

TOWN OF PARMA
ZONING BOARD OF APPEALS
MAY 19, 2021

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

Members Present: Greg Colavecchia, Dan Melville, Veronica Robillard, Stephen Shelley, Tim Thomas

Member Excused: Corinne Zajac (alternate)

Others Present: Jack Barton, Councilperson Blake Keller, Mark Lenzi

Public Present: Jason Clark, Brynne Clark, Nick Castello, Don Sigler, Carrie Sigler, Dick Vance, Larry Speer

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

Chairperson Robillard explained the function and decision-making process of the Zoning Board of Appeals. She noted this is a five-member board; there are 5 members present. A quorum of three is required to pass a motion.

TABLED FROM THE APRIL 21, 2021 MEETING

1. 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).

Jack Barton stated the applicant's spoke with Elaine and left a voicemail on May 12, 2021 withdrawing this application. The Board accepts the applicant's request to withdraw, and no further action is necessary.

2. 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).

Chairperson Robillard asked if the 2 existing sheds will remain on the property and are all the items listed for storage currently the owners. Don Sigler, owner, said the two sheds will be removed and the new structure will sit in that location. All items listed are owned by the

applicant and on the property except for the tractor because he does not have enough room to store that inside and does not want it sitting outside. If granted all items will be stored inside. Dan Melville asked if there will be electric, or automobiles stored in the structure. The applicant said there would be no electric and no automobiles inside. Stephen Shelley asked if the floor would be concrete. The applicant said yes. Chairperson Robillard asked if they had considered a smaller structure. The applicant said this structure will allow them to combine all belongings from the two sheds and the garage so they can park in their garage. All items are personal property. Tim Thomas feels the structure is an appropriate size.

Public Comment: None.

Public Hearing Closed

Board Discussion: Board discussion took place at the last meeting and there are no additional comments or letters in the file since that meeting.

A motion was made by Tim Thomas to **approve** the application of Donald and Carrie Sigler, owners, for an area variance at 110 Dunbar Road 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. granting 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). Using the balancing test, the Board finds the following:

- The benefit cannot be achieved by other means feasible to the applicant. The applicant provided a detailed sketch of the items that will be stored in the structure. These items are all typical residential and recreational type items you would expect to find and will give them ample room to move around and will keep the belonging safe and secure. A smaller size structure would not provide the applicant enough space as was shown to the Board.
- There will be no undesirable change in neighborhood character or to nearby properties. The applicant has chosen a very attractive structure and there are other structures on Dunbar Road that are of similar size.
- The request is substantial but mitigated by the need of the applicant to store several personal and recreational items.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created due to the number of items that need to be stored. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety, and welfare of the community.

With this approval, the two existing sheds on the property must be removed.

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

NEW BUSINESS

3. JASON EMLER & BRYNNE CLARK – 412 BURRITT ROAD

The application of Jason Emler and Brynne Clark, owners, for three area variances at 412 Burritt Road. The applicants have erected a 6' fence with a rear and side setback of 5' and are requesting relief from Town Zoning Article XVI, subsection 165-128.B.1 and 128.B.2 which state in part that fences may be erected up to a height of 4' within the rear or side yard and that 6' fences are subject to the side and rear setback requirements which, in this case, is a 17.1 feet side setback and a 13.75 feet rear setback, and the complete enclosure of a yard in this manner shall not be permitted. This property is currently zoned Rural Residential (RR).

Chairperson Robillard noted the Board must regard the application as if the fence is not already up because it was put up without any approvals.

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.

Brynne Clark, owner, passed out a folder of information for Board review. The applicant stated they did not file for a permit and realize now that they should have. After being advised they needed one they did file for a permit and filed an application for the Zoning Board to comply with the Town Code.

She understands there are five criteria the Zoning Board looks at. She feels the benefit cannot be achieved by any other means feasible. They explored other options including a 4' fence. They felt for their situation a 4' fence would not give them enough protection for their child and pets to keep them from the high-volume busy road. She feels a child could easily climb and a dog can easily jump a 4 ft. fence. She has concerns with the increased reports of vandalism and thieves in the news and on social media. They have had things stolen from their property before. A 6' fence will give them privacy from the two properties near them with tenants that are always changing, migrant workers, loud equipment and dust from the farmers' fields. They have people trespassing on the property with their four-wheelers. She has concerns with the 4/5 registered sex offenders living in a halfway house on Wilder Road. She would like to keep her property secure and keep coyotes away from their dogs. They had an issue with a neighbor feeding stray cats on their property and she feels that the safety of every child is important not just autistic or special needs children.

She feels there will not be an undesirable change to the neighborhood. The property is surrounded by open fields and they would eventually have greenery along points of the fence so it will look nice. She has signed statements from three neighbors and spoke to them directly and they were in favor of the fence.

Chairperson Robillard said they did a great job representing their concerns, but those tend to be global concerns that anyone could have. The job of the Board is to give relief to the code based on unique individual circumstances and not to compare it to other applications. The information provided tonight by the applicant is not something they can process at tonight's meeting. The applicant stated she understood that. Chairperson Robillard asked if they are surrounded by fields why not abide by the setbacks.

Tim Thomas asked who installed the fence. The applicant stated they did; it was very expensive to have a company install it. They were unable to buy 4' stockade fencing, they were told they would have to buy 6' fencing and cut it down wasting wood. They apologized for putting the fence up without a permit.

Tim Thomas stated the Board struggles with 6' fences because the code states "the complete enclosure of a yard *shall* not be permitted". Tim Thomas said the Board is not here to legislate or change the code, they are charged with granting minimum relief if reasonable and if it meets certain conditions. Chairperson Robillard said the criteria is from NYS and it is a balancing act for the Board. The Board must weigh the pros and cons to make sure each application is a reasonable request, and it can be quite challenging, the Board does not just approve everything a lot of time and concern goes into each application.

Tim Thomas noted the Board has a long history with fences and the ones approved had extenuating circumstances. A lot of the issues mentioned effect a lot of properties and they do not want an influx of 6' fence requests and do not want to set a precedent. The code reads that 6' fence may be permitted on a lot for the *express purpose* of enclosing or screening a swimming or patio area.

Ms. Clark said she would hate to lose \$4,000 in materials they spent to put up the fence. They looked at putting up a 4' fence with plantings but the cost would have doubled.

Tim Thomas said the Board needs time to review the information provided tonight before deciding, he stated these are the hardest requests for the Board to work through. The applicant said she understood they could not review the information tonight. Stephen Shelley stated the code is very specific on fences.

Tim Thomas asked if the Town Board had made any progress regarding 6' fences. Councilperson Keller said a survey is being created for residents to help the Town gather information. Chairperson Robillard noted that changing the code would also affect housing tracts, there could be various kinds of fences (wood, chain-link) throughout a neighborhood, some yards could be looking at a different fence on all sides. There is concern with how fences would be maintained if they sit right on the property line. If the Town does work to change the code, there might have to be rules in place to maintain some consistency throughout.

Public Comment:

Dick Vance, Peck Road, stated the concerns mentioned are issues all property owners face. He had kids, has grandkids, his friends have kids and dogs and they do not need 6' fences to keep them safe. He does not want to see 6' fences all over Town.

Public Hearing Closed

Greg Colavecchia asked what breed the dogs are. The applicant stated a Border Collie Beagle and a Lab mix.

A motion was made by Tim Thomas to **table** the application of Jason Emler and Brynne Clark, owners, for three area variances at 412 Burritt Road to the June 2021 Zoning Board of Appeals meeting to afford the Board time to review in detail the additional information provided by the applicant at the beginning of the meeting. Any other information the applicant would like to provide should be to the Building Department by June 2, 2021 for consideration.

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

4. ALEXANDRIA & NICHOLAS CASTELLO - 178 BLUE MOUNTAIN DRIVE

The application of Alexandria & Nicholas Castello, owners, for 2 area variances at 178 Blue Mountain Drive. The applicants are proposing to erect a 240 sq. feet accessory structure in the side yard with side and rear setbacks of 6' and are requesting relief from Town Zoning Article X, subsection 165-33.E.1 schedule 1 which states that the side and rear setback are to be 10 feet and Town Zoning Article X, subsection 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, two side yards and no rear yard. This property is currently zoned Medium Density Residential (MD).

Nick Castello, owner, said he is looking to put a shed on the property for storage. He needs a variance because it is a corner lot, and they are looking to have 6' setbacks so this will sit as far back in the corner as possible. At a 10' setback it will sit awkwardly in the middle of the yard. This will also keep it a safe distance from the play gym and out of the neighbors view in their window. The applicant feels it will not look good if it was at a 10' setback.

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.

Tim Thomas can support the 6' from the east property line to allow for space between the play gym and the shed but feels 10' from the south property line is appropriate and can be complied with. Chairperson Robillard and Stephen Shelley agree. The applicant did not understand why they would approve the 6' on the east but not on the south. He said he could not have a shed at all, and the Board said that was up to him. Tim Thomas stated that looking at the information provided there is no reason the shed has to be at 6' on the south side. Jack Barton said at a 10' setback there is still 70' of space between the house and where the front of the shed would be, there would still be ample room in the yard.

Public Comment: None

Public Hearing Closed

A motion was made by Tim Thomas to **approve** the application of Alexandria & Nicholas Castello, owners, for area variances at 178 Blue Mountain Drive to erect a 240 sq. feet accessory structure in the side yard granting relief to Town Zoning Article X, subsection 165-82.C.3 which states in part that accessory structures shall be located in the rear yard. This motion also approves the request for a setback of 6' on the east property line granting

relief from Town Zoning Article X, subsection 165-33.E.1 schedule 1 which states that the side and rear setback are to be 10 feet. This does not approve the 6' request on the south property line and the applicant must comply with 10' setback. This is a corner lot and is defined by zoning as having two front yards, two side yards and no rear yard. This property is currently zoned Medium Density Residential (MD).

Using the balancing test, the Board finds the following relevant to the location of the structure in the side yard.

- The benefit cannot be achieved by other means feasible to the applicant. This is a corner lot and is defined as having two front yard, two side yards and no rear yard. As a result, there is no other way to achieve what the applicant is trying to achieve. The shed will be placed in what would be perceived as the back yard.
- There will be no undesirable change in neighborhood character or to nearby properties. Anyone passing by the property will perceive the shed as being in the backyard.
- The request is not substantial because this is a corner lot.
- 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.

Using the balancing test, the Board finds the following relevant to 6' setback on the easterly property line.

- The benefit cannot be achieved by other means feasible to the applicant. The applicant has pointed out there is a play gym adjacent to the shed and complying with the 10' setback could create a safety issue for children playing.
- There will be no undesirable change in neighborhood character or to nearby properties.
- The request is not substantial and is mitigated by the need to keep a safe distance between the play gym and the shed.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is self-created. Using the balancing test, the benefit to the applicant outweighs any detriment to the health, safety, and welfare of the community.

This motion does not approve the 6' setback on the southerly property line and Using the balancing test, the Board believes the 10' setback can be easily achieved, and no evidence was provided to substantiate a need for the 6' as requested. There are other means feasible to the applicant.

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

5. SHANE PFEFFER- 420 MOUL ROAD

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

Chairperson Robillard gave a history on this Special Permit. There were no new letters in the file. Per the conditions of the last renewal, there has not been an inspection by the Zoning Enforcement Officer and the current FFL License was to be provided to the Town and is not in the file. The applicant was not in attendance at tonight's meeting. The Board did not feel they could act on this tonight without further information.

A motion was made by Stephen Shelley to **table** the application of Shane Pfeffer, owner, for a Special Permit at 420 Moul Road to operate a home business for the sale and transfer of firearms to the June 2021 Zoning Board of Appeals meeting to afford the Building Department time to obtain further information from the applicant pertinent to the conditions of the previous Special Permit renewal.

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

MINUTES OF APRIL 21, 2021

The ZBOA minutes of April 21, 2021 were reviewed. **Motion** was made by Tim Thomas to approve the APRIL 21, 2021 minutes as presented. **Seconded** by Greg Colavecchia. **Motion carried to approve (5-0)** (Ayes: Greg Colavecchia, Dan Melville, Stephen Shelley, Tim Thomas, Veronica Robillard).

OTHER BUSINESS

ADJOURNMENT

There being no further business, a **Motion** was made by **seconded** by Dan Melville to adjourn the meeting at 9:00 p.m. **Seconded** by Greg Colavecchia. **Motion carried to approve (5-0)** (Ayes: Greg Colavecchia, Dan Melville, Stephen Shelley, Tim Thomas, Veronica Robillard).

Respectfully submitted,

Carrie Fracassi
Recording Secretary