

**TOWN OF PARMA
ZONING BOARD OF APPEALS
JANUARY 16, 2014**

Members Present: Veronica Robillard
Stephen Shelley
Tim Thomas
Jim Zollweg

Members Excused: Dean Snyder

Others Present: Jack Barton, Kyle Mullen

Public Present: Dave Gardner, Vince Koetz, Mary Ellen Koetz, Jane Bacon, Mat Thomas, Mark Camarata, Bob King, Ellie Carr, Les Carr, Mary Corey, Roger Odell.

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

NEW BUSINESS

1. ESTATE OF THEODORE F. KOETZ – 5100 RIDGE ROAD WEST

The application of the Estate of Theodore F. Koetz for a use variance at 5100 Ridge Road West. The applicant requests a use variance to allow a boarding house in the existing dwelling. Town Zoning Article 6, subsection 165-39 does not allow this use. This property is currently zoned General Commercial (GC).

David Gardner, son of Theodore F. Koetz, explained that his uncle is trying to purchase the property. They are hoping this can be kept in the family and continued to be used as a boarding house like it has been since the 1950's so that he does not have to throw out the tenants who have been there a long time. Chairperson Robillard stated she knows what the concept of a boarding house is and asked the applicant to explain how this works and are meals included. The applicant explained that each tenant has a room and they share a bathroom, kitchen and eating area. Chairperson Robillard asked how many current tenants there are. There are 6 tenants and 7 bedrooms, meals are not included. Chairperson Robillard asked if there are leases and how they pay. Mr. Gardner stated that most of these are week to week tenants. Tim Thomas stated that the Board does not see a lot of use variances and the criteria is exceptionally significant. Mr. Thomas asked if they are aware of the criteria. Chairperson Robillard read the criteria for a use variance. Chairperson Robillard asked if they have tried to sell this property with its current zoning.

Mark Camarata, stated that the property was appraised and the appraiser felt that the highest and best use for this property would be to keep it as it is. They felt that listed as General Commercial this would sit on the market and they could not place a value to it. The negatives of this property include the slope of the property, issues with the excess land in the back and not a good right of way to get back there, and wetlands. The appraiser did not appraise the property as its allowed use, only as it is being used. Tim Thomas stated that before moving forward he would need evidence that addresses the 18 principal permitted uses as to why or why not there could not be a reasonable return. Mr. Thomas also explained that this is typical information that is required for every application for a use variance. Mr. Camarata asked the Board what information would be adequate. Tim Thomas stated that they need to address each principal permitted use and tie some numeric value to each one. Chairperson Robillard said they can't arbitrarily say they are not feasible without evidence because they might be feasible. Documentation showing how long this goes back and does it predate the zoning code. It was emphasized that all four criteria need to be addressed. Chairperson Robillard stated that the Board does not want to set the applicant up for a negative outcome without giving them the chance to get further information. Chairperson Robillard asked if there is only one electric, gas and water meter. The applicant stated yes. The Board would like to see documentation showing that there has been a constant use and no skipped time periods. Tim Thomas asked Jack Barton if he could help with the history. Jack Barton explained that Mrs. O'Keefe, daughter of Ted Koetz, back in 1970 came to the Planning Board

to ask to renovate this property and to use it as a boarding house. It was referred to Monroe County Health Department with concerns over a leach field but that was all Jack Barton could find in the Town Records and Minutes. The Board advised the applicants that the use of an attorney may be helpful and they might have some other ways to research this. The inclination of the Board is to table this to allow the applicant time to gather further information. Tim Thomas told the applicants to look at all four criteria, look at the permitted uses and why those would not work and to bring documentation not just information. Jack Barton explained that if this is tabled until February 2014 it could be postponed to March if necessary.

Jane Bacon, representative for the applicant stated she would like this tabled to February and if needed postpone it until March. Vincent Koetz, 547 Clarkson Hamlin Town Line Road, had some concerns and asked for a brief recess to discuss how long to postpone this with the other parties. After the break the applicants felt that they would like this tabled until the February meeting with the understanding that they would let Jack Barton know if they needed to postpone this longer.

Chairperson Robillard explained to the applicants that while this is currently a family thing, if in the future this property is ever sold to someone else the Board has to make sure that the community is safeguarded against negative things that could impact the surrounding area.

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 Tim Thomas to table the application of the Estate of Theodore F. Koetz for a use variance at 5100 Ridge Road West without prejudice until the February 2014 meeting. This property is currently zoned General Commercial (GC).

In making this motion to table, the following is information that the Board will require at the February meeting in order to continue with this application:

1. The applicant shall address every permitted principal use in Section 165-39 in the General Commercial District as it relates to the criteria for reasonable return shown by competent financial evidence. There was extensive dialogue as to what kind of information the Board is looking for relative to the first criteria and relative to the permitted principal uses of which there are 18.
2. The applicant shall address the remaining three criteria that are required to satisfy for this use variance.
3. The applicant shall demonstrate a timeline or occupancy trail showing an unbroken chain of use and occupancy at the boarding house as far back as reasonably can be done.

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

2. **EDDIE CARROLL – 8 CLEARVIEW AVENUE**

The application of Eddie Carroll, owner, for a use variance at 8 Clearview Avenue. The applicant is proposing to use the two existing structures as single family dwellings. Town Zoning Article 5, subsection 165-35 does not allow this use. This property is currently zoned Waterfront Residential (WF).

Bob King, Real Estate broker on behalf of Eddie Carroll, explained that this house was built as an A frame in 1965. There was a guest house added but it was not connected by any hallways, only by a covered deck. When his client originally purchased the house it was presented as a three family, which they later found out when contacted by the Town that that was not a permitted use of the property. Per the Assessor's Office this was classified as a two family from 2000-2005 and a three family from 2006-2012. Mr. Carroll purchased this in 2010. In 2012 the property was reverted back to a single family home. There is a total of 3000 sq. feet split pretty evenly between the two residences that are not connected and it is not easy to move from one side of the residence to the other. Currently it is vacant. It sits at the end of a long driveway which is about 100' back, secluded on both sides by vacant land. There is a two car garage with plenty of parking. Chairperson

Robillard explained to Mr. King that the applicant is looking for a use variance and that there are four criteria needed and that the Board is looking for information that pertains to these criteria. Chairperson Robillard asked if the market price is the true price. Mr. King said that this has been marketed at various prices, and there have been people looking at this but the way the house is set up it is not a very good layout and hard to market.

Tim Thomas was curious why the Board is entertaining this again. Jack Barton stated because the applicant is now applying for a two family which is a significant change from the last application. There was discussion about the original purchase price being \$169,900 and now being listed to \$299,900. Mr. King stated that this was originally purchased out of a foreclosure. Chairperson Robillard does not feel that the current price of \$299,900 is a reasonable return on their money spent. Chairperson Robillard asked why another \$69,000 was put into it recently. Stephen Shelley stated he interpreted that there was damage from a storm but that was covered by insurance. There was discussion about the money that was put into it by the owner because the house was in disrepair without permits from the Town and without researching the zoning. Tim Thomas feels that because they are trying to recoup spent money it has become difficult to sell. Mr. Thomas asked why not demolish the A frame and make it a one family residence. As things stand Mr. Thomas sees nothing here to work with, no financial evidence just numbers being thrown around. Mr. King asked if the request could be changed to allow this to be rented by two separate unrelated people. Chairperson Robillard does think this is definitely a unique structure that needs a special person to fit this house. There was discussion about using as an accessory structure but it would have to be owner occupied. Jack Barton felt that that could be a reasonable condition. Chairperson Robillard asked if the lot could be subdivided. Jack Barton said it could not. There was further discussion about using it as an accessory structure but not only would it have to be owner occupied it would also have to be occupied by a relative, and there would be needed variances. Chairperson Robillard is concerned with the pricing of this since it has been on the market. The price keeps going up and down. Chairperson Robillard asked if there was any documentation showing a reasonable return. Jim Zollweg asked how long his client (Mr. Carroll) owned the property. Mr. Zollweg stated that he would like to see how much Mr. Carroll has spent and how much Mr. Carroll can recover. There was also discussion about the current owner's investment in the property was only \$100,000 and he is now asking \$299,900. The money put in by the previous owner does not play into what the current owner needs to recover. Tim Thomas asked how Mr. King appraised this property. Mr. King stated he had to look at it as a whole because it is listed as single family. Tim Thomas asked what the A-frame portion of the house is worth. Mr. King felt \$180,000 to \$190,000. There was further discussion surrounding the current's owner's investment of \$100,000 and to be convinced that this is a reasonable return the Board will need documentation. Chairperson Robillard also inquired why this should not be considered a self-created hardship. They purchased this property at the original price, they invested a lot of money into it without permits which made price go up but that hardship was self-created. The Board also needs to see evidence why this is not self-created. Mr. King felt that the change in use helped to create the hardship. Mr. King wondered if there was potential for a new owner to buy the house with an accessory apartment. Tim Thomas stated they could but it would have to be owner occupied and relatives.

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:

Mary Corey, 7 Clearview Avenue, has lived there for 13 years. She is concerned about traffic on the road and parking. If granted two separate residences there is only a long narrow driveway on an easement which is along her property line and cars frequently encroach onto her property. She has been in the residence and she feels this is an awful layout. She also asked if there are two septic systems. It was stated there is only one.

Chairperson Robillard read an email from Donald and Nancy Town, Clearview Avenue. They have concerns about noise, traffic and parking congestion on this narrow street, large parties that have taken place at this residence and general nuisance of the situation. They are concerned about property values being diminished

if multiple residences are allowed to exist on this property. They are also concerned as to whether proper sewage facilities exist on this property to handle multiple families.

Gail Snow, 8 Clearview Avenue, had a question about the driveway easement currently on the property and whether both houses have the right to use the easement. Jack Barton explained that the easement goes with the property, not the house, both structures have access.

Public Hearing Closed.

A **Motion** was made by Tim Thomas to deny the application of Eddie Carroll, owner, for a use variance at 8 Clearview Avenue. The applicant is proposing to use the two existing structures as single family dwellings. Town Zoning Article 5, subsection 165-35 does not allow this use. This property is currently zoned Waterfront Residential (WF).

In making this motion I will go through each of the criteria that must be satisfied to approve:

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. There is no documented information other than general discussion and numbers being quoted and thrown around. There was no financial information provided to the Board that allowed the Board to ascertain that a reasonable return cannot be realized. The price of the property seems to have been adjusted upwards and it is not believed the applicant has made an attempt to price the property so he could achieve a reasonable return.
2. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood. I would agree that this property is unique and does not apply to a substantial portion of the district or neighborhood.
3. The requested use variance will not alter the essential character of the neighborhood. I would agree that this property has become part of the fabric of the neighborhood and has been there for a number of years.
4. The alleged hardship has not been self-created. There is a mountain of documentation from the previous Board Meetings that this was absolutely self-created through poor investments, poor decisions, and totally ignoring Town of Parma Building and Zoning issues.

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

Chairperson Robillard polled the board for their reasons to deny:

Tim Thomas - My motion stands for my reason for denial.

Stephen Shelley – His reason for denying is that the applicant cannot meet all four of the criteria. The Board has not received documentation showing that a reasonable return cannot be achieved. If the Board had received proof of what the current owner invested and compared it to the sale price, the Board could have determined a reasonable return. The alleged hardship is unique and does not apply to a substantial proportion of the district. He feels that if approved this might alter the character of the neighborhood because all of the homes are single family. The current owner is the person who loaned the money and he did not necessarily self-create this issue but all four criteria were not met and that is required.

Jim Zollweg – I voted to deny this request based upon the use variance criteria that we are required to work with. All four criteria are required to be met. I am not convinced that number 1, 3 or 4 have been met. Condition number 1 relates to the ability of the owner being able to realize a reasonable return, I have not seen evidence that satisfies me. I believe that this has been self-created; the owner has been involved during this process while creating this situation and bears some responsibility. I believe having two separate residences on a property this small with limited parking and street size is inappropriate.

Chairperson Robillard – It is in order to deny this request based on criteria of use variances. The application for 8 Clearview Avenue is similar to a previous application. I believe the previous owner admitted that she purchased and invested heavily in this property with disregard to the Zoning requirements. The inflated asking price was based on the purchase price and the investment in improvements, not the true value based on use allowed by the current zoning code. These two imprudent investments seem to have caused a self-created hardship. The owner at the time made the conscious decision to move forward at her own risk. It appears this was an uneducated investment and completely self-created. I would suggest reviewing the

lengthy testimony and comments from the previous applications that were subsequently denied. Criteria numbers 1, 3 and 4 would be a significant basis for denial.

MINUTES OF DECEMBER 19, 2013

The ZBOA minutes of December 19, 2013 were reviewed a **Motion** was made by Tim Thomas to approve the December 19, 2013 minutes with the following changes. Page 2, paragraph 2, line 1, change “building” to “build”; and Page 2, paragraph 7, line 2, change “the” to “they.” Seconded by Jim Zollweg. **Motion carried (4-0) (Ayes:** Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; **Absent:** Dean Snyder).

OTHER BUSINESS

Chairperson Robillard introduced Kyle Mullen who is the new Liaison for the Zoning Board of Appeals.

1880 N. Union Street – RGE has contacted the Building Department about replacing the tower and wanting to do it as soon as possible. If they build the tower 180’ would they only need a building permit or would they need a special permit. Stephen Shelley explained that the higher the tower the more range they would have. Tim Thomas felt that if they want to build higher than they would need a special permit to keep it consistent. The quickest way would be to get permits and build the tower to the height it is currently and then come for the special permit and add on if the extra height is needed.

Auto Sales – There has been a question about having balloons on cars at the dealers. No signs. Art Fritz, Zoning Enforcement has described these as being an attention getting device. It was felt that these are attention getting devices.

Alternate Zoning Board Member – Jack Barton explained he has not looked at the applications yet. The Supervisor asked that he look at the applications on file and then possibly this would not have to be advertised. There are two new applications but there are some older ones on file from when Blake Keller was hired. There was discussion about interviewing or appointing.

Jack Barton told the Board that he is retiring in April after 25 years.

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Stephen Shelley to adjourn the meeting at 9:15 p.m. **Motion carried (4-0) (Ayes:** Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; **Absent:** Dean Snyder).

Respectfully submitted,

Carrie Webster, Recording Secretary