

**TOWN OF PARMA
ZONING BOARD OF APPEALS
February 16, 2012**

Members Present: Stephen Shelley
Dean Snyder
Tim Thomas
Jim Zollweg

Members Excused: Veronica Robillard

Others Present: Jack Barton

Public Present: Adam Freeman, Tim Hughes, John Love, Dave Wright, Greg Sullivan, Frank Santonastaso, Sarah Warmbrodt, Blake Keller, Steve Aprilano, Gary Comardo, Chris Tobin, and Arda Davey

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

TABLED PUBLIC HEARINGS

1. GREG STAHL PROPERTIES – 4621 RIDGE ROAD WEST

The application of Greg Stahl Properties, owners, for modification of their Special Permit at 4621 Ridge Road West. The applicants are requesting to increase the number of parking spaces for vehicles to 200. The current Special Permit limits the number of display parking spaces to 140. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit.

Chairperson Thomas recalled this application was tabled at the January ZBOA meeting to allow the applicants additional time to meet the 7 day notification requirement.

John Love, owner of Websmart Auto, explained that they are making this request to increase parking spaces to 200 from 140 because they are delivering about 100 vehicles a month and business has grown quickly which makes it difficult with the current number of spaces to acquire cars and process them through. There is also a concern with some of the neighbors about the number of cars on the property. They expect the business to continue to grow and the need will be there in the future also. Mr. Love went on to explain that Monroe County responded to the them that there is no environmental effect. They are not looking to modify the space, just to be able to use the space that already exists. The space will not be used for display it is more of a staging area where the cars are processed or parked while waiting for transport or delivery. Access to the area would be the same as what is currently there. The expectation is that customers will not be in the area. This is just to augment the primary sales area for the cars.

Public Comment: None

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

Monroe County submitted a Report which Chairperson Thomas read and confirmed that the owner also has a copy. Their annual permit was recently renewed in February 2012.

A **Motion** was made by Jim Zollweg to approve the application of Greg Stahl Properties, owners, for modification of their Special Permit at 4621 Ridge Road West increasing the number of parking spaces for vehicles from 140 to 200. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit.

All recommendations by Monroe County should be complied with and if there is any effect on monumentation or any work done that encroaches on the highway right-of-way then the proper agencies must be notified and worked with. Any provisions and constraints that are part of the existing permit shall stay in place. It was noted that the application meets the provisions established by Article 9, Special Permitted Uses, Section 165-55 and there is no objections to any of the stated requirements. This application does and we expect they will continue to meet the requirements of 165-78, Rules for Sales and Services of Motor Vehicles.

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

The Applicant was made aware that the next step in the process will be going back to the Planning Board.

2. GREGORY SULLIVAN – 300 BURRITT ROAD

The application of Gregory Sullivan, owner, for three area variances at 300 Burritt Road. The applicant is proposing to construct a 2,016 square feet accessory storage building with a wall height of 16 feet in the front and side yard. The applicant is requesting relief from Town Zoning Article 5, subsection 165-32.C.2 which limits the area of accessory structures to 1,500 square feet, Article 10, subsection 165-82.C.2 which limits the wall height of the structure to 12 feet and subsection 165-82.C.3 which states in part that all detached accessory buildings shall be located in the rear yard. This property is currently zoned Rural Residential (RR).

Chairperson Thomas recalled this application was tabled at the January ZBOA meeting to allow the applicant time to explore alternatives options for placement of the storage building so that it does not encroach upon the front yard of the home, cost comparison to align with the house to enable the board to make a better determination. Additionally, some options to erect a smaller structure closer to the 1500 square feet as listed in the code and also a clearer idea of what the changes of the elevation are as you move back towards the pond, whether it is minor elevation changes or prohibitive elevation changes.

Greg Sullivan, owner, provided new documentation to the board for review. Mr. Sullivan explained that he looked at the location and was able to push the accessory structure back to be in line with the house, doing this increases his site preparation costs but he is willing to do that. Decreasing the building size diminishes what he is trying to do and would mean some items would have to be stored elsewhere or outside. There was some discussion over the site preparation costs and the retaining wall, which while doubling the costs will make the building appear smaller.

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

Public Comment:

Arda Davey, owner of 146 Burritt Road, feels that the applicant should have realized when purchasing the house that it was going to be a hardship to place a storage structure that large on the property and wondered if it is really necessary to have a structure that big to house every “toy”. Chairperson Thomas explained that people do have more “toys” and most do put the accessory structures in the back but once and a while it can happen where a structure needs to be placed in the front or side yard of a property. The Zoning Boards goal is to try and grant relief and mitigate this

to the best of their ability so that the applicant can be approved but not impact the surrounding area. Dean Snyder showed Mrs. Davey a map to help her see where the structure would be placed and why there is no other reasonable area for this application.

Frank Musso, owner of 261 Huffer Road, wondered about being able to lower the walls to 14 feet. Dean Snyder felt that 16 feet walls are common and that to accommodate 14 foot doors would be necessary.

Steve Aprilano, owner of 304 Burrirt Road, stated that he has been working with Mr. Sullivan on the building and being a neighbor he is in favor of this application.

Dean Snyder stated that he is not in favor of buildings being in the front yard but after review he sees no opportunity to slide it farther back and decreasing the size of the building in order to accommodate that side yard would not be reasonable and he supports the placement.

Tim Thomas also stated that he is not in favor with structures in the front yard but the applicant did further research as the board had asked and after further review is he supports this placement.

A **Motion** was made by Jim Zollweg to approve the application of Gregory Sullivan, owner, for three area variances at 300 Burrirt Road to construct a 2016 square feet accessory storage building with a wall height of 16 feet in the front and side yard. This grants relief from Town Zoning Article 5, subsection 165-32.C.2 which limits the area of accessory structures to 1,500 square feet, Article 10, subsection 165-82.C.2 which limits the wall height of the structure to 12 feet and subsection 165-82.C.3 which states in part that all detached accessory buildings shall be located in the rear yard. This property is currently zoned Rural Residential (RR).

Mr. Sullivan provided sufficient evidence that he has enough items to require the size of the structure that he has requested. Evidence was also provided that he has a recreational vehicle that requires 16 foot walls to accommodate 14 foot doors to have appropriate clearance. The change in location that the applicant has proposed by moving it to the northwest puts the structure into the lower portion of the topography which even though the side walls height has not changed the apparent height of the building will be less and look less out of place. The contractor for the owner has stated that it will reduce the perceived height of the building by 2'10". The house itself is built on a higher elevation area and the height of the house will visibly minimize the look of the structure. The applicant has provided information that there is really no other appropriate location for this building than the one that the applicant has proposed because the house is surrounded by steep drop-offs.

In making the determination to approve:

- I don't believe the benefit can be achieved by other means feasible to the applicant. There is no other place or size of structure that would meet the needs of the applicant.
- There will be no undesirable change in neighborhood character or to nearby properties. The topographical location of the building makes it look considerably smaller than it is. The garage will be in excess of 200 feet from the road and is also blocked by vegetation so it won't be as apparent because of the distance from the road.
- The request is substantial because it is a 34% increase in size of a structure and it will be placed in the front and side yard versus the back.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created because of the owners need to store all of the items, however, 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 (4-0)** (Ayes: Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard).

3. FRANK AND LUIGI SANTONASTASO – 5070 RIDGE ROAD WEST

The application of Frank and Luigi Santonastaso, owners, for modification of their Special Permit at 5070 Ridge Road West. The applicants are proposing to increase the number of parking spaces for display vehicles from 160 to 315. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit.

Chairperson Thomas recalled this application was tabled at the January ZBOA meeting to allow the applicants additional time to meet the 7 day notification requirement.

Adam Freeman, Landtech, explained that the property is approximately 6 acres in size, half of it is asphalt, broken pavement and gravel, they are just looking to extend that back to have some additional parking. The owners will be adding a retention pond to minimize the effects of the runoff in the back and having soil tests done on the premises, which is basically all fill and very dense. The owners will also be replacing the leach field which is very old.

Chairperson Thomas wanted to know the business reasons for the application. Mr. Santonastaso explained that there is a surge in vehicles during the peak season starting in November and continuing on until Spring and during peak times, he is over the 160 allowable cars. The tenants in the building have been eliminated until proper parking spaces are available and they are preparing for future growth. They would like to pave about 50 feet back or to the edge of the second row.

There was some discussion about whether they would have to pave the whole area if there is considered to be a change of use, and whether the ZBOA has jurisdiction to approve without paving the area. After discussion it was determined that there is not going to be a change of use. Chairperson Thomas explained why we issue special permits.

Public Comment: None

Board Discussion: Jack Barton reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II action under SEQR.

Monroe County submitted a Report which Chairperson Thomas read and confirmed that the owner also has a copy. There was discussion about an existing “Blocked Entrance” that should be removed and made more permanent with grass and should be addressed with New York State.

A **Motion** was made by Dean Snyder to approve the application of Frank and Luigi Santonastaso, owners, for modification of their Special Permit at 5070 Ridge Road West to increase the number of parking spaces for vehicles from 160 to 315. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit. In making the determination to approve, the application meets the requirements of Town Code Section 165-55 and Town Code Section 165-78, in addition all recommendations by Monroe County shall be complied with.

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

4. STEPHANIE SMITH – 118 WEST BEACH ROAD

The application of Stephanie Smith, owner, for an area variance at 118 West Beach Road. The applicant is proposing to construct a detached garage in the front yard, south of the existing home, with a side setback of five feet from the easterly property line and is requesting relief from Town Zoning Schedule 1 which requires a minimum setback of 10 feet. This property is currently zoned Waterfront Residential (WF).

Tim Hughes, friend of the Smith family, spoke on their behalf. He explained that the property is at the end of a cul-de-sac and that there have been some safety and security issues recently. By placing the garage where requested, it allows the homeowners to visualize the happenings in the cul-de-sac. They would like enough room for the cars to turn into a side load garage. The existing shed on the premises will be removed and they are working with the DEC for the necessary permits.

Public Comment: None.

The public hearing was closed.

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

Following discussion, a **Motion** was made by Dean Snyder to approve the application of Stephanie Smith, owner, for an area variance at 118 West Beach Road to construct a detached garage in the front yard, south of the existing home with a side setback of five feet from the easterly property line. This grants relief from Town Zoning Schedule 1 which requires a minimum set back of 10 feet. This property is currently zoned Waterfront Residential (WF). In making this determination:

- I don't believe the benefit can be achieved by other means feasible to the applicant, the proposed location for the garage is an appropriate location. The applicant security issues are well founded making it important to continue to be able to visualize the dead end of West Beach Road. The 5 feet set back is very consistent with other properties in that area because it makes efficient use of the limited width of the properties. Locating this building in the front yard is appropriate, because on the lakefront it is the normal location for a garage because it minimizes visual obstruction by neighboring properties.
- There will be no 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 self-created, however, using the balancing test; the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community.

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

5. DEAN SNYDER – INTERPRETATION OF A BUILDING DEPARTMENT DECISION

Jack Barton explained that an applicant can appeal an administrative decision made by the Building Department. He explained that the reason it has not been advertised is because the Board of Appeals is determining if a public hearing is necessary. In terms of a public hearing, the board would not be considering the public's input. In this case, the building department made a decision and the question is, does the board affirm the decision or wish reverse the decision of the building department. If the public hearing is not needed than the board can rule on the decision. If determined that a public hearing is needed, there would not be public comment but more of an informational session. There are two matters to discuss tonight:

1. Should a Public Hearing be set and if so setting the hearing date, or
2. Would the Zoning Board of Appeals affirm or reverse the Building Department Decision.

It was explained that if the Board agrees with the Building Department decision, there can still be a public hearing. Dean Snyder recused himself since he is the applicant.

Dr. Snyder provided a statement, pictures and maps for the Boards review, which will be made part of the permanent file. He is proposing to change the layout of his Veterinary Hospital and Boarding Kennels, taking part of the approved area for outdoor runs and making it an indoor area.

Dr. Snyder read through the statement and explained the various maps. In 1995 Dr. Snyder was granted a single Use District Exception to allow the combined operation Animal Hospital and Animal Kennel at 514 North Avenue. Subsequently the Town of Parma updated its Codes eliminating the Use District Exception rendering the Animal Hospital and Boarding Kennel a nonconforming use. The new zoning ordinance cannot diminish the previously approved nonconforming use as an Animal Hospital and Animal Kennel. Dr. Snyder wants to show that there will not be a change to the nonconforming use so a continuance of the pre-existing nonconformance use should be granted. He feels that the relief granted in 1995 Use District Exception is sufficient and does not require expansion. Areas previously approved for outdoor kennels will be replaced with a modern building. He would be updating the building, raising the sidewalls and updating the clinic to meet the needs of the clients and patients while abiding by the rigorous updates of New York State Codes and Standards of Veterinary Hospitals, while also making modifications to the building and bathroom to be accessible to individuals with disabilities. The new roof would not be any higher than the existing hospital roof. There would be no significant increase in the number of clients or traffic on route 259. Without relief nonconforming properties may become an eyesore without an opportunity to modernize them. While the building size would increase, the area of nonconformance would not. The modifications proposed will result in a slightly smaller foot print and reduce the overall area and nonconformity of the facility by reducing the number of outdoor kennels through the conversion into an interior building. Dr. Snyder is not looking to expand the nonconforming use as far as level or area, they would be shifting them. If this were not able to be grandfathered, it would create a hardship for the applicant. He is not proposing to change the use it will still be used as a veterinarian clinic and kennel. Dr. Snyder went through the drawings handed out at the beginning and made a part of the permanent file showing the way the hospital and kennel are today and the changes he is proposing to make.

There was further discussion about having a Public Hearing. Dr. Snyder felt that a public hearing would not be necessary because they aren't asking the neighbors for input and it is not changing the neighborhood appearance. Jim Zollweg felt that the public would not be able to offer any information since it is an interpretation of a building department decision.

Jack Barton read a letter sent to the applicant explaining the Building Department's decision. They view this request as an expansion of a non-conforming use because the veterinary clinic would be enlarging.

There was discussion among the board as to whether there should be a public hearing. Jim Zollweg does not feel that there should be a public hearing for this matter. He feels that the ZBOA is acting as judges and judges do not get public opinion, but that this should be open and the public can attend.

Dean Snyder asked if the Town attorney had made any comments. Tim Thomas stated he would like to talk to the Town attorney, make a site visit and have time to sort through the information provided before taking any action.

Dean Snyder felt that a public hearing should not be held because in this case they are looking for an interpretation of an existing law not what the impact of the neighbors would be. Chairman Thomas felt that he agrees with that but he would like to know what his options are. Jack Barton explained that he had talked to the Town attorney and she reviewed the application and her feeling was both sides were defensible positions, she did not see either one as being wrong.

If determined that a public hearing is needed, there would not be public comment but more of an informational session. Jack Barton believes that there would not be a place for public input. The only reason would be to let the public know what is going on. Chairman Thomas clarified that the

public hearing would be during the regular meeting but there would not be any public input. The board members were not prepared to go ahead with the interpretation tonight.

A **Motion** was made by Jim Zollweg to table the issue at hand until the March meeting. In March the board will not seek input from the public at that time, negating the need of a public hearing relevant to this issue. This matter is being tabled to allow the board time to review the large amount of the information provided.

Seconded by Stephen Shelley. **Motion carried (3-0)** (Ayes: Stephen Shelley, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard).

Dean Snyder rejoined the board for the remainder of the meeting.

MINUTES OF JANUARY 19, 2012

The ZBOA minutes of January 19, 2012 were reviewed and the following recommended changes were made: Page 2, Para 2, line 1 add Jim Zollweg to "Seconded by"; page 2, Para 4, line 6, change to "Under the current zoning code it allows"; Page 2, Para 4, line 9, change to "cannot be used and the structure is subject to"; Page 2, Para 6, line 2 "Type II action under SEQR"; Page 3, Para 9, line 2 "Type II action under SEQR; Page 4, Para 2, line 2, change to "road widths were"; Page 4, Para 9, line 2 "Type II action under SEQR". A **Motion** was made Stephen Shelley to approve the January 19, 2012 minutes as amended. Seconded by Jim Zollweg **Motion carried (3-0)** (Ayes: Stephen Shelley, Tim Thomas, Jim Zollweg; Abstain: Dean Snyder; Absent: Veronica Robillard).

OTHER BUSINESS

1608 Hilton Parma Corners Road – Jack Barton gave an update to the Board. Before it went to court the owner went to the Town Board and expressed a hardship and requested additional time. It was explained by the Town Board that they do not have the authority to do that but they did agree to recommend to the Court to give him a six month time frame to complete the garage. The letter was taken to the Court and the Judge granted the property owner six months to have a garage built. If that is not accomplished in that timeframe, there will be fines put in place at that time. There is a return Court date of August 9, 2012.

Zoning Board Alternate Applicants – The 5 applicants were invited to come to the meeting to see what goes on. Interviews will be scheduled with the interested applicants at the end of the month. There was some discussion with the prospective applicants and they were able to ask questions about the process and function of the ZBOA.

ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Jim Zollweg, to adjourn the meeting at 10:09 p.m. **Motion carried (4-0)** (Ayes: Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg; Absent: Veronica Robillard).

Respectfully submitted,

Carrie Webster, Recording Secretary