

**TOWN OF PARMA
ZONING BOARD OF APPEALS
JULY 19, 2018**

Members Present: Dan Melville, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas

Others Present: Dennis Scibetta, Blake Keller

Public Present: Russ Angelo, Chad Flansburg, Peter McMann, Michael Fediuk, Brenda Fediuk, Cliff Weber, Louise Weber, Roy Gursslin, Betsy Brugg

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 explained that this is a five member board and a quorum of three is required to pass a motion.

CONTINUING BUSINESS

1. RUSS ANGELO – 5200 RIDGE ROAD

The application of Russ Angelo, Lessee, for a Special Permit at 5200 Ridge Road West. The applicant is proposing to operate an automobile sales business with the ability to display 80 automobiles for sale. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit.

There was discussion that this application was to display 80 vehicles; however, it has been modified down to 30. Chairperson Robillard explained that this matter has been heard previously and while Public Comment was closed at the June meeting if there is pertinent information to this application she will open it back up to listen to that information. Dr. Snyder would like any information being brought forward to be new information only.

Public Comment:

Chairperson Robillard explained that this was tabled at the June meeting partly because there was a letter sent by way of email that was not received by the Board for their review. This latest letter also came in only 2 days prior to this meeting even though it was requested that all information should have been received before the Board packets go out.

Chairperson Robillard read the latest letter from Chad W. Flansburg, Esq. with Phillips Lytle LLP dated July 12, 2018 and received by the Building Department on July 17, 2018. He wanted this letter to be part of the record. He would like the ZBA to deny Russ Angelo's application for a special permit based on his unlawful course of conduct and deceit during the application process. He stated that it is his belief that Mr. Angelo does not care about the rule of the law and is a public danger. He believes that Mr. Angelo's prior course of conduct shows this to be the case. He stated that the Town of Parma Building Department made numerous attempts to get Mr. Angelo to apply for a renewal of his special permit and only did so after more heightened measures were taken by the Town. He felt that Mr. Angelo did not comply with the Town's

direction that all car sales and display must immediately cease from the above referenced address. He also stated that after the March 15, 2018 ZBA meeting when the application for the renewal was withdrawn and Chairperson Robillard advised the client that he has no special permit and there was to be no display or sales of automobiles that he continued to sell.

He states in his letter that on April 27th the applicant filed a new application for a special permit which would be heard at the May 17, 2018 meeting. He felt that Mr. Angelo was still displaying and selling vehicles on the property. He stated that it was not until May 9, 2018 that Mr. Angelo moved the vehicles. He believes that even after that he was still selling vehicles and that it was a sham designed to deceive the public and ZBA. Attached to the letter was a copy of a report from a private investigator engaged by his client, a competitor of Russ Angelo. He states that this report confirms that Mr. Angelo continued to sell vehicles at the property and only located his vehicles next door which he feels is a deception to the Board.

He also states that it is believed that Mr. Angelo does not and will likely never have a dealer's license under his own name. He referenced prior litigation and court orders also attached to the letter.

In the letter he states that he feels there are very reputable automobile dealers in the Town and obey all of the rules and that Mr. Angelo's behavior jeopardizes the other dealers. He stated that he cannot be trusted, is deceitful and that he is a clear and present danger to the public in selling used vehicles in an industry where the public must be protected. He feels the public should be protected from Mr. Angelo and that this special permit should be denied.

Chairperson Robillard made it available to anyone wishing to review it and stated it would be in the Building Department after this meeting for review.

Betsy Brugg, Esq. of Woods, Oviatt, Gilman LLP wanted to let the Board know that she is available on behalf of the applicant if anyone has any questions or would like her to address any of the new information and would like to make sure they feel like they have all of the information they need to make a decision. The consensus of the Board was that they did not have any questions at this time for Ms. Brugg.

Public Hearing: Closed

Dr. Snyder stated that this was one of the most confusing letters he had ever seen. He was very disappointed that the letter was received after July 1st when the Board was pretty clear they needed it by then. With all of the information it would have been nice for the Board to have it to refute quite a bit of the information. In his opinion this is a complaint made by a competitor, the information from the lawsuit was from a year ago and there was contempt of court and a lot of times there is good reason for contempt of court, he doesn't know what that was or what the outcome was and it does not matter for this.

One of the paragraphs he takes issue with states "There are a lot of very reputable and strong automobile dealers in the Town of Parma. These dealers have a great deal invested, and are obeying all of the rules. Mr. Angelo's activities jeopardize these dealers – one rotten apple can spoil an entire bushel. Mr. Angelo's course of conduct establishes that he cannot be trusted and is

manifestly deceitful. He presents a clear and present danger to the public in selling used vehicles which is an industry where consumer protections are historically necessary to protect the public from unscrupulous practices. Mr. Angelo is a person from whom the public should be protected. Based on Mr. Angelo's course of conduct and deceitful activity during this application process as discussed herein, we respectfully request that the ZBA deny Mr. Angelo's application for a special permit." Dr. Snyder's concerns are that he does not understand why one bad used car dealer makes all used car dealers bad. If you have one bad attorney it does not make all attorneys bad. He felt that there were some miscommunications getting things cleaned up, today it is cleaned up and he would like to ask the Building Department what their opinion is because he trusts that more than this letter. His understanding is that clear and present danger is a doctrine put together by the Supreme Court years ago and has to do with taking the right of expression away from someone (ex. yelling fire in a theater) and using that phrase here seems a little over board. The letter states that he doesn't have a license to sell cars and never will have a license to sell cars but states that the Town should stop him from selling cars, very confusing. It also states that he is a public danger, which he will ask the Building Department, because if that is the case then he should be incarcerated. Dr. Snyder was very frustrated and disappointed in the letter that came late not leaving an opportunity to read it. Just like any other car dealer when there are issues they try to work with them to allow them to earn a living and to help the public. Because of the history on this it would be a good idea for this to be monitored closely. One way would be to consider a special permit for 3 months, or make it for 12 months and ask the Building Department to inspect it every 3 months to make sure things are going well.

Dr. Snyder asked Mr. Scibetta if he thought the applicant presents a clear and present danger to the public. Mr. Scibetta stated he does not. Dr. Snyder asked Mr. Scibetta if he thought the Board approving this would somehow allow the applicant to be a public danger. Mr. Scibetta stated he does not. Dennis Scibetta stated that it was never the intent of the Building Department to stop Mr. Angelo from selling vehicles that is not their job. The initial letter of February 2, 2018 cited him for dismantling of vehicles and the display of too many vehicles only.

Tim Thomas stated that this applicant is not the first applicant that the Board has gone the extra mile with to get them into compliance and he concurs with Dr. Snyder's remarks. He feels the letter goes a bit in excess relative to some of the comments, accusations and conclusions. It is not the Board's duty to determine if he is a good businessman or not. This is an allowed use with a special permit and that is what the Board is looking at and they can put conditions on it that they deem appropriate.

Stephen Shelley stated that when he was reading the letter he felt that most of the material in the letter was not information that the Zoning Board would address.

There was discussion about who would be the licensed dealer. Al Vella explained that he has had his NYS License for 50 years, the last 10 years at this address. He will continue to have his license at this address if this is approved. He also stated that in the 10 years he has been associated with Russ Angelo he has never seen him jeopardize the license. He has always supplied a proper facility, handled his customers legitimately and handles all issues that come up.

Dan Melville clarified that if this is approved tonight, this is only approving the display of the vehicles. The DMV oversees the sales of the vehicles.

Chairperson Robillard stated that she would like to see the applicant reestablish his credibility with the community for the operation. However, she feels the Board should make the conditions for a time-frame with the possibility of continuing if all conditions are met. Betsy Brugg, Esq. stated that the applicant would be willing to report back to the Board in 6 months if the Board would like. She was concerned that 3 months would not be enough time to move all of the vehicles back and get back up and running before reporting to the Board. She also stated that the factor in front of the Board tonight is simply land use related only and the letters submitted are not relative.

Tim Thomas suggested the Board approve this for three months. He is concerned that asking the Building Department to do inspections every three months will be a burden to them whereas the formal permit process would insure that those inspections get done.

Dennis Scibetta felt it is a good suggestion to go with a year with inspections throughout the year and he would personally make sure the inspections were done. Chairperson Robillard was concerned if they approve a year and there are issues they have no recourse. Dan Melville stated that the Building Department can go in there and if there is an issue they can bring them right back to the Board. Chairperson Robillard feels the timeframe should be shorter than one year so there would be visibility and accountability.

Dr. Snyder agrees that three months is not a long enough period of time to see what is going on, fill out a renewal application and come report to the Board; however, three months is long enough for the Building Department to see if they are dismantling cars outside. He feels the Building Department has resolved some inspection issues and he is very confident that the Building Department can make inspections every three months. Chairperson Robillard feels the inspections should be random.

Stephen Shelley feels it is reasonable to approve this for a year with random quarterly inspections.

Dan Melville agrees with a year with random inspections as long as the Building Department goes there at a minimum of every 3 months with even some surprise visits in between.

Chairperson Robillard says it is important that the visits be not scheduled but also feels that it should not be on the Building Department to keep the operation of the business genuine, it should be on the applicant. She feels that with a shorter window of time, the diligence is more likely to happen. Tim Thomas is not comfortable putting the burden on the Building Department and would rather see this approved for three months.

Dennis Scibetta agrees to an extent. They have 38 car dealerships from Manitou to Clarkson Parma Town Line. The used car business and their special permits have always been a problem, with continuous call for flags, banners, too many vehicles and vehicles in the right of way, and once one dealership does it then they all follow suit. Those are the things that they will be

looking for and if there are violations they can be brought back in and the special permit revoked.

Dr. Snyder agrees with Steve and Dan that he doesn't think the inspection should be every three months. He thinks the Board should receive a report every three months with random inspections during that time period. He still feels the renewal should be for 12 months. Tim Thomas is concerned that if this falls off the plate of the Building Department than the issue becomes compounded.

A **Motion** was made by Dean Snyder to **approve** the application of Russ Angelo, Lessee, for a Special Permit at 5200 Ridge Road West to operate an automobile sales business with the ability to display 30 automobiles for sale. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit. This Special Permit will be for a period of 12 months. During those 12 months the Zoning Board will expect to receive a report from the Building Department quarterly (Nov. 1st, Feb. 1st, May 1st, August 1st) which will include at least one inspection to update the Board and make sure the applicant is following all of the laws. Copies of these reports are to be included in the Zoning Board packet for that month's meeting, together with a copy of the report to be sent to Monroe County Office of Real Property. The following conditions apply:

1. Hours of operation will be Monday – Friday 9 a.m. to 6 p.m.; Saturday 10 a.m. to 4 p.m.; Sunday 10 a.m. to 2 p.m.
2. There will be no street parking and must have adequate parking for customers.
3. All repairs to be performed in the existing structure.
4. Signs to conform to the current Zoning.
5. The other stipulations in the original permit are covered by our current code.

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

2. NICOLE NITTI – 1961 NORTH UNION STREET

Application of Nicole Nitti, contract vendee, for an area variance at 1961 N. Union Street. The applicant is proposing to construct a 990 square feet accessory building, which would bring the total amount of accessory buildings on this property to 1,454 square feet, and is requesting relief from Town Zoning Article V, subsection 165-33.C.2 which limits the building area of accessory buildings to 600 square feet. This property is currently zoned Medium Density Residential (MD).

Dennis Scibetta reported that he spoke to the applicant and they have withdrawn their purchase offer for the property and the above application. The property is back on the market for sale.

NEW BUSINESS

3. MICHAEL AND BRENDA FEDIUK – 62 CARRIE MARIE LANE

The application of Michael & Brenda Fediuk, owners, for an area variance at 62 Carrie Marie Lane. The applicants are proposing to construct a 1,320 square feet accessory building, which would bring the total amount of accessory buildings on this property to 1,480 square feet, and are requesting relief from Town Zoning, Article V, subsection 165-34.C.2 which limits the building

area of accessory buildings to 400 square feet. This property is currently zoned High Density Residential (HD).

Michael Fediuk, owner explained that he moved into the house a little over a year ago. It is a very large lot at 6.37 acres with a pond and fields on it. Currently there is a small 10x16 shed. They are looking to build the accessory structure to store things to maintain the property and enjoy the house and property. Last winter they had to leave a lot of stuff outside under tarps which doesn't look the nicest and stuff could get ruined.

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

There is a pavilion at the one end of the structure. Tim Thomas clarified with Mr. Scibetta that that square footage for the pavilion is not calculated into the size of the accessory structure. Tim Thomas stated that it is very rare to have a HD lot with over 6 acres of land. Dr. Snyder stated that it is important to note that the size of this parcel makes this different from other HD lots. There was discussion about the orientation of the building. The applicant stated that the pavilion end of the structure will be towards the pond and the garage doors will face the middle of the yard.

Tim Thomas stated that he was not thrilled with this when he first saw this in a HD district; however, after looking at the size of the property he is not as concerned. He would not want others to start coming in thinking they could get the same size building but this lot is extremely large.

Dennis Scibetta reported that there are some challenges that they have to overcome and the applicant is well aware of them. The proposed structure may be in a flood zone. They are waiting for an elevation certificate to determine that. If it is the applicant will required to have flood vents on the building and the applicant is aware of this too.

Chairperson Robillard complimented the applicant on his diagram and the listing of items that will be stored in the structure. She asked if the applicant currently has all of these items. The applicant stated yes they do. She asked them where they have been storing these items up until now. The applicant stated they have been stored in their two car garage and in the back of the property under tarps behind a dirt pile.

Tim Thomas asked how far from the road will this be. The location has not completely been determined because it might have to be moved slightly one way or the other due to the flood zone. It will be in the same area as the current shed on the property.

Chairperson Robillard asked if they are taking the smaller shed down. The applicant would like to move it near the dock to store smaller belongings. Chairperson Robillard asked if they had considered a smaller building. The applicant stated that this is as small as he can go. She felt there was extra space in the building. Dr. Snyder thinks the layout looks fine. Tim Thomas is ok

with the structure because of the size of the property. To put it into perspective the applicant could have horses on this lot if they wanted.

Public Comment:

Roy Gursslin, 70 Carrie Marie Lane, stated he is concerned with encroachment into the flood zone and the other easements on the property. He feels that a 400' accessory structure is adequate in a residential area. He would like the Board to vote against this.

Louise Weber, 72 Carrie Marie Lane, explained that every one of the lots in this area backs up to Salmon Creek, and that the residents paid \$10,000 extra for the lot to purchase into Salmon Creek so no one could build behind them. She feels that this building is too big. She would like to keep the view as it is and not look at a barn. She is concerned that more people will want these large structures if this is allowed. Dr. Snyder asked if she was next door to them. Ms. Weber stated no they are three lots away. Dr. Snyder has a difficult time understanding how this will obstruct their view from three lots away.

Clifford Weber, stated he understands that this is a large piece of land to maintain but the applicant is storing a lot of things that are not used to maintain the land. He thought there were deed restrictions put into place against structures of this size. He asked what the height of the building would be. The applicant stated the walls will be 12'.

There was discussion about possible deed restrictions on the property that get filed with the state that may determine that the applicant cannot do this. Dennis Scibetta stated that if there is a deed restriction filed with the state, the Town is not aware of that and not involved in those. That would be for the applicant to look into and is independent of what this Board is doing. The State would supersede anything that this Board does.

Chairperson Robillard feels that this is excessive since it is more than 3x's the allowed amount and that this is more of a want vs. a need. Tim Thomas feels people have stuff and they have the property to enjoy the belongings.

Ms. Weber stated that her garage is loaded and sometimes she cannot get the car in there with all of her belonging. She has to stack her stuff up in a normal size shed and garage. She feels they should not have bought this property if they needed this kind of storage.

Dr. Snyder felt that they bought a property where there is an opportunity to store their belongings so that they aren't doing just as Ms. Weber said stacking things up and climbing over things to park cars in their garage and store belongings. For most properties this would be excessive but not for this sized property. He stated that this house backs up to Salmon Creek and they have the opportunity to enjoy that and the pond on the parcel. As stated before there are very few parcels in this zoning that have that large of an area. He thinks this looks great and his belongings will be stored in a clean, safe environment.

Public Hearing: Closed

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of Michael & Brenda Fediuk, owners, for an area variance at 62 Carrie Marie Lane. The applicants are proposing to construct a 1,320 square foot accessory building, which would bring the total amount of accessory buildings on this property to 1,480 square feet, and are requesting relief

from Town Zoning, Article V, subsection 165-34.C.2 which limits the building area of accessory buildings to 400 square feet. This property is currently zoned High Density Residential (HD). In making the motion to approve the application:

- The benefit cannot be achieved by other means feasible to the applicant. The applicant has several recreational items that are currently being stored in the garage of the home as well as on the outside of the property. This will afford them the opportunity to bring these items inside to protect them from the elements but also to improve look of the neighborhood by not having the items stored outside.
- There will be no undesirable change in neighborhood character or to nearby properties. This particular parcel with the pond is 6.37 acres which is exceptionally unusual and large for a high density district. The structure is going to be located significantly setback from the road right of way and in his opinion the 30'x44' structure will not significantly obstruct the view from the neighbor's property.
- The request is substantial; however, the applicant has done an exceptional job in preparing a diagram that justifies the need for the size and how the recreational vehicles and lawn equipment will be laid out in the structure.
- There will be no adverse physical or environmental effects. It has been noted that there may be flood vents required which will be determined upon completion of an elevation certificate.
- The alleged difficulty is self-created. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

The applicant should investigate whether there is a Deed Restriction on the property.

Seconded by Dean Snyder. **Motion carried to approve (4-1) (Ayes:** Dan Melville, Stephen Shelley, Dean Snyder, Tim Thomas; **Nay:** Veronica Robillard).

Chairperson Robillard felt that based on the neighbors remarks there might cause an undesirable change to nearby properties and what the neighbors perceive as the quality of their lives. She feels that the request is significantly substantial and it is self-created, it is not for need but for want. She feels the Board is empowered to give the least amount necessary, not the most amount wanted. She would have liked there to have been more discussion about the possibility of making the structure smaller.

Tim Thomas stated that if this were a smaller lot he would agree but given the size of the lot it will not provide a significant obstruction. He felt that in regards to the size of it this is the optimum size to store the amount of belongings.

Dr. Snyder felt that if the subdivision wanted this to be forever wild they could have donated it to the Town or made some kind of provision for that but these folks bought the property and pay tax on the land and the pond and they should be able to enjoy the property.

Stephen Shelley felt that even if the building was smaller the neighbors would still not want the building there.

4. PETER McMANN – 5408 RIDGE ROAD WEST

The application of Peter McMann, owner, for an area variance at 5408 Ridge Road West. The applicant is proposing to construct a commercial storage building on a flag lot with a front

setback of 12 feet and is requesting relief from town Zoning Schedule 1 which states that the front setback shall be 100 feet. This property is currently zoned Highway Commercial (HC).

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 a Type II action under SEQR and no further review is required. There are no letters in the file. This has gone to Planning Board for conceptual approval and the Planning Board is waiting for the Zoning Board decision, however they have deemed this location to be appropriate.

Peter McMann, explained that he is looking to put a building next to his current building to store vehicles when the weather is bad before they are repaired, this way the vehicles would be dry. This is storage for his business only not a commercial storage building. This building would be 127' from the road, however because it is a flag lot it is only 12' from the property line. Visually the front set back will look fine. The proposed building would be complimentary to the current building, other locations would be impractical. Other than the front setback it will comply with all other aspects of the code.

Public Comment: None
Public Hearing: Closed

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of Peter McMann, owner, for an area variance at 5408 Ridge Road West. The applicant is proposing to construct a commercial storage building on a flag lot with a front setback of 12 feet and is requesting relief from town Zoning Schedule 1 which states that the front setback shall be 100 feet. This property is currently zoned Highway Commercial (HC).

In making the motion to approve the application:

- The benefit cannot be achieved by other means feasible to the applicant. The proposed building is a complimentary use to the existing building that is north of this building. This building will be used to store the vehicles before they go into the adjacent building for finishing and body work. Any other location on the property would be impractical from the business perspective and being able to manage the work in an organized fashion.
- There will be no undesirable change in neighborhood character or to nearby properties. It was noted that some of these existing buildings on this property predate the existing code and would not be in compliance; however, they have become a fabric of the neighborhood and anyone driving by would not notice any substantial difference. There is a building in front of where this building will be that obstructs the view of the building.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created. 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, Dean Snyder, Tim Thomas).

SPECIAL PERMIT RENEWAL

5. JOHN BURGESS – 347 MOUL ROAD

Application was received from John Burgess for renewal of a Special Permit allowing a dog kennel at 347 Moul Road.

The property was inspected on July 19, 2018 regarding the conditions of the Special Permit and there were no violations of the Special Permit Conditions. There are no letters or complaints in the file.

After discussion, a **Motion** was made by Dean Snyder to **approve** the request for renewal of a Special Permit for John Burgess to allow a dog kennel at 347 Moul Road with the following conditions:

1. Granted for a five year period, expiring in October 2023.
2. No additional all night lighting.
3. Waste to be properly disposed of.
4. No sign, other than those allowed by zoning.
5. No on-street parking.
6. This Special Permit supersedes the previously granted permit.

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

6. HOBIE CATS – 153 LAKESIDE BOULEVARD

Application was received from David V. Shaheen, 153 Lakeside Boulevard, for renewal of a special permit allowing a private sailing club on lake front property owned by Wolf Associates, LLP at 153 Lakeview Boulevard.

Chairperson Robillard explained that an email was sent by Art Fritz with a letter from Mr. Mike Conway. The letter indicates that the Hobie Cats entity no longer exists. They would like the special permit to be waived. There are only 2 boats on site. Stephen Shelley questions whether they even need a special permit and Dan Melville agrees that they would not. Dr. Snyder felt it depended on if this is a business and there is a contract, if they are just friends and they just store the boats there then he doesn't think so. The consensus was that the permit was expired and the club no longer exists. If it were to exist again then they would need to come back for a special permit.

After discussion, a **Motion** was made by Dean Snyder that upon the information by Mr. Conway Fleet 295 no longer exists and the Zoning Board has determined that the special permit is no longer required.

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

MINUTES OF JUNE 21, 2018

The ZBOA minutes of June 21, 2018 were reviewed. **Motion** was made by Dan Melville to **approve** the June 21, 2018 minutes as presented. **Seconded** by Tim Thomas. **Motion carried to approve (4-0)** (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas; **Abstain**: Dean Snyder).

OTHER BUSINESS

Betsy Brugg, Esq, of Woods Oviatt has offered to hold training for members to get their required training hours. This could be opened up to the Planning Board and even the Village. He will get some dates and then bring it back to the Board.

ADJOURNMENT

There being no further business, a **Motion** was made by Dan Melville, seconded by Tim Thomas to adjourn the meeting at 9:05 p.m. **Motion carried to approve (5-0)** (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas).

Respectfully submitted,

Carrie Fracassi
Recording Secretary