

**TOWN OF PARMA  
ZONING BOARD OF APPEALS  
June 20, 2013**

**Members Present:** Veronica Robillard  
Stephen Shelley  
Dean Snyder  
Tim Thomas  
Jim Zollweg

**Others Present:** Jack Barton, Gary Comardo

**Public Present:** Laurie Eisele, Michael Eisele, Mary Lou Clifford, Jeremiah Clifford, Mary Brown, Kathryn Smith, Raymond Wenzel III, Don Payne, John Lodge, Frank Santonastaso, Francis Scholand, Brian Andrychuk, Kris Schultz, Glynne Schultz, David Tang, Esq.

The meeting was called to order by Chairperson Robillard at 7:05 p.m. She explained the function of the ZBOA and the decision-making process. She explained that a quorum of three is required to pass a motion.

**TABLED PUBLIC HEARINGS**

**1. JAMES ZABAWSKY – 1769 HILTON PARMA ROAD**

The application of James Zabawsky, owner, for an area variance at 1769 Hilton Parma Road. The applicant is proposing to construct a detached garage with a side setback of five feet from the southerly property line and is requesting relief from Town Zoning Article 11, subsection 165-87.A.1 which establishes a minimum side setback of ten feet. This property is currently zoned Rural Residential (RR).

James Zabawsky, owner explained he is looking to build a 22x24 detached garage. He stated that it would be better to have it attached but that the cost is higher to do that. He explained that he is looking to position it in the southerly part of the property because the placement of the driveway and the sloping of the property keep him from placing elsewhere on the property. Tim Thomas asked if attaching the garage would eliminate the need for the variance, the applicant stated “it would”. Dean Snyder stated that if this were to be attached to the house then there would be no need for a variance and he has a hard time approving this because of that unless the applicant could show tonight that there is no way to do the attached garage. He would like to see the applicant do some research and get some numbers showing the cost to build a detached as opposed to building an attached garage then come back to the board where it could possibly be granted, if the board denies it now then the decision cannot be reversed. Chairperson Robillard read the criteria the applicant would need to meet to be approved. Mr. Zabawsky was in agreement to table this matter to gather more information for the next meeting.

**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 SEQOR and no further review is required.

A **Motion** was made by Stephen Shelley to table, without prejudice, to the July 2013 meeting the application of James Zabawsky, owner, for an area variance at 1769 Hilton Parma Road to construct a detached garage with a side setback of five feet from the southerly property line granting relief from Town Zoning Article 11, subsection 165-87.A.1 which establishes a minimum side setback of ten feet. This property is currently zoned Rural Residential (RR).

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

**2. BRIAN AND SHAUNA ANDRYCHUK – 14 AMPOR BEACH**

The application of Brian and Shauna Andrychuk, owners, for three area variances at 14 Ampor Beach. The applicant is proposing to construct a 3,201 square feet garage with a wall height of 16 feet on the south side of Ampor Beach. After the new garage is completed, the garage on the north side of Ampor Beach will be demolished. The existing 500 square feet one story barn located on the south side of Ampor Beach is proposed to remain. The applicant is requesting relief from Town Zoning Article 10, subsection 165-82.C.2 which limits the garage wall height to 15 feet, Article 5, subsection 165-35.C.2 which limits the accessory storage on a property to 400 square feet to allow the barn

to remain and Article 3, subsection 165-17 which requires an accessory building (garage) to be less in area than the principal building. This property is currently zoned Waterfront Residential (WF).

Brian Andrychuk, owner, explained that the buildings on the property are in need of repair and they are looking to be able to store their belongings. He is looking at building a 2100 square foot building with a loft. Their house has no basement or attic and living on the water he understands that at some point his stuff is going to get wet and he would like the opportunity to store his things safely. The premise is 1.5 acres and the building would be set back on the property as far back as it can go. The reason for the 16 foot height is so that he can "marry" the rooftops and keep the pitch down while leaving headroom so that when walking in the loft they would not have to be hunched over. This would also be a better use of the lumber with less waste.

Chairperson Robillard asked what would be stored in the building. Mr. Andrychuk stated he has 2 boats, one 11 foot and one 23 foot long, an 11 foot Jetski, a 26.5 foot trailer that is currently being stored off premises, and a 40 foot truck and trailer that he uses for his business. Chairperson Robillard asked if he was planning to rent out storage space. Applicant said no. The second floor would be used to store household items including Christmas decorations and lawn furniture in the wintertime. There was discussion about the large size of the building; Chairperson Robillard feels that with the two buildings 3700 square feet is excessive. The applicant stated that the foot print is less than 2100 sq. feet and his understanding was that the requirement was that it be less than his house which is 2880 sq. feet. Chairperson Robillard read the application that states that the property backs up to privately owned forest. The applicant explained that a woman on Lighthouse Road owns that property and she was notified. Tim Thomas also felt that the wall height seemed excessive. Dean Snyder feels that the idea of the size of the footprint being less than what the house footprint is the perception; you don't want a tiny house and a great big building because it doesn't go together. Dr. Snyder is concerned with the size of the building compared to the size of the house and he explained that most applicants come to the board providing drawings showing the space and how it will be used and the layout of how the belongings will fit in the building, as for the headspace if it is being used only for storage of personal belongings than it is not really necessary to have full headspace. Mr. Andrychuk feels that it is perception not just numbers on paper. Chairperson Robillard stated that all of the board members were out there to inspect and they are trying to work with the applicant within the confines of the code.

**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:**

Gary Gay, 9 Ampor Beach, he has seen the plans that are being proposed and feels that this would fit into the neighborhood and because it would be far to the south he feels like it will not really be able to be seen and that it is far away from the residential structures.

Public Hearing Closed.

Tim Thomas stated that the board is looking at a difference of 320 sq. feet that the applicant could build without a variance as a garage instead of what the applicant is proposing. He feels that this could be downsized the 320 sq. feet and the variance would not be needed and also that full overhead access to storage is not necessary. Tim Thomas feels that there are other means feasible to the applicant and he would not vote in favor of either the wall height or square footage. Jim Zollweg asked if cars were going to be parked on the lake side after the garage was moved. Applicant said no. Stephen Shelley would like to see a sketch of what would be stored inside. The applicant said that he could put a 100 page list of what would be stored. Tim Thomas said the board is not looking for a list of items but a sketch of the layout of items, like the board consistently asks for in these matters. There was discussion about tabling this matter to give the applicant time to put together a sketch for the board members, or the applicant could withdraw the application or the board could act on it tonight. Dean Snyder stated that tabling this would give the applicant time to reassess the need and maybe change the design and size of the building. Chairperson Robillard relayed the options to the applicant and what the board will be looking for. The applicant stated he would like the board to act on this tonight.

A **Motion** was made by Tim Thomas to deny the application of Brian and Shauna Andrychuk, owners, for two area variances at 14 Ampor Beach. The applicant is proposing to construct a 3,201 square feet garage with a wall height of 16 feet on the south side of Ampor Beach. After the new garage is completed, the garage on the north side of Ampor Beach will be demolished. The applicant is requesting relief from Town Zoning Article 10, subsection 165-82.C.2 which limits the garage wall height to 15 feet and Article 3, subsection 165-17 which requires an accessory building (garage) to be less in area than the principal building. This property is currently zoned Waterfront Residential (WF). In making this motion to deny:

1. I believe the benefit can be achieved by other means feasible to the applicant; however the applicant has chosen not to pursue that possibility. It was very clearly stated that he could build a building in compliance that would fall 320 square feet shy of what he is requesting that would make that building comply with the code.
2. There would be an undesirable change in neighborhood character or to nearby properties. This is an excessive building relative to other structures in the area. The applicant has not provided the board definitive layout as to what substantive items would be stored in the proposed accessory structure that would justify the size as well as the wall height.
3. The request certainly is substantial.
4. There will be no adverse physical or environmental effects.
5. The alleged difficulty is certainly self-created. Using the balancing test this would be a detriment to the health, safety and welfare of the community.

Seconded by Dean Snyder. **Motion unanimously carried to deny (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

Chairperson Robillard polled the board for their reasons to deny:

**Tim Thomas** - My motion stands for my reason for denial.

**Stephen Shelley** – Does not believe the board has enough information to support that the additional space is required and this could be achieved by reducing the square footage to the allowable amount. This is very substantial and this is a self-created situation.

**Jim Zollweg** – Thinks that the benefit can be achieved by other means which have not been explored.

**Dean Snyder** – Believes the benefit can be achieved by other means feasible to the applicant. The applicant was given an opportunity to provide additional information to justify the increase of 320 square feet and the 16 side wall request. Without that information it is difficult to comprehend why the design cannot be modified to eliminate the need for these variances.

**Chairperson Robillard** – Believes the benefit may be able to be achieved by other means feasible to the applicant and as discussed by the board. The alleged difficulty could be considered self-created since information of need has not been proved as per request of the board. The definitive information regarding need for size and wall height has not been provided and is substantial. The alleged difficulty is self-imposed.

A **Motion** was made by Tim Thomas to approve the application of Brian and Shauna Andrychuk, owners, for an area variance at 14 Ampor Beach for the existing 500 square feet one story barn located on the south side of Ampor Beach. The applicant is requesting relief from Article 5, subsection 165-35.C.2 which limits the accessory storage on a property to 400 square feet. This property is currently zoned Waterfront Residential (WF).

In making this motion to approve:

1. I don't believe the benefit can be achieved by other means feasible to the applicant, as the applicant stated he believes the barn has been there for at least 50 to 60 years and most likely predates our zoning code.
2. There will be no undesirable change in neighborhood character or to nearby properties. Due to the age of the barn it has become a part of the fabric of the neighborhood character.
3. The request is not substantial because the barn predates the current code.
4. There will be no adverse physical or environmental effects.
5. The alleged difficulty is not self-created because the barn was there when the applicant purchased the property. 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 (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

### **3. FARMINGTON LAWN CARE, INC. – 4658 RIDGE ROAD WEST**

The application of Farmington Lawn Care, Inc., contract vendee, for two area variances at 4658 Ridge Road West. Applicants are proposing to construct a retail store and are requesting to erect a six feet high decorative fence in the front yard to enclose a display area and create 115 vehicle parking spaces. Applicants are requesting relief from Town Zoning Article 16, subsection 165-128.A.2 which limits fence height in the front yard to three feet and Schedule 2 which requires 138 vehicle parking spaces. This property is currently zoned Light Industrial (LI).

Wendy Meagher, the engineer for the project explained that she is here tonight to obtain variances for the parking and a fence. Jack Barton explained that he talked to the engineer and explained to her that a variance that would be required was missed when this was advertised for the display area falling within the required setback. Chairperson Robillard clarified that this is the same area where they want the fence so even if the fence was approved they would still not be able to display. There was discussion over where the 100 feet is measured from and how to proceed from here. Ms. Meagher explained that the reason why they came to the board this month is because the clients are currently leasing on a month to month basis and are purchasing this property with the hopes of relocating as soon as possible and they are looking to submit to the Planning Board at the end of this month. There was discussion surrounding the amount of parking and the layout of the building. The layout works well with their product. As far as the parking she stated that this is the first town that has requirement this amount of parking and they would prefer 86 spaces, less parking would allow more green space and is a nicer barrier. The drainage would continue the way it is. Dean Snyder stated that lessening the parking would still have the display area falling into the 100 foot setback and he feels that with this type of store it is important to have these outdoor displays. There was discussion about reconfiguring the building. Ms. Meagher explained that because of the shape of the building, slope in the back and the septic system in the front it would be hard to change the location of the building while keeping a good turning radius for trucks bringing in product. They would prefer to keep the footprint similar to the other stores and she showed pictures of what the store would look like.

Jack Barton explained that re-advertising with fewer parking spaces would require a bigger variance. Chairperson Robillard feels that if this is going to be re-advertised than it should be advertised as one application. Dr. Snyder wants to make sure that this will not preclude the Planning Board from moving forward. Mr. Barton explained that the applicant could proceed to Planning Board at their own risk, realizing that Zoning Board has not made a decision because they still need approvals from both Boards. Mr. Barton explained that the Planning Board process typically takes three meetings. At the first meeting there would be no approvals, its conceptual. Dean Snyder confirmed that this has not gone to Monroe County or anyone else for comment yet. Jack Barton said no.

There was discussion about the best way to procedurally move forward. Jack Barton said that withdrawing the application and resubmitting a new proposal with fewer parking spaces and table the fence proposal. Jim Zollweg noted that this plan removes two structures currently on the premises that are encroaching.

**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:**

John Lodge, 4670 Ridge Road, explained that he has property adjacent to this parcel and agrees that the parking spaces required are excessive. He said he feels that this is a welcome addition to the neighborhood and sees no issue.

Public Hearing Closed.

There was discussion among the board and Ms. Meagher about this application being withdrawn and then a complete and new application would be advertised with three variances instead of withdrawing part of this application and then advertising the new part, it would be a cleaner application.

Ms. Meagher requested to withdraw the application for the variances at this time and the board accepted the withdrawal of this application.

#### **4. NANCY WEHNER – 189 WEBSTER ROAD**

The application of Nancy Wehner, owner, for an area variance at 189 Webster Road. A new street is being proposed directly south at 199 Webster Road. This parcel will become a corner lot with a setback of 22 feet from the street right-of-way. Applicant is requesting relief from Town Zoning Schedule 1 which requires a 60 feet setback. This property is currently zoned Medium Density Residential (MD).

Kris Schultz, engineer for the project explained that this application and the next item on the agenda is also the same application for the property on the other side of this street. Item 5 on the Agenda was read so that discussion could be about both agenda items. Mr. Schultz stated that this is a second phase of a subdivision. This started out as four lots of a subdivision with a sixty foot opening to develop the back lots. Originally they were going to develop the lots in the back with a shared common driveway, but in the Town of Parma when putting in a private drive it basically has to be built to the same standards as a dedicated road. It was decided to go with the dedicated road because there would be no homeowners association in place to maintain and plow, which start out ok but when people move in and out then there becomes issues, then they want the Town to plow. The school district will not send a bus down a private road. On a dedicated road Monroe County Water Authority will allow a main to be placed so a fire hydrant could be placed for fire protection. With a dedicated road the adjacent neighbors are impacted and then they become corner lots. This is a similar scenario to Rockridge Drive. The developer will work to put up some screening and landscaping with the owners to shield the houses. Dean Snyder asked where the driveways for the two houses go out. Mr. Schultz showed them the driveways are on Webster Road. There was discussion about the amount of lots that will be back there.

**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. Jack Barton stated that this was before the Planning Board and when reviewing the map they did not particularly like the 20 feet access strips and really would prefer this dedicated road.

**Public Comment:** None. Public Hearing Closed.

A **Motion** was made by Tim Thomas to approve the application of Nancy Wehner, owner, for an area variance at 189 Webster Road. A new street is being proposed directly south at 199 Webster Road. This parcel will become a corner lot with a setback of 22 feet from the street right-of-way. Applicant is requesting relief from Town Zoning Schedule 1 which requires a 60 feet setback. This property is currently zoned Medium Density Residential (MD).

In making the motion to approve:

1. I don't believe the benefit can be achieved by other means feasible to the applicant. This particular dedicated road and the setbacks will maximize the development of the proposed lots that will be accessed by this dedicated road.
2. There will be no undesirable change in neighborhood character or to nearby properties. From a visual perspective of somebody driving by it will be negligible that the 60 foot required has not been achieved. In addition he believes that the amount of traffic will be minimal which will have a positive impact on the undesirable change or the character of the property.
3. The request is substantial.
4. There will be no adverse physical or environmental effects.
5. 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 (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

#### **5. ROBERT LAYTON – 209 WEBSTER ROAD**

The application of Robert Layton, owner, for an area variance at 209 Webster Road. A new street is being proposed directly north at 199 Webster Road. This parcel will become a corner lot with a setback of 22.6 feet from the street right-of-way. Applicant is requesting relief from Town Zoning schedule 1 which requires a 60 feet setback. This property is currently zoned Medium Density Residential (MD).

A **Motion** was made by Tim Thomas to approve the application Robert Layton, owner, for an area variance at 209 Webster Road. A new street is being proposed directly north at 199 Webster Road. This parcel will become a corner lot with a setback of 22.6 feet from the street right-of-way. Applicant is requesting relief from Town Zoning schedule 1 which requires a 60 feet setback. This property is currently zoned Medium Density Residential (MD).

In making the motion to approve:

1. I don't believe the benefit can be achieved by other means feasible to the applicant. This particular dedicated road and the setbacks will maximize the development of the proposed lots that will be accessed by this dedicated road.
2. There will be no undesirable change in neighborhood character or to nearby properties. From a visual perspective of somebody driving by it will be negligible that the 60 foot required has not been achieved. In addition he believes that the amount of traffic will be minimal which will have a positive impact on the undesirable change or the character of the property.
3. The request is substantial.
4. There will be no adverse physical or environmental effects.
5. 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 (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

#### **6. MICHAEL EISELE – 190 OGDEN PARMA TOWN LINE ROAD**

The application of Michael Eisele, owner, for a Special Permit and an area variance at 190 Ogden Parma Town Line Road. Applicant is proposing to operate a small tool and residential lawn equipment repair shop in accordance with Town Zoning Article 9, subsection 165.79.1. Applicant is also requesting an area variance to add 883 square feet to an existing 621 square feet shed to provide additional area for storage. The total area of the accessory structure on this property will be 2,105 square feet. Town Zoning Article 5, subsection 165.33.C.2 limits the total area of accessory structure to 600 square feet. This property is currently zoned Medium Density Residential (MD).

David Tang, attorney for the applicant, explained that the intention of this application is to allow Mr. Eisele operate a home business that he has had since 1982. In May 2012 the applicant was denied the request to operate this business. This application has been amended to include hours of operation and the type of work to be done. He further explained that Mr. Eisele had reached out to about 8 neighbors along Ogden Parma Town Line and Winding Country Lane. He has received support from 7 of the 8 immediate neighbors; they were showed the proposal and given a chance to ask questions. An attempt was made to speak to Mr. Clifford, the neighbor to the west, by Mr. Tang to sit down and discuss and that attempt was refused. Mr. Eisele has resided at this residence since 1982 and the small engine repair business has been there since then. Mr. Clifford was at least 5 times a client of Mr. Eisele's and had a good relationship until they had a personal dispute. Mr. Tang explained that he feels there would not be a change in character because it has been going on for 30 years and many of the town resident's use his service. He has researched moving the business to another location but unfortunately there has not been suitable space that he could find that would be financially viable. They are suggesting limited hours Monday through Friday, Saturday and no hours on Sunday with a pickup and drop off service so there would not be additional traffic on the street. There would be no visual change from the view on the street because the shop is directly behind his home.

With respect to the area variance for the size of the building Mr. Tang explained that this building would give him the ability to move indoors the equipment that has been stored outside. Tim Thomas asked Jack Barton procedurally a year ago this special permit was denied and as with a variance the board could only listen to the application again if there was a substantive change. Jack Barton said that the procedure would be the same for a variance and a special permit.

There was discussion about the prior denial. Chairperson Robillard read a portion of the minutes from the May 2012 denial. Dean Snyder recollected one of the main reasons this was turned down was because 165-79.1 Home Business subsection C states that no lights or noise from the home business shall be noticeable at any time from any public street or neighboring property, it does not state noise above the normal lawn mowing. So the board had determined that there was no way for him to test lawnmowers and have it as a home business in that area. In the application under attachment 6, Special Permitted Use Application it states limited noise, the sounds of testing of handheld and other

small tools will not escape the shed or workshop area. Unless some proof is provided that it is a sound attenuated building it is hard to think that noise will not be heard. Dr. Snyder continued saying that what is considered annoying to the neighbors depends on the sensitivity of the neighbor. He does not see anything significantly different in this application compared to the last application except someone else is making the application.

Tim Thomas asked what has been going on with this business since the last meeting. Mr. Tang said that Mr. Eisele has not been partaking in this business since being told to stop and this has been a hardship for him. Mr. Tang feels that this is an amended application because of the reduced hours the pick-up and drop off service with letters of support. Mr. Tang feels like there is some room to be able to test the equipment. Dean Snyder read back the motion about the testing of the lawnmowers and pictures of a junkyard like condition of the property. Dr. Snyder states he needs to see where the motion and the new application address those issues. Mr. Tang said that those photos were dated more than five years ago. Dean Snyder stated Google Earth showed those same issues dated May 2011. Mr. Tang showed pictures where there is not junk strewn about and has been cleaned up and he does not feel that this is a problem property.

Tim Thomas stated that a Special Permit is very explicit as to the existing neighborhood character, color, material, structure, lighting, and no emission of sounds, noise or vibrations and there is no flexibility, the conditions are either met or they are not, with a variance there is more flexibility. They are written that way because towns have problems with home business and this gives the town's more control. There was discussion about how many times a week is it unreasonable to be mowing the lawn. Dean Snyder said that this is not just mowing the lawn; this is a neighbor having to test engines on and off while repairing, grind off pieces if necessary, possible welding of equipment in order to make sure an engine is working properly which Dr. Snyder feels is completely different than a neighbor mowing his yard a couple times a week. Mr. Tang stated that Mr. Eisele has run this business for 29 years with the blessing of his neighbors and no complaints made to the board. Dean Snyder stated that for 29 years it looked like a junk yard, what information is there to convince the board that it would be different going forward. Mr. Tang said that his client is willing to work with the neighbors and maybe test equipment a half an hour or hour a day. Chairperson Robillard wondered how that would be enforced by the Town; this would set precedent across the Town. Mr. Tang said that he felt with a restriction set if there was any violation the Town would be notified immediately by the neighbor. Chairperson Robillard said it is not a good idea to put the Town in a situation of refereeing a neighbor dispute and she does not feel that there has been enough changed to hear this application again. Mr. Tang feels that this is a new application because of the restrictions they are willing to work within and he has received letters of support since the last meeting. Tim Thomas felt that entertaining this when it was denied because of a schedule adjustment is a very minor change, but because of the support of neighbors he feels they should be able to listen to the neighbors. Chairperson Robillard feels that the board should decide if they even are willing to move forward and hear this application. Mr. Tang feels that there is new information and this should be heard. There was discussion among the board about the procedure and if the board should hear this application.

Chairperson Robillard asked what is considered small tool repair. Mr. Tang responded related yard equipment, hedge trimmers, weed whackers, chainsaws. Chairperson Robillard said those would also lead to a lot of noise. Mr. Tandy wants to know what could be done to appease the neighbor. Dean Snyder stated that the point of this is not that a neighbor has complained the point is that this has been proposed to the Zoning Board of Appeals and the ZBOA has an issue with this. The motion did not say one neighbor has a problem with it so we have a problem with it, the board said due to the nature of this business it does not belong in a residential area.

Mr. Tandy stated that other towns allow this kind of business. Dean Snyder asked if other towns have the same verbiage as ours that specifically state that there is to be no lights or noise from the home business shall be noticeable at any time from public street or neighboring property. Mr. Tang thought they may have identical language and was sure at least one did.

Chairperson Robillard decided to poll the board for comments on whether to hear this application.

**Dean Snyder:** He has a difficult time accepting where this application is significantly different than the one heard in May 2012. There has been more information provided, some other provisions provided but as I read the motion I don't see anything in this expanded application that would change our minds. For example, attachment No. 6 under Special Permitted Use Application – Limited Noise “The sounds of testing of hand held and other small tools will not escape the area”. The applicant does not describe how this will be accomplished. In order to attenuate a motor of a lawnmower, weed whacker, or the sounds associated with a chain saw, it would require significant sound attenuation to make it so no sound would escape the shed. There is no reason to believe that the applicant can or would follow through with this claim. Again attachment No. 6 – Testing is limited to mowing grass. Dr. Snyder does not agree with that or think that is reasonable, if a lawnmower needs an engine replaced you have to start that engine and listen to it to evaluate it, you don't mow grass to evaluate an engine or tuning a carburetor. Attachment No. 4 – Limited Hours of Operation. Proposing hours of operation indicates there is an undesirable noise being generated. The representative for the applicant has asked if there is a certain time where the noise would not offend one of the neighbors, indicating that noises are being generated. If there was no noise being generated other than mowing the lawn there would not be a need for this. The attorney mentioned that he does not consider mowing the lawn 4 times a week as excessive. Dr. Snyder finds it very difficult to accept this as not being excessive. After reviewing the motion from the minutes dated May 17, 2012, I do not see where this application includes trusted information that would reverse our previous decision.

**Jim Zollweg:** Last time we heard this application, my concern was Paragraph E, which states limitations on the size and numbers of the out structures. He does not feel that has changed in fact it is more significant. He does not feel there has been any substantive change to his concern with this new application.

**Stephen Shelley:** 165-79.1 – Home Business. He has a hard time figuring out how the board can satisfy Item C- In part, no emissions of sounds, noise and vibrations shall be noticeable anytime from any public street or neighboring property. That item is enough to sway him.

**Tim Thomas:** Comments specifically surround the Special Permit. After reviewing the information that counsel presented, it is my opinion that there is no significant change in the proposed application from May 2012 motion. No substantive information has been provided that would warrant a reversal or rehearing of our decision. The new information that was provided regarding the hours of operation are very minimal changes as compared to the original application.

**Chairperson Robillard:** After reviewing this new request, it seems repetitive to the prior request. Significant new information is not apparent. 165-79.1 specifies criteria which was reviewed previously and concern still exist which led to our denial in May 2012.

Jack Barton said that a motion would need to be done denying the hearing of this application. This denial does not take into account public comment it is based on there not being a significant change from the previous application. Mr. Tang asked if the board would bifurcate the application so that the area variance could be heard and ruled on separately tonight.

**A Motion** was made by Tim Thomas to deny the request to hear the application of Michael Eisele, applicant, for a special permit to operate a small tool and residential lawn equipment repair shop at 190 Ogden Parma Town Line Road in accordance with the requirements of Zoning Code 165.79.1 per the polling of the board and the comments thereof that support the consensus that this application did not include any significant changes or new information that would warrant further consideration.

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

The board continued hearing the information for the increase in size for the storage shed. Mr. Tang explained the increase in the size of the shed it to accommodate the storage of equipment that is currently outdoors and would not be visible from the street. Tim Thomas asked what would be stored in there. Mr. Tang explained there is a trailer and saw mill and a medium sized trailer. Jim Zollweg asked if the saw mill is relevant to the business. Mr. Tang stated no. Chairperson asked what someone does with a saw mill. Mr. Tang stated the first task is to fix the saw mill and then it would be for personal use, he stated that there has been no business being conducted on the premises since the denial in May 2012. There was discussion about the dimensions of the shed. Mr. Tang stated that the shed is going to be



16x20 or 1504 square footage. Jack Barton explained that the existing pavilion is also added into the total square footage to bring it to 2104 sq. feet. Stephen Shelley explained that the board typically asks for specific information and layouts of what will be stored in the building to remain consistent with past applications.

**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:**

Jeremiah Clifford: 198 Ogden Parma Town Line Road. He has a petition which he brought opposing the special permit and the area variance of the shed with approximately 50 signatures. He feels that this will have an adverse effect on all of the neighbors and will have a negative impact on property values. He feels adding additional buildings creates a commercial atmosphere. There is no reason to have extensive buildings in residential areas. The petition was given to the board to remain in the file. Some of the signatures on the petition postdate the letters that the applicant had in the application giving their approval. The petition that was signed states: I, the undersigned, with no personal animosity toward Michael Eisele, submit my signature in opposition to his application for a Special Use Permit for a small tool and residential lawn equipment repair shop at 190 Ogden Parma Town Line Road. My opposition includes his request for an area variance to add 883 square feet to an existing 621 sq. feet shed. The total 2,105 sq. feet for his property far exceeds the 600 sq. feet allowed by Article 5, subsection 165.33.C2. The request is in total disregard for the property values of our MD Residential Zoning and adverse effects on all neighbors. Three neighbors signed rescinding their prior signature on any other documents signed before this petition.

Lynn Schutlz: Black Forest Drive. Worried about home business starting along this strip, she knows of two other applications possibly coming in to start a home business. She is concerned about the school down the road with busses on the road all day with extra traffic.

Mary Lou Clifford: 198 Ogden Parma Town Line Road. They have been in front of various boards to fight other commercial businesses. Extra excessive buildings open the door to more trouble. Feels Mr. Eisele has had adequate years to find another place to run his business. The neighborhood has come and long way and is a nice place.

Mike Lenhard: 185 Ogden Parma Town Line Road. Opposed to the building because what would be the reason for the building if he is not running the business.

Francis Scholand: 144 Ogden Parma Town Line Road. He is against this building. This is a residential area and he would like to keep it this way. Feels if the building is there, the business would continue.

Mary Brown, 198 Ogden Parma Town Line Road. Is against the expansion of the building. The applicant still keeps the yard a mess and this will give him the opportunity to bring and store more junk.

Laurie Eisele: 190 Ogden Parma Town Line Road. Would like the building to get the junk out of the yard but if this is not approved what is sitting out there now will remain.

Mr. Tang addressed what would be placed in the extra storage space. Two mowers, tractor, saw mill, gator and a 16' trailer. Chairperson Robillard asked what is in there now. Mr. Tang stated stuff that was being used for the business; they would not be expanding the workable area of the shop.

Tim Thomas explained that the board has approved several accessory building to accommodate the storage of outside stuff so that these premises do not become an eyesore and to protect the equipment, but the board asks to see a layout or floor plan of what will be being stored in the building and how the space will be used. The board would also like something showing what the building would look like after construction. Stephen Shelley would like to see how the increased building size would be used.

**A Motion** was made by Tim Thomas to table, without prejudice, to the July 2013 meeting the application of Michael Eisele, owner, for an area variance at 190 Ogden Parma Town Line Road to add 883 square feet to an existing 621 square feet shed to provide additional area for storage. The total area of the accessory structure on this property will be 2,105 square feet. Town Zoning Article 5, subsection 165.33.C.2 limits the total area of accessory structure to 600

square feet. This property is currently zoned Medium Density Residential (MD). This will afford the applicant the opportunity to come back to the board with a more detailed floor plan of both the proposed structure and the current structure as to how these items will be stored as well as better drawings of what the shed will look like after construction.

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

### SPECIAL PERMIT RENEWALS

#### **7. FRANK AND LUIGI SANTONASTASO – 5070 RIDGE ROAD WEST**

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

Jack Barton explained that the special permit was modified but upon inspection it was discovered that the applicant did not have final approval of the Planning Board. Since then the applicant has presented to the Planning Board and they did not take action for a couple minor reasons. The Planning Board also wants the Zoning Board approval.

Jack Barton reported there are no complaints on file and an inspection was completed on June 19, 2013. At the time of the inspection, there were no violations pertaining to the Special Permit and there are no complaints on file. However, there are minor interior violations that are being rectified through the current permits that are on file.

A **Motion** was made by Jim Zollweg to approve the application of Frank and Luigi Santonastaso, owners, for renewal of their Special Permit at 5070 Ridge Road West to maintain the number of parking spaces for vehicles at 315. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit. This renewal will carry the same restrictions as the original permit and will expire in February 2014. Seconded by Dean Snyder. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

#### **8. RUSSEL ANGELO – 5200 RIDGE ROAD**

The application of Russel Angelo, owner, for renewal of his Special Permit at 5200 Ridge Road West to sell automobiles. This property is currently zoned Highway Commercial (HC) which allows this with a Special Permit.

Jack Barton reported there were no complaints on file and a safety and fire inspection was completed on June 12, 2013. At that time there were no violations noted and there are no complaints on file. Art Fritz asked that the applicant come to the meeting tonight so if the board had questions he could respond. There was discussion about making the special permit good for one year instead of two years.

A **Motion** was made by Jim Zollweg to approve the application of Russel Angelo, owner, for renewal of a Special Permit to sell automobiles at 5200 Ridge Road West, with the following conditions:

1. No more than 30 cars to be displayed for sale
2. No on-street parking. There must be adequate space for customer parking.
3. Exit and entrance driveways are to be provided.
4. All repairs to be performed within the existing structure, not outside.
5. Hours of operation: 7:00 am to 8:00 pm, Monday through Sunday.
6. Signs to conform to current zoning.
7. Lighting to be directed away from the road.
8. Special Permit for a period of one year, renewable in April 2014.

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

**MINUTES OF MAY 16, 2013**

The ZBOA minutes of May 16, 2013 were reviewed and the following recommended changes were made: Page 1, Para 2, line 2 change “about” to “to”; Page 2, Para 1, line 4, change the square feet numbers to 120 and 70; Page 2, Para 1, line 5 add “habitable” to additional habitable rooms; Page 3, Para 3, line 4, add on this application before because that use; Page 5, Para 7, line 1, change can to “can’t”. A **Motion** was made by Tim Thomas to approve the May 16, 2013 minutes as amended. Seconded by Jim Zollweg. **Motion carried (4-0)** (Ayes: Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; Abstain: Dean Snyder).

**OTHER BUSINESS**

Outside seating – A business would like to have outside seating for patrons who would like to go out to smoke and take their drinks with them. There would be chairs but no service. There was discussion about the modifying the code to allow. The current alcohol license would have to be modified.

July Meeting – Recording secretary will be out having minor surgery. It was discussed that the tape recorder would tape the meeting and the need to make sure that the applicants come to the front and speak up so that the minutes can be done from the tape.

**ADJOURNMENT**

There being no further business, a **Motion** was made by Stephen Shelley, seconded by Tim Thomas to adjourn the meeting at 11:05 p.m. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

Respectfully submitted,

Carrie Webster, Recording Secretary