

**TOWN OF PARMA
ZONING BOARD OF APPEALS
SEPTEMBER 17, 2009**

Members Present: Tina Brown
Veronica Robillard
Stephen Shelley
Tim Thomas
Jim Zollweg (alternate)

Members Excused: Dean Snyder

Others Present: Jack Barton

Public Present: See attached list

The meeting was called to Order by Chairperson, Veronica Robillard, at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She noted that this is a five-member board and a quorum of three is required to pass a motion.

Chairperson Robillard offered hearing aid devices for anyone who required them.

TABLED PUBLIC HEARINGS

1. WAYNE NEWMAN – 134 COLLAMER ROAD

Application of Wayne Newman, owner, for expansion of a non-conforming use at 134 Collamer Road. The applicant has renovated the second floor of an existing garage and converted it to living space. Town Zoning Article 12, subsection 165-91 states, in part, that the expansion of a non-conforming use or structure shall be subject to approval by the Zoning Board of Appeals. Applicant is also applying for the following variances: (1) relief from Article 5, subsection 165-33-E.2a, which requires a minimum living area of 1,200 square feet. The existing second floor is 1,036 square feet. (2) relief from Town Zoning schedule 1 which requires a ten feet side setback from property lines. The structure is 2.8 feet from the southerly property line and 1.8 feet from an easterly property line. and (3) applicant is proposing to rebuild the rear portion of the barn on the property which will increase the storage area on this property by 1,281 square feet, bringing the total storage area to 2,900 square feet and is requesting relief from Town Zoning Article 5, subsection 165-33.C.2, which limits the area of accessory buildings to 600 square feet. This property is currently zoned Medium Density Residential (MD).

Chairperson Robillard recalled that this application was tabled until the October 15, 2009 ZBOA meeting, without prejudice, in order to allow the applicant an opportunity to provide proof of continuous occupancy since 1940.

2. MARK EVANS – 5461 RIDGE ROAD WEST

Application of Mark Evans, as applicant, for a modification of an existing use variance for property located at 5461 Ridge Road West. Applicant is requesting that the existing use variance, which allows the tenant to operate a “custom and specialty motor vehicle paint and repair shop” be modified to allow an auto body repair shop. Applicant is requesting relief from Town Zoning Article 165-39 which does not allow auto repair as a permitted use. Property is currently zoned General Commercial (GC).

Chairperson Robillard recalled the previous motion made to table the application of Mark Evans until this meeting. Jack Barton read a letter from the applicant requesting this application be tabled until the October 15, 2009 ZBOA meeting to allow him more time to prepare his presentation. This would allow him to provide his packet of information prior to the meeting.

A **Motion** was made by Stephen Shelley to table the application of Mark Evans, 5461 Ridge Road West, until the October 15, 2009 ZBOA meeting, without prejudice, per the applicant's request. Seconded by Tina Brown. Motion unanimously approved (5-0) (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

3. SURGEY SVARISHCHUK – 522 BURRITT ROAD

Application of Surgey Svarishchuk, owner of 522 Burritt Road, for relief from Town Zoning Article 10, subsection 165-82.0 which states in part that no commercial vehicle with a load capacity of more than two tons shall be parked out of doors overnight or on Sunday in a residential district. Applicant parks a tractor trailer cab in the driveway. This property is currently zoned Rural Residential (RR).

Jack Barton reported that he spoke with the Town of Parma Attorney who had not found any case law or reference with regard to this application. The attorney said that it was the Zoning Board's discretion to grant relief.

Board Discussion: Discussion was held that this application doesn't quite fit a use variance or area variance. Tim Thomas suggested that the Town Board be consulted regarding this situation, considering this was for a cab not a full tractor-trailer, as the Town Attorney has not identified a case law to support a decision on this. It was the consensus that this decision cannot be based on the Town Board's decision.

A **Motion** was made by Tim Thomas to deny the application of Surgey Svarishchuk, owner of 522 Burritt Road, for relief from Town Zoning Article 10, subsection 165-82.0 which states in part that no commercial vehicle with a load capacity of more than two tons shall be parked out of doors overnight or on Sunday in a residential district. Applicant parks a tractor trailer cab in the driveway. This property is currently zoned Rural Residential (RR). This application that came in was described as "other." I have stated my opinion to deny after listening to the dialogue. I have denied this application based on the fact that the code, as it relates to this application, specifically prohibits this type of parking a commercial vehicle in a residential district. There are opportunities to park this cab in other areas that are allowed in the Town of Parma and the applicant needs to pursue these other avenues. We will allow the applicant 30 days to seek an alternative location to park the cab. Seconded by Stephen Shelley.

Jim Zollweg asked to amend the motion to allow the applicant 90 days to find alternative parking to prevent a hardship for the applicant. It was agreed to leave the motion as originally stated. **Motion carried to deny (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

Chairperson Robillard polled the Board for their reasons to deny:

Tim Thomas: Stated his motion speaks for his reasons.

Stephen Shelley: Stated there are very specific limitations in the code and nothing was shown that proves otherwise. There are reasonable alternative to parking on this property.

Tina Brown: Denial based on the specific code.

Jim Zollweg: Code does not give the Board any way to approve this.

Veronica Robillard: The applicant can seek other means or alternatives and the code prohibits commercial vehicles with a load greater than 2 tons to be parked overnight or on Sunday in this district.

4. MICHAEL MATTIA – 1195 WEST AVENUE

Application of Michael Mattia, owner, for four variances at 1195 West Avenue. Applicant is proposing to merge this parcel with 1201 West Avenue and then construct a 1,984 square feet accessory storage building in the front yard with a wall height of 14 feet and is requesting relief from (1) town Zoning Article 5, subsection 165-32-C.2 which limits the total area of all permitted accessory structures to 1,500 square feet. The total area of accessory structures for this property is proposed to be 2,085 square feet; (2) Article 10, subsection 165-82.C.3 which states in part that detached accessory buildings shall be located in the rear yard.; (3) Article 10, subsection 165-82.C.2 which limits the wall height to 12 feet; and (4) Town Zoning which defines an accessory structure as being subordinate in area to the primary structure (home), which has a footprint of 1,545 square feet. This property is zoned Rural Residential (RR).

Chairperson Robillard recalled a motion made to table this application to enable the applicant time to revisit the size, location and structure and mitigate encroachments in the front yard and to pursue possible alternatives.

Michael described his property, noting the west side slopes down with a swale that fills up with water. He stated that due to the meandering of the creek, they are unable to place the structure further back on the property. He again noted the location of the fruit trees, stating that the proposed location of the accessory building is as far back as possible and still allows for access for mowing. He stated he consulted with an architect and this is the best possible location. He noted that the following items will be stored in this accessory structure: boat and trailer, pick up truck, truck cap, 8 x 12 utility trailer, and 5 x 8 BBQ. Chairperson Robillard stated that the only difference from the original application in August is that the building will be pivoted. Jean Mattia stated that there are no other alternatives to the proposed placement. Chairperson Robillard recalled the motion made at the August meeting which indicated the conditions to table. Mike explained the design of the proposed accessory structure, noting an east wing of 16 x 36 and a west wing which is just a carport. He stated he could cut the carport to 8 feet but that would make the building look unbalanced. He stated he wished to keep the carriage look. He described the slope which prevents other placements. He noted the center of the building is 14' and the side walls are 10'. Chairperson Robillard again read the motion and what the Board was looking for, specifically possible alternatives. Mike provided an alternative plan which was taking 1' off the end and 8' off the back of the building, which would reduce it to 1752 square feet. Jean questioned if the setback is an issue. Jack Barton noted that because of the slope and creek bank this building could not be placed farther back. Chairperson Robillard asked why a 14' height is needed. Mike responded it is needed for aesthetics. He has to have a 10' at the side wall and to maintain the 10 feet he has to start at 12'. Jean stated that the design of this building will be complimentary to the house. Mike stated that if the carport was taken off, it would ruin the look of the building. He stated he needs storage space and would like to keep this design. Jean stated that it was important to them that all items stored outside are stored inside. Chairperson Robillard stated that she preferred to see the alternatives drawn out on paper. A verbal concession is difficult to visualize. She stated that her opinion that the 14 feet height is too much. Mike asked what the intent of this ordinance is. Chairperson Robillard explained that it is not the ZBOA's job to determine intent. The job of the Zoning Board is to grant relief from the ordinance. Chairperson Robillard polled the Board that based on the information presented tonight, how they would suggest we continue, addressing the request of the applicant.

Tim Thomas: Referred to other applicants being given another opportunity to provide the requested information. The applicant should have another month to provide very specific information to address the three variances.

Stephen Shelley: Not present at the August meeting and abstained from an opinion.

Jim Zollweg: Stated with the setback due to constraints of the property, he would like to look at the applicant's basic offer and which comes the closest that they can possibly come to meeting the ordinance. Of special concern is the size of this structure.

Tina Brown: Stated she agreed with the other members.

Chairperson Robillard requested that multiple copies and specific dimensions of the proposed building be provide to the Zoning Board prior to the October meeting. She asked the applicant to once again look at the size and location of the structure.

A **Motion** was made by Tim Thomas to table the application of Michael Mattia, owner, for four area variances at 1195 West Avenue without prejudice to the October ZBOA meeting. When the applicant returns next month, the Board would like to see the following items specifically addressed:

- Proper square footage of the structure
- 14' wall height justified
- Justification why the structure should not be subordinate to the house, including total square footage of the structure

The Board seems to be comfortable with the front setback. I ask the applicant to come prepared with organized specific options. The applicant stated that he understood what the Board is looking for. Seconded by Stephen Shelley. Motion unanimously approved (5-0) (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

A brief recess was called at 9:09 p.m. The meeting reconvened at 9:16 p.m.

NEW PUBLIC HEARINGS

5. KAREN ZANDI – 311 NORTH AVENUE

Application of Karen Zandi, owner, for an area variance at 311 North Avenue. Applicant is proposing to subdivide a 165 feet by 333.38 feet rear portion of property and convey to an abutting parcel. Applicant is requesting relief from Town Zoning Article 12, subsection 165-89.A which states that a non-conforming lot shall not be further reduced in size. This property is considered non-conforming because it does not meet the minimum lot width of 300 feet. This property is currently zoned Agricultural/Conservation (AC).

Jack Barton read a letter from the applicant, who stated she was withdrawing her application.

A **Motion** was made by Jim Zollweg to accept the withdrawal of Karen Zandi, without prejudice, for an area variance at 311 North Avenue. Seconded by Tina Brown. Motion unanimously approved (5-0) (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

6. JAMES AND ANN DOAN – 352 BENNETT ROAD

Application of James and Ann Doan, owners, for an area variance at 352 Bennett Road. Applicants are proposing to subdivide a 100 feet by 175 feet portion of property located behind 348 Bennett Road and convey land to 348 Bennett Road and are requesting relief from Town Zoning Article 12, subsection 165-89.A. which states that a non-conforming lot shall not be further reduced in size. This property is considered non-conforming because it does not maintain a minimum lot width of 260 feet. This property is currently zoned Rural Residential (RR).

Rich Maier stated he represented the Doan estate. Ann has power of attorney and they want to sell the property. He referred to the map, explaining that this used to be two separate lots and are now proposing to divide it again. He noted the shed was encroaching on one piece of the property. He suggested they push the lot line straight back, resulting in lot #1 will conform and lot #2 is less conforming because of the width. Lot 1 and Lot 2 will be 342 feet back, with the width for lot #1 being 348 feet for a 1.375 acre total and lot #2 will be 352 feet wide for a 2.448 acre total.

Public hearing: None. The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Jack Barton reported this is a Type II SEQR with no further action required.

A **Motion** was made by Stephen Shelley to approve the application of James and Ann Doan, owners, for an area variance at 352 Bennett Road to subdivide a 100 feet by 175 feet portion of property located behind 348 Bennett Road and convey land to 348 Bennett Road and this grants relief from Town Zoning Article 12, subsection 165-89.A. which states that a non-conforming lot shall not be further reduced in size. This property is considered non-conforming because it does not maintain a minimum lot width of 260 feet. This property is currently zoned Rural Residential (RR). In making this determination to approve, I believe the benefit could be achieved by other means feasible to the applicant, but this is the best plan. It will not create an 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 not self-created because the problem came about because of the current zoning after the house was built. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Jim Zollweg. Motion unanimously approved (5-0) (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

7. KAREN PHILLIPS AND JOHN AMES – 1633 HILTON PARMA CORNERS ROAD

Application of Karen Phillips and John Ames, owners, for an area variance at 1633 Hilton Parma Corners Road. Applicants are proposing to construct an 864 square feet detached garage and are requesting relief from Town Zoning which states by definition that accessory structures shall be subordinate in area to the principal building which has a footprint of 636 square feet. This property is currently zoned Rural Residential (RR).

Karen explained they are planning to build a detached garage on their 2.4 acre property. She stated they have a 7 x 10' shed and need room for two vehicles, two riding mowers, snow blower, motorcycle, work bench, camping equipment and other lawn maintenance equipment. They have no more room in the shed. She explained that the house was built over 100 years ago and the basement is not finished and not suitable for storage. She stated this is why John wants a workshop in the garage. The shed is 70 square feet. John stated that this will bring the property to the modern era. He noted the garage will have a 1 foot overhang and wainscoting. It will be sided to match the house. The garage will have two doors and a window on the side. Another window and side door faces the house. He stated they tried to make it look more residential than a garage. He stated to place the garage farther back would require more driveway. Chairperson Robillard asked if the garage could be made smaller. John replied that this size is needed to accommodate two cars.

Public hearing: None. The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Jack Barton reported this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of Karen Phillips and John Ames, owners, for an area variance at 1633 Hilton Parma Corners Road to construct an 864 square feet detached garage and this grants relief from Town Zoning which states by definition that accessory structures shall be subordinate in area to the principal building which has a footprint of 636 square feet. This property is currently zoned Rural Residential (RR). In making this determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. This motion is based on four key points: the home was constructed over 100 years ago; acreage for this property is 2.4 acres. If this home were built today, it would be 1200 square feet minimum which would then allow a structure this size. 1% of total lot coverage will result with this garage with a 33% increase in total storage area. This makes this proposal unique and justifies the need for square footage. There will be no undesirable change in neighborhood character or to nearby properties. This predates current code. The request is substantial but mitigated by the four points listed above. There will be no adverse physical or environmental effect. The alleged difficulty is somewhat self-created, but 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 unanimously approved (5-0) (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

8. GENE MAZZOLA – 5010 RIDGE ROAD WEST

Application of Gene Mazzola, contract vendee, for two area variances at 5010 Ridge Road West. Applicant is proposing to convert existing residence to a 157 square feet insurance office with an apartment as an accessory use on the same floor. Applicant is requesting relief from Town Zoning Article 6, subsection 165-39.E.2 which states that principal buildings in a General Commercial District shall contain an area of not less than 1,000 square feet and subsection 165-39-C.3 which states in part that the building may include a residence as an accessory use providing that the living unit shall not be on the same floor of the building with the commercial use. This property is currently zoned General Commercial (GC).

Gene explained that he has a insurance company and described the current economic climate which is changing and how he plans to change his business to keep up with new things. He explained that he started with 11 offices 40 years ago and is now down to 3. He stated with the new TV ads and doing business on the computer, one person in the office and one appointment person is all that is necessary. He explained his proposal to provide an apartment in the back of this office for the person who will run the insurance business out of this location. He provided pictures of the property, stating that they are looking for a variance that cannot be seen. An architect will draw up an entire new look for this commercial building. This building will be transformed from an old broken down house to a beautiful commercial building. He promised if he gets this variance he will be the best neighbor Parma ever had. If he sells this in the future, he doesn't have a problem that it goes back to just commercial and not include the apartment. He stated that having an apartment on the same floor and one employee can live there will provide coverage for his clients even in the middle of the night. He provided a copy of a paper that was signed by all his neighbors who support this. He stated this will look just like an office building. He stated they are going back to basics with this setup for his business. He stated his commitment to his employees and not cutting their overtime. This setup helps with the overhead, with one employee using this apartment and running the office. He stated it is economically smart. He stated that everything done on this property will be down correctly. He wants this building to be a showplace. He stated that the 2nd floor has 345 square feet, the first floor has 630 square feet minus the 157 square feet for office space. He stated he has made a purchase offer on this property, subject to this approval. He noted this house used to be a two family home.

Public hearing: None. The public hearing was closed.

Board Discussion: Chairperson Robillard reported that notifications were in order and the request was returned by Monroe County as a matter of local determination. Jack Barton reported this is a Type II SEQR with no further action required.

Following discussion, a **Motion** was made by Tim Thomas to approve the application of Gene Mazzola, contract vendee, for two area variances at 5010 Ridge Road West to convert existing residence to a 157 square feet insurance office with an apartment as an accessory use on the same floor. This grants relief from Town Zoning Article 6, subsection 165-39.E.2 which states that principal buildings in a General Commercial District shall contain an area of not less than 1,000 square feet and subsection 165-39-C.3 which states in part that the building may include a residence as an accessory use providing that the living unit shall not be on the same floor of the building with the commercial use. This property is currently zoned General Commercial (GC). In making this determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. Due to the economic climate, the applicant's insurance business has changed and the use of the first floor by the applicant in having a live-in employee in the insurance office will address safety issues around the clock and enable the insurance business to meet customer needs and make them more available. Overall, this is a hybrid solution to a business in that the applicant is trying to make changes in light of economic downturn. This is a very feasible way to do business in our town. There will be no undesirable change in neighborhood character or to nearby properties. This will significantly improve the look of the property. It is certainly substantial relative to the apartment requirement on the first floor, but changing economic conditions requiring a change in approach to business justifies this application. There will be no adverse physical or environmental impact. The alleged difficulty is somewhat self-created, but mitigated by this hybrid approach to the insurance business. Because this is a unique business venture, upon cessation of such function, the variance requirements set forth in the Parma Zoning Ordinance shall take precedence at 5010 Ridge Road West. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community. Seconded by Tina Brown. Motion unanimously approved (5-0) (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

9. TERENCE AND JANET BROWN – 6 DEAN ROAD

Application of Terence and Janet Brown, owners, for an area variance at 6 Dean Road. Applicants are proposing to construct an accessory storage building in the front yard and are requesting relief from Town Zoning Article 10, subsection 165-82-C.3 which states in part that all detached accessory buildings shall be located in the rear yard. This property is a corner lot and by definition has two front yards, two side yards, and no rear yard. This property is currently zoned Rural Residential (RR).

Jack Barton reported that the required notifications were not made for this application.

A **Motion** was made by Stephen Shelley to table the application of Terence and Janet Brown, owners, for an area variance at 6 Dean Road, without prejudice, to the October ZBOA meeting to give the applicants an opportunity to make the required notifications. Seconded by Tina Brown. Motion unanimously approved (5-0) (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Dean Snyder)

OTHER

Continuing Education: Jack Barton encouraged the ZBOA members to sign up for continuing education programs.

MINUTES OF APRIL 16, 2009

Discussion was held on these very lengthy minutes and the numerous recommended changes. There was a consensus to postpone discussion and approval of these minutes until the October ZBOA meeting, to allow the Board members additional time to review the motions made at this meeting.

MINUTES OF AUGUST 20, 2009

The August 20, 2009 minutes were reviewed and the following changes were recommended: several "typos" were pointed out; page 8, last Para, line 11, change to "8 x15 feet". A **Motion** was made by Tim Thomas to approve the August 20, 2009 ZBOA minutes with the recommended changes. Seconded by Tina Brown. **Motion approved (4-0)** (Ayes: Tina Brown, Veronica Robillard, Tim Thomas, Jim Zollweg; Abstain: Stephen Shelley; Absent: Dean Snyder

ADJOURNMENT

There being no further business, a **Motion** was made by Jim Zollweg, seconded by Tim Thomas, to adjourn the meeting at 11:02 pm.

Respectfully submitted,
Diane Grundon, Recording Secretary