

**TOWN OF PARMA**  
**ZONING BOARD OF APPEALS**  
**April 21, 2021**

Due to COVID-19 this meeting will also be held via ZOOM.

- Members Present:** Greg Colavecchia, Veronica Robillard (via Zoom), Stephen Shelley, Tim Thomas, Corinne Zajac (alternate)
- Members Excused:** Dan Melville
- Others Present:** Jack Barton, Councilperson Blake Keller
- Public Present:** Melissa Matyjczuk, Nikolas Antonucci, Dan Schum, Esq., Sandra Butler, Bruce Cosman, Keith Christensen, Peggy Christensen, Cathy Buckert, Matt Rodgers, Duvall Rodgers, Ted Holz, Karen Holz, Matt Russell, Mark Acker, Don Sigler

The meeting was called to Order by Acting Chairperson Thomas at 7:00 p.m.

Acting Chairperson Thomas explained the function and decision-making process of the Zoning Board of Appeals. He noted this is a five-member board; there are 5 members present, 1 via Zoom. A quorum of three is required to pass a motion.

**TABLED FROM THE MARCH 17, 2021 MEETING**

**1. SCOTT SPICER– 80 WINDING COUNTRY LANE**

The application of Scott Spicer, owner, for property located at 80 Winding Country Lane. The applicant is proposing to build a single-family home on this property at the end of the road, which would bring the total of dwelling units on the cul-de-sac to 48. The applicant is requesting relief from Parma Town Code Chapter 30, Article IV, subsection 130-15.A.7.b, which states that no cul-de-sac shall be allowed to serve more than 20 dwelling units. This property is currently zoned Medium Density Residential (MD).

There was no one in the audience to speak on this. A letter was received from John H. Sciarabba, L.S. Land Tech asking to withdraw this application on behalf of his client, Scott Spicer. The Board accepted the withdrawal.

**2. DANIEL FEENEY – 115 HINKLEYVILLE ROAD**

The application of Daniel Feeny, owner, for an area variance at 115 Hinkleyville Road. The applicant is proposing to construct a 12'x24' garage addition on to the existing garage with a side setback of 4.23 feet to the front corner of the garage and a side setback of 8.2 feet to the back corner of the garage. He is requesting relief from Town Zoning Article V, subsection 165-33.E.1, schedule 1 which states that the side setback is to be 10'. This property is currently zoned Medium Density Residential (MD).

Acting Chairperson Thomas noted this was tabled pending further information. Mr. Thomas noted he did not receive any new information in the packet. Mr. Feeney, owner, provided a letter from the neighbor, Mr. Hill (119 Hinkleyville Road), stating he does not have an issue with the application.

Mr. Feeney further explained that the structure the structure will be 12'x24' and he amended the request so the addition will now sit flush with the current structure. There was discussion about an error on the original survey that continued over many years as to his lot line that was corrected when he had the property staked.

**Public Comment:**

Douglas Hill, 119 Hinkleyville Road, sent a letter saying he agrees with the plan submitted by Mr. Feeney for the 12'X24" addition.

**Public Hearing Closed**

Veronica Robillard asked if the applicant provided an alternate plan as requested at the February meeting and if he is able to comply with the 5' fire code setback. Mr. Barton noted fire rated construction will eliminate the 5' fire code setback and the applicant is willing to do that. That will be enforced by the Building Department. The applicant does not have an alternate plan to submit. There was discussion about what the side setback would be now that the structure is being moved further back and the distance gets larger. It was felt they could approve a minimum setback of 4.2 then if it is more it is covered.

**Board Discussion:** Jack Barton reported notifications were in order, the request was returned by Monroe County as a matter of local determination and is a Type II Action, no further action required. There were no comments from the ZEO or Building Department.

Acting Chairperson Thomas stated he does not think there is a reasonable alternative that would be functional. The property currently has a single car garage. The applicant is trying to store his camper inside and he agreed to move the proposed structure back, so it will sit flush with the current structure.

**A motion** was made by Stephen Shelley to **approve** the application of Daniel Feeney, owner, to construct a 12'x24' garage addition on to the existing garage with a side setback of 4.23 feet to the front corner of the garage and a side setback of 8.2 feet to the back corner of the garage. This grants relief from Town Zoning Article V, subsection 165-33.E.1, schedule 1 which states that the side setback is to be 10'. This property is currently zoned Medium Density Residential (MD).

Using the balancing test, the Board finds the following:

- The benefit cannot be achieved by other means feasible to the applicant.
- There will be no undesirable change in neighborhood character or to nearby properties.
- The request is substantial.

- There will be no adverse physical or environmental effects.
- The alleged difficulty is not 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 Corinne Zajac. **Motion carried to approve (3-2) (Ayes:** Stephen Shelley, Tim Thomas, Corinne Zajac; **Nays:** Greg Colavecchia, Veronica Robillard; **Excused:** Dan Melville).

### **3. MATTHEW RUSSELL – 420 OGDEN PARMA TOWN LINE ROAD**

The application of Matthew Russell, owner, for three area variances at 420 Ogden Parma Town Line Road. The applicant has constructed a 3,375 sq. foot storage structure with a 14' wall height as well as 2 lean-tos that are attached to the structure that are a total of 1,455 sq. foot in size, for a total of 4,830 sq. foot. He is requesting relief from 1) Town Zoning Article V, subsection 165-33.C.2 which limits the square footage of accessory buildings to 600 sq. foot, 2) Town Zoning Article 165-82.C.2. which limits the wall height to 12' and 3) Town Zoning which states by definition that accessory structures shall be subordinate in area to the principal building which in this case is 2,407 sq. foot. This property is currently zoned Medium Density Residential (MD).

Acting Chairperson Thomas gave a brief history of the project and what has happened to date. A letter was received from the DEC stating the NYSDEC Region 8 Law Enforcement has issued a Notice of Violation to Mr. Russell for unpermitted excavation/fill of a state freshwater wetland under Article 24 jurisdiction. They are offering to settle with Mr. Russell using a short-order consent form, which includes a financial penalty and remedial work. The work will involve removing all added fill, returning the wetland to its original grade, and seeding with appropriate native plants. After all work is completed and approved and the penalty paid, Mr. Russell apply for a DEC permit to build a storage structure on the parcel. They will keep the Town apprised of the situation.

Matt Russell, applicant stated he has not received the letter that was just read into the record. The DEC told him there will be a \$20,000 fine. He stated that while he was building in the buffer zone, he was not in the freshwater. He feels he will be able to build this structure in the future.

Acting Chairperson Thomas noted he spoke with the Town Attorney and it was determined that the Board cannot take any action on this matter with an active pending case with the DEC. Her recommendation was to table this without prejudice and the applicant can come back to the Board when the matter is resolved with the DEC.

**Public Comment: None**

**Public Hearing Closed**

There was discussion about tabling, denying, or withdrawing the application. The applicant requested to formally withdraw the application tonight. The Board accepted the withdrawal.

#### **4. CHRISTOPHER GAGE – 88 BUTCHER ROAD**

The application of Christopher Gage, owner, for an area variance at 88 Butcher Road. The applicant is proposing to construct a 1,728 square foot pole barn and is requesting relief from Town Zoning Article V, subsection 165-32.C.2 which limits the size of accessory structures to 1,500 square feet. This property is currently zoned Rural Residential (RR).

Acting Chairperson Thomas noted this was tabled at the last meeting because there was no one at the meeting and there was no communication from the applicant. Acting Chairperson Thomas asked if there was anyone here to speak tonight and there was no response in the audience or zoom. There has been no communication with the Building Department either. A letter was mailed to the applicant on March 26, 2021 advising them that the application was tabled at the March 2021 meeting, because the applicant was not present, to the April 21, 2021 Zoning Board Meeting (tonight). There was no response to the letter. It was determined that a denial would be appropriate.

**Public Comment: None**

**Public Hearing Closed**

**A motion** was made by Greg Colavecchia to **deny without prejudice** the application of Christopher Gage, owner, for an area variance at 88 Butcher Road to construct a 1,728 square foot pole barn and is requesting relief from Town Zoning Article V, subsection 165-32.C.2 which limits the size of accessory structures to 1,500 square feet. This property is currently zoned Rural Residential (RR).

Having no appearance by the applicant at both the March and April Zoning Board meetings, no information, and no communication from the applicant the motion made is to deny the application. A letter was mailed to the applicant on March 26, 2021 at his residence, 88 Butcher Road sufficiently notifying the applicant that the matter was tabled from the March 2021 meeting to the April 2021 meeting. There was no response.

**Seconded** by Corinne Zajac. **Motion carried to deny (5-0)** (**Ayes:** Greg Colavecchia, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac; **Excused:** Dan Melville).

**Acting Chairperson Thomas polled the Board for their reason to deny:**

**Greg Colavecchia** – His motion stands for his reason to deny.

**Corinne Zajac** – Concurs with Mr. Colavecchia’s motion.

**Stephen Shelley** – Concurs with Mr. Colavecchia’s motion.

**Acting Chairperson Thomas** – My reason to deny is because the applicant did not show up at either meeting, had no communication with the Building Department even after the Building Department sent them a letter advising them of the new meeting date. It is appropriate to deny the application without prejudice.

**Veronica Robillard** – My reason to deny is because the applicant did not appear, there has been no communication with the Building Department and no further information even after communication from the Building Department.

**NEW BUSINESS**

### **5. THEODORE and KAREN HOLZ- 31 ARMAND DRIVE**

The application of Theodore and Karen Holz, owners, for 4 area variances at 31 Armand Drive. The applicants are proposing to construct a 2,400 square foot addition with a wall height of 16 ft. to an existing 603 sq. ft. accessory building located in the front yard. This property also has an existing 902 sq. ft. barn and a 388 sq. ft. greenhouse, which would bring the total of accessory structures on the property to 4,293 sq. ft. They are requesting relief from (1) Town Zoning Article X, subsection 165-82.C.2 which limits the wall height to 12 feet, (2) subsection 165-82.C.3 which states in part that accessory buildings shall be located in the rear yard, (3) Town Zoning Article V, subsection 165-31.C.2 which limits the size of accessory structures to 2,000 sq. ft. and (4) Town Zoning which states by definition that accessory structures shall be subordinate in area to the principal building, which is 1,407 sq. feet. The property is currently zoned Agricultural/Conservation (AC).

Theodore Holz, owner, stated that he resides on a dead-end road. This structure will be attached to an existing building on the property. The reason for the 16' sidewalls is to accommodate the vehicles that will be stored including Classic Airstream Campers with air-conditioning units on top; a Freightliner School Bus; Classic cars/trucks and a 15' Boat. This structure will enable him to store the items inside that are currently stored outside and will compliment the current detached garage and the architecture will be similar. The parcel is 4.17 acres in size. They are unable to put this at the back of the property because it slopes down into Salmon Creek. There are several creeks and streams running through the property.

Acting Chairperson Thomas asked if they had considered something smaller. The applicant stated this is already smaller than what is needed, and they would have to sell vehicles if they went any smaller. The Board asked if all vehicles were personal or for a business. The applicant stated that this is not a business, and all vehicles are personal and registered in his name.

**Public Comment: None**

**Public Hearing Closed**

**Board Discussion:** Jack Barton reported notifications were in order, the request was returned by Monroe County as a matter of local determination and is a Type II action, no further review required. There are no letters in the file and no comments from the ZEO or Building Department.

**A motion** was made by Stephen Shelley to **approve** the application of Theodore and Karen Holz, owners, of 4 area variances at 31 Armand Drive to construct a 2,400 square foot addition with a wall height of 16 ft. to an existing 603 sq. ft. accessory building located in the front yard. The property has an existing 902 sq. ft. barn and a 388 sq. ft. greenhouse, which would bring the total of accessory structures on the property to 4,293 sq. ft. This grants relief from (1) Town Zoning Article X, subsection 165-82.C.2 which limits the wall height to 12 feet, (2) subsection 165-82.C.3 which states in part that accessory buildings

shall be located in the rear yard, (3) Town Zoning Article V, subsection 165-31.C.2 which limits the size of accessory structures to 2,000 sq. ft. and (4) Town Zoning which states by definition that accessory structures shall be subordinate in area to the principal building, which is 1,407 sq. feet. The property is currently zoned Agricultural/Conservation (AC). Using the balancing test, the Board finds the following:

- 1) The variance for the wall height is needed because some of the items being stored are too tall to fit inside a building any shorter.
- 2) The variance for the location because the rear yard of the property is very wooded and consumed by several streams.
- 3) The variance for size. The applicant provided a diagram showing all the vehicles that will be stored inside. They are all owned by the applicant and currently stored outside.
- 4) The variance for the structure to be subordinate to the principal structure. The applicant has provided proof as to why he is requesting a structure this large.
  - The benefit cannot be achieved by other means feasible to the applicant.
  - There will be no undesirable change in neighborhood character or to nearby properties.
  - The request is substantial.
  - There will be no adverse physical or environmental effects.
  - The alleged difficulty is self-created because the applicant owns all the vehicles.Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety, and welfare of the community.

Veronica Robillard is concerned with the cumulative size of all the structures, especially with the idea of how large it is compared to the home. Acting Tim Thomas shares the concern about the size comparison to the principal structure. This is a unique area; the variances are very significant. Houses were smaller when this home was built in the 50's. They asked if the applicant had considered removing any of the current structures. The applicant stated no.

**Seconded** by Corinne Zajac. **Motion carried to approve (3-2) (Ayes:** Greg Colavecchia, Stephen Shelley, Corinne Zajac; **Nay:** Veronica Robillard, Tim Thomas; **Excused:** Dan Melville).

#### **6. KEITH AND PEGGY CHRISTENSEN- 701 PARMA CENTER ROAD**

The application of Keith and Peggy Christensen, owners, for 2 area variances at 701 Parma Center Road. The applicants are proposing to erect 150 lineal feet of a 6' privacy fence along the southwest property line with a zero foot setback and are requesting relief from Town Zoning Article XVI, subsection 165-128.B.1 and 128.B.2 which states in part that fences may be erected up to a height of 4 ft. within the rear or side yard and that 6 ft. fences are subject to side and rear setback requirements which in this case is 10 feet. The property is currently zoned Agricultural/Conservation (AC).

Keith Christensen, owner, stated the lot next to them has been vacant since they purchased their home. Recently the neighbors have added to their farming activities and have begun cutting wood, all activities they would rather not see. All the foliage has been removed in the area and it is no longer peaceful. They had the property staked and would like to fence it in. The Board asked if they looked at other options including putting trees, arborvitaes, or

a berm in place. The applicant stated they talked to a landscaper and it was going to be a lot more expensive than a fence and would require maintenance. Veronica Robillard asked why a 4' fence would not suffice. The applicant stated they do not want to see anything on the other property and the way their property slopes a 4' fence will not make a difference. Acting Chairperson Thomas asked if they could put a 4' fence on a berm. Jack Barton said that is not allowed by code.

Acting Chairperson Thomas noted that the Board is very careful when it comes to approving 6' closed fences along the front or side lot lines because they do not want to set a precedent. The code reads that closed fences "shall" not be permitted along any front or side lot lines. They are allowed for the express purpose of screening a pool or patio. There have been very few with extraordinary circumstances they have approved. Chairperson Robillard asked how they would maintain it at a 0 ft. setback. The applicant stated he did not feel maintenance will be an issue, they can ask the neighbor. The applicant stated that they might not even put at a 0 ft. setback, but they are not sure what the final setback figure will be.

Acting Chairperson Thomas stated he would feel better if there was something from a landscaper showing with the cost to put in natural vegetation over a fence and why that option will or will not work. Veronica Robillard agrees. Natural vegetation would provide the benefit and she feels this is a self-created issue and it is substantial. The owner stated that there is no one around that would be able to see the fence. Acting Chairperson Thomas said that as soon as the Board approves one then other applications will come in saying the Board approved this and that so there must be substantive information to be able to show why it was approved.

The applicant feels that the Board is nitpicking in a negative way over normal things, and they explained why they could not do landscaping. The Board stated they understand they talked about it, but the board needs information in writing to substantiate the need for the file. Acting Chairperson Thomas noted that the Board is charged with making these decisions and investigating the applications and information provided to avoid litigation. The Board must be thorough to protect the Town and the taxpayers. The Board is not here to rubberstamp projects.

**Public Comment:**

Cathy Buckert said other west side Towns and the Village of Hilton allow 6' fences. Acting Chairperson Thomas noted that the Board can only deal with the Code for Parma as it is written. Any code changes happen at the Town Board.

**Public Hearing Closed**

Greg Colavecchia said he respects the applicant's position and desire for the fence; however, the Board is charged with following the Code. Sometimes the Board requests more information to help alleviate concerns the Board is having.

**Board Discussion:** Jack Barton reported notifications were in order, the request was returned by Monroe County as a matter of local determination and is a Type II action, no further review required. There are no letters in the file and no comments from the ZEO or Building Department.

Veronica Robillard agrees with tabling this matter to allow the applicant time to provide additional information. The applicant agrees to table even though he does not agree with the reasoning and is not in favor of it. Acting Chairperson Thomas asked if the applicant is clear on what the Board is looking for. The applicant stated he is clear. He stated that he does not want to come back and the Board continue to nitpick on this or his shrubs when he comes back. He feels everything about the Board is negative. Jack Barton noted that plantings do not require a variance. Acting Chairperson Thomas stated that the society we live in is very litigious and the Board is in place to protect the Town.

**A motion** was made by Greg Colavecchia to **table** the application of Keith and Peggy Christensen, owners, of 2 area variances at 701 Parma Center Road to the May 2021 Zoning Board meeting. The applicants are proposing to erect 150 lineal feet of a 6' privacy fence along the southwest property line with a zero foot setback and are requesting relief from Town Zoning Article XVI, subsection 165-128.B.1 and 128.B.2 which states in part that fences may be erected up to a height of 4 ft. within the rear or side yard and that 6 ft. fences are subject to side and rear setback requirements which in this case is 10 feet. The property is currently zoned Agricultural/Conservation (AC).

- The benefit cannot be achieved by other means feasible to the applicant. As previously indicated in his comments before, the Board must weigh the balancing test. One of the criteria is if there are other means feasible to the applicant. As discussed, there are other options available to the applicants including vegetation and trees. The applicant has stated landscaping is not cost effective. The Board is requesting the applicant get at least one estimate from a Landscaping Company with other options available to the applicant and the fencing company detailing the cost to install both options and the cost difference between them. All information shall be submitted to the Building Department by May 5, 2021.

**Seconded** by Corinne Zajac. **Motion carried to table (5-0)** (Ayes: Greg Colavecchia, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac; **Excused:** Dan Melville).

## **7. DONALD and CARRIE SIGLER- 110 DUNBAR ROAD**

The application of Donald and Carrie Sigler, owners, for an area variance at 110 Dunbar Road. The applicants are proposing to construct a 800 sq. ft. pole barn with a 320 sq. ft. overhang, which would bring the total square footage to 1,120 sq. ft. and are requesting relief from Town Zoning, Article X, subsection 165-33.C.2 which limits the size of accessory structures to 600 sq. ft. The property is currently zoned Medium Density Residential (MD).



Donald Sigler, owner, stated that he would like to build the structure for storage of porch furniture, wheelbarrows, kayaks, boats, a tractor, etc. This will be built out of the floodplain and there is no separation requirement for construction. Chairperson Robillard asked if there would be living space in the structure. The applicant stated no.

The layout provided was not detailed and did not make it into all the Board packets. The applicant had pictures but they were not printed out. The Board agreed that they want to see a scaled/detailed drawing. The Board must stay consistent with past practices. The applicant stated that information was not relayed to him when he called or contacted the Town several times. Acting Chairperson Thomas stated they understand that could be the case but when it gets in front of the Board, all information must be provided to the Board before they decide.

**Public Comment:**

Mark Acker, 112 Dunbar Road, is in favor of this application. He stated it would be nice to have the belongings stored inside versus outside where they sit now. Mr. Acker noted there are other barns on the road bigger than this.

**Public Hearing Closed**

**Board Discussion:** Jack Barton reported notifications were in order, the request was returned by Monroe County as a matter of local determination and is a Type II action no further review required. There are no letters in the file and no comments from the ZEO or Building Department.

**A motion** was made by Greg Colavecchia to **table** the application of Donald and Carrie Sigler, owners, for an area variance at 110 Dunbar Road to the May 2021 Zoning Board meeting. The applicants are proposing to construct a 800 sq. ft. pole barn with a 320 sq. ft. overhang, which would bring the total square footage to 1,120 sq. ft. and is requesting relief from Town Zoning, Article X, subsection 165-33.C.2 which limits the size of accessory structures to 600 sq. ft. The property is currently zoned Medium Density Residential (MD). Although the applicant was kind enough to provide pictures, a diagram and other documents, the Board is requesting further information including a proposed detailed floorplan/layout to show the necessity of the requested variance. He has indicated a number of items that he intends to store inside the structure. All information should be submitted to the Building Department by May 5, 2021.

**Seconded** by Stephen Shelley. **Motion carried to table (5-0)** (Ayes: Greg Colavecchia, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac; **Excused:** Dan Melville).

**8. SANDRA BUTLER- 1454 CLARKSON PARMA TOWN LINE ROAD**

The application of Sandra Butler, owner, for 2 area variances at 1454 Clarkson Parma Town Line Road. The applicant is proposing to construct a 4,480 sq. ft. accessory structure with a 16 ft. wall height in the front yard and is requesting relief from Town Zoning Article X, subsection 165-82.C.2 which limits the wall height to 12 feet and 165-82.C.3 which states in part that accessory buildings shall be located in the rear yard. This is a corner lot and is

defined by zoning as having two front yards, 2 side yards and no rear yard. This property is currently zoned Agricultural/Conservation (AC).

Daniel Schum, Esq., on behalf of the applicant, stated that this property is 65.3 acres and is on the corner of Peck and Clarkson Parma Town Line Road. The north boundary of the property is heavily wooded, the northwest corner is where the house sits. The structure will sit 350' off Clarkson Parma Town Line Road behind the principal structure which is over 150' off the road. This will appear to be in the rear of the yard, and it is physically. This will be visually blocked from view on the north side. There will be no impact or undesirable change in the neighborhood character. The applicant needs the 16' wall height to gain access to and from the building for the farm equipment being stored inside. The equipment includes Hay Wagons, Horse Trailers, Hay Balor, and a Hay Elevator. The size of the equipment requires a 14' door requiring the walls to be 16' to allow for a header. The attorney provided a Memorandum of Law that outlined all the criteria for the variance. There would be no detriment to surrounding properties. There would be no alternative to the wall height because if they cannot get the height, they cannot store what needs to be inside.

Acting Chairperson Thomas noted that this application is not about the sq. footage because that is allowed, which is why a layout was not needed to act on this application.

**Public Comment: None**

**Public Hearing Closed**

**Board Discussion:** Jack Barton reported notifications were in order, the request was returned by Monroe County as a matter of local determination and is a Type II Action, no further review required. There are no letters in the file and no comments from the ZEO or Building Department.

Acting Chairperson Thomas stated that the reason for the 16' walls make sense and that this is the biggest corner lot to come in front of the Board since he has been on it.

**A motion** was made by Greg Colavecchia to **approve** the application of Sandra Butler, owner, for 2 area variances at 1454 Clarkson Parma Town Line Road to construct a 4,480 sq. ft. accessory structure with a 16 ft. wall height in the front yard. This grants relief from Town Zoning Article X, subsection 165-82.C.2 which limits the wall height to 12 feet and 165-82.C.3 which states in part that accessory buildings shall be located in the rear yard. As indicated, this is a corner lot and is defined by zoning as having two front yards, 2 side yards and no rear yard. This property is currently zoned Agricultural/Conservation (AC), therefore this request has no bearing on the square footage of the structure.

Using the balancing test, the Board finds the following:

- The benefit cannot be achieved by other means feasible to the applicant. As the applicant has provided, they have approximately 26 pieces of farm equipment which would not fit through a 12' door and a 16' wall height would be required to allow

access. As for the rear yard, as indicated and defined by the code there is no rear yard. There are no other means feasible to the applicant in both requests.

- There will be no undesirable change in neighborhood character or to nearby properties.
- The request is not substantial. There is no rear yard by definition and the need for the wall height has been proven.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created, specifically as it relates to the rear yard since the property by definition does not have a rear yard despite its acreage. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety, and welfare of the community.

**Seconded** by Corinne Zajac. **Motion carried to approve (5-0)** (Ayes: Greg Colavecchia, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac; **Excused**: Dan Melville).

### **9. DUVALL RODGERS- 249 NORTH AVENUE**

The application of Duvall Rodgers, owner, for 2 area variances at 249 North Avenue. The applicant is proposing to construct a garage with an 8 ft. side setback from the north property line and a 9 ft. addition to the front of the house with a front setback of 68 ft. He is requesting relief from Town Zoning Article XI, subsection 165-87.A.1 which states in part that the minimum side yard setback shall not be reduced to less than 10 ft. and Town Zoning Article V, subsection 165-31.E.1 Schedule 1 which states that the front setback is to be 75 ft. This property is currently zoned Agricultural/Conservation (AC).

Matt Rodgers, owner, said there was a fire at the residence in January and they are in the process of rebuilding the house. The garage was burnt down completely. He is looking to extend the garage back further on the property using the same setback that was originally in place. This would allow him to store his three vehicles and motorcycle inside especially during the winter. He is also requesting to add on to the front of the kitchen which has very little counter space and not a lot of cabinets to accommodate the counter space. The current kitchen is too small to eat their meals at a table. Acting Chairperson Thomas noted that other homes in that area encroach on the setback.

**Public Comment: None**

**Public Hearing Closed**

**Board Discussion:** Jack Barton reported notifications were in order, the request was returned by Monroe County as a matter of local determination and is a Type II action, no further review required. There are no letters in the file and no comments from the ZEO or Building Department.

**A motion** was made by Stephen Shelley to **approve** the application of Duvall Rodgers, owner, for 2 area variances at 249 North Avenue to construct a garage with an 8 ft. side setback from the north property line and a 9 ft. addition to the front of the house with a front setback of 68 ft granting relief from Town Zoning Article XI, subsection 165-87.A.1 which states in part that the minimum side yard setback shall not be reduced to less than

10 ft. and Town Zoning Article V, subsection 165-31.E.1 Schedule 1 which states that the front setback is to be 75 ft. This property is currently zoned Agricultural/Conservation (AC).

Using the balancing test, the Board finds the following:

- The benefit cannot be achieved by other means feasible to the applicant. The garage footing was already at 8' and will remain; the garage will extend back on the property.
- There will be no undesirable change in neighborhood character or to nearby properties. As stated, a number of homes encroach into required 75' front setback. This home was built prior to the current code being in effect.
- The request is substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created, this home was built prior to the current code. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety, and welfare of the community.

**Seconded** by Corrine Zajac. **Motion carried to approve (5-0)** (Ayes: Greg Colavecchia, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac; **Excused**: Dan Melville).

#### **10. MELISSA MATYJCZUK and NIKOLAS ANTONUCCI- 560 PARMA CENTER ROAD**

The application of Melissa Matyjczuk and Nikolas Antonucci, owners, for 2 area variances at 560 Parma Center Road. The applicants are proposing to construct a 384 sq. ft. shed in the front yard with a front setback of 45 ft. and are requesting relief from Town Zoning Article X, subsection 165-82.C.3 which states in part that accessory buildings shall be located in the rear yard and Town Zoning Article V, subsection 165-31.E.1 Schedule 1 which states that the front setback is to be 60 ft. This is a corner lot and is defined by zoning as having 2 front yards, 2 side yards and no rear yard. This property is currently zoned Agricultural/Conservation (AC).

Melissa Matyjczuk, owner, stated that they would rather erect this structure versus adding onto the garage. This will sit flush with the garage with a 6' crushed stone walkway in between. The smaller shed on the property would stay. This property also sits on a corner lot with no backyard by definition. Veronica Robillard asked if they had explored other options. The applicant stated that the backyard is small and already contains a pool, maple tree and shed. Greg Colavecchia noted that this would need a variance regardless of where it is placed.

**Public Comment: None**

**Public Hearing Closed**

**Board Discussion:** Jack Barton reported notifications were in order, the request was returned by Monroe County as a matter of local determination and is a Type II action, no further review is required. There are no letters in the file and no comments from the ZEO or Building Department.

**A motion** was made by Greg Colavecchia to **approve** the application of Melissa Matyjczuk and Nikolas Antonucci, owners, for 2 area variances at 560 Parma Center Road to construct a 384 sq. ft. shed in the front yard with a front setback of 45 ft. and grants relief from Town Zoning Article X, subsection 165-82.C.3 which states in part that accessory buildings shall be located in the rear yard and Town Zoning Article V, subsection 165-31.E.1 Schedule 1 which states that the front setback is to be 60 ft. This is a corner lot and is defined by zoning as having 2 front yards, 2 side yards and no rear yard. This property is currently zoned Agricultural/Conservation (AC).

Using the balancing test, the Board finds the following:

- The benefit cannot be achieved by other means feasible to the applicant. As indicated with respect to the first variance request pertaining to the placement of the structure in the front yard, the Town Code defines a corner lot as having 2 front yards and 2 side yards and no rear yard.
- There will be no undesirable change in neighborhood character or to nearby properties. The applicant has provided pictures showing how the structure will look.
- The request could be perceived as substantial. The applicant has provided a survey map showing the location and after reviewing the map it would not be feasible to accommodate a location at a further setback.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created for the reasons previously stated. 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:** Greg Colavecchia, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac; **Excused:** Dan Melville).

#### **11. CATERINA BUCKERT- 23 JUDD LANE**

The application of Caterina Buckert, owner, for 2 area variances at 23 Judd Lane. The applicant is proposing to erect 100 lineal feet of a 6' privacy fence along the south property line with a zero ft. setback and are requesting relief from Town Zoning Article XVI, subsection 165-128.B.1 and 128.B.2 which states in part that fences may be erected up to a height of 4 ft. within the rear or side yard and that 6 feet fences are subject to the side and rear setback requirements which, in this case, is 10 ft. This property is currently zoned High Density Residential (HD)

Caterina Buckert, owner, stated she has lived at the property since 1998 and until recently had a line of trees to provide privacy. She had to have the row of trees removed because they were dying and becoming a safety issue. She would like to install a 6' fence in their place. She stated she spoke to the neighbors about removing the trees and putting in a fence and they did not object. The Board asked if she had considered more trees. She stated she did consider it, but she knows that some plantings do not do well, or animals will eat them. She has concerns with privacy because the neighbors can see into her house, and the neighbors swing set is in her view, which a 6' fence would block a 4' fence would not give the same benefit. She felt she would be able to maintain both sides of the fence. She stated

the only fence not maintained is the one owned by the Town. She said she would landscape around the fence so that it will look nice and natural. She does not want to maintain anymore trees. She stated that she understands they are saying they do not approve 6' fences however she feels the Board has that discretion and that for legal reasons she does not think the Town would take money for a variance they could not ever approve. She feels the benefit for her privacy and security outweighs the detriment to the neighbors.

**Public Comment: None**

Shelby Letta, neighbor, stated that the fence would not be noticeable in the backyard.

**Public Hearing Closed**

**Board Discussion:** Jack Barton reported notifications were in order, the request was returned by Monroe County as a matter of local determination and is a Type II Action, nor further review required. There are no letters in the file and no comments from the ZEO and Building Department.

Acting Chairperson Thomas noted the Board is charged with looking at the criteria for each request and there are other means feasible to the applicant including plantings. There are plantings that could be used there that would survive and accomplish what the applicant is trying to do. If these are allowed and one is approved, then a precedent gets set and pretty soon there are a lot of 6' fence applications. She stated she is not concerned with anyone else. It was suggested she go to the Town Board to ask them to consider a Code Change. They can only work with the Code as it stands. The Code specifically states they "shall" not be permitted. He feels the request is substantial, there would be an undesirable change to the neighborhood, and it is self-created.

Chairperson Robillard concurs with Mr. Thomas; the Board is commissioned to grant relief when necessary. There is a question around maintenance of the fence, other means could be plantings or a 4' fence. She would find this difficult to approve. Ms. Buckert felt that her situation cannot be compared to any other application.

Councilperson Keller is here as the Town Board liaison to observe the process and if there are things that should be clarified in the Town Code those can be looked at. He would also encourage her to go to the Town Board, he will speak to the issue. The Board is in a difficult position when it comes to fences. If there were a lot of applications, then the Town Board could look at the code but there have not been a lot of them over the years. One way to get the desired result might be to have a fence to shield the patio, a variance would not be required. There was further discussion with the applicant about shielding her patio with a 6' fence which is allowed by the code.

There was discussion about tabling the matter so the applicant could bring further information. The consensus by the Board was that the result could be achieved by other means; there would be no reason to table, the matter should be denied or withdrawn.

The applicant requested the application be withdrawn because she felt the Board was never going to vote yes. She will investigate screening her patio. The Board accepted the withdrawal.

### **MINUTES OF MARCH 17, 2021**

The ZBOA minutes of March 17, 2021 were reviewed. **Motion** was made by Veronica Robillard to approve the March 17, 2021 minutes as amended. **Seconded** by Tim Thomas. **Motion carried to approve (5-0) (Ayes:** Greg Colavecchia, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac; **Excused:** Dan Melville).

### **OTHER BUSINESS**

Veronica Robillard would like to request an up-to-date listing of Board members, phone numbers and emails.

### **ADJOURNMENT**

There being no further business, a **Motion** was made by **seconded** by Greg Colavecchia to adjourn the meeting at 10:48 p.m. **Seconded** by Corinne Zajac. **Motion carried to approve (5-0) (Ayes:** Greg Colavecchia, Veronica Robillard, Stephen Shelley, Tim Thomas, Corinne Zajac; **Excused:** Dan Melville).

Respectfully submitted,

Carrie Fracassi  
Recording Secretary