town Zoning Article V, subsection 165-33.E.1, Schedule 1 which states in part the front setback of a single family dwelling is to be 60 feet from a town road. This property is currently zoned Medium Density Residential (MD).

Tim Thomas explained to the owner to describe this request to the Board. Dr. Snyder explained to the owner when explaining the request give specific details because he understands there are reasons why it has to be on this side of the house and not in the back. Jean McCagg explained that there are water issues in the back of the house like most houses on Webster Road. Steve McCagg, owner, explained that he cannot build the addition to the back of the house because of water issues that are up and down Webster Road and he does not want to lose the view out of this back windows of the wooded areas. Jean McCagg explained that if you look at the lot there is a lot of frontage on the north side of the house. The houses on this road are all close to the road so this would fit in. Dan Melville clarified that this addition would still be back further than the front line of the current house with some definition. Stephen Shelley stated that the back of the addition will be flush with the current house, the roof line and back of the house will be in line with each other. The

applicant stated that they had purchased the house with the idea of doing this and they did not know they needed a variance for this.

Public Comment: None
Public Hearing Closed.

Board Discussion: Art Fritz reported that notifications were in order, there are no letters in the file, 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. Dennis Scibetta feels that there is ample room for this addition.

There was discussion with the applicant about the notification of property owners and why it is from the property line not the dwelling. Dennis Scibetta stated that is a State code, not Town. The applicant asked if there would be anything further they would need to come to the Board for. Dean Snyder stated that they can not discuss anything unless it is published so any new items would need to come back at a later date.

A **Motion** was made by Stephen Shelley to **approve** the application of Jean McCagg and Steve McCagg, owners, for an area variance at 116 Webster Road. The owners are proposing to construct an addition to the north side of the dwelling with a front setback of 40.8 feet. Applicants are requesting relief from Town Zoning Article V, subsection 165-33.E.1, Schedule 1 which states in part the front setback of a single family dwelling is to be 60 feet from a town road. This property is currently zoned Medium Density Residential (MD). In making this motion using the balancing test:

- The benefit cannot be achieved by other means feasible to the applicant. They have stated that they have a very wet backyard which will preclude building in the back.
- There would be no undesirable change in neighborhood character or to nearby properties. As you look down the road not a single house was much further behind this one.
- The request is substantial but considering the age and the fact that it was in conformance when the house was placed there this is not an issue.
- There will be no adverse physical or environmental effects. This will blend very well with the rest of the houses on the road.
- The alleged difficulty is not self-created because the applicant said they had purchased the house and this was created before they owned it. Using the balancing test, the benefit to the applicant exceeds any detriment to the health, safety and welfare of the community.

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

4. ANTHONY and SHELBY LETTA – 18 JUDD LANE

The application of Anthony and Shelby Letta, owners, for a Special Permit at 18 Judd Lane. The applicants are proposing to operate an in-home business (bakery) in the basement of the dwelling in accordance with Town Zoning Article IX, subsection 165-79.1. The property is currently zoned High Density Residential (HD).

Shelby Letta, owner explained that she makes specialty cookies and cupcakes and would like to install a small kitchen in the basement for this business which would be health inspected. Tim Thomas felt that this would be unnoticeable as far as the neighbors go. There would be no employees. Stephen Shelley asked about the gross area of the space to be used for the business. There was discussion about the square footage of the workspace. Mrs. Letta does not know the exact measurements of the premises and that they had not marked out the exact size because they wanted to get the approval first. The Board clarified with her that 15% of the total square footage is the maximum amount of space that can be used for this business. Mrs. Letta stated that she would have only a regular sized stove/oven, a small table and refrigerator, she can make sure that it falls under this requirement. She further explained that if this is approved then she needs a to scale drawing to take to the Health Department for approval. A fire inspection would be required for the Special Permit.

Board Discussion: Art Fritz reported that notifications were in order, there are no letters in the file.

Public Comment: None

Public Hearing Closed.

A **Motion** was made by Jim Zollweg to **approve** the application of Anthony and Shelby Letta, owners, for a Special Permit at 18 Judd Lane. This permit allows operation of an in-home business specifically a bakery in the basement of the dwelling in accordance with Town Zoning Article IX, subsection 165-79.1. The property is currently zoned High Density Residential (HD). The square footage of the work area in the basement cannot exceed 15 percent of the total floor footage of the residence. All of the operating conditions and characteristics will reflect what the applicant has put into the application package dated July 21, 2014. Seconded by Dean Snyder. **Motion carried to approve (5-0) (Ayes:** Dan Melville, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; **Absent:** Veronica Robillard).

MINUTES OF JULY 17, 2014

The ZBOA minutes of July 17, 2014 were reviewed a **Motion** was made by Jim Zollweg to **approve** the July 17, 2014 as presented. Seconded by Stephen Shelley. **Motion carried (4-0) (Ayes:** Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; **Absent:** Veronica Robillard; **Abstain:** Dan Melville).

OTHER BUSINESS

There was discussion among the Board about the possibility in the future of giving leeway to the Building Department and allowing them to do administrative reviews of certain applications that would normally come before the Zoning Board. Dennis Scibetta feels that because of the Zoning Law changes in 1998 there are some properties, like Webster Road, that are no longer in compliance and that doing this could mean there would be fewer variances. Dean Snyder feels that not all applications are the same and depend on a lot of variables so each case should be looked at by the Board because of the level of subjectivity and that should not be left up to the Building Department, because how would that be explained unless something can be written up. There was discussion about having generic discussion before some of these are brought to the Board. Dean Snyder stated that in order to do that there would have to be a change in the Code. Dennis Scibetta stated maybe that is something that the Board wants to do because someone may take that the wrong way. Kyle Mullen understands that this process is painful for some people but the reason you have this Board is because there is that one that slips through and you need to have a record why something was approved or not approved, then when someone comes in and questions this then there is a public record of why each decision is made.

ADJOURNMENT

There being no further business, a **Motion** was made by Stephen Shelley, seconded by Dan Melville to adjourn the meeting at 8:17 p.m. **Motion carried (5-0) (Ayes:** Dan Melville, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; **Absent:** Veronica Robillard).

Respectfully submitted,

Carrie Webster, Recording Secretary