

**TOWN OF PARMA
ZONING BOARD OF APPEALS
MAY 15, 2014**

Members Present: Dan Melville
Veronica Robillard
Stephen Shelley
Tim Thomas
Jim Zollweg

Members Absent: Dean Snyder

Others Present: Art Fritz, Kyle Mullen

Public Present: Walter Pavlovych, George Robinson, Kris Schultz, Dave DeConinck, Dave Dyminski, Carl Petrykowicz, Katherine Petrykewicz, Denise Keller, Edward Perry

The meeting was called to Order by Chairperson Robillard at 7:05 p.m. She 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.

TABLED BUSINESS

1. PETER MORREALE – 4712 RIDGE ROAD WEST

The application of Peter Morreale, owner, for a use variance at 4712 Ridge Road West. The applicant is requesting to use the property for open storage of unlicensed vehicles and is requesting relief from Town Zoning Article 6, subsection 165-39 which does not list open storage of unlicensed vehicles as an allowed use. This property is currently zoned General Commercial (GC).

Art Fritz gave the Board an email from the applicant asking to withdraw this application.

A **Motion** was made by Tim Thomas to **accept** the withdrawal of the application of Peter Morreale, owner, for a use variance at 4712 Ridge Road West without prejudice.

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

2. PAVS, LLC – 4704 RIDGE ROAD WEST

The application of PAVS, LLC, owner, for a use variance at 4704 Ridge Road West. The applicant is requesting to use the property for an open storage of unlicensed vehicles and is requesting relief from Town Zoning Article 5, subsection 165-32 which does not list open storage of unlicensed vehicles as an allowed use. This property is currently zoned Rural Residential (RR).

Kris Schultz, engineer for the applicant, explained that this was tabled at last month's meeting and that he felt the financial information was the key information needed to move forward with this request.

Chairperson Robillard explained the criteria for a use variance and explained that based on her notes it was said at the last meeting that each and every requirement of the code would need to be met. Mr. Schultz stated that he did provide financial information to the board ahead of time with hopes that the board would let him know if anything further was necessary, he asked if the Board had an opportunity to look at the information provided. Tim Thomas said he felt that the information provided fell short of what the Board was looking for; he was looking for financial information that would address all 14 potential uses and stated that personally he feels without this information the Board cannot continue. Chairperson Robillard concurred with Mr. Thomas and stated that it would be inappropriate for the Board to comment back to the applicant outside of the public hearing. There was discussion with the Board about what they would be looking for next month. Kris Schultz wanted to make sure he understood what was going to be needed so that they do not fall short next month. Chairperson Robillard stated that they should take each item one by one and explain how it has been considered or discounted. Tim Thomas stated that this is a very high bar to satisfy and each potential use should have a paragraph with quantitative information stating why it does or does not

make financial sense. Chairperson Robillard also would like to see if there are any facilities that could be used year round to supplement the income and this should include specific information regarding the requested use, location and timeframe. Kris Schultz explained that the need would only be during the winter months and would like this tabled to allow the applicant time to provide the necessary information.

A **Motion** was made by Tim Thomas to **table** the application of PAVS, LLC, owner, for a use variance at 4704 Ridge Road West without prejudice until the June 19, 2014 meeting to allow the applicant time to provide the Board with substantial competent financial evidence that will address all of the permitted accessory uses in 165-32.C as well as the special permitted uses as set out in 165-32.D. Also provide some of the expected revenue from the storage of the cars, together with a quantitative analysis where appropriate and or why that particular criteria is being dismissed and the explanation behind that. All four of the use variance criteria also must be addressed and also provide specific information regarding the requested use, timeframe and location of cars on the premises.

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

3. DB PROPERTIES LLC – 4742 RIDGE ROAD WEST

The application of DB Properties LLC, owner, for an appeal at 4742 Ridge Road West. Pursuant to Town Zoning Article 4, Subsection 165-19.B.1 which states in part that the Zoning Board of Appeals shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative officer or body in enforcement of this chapter. The Building Department has determined that numerous mobile/manufactured homes and other structures on the property have been vacant for over six months. In accordance with Town Code Article 10, subsection 165-82.V, the structures have lost their Certificates of Occupancy and have been posted Not to Be Occupied. Pursuant to Town Code Section 24-6.3 (Stop Work Orders), a stop work order was posted on B-24 for working without a permit. The applicant has asked for an interpretation of the Town's Zoning as it applies to this property. This property is currently zoned General Commercial (GC).

Dave Dyminski, applicant, residing at 27 Lepore Drive, explained that he believes an error has been made in the Building Department and has prepared an Affidavit to that effect, that Affidavit was not provided to the Board so he is going to summarize what it says. He explained that we are the owner of the mobile home park, a building divided into apartments and a small commercial building on the premises. All three entrances are marked with No Trespassing Signs, and that this is private property unless invited on by the landlord or tenants. He stated that he has never given consent for the Town of Parma to be on the property and in fact when the Town showed up on day his agent told them they could not be on the property. When they continued onto the property the police were called and the police called Mr. Dyminski to see if permission was given, the applicant said they did not and the representatives from the Town left. Mr. Dyminski stated that there is no definition of vacant in the Town Code and said that the Town has never obtained a warrant to come on the property and that when they screwed the signs into the side of the buildings they damaged the property. Mr. Dyminski said that the Town never gave them any information about what the signs were for. He further explained that he or his agent is on the property daily and some of the residences are unoccupied because it is a rental company but that he has continued electric and gas service to the property. Mr. Dyminski felt that they were never given evidence as to why a Stop Work Order was issued and how that was determined by the Town and he stated that he feels the Town is not consistent with what they are requesting from him (ex. c of c, c of o). He showed the Board pictures of the No Trespassing Signs. He wants the Town to remove the signs and fix the damage to his property.

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.

Chairperson Robillard asked Mr. Dyminski if he had a copy of the affidavit for the Board. He stated that that one was his only copy. She told him that it would be needed for the record.

Tim Thomas stated that the applicant keeps using the word “we”, is this an association of owners, who owns what. Mr. Dyminski explained that it is a combination, the apartments are owned by him and rented out, in the mobile home park some lots are rented and the owners own the home or he has taken over the home and he owns it and would be responsible. Tim Thomas explained that even if the Town removes the signs the issues do not go away. Mr. Dyminski stated that he does not feel that there have been any issues and he has not been notified of any. No one is living in the mobile homes that say Do Not Occupy. Mr. Dyminski explained that the utilities go to the property but not to the individual mobile home if no one is living in it. Art Fritz explained that the units posted have been vacant for at least six months with ongoing issues for the past 10 years. The Town’s definition of vacant is a unit vacant for six months or more with no utilities to the units. Chairperson Robillard asked Mr. Dyminski if the units are vacant based on the definition that Mr. Fritz gave? Mr. Dyminski said that some units are unoccupied but he does not consider them vacant because people live on the property and the property is being maintained.

Chairperson Robillard asked Mr. Dyminski what exactly he wants from this Board. The applicant responded that they would like a determination saying that the Town came onto his property without proper authorization and without providing detail on three separate dates this past winter. Chairperson Robillard asked the applicant which date is the third date he is referring to because the Board is only aware of two dates, February 5, and February 26 and the application lists these two dates. After looking at the application, the applicant responded that there is not a third date only the two mentioned. Chairperson Robillard stated that Mr. Fritz said there have been issues here for ten years. Mr. Dyminski said that there have been other issues over the past ten years but he is not here to address those issues. Tim Thomas stated that it is reasonable to say that Mr. Dyminski does not seem to contest that some units need to be brought up to code. Mr. Dyminski says that each unit is inspected and repaired after the tenant leaves; he doesn’t feel that that means there are code violations or they need to be inspected.

Chairperson Robillard explained that sometimes a building permit is needed to repair these units and Mr. Dyminski would need to go to the Building Department to get a permit. She asked Mr. Dyminski if he has made an effort to work with the Building Department. Mr. Dyminski stated that the Town tags the unit but they do not tell him why and he does not feel that the burden should be on him to do this. Chairperson Robillard asked Mr. Dyminski if he has invited the Building Department on to the property to look at violations. Mr. Dyminski stated he does not feel there are any violations. Chairperson Robillard asked him why not work together and communicate with them so that there would not be any violations or safety issues. Chairperson Robillard asked if there are any situations of the units that warrant them to come onto the property. Mr. Dyminski stated that even if there were that does not give them the right to come onto the property and search it. Jim Zollweg stated that that would only apply in a criminal action and evidence in a court and doesn’t feel that is relevant. Chairperson Robillard asked Mr. Dyminski if he had applied for any C of C’s since February or for any of the units in question to prove to the Town that you are working towards being compliant. The applicant said no. Chairperson Robillard asked if he has applied for a C of C for any of the units in question. Mr. Dyminski stated that he feels that tonight is just about the signs and the Town coming onto his property. Tim Thomas said so this all comes down to the Town going on the property without authorization or notification and he is not arguing the condition of the units. Mr. Dyminski stated he is unsure because he does not have a listing of the units and what needs to be fixed. He stated that if he thinks a building permit was necessary he would come to the Town.

Public Comment:

Carl Petrykiewicz – 350 Dean Road. He stated he has been in his residence for 21 years right behind the trailer park. In those years there have been several problems at this property. There have been sewer issues and odors all the time, multiple feral cats, barking dogs, dog feces thrown into his yard from people living on the property, a house blew up, a sexual predator lived in one of the homes, cops in and out multiple times. This is a visual eyesore with boarded up windows. In his opinion whoever owns it does not care about this property. Some of the units are so old they cannot even be fixed. There have been no updates or upgrading to these units and no background checks into the people who do live there.

Denise Keller – 348 Dean Road. She stated that her living room faces the trailer park and the landlord is never there to fix it up and feels he does not care because he doesn't live there. She stated that there are about 30 vacant units on the property. People fighting and screaming all the time, junk piled next to her fence including a toilet and chairs. She has 7 cats that are on her property from there, she also gets dog feces in her yard along with needles, and beer cans thrown into her yard. Chairperson Robillard asked Ms. Keller if there have ever been repairs done that she has seen. Ms. Keller said no never. Chairperson Robillard asked Ms. Keller if she has ever visually seen anyone living in any of the posted units. Ms. Keller stated no. She also said that she has tried to reach out to Mr. Dyminski several times but he has never returned a phone call.

Public Hearing Closed.

Chairperson Robillard asked if Mr. Dyminski lived on the premises. Mr. Dyminski stated that he does not and is not there all the time and that he has two agents and a work crew that go between the two parks he owns. Chairperson Robillard asked if the agents are employees. Mr. Dyminski stated no they are just people who live on the property. Chairperson Robillard asked if the agent's names could be given for contact information. Mr. Dyminski said no he takes all calls regarding this property. Chairperson Robillard asked if these agents are compensated in any way. Mr. Dyminski said no they are not employed by him. Chairperson Robillard asked if Mr. Dyminski has submitted all the information needed because number 5 and 6 of the application indicate further evidence and documents would be provided before the public hearing but the Board did not receive anything additional. Mr. Dyminski stated he did not submit anything else and there is nothing else to submit. He stated he only wants to work on this one issue.

Chairperson Robillard stated the Board will make a determination in a timely manner and notify him of that decision. Mr. Dyminski stated that he feels that landlords always have issues and he is trying to get better tenants and make this a good property with good tenants.

4. CRAIG BRYCE – 645 MANITOU ROAD

The application of Craig Bryce, owner of 645 Manitou Road for a Special Permit, pursuant to Town Zoning Article 9, subsection 165-79.1 (Home Businesses), to allow the outside storage of eight pieces of construction equipment and the repair of the equipment in the existing garage. This property is currently zoned Rural Residential (RR).

Chairperson Robillard asked Mr. Deconinck where Mr. Bryce is. Mr. Deconinck did not know. He had talked to him on the phone and he said he would be here. There was discussion about the Board being unable to act without Mr. Bryce at the meeting because he is the owner and he is the only one who signed the application and he did not authorize Mr. Deconinck to speak on his behalf.

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.

Tim Thomas asked about the Special Permit lapsing previously. Art Fritz explained that the original Special Permit lapsed when another tenant who did not have permission to be there moved in and there were property maintenance issues so that Special Permit renewal was denied. Mr. Deconinck is back on the premises and this special permit benefits him. Chairperson Robillard asked if an inspection was done. Art Fritz stated it was and the inspection was good.

A **Motion** was made by Stephen Shelley to **table** the application of Craig Bryce, owner, for a Special Permit at 645 Manitou Road to the June 2015 Zoning Board meeting without prejudice because the applicant was not in attendance.

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

Since Mr. Bryce arrived at the meeting and after discussion because the meeting was not closed yet, the motion made by Stephen Shelley to table and seconded by Tim Thomas was stricken from the record; the application was heard so action could be taken.

Art Fritz reported there were no complaints on file and a safety and fire inspection was completed on May 14, 2014 by Art Fritz. At that time no violations were noted and no complaints are in the file.

Mr. Bryce stated that they are looking for the same thing that they had for the last 29 years. There was discussion about what kind of equipment is stored on the premises. Mr. Deconinck explained that there could be bulldozers, backhoes, and trailers but it is not always the same equipment. There would never be more than 8 pieces and sometimes there would be none because equipment is sometimes left at the job. Before this last lapse the tenant and the Special Permit had been in place for 29 years. Tim Thomas asked if there would be any other business taking place. After discussion and because the Special Permit had lapsed and then was denied the Board decided to make it renewable in one year.

A **Motion** was made by Tim Thomas to **approve** the application of Craig Bryce, owner, for a Special Permit at 645 Manitou Road pursuant to Town Zoning Article 9, subsection 165-79.1 (Home Businesses), to allow the outside storage of eight pieces of construction equipment and the repair of the equipment in the existing garage with the following conditions as referenced in the lapsed Special Permit from May 2009:

1. No more than 8 pieces of construction equipment.
2. No outside storage of junk, trash, or dismantled vehicles.
3. Hours of operation, Monday through Saturday, 7 am to 8 pm; Sunday, Noon to 5 pm.
4. No sales of any kind.
5. For a period of one year, renewable May 2015.

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

SPECIAL PERMIT RENEWALS

5. KENNETH SIKORSKI – 96 DUNBAR ROAD

The application of Ken Sikorski, 96 Dunbar Road, for renewal of his Special Permit allowing the sales, service, and repair of legal firearms, golf clubs, snow skis, and related items.

Art Fritz reported there were no complaints on file and a safety and fire inspection was completed on May 7, 2014 by Art Fritz. At that time no violations were noted and no complaints are in the file.

A **Motion** was made by Tim Thomas to approve the application of Ken Sikorski, applicant, for a Special Permit at 96 Dunbar Road to allow the sales, service and repair of firearms, golf clubs, snow skis, and related items at 96 Dunbar Road with the following conditions:

1. The operation be located exclusively to the rear of the storage building.
2. Hours of operation, Monday through Friday, 6:00 p.m. to 9:00 p.m.; Saturday, 8:00 a.m. to 9:00 p.m. by appointment only.
3. No on-street parking.
4. Signage to comply with zoning regulations.
5. Upon fire marshal and zoning enforcement officer inspection and approval of property.
6. Based on packet information presented at the original application hearing on February 16, 1995.
7. The hours of business will comply with town regulations of a home business.
8. For a period of five year, to be renewable February 2019.

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

6. JEAN RANALLETTI – 1571 MANITOU ROAD

The application of Jean Ranaletti, applicant, for renewal of the Special Permit to operate a spa treatment business at 1571 Manitou Road. This property is currently zoned Rural Residential (RR).

A letter was provided from Arthur J. Fritz, Jr., Zoning Enforcement Officer, explained that the original Special Permit was never issued for this because Mrs. Berke did not start the beauty business. After discussion it was decided that the applicant would need to supply a new application and come back to the Zoning Board because it was never acted on.

MINUTES OF MARCH 20, 2014

The ZBOA minutes of March 20, 2014 were reviewed a **Motion** was made by Jim Zollweg to **approve** the March 20, 2014 minutes as presented. Seconded by Stephen Shelley. **Motion carried (3-0) (Ayes:** Veronica Robillard, Stephen Shelley, Jim Zollweg; **Abstain:** Dan Melville, Tim Thomas; **Absent:** Dean Snyder).

MINUTES OF APRIL 17, 2014

The ZBOA minutes of April 17, 2014 were reviewed a **Motion** was made by Tim Thomas to **approve** the April 17, 2014 as presented. Seconded by Jim Zollweg. **Motion carried (3-0) (Ayes:** Stephen Shelley, Tim Thomas, Jim Zollweg; **Abstain:** Dan Melville, Veronica Robillard; **Absent:** Dean Snyder).

OTHER BUSINESS

Parma Historical Society – Kyle Mullen stated that as an FYI the Parma Historical Society will be coming to the Zoning Board to ask to have letters put on the West side of their building so that people will know where the building is.

Chairperson Robillard welcomed the newest Zoning Board of Appeals Alternate, Dan Melville.

ADJOURNMENT

There being no further business, a **Motion** was made by Tim Thomas, seconded by Jim Zollweg to adjourn the meeting at 9:07 p.m. **Motion carried (5-0) (Ayes:** Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; **Absent:** Dean Snyder).

Respectfully submitted,

Carrie Webster, Recording Secretary