

TOWN OF PARMA
ZONING BOARD OF APPEALS
May 21, 2015

Members Present: Dan Melville
Veronica Robillard
Stephen Shelley
Dean Snyder
Jim Zollweg

Members Excused: Tim Thomas

Others Present: Dennis Scibetta, Art Fritz, Kyle Mullen

Public Present: Bruce Buell, Jim Richardson, James Scorse, Amy Scorse, Jean DeRuyter, Jeff DeRuyter, Steve Ozminkowski, Zach DeRuyter, Danielle DeRuyter

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

NEW BUSINESS

1. STEVEN OZMINKOWSKI – 1238 CLARKSON PARMA TOWN LINE ROAD

The application of Steven Ozminkowski, owner, for a Special Permit at 1238 Clarkson Parma Town Line Road to allow a home business. The applicant seeking a special permitted use in accordance with Article IX, subsection 165-79.1. This property is currently zoned Agricultural Conservation (AC) which allows a home business with a Special Permit.

Steven Ozminkowski, owner, explained that he would like to run a karate class out of his house. Originally his school was located in Greece and was closed down. He explained that these classes would be twice a week for 1 ½ hours total. Mostly this is kids with a couple adults but most adults stay while their child is in class. Mr. Ozminkowski explained that there was a complaint filed with the Town and they told him he would need a Special Permit to operate.

Board Discussion: Art Fritz reported that notifications were in order, the request was returned by Monroe County with the comments which were reviewed with the Board and the applicant. There are no comments from the Building Department. There was discussion among the Board about whether this can be acted on tonight until the information has been provided to the appropriate agencies. They decided that they would hear the application and determine from there how to act.

Chairperson Robillard asked what the number of students would be. The applicant stated there are 26 at most but they would not be at the same time. It would be at the most 11 students at a time. He stated he would not be taking any more students on unless there were siblings of current students, which he does not anticipate. Chairperson Robillard asked about parking. The applicant stated that the driveway is wide and rarely are there more than two cars on the road. He parks the cars sideways in the driveway. Dean Snyder stated that all parking has to be off street, so the applicant will have to show that all parking can be off street. Chairperson Robillard stated it is a concern with the busy road and what about snow. The applicant explained that he keeps the driveway plowed and some of the younger kids drop off in the cold. Chairperson Robillard asked about hours. The classes would be Monday and Wednesdays with the younger students going from 6 p.m. to 6:45 p.m. and the older students 6:30 p.m. to 7:30 p.m. There would be no weekends. Dan Melville asked if there would be any employees or signage. Applicant stated no. Dan Melville asked if there was any required licensing through the state or county. Applicant stated no but he is certified through his organization to teach. Mr. Ozminkowski stated that he does not run this as a business and he only collects \$10.00 per month which is enough to cover his expenses; there is no DBA on file.

Public Comment:

Michelle Ciciotti, 1240 Clarkson Parma Town Line Road, stated that debris on the side of his home originated the complaint and also the addition to the front of the house is an unfinished structure. Clients are turning around in their driveway and have parked in front of their home and on their property; the houses are close together with only 50 feet between them. There have been practices held in the back yard. Mr. Ozminkowski showed the Board pictures of the structure and the training space and also explained that as soon as the parking issues were brought to his attention he corrected that issue. He plans on marking the yard so that it does not continue to happen. He also stated that he can discontinue outside training and he has been in contact with the Town regarding the structure and what needs to be done with that.

Dan Vermilyei, 52 Long Park Drive, stated that his daughter goes here for training. He stated that he was there when the class was outside and it was for 10-15 minutes at the most. He also stated that as far as he could tell the cars were not parked over the property line, it was the nose of the car over the line.

Levio Ciciotti, 1240 Clarkson Parma Town Line Road, feels that the cars are on his property. He has concerns because his three dogs go wild and bark when they hear the doors opening and closing or kids playing which creates chaos. There was discussion over whether this would now be considered commercial or still residential. It was explained this would remain rural residential and he is looking to get a Special Permit.

Public Hearing Closed.

Dennis Scibetta stated that depending on the outcome of this, the Building Department would be addressing the temporary structure and explained that this is not an addition and it is not fastened to the house in any way.

Dean Snyder cited Home Business; 165-79.1 and stated that the intent is to allow this where there is no impact on the neighbors and where it blends in with the existing character. In the past it was thought that that meant it had to be inside but that is not called out in the Code. Though it does state that the appearance of the structure should not be altered and in this case part of the business altered the front of the garage. It does not say the structure has to be altered just the appearance. Also it says the business shall not be conducted in a manner that would cause the premises to differ from the existing neighborhood character either by use of colors, materials, construction, lighting or emission of sounds, noises, or vibrations. No lights or noise from the home business shall be noticeable at any time from any public street or neighboring property. So if they are practicing in the back yard and talking this business interferes with the neighbors. Dr. Snyder feels that this does not meet the criteria and it is in the wrong place. Feels that the parking issue is the most damaging because sufficient off-street parking shall be provided for the home business and shall be in addition to the parking for the dwelling. Looking at the driveway there is no way that you can fit upwards of 25 cars in the drive. Cars on the road or parked on the neighbor's yard are unacceptable; turning around in the neighbor's driveway is unacceptable.

Dan Melville agrees with Dean Snyder and feels that it would be hard to justify approving this and feels that noise will be a problem. Usually when approving there might be 1 customer at a time, 11 or more customers affect the character of the neighborhood. Stephen Shelley agrees with the above and believes that the appearance has changed. Chairperson Robillard thinks this is a good concept but it is in the wrong place and is not a reasonable request. Jim Zollweg also agrees. Dean Snyder feels that this is more of a commercial business and that it is a great business but wrong neighborhood.

A **Motion** was made by Dean Snyder to **deny** the application of Steven Ozminkowski, owner, for a Special Permit at 1238 Clarkson Parma Town Line Road to allow a home business. The applicant was seeking a special permitted use in accordance with Article IX, subsection 165-79.1. This property is zoned Agricultural Conservation (AC) which allows a home business with a Special Permit. In making this determination, several areas of the home business requirements were found to be deficits.

1. Intent under 165-79.1 Home Business (A) – It is found that the applicant as described the current business does not blend in with the existing character of the area of which they are located. There are several instances where this business shown to impact the nature of the neighborhood.
2. The paragraph under Neighborhood Character, 165-79.1 (C) says in part “the appearance of the structure shall not be altered.” In this case, in order to appropriately utilize the garage door and to conserve energy a temporary structure was built in front of the garage door capture the energy and allow folks to get in and out. This has a very significant change to the appearance of the garage to the point it is difficult to tell that it is a garage. Second item under the same paragraph states in part “that the business shall not be conducted in a manner which results in the emissions of sounds, noises, odors or vibrations. No noise from the home shall noticeable at any time from any public street or neighboring property”. Unfortunately, the proposed business is located in a very close proximity to the neighboring property and it would be very difficult to have 11 students arriving at approximately the same time without causing some type of noise that would affect the character of the neighborhood. Additionally, if the classes were held outdoors it is certainly going to produce noise that will be noticeable from a neighboring property. Even if the classes were held in the garage because they typically do not have enough sound attenuation and it would still be noticeable to the neighbors.
3. Parking 165-79.1 (L) – Our code calls out that sufficient off street parking shall be provided. The applicant only has 11 students at a time but there is a 15 minute overlap and it is not clear how they could fit 11 student cars plus 2 for residents of the property safely in the provided parking area much less the additional 11 during the overlap.

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

Chairperson Robillard polled the Board:

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

Jim Zollweg: I based my decision on the change in the neighborhood character and especially on the parking limitations.

Dan Melville: My vote is based on the change in the neighborhood character, parking and the possible noise levels that might be coming from the business.

Stephen Shelley: My decision is based on the parking issues and the change of the neighborhood character and the proposal could change the appearance of the structure.

Chairperson Robillard: My vote reflects that I concur with the motion and the concerns of the neighbors and Board members. The intent regarding the character of the residential area will be impacted in a negative way, the appearance of the structure, the noise of the students arriving and departing, and very importantly the lack of sufficient off street parking to make it safe and accessible for the number of students and people coming and going.

2. JEAN and JEFFREY DeRUYTER – 676 OGDEN PARMA TOWN LINE ROAD

The application of Jean and Jeffrey DeRuyter, owners, for a Special Permit at 676 Ogden Parma Town Line Road. The applicant is proposing to construct a 1,010 square feet addition to be used as an accessory apartment. The applicant is also seeking relief from Town Zoning Article IX, subsection 165-76.D which states that an accessory apartment shall not exceed 35% of the total floor area of the principal building, which, in this case, is 821.45 square feet. This property is currently zoned Medium Density Residential (MD) which allows this use with a Special Permit.

Jean DeRuyter, owner, explained that they would like to build this addition so that her and her husband could move into the in-law apartment of the house and their son and his wife would stay in the main part of the house. Currently they live in the house together. The majority of this addition would be to the back of the house off the current family room, the only thing to the front would be the new entrance way. Dan Melville asked what they would do when this addition was no longer needed and if it would be rented out down the road. The applicant stated they would not rent it out. Dean Snyder asked about the shared space and if it will be shared equally. Art Fritz stated that he was not really sure what area was shared and what area was not because it is not depicted on the plan. The architect thought it would be added to the square footage of the current house. There was discussion about the square footage of the principal house, the addition to the

house and the shared space. Dennis Scibetta stated that they added some in to make sure that the applicant would be covered. The Board discussed that without accurate numbers they cannot do their job. Dean Snyder stated that the Board has been burned before and they would need further information and accurate numbers to rule on this. Stephen Shelley felt that he could not even figure out the dimensions from the map. They discussed the Survey Map provided to the Board which the Building Department had and the applicant sketched where the addition would be. Dan Melville feels that the Board needs to know exactly where this falls percentage wise. Dean Snyder stated he would like to see actual numbers instead of calculating quickly and possibly having an error. He felt that typically the architect would have been here or he would have had the calculations on the plans. After further discussion and some confusion with the different numbers provided, it was determined that the Board could not make a determination until they have the correct numbers.

Board Discussion: Dennis Scibetta reported that notifications were in order, the request was returned by Monroe County with the comments which were reviewed with the Board and the applicant. There are no comments from the Building Department.

Dean Snyder asked what the exterior would look like. The applicant stated it would have vinyl siding to match the house. Chairperson Robillard asked who owns the 7 cars in the driveway. Zach DeRuyter said most of them are his but they all belong to people living in the house. Chairperson Robillard felt that the application was lacking needed information and has some incorrect information regarding if this is a two story or one story.

Public Comment: None
Public Hearing Closed.

A **Motion** was made by Jim Zollweg to **table** the application of Jean and Jeffrey DeRuyter, owners, for a Special Permit at 676 Ogden Parma Town Line Road. This application is in respect to construction of an accessory apartment. The information that the Board needs to make a decision is credible measurements of the existing building and the square footage of the proposed accessory apartment, including detail about the size is of the shared space and whether that shared area is included in the existing building or the addition. Also the Board is looking for a chart that calculates what the proposed percentage is. This is being tabled to the June 2015 meeting without prejudice with the information to be provided to the Building Department by May 29, 2015 so that all information will be in the Board packet.

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

3. BRUCE and HEIDI BUELL – 212 DEAN ROAD

The application of Bruce and Heidi Buell, owners, for an area variance at 212 Dean Road. The applicant is seeking relief from Town Zoning Article V, subsection 165-32, schedule 1 which states that the front setback shall be 75 feet. The applicant is seeking to construct a residence on a flag lot with a front setback of 20 feet. The property is currently zoned Rural Residential (RR).

Bruce Buell, owner, explained that they have purchased land at this address and would like to build a house. What he did not understand was that there is supposed to be a 75 foot setback from the neighbor's property at 208 Dean Road. He explained that the front corner of the garage will be 20 feet behind the property line but it will be 60 feet beyond the back fence on the neighbor's property. His concern is that after building the house, patio and pool he will still be in the safe zone from flying golf balls. If he used the 75 foot setback they would only be about 7 ½ feet from the back lot line. This will also allow them to keep a buffer of trees around the property. This is 250 feet from the road.

Board Discussion: Dennis Scibetta 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.

Dean Snyder asked the applicant to point out where the 75 feet is. It was determined that the Board was missing the layout of the house and copies were made, handed out and reviewed by the Board.

Public Comment: Chairperson Robillard read letter that were in the file.

Walter Pavlovych, owner of Braemar Country Club – His letter stated that he is in support of this variance and his desire to build a home at 212 Dean Road. He sold the property to them and has had several conversations with them. He stated that for safety reason, (errant golf balls hit on the 2nd fairway) it is best for their house and in-ground pool to be set as far forward toward Dean Road and away from the back property line as possible.

Merle and Janine Salisbury, 216 Dean Road – Their letter stated that after discussion with the applicants and reviewing the proposed setback for their home, they are satisfied and supportive of their request. They noted that at the location of the closest point of their house behind their property line would be 47 feet behind their rear property line and well over 200 feet from their house. Their understanding is that the Buells plan to add appropriate landscaping to protect views and privacy for both homes.

Andrew and Alma Miller, 208 Dean Road – Their letter stated that after discussing the plans with the applicants they are satisfied and supportive of their request. They noted that the location of the front point of their garage will be 20 feet behind the property line and approximately 160 feet behind their house. They have discussed adjacent lawn area and understand that they plan to add appropriate landscaping to protect views and privacy.

Public Hearing Closed

Dennis Scibetta stated that this is an unusual lot and at some point this was determined to be a flag lot and until they went out there and could see the layout it was hard to understand the request. Dennis Scibetta also wanted to point out in reality this is a 350 foot setback not a 75 foot setback. Stephen Shelley stated that this is not uncommon with a flag lot. Dean Snyder stated that with the neighbor's approval it makes it easy for the Board.

A **Motion** was made by Stephen Shelley to **approve** the application of Bruce and Heidi Buell, owners, for an area variance at 212 Dean Road. The applicant is seeking relief from Town Zoning Article V, subsection 165-32, schedule 1 which states that the front setback shall be 75 feet. The applicant is seeking to construct a residence on a flag lot with a front setback of 20 feet. The property is currently zoned Rural Residential (RR). In making the motion to approve:

- The benefit cannot be achieved by other means feasible to the applicant. By placing the house where it is proposed it will be safer from errant golf balls at the adjacent golf course and there are other reasons presented that makes this more beneficial.
- There will be no undesirable change in neighborhood character or to nearby properties. We have letter in the file from neighbors which do not present any objection to this placement.
- The request is substantial since the code calls out 75 feet and this is 20 feet; however, this is mitigated by the fact that this is 250 feet from the road.
- 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 exceeds any detriment to the health, safety and welfare of the community.

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

Dennis Scibetta thanked the Board for reasoning through this in a thoughtful and insightful way.

4. JAMES and AMY SCORSE – 475 HUFFER ROAD

The application of James and Amy Scorse, owners, for an area variance at 475 Huffer Road. The applicant is seeking relief from Town Zoning Article X, subsection 165-82.C.2, which requires no more than a 12 feet high sidewall. Applicant is requesting an accessory structure with a 16 feet high sidewall. The property is currently zoned Agricultural/Conservation (AC).

James Scorse, owner, explained that he needs an extension on the side wall from 12 to 16 feet to store his RV inside the building. Chairperson Robillard asked how tall the RV was. Applicant stated 12'6." Dean Snyder asked where the RV will be parked if the building is not approved. Applicant stated it has been out in the yard and he has been having issues because tree branches have come down and repairs have been needed. Chairperson Robillard asked what will happen when the trees are bare and will this be higher than the house. Mr. Scorse explained that the back yard is considerably lower than the front and from the roadway this it will not be obvious. Dean Snyder stated that this will be insignificant from the road and that he much prefers to see stuff stored inside. Dean Snyder stated that a new pole barn will look better than an RV in the yard. Dennis Scibetta stated that there is a 10 foot drop from the front yard to the back yard. Chairperson Robillard feels that that is very positive for this request.

Board Discussion: Art Fritz reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II action under SEQR and no further review is required. There are no comments from the Building Department and no letters in the file.

Public Comment:
Public Hearing Closed

A **Motion** was made by Jim Zollweg to **approve** the application of James and Amy Scorse, owners, for an area variance at 475 Huffer Road. The applicant is seeking relief from Town Zoning Article X, subsection 165-82.C.2, which requires no more than a 12 feet high sidewall for an accessory structure. Applicant is requesting an accessory structure with a 16 feet high sidewall. The property is zoned Agricultural/Conservation (AC). In making this motion:

- The benefit cannot be achieved by other means feasible to the applicant. There is a significant benefit of his property being stored indoors as opposed to outdoors. Because of the height of the RV they cannot achieve this benefit by any other means.
- There will be no undesirable change in neighborhood character or to nearby properties. It is at the far back of the lot and there is a significant drop in elevation from the road and the residence where this structure will be. The peak will fall below the main residence so it will not be visible.
- The request is substantial. It is four feet above the normal wall height.
- 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 exceeds any detriment to the health, safety and welfare of the community.

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

MINUTES OF FEBRUARY 19, 2015

The ZBOA minutes of February 19, 2015 were reviewed. **Motion** was made by Dean Snyder to **approve** the February 19, 2015 minutes as presented. **Seconded** by Stephen Shelley. **Motion carried (3-0) (Ayes:** Stephen Shelley, Dean Snyder, Jim Zollweg; **Abstain:** Dan Melville, Veronica Robillard; **Absent:** Tim Thomas).

MINUTES OF MARCH 19, 2015

The ZBOA minutes of March 19, 2015 were reviewed. **Motion** was made by Jim Zollweg to **approve** the March 19, 2015 minutes as presented. **Seconded** by Dan Melville. **Motion carried (3-0) (Ayes:** Dan Melville, Veronica Robillard, Jim Zollweg; **Abstain:** Stephen Shelley, Dean Snyder; **Absent:** Tim Thomas).

ADJOURNMENT

There being no further business, a **Motion** was made by Stephen Shelley, seconded by Jim Zollweg to adjourn the meeting at 9:13 p.m. **Motion carried (5-0) (Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Dean Snyder, Jim Zollweg; **Absent:** Tim Thomas).

Respectfully submitted,

Carrie Webster
Recording Secretary