

TOWN OF PARMA
ZONING BOARD OF APPEALS
August 20, 2015

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

Members Excused: Jim Zollweg

Others Present: Art Fritz, Dennis Scibetta, Kyle Mullen

Public Present: Clayton Weddington, Michael Brown, Duvall Rodgers, Angela Rodgers, Jeffrey Rodgers, Jack Barton

The meeting was called to Order by Chairperson Robillard at 7:02 p.m. Chairperson Robillard explained the function of the ZBOA and the decision-making process. She also explained that this is a five member board and a quorum of three is required to pass a motion.

TABLED FROM THE JULY 23, 2015 MEETING

1. CLAYTON WEDDINGTON – 510 PECK ROAD

The application of Clayton Weddington, owner, for an area variance at 510 Peck Road. The applicant is proposing to construct a 25' x 29' garage with a 5' setback from the west property line and a 5' setback from the rear property line. The applicant is requesting relief from Town Zoning Article XI, subsections 165-87.A.1 and .2 which state in part that the minimum side and rear setback shall not be less than 10 feet. This property is currently zoned Agricultural/Conservation (AC).

Chairperson Robillard explained that this was tabled to allow the applicant more time to provide further and specific documentation that were requested by the Board. Chairperson Robillard asked the applicant if he had anything more to add besides what was provided Board members. Mr. Weddington stated that he has nothing further to add except that he did contact Monroe County and they could not locate a map in their files depicting his leach fields. Stephen Shelley stated he also did some research and was unable to locate a map with that information.

Chairperson Robillard asked why he is unable to move the garage forward so that he would comply with the rear setback. Mr. Weddington stated that he would be ok with that. Chairperson Robillard asked if he has considered minimizing the garage and why there is a need for the 25 feet, then the side setback would be less. The applicant explained that he needs room to store two classic cars plus he works on them. Stephen Shelley stated that a standard garage door is 16 feet and then there is a need for space on either side of it to get around and have work benches. Dan Melville felt that with a 16' garage door the applicant would need the extra space on the sides plus down the center. Chairperson Robillard feels that 24' is excessive. Tim Thomas asked if working on the classic cars is a hobby or does he restore and sell. The applicant stated that these cars have been in the family for years. The cars in question are a 75 Pontiac which is 19'5" and a 1974 MGB. Tim Thomas asked the Building Department what the minimum is for a garage in a new house. Dennis Scibetta stated that the bare minimum on a new house is 440 square feet and Mr. Weddington is asking for 672 square feet which he felt is appropriate. Chairperson Robillard stated that she is concerned that there will be three garages. Tim Thomas asked about the addition to the garage on the house. The applicant stated that is used for their personal cars. Tim Thomas asked where the two classic cars are currently stored. Mr. Weddington stated they are stored outside in the summer and he stores them off site at a farm in the winter.

Tim Thomas stated that he is not too concerned about the size of the garage. Dan Melville asked if the property was staked because he didn't want the applicant asking for five but ending up being four because the applicant was unsure of where the property line really is. The owner said it is.

Board Discussion: Chairperson Robillard reviewed from the last meeting 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. Dennis Scibetta stated that there have been no changes to the above information and no letters in the file.

Public Comment: None
Public Hearing Closed

Tim Thomas clarified that the house was built with a single car garage, and then added another garage to that. Dean Snyder felt that with a 16' door and a 3' path around the cars plus any workbenches the applicant cannot go any smaller. Chairperson Robillard asked how he was going to access this. Stephen Shelley showed that there is 12 feet available to access the building. There was discussion about amending this request to eliminate the need for a variance for the rear setback and the applicant agreed to abide to the 10' rear setback. Chairperson Robillard clarified with the applicant that he is requesting a 24' x 28' garage not a 25' x 29'. Applicant stated that was correct.

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of Clayton Weddington, owner, for an area variance at 510 Peck Road. The applicant is proposing to construct a 24' x 28' garage with a 5' side setback. The applicant is requesting relief from Town Zoning Article XI, subsection 165-87.A.1 which state in part that the minimum side setback shall not be less than 10 feet. This property is currently zoned Agricultural/Conservation (AC). The applicant has agreed to the amended application and agrees to abide by the rear setback of 10' and no longer needs a variance for the rear setback.

- The benefit cannot be achieved by other means feasible to the applicant. The proximity of the leach bed system more or less dictates where the accessory structure can be located on the property. After much discussion surrounding the size of the structure, it was determined that the room required for the two vehicles ('75 Pontiac and '74 MGB) along with ample work space to get around the vehicles justifies the size of the structure.
- There will be no undesirable change in neighborhood character or to nearby properties. This will be in the NW corner of the property and is partially obstructed from the road.
- The request is substantial. Town Code requires a 10' setback and this will be 5'.
- 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 outweighs any detriment to the health, safety and welfare of the community. As part of this application being approved, the shed currently there will be removed.

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

NEW BUSINESS

2. MICHAEL BROWN – 1584 HILTON PARMA CORNERS ROAD

The application of Michael Brown, owner, for an area variance at 1584 Hilton Parma Corners Road. The applicant is proposing to construct a 40' X 80' pole barn in the side yard with a portion of the building projecting into the front yard and is requesting relief from Town Zoning, Article X, 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).

Michael Brown, owner, explained that he would like to build this barn because he is going to need storage for farming equipment that he will be using for his future plans to install a trellis system to grow hops and the possibility of owning cattle at some point.

Board Discussion: Dennis Scibetta reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II action under SEQR and no further review is required. Dennis Scibetta explained that this is considered an AG structure under the Agricultural and Markets laws. There are no letters in the file.

Chairperson Robillard asked if some construction of this pole barn has been started because she noticed that some poles were up already. The applicant stated due to a miscommunication with the Building Department it has been started. Chairperson Robillard explained to the applicant that the Board has to look at this like it has not been started and should there be a denial then this will have to be removed or modified. The applicant stated he understood that. Tim Thomas asked how many acres the applicant owns. The applicant stated just shy of 30 acres. There was discussion surrounding an AG District, with an AG District this can be in the side yard, not the front. Stephen Shelley asked if the applicant was aware that to have cattle there would need to be a 100 foot side setback and he also asked the applicant if this building was going to be straight or skewed like the house. The applicant stated that this will sit square with the driveway and about 40' of the building would be in the front yard. Dean Snyder stated that according to the drawing 65' of the building will be in the front yard. By definition the front of the house is at the closest corner to the road. After comparing maps and more discussion it was determined that 70' of this building will be in the front yard and that it would be built right up to the driveway.

Dean Snyder stated he doesn't understand why we would put a barn in the front yard when there is a lot of room behind it and it seems odd that you would have an agricultural building hooked up to the driveway. The applicant explained that putting it here would allow him access to and from the building and would make his future farming more efficient. Dean Snyder stated that he understands the layout but he does not understand the application. To clarify Dean Snyder stated that the application is to put a 40x80 barn with 70' in the front yard when the applicant owns a lot of property right behind it and it can be in the side yard as dictated for agricultural buildings. The applicant feels that moving it behind the house would affect his future plans with the cattle and the growth with the hops trellis. Dean Snyder asked how many feet there were from the barn to the back of the property. It was determined that there is 1200 feet to the rear of the property and moving this back 70 feet would only consume 5% of the depth of the property not the volume. There is 664 feet from the driveway to the hedgerow (woods) in the back. There was clarification with the Building Department that this can be in the side yard because it is considered an AG Building, not in the front without a variance.

**Public Comment:
Public Hearing Closed**

Stephen Shelley would like more information regarding the future plans. Dean Snyder stated that the Board has to look at the current situation not future and that the Agricultural Building is already exempt for size and can be in the side yard. Tim Thomas stated he is also having a hard time finding the rationale for allowing this in the front yard. Tim Thomas asked if the applicant wanted to explain what the misunderstanding was he mentioned. The applicant stated that that was not necessary at this time. Tim Thomas asked Mr. Brown how much money he has invested. Mr. Brown stated \$15,000. Dean Snyder stated that money spent has no bearing on an area variance like it does a use variance.

The applicant felt that considering how this is going he wanted to elaborate on the miscommunication. He further stated that he originally applied for a variance but he was told he did not need a variance. He signed an agreement with his contractor and gave him \$10,000 plus money for material and he started digging holes for the posts because it was his understanding he just needed to pick up his permit and when he came in it was realized that he could not build it there without a variance, though he had discussed where he wanted it prior to this. Dean Snyder felt that the contractor should have known that a permit was needed before starting the building he also felt that the Board only has certain authority and he feels that they have exhausted every angle to grant relief. Stephen Shelley stated that is why he wanted more information regarding the future plans. Chairperson Robillard feels that because there is not any further information regarding the goals, visions or timeline for this property this is very hypothetical. Dan Melville felt that you

cannot grant an approval on something that might never happen. Dean Snyder stated that if they move the building 70' straight back then there would be no need for a variance and that future cattle or hops can fit around the building. Dennis Scibetta stated that it was determined that this building was an AG building which did not require a variance for size, he did not have a site plan and it was not until the applicant came in to pick up the permit that he saw where the applicant wanted this. Dean Snyder asked that there be no discussion between the Building Department and applicant rather they both direct their comments to the Board. Chairperson Robillard stated that she is not going to entertain an argument. Chairperson Robillard asked if Art Fritz had anything to add. He stated no. She asked Dennis Scibetta if he had any comments. Mr. Scibetta explained that he did not have a site plan showing where the building was going to be placed when the Building Department and applicant were discussing this, even after the Building Department had asked to see it. It was not until the applicant came in to pick up the permit that he brought in the map and they realized that it could not be built in that spot without a variance. Kyle Mullen added that when the potential problem was realized the contractor was called and told to stop building after the polls were set. His understanding is that the applicant wanted to make use of the driveway and that is why he wanted it built here. There was discussion surrounding the difference between a building permit and a zoning permit, the applicant needed the zoning permit which sets the parameters for the setbacks and does not come up often. Chairperson Robillard stated that the building being started was premature because the location still needed to be in compliance. Kyle Mullen had further information for the Board. Chairperson Robillard stated that while she would like to see it, it is not the Boards job to look for information that should be done by the applicant and further it is very hard for the board members to see and process information on the night of a meeting. The board members were in favor of looking at the information Mr. Mullen had.

Chairperson Robillard polled the Board as to whether additional specific information would make the board members decision different:

Dean Snyder: Does not believe additional information would help him make a more qualified decision.

After seeing the location of the house, leach field, the turnaround, the proposed location of the barn and other possible locations of the barn, the benefit can be achieved by other reasonable means. He understands that it might change where he keeps his cattle or where he puts hops in the future but there is over 600 feet behind it. The structure is a very important part of the farm and so the farm would wrap around it.

Dan Melville: Agrees with Dean Snyder.

Stephen Shelley: Felt that with other information he might be able to justify this.

Tim Thomas: Does not believe that additions information would not be helpful because this can be achieved by other reasonable means is a significant factor in this case. The Board cannot entertain future plans with no specifics that might not ever happen.

Chairperson Robillard: Based on what was presented tonight, the information provided is sufficient to make a decision.

A **Motion** was made by Tim Thomas to **deny** the application of Michael Brown, owner, for an area variance at 1584 Hilton Parma Corners Road. The applicant is proposing to construct a 40' x 80' pole barn in the side yard with a portion of the building projecting into the front yard and is requesting relief from Town Zoning, Article X, 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). As pointed out through discussions the building has an Agricultural exemption which will allow it to be located in the side yard however, the applicant is not open to that idea currently.

In making the motion to deny:

- The benefit cannot be achieved by other means feasible to the applicant. After lengthy discussion with the Board there are at least two feasible means to achieve what the applicant would like to do with this particular structure. He put a lot of weight on this one because it is the Boards charge to try and grant relief where we can, when reasonable and absolutely needed.
- There would be an undesirable change in neighborhood character or to nearby properties. Although the property does sit back a distance from the main road, having the structure in the front yard, over a course of time this could cause an undesirable change to the neighborhood character.

- The request is absolutely substantial. The code is very clear about not haven structures in the front yard even with the Ag exemption they are to be in the side yard. There was nothing in the discussion or information provided that would warrant this building being partially in the front yard.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is absolutely self-created.

Seconded by Dean Snyder. **Motion carried to deny (4-0)** (Ayes: Dan Melville, Veronica Robillard, Tim Thomas, Dean Snyder; **Nay:** Stephen Shelley; **Excused:** Jim Zollweg).

Chairperson Robillard polled the Board for their reasons for denial:

Tim Thomas: My motion supports my reasoning for denial.

Dean Snyder: I denied it based on whether the benefit can be achieved by other means feasible to the applicant. This is a large property with a significant amount of area available. In reviewing the layout of the property including the house, septic tanks, driveway and relationship to the boundaries, I believe there are other locations which would be feasible to the applicant that would not require placing the structure in the front yard.

Dan Melville: My denial was based on the setback and location. There are other alternatives that could be done because there is plenty of room on this property.

Chairperson Robillard: My denial is due to the fact the proposed building location and is significantly impacted by the criteria that states that the benefit can be achieved by other means feasible to the applicant. With the size of the property I feel that other alternatives and other options should and could be explored for the proposed building.

Chairperson Robillard explained to the applicant that there could be an opportunity for this to be heard in the future if there becomes new and significant information.

3. DUVALL & ANGELA RODGERS – 243 NORTH AVENUE

The application of Duvall and Angela Rodgers, owners, for an area variance at 243 North Avenue. The applicants are proposing to construct a 13'x 34 1/2' addition to their attached garage with a side setback of 5 feet from the north property line and are requesting relief from Town Zoning Article V, subsection 165-31.E.1, schedule 1 which states that the side setback of the principal building shall be 50 feet. This property is currently zoned Agricultural/Conservation (AC).

Board Discussion: Dennis Scibetta reported that notifications were in order, the request was returned by Monroe County as a matter of local determination, and that this is a Type II action under SEQR and no further review is required. There are no comments from the Building Department and no letters in the file.

Duvall Rodgers, owner, explained that they currently have a one car garage and he would like to store his antique car on the premises instead of off-site. They currently have three cars and he would like to add a small tool bench. The door would be 9' wide. Currently there is a 6-8' overhang off the front. Tim Thomas asked when the house was built. The applicant stated in the 50's .

Public Comment:

Public Hearing Closed

A **Motion** was made by Dean Snyder to **approve** the application of Duvall and Angela Rodgers, owners, for an area variance at 243 North Avenue proposing to construct a 13'x 34 1/2' addition to their attached garage with a side setback of 5 feet from the north property line and to grant relief from Town Zoning Article V, subsection 165-31.E.1, schedule 1 which states that the side setback of the principal building shall be 50 feet. This property is currently zoned Agricultural/Conservation (AC).

In making my determination:

- The benefit cannot be achieved by other means feasible to the applicant. The applicant has a single car garage and owning three cars it is somewhat an eyesore for them to have to leave two cars out in the driveway. To bring them up to what is a common standard in that area of a two car garage, this

is the only place that I can see that it can be reasonably located. The depth is consistent with the existing structure and the look of the existing structure in the front.

- There will be no undesirable change in neighborhood character or to nearby properties. Most of the homes in this area have a two car garage and although a 5' setback is somewhat minimal I think it is acceptable given any other opportunities the owner has.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety and welfare of the community.

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

MINUTES OF JULY 23, 2015

The ZBOA minutes of July 23, 2015 were reviewed. **Motion** was made by Tim Thomas to **approve** the June 18, 2015 minutes as corrected. **Seconded** by Stephen Shelley. **Motion carried (4-0)** (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, **Abstain:** Dean Snyder; **Excused:** Jim Zollweg).

ADJOURNMENT

There being no further business, a **Motion** was made by Dan Melville, seconded by Stephen Shelley to adjourn the meeting at 8:45 p.m. **Motion carried (5-0)** (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas, Dean Snyder; **Excused:** Jim Zollweg).

Respectfully submitted,

Carrie Webster
Recording Secretary