

**TOWN OF PARMA  
ZONING BOARD OF APPEALS  
JUNE 19, 2014**

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

**Others Present:** Dennis Scibetta, Art Fritz, Kyle Mullen, Dan Melville

**Public Present:** Chris Payment, Moreen Payment, Ruth Landry Luyk, Sam Luyk, Eric Vandenberg, Janet Vandenberg

The meeting was called to Order by Chairperson Robillard at 7:00 p.m. Because of a throat illness of Chairperson Robillard, Tim Thomas explained the function of the ZBOA and the decision-making process. He also explained that this is a five member board and a quorum of three is required to pass a motion.

**TABLED BUSINESS**

**1. PAVS, LLC – 4704 RIDGE ROAD WEST**

The application of PAVS, LLC, owner, for a use variance at 4704 Ridge Road West. The applicant is requesting to use the property for an open storage of unlicensed vehicles and is requesting relief from Town Zoning Article 5, subsection 165-32 which does not list open storage of unlicensed vehicles as an allowed use. This property is currently zoned Rural Residential (RR).

There was discussion surrounding this application. There was no one at the meeting to speak on behalf of this matter. Chairperson Robillard asked Mr. Fritz if he had heard from anyone about this. Mr. Fritz stated that he has not heard anything from anyone on this matter. Dean Snyder felt that the Board could move onto the rest of the agenda and deal with this one at the end of the meeting to allow time for someone to show up. The Board agreed and moved on to the new business.

**NEW BUSINESS**

**2. CHRISTIAN AND MOREEN PAYMENT – 628 PECK ROAD**

The application of Christian and Moreen Payment, owners, for a two area variances at 628 Peck Road. The applicants are proposing to construct a 20' x 30' pole barn in the front yard with a setback of 60 feet from Peck Road. Applicants are requesting relief from Town Zoning Article X, subsection 165-82.C.3 which states in part that all accessory buildings shall be located in the rear yard. This lot is a corner lot which, by definition, has two front yards, two side yards and no rear yard. They are also requesting relief from Town Zoning Article XVII, Zoning Schedule 1 which states in part that there shall be a minimum front setback of not less than 75 feet from all state or county highways. This property is currently zoned Agricultural/Conservation (AC).

Christian Payment, owner, explained that he would like to build this pole barn in his side yard but it is considered his front yard because of this being a corner lot and how his house is situated. His property is over 3 acres with the house in the center. He wanted the 60 feet setback to keep this in line with the building next door because he thinks it will look better, but he would be willing to build this at 75 feet instead so that the one variance would not be needed. Tim Thomas asked why this could not be moved further back. Mr. Payment stated that he would be unable to access the building when it is wet, it is dryer ground where he wants to place it. The applicant showed pictures of the neighboring lots that also have pole barns closer than 75 feet to the road.

**Board Discussion:** Art Fritz reported that notifications were in order, there are no letters in the file, 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.

Tim Thomas asked what would be stored in this. Mr. Payment said he has an old mustang that he has stored offsite, a tractor, front loader and a convertible. Tim Thomas is concerned that people passing by would think this was in the front yard and asked if he had looked further into moving this back more. Mr. Payment stated he would have to have an engineer come in and probably would have to put in a culvert because of the water issues. There is a leach field at the SE corner of the house. Dean Snyder wanted to make sure that the applicant understood what the definition of a corner lot was, the applicant understands that by description this is a corner lot but he does not think that fits his yard.

Tim Thomas asked if this structure would be on a slab. The applicant said it would have a stone floor and then a poured floor inside with poles and footers. Tim Thomas asked if there are any water problems with the existing shed on the premises. The applicant stated that there are no water issues there and it is in a high spot of the property. Tim Thomas asked what would prohibit this from being placed in the NW corner of the premises. Mr. Payment explained that moving this to the NW corner of the lot would place the building right in front of his neighbor's house. Dean Snyder stated that because the applicant is not asking for a size variance he feels it is not important what is being stored in the structure and he agrees that putting it in that back corner will be putting it in a wet area and it would be more of an eyesore to the neighbor and if this was placed at 75 feet back he would have no issue with this request. Chairperson Robillard asked the applicant if he would be willing to move this back to a 75 feet setback. The applicant said that that would be fine with him.

Applicant indicated that he would like to withdraw his request for the setback variance at this time.

Dean Snyder asked what the construction of this building will be. Mr. Payment stated it will have 1 foot overhangs, 10 foot eaves, it will be red with a charcoal roof, will have wainscoting and a cupola with a white garage door.

**Public Comment:**

**Mary Smith** – 627 Peck Road asked what the height will be. Applicant responded 10 feet. Dean Snyder explained that the Board looks at side wall height and this is lower than the 12 feet the code calls for. Ms. Smith asked if this will be disguised by trees because she will be looking directly at it. The applicant said that is why they are dressing the building up so it will look good. She is ok with this now that it will be moved back 15 feet.

**Bob Burrows** – 641 Peck Road is concerned that this will be in his direct line of site and stated that he could not find the part of the code that spells out the rules for pole barns. Tim Thomas explained that a pole barn is considered an accessory structure so that is the part of the code that governs height of side walls. Art Fritz stated that 165-82.C.3 is the correct section of the code. Mr. Burrows asked how the applicant would get access to this. Applicant stated to the east.

Chairperson Robillard explained the relief the applicant is asking for is because this lot is a corner lot only not for the setback. The applicant stated that there will be a gravel driveway to the structure and that he is willing to plant trees to create a barrier. The neighbors were ok with that.

Tim Thomas is concerned that if this were not a corner lot it would be asked that if applicant looked at other places on the property to build and those options would be given to the Board to consider. Dean Snyder feels that moving this structure back on the property would be encroaching more on the neighbors and this would be better at the 75 foot setback being this is a unique property with a house virtually in their backyard. Stephen Shelley agreed with Dr. Snyder and felt that it would be good to have a tree buffer which will someday basically cover this structure.

**Public Hearing Closed.**

A **Motion** was made by Jim Zollweg to **approve** the application of Christian and Moreen Payment, owners, for an area variance at 628 Peck Road which differs from the agenda because the owners have withdrawn their request for the 60 feet setback. The applicants are proposing to construct a 20'x 30' pole barn in the front yard. Applicants are requesting relief from Town Zoning Article X, subsection 165-82.C.3 which states in part that all accessory buildings shall be located in the rear yard. This lot is a corner lot which, by definition, has two front yards, two side yards and no rear yard. This property is currently zoned Agricultural/Conservation (AC). This motion makes the provision that the owners will restore the tree barrier to block the view from Peck Road and the neighbors across the street. The owners have also indicated that this structure will have 1 foot overhangs, 10 foot eaves, it will be red with a charcoal roof, have wainscoting, a cupola, and a white garage door which will make this an attractive building. In making this determination:

- The benefit cannot be achieved by other means feasible to the applicant. There is no backyard so there is no opportunity to place this in a backyard.
- There will be no undesirable change in neighborhood character or to nearby properties. With the restoration of the tree barrier and appropriate construction there will not be an undesirable change in the neighborhood character.
- The request is more substantial because it is in the front yard.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created, it is the choice of the applicant to desire extra storage; 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 (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

**3. RUTH LANDRY – 1145 HILTON PARMA CORNERS ROAD**

The application of Ruth Landry, owner, for an area variance at 1145 Hilton Parma Corners Road. The applicant is proposing an 8'x15' front addition to her home with a front setback of 68' from Hilton Parma Corners Road and is requesting relief from Town Zoning Article XVIII, Zoning Schedule 1 which states in part that there shall be a minimum front setback of not less than 75 feet from all state or county highways. This property is currently zoned Agricultural/Conservation (AC).

Ruth Landry, owner, explained that she would like to make the kitchen larger and because the house is a back to front split the only way to expand this would be to the front of the house. The size of the addition would be a 15 foot front section that would come out 8 feet; the addition would include a window but not a bay window like shown in the drawing. Tim Thomas asked when this house was built. Ms. Landry stated it was built in 1959. Stephen Shelley asked if there would have to be any trees removed to do this. The applicant stated possibly one tree would have to be cut back or removed and she would talk to the contractor about this. Chairperson Robillard asked what is the square footage of the house is now. Ms. Landry stated it is 1800 square feet plus 600 square foot in the lower level with windows and an exit.

**Board Discussion:** Art Fritz reported that notifications were in order, there are no letters in the file, 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:** None

**Public Hearing Closed.**

A **Motion** was made by Dean Snyder to **approve** the application of Ruth Landry, owner, for an area variance at 1145 Hilton Parma Corners Road to construct an 8'x15' front addition to her home with a front setback of 68' from Hilton Parma Corners Road.

In making this determination:

- The benefit cannot be achieved by other means feasible to the applicant. This is a very small home with a footprint of approximately 1000 square feet which is relatively small in this day and age and we are finding owners need room and in this case this is a relatively small addition but because of this use it will make a very large improvement to the house, normally we would want this built on the rear of the house but because of the current construction there is no opportunity to put a kitchen there and make it accessible. Although the setback is 68 feet which is 7 feet shy of the 75 feet required from the road it will be difficult to discern that difference.
- There will be no undesirable change in neighborhood character or to nearby properties. This addition will complement the current construction and enhance the look of the house.
- 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 Tim Thomas. **Motion carried (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

#### **4. ERIC AND JANET VANDENBERG – 455 HUFFER ROAD**

The application of Eric and Janet Vandenberg, owners, for an area variance at 455 Huffer Road. The applicant is proposing to construct a 24' x 24' barn in the rear yard with a side setback of 10 feet from the east property line and are requesting relief from Town Zoning Article XI, subsection 165-87.A.1 which requires a minimum side yard setback of 10% of the lot width which, in this case, is 16 feet. This property is currently zoned Agricultural/Conservation (AC).

Eric Vandenberg, owner, explained that he would like to build this structure in the proposed area because of the leach field and the driveway configuration. Tim Thomas stated that if this were put into compliance it would be in the middle of the turnaround. The applicant said yes it would be in the driveway and a tree would have to come down, plus it would encroach on the leach field. Chairperson Robillard asked about the existing shed. The applicant stated that this will be put behind the existing shed which will be coming down. Janet Vandenberg stated that the whole lot is treed so people from the road or the neighbors will really not notice it. There was discussion about the 10% side yard setback.

**Board Discussion:** Art Fritz reported that notifications were in order, there are no letters in the file, 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:** None

**Public Hearing Closed.**

A **Motion** was made by Tim Thomas to **approve** the application of Eric and Janet Vandenberg, owners, for an area variance at 455 Huffer Road. The applicant is proposing to construct a 24' x 24' barn in the rear yard with a side setback of 10 feet from the east property line and are requesting relief from Town Zoning Article XI, subsection 165-87.A.1 which requires a minimum side yard setback of 10% of the lot width which, in this case, is 16 feet. This property is currently zoned Agricultural/Conservation (AC). In making this motion to approve:

- The benefit cannot be achieved by other means feasible to the applicant. The applicant has informed us that to put the barn in compliance will encroach upon his leach bed system and also severely limit his accessibility to his back yard from the driveway.
- There will be no undesirable change in neighborhood character or to nearby properties. This property is heavily wooded and to passersby this will be shaded from the road and most people will not even know it is there. The barn has a unique character which will fit into the neighborhood.
- The request is not substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created; 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 (5-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder, Tim Thomas, Jim Zollweg).

## **CONTINUING TABLED BUSINESS ITEM 1**

### **PAVS, LLC – 4704 RIDGE ROAD WEST**

There was further discussion among the Board and since the beginning of the meeting no one has arrived to speak on behalf of this agenda item. Chairperson Robillard reiterated that there has been no further information received from Mr. Schultz or the applicant for this request. The Board discussed that there was information needed and requested from the applicant at the May meeting and the timeline was discussed at that point so there would not be any confusion and that this has been in front of the Board since February 2014.

A **Motion** was made by Tim Thomas to **deny** the application of PAVS, LLC, owner for a use variance at 4704 Ridge Road West. The applicant has applied to use the property for open storage of unlicensed vehicles and is requesting relief from Town Zoning Article 5, subsection 165-32 which does not list open storage of unlicensed vehicles as an allowed use. This property is currently zoned Rural Residential (RR). In making this motion to deny. The Board worked diligently with the applicant at the May meeting to make him aware of the filing deadlines and he assured us and was highly confident that he would be able to provide the information requested to entertain this application. Item No. 1 of the use variance criteria:

- The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. No information was provided to the Board either tonight or prior to tonight to address these criteria either affirmative or negatively. The Board was very explicit with the applicant to address the allowable uses in this district and to show why they could not realize a reasonable return for each and every one of those uses and no information has been provided to this Board.

Seconded by Dean Snyder. **Motion 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 supports my reason for the denial.

**Dean Snyder** – It was made very clear to the applicant that the Board needed to see competent financial evidence to substantiate his claim that they could not realize a reasonable return for each and every permitted use and without that information there is no opportunity to approve this application.

**Stephen Shelley** – I base my denial on the fact that the Board was very explicit in asking for specific information and it was not provided.

**Jim Zollweg** – The applicant did not provide information that was specifically discussed to support items 1 of the use variance criteria.

**Chairperson Robillard** – Applicant was requested to provide by the Board substantial competent financial evidence that would address all of the permitted accessory uses in 165-32 as well as the special permitted uses set out in 165-32. All four of the use variance criteria must be addressed and also specific information provided regarding the requested use, timeframe and location of cars on the premises and this was not done.

## **CONTINUING BUSINESS**

### **5. DB PROPERTIES LLC – 4742 and 4728 RIDGE ROAD WEST**

The application of DB Properties LLC, owner, for an appeal at 4742 Ridge Road West. Pursuant to Town Zoning Article 4, Subsection 165-19.B.1 which states in part that the Zoning Board of Appeals shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative officer or body in enforcement of this chapter. The Building Department has determined that numerous mobile/manufactured homes and other structures on the property have been vacant for over six months. In accordance with Town Code Article 10, subsection 165-82.V, the structures have lost

their Certificates of Occupancy and have been posted Not to Be Occupied. Pursuant to Town Code Section 24-6.3 (Stop Work Orders), a stop work order was posted on B-24 for working without a permit. The applicant has asked for an interpretation of the Town's Zoning as it applies to this property. This property is currently zoned General Commercial (GC).

Based on the information that was provided to the Board at the May 2014 meeting it was decided that there would be a motion made to address the interpretation.

DB Properties, LLC has, by application for public hearing received April 11, 2014, appealed "the determinations by the Code Enforcement Officer" to affix notices to various units at 4742 and 4728 Ridge Road West and a commercial building located at 4742 Ridge Road West. Specifically, DB Properties alleges:

- "Not to Be Occupied" notices were issued on February 5, 2014 and affixed to 4742 Ridge Road West Units A-11, A-13, A-14, A-17, B-1, B-2, B-10, B-11, B-18, B-19, B-20, B-21, B-22, B-24 and B-25.
- "Stop Work" notice was issued on February 5, 2014 and affixed to 4742 Ridge Road West Unit B-24.
- "Not to Be Occupied" notices were issued on February 26, 2014 and affixed to 4728 Ridge Road West Units 3, 7, 8 and 4742 Ridge Road West Units B-14, B-15, B-16, B-17, and a commercial building located at 4742 Ridge Road West.

DB Properties, LLC has asked the Zoning Board of Appeals to rescind the notices. DB Properties, LLC's application for public hearing directs the applicant to describe any undue hardships that would be created by strict application of the current regulations and to describe how granting the applicant's request would not change the appearance or character of the neighborhood. In response, DB Properties, LLC's application states "Further evidence/documents to be submitted by the Owner/Applicant in advance of the public hearing." No evidence/documents were received by the Zoning Board of Appeals in advance of the public hearing.

A public hearing on this matter was held on May 15, 2014. David Dyminski appeared on behalf of DB Properties, LLC. Mr. Dyminski stated he did not submit evidence/documents in advance of the public hearing, but he submitted a 5 page affidavit with exhibits at the hearing. At the hearing, Mr. Dyminski stated that he felt the notices posted on February 5 and February 26, 2014 should be removed because he marked the premises with three "No Trespassing" signs. He stated the Town passed those signs to post the aforementioned notices and, therefore, unlawfully entered the premises on February 5 and February 26, 2014. He stated the Town entered the premises without a warrant or consent.

The issue of whether the Town unlawfully entered the premises on February 5 and February 26, 2014 without a warrant or consent was the subject of a recent New York State Supreme Court action. In that action, DB Properties, LLC made the same allegations being made in this instance. The Town of Parma responded to that action by moving to dismiss the action. The Town of Parma argued that it was permitted to enter the property for purposes of posting the notices. Agreeing with the Town of Parma's position, the Honorable Ann Marie Taddeo, Supreme Court Justice, dismissed DB Properties, LLC's complaint by Order entered May 7, 2014. As DB Properties, LLC enjoyed the full and fair opportunity to litigate the issue of whether the Town of Parma unlawfully entered the premises on February 5 and February 26, 2014, and as this issue was resolved by the Order of the Honorable Ann Marie Taddeo, this board is unwilling to undermine the decision of the Court. This board recognizes the legal issues raised by this appeal are best suited for the courts. This board

further acknowledges that DB Properties, LLC may seek any necessary Certificate of Compliance or building permit from the Town of Parma.

Therefore, I move to **DENY** the appeal by DB Properties, LLC regarding “the determinations by the Code Enforcement Officer” to affix notices to various units at 4742 and 4728 Ridge Road West and a commercial building located at 4742 Ridge Road West.

Seconded by Jim Zollweg. **Motion carried (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 supports my reason for the denial.

**Jim Zollweg** – This issue was already been decided by a State Supreme Court Justice.

**Stephen Shelley** – The claim that the notices were unlawfully posted because there were no trespassing signs was heard by a New York State Supreme Court Judge and denied and I concur with that decision.

**Dean Snyder** – I also concur with the Supreme Court’s decision.

**Chairperson Robillard** – The substance of the motion is congruent with my understanding of the information, the court decision and the events leading up to the request for this interpretation and decision. It is my opinion that this motion is appropriate based on the information presented by the applicant to the Parma Zoning Board of Appeals.

#### **MINUTES OF MAY 15, 2014**

The ZBOA minutes of May 15, 2014 were reviewed a **Motion** was made by Stephen Shelley to **approve** the May 15, 2014 as presented. Seconded by Tim Thomas. **Motion carried (4-0)** (Ayes: Veronica Robillard, Stephen Shelley, Tim Thomas, Jim Zollweg; **Abstain**: Dean Snyder).

#### **OTHER BUSINESS**

There was discussion about a training opportunity in August.

Chairperson Robillard introduced and welcomed Dennis Scibetta as the new Building and Development Coordinator for the Town of Parma.

#### **ADJOURNMENT**

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

Respectfully submitted,

Carrie Webster, Recording Secretary