

TOWN OF PARMA
ZONING BOARD OF APPEALS
JUNE 16, 2021

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

Members Present: Greg Colavecchia, Dan Melville, Veronica Robillard, Stephen Shelley, Corinne Zajac

Member Excused: Tim Thomas

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

Public Present: Martha Gardner, Randy Gardner, Craig Kanthal, Kristin Capuano, Marc Hryhorenko, Jason Clark, Brynne Clark, Dick Vance, Matt Flagg, Chrissy Flagg, Michael Crawford, Paula Crawford.

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 MAY 19, 2021 MEETING

1. 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' privacy 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 said this was tabled in May to allow the Board time to review information that was provided at the last meeting. Chairperson Robillard asked if there was anything further to share with the Board. The applicant stated they do not have any more information to provide. Mark Lenzi stated the Building Department has no further information. Dan Melville asked if the Board should be acting on this since this section of code is under review. Jack Barton said that the Board should because the fence is already up and is in violation under the current code. Mark Lenzi said it could three to six months before anything could change, if at all and he felt it should be acted on tonight.

Public Comment: None.

Public Hearing Closed

A motion was made by Stephen Shelley to **deny** 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).

- The benefit *can* be achieved by other means feasible to the applicant. When reviewing the information there is nothing unique about this application to justify approval. There are other options available to the applicant. The code clearly states that "complete enclosure of a yard *shall* not be allowed".
- There will be an undesirable change in neighborhood character or to nearby properties and would set a precedent.
- The request *is* substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty *is* self-created. Using the balancing test, the benefit to the applicant *does not* outweigh any detriment to the health, safety, and welfare of the community.

Seconded by Greg Colavecchia. He stated that he reviewed the material and the information submitted by the applicant and unfortunately this application does not rise to the level that would warrant a variance under the criteria set forth that the Board must consider. **Motion carried to deny (5-0) (Ayes:** Greg Colavecchia, Dan Melville, Stephen Shelley, Veronica Robillard, Corinne Zajac; **Excused:** Tim Thomas).

Chairperson Robillard polled the Board for their reasons to deny:

Stephen Shelley – His motion stands for his reason to deny.

Greg Colavecchia – He seconded the motion and stands as his reason to deny.

Dan Melville – He stated he is not against fences; however, the current Zoning as written, does not allow the Board to approve this request. There are other options available to the applicant. The request is substantial.

Corinne Zajac – There are other means available to the applicant. The request is substantial.

Chairperson Robillard – The Board is charged with using the balancing test. When the criteria are considered, there are other means available to the applicant. This request is substantial and is self-created and could create an undesirable change to the neighborhood character.

Chairperson Robillard noted the applicant will receive correspondence from the Building Department with information about removing the fence.

NEW BUSINESS

2. MARC HRYHORENKO- 146 FERGUSON DRIVE

The application of Marc Hryhorenko, owner, for an area variance at 146 Ferguson Drive. The applicant is proposing to construct a 14'x32' accessory building and is requesting relief

from Town Zoning Article V, subsection 165-35-C.2 which limits the size of accessory structures to 400 sq. feet. This property is currently zoned Waterfront Residential (WF).

Marc Hryhorenko, owner, said he is replacing the current 12x29 accessory shed on the property with a 14x32 sized structure. The inside dimensions of the structure will not be any larger due to the type of construction of the building; they will be using the existing concrete slab. He provided the Board a detailed layout showing the belongings being stored, all personal belongings. 122, 151, 164, 160, and 188 Ferguson all have similar constructed buildings, some larger, some taller. The 36x30 structure is considered the garage. Greg Colavecchia stated this request is minimal.

Board Discussion: Mark Lenzi 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.

Public Comment: None.

Public Hearing Closed

A motion was made by Dan Melville to **approve** the application of Marc Hryhorenko, owner, for an area variance at 146 Ferguson Drive to construct a 14'x32' accessory building granting relief from Town Zoning Article V, subsection 165-35-C.2 which limits the size of accessory structures to 400 sq. feet. This property is currently zoned Waterfront Residential (WF).

Using the balancing test, the Board finds the following:

- The benefit *cannot* be achieved by other means feasible to the applicant. This will replace an existing dilapidating structure currently on the property.
- There will be *no* undesirable change in neighborhood character or to nearby properties. This will be much more visually appealing than the current structure.
- The request *is not* substantial and is only slightly over the allowed size.
- 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 Stephen Shelley. **Motion carried to approve (5-0) (Ayes:** Greg Colavecchia, Dan Melville, Stephen Shelley, Veronica Robillard, Corinne Zajac; **Excused:** Tim Thomas).

3. BRENDA INDELICATO – 26 CLEARVIEW AVENUE

The application of Brenda Indelicato, owner, for an area variance at 26 Clearview Avenue. The owner is proposing to erect a 2,024 sq. foot detached garage and is requesting relief from Town Zoning Article III, subsection 165-17 which states by definition that accessory structures shall be subordinate in area to the principal building which, in this case is 1,728 sq. feet. This property is currently zoned Waterfront Residential (WF).

Mark Lenzi noted that the applicant did not send the neighborhood notifications so this application will be moved to next months agenda.

A motion was made by Dan Melville to **table** the application of Brenda Indelicato, owner, for an area variance at 26 Clearview Avenue to the July 2021 Zoning Board Meeting of Appeals to afford the applicant time to send out neighborhood notifications.

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

4. KRISTIN CAPUANO & CRAIG KANTHAL – 96 JAMES MOORE CIRCLE

The application of Kristin Capuano and Craig Kanthal, owners, for 2 area variances at 68 James Moore Circle. The applicants are proposing to erect a 6' privacy fence on the 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 state in part that fences may be erected up to a height of 4 feet 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 feet, and that the complete enclosure of a yard in this manner shall not be permitted. This property is currently zoned High Density Residential (HD).

Kristin Capuano, owner, said her 7-year-old son is on the autism spectrum and there are several pools in the area in yards that are not fenced in. The applicants are concerned that their son may try and get in one of those pools as autistic children are drawn to water. Mark Lenzi noted that an above ground pool has walls that act as a barrier which is why they are not required to have a fence around them.

Board Discussion: Mark Lenzi 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 is one letter in the file from the applicant's pediatrician and no comments from the ZEO or Building Department.

Greg Colavecchia asked if the purchase contract is dependent on the outcome of this hearing. The applicants said it is not because they were not aware of the code. They were asked if they would consider a 4' fence. The applicant said their son would be able to climb that. Chairperson Robillard did not know a 6' fence would be adequate since he slips away through door also. Corinne Zajac asked if the ADA would have rules on this. Mark Lenzi stated they do not have rules for single family homes, its for commercial buildings and public use areas.

Mark Lenzi asked what the fence would be made from and if they could have more of an open fence. The fence construction will be white vinyl and they would like the privacy fence so their dogs will not bark at other dogs. They said they spoke to their neighbors who seemed in favor of this. Greg Colavecchia stated that even with the code the way it is written the Board can differentiate the need for this, not because of the dog, but because of their son. There was discussion about putting the fence at the required setback of 10'. The applicant did not like that she would be losing a portion of her backyard.

Public Comment:

Richard Vance feels the side and rear setback should be recognized, in this matter, which would be 10'.

Matt Flagg noted that the Town Board is looking at a possible change to this part of the code in the future.

Public Hearing Closed

The applicant doesn't understand why it can't be 6' on the lot line. Mark Lenzi reiterated that the Board is charged with granting the minimum variance necessary, that is written in the State Law. The Board can approve the full enclosure but at the required setbacks, that would eliminate a variance. The code states you can have a 6' fence to screen a patio or pool or it has to be at the setbacks. A 4' fence is allowed on the property line. She stated that does not seem fair because she did not know that. The applicant did not understand why you can have a 6' fence at the setback and not on the lot line, her son needs to be able to run. Mr. Barton noted that even at the setbacks the yard would still be 60x80, which is not small.

Chairperson Robillard said the Board is understanding of the need for a 6' fence and willing to work with the applicant but thinks the fence should be at the setback. There is an option for the applicant to put up a 4' fence on the lot line and if the code changes, they could add lattice to the top.

A motion was made by Corinne Zajac to **approve** the application of Kristin Capuano and Craig Kanthal, owners, for 2 area variances at 96 James Moore Circle to erect a 6' privacy fence on the property with 10 feet rear and side setbacks. This grants relief from Town Zoning Article XVI, subsection 165-128.B.1 which state in part that fences may be erected up to a height of 4 feet within the rear or side yard and approves the complete enclosure of the yard. This motion does not grant relief to Town Zoning Article XVI, subsection 165-128.B.2 with regards to the 10' setback. This property is currently zoned High Density Residential (HD).

Using the balancing test, the Board finds the following.

- The benefit *cannot* be achieved by other means feasible to the applicant. The applicants have proven they have a legitimate hardship, which is unique. This will ensure the safety of their autistic child. Because the Board is charged with granting the minimum relief necessary, this motion approves a 6' fence at a 10' rear and side setback.
- There will be *no* undesirable change in neighborhood character or to nearby properties.
- The request *is* substantial but necessary in this particular instance.
- 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 Stephen Shelley. **Motion carried to approve (4-1)** (Ayes: Greg Colavecchia, Stephen Shelley, Veronica Robillard, Corinne Zajac; **Nay:** Dan Melville; **Excused:** Tim Thomas).

5. MARTHA & RANDALL GARDNER- 1780 CLARKSON PARMA TOWN LINE ROAD

The application of Martha & Randall Gardner, owners, for an area variance at 1780 Clarkson Parma Town Line Road. The applicants are proposing to erect a 4' fence in the front yard and is requesting relief from Town Zoning Article XVI, subsection 165-128.A.2 which limits the height of fences in the front yard to 3 feet. This property is currently zoned Agricultural/Conservation (AC).

Martha Gardner, owner, stated they are looking to install a 4' black chain link fence which will blend into the area with a 75' setback which will sit several feet below the grade of Ridge Road. The house is on a corner lot, and they plan to landscape the area. A corner lot is defined as having two front yards and no rear yard.

Board Discussion: Mark Lenzi 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. Mark Lenzi stated the request is minimal and being 75' back this will sit below the grade of Ridge Road. The fence will not impede on motorists' vision at the corner.

Public Comment: None

Public Hearing Closed

Chairperson Robillard asked by a 4' fence versus a 3' fence. The applicant stated they are concerned with their dog's ability to jump over the fence and wildlife being able to get in the fence. They are only extending into what is defined as the front yard by 20'.

A motion was made by Greg Colavecchia to **approve** the application of Martha & Randall Gardner, owners, for an area variance at 1780 Clarkson Parma Town Line Road to erect a 4' fence in the front yard granting relief from Town Zoning Article XVI, subsection 165-128.A.2 which limits the height of fences in the front yard to 3 feet. 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. This is a corner lot and by definition does not have a back yard. This will extend only 20' into what is defined as the front yard.
- There will be *no* undesirable change in neighborhood character or to nearby properties considering this will be a chain-link fence as opposed to a privacy fence keeping the open feel. This will sit 75' off the road below the grade of Ridge Road. There will be no obstruction at the corner.
- The request *is not* substantial given that it is only 1' over the allowed height and only extends only 20' into what is considered the front yard. This will be 75' off Ridge Road and below grade.
- There will be *no* adverse physical or environmental effects.

- The alleged difficulty *is not* self-created given the location of the home. There will be no obstructions at the corner. 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, Dan Melville, Stephen Shelley, Veronica Robillard, Corinne Zajac; **Excused**: Tim Thomas).

6. MATTHEW FLAGG– 73 DELAVERGNE DRIVE

The application of Matthew Flagg, owner, for three area variances at 73 Delavergne Drive. The applicant has built a deck with a side setback of 3.5 feet from the east property line, a side setback of 3.76 feet from the west property line and a front setback of 43.3 feet and is requesting relief from Town Zoning Article V, subsection 165-35.E.1, schedule 1, which states that the side setback is to be 10 feet and the front setback is to be 60 feet. This property is currently zoned Waterfront Residential (WF).

Matthew Flagg, owner stated he applied for a building permit and was not aware that he needed any variances. The current Building Inspector notified him that he needed to have some variances. Due to the recent flooding the applicant is raising the home to protect it from future flooding. They added a deck over a walkway on the east side. The post holes for the deck were approved, however, there was a change in building plans after the permit was issued on the east side. The deck was extended another three feet past what was approved in the original permit. That extension expanded the variance needed.

Board Discussion: Mark Lenzi 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. Mark Lenzi said he does not think what was or was not approved is relevant, a setback was overlooked and needs to be dealt with. The applicant and the Building Inspector do not agree on what was originally approved. The original building permit was issued in error for a 4' stair landing and a 6' portion down the east side to the south, it did not address the setback issue. The rest was added after the building permit was issued. Mark Lenzi did go and approve the footings but after some research and finding out it was not quite right, he spoke to the applicant and told him to stop work on the project, the applicant agreed, and work was continued.

Chairperson Robillard noted that the Board must look at the application as if no work has been started and if not approved this could need to be removed. Chairperson Robillard asked why work continued. The applicant said that a contractor is doing the work and he could not stop them before the point they are now because once they leave it is hard to get them back. This structure is very close to the neighbors.

There was discussion about the different setbacks. Greg Colavecchia said that when breaking it down, the front setback of 60' cannot be complied with because the house is set back at 43'. The west side setback of 3.76 is also even with the house. The east side of 3.5 feet was supposed to be 6.5 ft as approved in the original permit issued until the applicant bumped it out. Both would have needed a variance, but the need would have been smaller.

Public Comment:

Michael Crawford, 78 East Wautoma Beach (Delavergne) stated that while they welcome improvements to the neighborhood they have concerns regarding this project. They were originally told that the applicant would not need variances as long as the construction remained within the original footprint. They do not feel it is necessary to build a large deck, approximately 10' in the air wrapping around the house to encroach with only a 3.5 setback to the neighboring property. They feel this will create increased noise disturbances and lack of privacy. They were concerned that the proximity to the lot line raises a potential danger, fire hazard and limited emergency access for rescue. They are concerned with their ability to rent their property at 75 East Wautoma Beach (Delavergne Dr) and that there is the potential to set a precedent. They feel this large deck will change the aesthetics of the neighborhood and have an impact on property values. They would like Mr. Flagg to design a new plan that would conform to the Town building requirements.

Public Hearing Closed

Mark Lenzi noted that if a building permit is issued in error, if something is overlooked, after speaking with the Town Attorney, that does not negate the need to comply with zoning. Once found the building permit can be revoked until it is brought into compliance. What was approved before does not necessarily matter, zoning still must be complied with. When the building permit was originally issued there was a side setback issue on the west side and a front setback issue, along with the east side setback issue. At that time, the applicant should have been sent to zoning.

There was concern expressed by the Chairperson that the Board is trying to solve the problem, and that is not their job. She is concerned that they were issued a building permit and then they continued to build larger than was approved and that extended the variance. She feels construction should have been stopped and she would like a new plan. Mark Lenzi suggested the Board approve what they are comfortable. They cannot approve more than what was advertised but they can approve less if that were what they would like to do.

Greg Colavecchia said he would like a little bit more time to review the information now that he is familiar with the project. Councilperson Robillard stated she did not need further time to review but if other members felt they did they could table this to next month. She is concerned that the applicant went beyond what was even originally approved. Stephen Shelley stated a lot of properties on the road do not comply with zoning. He is ok with the west side and front but would like the east side deck to only go as wide as the stairway. The Board is concerned mostly with the east side. They would be more comfortable approving this to the original plan, with a setback of 5.39 ft.

A motion was made by Stephen Shelley to **approve** the application of Matthew Flagg, owner, for two area variances at 73 Delavergne Drive as requested for a side setback of 3.76 feet from the west property line and a front setback of 43.3 feet granting relief from Town Zoning Article V, subsection 165-35.E.1, schedule 1, which states that the side

setback is to be 10 feet and the front setback is to be 60 feet. This property is currently zoned Waterfront Residential (WF).

Using the balancing test, the Board finds the following.

- The benefit *cannot* be achieved by other means feasible to the applicant. These setbacks are consistent with other structures in the area. Moving that wall further to the east will make the setback to the east worse.
- There will be *no* undesirable change in neighborhood character or to nearby properties.
- The request is *not* 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.

Relevant to the third setback, this motion approves the setback on the east to 5.0 feet which will bring the side of the deck in line with the existing stairway which has been built at that setback.

- The benefit *may be able to* be achieved by other means feasible to the applicant; however, this seems practical.
- There will be *no* undesirable change in neighborhood character or to nearby properties.
- The request *is* substantial. This grants the minimal variance needed.
- 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.

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

SPECIAL PERMITS

7. 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.

Mark Lenzi noted that the Building Department received a copy of the applicant's license. They have not done an inspection to date.

A motion was made by Dan Melville 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 July 2021 Zoning Board of Appeals meeting pending an inspection by the Building Department.

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

MINUTES OF MAY 19, 2021

The ZBOA minutes of May 19, 2021, were reviewed. **Motion** was made by Stephen Shelley to approve the May 19, 2021, minutes as presented. **Seconded** by Dan Melville. **Motion carried to approve (5-0)** (Ayes: Greg Colavecchia, Dan Melville, Stephen Shelley, Veronica Robillard, Corinne Zajac; **Excused:** Tim Thomas).

ADJOURNMENT

There being no further business, a **Motion** was made by Greg Colavecchia to adjourn the meeting at 9:45 p.m. **Seconded** by Corinne Zajac. **Motion carried to approve (5-0)** (Ayes: Greg Colavecchia, Dan Melville, Stephen Shelley, Veronica Robillard, Corinne Zajac; **Excused:** Tim Thomas).

Respectfully submitted,

Carrie Fracassi
Recording Secretary