

**TOWN OF PARMA
ZONING BOARD OF APPEALS
DECEMBER 20, 2018**

- Members Present:** Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac
- Members Excused:** Dean Snyder
- Others Present:** Dennis Scibetta, Art Fritz, Lara Badain, Esq.
- Public Present:** Mike Ansaldi, Esq., Katie Coyle, David Dills, Roger Dills, Eunice Dills, Mike Agostinelli, Paul Acito, Justin Borelli, Larry Heiniger, John Brickler, Paul S. Cummings, Stephen Connolly, Bernard Connolly, Joyce Watkins, and other members of the Public.

The meeting was called to Order by Chairperson Robillard at 7:00 p.m. She explained the function and the decision-making process of the Zoning Board of Appeals. She explained that this is a five member board and a quorum of three is required to pass a motion. She explained that the last matter on the Agenda will be moved to the beginning of the meeting because of the attorneys present for that application.

1. PAUL AND DEBRA ACITO – 1228 CLARKSON PARMA TOWN LINE ROAD

The application of Paul and Debra Acito, owners, for a Special Permit at 1228 Clarkson Parma Town Line Road. The applicants currently have 15 dogs on this property and are 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).

Michael Ansaldi, Esq, representing the applicant stated that his client is looking to obtain a special permit for 15 dogs, ranging in age from 3 to 11 years old and weighing between 5 and 15 pounds. These dogs are family dogs and are being taken care of by the Acito's and their daughters. He provided a letter from the Family Vet stating that all of the dogs are properly taken care of and vaccinated appropriately. All are currently licensed. He noted that he has an affidavit from the owner at 1234 Clarkson Parma Town Line Road stating that the dogs are well behaved, it does not change the character of the neighborhood and he sees the owners interact with the dogs.

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 Type II action under SEQR and no further review is required. There are no letters in the file.

Tim Thomas is concerned by the fact that Mr. Fritz made several attempts to contact the applicants to get a status update and find out the intentions of the applicant and he never received a response. Mr. Ansaldi stated that his clients were trying to meet with him during that timeframe and there was some miscommunication. Tim Thomas asked Mr. Ansaldi if he agreed that this is an extraordinarily excessive amount of dogs to have on a property. He agreed that 15 is a large number but felt that these are small dogs and felt that the code in place is a newer part of the code and these dogs do not change the character of the neighborhood.

Lara Badain, Esq., representing the Town, stated that while we can all agree these are small dogs, she asked Mr. Ansaldi to set out the ages of the dogs. He stated the majority are between 3 and 7, two 7 year olds, one 6 and a half year old, one 6 year old, three 3 year olds, one 11 year old, and the remaining are in the 3 to 7 year old range.

Tim Thomas asked if the applicant has engaged in breeding any of the dogs as in having puppies and selling them. Mr. Ansaldi stated that there have been some accidents and they have sold those puppies for a very low amount to get rid of some of the puppies but they are not in the business of breeding and do not intend to do that. He stated that the dogs are aging and getting past the point of having puppies and they do not intend to replace them.

Lara Badain, Esq., asked if all 15 dogs are purebred dogs and what the breeds are. The applicant stated 6 of the 15 are and they are Maltese, Poodles and Multipoos. Ms. Badain asked if 6 are purebred what are the other 9 dogs are. Mrs. Acito said they are mixed poodles. Ms. Badain asked if the purebred dogs are registered AKC dogs. Mrs. Acito said they are. Ms. Badain asked if when the accidents occurred and there were litters of dogs, were the puppies sold. The applicant stated yes for a little bit of money. Ms. Badain asked if when the purebred puppies were sold, did the buyers receive AKC papers since they were AKC registered. The applicant stated no.

Tim Thomas asked if any of the dogs are spayed or neutered. Art Fritz, Dog Warden, stated that according to the Town's records none of them are spayed or neutered. Mr. Ansaldi confirmed that none of them are spayed or neutered. However he felt that they are at an age where having puppies is less of an issue. Dan Melville asked if the yard is fenced in or are they kept in cages. Mr. Ansaldi stated there is a fence and the dogs can run free and they have a dog room in the house with cages for when the dogs are sleeping; at least half the day they are not in that room. Dan Melville asked if the dogs bark a lot. Mr. Ansaldi stated they bark a little but not overwhelming and he spoke with the neighbor and he stated that they bark some but never late at night.

Mr. Thomas asked why the need for so many dogs. Mr. Ansaldi stated that it started with a few dogs, some were show dogs. He felt that the Board should look more at going forward; the applicant is willing to work with the Board and become compliant at some point

Stephen Shelley stated that there are two numbers going around. The records at the Town show 16 licensed dogs and the application is asking for 15 dogs. Mr. Ansaldi stated that there was a 16th dog living in the residence with their son who has moved out of the residence with the dog since it was licensed. Chairperson Robillard noted that the original request was for 9 dogs and then it was increased to 15 dogs and then 16 dogs were licensed which is going in the wrong direction from what is allowed.

Dennis Scibetta wanted it clarified and in the record that the applicants are in compliance with the State Licensing requirements NOT with the Town Code. The applicant's attorney stated that when he spoke about them being in compliance he meant with the licensing end not the code.

Chairperson Robillard stated that there have been other applications for this when families have merged and those circumstances put them over the amount of dogs allowed but usually that meant they had four or five dogs and the Board has made allowances for those circumstances and unique situations.

Lara Badain, Esq., asked why the dogs were not spayed or neutered if they are pets and not meant for breeding. Mr. Acito stated that the male dogs are studded out. Mr. Ansaldi stated that they are studded out to others for the purpose of breeding but not with the intention of the Acito's having puppies. Chairperson Robillard stated that with the accidents at some point there were more than 15 dogs on the property. Mr. Ansaldi would like to look towards the future and getting them in compliance not back. Tim Thomas' concern is that the potential is there to spin out of control with more dogs and more accidents. Ms. Badain asked if the applicants would spay/neuter the dogs so there would be no more accidents. Mr. Ansaldi stated that if that is something the Board was requesting he would like to speak to them about that.

Stephen Shelley felt the Board cannot grant the special permit per 165-82-3(c) if there are any violations within the last year of Chapter 9 which is the Dog Code and he asked Art Fritz if there were any violations. Art Fritz stated that at the October meeting only 9 dogs were licensed meaning 6 were not and that would be a violation; however, after that meeting the next day they licensed a couple more and a few days later the rest were licensed. Currently there is no violation but since the October meeting there was. Mr. Ansaldi stated that no violations have been filed against his client and his understanding is that this application is still appropriate under the law unless there was a reported violation. Lara Badain, Esq., stated she does not think that part of the law is that clear and is open to interpretation. The language says "the resident applying for a special permit must have had no violations" it does not say they must have had no convictions of violations. The fact that some dogs were unlicensed and then she came into license them speaks to the fact that there was a violation at some point. He feels that if they were not cited then they were not in violation. Dan Melville stated that while they were not cited with the violation, they were informed of the violation. Mr. Ansaldi agreed with that and that is why they came in and paid the fees and licensed the dogs, which means they are currently not in violation.

Tim Thomas stated this is very clear for him. This is an excessive amount of dogs, in 14 years he has never seen anything like this before the Board. None of the dogs are spayed/neutered. This is not a family merge situation that might warrant the Board to possibly grant this. The male dogs have been sent out for breeding and there have been accidents in the past resulting in puppies being sold. He has not seen any reasonable justification as to why they need 15 dogs and he could not support this application as it stands. He would be willing to work with the applicant to reduce the number of dogs over a very short period of time.

Lara Badain, Esq., stated that Art Fritz completed a Compliance Inspection on October 18, 2018 and she asked Art some questions based on that inspection.

Lara Badain, Esq. asked Art if he was the Dog Code Enforcement Officer. Mr. Fritz stated that was correct.

Ms. Badain asked if that was the capacity in which he was acting at the time of the inspection. Mr. Fritz stated yes.

Ms. Badain asked if he could describe the circumstances of that inspection when he went to the property. What he observed and his interactions. Mr. Fritz stated he stopped to talk to the Acito's about their application before the Zoning Board and to do an inspection. Mr. and Mrs. Acito brought him into the dog room, which is approximately a 10x10 room with individual crates around the outside of the room containing 14 dogs and one dog running around the house. When he was trying to have a conversation with Mrs. Acito they had to leave the room because they could not understand each other over the barking dogs.

Ms. Badain asked if at any time he asked the applicant why the dogs were in the dog room in crates. Mr. Fritz stated that he asked why they are crated if they are pets. The applicant told him that when they have company they are crated; Art Fritz stated however, he is not really company and he just happened to stop by.

Mr. Ansaldi asked if he could have a copy of this report.

Tim Thomas asked how the Town became aware of this. Art Fritz explained that when the dogs were licensed through the Town Clerk Office and they get one for more than three dogs they notify him.

Lara Badain, Esq., asked how long the applicants have resided at the property. The applicant stated since 1985. Ms. Badain asked if they have ever had any complaints, visits or been inspected by the Humane Society. They said they had an inspector there in September 2018. Ms. Badain asked if there was ever a time before that. Mrs. Acito said no and Mr. Acito said there was one other time maybe 10 years ago.

Mr. Ansaldi asked Art Fritz if he noted the large yard and fence at this property during his inspection. Mr. Fritz stated no that he was in the house mainly.

Public Comment:

Joyce Watkins, 1216 Clarkson Parma Town Line Road, stated she rarely hears the dogs barking and she has no objection to this application or how many dogs she has.

Jhan Sauer, 986 Parma Center Road, stated that she voiced her concerns at the October meeting and she hears them barking from her backyard for more than 15 minutes at a time and that the dogs are out in the yard for hours at a time. She cannot enjoy her yard during those times.

Bernie Connolly, 77 North Avenue, wanted to make sure the dogs are taken care of which a vet said they are and they have good living conditions.

Dennis Scibetta read the following letter into the record from Dean Snyder, DVM, Member Parma Zoning Board of Appeals

Although I will be unable to attend the Parma ZBA December meeting 12-19-18, I would like to share my thoughts regarding this application:

1. In October the applicant requested a Special Permit to retain 9 existing dogs on their property. An Inspection Report dated Oct. 18, 2018 indicated that applicant harbored 15 dogs on the premises on that particular day. These were housed in a room approximately 10'x10', with the exception of one that appeared to be a free roaming pet, the remainder were kept in small cages located around the perimeter of the small room. The room appeared cramped and the noise level was such that the DCO was unable to carry on a conversation with the applicant in that room.

This Inspection Report identified that the applicant was in violation of Parma Zoning Ordinance Article 10, Subsection 165.82 AA.1 and 3C in addition to a violation of Chapter 9 of the Parma Town Code. It has not been determined whether the applicant truly was not aware the number of dogs she harbored as she had indicated to the DCO or if she was trying to deceive the DCO. It has not been determined whether she actually harbored 9 dogs when she made the application and then possibly acquired 6 more breeding dogs before the inspection.

2. At the October 18, 2018 Parma ZBA meeting, the applicant stated none of the 15 dogs were neutered.

My subjective opinion is that this appears to be an Animal Breeding Facility. Harboring such a large number of intact dogs kept in small cages is most consistent with this definition. It also could be a case of Compulsive Animal Hoarding. If these animals were truly pets, I would expect the applicant would have the pets neutered to minimize the chance of devastating diseases such as Pyometritis and Mammary Tumors that frequently affect intact female dogs, Perianal Adenocarcinoma that frequently affect intact male dogs. Owners of breeding dogs are willing to subject their dogs to these diseases for many reasons including personal financial gain.

Our Town Code has provisions for Animal Breeding Facilities 165-57. This part of the code has many requirements to minimize the impact of such a facility on the character of the neighborhood and to nearby properties. Some of these requirements are:

1. Minimum parcel size of 5 acres.

2. No kennel structure shall be located closer than 150 feet to a residential structure on an adjacent lot.
3. No kennel structure shall be located within 150 feet from the front lot line, nor within 100 feet from a side or rear property line.
4. An exercise area shall be provided for each animal.

The applicant seems to be trying to circumvent these important requirements by claiming these animals are pets.

The Town of Parma supports the important Human- Animal Bond by providing an opportunity for property owners who have found themselves with more than 3 pets, to make application per 165-82 AA. The ZBA has granted temporary relief for families who have blended from separate residences combining their existing pets. I do not believe the Code was written to circumvent section 165-57 for Animal Breeding Facilities.

Keep in mind the Human-Animal Bond is a mutually beneficial and dynamic relationship between people and animals that is influenced by behaviors essential to the health and wellbeing of both (American Veterinary Medical Association).

1. Is keeping these animals in small crates, subjected to the intense pheromones emitted by intact animal, in a cramped room where the barking makes it impossible to carry on a conversation representative of celebrating this sacred bond? I fail to see the mutual benefit.
2. Would many of these small breed dogs be better served being adopted into homes where they could run free within the house like apparently one of the dogs in this house is allowed to?
3. Is it fair for the neighbors to be subjected to the intense barking experienced by the DCO?
4. Is it fair to the neighborhood for the ZBA to circumvent all of the requirements currently in place for Animal Breeding Facilities to minimize any impact on adjacent properties?
5. How many puppies have been sold or offered for sale from this property and why isn't it registered as a Pet Dealer with the NYS Ag and Markets? How many people have visited this facility in response to advertisements of puppies for sale? Who are the majority of the puppies sold to? How many of the 15 dogs are AKC registered and how many their litters have been registered with the AKC?
6. How effective is an emotional support dog who is intact and constantly crated?
7. Does anyone else find this situation deeply offensive, knowing this home has animals crated like food animals or breeding stock? I understand keeping an animal in a crate all day and night does not meet the definition of animal cruelty if they have enough room to stand and turn around, shouldn't we wish for more than non-cruelty for pets if we truly care about them?

For the above mentioned reasons I strongly recommend the Parma ZBA vehemently deny this application due to the negative effect on the character of the neighborhood.

Chairperson Robillard asked the applicant to address each point from Dr. Snyder's letter.

1. Mr. Ansaldi stated that this was a single incident and is not representative of the general conditions the dogs are in. The dogs were barking in response to Mr. Fritz coming over to the house. The neighbors next door do see the dogs outside and interacted with.
2. Mr. Ansaldi feels that the dogs do run free both inside and outside the house and that they are out of the cage for the majority of the waking hours.
3. Mr. Ansaldi stated that there is a neighbor who says the barking is too much and another one who says it is not an issue. The applicants would work to make sure this is not an issue going forward.
4. Mr. Ansaldi feels that this is a newer part of the code not in place for decades. They would like to get into compliance but these dogs are part of the family. The code has been in place since 2011.
5. Mr. Ansaldi stated that there have been 4 or 5 litters (approximately 15 to 20 puppies) that have been sold over the years. Lara Badain, Esq., asked if they advertised the puppies anywhere. The applicant said they were advertised in the Penny Saver. Chairperson Robillard asked why they are not registered as a pet dealer with NYS Ag & Markets. Mr. Ansaldi said this is not an intended business and he wants to commit to the Board that this will not be an issue going forward.
6. Mr. Ansaldi does not feel that the dogs are being constantly crated.

Chairperson Robillard would ask the Board members to take No. 7 of Dr. Snyder's letter into consideration when making their ruling. Mr. Ansaldi said that the letter from the Vet should be taken in consideration when making their decision.

Dan Melville asked if the attorney had medical reports on the dogs. Mr. Ansaldi said they have some vaccination records and could get those if needed.

Art Fritz asked how often the dogs are studded out. The applicant stated only once and a while, between 3 and 5 times a year through the Vet. There are three or four male purebred dogs that are being studded out. Lara Badain, Esq., asked if those are AKC breeding that is occurring. The applicant stated their purebreds are being studded out to other mixed breeds, there are no AKC papers involved and the Vet is facilitating this.

Chairperson Robillard said that this is 5 times the allowed amount of dogs; the Board is here to grant relief not rewrite the whole code and this application is not asking for a little leeway. She has concerns with the fact that the dogs are being held in cages in very small spaces. How often are they out, do they go in shifts, more in the summer and not winter? She feels they might be inside a lot. Mr. Ansaldi stated that they are inside more in the winter than the summer months when they are mostly outside during the day when they are home.

Tim Thomas asked what a typical stud fee is for this. The applicant stated they get \$500. Ms. Badain asked what the small amount was they received when they sold the puppies. The applicant said \$100 each. Corinne Zajac asked why they didn't surrender the puppies to a non-kill shelter vs. selling them for profit for such a small fee through an

ad in the paper not knowing what kind of home they could be going to. Mr. Ansaldi said that \$100 is really not a profit. Corinne Zajac asked why profit at all for these litters that were accidents. Dan Melville feels that the fact that they are being sold points to this being a business and if you are not looking to profit why not get them neutered so you don't have to worry about it at all. Mr. Ansaldi stated he would like an opportunity to speak to his clients before answering that.

Lara Badain, Esq., asked how many of the 15 dogs were kept as a result of the accidental litters. The applicant stated no. Ms. Badain asked where the dogs came from. The applicant stated they buy them.

Stephen Shelly noted that if some of the dogs are 3 to 5 years old that means that at least 6 of the dogs were not licensed for over 2 years and in violation of New York State Law. Mr. Ansaldi stated while the Town deals with these laws on a daily basis that is a code that people don't always know. Art Fritz stated that while he agrees with that, in this case, the Acito's already had three dogs licensed and then when they came in and licensed more the Town became aware of how many dogs there were. He feels they were aware of the law requiring the licensing the dogs.

Kate Coyle, 16 Fairwood Drive, stated she has two Maltese dogs, they bark at everything and can be very loud and she can only imagine how many 15 dogs would make. She did think it was possible to put the dogs in cages when Mr. Fritz showed up. The timeline is concerning to her because the code came in in 2011 and most of these dogs are 3 to 7 years old which makes most of them purchased after the code changes became effective. If the applicants were staying up with the licensing and care of the animals than the Town would have known 7 years ago that this was a problem, so they have been skirting the system for that long.

Tim Thomas stated the reason the code was modified in 2011 is so there would not be situations like this and the Board has to be very careful of setting a precedent so that there does not become neighborhoods with dogs running around and litters and stud services happening. It is pretty apparent and there is evidence that there is breeding going on here. There were some litters here, some stud services happening with some financial gain and that is breeding.

Jhan Sauer, felt that if the Vet who wrote the letter saying the dogs were well cared for is also the Vet that is using them for stud dogs she thinks that might be a conflict of interest.

Kate Coyle, stated that the comment that they are coming to an age where they cannot breed is false. Female dogs may continue in silent heat which is not a visible heat cycle but it is still possible for them to get pregnant if they are not spade.

Dennis Scibetta stated that many surrounding Towns also have a three dog limit, including the Village, Chili, and Clarkson.

Public Hearing: Closed

A **Motion** was made by Tim Thomas to **deny** the application of Paul and Debra Acito, owners, for a Special Permit at 1228 Clarkson Parma Town Line Road. The applicants currently have 15 dogs on this property and are 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). With a Special Permit there are no specific criteria. The denial is based on the following:

1. This is an extraordinarily excessive amount of dogs on this property. He has never seen something like this in his 14 years on the Board.
2. This is not a situation where a family has merged which would provide a reason for why this might be allowed. Prior to this application there have been a couple applications where to families have merged and they ended up with four or five dogs on the property. That is a reasonable expectation when families merge.
3. There is reasonable evidence that the applicants have had litters of puppies and stud out some of the male dogs for a fee.
4. None of the dogs are currently spayed or neutered.
5. The applicant's attorney agreed that this is an extraordinarily excessive amount of dogs on the property.
6. There was no reasonable justification given as to why the applicant needs to have 15 dogs on the property.

The applicant has 45 days from January 1, 2019 to reduce the number of dogs to comply with the code. The Dog Control Officer shall perform 2 inspections in the 45 day period, one at midpoint and one at the end of the 45 days to demonstrate that the applicant is complying with the code and the motion as has been set forth. The applicant will have to show proof to the Town where the dogs have gone by showing copies of dog licenses from the new owners.

Chairperson Robillard stated that there had been some discussion that if the dogs were neutered would that change the mind or would there be a different outcome from the Board. Mr. Ansaldi, Esq., wanted to know if neutering of the animals was a factor in this matter. There was a consensus by the Board that whether the dogs were neutered or not was not a critical factor in this decision. The amount of dogs is the deciding factor and it is irrelevant whether they are neutered or not. The Board does not get into any ethical decisions about spaying or neutering of pets.

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

Chairperson Robillard polled the Board as to their reason for denial:

Stephen Shelley – He voted to deny based on the fact that this is 500% over the amount that is allowed by the Code. In the past these have been allowed because there has been a merger between families and that is not the case here. Based on the ages of the dogs this would take 10-15 years for the applicants to become compliant.

Dan Melville – His main concern is the number of animals on this property. While some have been approved in the past they were nowhere close to the extent of this

application of 15 dogs. To approve this would not be consistent with anything done in the past.

Corinne Zajac – The applicant is out of compliance with the code and she feels like everything indicates that this is a family business.

Chairperson Robillard – She feels that everything entered into the record framed her opinion with regards to the condition and the background of this application. The number far exceeds the amount of dogs allowed per the code.

CONTINUING BUSINESS FROM NOVEMBER 15, 2018

2. JOHN BRICKLER – 52 BAILEY ROAD

The application of John Brickler, owner, for an area variance at 52 Bailey Road. The applicant is proposing to construct a 2,560 square foot accessory building, which would bring the total square footage of accessory structures on this property to 4,560 square feet, and is requesting relief from Town Zoning, Article V, section 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet. This property is currently zoned Rural Residential (RR).

Chairperson Robillard noted this was tabled for additional information. John Brickler, owner stated he submitted the addition information that was asked for at the last meeting. The layouts show what will be in each structure. Tim Thomas asked if all of the items belong to him. Mr. Brickler stated they do. Chairperson Robillard asked if he had looked into making it smaller. Mr. Brickler stated he could eliminate the work area making the structure smaller by 500 square feet and he would be willing to do that. There was discussion about the items that will be stored including four snowmobiles, two wave runners, two 4-wheelers, a truck and a utility trailer.

Tim Thomas asked if he ever looked at an addition to the current structure versus a second building. Mr. Brickler stated he did look at that but when trying to configure how he would get things in and out of a long building if he needed something out of the back where the addition was he would need to move everything out of the way. Tim Thomas asked what the building would look like. The applicant stated it would look identical to the other building and will blend in. The structure will sit over 600' from the road and the property is approximately 6 acres. If this were not approved than he would have to store the items based on season off site.

Tim Thomas stated that normally he is uncomfortable approving these; however, there is a need based on the provided layout or they will have to be stored outside or off-site; the applicant is willing to go a little smaller than the original request showing he is willing to work with the Board. Stephen Shelley stated there are other structures that are more visible in the area.

Public Comment: None

Public Hearing: Closed

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of John Brickler, owner, for an area variance at 52 Bailey Road. The applicant is proposing to construct a 2,000 square foot accessory building, which would bring the total square footage of accessory structures on this property to 4,000 square feet, and is requesting relief from Town Zoning, Article V, section 165-32.C.2 which limits the total area of accessory structures to 1,500 square feet. This 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. It was discussed with the applicant the possibility of putting an overhang on the building to store equipment under but that would still subject them to the elements and impact the quality of the equipment and increase its depreciation. Off-site storage would cause the applicant to incur additional expense. The applicant has provided a detailed layout/drawing of where the equipment will be stored. The applicant has also agreed to reduce the size of the structure from 2,560 square feet to 2,000 square feet.
- There will be no undesirable change in neighborhood character or to nearby properties. The proposed structure sits 600 plus feet off the road, is shielded by natural vegetation. The property is approximately 6 acres.
- The request is substantial. It is almost 3 times what is allowed.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created like many applicants before us for accessory structure requests they have a lot of recreational toys. 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 to approve (5-0) (Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac; **Excused:** Dean Snyder).

3. STEPHEN CONNOLLY – 1235 HILTON PARMA CORNERS ROAD

Application of Stephen Connolly, lessee, for a Special Permit at 1235 Hilton Parma Corners Road. The applicant is proposing to operate an automobile sales business with the ability to display 5 automobiles for sale. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit.

Dennis Scibetta noted that the applicant was sick and asked to be put on the Agenda for January.

A **Motion** was made by Dan Melville to **table** the application of Stephen Connolly, lessee, for a Special Permit at 1235 Hilton Parma Corners Road at the request of the applicant without prejudice to the January 2019 meeting.

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

4. DAVID AGOSTINELLI – 5021 RIDGE ROAD WEST

The application of David Agostinelli, owner, for a Special Permit at 5021 Ridge Road West. The applicant is proposing to operate an automobile sales business with the ability to display 50 automobiles for sale. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit.

Larry Heiniger, Engineer at Marques and Associates PC, clarified that the applicant is looking to display 23 vehicles for sale. He provided a site plan with the layout of where the cars for sale would be parked, where employees will park and where customers will park. Chairperson Robillard asked if the tanks have been removed. It was noted they were. They discussed the hours of operation which would be 8-5 pm Monday through Friday; 9-1pm Saturday and Closed on Sunday. Any signage would be per Town Code. They will be using the existing Lighting. There will no speaker system.

Public Comment: None

Public Hearing: Closed

A **Motion** was made by Dan Melville to **approve** the application of David Agostinelli, owner, for a Special Permit at 5021 Ridge Road West. The applicant is proposing to operate an automobile sales business with the ability to display 23 automobiles for sale. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit with the following conditions:

1. Hours of operation will be Monday-Friday 8 a.m. to 5 p.m.; Saturday 9 a.m. to 1 p.m.; Closed on Sunday.
2. Signage shall be per Town Code.
3. The applicant will use the existing lighting.
4. No outside sound system.
5. No display of vehicles in the road right-of-way.
6. Applicant to maintain all licenses from the State or DMV.
7. This Special Permit will be good for a period of one year, renewable December 2019.

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

5. PETER BEASLEY –711 BURRITT ROAD

The application of Peter Beasley, owner, for a Special Permit at 711 Burritt Road. The applicant is proposing to operate an in-home business in accordance with Town Zoning Article IX, subsection 165-79.1. This property is currently zoned Agricultural/Conservation (AC).

It was noted that this was tabled from the prior meeting so the applicant could provide a site plan (drawing) for the proposed use. Dennis Scibetta explained that the applicant is looking to use a space on the first floor and space in the basement. The total area that will be used is 378 sq. feet which is under the 500 sq. feet allowed.

Public Comment: None
Public Hearing: Closed

A **Motion** was made by Stephen Shelley to **approve** the application of Peter Beasley, owner, for a Special Permit at 711 Burritt Road. The applicant is proposing to operate an in-home business in accordance with Town Zoning Article IX, subsection 165-79.1. This property is currently zoned Agricultural/Conservation (AC). This approval is with the following conditions:

1. Per the drawing submitted, the total square footage for the business will be 378 square feet.
2. There will be no signage.
3. No on-street parking.
4. No hours of operation.
5. Items for the business to be stored safely and securely.
6. The applicant will maintain all Federal and State Licensing for the business.
7. This Special Permit will be good for a period of two years; renewable December 2020.

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

NEW BUSINESS

6. RONALD AND KATHERINE COYLE – 158 LIGHTHOUSE ROAD

The application of Ronald and Katherine Coyle, owners, for an area variance at 158 Lighthouse Road. The owners are proposing to construct an addition to the south side of the dwelling with a front setback of 25 feet. Applicants are requesting relief from Town Zoning Schedule 1 which states that the front setback of a single family dwelling is to be 75 feet from a county road. This property is currently zoned Rural Residential (RR).

Kate Coyle, owner, explained that they are looking to put a 980 sq. feet addition onto the south side of their new house and running completely in-line with the current house. The house was built in 1890 and sits approximately 30' off the road. They are unable to add to the back of the house because of a deck, fence and the septic system. The addition will sit 60' off the lot line to the south. The addition will be used as a master bedroom. If she has to maintain the required 75' foot setback the addition will not be touching the main house.

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 Type II action under SEQR and no further review is required. There are no letters in the file. Dennis Scibetta noted that there was an addition put on the house 15 years ago that does not have a final inspection and said the Building Department can take care of that with this addition. He felt that the applicant should have been made aware of it when she purchased the house.

Public Comment: None
Public Hearing: Closed

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of Ronald and Katherine Coyle, owners, for an area variance at 158 Lighthouse Road. The owners are proposing to construct an addition to the south side of the dwelling with a front setback of 25 feet. Applicants are requesting relief from Town Zoning Schedule 1 which states that the front setback of a single family dwelling is to be 75 feet from a county road. This 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. This house was built in 1890 substantially before the Town Code was established. They cannot build north of the structure because of the driveway and to push the addition back to comply with the setback would make it a non-functional detached structure.
- There will be no undesirable change in neighborhood character or to nearby properties. There are other properties on Lighthouse Road of the same era that potentially as close as this house is to Lighthouse Road.
- The request is not substantial because of the age of the home and the fact it predates by several decades the code. .
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created but is mitigated by the fact that this particular structure sits closer to the road because of the age of the structure. Using the balancing test, the benefit to the applicant outweighs 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, Tim Thomas, Corinne Zajac; **Excused:** Dean Snyder).

7. DAVID DILLS – 1188 CLARKSON PARMA TOWN LINE ROAD

The application of David Dills, owner, for an area variance at 1188 Clarkson Parma Town Line Road. The owner is proposing to construct a 1,800 square feet addition to an existing accessory building, which would bring the total square footage of accessory structures on this property to 3,320 square feet, and is requesting relief from Town Zoning, Article V, section 165-31.C.2 which limits the total area of accessory structures to 2,000 square feet. This property is currently zoned Agricultural Conservation (AC).

David Dills, owner, explained that he and his dad restore antique tractors and other related equipment. They have outgrown the area that they have now and need more room. In order to work on one currently they have to move stuff in and out and they have some equipment stored outside.

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 Type II action under SEQR and no further review is required. There are no letters in the file.

Public Comment: None
Public Hearing: Closed

Tim Thomas asked if it will be attached to the current structure. The applicant stated yes, there will be a door that connects the two buildings and there will be a concrete floor. Dan Melville explained that it is a requirement to have a concrete floor when storing vehicles. Dennis Scibetta noted the permit will not be closed out until the concrete floor is in place. The size of the lot is 10 acres.

After discussion, a **Motion** was made by Corinne Zajac to approve the application of David Dills, owner, for an area variance at 1188 Clarkson Parma Town Line Road. The owner is proposing to construct a 1,800 square feet addition to an existing accessory building, which would bring the total square footage of accessory structures on this property to 3,320 square feet, and is requesting relief from Town Zoning, Article V, section 165-31.C.2 which limits the total area of accessory structures to 2,000 square feet. This property is currently zoned Agricultural Conservation (AC).

- The benefit cannot be achieved by other means feasible to the applicant. The applicant has provided the Board a detailed layout showing the need for the accessory structure.
- There will be no undesirable change in neighborhood character or to nearby properties.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created; however, using the balancing test, the benefit to the applicant outweighs 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, Tim Thomas, Corinne Zajac; **Excused:** Dean Snyder).

MINUTES OF NOVEMBER 15, 2018

The ZBOA minutes of November 15, 2018 were reviewed. **Motion** was made by Dan Melville to approve the November 15, 2018 minutes as amended. Seconded by Stephen Shelley. **Motion carried to approve (3-0) (Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley; **Abstain:** Tim Thomas, Corinne Zajac; **Excused:** Dean Snyder).

OTHER BUSINESS

Chairperson Robillard asked if there was a report available for 5200 Ridge Road. Dennis Scibetta stated that he has been there to inspect and will send out a report to the Board and Monroe County.

Dennis Scibetta noted he will email the map to the board for 1235 Hilton Parma Corners Road.

Beginning next month the Board will be getting their packets both electronically and in the mail.

ADJOURNMENT

There being no further business, a **Motion** was made by Dan Melville, seconded by Stephen Shelley to adjourn the meeting at 10:00 p.m. **Motion carried (5-0) (Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac; **Excused:** Dean Snyder).

Respectfully submitted,

Carrie Fracassi
Recording Secretary