

**TOWN OF PARMA**  
**ZONING BOARD OF APPEALS**  
**October 20, 2016**

**Members Present:** Dan Melville  
Veronica Robillard  
Stephen Shelley  
Dean Snyder  
Jim Zollweg

**Members Excused:** Tim Thomas

**Others Present:** Dennis Scibetta , Kyle Mullen

**Public Present:** Debie Torres, Amanda Torres, Katie Moran, Katherine Brays, Laura Cannon, Rick Rodriguez, Ryan Schmitt, Jared Endres, Bill Ross, Bill Johnson, Bill Littleboy, Marge Littleboy, Emily Mullen

The meeting was called to Order by Chairperson Robillard at 7:00 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. A quorum of three is required to pass a motion.

**NEW BUSINESS**

**1. RIDGE ROAD 5247, LLC – 5247 RIDGE ROAD WEST**

The application of Ridge Road 5247, LLC, owner, for an area variance at 5247 Ridge Road West. The applicant is proposing to add individual business names to a plaza sign is requesting relief from Town Zoning Article 14, subsection 165-113-B.5 which states in part that such sign shall not contain the names of businesses. This property is currently zoned General Commercial (GC).

Bill Johnson, owner, explained that this property is where Country Max used to be. He explained that this property was hard to fill with new tenants after they left but he now has five tenants. Mr. Johnson stated that he would like to have this sign so it would be easier for people to find the plaza. This sits low and people drive right past. The sign would match the building and would say Parma Commons and the address, which would be lit from dusk to dawn. The names would be listed under that but they would not be lit. There was discussion about the hours the sign could be lit. Because there is a climate controlled storage that is open 24 hours for business it was determined that the lights could be lit during business hours. This would be on a timer that runs in conjunction with the parking lot lights.

**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 were no letters in the file.

Stephen Shelley asked if there was a different variance given in the past. The applicant stated that there was one for propane tanks and the refilling of them. Chairperson Robillard asked if the sign would be built according to zoning. The applicant stated yes, the sign is already made and can go in as is but he is trying to help the tenants' business by putting the directory on it.

Chairperson Robillard asked about similar signs. Dennis Scibetta explained that at 1835 North Union Street (D'Angelos) they came in for a directory sign and there is illumination on the sign. The Building Department is not sure if they use the illumination. The Dunkin Donuts on Ridge Road while called out for one on the site plan presented to Planning Board never came to the Zoning Board for the directory itself. That also appears to be lit but it is lit only for a short period of time.

**Public Comment:**  
**Public Hearing: Closed**

Dennis Scibetta stated that Mr. Johnson has really worked with the Town in order to get the building fully rented and he has made several improvements to the lot which has been an enhancement to the community. As a safety measure with the storage and labs of love hours, if the sheriff's had to be called certainly the lights on the sign would be important for them to find where they are going. There has never been a complaint made for the parking lights and because this sits back and lower there is a visibility issue.

Chairperson Robillard asked if there was going to be any flashing light. The applicant stated no. Dean Snyder stated that as he was driving by the building the sign on the building has pretty large letters that jump out at you. The code states that each business is permitted one business sign which is flat against the building wall for each street in which the business fronts. Each sign shall not exceed 1 1/2 square feet of sign area for each linear foot of business frontage occupied. The letters on the building are pretty big and easier to read than anything on the temporary sign. His second concern is the location. It would make more sense to have a drive cut on both sides so then the sign would be in the center of the two cuts. Now a sign in the center does not make sense and customers would have already driven by the entrance. The third concern is that our code specifically precludes this. It states that in addition to the permitted sign area for each individual business, one free standing sign identifying the name and address of the shopping center, office, complex may be permitted. It states it shall not contain individual businesses within the shopping center. After going back and looking at others that have been approved, D'Angelo's came up and that was a non-conforming pre-existing use. There was a sign there already and it was low so people kept hitting the sign. The approval was to allow them to move the sign up higher but the businesses had always been listed on that one. There are not any others on Ridge Road that have been approved. Dean Snyder feels that if you are going to allow this for one then it should be allowed for all because there are benefits for having a sign like this but the code does not allow for that right now. Dean Snyder felt that he has not seen anything in this application that makes it different enough from so many other businesses on Ridge Road. As far as the illumination he agreed that the lights should be lit as long as there are businesses open. Parking lots absolutely need to be on at all times for security purposes. Dean Snyder felt that maybe the code should be changed to make it better for our businesses, if the code is wrong than it should be fixed. Maybe there is a reason that it is this way, but that would be up to the Town Board to look into and change if they wanted to.

Dennis Scibetta stated that they have already received a building permit for the sign with illumination but without the directory portion.

Dean Snyder felt that at this point he would not be able to vote on this application and would rather allow the applicant time to get the needed information.

Dan Melville stated he does not have a problem with the sign itself and doesn't know why it is not allowed by the code. He agrees that that might have to be worked on by the Town Board.

Jim Zollweg stated he is ambivalent on the whole thing. What gets him is the stated benefit to the applicant is increased visibility for the businesses. He does not agree with the code and is not sure the variance is going to solve the problem as people are driving by.

Stephen Shelley agrees with Dean Snyder and felt that the Town Board should be involved to see if they still feel the same way about this code. It makes sense to him that the listing would be there.

Chairperson Robillard stated that it makes sense to her also but it is a matter of the Zoning Board not legislating and instead granting relief.

Kyle Mullen asked if the Board is looking to the Town Board to make a code change and asked if the applicant would go to the Town Board or on recommendation of the Zoning Board. There would have to be a change to the local law. Dean Snyder stated that the Town Board should research this and find out what this law is trying to protect and if it is still needed, they might ask for the Board's opinion but it is not up to the Zoning Board to make a recommendation that they make the change. Dean Snyder felt that this matter should be tabled so that other avenues can be looked at and other information provided. He felt that there should be two cuts to the driveway because that would make the whole thing safer.

After discussion, a **Motion** was made by Dean Snyder to **table** the application of Ridge Road 5247, LLC, owner, for an area variance at 5247 Ridge Road West to the November 2016 Zoning Board of Appeals meeting. The applicant is proposing to add individual business names to a plaza sign is requesting relief from Town Zoning Article 14, subsection 165-113-B.5 which states in part that such sign shall not contain the names of businesses. This property is currently zoned General Commercial (GC). This is being tabled for additional information.

1. Identify other properties that may have previously been granted relief in order to allow us to examine the reasons for that relief and see if those reasons are consistent with this application.
2. Identify other properties that are in similar situations that may ask for relief based on precedence.
3. Identify the proposed location of the sign relative to the driveway to maximize the benefit to the applicant for identification of each of these businesses yet minimize any safety risk generated by the placement of the sign relevant to the driveway.

Items 1 and 2 are information we would ask the Building Department to supply and item 3 is information that we would ask the applicant to supply possibly with the help of an Engineer.

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

## **2. RESIDENT OWNER – 176 COUNTRY VILLAGE LANE**

The application of the resident owner of 176 Country Village Lane for two area variances. The applicant is proposing to construct a 12' 16' shed in the side yard with a 5 feet side setback and is 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 is a corner lot which, by definition, has two front yards, two side yards, and no rear yard. The applicant is also requesting relief from Town Zoning Article V, subsection 165-34.E.1, schedule 1, which states that the side setback is to be 10 feet. This property is currently zoned High Density Residential (HD).

The resident owner explained that she purchased this property about a year ago. She stated she takes good care of the house and property but did not realize when buying a corner lot that she could not put whatever she wants on it. She is looking to build this shed so she can store items that are currently being stored in her garage making it so she cannot park in her garage. She is looking to store her riding lawnmower and various other equipment. It will look like a small version of the house. The 5' setback would be from both sides of the shed. There is currently a fence on this corner and the shed would tuck right into it. Chairperson Robillard asked why not a 10' setback. She felt that with having the fences around there it will look nicer to tuck it in that corner.

**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 were no letters in the file.

**Public Comment: None**

**Public Hearing: Closed**

Dean Snyder stated that typically in these matters the Board looks for a tree or a septic tank or some reason why the applicant is not able to put it at the 10' setback. When looking at the drawing there really is no reason and it can easily be put at the correct setback. When driving by the property this is level and flat with a lot of visual access with you drive by. It does not benefit the neighbor whatsoever to bring this out another 5' because they have fences in that corner and all it does is move it to the center of the yard. Five feet leaves plenty of room to maintain it and this property is unique. There will be less of a visual impact of this when people drive by. Stephen Shelley agrees with what Dean Snyder said.

After discussion, a **Motion** was made by Jim Zollweg to **approve** the application of the resident owner of 176 Country Village Lane for two area variances. The applicant would like to construct a 12'x16' shed in the side yard with a 5 feet side setback. This grants 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 is a corner lot

which, by definition, has two front yards, two side yards, and no rear yard. The also grants relief from Town Zoning Article V, subsection 165-34.E.1, schedule 1, which states that the side setback is to be 10 feet. This property is currently zoned High Density Residential (HD). This corner of this property is surrounded by fences which mitigate the situation and additionally the placement of the shed closer to the property lines because of the fencing and the location of the other properties will not impede on the neighbors.

In making this motion I applied the balancing test:

- The benefit cannot be achieved by other means feasible to the applicant. The benefit of having this shed in a position which preserves the character of the applicant's property can only be achieved by placing it closer in the corner. This will give the applicant the ability to store the customary household and yard equipment and materials in order to maintain the property instead of in the garage. By granting relief it allows the applicant to place the shed in an area that is less obtrusive.
- There will be no undesirable change in neighborhood character or to nearby properties because of the fencing that is already there.
- 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 outweighs any detriment to the health, safety and welfare of the community.

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

## 2. LAURA CANNON – 1458 HILTON PARMA CORNERS ROAD

The application of Laura Cannon, owner, for 4 area variances at 1458 Hilton Parma Corners Road. The applicant has constructed a 6 feet privacy fence on the north property line with a zero foot setback, 40' of the fence being in the front yard, and with the finished side facing the applicant's yard. The applicant is requesting relief from 1) Town Zoning Article 16, subsection 165-128.B.1 which states that fences may be erected up to a height of 4' within the rear or side yard, 2) Town Zoning Article 16 subsection 165-128.B.2 which states in part that 6 feet fences are permitted for the express purpose of enclosing or screening a swimming pool or patio area and are subject to the side setback requirement which, in this case, is 12.7 feet, 3) Town Zoning Article 16, subsection 165-128.A.2 which states in part that closed fences shall not be permitted alongside lot lines between the front setback line and the highway right-of-way and open fences shall not be higher than three feet and 4) Town Zoning Article 16, subsection 165-128.A.6 which states that the finished side of a fence shall face away from the applicant's yard. This property is currently zoned Rural Residential (RR).

Laura Cannon, owner, explained that she put the fence up approximately a year ago and was not aware that she needed to have a permit or of the Zoning laws. Chairperson Robillard explained that the Board has to regard the fence as if it is not already there. Ms. Cannon explained that this sits 105' from the road. She stated she has a neighbor whose house is in bad disrepair and when leaving or entering her property she sees this house. She also stated the neighbors took down some trees making the house more visible to her. Friends and family helped put up the fence and were not aware of the need for a permit. She stated she looked it up on the internet and all she found was that it needed to be on her property. Chairperson Robillard stated that the Board had received paper copies of pictures of the fence, the driveway and the neighbor's yard.

**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.

### **Public Comment:**

**William Littleboy**, owner of 1442 Hilton Parma Corners Road, stated that he has no issue with the fence as it stands. He knows that his house needs repair and felt it gives both of them privacy. Chairperson Robillard asked if it bothers him that the good side is facing away from them. He stated no. Ms. Cannon stated that they have lived next to each other for 13 years and didn't think that anyone is going anywhere any time soon.

**Margaret Littleboy**, owner of 1442 Hilton Parma Corners Road, stated that she wanted Ms. Cannon to know that they did not file a complaint against her fence and did not want her coming back on them for any actions taken by the Board. Dennis Scibetta stated that there was no complaint filed and that Mr. Fritz found the fence.

**Bill Russo**, owner of 1462 Hilton Parma Corners Road, stated he is the neighbor on the south side of Ms. Cannon and he does not want to see a 6' stockade fence on his property line, if allowed on the north side what is to stop one from being placed on the south side also.

Chairperson Robillard read a letter from the Supervisor. The Supervisor stated that he has no major concerns with this and that as an independent board it is up to the Zoning Board to adjudicate this any way the Board deems is reasonable.

**Public Hearing: Closed**

Dean Snyder asked the Building Department for clarification on setbacks, if this was a 3' open fence in the front could it be at the zero setback and if it was a 4' closed fence on the side and rear of the property could that be at a zero setback, the only setback requirement is if it is a 6' fence. Dennis Scibetta stated that that is correct. Dean Snyder stated that there have been several of these cases before us and a lot of times it is because there is something homeowners don't want to see or they don't want someone to see them. The reality is it is very unusual for the Board to grant relief for these. Although right now and for the next 25 or 30 years these folks may live next door and be the best of friends and be happy, there is no jurisdiction to say that this fence lasts only as long as the current owner is there. So even though the neighbors to the north currently have no problem looking at the bad side of the fence in 30 years when they move out and someone else moves in, they may think "why did they put that there". Part of the job of this Board is to look for some of these unforeseen consequences. To have a fence in the front yard even though it is somewhat tucked in is very inappropriate. There are other ways to create a visual barrier especially when neighbors are friends. On the back of this property there are huge arborvitaes which make great barriers without granting a variance for this fence. The change was made when the neighbors trimmed some trees and that opened things up visually. While currently this fence is tucked in there in the future that may not be the case, those trees may need to come down or be replaced. Allowing a 6' fence in a front yard is unacceptable. When discussing if this is substantial or not, currently the code calls for a 3' fence so this would be twice the height and also states that it be open and this is a stockade fence. When going to the backyard and side, there is no variance needed for a 4' fence. A 4' fence is very appropriate there. It is very inappropriate to have the bad side of the fence facing towards the neighbors.

The code calls out where a 6' fence would be appropriate. It is allowed for patios and pool areas where additional privacy is necessary, but in this application neither of those situations were shown to be a need. Dean Snyder feels that if this application is allowed there are other cases where people may come back because they were told it is unacceptable. Some other cities allow these but when looking at those from above they look like dog kennels and he does not feel that that is an appropriate look for the Town and concurs with the code. Dean Snyder stated that if the fence were not already there he would have personally never allowed it regardless of how close the neighbors were, even if family. This is a permanent variance with no opportunity to limit the length of it.

Stephen Shelley stated that there was a similar request recently and the Board had a very difficult time coming up with a reason to approve and I do not see any applicable reasons to approve for this application.

After discussion, a **Motion** was made by Dean Snyder to **deny** the application of Laura Cannon, owner, for 4 area variances at 1458 Hilton Parma Corners Road. The applicant has constructed a 6 feet privacy fence on the north property line with a zero foot setback, 40' of the fence being in the front yard, and with the finished side facing the applicant's yard. The applicant is requesting relief from 1) Town Zoning Article 16, subsection 165-128.B.1 which states that fences may be erected up to a height of 4 feet within the rear or side yard, 2) Town Zoning Article 16 subsection 165-128.B.2 which states in part that 6 feet fences are permitted for the express purpose of enclosing or screening a swimming pool or patio area and are subject to the side setback requirement which, in this case, is 12.7 feet, 3) Town Zoning Article 16, subsection 165-128.A.2

which states in part that closed fences shall not be permitted alongside lot lines between the front setback line and the highway right-of-way and open fences shall not be higher than three feet and 4) Town Zoning Article 16, subsection 165-128.A.6 which states that the finished side of a fence shall face away from the applicant's yard. This property is currently zoned Rural Residential (RR). There are four items in this application that need to be addressed.

1. The requirement to maintain a 4' side and rear height of a fence which is allowed at a zero foot setback. In this case the applicant is requesting a 6' fence in that area but has demonstrated a need for that.
2. A 6' high fence is allowed in pool and patio areas and requires a setback of 12'. It has been determined that this fence is not necessary so the 12' setback is a moot point.
3. Fences located within the front setback are required to be open and a maximum of 3' high. The proposed fence is closed and 6' high which is an unacceptable change to the neighborhood character.
4. Our code requires that the furnished side of the fence face away from the owner. Because this variance would last for the length of the property there is no appropriate way to determine who the neighbors would be in the distant future and this variation would be unacceptable.

In making this determination:

- The benefit can be achieved by other means feasible to the applicant. We have two neighbors that are good neighbors, which is not always the case in the applications. There are opportunities to provide other means of visual barriers which may include shrubbery to grant privacy to both neighbors because both neighbors have asked to have some privacy.
- There will be no undesirable change in neighborhood character or to nearby properties. This would cause an undesirable change. At this point it may not be as severe because there are mature trees blocking some visualization of this fence but in the distant future if those trees are gone this will be very obtrusive and an eye sore.
- The request is substantial. In all four situations, it has been determined that this is extremely substantial.
- There will be no adverse physical or environmental effects. There would be a physical effect because there is the potential for this long lasting 6' high fence becoming an eye sore and obstructing the view that has been dictated by our code within all front setbacks.
- The alleged difficulty is self-created in that the applicant would like to have a barrier that is much larger and is not necessary for a visual border as discussed under whether the benefit can be achieved by other means feasible to the applicant. The benefit to the applicant is outweighed by the detriment to the health, safety and welfare of the community.

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

#### **Polling of the Board:**

**Dean Snyder:** My motion stands for my reason.

**Stephen Shelley:** Voted to oppose the application because there were no extenuating circumstances like other applications we have heard. There is a probability and potential for this to create undesirable changes to the character and nearby properties. Feels that the benefit can be obtained by other means feasible to the applicant.

**Jim Zollweg:** My interpretation of the balancing test is why he approved the motion to deny. He believes that the benefit can be achieved by other means feasible to the applicant. He fears this would have created an undesirable change to the neighborhood character or nearby properties, especially the issue with the unfurnished side of the fence facing the neighbor. The request is very substantial. Each of the four components is above and beyond the code. It will have adverse physical effects. A large fence such as this if approved would be potentially there forever and maintenance and upkeep will have to keep up forever. The detriment to the health, safety and welfare of the community substantially outweighs the benefit to the applicant.

**Chairperson Robillard:** There could be an alternate solution or means to allow privacy. This was explained to be an undesirable change by other neighbors who expressed concerns over further fencing. This request is substantial. The balancing test criterion substantiates this move and the motion outlines the concerns of the Board in this decision.

Chairperson Robillard explained to the applicant that this has been denied. The applicant felt that was not right and wanted to know if there was any other court this could be taken to. She was advised to speak to the Building Department about the appeal process. Chairperson Robillard stated again that the Board had to regard this matter as if the fence was not there and there was no Building Permit issued.

### MINUTES OF SEPTEMBER 15, 2016

The ZBOA minutes of September 15, 2016 were reviewed. **Motion** was made by Jim Zollweg to **approve** the September 15, 2016 minutes as presented. Seconded by Stephen Shelley. **Motion carried to approve (3-0) (Ayes: Dan Melville, Stephen Shelley, Jim Zollweg; Abstained: Veronica Robillard, Dean Snyder; Excused: Tim Thomas).**

### OTHER BUSINESS

There was discussion about an application coming back next month on Moul Road and a pre-existing conforming building.

### ADJOURNMENT

There being no further business, a **Motion** was made by Dan Melville, seconded by Jim Zollweg to adjourn the meeting at 8:55 p.m. **Motion carried to approve (5-0) (Ayes: Dan Melville, Veronica Robillard, Stephen Shelley, Dean Snyder, Jim Zollweg; Excused: Tim Thomas).**

Respectfully submitted,

Carrie Webster  
Recording Secretary