

**TOWN OF PARMA
ZONING BOARD OF APPEALS
AUGUST 20, 2020**

Members Present: Dan Melville, Veronica Robillard, Tim Thomas, Corinne Zajac

Members Excused: Stephen Shelley

Others Present: Dennis Scibetta, Councilperson Judd

Public Present: Art Fritz, Paula Fritz, Jim McAfee, Marylynn DeMarco, Cindy Palmer, Stanley Palmer, David Ealy, Graham Sears, Emilie Sears, Patrick Lloyd, Alex Casttello, Nick Casttello, Robert Christ, Marissa Douglas, Julianne King

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 and noted this is a five member board; there are four members present and a quorum of three is required to pass a motion.

TABLED FROM THE FEBRUARY 20, 2020 MEETING

1. ROBERT CHRIST – 1060 HILTON PARMA CORNERS ROAD

The application of Robert Christ, owner, for 3 area variances at 1060 Hilton Parma Corners Road, as well as modification of the existing use variance. The applicant is proposing to erect a 14.2 square foot sign and is requesting relief from Town Zoning Article XIV, section 165-112.F which states in part that a sign may not exceed 2 sq. feet. The applicant is also proposing to construct a 3,600 square feet accessory structure and is requesting relief from Town Zoning Article V, section 165-31.C.2 which limits the size to 2,000 square feet and which also does not allow this structure without a primary structure. The proposed building will be constructed no closer than 350 feet to the road right-of-way. The existing use variance states that the buildings are to be 400' from the road right-of-way. This property is currently zoned Agricultural/Conservation (AC).

Dennis Scibetta noted that the applicant is asking that the sign portion of the application be heard tonight and the Town Attorney has agreed that the Board can listen to that tonight. The remaining portion of the application should be tabled for further legal clarification.

Robert Christ said he is looking to put the sign up that had been in place for several years. He took it down after it was determined it did not have the proper permits on file. The actual size of the sign is 12.5 sq. feet not the 14.2 that was advertised. Both neighbors to the south and north have signs that measure 15 sq. feet or more. Mr. Christ has concerns for the safety of drivers along the road if people trying to access the business from the main road cannot see the property to turn in until too late. The sign will not be in the right of way, will sit perpendicular to the road so it can be seen from both directions. There will be no lighting or noise from the sign. Tim Thomas noted that this sign has been a part of the neighborhood for many years. He would like a drawing (image) of the sign with the dimensions for the file if approved.

Board Discussion: Dennis Scibetta reported notifications were in order, the request was returned by Monroe County as a matter of local determination. This is a Type II action under SEQR; no further review is required. There are no letters in the file.

Public Comment: None

Public Hearing: Closed

The following motion is regarding the request for a sign on the property. Normally an image is requested; however, this sign has been a part of the community for several years. The Board is asking that an image of the sign with dimensions be provided to the Building Department within 10 days for the file.

A motion was made by Tim Thomas to **approve** the application of Robert Christ, owner, for an area variance at 1060 Hilton Parma Corners Road to erect a 14.2 square foot sign granting relief from Town Zoning Article XIV, section 165-112.F which states in part that a sign may not exceed 2 sq. 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. The applicant has operated a business at this location for almost 40 years; there is a lot of truck traffic and other deliveries taking place. Having good signage improves the safety in the area as it relates to traffic.
- There will be no undesirable change in neighborhood character or to nearby properties. In different zoning districts there are other signs near the corner of Burritt and Hilton Parma Corners Road. This sign will be consistent with those in the area.
- The request is substantial relative to the code but it is mitigated by the fact that traveling down this road with speeds of 40 or 45 mph having a sign that is easily viewable by trucks is warranted and helpful.

- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat self-created but is mitigated by the needs to have a sign that is easily identifiable for people looking to access the business. Using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community.

Seconded by Dan Melville.

Motion carried to **approve**: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0

Excused 1 (Shelley)

There was a discussion on time-frame to get the information from the Attorney. Mr. Scibetta could not say he would have it in time for September, and it was felt going to October would be better. The applicant was in agreement with that. The following motion is regarding the request for an accessory structure.

A motion was made by Dan Melville to **table** the application of Robert Christ to the October 15, 2020 Zoning Board of Appeals meeting to construct a 3,600 square foot accessory structure requesting relief from Town Zoning Article V, section 165-31.C.2 which limits the size to 2,000 square feet and which also does not allow this structure without a primary structure. The proposed building will be constructed no closer than 350 feet to the road right-of-way. The existing use variance states that the buildings are to be 400' from the road right-of-way. This property is currently zoned Agricultural/Conservation (AC). This tabling will afford the Building Department time to get the necessary legal documentation from the Town Attorney. The requested information should be to the Board by September 25, 2020.

Seconded by Corinne Zajac.

Motion carried to **table**: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0

Excused 1 (Shelley)

TABLED FROM THE JULY 16, 2020 MEETING

2. PATRICK & EVELYN LLOYD – 214 HAMLIN PARMA TOWN LINE ROAD

The application of Patrick and Evelyn Lloyd, owners, for 2 area variances at 214 Hamlin Parma Town Line Road. The applicants are proposing to erect a 4,800 sq. foot accessory structure on the property that has an existing 400 sq. foot accessory structure, which would bring the total square footage of accessory structures to 5,200 sq. feet. They are requesting relief from Town Zoning Article V, section 165-31.C.2 which limits the size of accessory structures to 2,000 sq. feet and Town Zoning which states by definition that accessory structures shall be

subordinate in area to the principal building, which is 3,323 sq. feet. This property is currently zoned Agricultural/Conservation (AC).

Tim Thomas noted that the information requested at the last meeting was due to the Building Department by August 10, 2020. A drawing was received in the office today and emailed to the Board. Due to the lateness of the information Mr. Thomas was unable to review it and does not feel he can make a decision tonight. The applicant feels that he should not be held to the date as he had a hard time getting here to hand it in. He stated the Board was provided a drawing before just in a larger size, he isn't doing anything different. Tim Thomas explained that other applicants were given the same timeframe and their information was received and it would not be fair to hold one applicant to a deadline and not all. Mr. Lloyd stated that he did not know what the Board was asking for and he was unsure what to send in. Chairperson Robillard stated that the Board was looking for a detailed drawing of a scaled back building from original application. She reviewed the minutes from last month with the applicant and they stated exactly what the Board was looking for and the applicant at that time stated he understood. The applicant continued to ask the Board what they will approve. Mr. Thomas said it is not the Boards job to say what they will approve; it is up to the applicant to provide the information and state why they need relief and it is the Boards job to determine if they can give relief to the applicant based on the need and code. It is important that the applicant show that this size is a need not a want.

Chairperson Robillard felt that not having the applicants information until the day of the meeting hurt the ability of the Board to move forward on this application tonight. The applicant continued to say he did not understand why he is being held to the date of August 10th. Tim Thomas asked if the applicant still wanted the building and if he was willing to table this. The applicant said yes.

The applicant said that he received a call from the Building Department this morning and was told to get the drawing them today for tonight's meeting. Art Fritz, ZEO, stated he was the person who called him and he told him to bring the information in so they could give it to the Board tonight but he did tell Mr. Lloyd that the Board would not hear the application tonight.

The Board asked if the applicant could do this in time for the September meeting. The applicant stated that he cannot make that meeting; he will need an October meeting.

A **Motion** was made by Corinne Zajac to **table** the application of Patrick and Evelyn Lloyd, owners, for 2 area variances at 214 Hamlin Parma Town Line Road to the

October 15, 2020 Zoning Board of Appeals meeting. Any additional information including drawings and sketches shall be to the Building Department by September 25, 2020.

Seconded by Tim Thomas.

Motion carried to **table**: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0 Excused 1 (Shelley)

Chairperson Robillard noted that information can be dropped off at the Town Hall, mailed in or scanned and emailed if it is unable to be done during business hours.

3. ALEXANDRIA CASTELLO– 178 BLUE MOUNTAIN DRIVE

The application of Alexandria Castello, owner, for an area variance at 178 Blue Mountain Drive. The applicant is 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'. This property is currently zoned Medium Density Residential (MD).

Alex Castello stated they have erected a 4' fence on two sides of the property and a temporary section until there is a decision made by the Board to complete the enclosure. The fence will be 12' off the lot line. Tim Thomas asked what the purpose is for extending in front of the house. Ms. Castello stated if they go straight back they lose a good portion of the yard because this is a corner lot and they would like to have 4' so they can keep both their children and dogs safe. Tim Thomas clarified that if this were not a corner lot this would be allowed. Mr. Scibetta said yes. Tim Thomas wished the code addressed corner lots regarding building permits.

Public Comment: None

Public Hearing: Closed

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of Alexandria Castello, owner, for an area variance at 178 Blue Mountain Drive 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'. This property is currently zoned Medium Density Residential (MD).

This lot is unique because it is a corner lot and by definition does not have a rear yard. To people passing by the house, it will appear to be in the rear yard. If this were not a corner lot this would be allowed in the rear yard. In making the motion to **approve**:

- The benefit cannot be achieved by other means feasible to the applicant. The primary purpose of the fence is for the safety of the children and to contain the dogs in the backyard.
- There will be no undesirable change in neighborhood character or to nearby properties. Several other chain link fences exist in the vicinity. This will fit in with the character and will be well constructed.
- The request is substantial but is mitigated by the fact that this is a corner lot with 2 front yards, 2 side yards and no rear yard that applies to corner lots in the Town.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created because it is a corner lot which is unique in nature. Using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community.

Seconded by Dan Melville.

Motion carried to **approve**: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0

Excused 1 (Shelley)

4. GRAHAM SEARS – 1167 WEST AVENUE

The application of Graham Sears, owner, for an area variance at 1167 West Avenue. The applicant is proposing to construct a 10'x14' accessory structure in the front yard with a front setback of 39.4' and is 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 from Town Zoning Article V, subsection 165-32.E.1, Schedule 1 which states that the front setback is to be 75'. This property is currently zoned Rural Residential (RR).

Graham Sears explained that the application is for an observatory and due to heavily wooded areas of most of his and his neighbor's property as discussed last month the area he has set out for placement is the only place it could go. Per the Board's request last month, he provided a letter from Timothy Collins, Observatory Astronomer, Buffalo Museum of Science. Mr. Collins explained the importance of the placement on their property for the most optimal view of the ecliptic sky. He also provided a signed letter from the neighbors in support of his application to be submitted for the file.

There is a concern that because this is an area variance it will run with the property. The Town would not have the authority to have it removed if it is not being used for this purpose down the road. The applicant said he is willing to comply with a condition limiting the use to this and would remove it if it was no longer needed.

He plans on this being a very nice structure that will look like the house and be landscaped accordingly.

The Board discussed the criteria and balancing the request against it. The neighbors support for the application and the information provided as to the importance of placement helps balance the criteria. Chairperson Robillard thinks the applicant has been very truthful with the application and is not looking to misrepresent the information to the Board. She is comfortable with the application and thinks it is a positive thing for the community and the applicant has indicated that if they were no longer using it he would remove it. Dan Melville is also comfortable moving forward on this tonight. Dan Melville felt that this application is another example of why the Town Attorney should be present at the meetings so they can give their opinions as to whether they can defend the action if needed. Corinne Zajac asked if this would be used as a home business for profit. The applicant said it is not going to be a business.

Board Discussion: Dennis Scibetta reported notifications were in order. Since the last meeting the request was returned by Monroe County as a matter of local determination. This is a Type II action under SEQR; no further review is required.

Public Comment: None

Public Hearing: Closed

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of Graham Sears, owner, for an area variance at 1167 West Avenue to construct a 10'x14' accessory structure in the front yard with a front setback of 39.4' granting 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 from Town Zoning Article V, subsection 165-32.E.1, Schedule 1 which states that the front setback is to be 75'. This property is currently zoned Rural Residential (RR).

In making this motion to **approve** the application using the balancing test:

- The benefit cannot be achieved by other means feasible to the applicant. The applicant provided a well written definitive letter from Timothy Collins, Observatory Astronomer, Buffalo Museum of Science, which was very specific as to why the location selected was important relative to the Earth's Ecliptic Revolution Plane and the associated images show why this location is the most feasible to the applicant.
- There will be no undesirable change in neighborhood character or to nearby properties. The applicants are going to great lengths to make this structure look similar to the home with landscaping. A letter signed by the several of the neighbors was provided in support of the application.

- The request is certainly substantial because of the setback requirement and the requirement that this structure be in the rear yard.
- There will be a physical presence and no environmental effects. The structure will have a positive appeal and image to people driving into the Village.
- The alleged difficulty is self-created. Although there is no legal bearing, the applicant has verbally volunteered that they would cease use if it is no longer needed. This will be a benefit to the community. Using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community.

Seconded by Corinne Zajac.

Motion carried to **approve**: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0

Excused 1 (Shelley)

Mrs. Sears thanked the Board for their consideration and taking the time to consider their application.

NEW BUSINESS

5. MARISSA DOUGLAS – 1042 CLARKSON PARMA TOWN LINE ROAD

The application of Marissa Douglas, owner, for an area variance at 1042 Clarkson Parma Town Line Road. The applicant is proposing to construct a 12'X24" accessory structure with side and rear setbacks of 5' and are requesting relief from Town Zoning Article V, subsection 165-2.E.1, Schedule 1 which states that the side setback shall be 10% of the lot width, which in this case is 10' and the rear setback is to be 20'. This property is currently zoned Rural Residential (RR).

Chairperson Robillard noted that this was heard last month but the Board is reopening the hearing for additional details with notifications.

Board Discussion: Dennis Scibetta reported notifications were in order, the request was returned by Monroe County as a matter of local determination. 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

A **Motion** was made by Tim Thomas to **approve** the application of Marissa Douglas, owner, for an area variance at 1042 Clarkson Parma Town Line Road. The applicant is proposing to construct a 12'x24' accessory structure with side and rear

setbacks of 5'. This grants relief from Town Zoning Article V, subsection 165-32.E.1, Schedule 1 which states that the side setback shall be 10% of the lot width, which in this case is 10' and the rear setback is to be 20'. This property is currently zoned Rural Residential (RR).

(RR). In making this motion to **approve** the application:

- The benefit cannot be achieved by other means feasible to the applicant. Upon reviewing the drawing the Building Department provided there would not be a better place in the yard for location of the shed. If located in the NE corner of the yard, it would actually be closer to the edge of the septic system than currently being proposed.
- There will be no undesirable change in the neighborhood character or to nearby properties.
- The request is not substantial because the change in the Code in 1998 kicked in the 10% guideline relative to this being a substandard lot size.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created and is predominately due to the physical placement of the leach bed system of the home. Using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community.

Seconded by Corinne Zajac.

Motion carried to **approve**: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0

Excused 1 (Shelley)

6. JAMES McAFEE AND MARYLYNN DeMARCO- 5383 RIDGE ROAD WEST

The application of James McAfee and Marylynn DeMarco, owners, for an area variance at 5383 Ridge Road West. The applicants are proposing to construct a 24'X26' garage with a front setback of 52' and are requesting relief from Town Zoning Article VI, subsection 165-40.E.1, schedule 1 which states that the front setback is to be 100'. This property is currently zoned Highway Commercial (HC).

James McAfee was in the audience to answer questions for the request. Tim Thomas asked if they were keeping the current barn. The applicant said they were. This structure would be placed behind the barn off to the right. This will allow them to park their vehicles in the garage.

Board Discussion: Dennis Scibetta reported notifications were in order, the request was returned by Monroe County as a matter of local determination. This is a Type II action under SEQR and no further review is required. There are no letters in the file.

Public Comment: None

Public Hearing: Closed

A **Motion** was made by Tim Thomas to **approve** the application of James McAfee and Marylynn DeMarco, owners, for an area variance at 5383 Ridge Road West to construct a 24'X26' garage with a front setback of 52' granting relief from Town Zoning Article VI, subsection 165-40.E.1, schedule 1 which states that the front setback is to be 100'. This property is currently zoned Highway Commercial (HC). In making this motion to approve the application using the balancing test:

- The benefit cannot be achieved by other means feasible to the applicant. The proposed location for the garage as set out is the optimal location to keep it usable on a daily basis and to keep it adjacent to the house,
- There will be no undesirable change in neighborhood character or to nearby properties.
- The request is substantial because the code calls out a 100' setback.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created due to the usability of putting the garage where proposed. Anything else would make it difficult to access. Using the balancing test, the benefit to the applicant far outweighs any detriment to the health, safety and welfare of the community.

Seconded by Dan Melville.

Motion carried to **approve**: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0

Excused 1 (Shelley)

7. STANLEY AND CINDY PALMER – 490 BURRITT ROAD

The application of Stanley and Cindy Palmer, owner, for an area variance at 490 Burritt Road. The applicants are proposing to construct a 12'X12' addition to an existing shed with a side setback of 9.7 feet and are requesting relief from Town Zoning Article V, subsection 165-32.E., schedule 1 which states that the side setback is to be 20'. This property is currently zoned Rural Residential (RR).

Cindy Palmer explained that they would like to put an addition on the north side of the existing shed. The original shed was approved in 1990. This would be used for storage of outdoor equipment to free up space in the main garage. It will be sided to match the home. They cannot add on to the south side of the shed because it would restrict access and the ability to maintain the yard and pool.

Board Discussion: Dennis Scibetta reported notifications were in order, the request was returned by Monroe County as a matter of local determination. 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

A **Motion** was made by Dan Melville to **approve** the application of Stanley and Cindy Palmer, owner, for an area variance at 490 Burritt Road to construct a 12'X12' addition to an existing shed with a side setback of 9.7 feet granting relief from Town Zoning Article V, subsection 165–32.E., schedule 1 which states that the side setback is to be 20'. This property is currently zoned Rural Residential (RR). In making this motion to **approve** the application:

- The benefit cannot be achieved by other means feasible to the applicant. The addition is onto an existing structure and there would be no other way to do this. The original approval was in 1990 before the code changed.
- There will not be an undesirable change in the neighborhood character and to nearby properties.
- The request is substantial.
- There would be no adverse physical effect but not an environmental effect.
- 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: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0
Excused 1 (Shelley)

8. ARTHUR AND PAULA FRITZ, JR. – 206 MOUL ROAD

The application of Arthur and Paula Fritz, Jr., owners, for 2 area variances at 206 Moul Road. The applicants are proposing to construct a 20'x28' accessory structure in the side yard on property that already has 3,474 sq. feet of accessory structures, which will bring the total of accessory structures on this property to 4,034 sq. feet; however, the owner will be removing 410 sq. feet from the existing structures making the final total of sq. footage 3,624. The applicants 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 from Town Zoning Article V, subsection 165–32.C.2, which limits the size of accessory structures to 1,500 sq. feet. This property is currently zoned Rural Residential (RR).

Art Fritz explained that he is going to remove the side buildings of the existing structure, keep the middle portion and add onto that section. This will be placed in the same location and at the same setback. The current building is in a state of

disrepair. He will be storing a boat, tractors, lawn equipment and other stuff that is currently stored in his garage. Prior to 1998 there was no requirement for the size of the structures on the property.

Board Discussion: Dennis Scibetta reported that notifications were in order, the request was returned by Monroe County as a matter of local determination. This is a Type II action under SEQR and no further review is required. There are no letters in the file.

Public Comment: None

Public Hearing: Closed

A **Motion** was made by Tim Thomas to **approve** the application of Arthur and Paula Fritz, Jr., owners, for 2 area variances at 206 Moul Road to construct a 20'x28' accessory structure in the side yard on property that already has 3,474 sq. feet of accessory structures, which will bring the total of accessory structures on this property to 4,034 sq. feet; however, the owner will be removing 410 sq. feet from the existing structures making the final total of sq. footage 3,624 granting 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 from Town Zoning Article V, subsection 165-32.C.2, which limits the size of accessory structures to 1,500 sq. feet. This property is currently zoned Rural Residential (RR).

The existing structures predate the current code. In making this motion to **approve** the application using the balancing test:

- The benefit cannot be achieved by other means feasible to the applicant. Effectively the applicant is replacing one of the structures with a new building and relocating the middle portion of the structure and there will be a net gain of approximately 150 sq. feet. The drawing provided shows the layout of the items to be stored.
- There will be no undesirable change in neighborhood character or to nearby properties. The new building will be a nice addition to the property versus the current structure which is in a state of disrepair and rotting.
- The request is not substantial. The net gain of 150 sq. feet. The overall square footage is not changing significantly and entire area will improve with the building as proposed,
- There will be no adverse physical or environmental effects.
- The alleged difficulty is not self-created, the buildings in existence predate the code and there is a small net gain in sq. footage. People passing by will effectively notice no change except that it will look like a new building. Per the requirement that the structure sit in the rear yard, the applicant is replacing existing buildings that predated the code. 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: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0
Excused 1 (Shelley)

9. JULIANNE AND ERIC KING – 68 COUNTRY VILLAGE LANE

The application of Julianne and Eric King, owner, for an area variance at 68 Country Village Lane. The applicants are proposing to erect a 6' fence on the property line to enclose the rear yard and are requesting relief from Town Zoning Article XVI, subsection 165-128.B.1 which limits the height of fences to 4 feet in the rear yard and subsection 165-128.B.2 which states in part that the complete enclosure of a yard in this manner shall not be permitted. This property is currently zoned High Density Residential (HD).

Eric King stated that they are getting an in-ground pool and they would feel safer having a 6' fence instead of the 4' allowed because of all of the neighborhood kids. Their lot is very small. They have a small dog and coyotes that frequent the neighborhood. Julianne King reiterated that they are looking to install a 6' fence around their entire yard to enclose a pool to maintain the safety of the neighborhood kids from accidentally drowning because their yard is so small. Along with the pool they are going to install a patio and they would like privacy from their neighbors. Their lot is one of the smallest in the subdivision and they can be seen from all of their neighbors. They stated they talked to their neighbors who said they were okay with this application.

Board Discussion: Dennis Scibetta reported notifications were in order, the request was returned by Monroe County as a matter of local determination. This is a Type II action under SEQR and no further review is required. There are no letters in the file.

Tim Thomas stated that the Board is strict on 6' fences unless it is for the express purpose of screening a swimming pool or patio. The code states that a complete enclosure of the yard shall not be permitted. He agrees that the yard is small and the pool will consume about 75% of the backyard.

Chairperson Robillard feels a 4' fence would be sufficient; the pool will have an alarm on it. The applicants feel that the code is not clear about the rules of when you can have a 6' fence and it did not make sense. The Board stated that the code is very clear, the options are a 6' fence can be placed directly around the pool or a 4' fence placed around the entire yard. The applicants are concerned about a child's ability to climb a 4' fence. The Board explained that when looking

at the criteria balancing of that with the application is unfavorable. The Board cannot approve the application if it does not meet the criteria. The code is very clear that a 6' fence shall not enclose the yard completely and this is a self-created situation.

Public Comment: None

Public Hearing: Closed

Because the code reads "the complete enclosure shall not" and with the answers to the balancing test all unfavorable there is really no way for the Board to approve this. Mrs. King felt that 4' fence is not good enough and by enclosing just the pool the whole backyard will be just pool. They are putting in the biggest pool possible because they do not think they can do anything else back there. Mrs. King feels that everyone with a pool should have a 6' fence. Tim Thomas stated the New York State building code says that 4' is acceptable to enclose a pool.

After much discussion, deliberation and using the balancing test which the Board is charged with applying, a **Motion** was made by Tim Thomas to **deny** the application of Julianne and Eric King, owner, for an area variance at 68 Country Village Lane. The applicants are proposing to erect a 6' fence on the property line to enclose the rear yard and are requesting relief from Town Zoning Article XVI, subsection 165-128.B.1 which limits the height of fences to 4 feet in the rear yard and subsection 165-128.B.2 which states in part that the complete enclosure of a yard in this manner shall not be permitted. This property is currently zoned High Density Residential (HD).

In making this motion to **deny**:

- The benefit can be achieved by other means feasible to the applicant. The applicant could erect a 6' fence directly around the pool area which is allowed. There is also the option of a 4' fence to enclose the entire yard or the applicants could get a smaller pool.
- There will be no undesirable change in neighborhood character or to nearby properties. A 6' fence is out of character for the property. The Town has had similar applications over the years that have been denied for 6' fences. This Board is very strict on 6' fences to not create precedent setting cases.
- The request is substantial. The code specifically prohibits the enclosure of an entire rear yard with a 6' fence. This would be the only 6' fence in the entire area.
- There would be adverse physical effects with regards to the site line. There would not be any adverse environmental effects.

- The alleged difficulty is certainly self-created and the need for the fence is driven by the applicants wanting the pool and patio. Using the balancing test, the benefit to the applicant does not outweigh any detriment to the health, safety and welfare of the community. There are other means feasible to the applicant and the code is very clear that the “complete enclosure of a property shall not be permitted” not “may not”.

Seconded by Corinne Zajac.

Motion carried to **deny**: Aye 3 (Robillard, Thomas, Zajac) Nay 1 (Melville) Excused 1 (Shelley)

Chairperson Robillard polled the Board on their reason to **deny**:

Tim Thomas: My motion stands for my reason to deny.

Corinne Zajac: She concurs with the motion. The difficulty is self-created and there are other opportunities available to the applicants.

Chairperson Robillard: The denial is in alignment with the criteria used for an area variance. The Zoning Board of Appeals considered the five criteria of the balancing test and each of them a denial was warranted in this request,

10. DAVID AND PATRICIA EALY – 33 WEBSTER ROAD

The application of David and Patricia Ealy, owners, for an area variance at 33 Webster Road. The applicants are proposing to construct a 10’x12’ shed with a rear setback of 5’ and are requesting relief from Town Zoning Article V, subsection 165-33.E.1, schedule 1 which states that the rear setback is to be 10’. This property is currently zoned High Density Residential (HD).

David Ealy said he is looking to place the structure where he located on the map because it will be less visible and not visible from the road. The maintenance in the area will be less if it is put where they would like it located. It also will sit closer to the pool for easier storage of pool equipment. This would be in the tree line of the property. He will be storing lawn and garden equipment, pool supplies and furniture.

Board Discussion: Dennis Scibetta reported notifications were in order, the request was returned by Monroe County as a matter of local determination. This is a Type II action under SEQRA and no further review is required. There are no letters in the file.

Public Comment: None

Public Hearing: Closed

There was discussion about balancing the criteria against the application. Aesthetically this will look better but the applicant could bring it into compliance.

Chairperson Robillard felt that using all of the criteria he will meet four of the five of them.

After discussion, a **Motion** was made by Tim Thomas to **approve** the application of David and Patricia Ealy, owners, for an area variance at 33 Webster Road to construct a 10'x12' shed with a side setback of 5' granting relief from Town Zoning Article V, subsection 165-33.E.1, schedule 1 which states that the rear setback is to be 10'. This property is currently zoned High Density Residential (HD). In making this motion to approve the area variance the Board considered the balancing test:

- The benefit cannot be achieved by other means feasible to the applicant. Tucking the shed in the tree line and closer to the property line will help to minimize view of the shed and of the over growth in that corner. It will minimize the maintenance of the overgrowth and will make it looker nicer for both the applicant and the resident to the south.
- There will be no undesirable change in neighborhood character or to nearby properties. This will not be seen from the road.
- The request is not substantial.
- There will be no adverse physical or environmental effects.
- The alleged difficulty is somewhat 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**: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0
Excused 1 (Shelley)

SPECIAL PERMIT RENEWALS

11. JEFFREY DERUYTER – 676 OGDEN PARMA TOWN LINE ROAD

Application was received from Jean and Jeffrey DeRuyter, owners, for renewal of a Special Permit at 676 Ogden Parma Town Line Road for an accessory apartment used as an in-law residence in accordance with Town Zoning Article 9, subsection 165-76. This property is currently zoned Medium Density Residential (MD) which allows this use with a Special Permit.

A Property Inspection completed on August 13, 2020 by Arthur J. Fritz, ZEO, and a letter was provided to the Board regarding the conditions of the Special Permit. At the time of the inspection, there were no violations of the Special Permit conditions. The Special Permit has not changed. The occupants are still Jean and Jeffrey DeRuyter. There are no complaints on file.

Following discussion, A **Motion** was made by Tim Thomas to **approve** the application of Jean and Jeffrey DeRuyter, owners, for renewal of a Special Permit at 676 Ogden Parma Town Line Road for an accessory apartment in accordance with Town Zoning Article 9, subsection 165-76. The accessory apartment will be occupied by Jean and Jeffrey DeRuyter and will be renewable January 2022. This property is currently zoned Medium Density Residential (MD) which allows this use with a Special Permit.

Seconded by Corinne Zajac.

Motion carried to approve: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0
Excused 1 (Shelley)

12. GARY RITZEL – 1777 MANITOU ROAD

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

A Property Inspection completed on August 13, 2020 by Arthur J. Fritz, ZEO, and a letter was provided to the Board regarding the conditions of the Special Permit. At the time of the inspection, there were no violations of the Special Permit conditions. The Special Permit has not changed and the dog licenses are current. There are no complaints on file.

Following discussion, A **Motion** was made by Dan Melville to **approve** the renewal of a Special Permit at 1777 Manitou Road to allow the applicant to keep 4 dogs on the 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 shall expire in November 2021.

Seconded by Corinne Zajac.

Motion carried to approve: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0
Excused 1 (Shelley)

OTHER DISCUSSION

There was discussion about thru lots and permits issued in Wilder Estates (Johncarlo Ct) for decks, sheds, pools and fences. A thru lot was not defined until the code was updated in 1998 after approval for the subdivision off Wilder Road. The frontages were approved at that time and none of the houses can front on Wilder Road. He is seeking a legal opinion from the Town Attorney about issuing

the permits without the resident needing to come to the Zoning Board. The Zoning Board felt that if the attorney is okay with that they would be too.

420 Moul Road – Special Permit – Mr. Fritz said that the resident received a Special Permit to operate a Home Business at this address and has not come in to renew. He wanted to know what the Board would like him to do regarding this Special Permit which has not been renewed and he is having a hard time getting the applicant to respond. Due to the lateness of this renewal the Board would like the applicant to reapply for a Special Permit and come back to the Board with up to date information. The Board has to stick to the dates to avoid Special Permits operating after they have expired as has happened in the past.

MINUTES OF JULY 16, 2020

The ZBOA minutes of July 16, 2020 were reviewed. **Motion** was made by Corinne Zajac to approve the July 16, 2020 minutes as presented. **Seconded** by Tim Thomas.

Motion carried to approve: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0
Excused 1 (Shelley)

ADJOURNMENT

There being no further business, a **Motion** was made by Dan Melville, **seconded** by Corinne Zajac to adjourn the meeting at 10:50 p.m.

Motion carried to approve: Aye 4 (Melville, Robillard, Thomas, Zajac) Nay 0
Excused 1 (Shelley)

Respectfully submitted,

Carrie Fracassi
Recording Secretary