

**TOWN OF PARMA
ZONING BOARD OF APPEALS
OCTOBER 15, 2009**

Members Present: Tina Brown
Veronica Robillard
Stephen Shelley
Dean Snyder
Tim Thomas

Others Present: Jack Barton, Jim Zollweg (alternate)

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.

Jack Barton provided a letter dated October 15, 2009 from Michael A. Sciortino, of Chamberlain D'Amada, attorneys, which requested an adjournment for at least 30 days to provide him an opportunity to assist Mr. Newman in obtaining the necessary information and documentation with respect to 134 Collamer Road in proving continuous occupancy since 1940, as the ZBOA has requested. It was noted they may have to subpoena records to provide the required information, which may be a lengthy process.

Discussion was held on the timeframe necessary to obtain this information.

A **Motion** was made by Dean Snyder to table the application of Wayne Newman, owner, for expansion of a non-conforming use at 134 Collamer Road to the January 2010 ZBOA meeting, without prejudice. Seconded by Tina Brown. **Motion unanimously approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

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.

Heather Evans presented a letter from an accountant, Timothy Yates, which provided a monthly Pro-Forma source and Use of Funds analysis for Richard P. Luciano at 5461 Ridge Road West. The letter states that in order to maintain ownership of this property, Mr. Luciano has been forced to supplement with his own money the annual shortage in operational costs. Recent attempts to sell the property have proven to be unsuccessful. Without a buyer or lessee, it is uncertain how much longer Mr. Luciano will be able to hold onto this property.

Dean Snyder noted that this Pro-Forma Source and use of funds report only addresses the current use, not all the allowed uses. He read the zoning ordinance of the 16 allowed uses for this property and questioned why they can't be used. Mr. Luciano has owned the property for 20 years. He has never been able to sell it under the permitted use. Heather provided a signed petition from property owners on Ridge Road and Trimmer Road who do not have an objection to this variance. Chairperson Robillard noted the discrepancy between the asking price and the amount Mr. Luciano purchased the property for. Discussion was held that this applicant should have looked at this as a new application. Chairperson Robillard read a letter addressed to Mr. Luciano from Art Fritz, ZEO, which listed a number of violations identified on an inspection on October 15th. Also listed were a number of violations of the property maintenance code of NY State. Chairperson Robillard stated that this is significant information. Heather stated that the current tenants are responsible for the violations. Chairperson Robillard stated that the current owner has the responsibility to make sure all violations are corrected. This makes it very difficult for the Board to modify this existing use variance. Dean Snyder pointed out that there are two issues here: (1) all allowed uses have not been addressed; and (2) code violations need to be corrected. Dean Snyder recalled what was asked for at the last meeting: proof that they can't realize a reasonable return based on competent financial evidence for each allowed criteria use and a real estate market analysis. Chairperson Robillard reiterated that the Board needs to look at this as if it is a new application.

Mr. Luciano explained the efforts he has made to clean up this property. He stated that he is willing to work with the Town. He stated that there are a lot worse looking properties on Ridge Road. Dean Snyder noted that the information that the Zoning Board has requested has still not been provided for each permitted use.

Public Comment: 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 Dean Snyder to table the application of Mark Evans, as applicant, for a modification of an existing use variance for property located at 5461 Ridge Road West, without prejudice, until the November 19, 2009 ZBOA to allow the applicant ample time to provide the ZBOA with the required information to determine, based on use variance criteria, the hardship with the current use and each and every permitted use. He referenced codes 165-20-C.1 and 165-39.b. Seconded by Tina Brown. **Motion unanimously approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

3. 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.

Jack Barton presented a letter from Jean and Michael Mattia dated October 8, 2009 which requested that their application be tabled until the November ZBOA meeting. They explained that due to family issues they have not had time to properly prepare their presentation.

A **Motion** was made by Tim Thomas to table the application of Michael Mattia, owner, for four variances at 1195 West Avenue to the November 19, 2009 ZBOA meeting without prejudice. Seconded by Stephen Shelley. **Motion unanimously approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

4. 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).

Chairperson Robillard recalled that this application was tabled at the September meeting to allow the applicants additional time to complete the required notifications.

Terence described their property as a densely wooded corner lot. He stated the accessory building will be 60 feet from the road with a 100 feet setback from one property line and 120 feet setback from the other property line. He noted the woods will screen this building.

Public Comment: 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 Terence and Janet Brown, owners, for an area variance at 6 Dean Road to construct an accessory storage building in the front yard and this grants 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). In making this determination to approve, I don't believe the benefit can be achieved by other means feasible to the applicant. This is a corner lot and this is approved taking into account the size of the lot, the wooded nature of the lot, and that the structure will be significantly set back from the road. There will be no undesirable change in neighborhood character or to nearby properties. This is a 3 acre wooded lot will screen this structure. It is not really substantial in that we have had numerous structures requested on a corner lot. There will be no adverse physical or environmental effects. The alleged difficulty is not self-created because of the nature of a corner lot. In 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, Dean Snyder, Tim Thomas)

SPECIAL PERMIT RENEWAL

PETER AND NANCY MANCUSO – 34 WINDING COUNTRY LANE

Application of Peter and Nancy Mancuso, Jr., owners, for renewal of a Special Permit to allow a home business at 34 Winding Country Lane.

Chairperson Robillard noted that on the application for renewal, the applicant indicated they wanted relief from the hours of operation but did not indicate the revised hours. Jack Barton explained that any change to this Special Permit would require an application to modify the Special Permit.

Jack Barton reported no complaints on file.

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Peter and Nancy Mancuso, Jr., owners, for a Special Permit to allow a home business at 34 Winding Country Lane. This also grants relief from Town Zoning Article 9, subsection 165-79.1.E which limits the floor area of a home business to 500 square feet. The floor area of the home business is 575 square feet. This property is zoned Medium Density Residential (MD) which allows a home business with a special permit. This approval with the following conditions:

- No extension of hours will be allowed. Hours are to comply with subsection 165-79.1.J which limits the hours of operation from 7:00 am to 9:00 pm, Monday through Saturday and 12:00 pm to 5:00 pm on Sunday. These hours are listed for a reason in a residential neighborhood.
- A screen is to be provided to prevent car headlights directed to the neighbors from both driveways.
- No on-street parking
- For a period of one year, renewable in 9/10.

Seconded by Stephen Shelley. **Motion unanimously approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

OTHER

Holiday Celebration. Due to the impending absence of one Board member in December, a decision was made to hold the annual holiday party following the November 19th meeting.

MINUTES OF APRIL 16, 2009

The ZBOA members reviewed these very lengthy minutes page by page, recommending numerous changes. Following this review, a **Motion** was made by Dean Snyder to approve the April 16, 2009 minutes with the recommended changes. Tina Brown made the recommended changes to the minutes on her laptop and agreed to e-mail the corrected minutes to the Building Department to place in the file. Seconded by Stephen Shelley. **Motion unanimously approved (5-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas)

MINUTES OF SEPTEMBER 17, 2009

The September 17, 2009 minutes were reviewed and the following changes were recommended: page 2, Para 4, change "at" to "that" and remove "to decide."; Para 5, change to "based on the.."; page 3, update the application of Michael Mattia to four variances; change "June Mattia" to "Jean Mattia;" on several pages, remove "Art Fritz" and replace with "Jack Barton"; page 4, third bullet point, change to "Justification why the structure should not be subordinate..."; page 6, line 8, change 2.14 acres to 2.4 acres. Several typos were pointed out. Following review, a **Motion** was made by Stephen Shelley to approve the September 17, 2009 ZBOA minutes with the recommended changes. Seconded by Tina Brown. **Motion approved (4-0)** (Ayes: Tina Brown, Veronica Robillard, Stephen Shelley, Tim Thomas; Abstain: Dean Snyder)

ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Stephen Shelley, to adjourn the meeting at 9:10 pm.

Respectfully submitted,
Diane Grundon, Recording Secretary