

**TOWN OF PARMA
ZONING BOARD OF APPEALS
MARCH 15, 2018**

Members Present: Veronica Robillard
Stephen Shelley
Dean Snyder

Members Excused: Dan Melville
Tim Thomas
Jim Zollweg

Others Present: Dennis Scibetta, Art Fritz, Blake Keller

Public Present: Russ Angelo, Jack Barton, Roger O'Dell, Andrew Zguta, Chad W. Flansburg,
Jim Read, Joe Trieste, Andrea Trieste, Charles Doll, Kristine Doll, Bill
DePasquale

The meeting was called to Order by Chairperson Robillard at 7:00 p.m. She explained the function of the ZBOA and the decision-making process. She explained that this is a five member board and a quorum of three is required to pass a motion and tonight there are three board members present meaning tonight's decisions would have to be unanimous. If any applicant is uncomfortable with that then they can ask for a tabling of their matter until the next meeting.

NEW BUSINESS

1. STEPHEN AND ANGELA STRATON – 222 BURRITT ROAD

The application of Stephen and Angela Straton, owners, for an area variance at 222 Burritt Road. The applicants are proposing to subdivide the property which would reduce the frontage of the existing lot to 200' and are requesting relief from Town Zoning Schedule 1 which states that the minimum lot width is to be 260'. This property is currently zoned Rural Residential (RR).

Rich Maier, engineer, who represents the applicant on this matter, explained that the property as indicated is 222 Burritt Road, which is on the north side of Burritt Road almost opposite Butcher Road. They are proposing a two lot subdivision and their kids would like to build on the property. The plans meet all other aspects of the zoning except for the width of the property. There are several properties along Burritt Road that do not meet the frontage; across the street there are several properties that are only 100' wide. There is a cell tower on this property that is roughly 16 acres. The proposed house will sit roughly 700' off the road. He has been to the Planning Board and explained to them that he was coming to the Zoning Board for this variance. He did what he could to move the driveway as far away from the Burritt Road/Butcher Road intersection. Chairperson Robillard asked if the barn is part of the property. Mr. Maier stated yes, it will remain with Lot 1.

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 where they plan to place the house relative to the cell tower. Mr. Maier stated it will be outside of the fall zone of the tower.

Public Comment:

William DePasuale, owner of 190 Burritt and 200 Burritt Road. He had some confusion over the needed variances they would need for this project. Dennis Scibetta clarified that they need this variance

to subdivide the property and approve Lot 1's frontage to 200' instead of 260', it meets all other requirements. Lot 2 which will have the new house will meet the 260' frontage and all other aspects of the zoning, there will be no further variances needed. Both lots will be 2 acres. He had some concerns about the wetlands. His concerns were more about the future plans of the property and whether there would be a possibility of more houses being built down the road. He is not opposed to this lot being subdivided. He asked how he would be notified about further meetings on this. A notice will be advertised in the paper.

Roger O'Dell, owner of 274 Burritt and 250 Burritt Road. He has no issue with the subdivision of this property. His concern is that Lot 1 will have 13 acres left and what would preclude them from continuing to subdivide the land and building a whole subdivision. He borders this property and has a farm so that concerns him and he feels like this would change the characteristic of the neighborhood. Art Fritz says there is nothing that says they can't come back for another variance but with a 60' access and the required 20' access per lot required to build a house, they would be limited. Dean Snyder explained that tonight the Board is only addressing this one variance and without further variances the applicant would be subject to all rules and regulations in the code. Dean Snyder did not feel that this parcel subdivided into two would adversely affect the neighborhood character. Mr. O'Dell did not feel that this would adversely affect it but if more houses started being built than it would change the look. He is not opposed to this singular subdivision. Dean Snyder said he understood that and if they were looking at doing multiple subdivisions than the Board would look at this differently.

Public Hearing: Closed

Dennis Scibetta explained that there are concerns on this property that limit where structures can be built. His understanding from the applicant is that is not their intent, but no one can look and see what the future holds. Mr. Maier explained that there is a cell tower in the middle of the property and there is a fall zone around the tower which limits the ability to develop more of this land. Dennis Scibetta said that the tower is 165' which makes the required fall zone 185'.

Dean Snyder clarified that the Board is looking at approving subdividing this into two separate lots. One of them will not have a full 260' of frontage the other will. If this were an application to subdivide into more than this at what point would the applicant need to come back in front of the Board, can this be made contingent based on what has been presented tonight and that it can only be broken down into two lots. Dennis Scibetta was not sure that you can legally say that it cannot be subdivided further in the future. The applicant would have to come back to this Board for any further variances. Hypothetically what if the applicant came back in a week and decided they wanted three houses vs. two houses. Dennis Scibetta felt that some of the confusion is with the approval to subdivide the land and the fact that they still have to gain their approved building lot. He did not feel that this could be subdivided further to be built on without variances in the future.

After discussion, a **Motion** was made by Dean Snyder to **approve** the application of Stephen and Angela Straton, owners, for an area variance at 222 Burritt Road to subdivide the property which would reduce the frontage of the existing lot to 200' granting relief from Town Zoning Schedule 1 which states that the minimum lot width is to be 260'. This property is currently zoned Rural Residential (RR). In making this determination.

- The benefit cannot be achieved by other means feasible to the applicant. The applicant has shown a need to break this property into two lots and in order to facilitate that we do not see any other opportunity to satisfy that without this variance.
- There will be no undesirable change in neighborhood character or to nearby properties. The frontage of 260' will still be perceived as 260' because there is not another house being built right up in that same area. It will appear that there is only one house and one lot. There are other nearby properties that are existing substandard properties by the current code, so this will fit very neatly into the existing neighborhood character.

- 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 Stephen Shelley. **Motion carried to approve (3-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder; **Excused:** Dan Melville, Tim Thomas, Jim Zollweg).

2. JAMES AND ALICE READ – 1269 HILTON PARMA CORNERS ROAD

Application of James and Alice Read, owners, for an area variances at 1269 Hilton Parma Corners Road. The applicants are proposing to construct an addition to the north side of the dwelling with a side setback of 15.3 feet and are requesting relief from Town Zoning Article XI, subsection 165-87.A.1 which requires a minimum side yard setback to be equal to 10% of the lot width which, in this case is 18.5 feet. This property is currently zoned Agricultural/Conservation (AC).

Jim Read, owner, explained that they are looking to put an addition behind the house and the variance will be on the north side of the lot. This will not be visible from the road and it will not extend past the back of the house. There was some clarification of the dimensions on the map.

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

After discussion, a **Motion** was made by Dean Snyder to **approve** the application of James and Alice Read, owners, for an area variances at 1269 Hilton Parma Corners Road to construct an addition to the north side of the property, located on the west side of the house, with a side setback of 15.3 feet and to grant relief from Town Zoning Article XI, subsection 165-87.A.1 which requires a minimum side yard setback to be equal to 10% of the lot width which, in this case is 18.5 feet. This property is currently zoned Agricultural/Conservation (AC).

In making this determination

- The benefit cannot be achieved by other means feasible to the applicant. The existing house has a side setback 15.3 feet. This application does not encroach further towards the property line than that existing setback.
- There will be no undesirable change in neighborhood character or to nearby properties. This addition is consistent with the existing house and will be of limited view from the road. It will be very non-obtrusive.
- 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 Stephen Shelley. **Motion carried to approve (3-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder; **Excused:** Dan Melville, Tim Thomas, Jim Zollweg).

3. RUSS ANGELO – 5200 RIDGE ROAD WEST

Application of Russ Angelo, lessee, for a Special Permit at 5200 Ridge Road West. The applicant is proposing to operate an automobile sales business with the ability to display 80 automobiles for sale. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit.

Russ Angelo, Lessee, explained that he is asking to display 83 cars on this property. However, because it was advertised for 80 and the application said 80 that is the most that can be granted.

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. A letter in the file was provided to Chairperson Robillard.

Chairperson Robillard stated that his last Special Permit expired and currently he is operating without a permit. The applicant stated that is true. The expired Special Permit stated there could be 30 vehicles but the applicant has more than 30 vehicles currently. There was discussion about the hours of operation that are happening on Sunday when there is not supposed to be any hours. There is currently another dealership operating at the premises under a different name. Dean Snyder asked if the other business has a Special Permit. The applicant said no. The applicant rents to him. Dennis Scibetta asked that the written permission from the County be brought into the Building Department. The Special Permit for this one expired April 1, 2015. The applicant stated that when it comes to paperwork he is terrible at following through but he has the wake-up call now.

Dean Snyder felt that this should be tabled to get further information; he would not be comfortable voting on this tonight. There are two businesses operating on the property, previously one of them had a Special Permit. More information is needed to find out what is going on at this property. Not only is the existing business out of conformance but there is a second business operating out of there. Chairperson Robillard felt the other option would be if the applicant was interested in withdrawing the application.

Mr. Angelo wanted to tell the Board why he is looking to have more vehicles on the property. In 2009 he switched his format from selling just cars to selling box vans, utility trucks, and cargo vans. Selling these items he needs to carry more in inventory because it takes longer to get reconditioned and on the front line. When a small company comes in they might buy two or three vehicles at a time so he can go through inventory quick and needs the extra room to store the vehicles to get them in circulation.

Chairperson Robillard read a letter from Art Fritz, Zoning Enforcement Officer to Tim Murphy at Monroe County, and the owner of the property dated February 2, 2018. The letter explained the various violations of the Special Permit Conditions issued to Mr. Angelo including:

1. Too many cars being offered for sale with numerous box trucks being stored alongside and behind the pole barn.
2. The box trucks in question are being dismantled and their parts are being sold, per several complaints received by the Town. This type of use is considered a junk yard and is not permitted in the Town of Parma.
3. The Special Permit has expired and after numerous attempts to contact him to renew his permit, to date it has not been renewed.

The letter stated that until such time as a new application to the Zoning Board of Appeals has been received, reviewed and approved by the Zoning Board of Appeals all car sales and display must immediately cease from the above referenced address. All unlicensed and partially dismantled vehicles, parts and debris must be removed from the property within 10 days of receiving this letter.

At this point the Board cannot approve a Special Permit until the property has been brought into compliance so he can continue with his business in the Town. The applicant needs to come back and show the Board how the business is being run and how he is going to be in compliance with the Town, the County and the Board. Dennis Scibetta stated that the Town was unaware that there was a second dealer working out of this property. The letter went out in February which stated the business must cease and desist and there is still business going on at the property and after no communication to the Town the applicant would like an additional 30 days to comply.

Dean Snyder does not want to vote on this tonight. He feels that there are some opportunities for the applicant and that the applicant should take those opportunities to come into compliance and he would like to give the applicant some time to come to the Board with an application that is consistent with the law, which it currently is not.

Public Comment:

Chad Flansburg, represents Twin Enterprises Inc. He felt that the Board should understand that the dealership is an LLC by the name of Angelo's Anything with Wheels, LLC. He believes that Mr. Angelo does not have any ownership interest in that LLC so he is unclear as to how he is making an application for that. There is ongoing litigation with that LLC and by affidavit it has been identified that Ryan Fisher is the owner. In his search of the 5200 West Ridge Road location there is only one licensed dealership. He feels that this business should be closed down and is operating unlawfully. Dean Snyder stated that this Board does not have jurisdiction over this. Chairperson Robillard stated that this Board is here to grant relief not legislate.

Public Hearing: Closed

Dean Snyder felt that the applicant should be given the options available to him at this point. Chairperson Robillard said this can be acted on tonight, tabling it, or the applicant can withdraw and clean up the application and property and come back to the Board with a plan. Chairperson Robillard asked what roll Mr. Angelo plays in this business. The applicant stated he holds the lease for the property with the County. The license to sell cars is not under his name, it is held by Ryan Fisher and Al Vella (Auto Alliance).

If the Board rules tonight and denies it than the applicant cannot come back without a significant change in the application. Mr. Angelo asked if there was a way he can continue with the business. The Board said no. Jack Barton stated that with a Special Permit the Board cannot even consider an application with any violations and all of the vehicles have to be moved.

Dean Snyder stated before you come back to the Board, you need to get the property in compliance. Art Fritz stated that until that time, you cannot sell or display any vehicles. Any way the applicant decides to precede means that the applicant cannot continue to operate the business. After discussion it was determined that if the Board tables the matter he could continue to operate until a ruling is made. Dean Snyder said with that information he would prefer to make a ruling tonight because the Board cannot continue to let him operate in extreme violation of the Special Permit and code or the applicant can withdraw and come back with the same request again.

After discussion Mr. Angelo decided that he would like to withdraw his application and come back with a new application.

4. ANDREW ZGUTA – 5255 RIDGE ROAD WEST

Application of Andrew Zguta, lessee, for a Special Permit at 5255 Ridge Road West. The applicant is proposing to operate an automobile sales business with the ability to display 35 automobiles for sale. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit.

Andrew Zguta, Lessee, explained that this premises used to be a Tool Rental Place and he is looking to operate a car dealership and needs a Special Permit to sell vehicles. He is looking to have 35 vehicles, cars and SUV's. The hours he would like are Monday – Friday, 9a.m. to 6p.m.; Saturday, 10a.m. to 4p.m.; Sunday, By Appointment Only. All of the cars will be displayed in the front of the building and the building will be used as office space only.

Board Discussion: Art Fritz reported that notifications were in order, the request was returned by Monroe County with comments as follows: Monumentation must be checked by the County Surveyor, all work within the NY 104 right-of-way will require NYSDOT Highway Work permit, All vehicle parking shall be outside the right-of-way, and applicants should verify with Monroe County Department of Health, New York State Department of Environmental Conservation, and Monroe County Department of Environmental Services that they do not have jurisdictional requirements for this project. This is a Type II action under SEQRA and no further review is required. There are no letters in the file. Dennis Scibetta reported that Mr. Zguta has been working with the Building Department throughout this process.

Jack Barton asked if there would be repair work being done because of the overhead doors in the back of the building. The applicant said there will be no repairing of vehicles on site, and that you cannot really fit a car inside because of the poles underneath and the height of the building.

Public Comment:

Public Hearing: Closed

Dean Snyder asked if conditions like lighting are covered someplace else in the code. Dennis Scibetta said that gets handled at the Planning Board level. He also asked about the setback from the right of way. In some cases they have designated how far from the road cars should be placed. Art Fritz said in some older applications they would designate that but it is now addressed in the code. There is no need to put a condition on the permit unless you want more than the 15' in the code. Dean Snyder advised the applicant that if things are going well when the renewal comes up on one year he might want to ask for more time.

After discussion, a **Motion** was made by Dean Snyder to **approve** the application of Andrew Zguta, lessee, for a Special Permit at 5255 Ridge Road West to operate an automobile sales business with the ability to display 35 automobiles for sale. This property is currently zoned Highway Commercial (HC) which allows the display and sale of motor vehicles with a Special Permit. The following conditions apply:

1. No more than 35 cars for sale or display.
2. Hours of operation will be Monday – Friday, 9a.m. to 6p.m.; Saturday, 10a.m. to 4p.m.; Sunday, Closed or by Appointment Only.
3. Renewable in March 2019.

Seconded by Stephen Shelley. **Motion carried to approve (3-0)** (Ayes: Veronica Robillard, Stephen Shelley, Dean Snyder; **Excused:** Dan Melville, Tim Thomas, Jim Zollweg).

SPECIAL PERMIT RENEWALS TABLED FROM THE FEBRUARY 15, 2018 MEETING

5. GOOD NEWS COMMUNITY CHURCH – 4797 RIDGE ROAD

Application was received from Good News Community Church, owner, for renewal of a Special Permit at 4797 Ridge Road West to operate a church. Article 5.3.D.2 requires a Special Permit to operate a church in a Medium Density Residential (MD) district.

There was an inspection performed on March 9, 2018 at the property. At the time of inspection there were no violations of the Special Permit conditions and there are no complaints in the file.

Chairperson Robillard read a letter from Pastor, Rev. David W. George and Elder, Robert St. James. They requested the Special Permit be issued permanently or to lengthen the time between renewals because they anticipate continuing to operate under their current status as a church for quite some time.

There was some confusion about this renewal and the time frame originally approved in the Special Permit. Art Fritz stated that there are other churches that do not have to renew and he thought the Board had given a permanent Special Permit for this application too.

The original Special Permit was issued for one year. Dean Snyder felt this should be renewable in a year because of their track record of not coming back to the Board for renewal. It has been difficult for the Zoning Enforcement Officer to contact them and there is a habit of the applicant not responding in a timely manner.

Following discussion, A **Motion** was made by Stephen Shelley to **approve** the application of Good News Community Church, 4797 Ridge Road West, for renewal of a Special Permit to operate a Church with the following conditions:

1. Limited outside activity such as camping with a maximum number of campers to be 16, including adults. Camping would include only tents, and not exceed 2 or 3 nights in duration. Limited to an average of twice a month. Camping locations to be limited to the area indicated on the map provided by the applicant.
2. Also included as an outside activity would be the opportunity to have a live nativity scene at Christmas time. Hours of the nativity scene to be 6p.m. to 9p.m. for just one weekend during the month of December. This nativity scene would be placed behind the church. Animals would be permitted if penned or corralled. Any lighting for scenes shall not impinge on neighboring property or behind the church property. The number of spectators is limited to 25 to 35 people at one time. The animals used for this nativity scene will not be housed year-round at the facility and will only be there at the time of the nativity scene.
3. Any other activities on the premises shall be within the normal zoning ordinance.
4. All necessary inspections to be made by the Building Department and the Fire Marshal to assure the health, safety and welfare of the community.
5. Renewable in March 2019.

Seconded by Dean Snyder. **Motion carried to approve (3-0) (Ayes:** Veronica Robillard, Stephen Shelley, Dean Snyder; **Excused:** Dan Melville, Tim Thomas, Jim Zollweg).

6. GARY RITZEL – 1777 MANITOU ROAD

The application of Gary and Lori Ritzel, owners, for renewal of a Special Permit at 1777 Manitou Road to have 4 dogs on this property it in accordance with Town Zoning Article X, subsection 165-82.AA.3. A Special Permit is required to have more than three dogs on a property. This property is currently zoned Medium Density Residential (MD).

In the original application this Special Permit was only going to be needed for 1 year because one of the dogs is owned by the son. Art Fritz reported that in speaking with Mrs. Ritzel the son still lives there and they are in need of continuing this Special Permit. The dogs are the same dogs listed in the original permit and they are all licensed.

An inspection was completed on February 28, 2018 regarding the conditions of the Special Permit. At the time of inspection there were no violations of the Special Permit conditions and there are no complaints in the file.

A **Motion** was made by Stephen Shelley to **approve** the application of Gary and Lori Ritzel, owners, for renewal of a Special Permit at 1777 Manitou Road to have 4 dogs on this property; Puggles, Pickles, Sasha and Libby. All of these dogs are licensed by the Town and all of the dog's information is included on their licenses. This Special Permit will be renewable in March 2019. This Special Permit only applies to these four specified dogs.

Seconded by Dean Snyder. **Motion carried to approve (3-0) (Ayes:** Veronica Robillard, Stephen Shelley, Dean Snyder; **Excused:** Dan Melville, Tim Thomas, Jim Zollweg).

7. SHANE PFEFFER- 420 MOUL ROAD

The application of Shane Pfeffer, owner, for renewal of a Special Permit at 420 Moul Road to operate a home business for the sale and transfer of firearms. This property is currently zoned Agricultural/Conservation (AC) which allows Home Business with a Special Permit in accordance with Town Zoning Article 9, subsection 165-79.1.

There was an inspection of the property on March 8, 2018 regarding the Special Permit conditions. At the time of the inspection, there were no violations of the Special Permit conditions and there are no complaints in the file.

Art Fritz explained that the extent of this is a 3x6 gun safe, there is no office. He is not really doing a whole lot with it but does not want to lose it. He would like to be able to store the firearms awaiting pick-up to be stored in the basement. He would like the expiration date to be July 1, 2019 because that is when his FFL will need renewing.

A **Motion** was made by Stephen Shelley to approve the application of Shane Pfeffer, owner, for renewal of a Special Permit at 420 Moul Road to operate a home business for the sale and transfer of firearms with the following conditions:

1. Hours of operation: Monday through Saturday, 9a.m. to 8p.m. by appointment only.
2. No signage, external storage or goods on display.
3. Subject to the inspection of the Fire Inspector and the Zoning Enforcement Officer.
4. No on-street parking.
5. Applicant can only have inventory on the premises for 12 government business days.
6. Applicant must maintain a continuous FFL License during the period of the Special Permit.
7. Applicant authorized to have temporary storage in the basement for firearms awaiting pick up.
8. Renewable in July 2019 by request of the applicant so that this will run with the renewing of his FFL License.

Seconded by Dean Snyder. **Motion carried to approve (3-0) (Ayes:** Veronica Robillard, Stephen Shelley, Dean Snyder; **Excused:** Dan Melville, Tim Thomas, Jim Zollweg).

8. DONALD AND NANCY TOWN – 2 LIGHTHOUSE BEACH

Application was received from Donald and Nancy Town, owners, for renewal of a Special Permit at 2 Lighthouse Beach Road to use their home as a tourist home (bed and breakfast) which is allowed with a Special Permit. This property is currently zoned Waterfront Residential (WF).

Dennis Scibetta explained that the Building Department is working on this still and waiting to hear back from the Town Attorney on how to proceed with this application. Chairperson Robillard would like to have a new application going forward. Dennis Scibetta stated that all fire inspection have been completed to date and felt a clean application would be the simplest way to move forward. Dean Snyder felt that this matter should be tabled until the Board gets direction from the attorney to find out if a Special Permit can be ruled on that does not exist, can the decision be reversed or is the best route to bring a new application with updated details and a new application. Dean Snyder would like to hear from the attorney, get the new facts and help bring this applicant into compliance with a new application. Dean Snyder feels that the majority of this business is good, there are some issues but until they hear from the attorney to stop them from doing business is not in the best interest of anyone. Jack Barton stated that the Board should table any decision until they get the legal interpretation from the attorney that was requested by the Board last month. Chairperson Robillard would like to hear from the attorney on this matter and also feels that the applicant should attend a future meeting so the Town and the applicant are on the same page with what is going on with the property.

A **Motion** was made by Stephen Shelley to **table** any decisions on the application of Donald and Nancy Town, owners, for a Special Permit at 2 Lighthouse Beach Road to the April meeting to allow the Building Department time to verify the correct way to move forward with this application. Seconded by Dean Snyder. **Motion carried to approve (3-0) (Ayes:** Veronica Robillard, Stephen Shelley, Dean Snyder; **Excused:** Dan Melville, Tim Thomas, Jim Zollweg).

MINUTES OF FEBRUARY 15, 2018

The ZBOA minutes of February 15, 2018 were reviewed with suggested changes, because there was not a quorum of members at this meeting that were at the February 15, 2018 meeting these will be voted on at the April 2018 meeting.

OTHER BUSINESS

The Board would like to get clarification from the Town Attorney as to whether minutes can be approved by a quorum even if the voting members were not present at the meeting.

ADJOURNMENT

There being no further business, a **Motion** was made by Dean Snyder, seconded by Stephen Shelley to adjourn the meeting at 9:30 p.m. **Motion carried to approve (3-0) (Ayes:** Veronica Robillard, Stephen Shelley, Dean Snyder; **Excused:** Dan Melville, Tim Thomas, Jim Zollweg).

Respectfully submitted,

Carrie Webster
Recording Secretary