

**STATE OF NEW YORK
COUNTY OF NIAGARA**

**ZONING BOARD OF APPEALS
TOWN OF PORTER**

The Regular Meeting of the Town of Porter Zoning Board of Appeals was held on Thursday, July 26, 2007 at 7:30 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairman William H. Tower, Member Joe Fleckenstein, Member Duffy Johnston, Member William Leggett, Member Irene Myers, Attorney Michael Dowd and Building Inspector Roy Rogers.

ABSENT: Member Peter Jeffery

Chairman Tower called the meeting to order at 7:30 pm. Chairman Tower asked if there were any additions or deletions to the previous month's minutes. William Leggett made a motion to accept the minutes as written and was seconded by Duffy Johnston. Chairman Tower called for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes; and Chairman Tower-abstain. **Motion Carried.**

Chairman Tower read the following:

NOTICE IS HEREBY GIVEN THAT, pursuant to Section 267 of the Town Law and Local Law No. 1 of 1968, as amended, of the Town of Porter, Niagara County, New York, a PUBLIC HEARING will be held by the Zoning Board of Appeals at the Town Offices, 3265 Creek Road, Youngstown, NY on July 26, 2007 at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of Matthew Leardini, 364 Howard Drive, Youngstown, NY 14174 A variance is requested under Sections 503.3A, 705 and 710 to construct a six (6') foot in height fence. Section 503.3 states "Maximum Height Residential Districts four (4') feet. Thus, a variance of two feet is requested. Property is located in an ARR-100 Zoned District approximately ½ mile south of the Village of Youngstown between Lower River Road and Brentwood Drive in said Town.

It was noted that Matthew Leardini was present. Chairman Tower asked if anyone from the audience wished to speak. None. Duffy Johnston made a motion and was seconded by Irene Myers to close the public part of the hearing. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower asked if the fence was just for the back yard. Matthew Leardini stated there is nothing for the front. We are presently going to do a white vinyl fence. Chairman Tower stated it has to be two feet off the property line with the good side facing the neighbor. Duffy Johnston asked if Mr. Leardini was going to stay on the inside of his neighbor's wooden fence and he replied "yes". He stated it is a wooden

fence not a privacy fence, and we are probably going to remove it. The fence is for additional privacy and the dog.

Irene Myers read the Planning Board recommendations:

Matthew Leardini, 364 Howard Drive, Youngstown submitted a use variance request to build a six foot (6) foot fence for privacy and to enclose his dogs. The Planning Board recommends that the Zoning Board of Appeals approve this request.

Chairman Tower asked if there was any further discussion. William Leggett made a motion to approve this six foot fence, two feet off the property line with the good side facing the neighbor and was seconded by Duffy Johnston. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes; and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following:

Application of Vernon and Mary Wallace, 1709 Harrison Lane, Youngstown, NY 14174. Under Sections 401.6, 705 & 710, A Variance is requested to erect a 20' x 30' pole barn. Under Section 401.6 maximum land coverage per buildings permitted 10%. Property is located on the East Side of Harrison Lane in an ARR-100 Zoned District between Murphy's Corner Road and Porter Center Road off of Lake Road in said Town.

Chairman Tower stated he was going to excuse himself because he has been accused of having a prejudged opinion. He was turning the meeting over to Vice Chairman Duffy Johnston and he would be leaving the room.

Vice Chairman Johnston asked if anyone from the audience wished to speak. None. William Leggett made a motion and was seconded by Joe Fleckenstein to close the public part of the hearing. Vice Chairman Duffy Johnston asked for a Roll Call Vote: Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes. All in Favor.

Attorney John Ottaviano approached the Board. He stated that Wallace's purchased the cottage in 1996, combined three lots and restored it to a nice residential home with no sufficient garage storage space. There are three sheds that they are proposing to tear down. Originally the plan was for a 35' x 40' barn. They did have a site plan, did have calculations from surveys. They were told a 35' x 40' barn was too much, and it would have to be something smaller. They are now asking for a 20' x 30' garage and he presented the drawing to the board.

Irene Myers asked "Is this the exact building that you are going to build on this print?" You will now be 23% versus 10%. The new site plan is 20' x 30'. Irene Myers asked are there three sheds plus a garage. Mary Wallace stated "no" just three sheds. Irene Myers asked Attorney Ottaviano if he has been down to look at it beside the picture. Attorney Ottaviano replied "no". Duffy Johnston asked Roy Rogers is the 23% calculation correct. Roy Rogers replied the calculation is correct. Irene Myers asked if the pool is in the

calculation. Roy Rogers stated he is not sure if the pool is covered. Attorney Dowd stated I am not sure if the pool is covered. Karen Schmidt stated that an above ground pool she didn't think was covered. Irene Myers stated that the original application was submitted as a pole barn and now coming back as a garage. Attorney Dowd stated I think the intention is a garage – an accessory structure.

Duffy Johnston stated that he talked with Peter Jeffery who is a contractor. There are roof trusses 30' x 40'. Duffy asked Joe Fleckenstein if you can use 30' x 40" trusses on a 30' x 20' building. Attorney Dowd stated 30' wide by 20' depth. As I understand, it is going to be a permit for a 30' x 20' with very strong roof or some extra rafters. You can't put a 30' rafter on a 20' roof. Irene Myers stated that you cannot incorporate those trusses into this building. Roy Rogers stated that before we do a building permit, we will get the actual plans. Attorney Dowd stated that the building cannot be more than 30' x 20'. He also stated the rafters are 30' wide. Irene Myers stated this is an incorrect print. Attorney Dowd stated that Mr. Rogers will have to make sure the square footage is exact on the blueprint. Attorney Dowd stated even if there is an overhang, I don't think it matters. You can take the pictures out of the application. Duffy Johnston stated it is going to be a 30' x 20' building. Irene Myers stated I don't want it to be manipulated. Duffy Johnston stated it is 23% over. Is everybody comfortable? William Leggett asked if the three building will be coming down. Joe Fleckenstein asked how many properties are over 20 – 25% in the Town. Attorney Dowd stated in the Town, I don't know. Irene Myers stated you have a beautiful home. I can't even walk back there to look. There is just stuff all over. I am in agreement, but the stuff has to be cleaned up. Attorney Dowd stated there are structures in the code. If there is stuff outside and the yard is not maintained then there is provisions in the code. There will be less of a problem with a garage. You can put a condition in the permit. Attorney Dowd stated the lot size and the whole neighborhood is like that. Irene Myers stated that there is no use for the shed but there is just stuff. You have come a long way from the home. Irene Myers asked Mary Wallace specifically is all the stuff that is outside will be housed in the building? Mary Wallace said everything will be in the garage. Attorney Dowd stated that the code does prohibit from parking outside – trailers and boats. There are specific conditions in the code regarding storing outside. I don't think they are required to keep the cars in the building.

Vice Chairman Duffy Johnston read the Planning Board recommendations:

“Request of Vernon and Mary Wallace, 1709 Harrison Lane, Youngstown for an area variance to erect a 20' x 30' pole barn on their property. Originally, this request was for a larger building. An Article 78 has been riled by Mr. & Mrs. Wallace regarding this request. The Zoning Board of Appeals has already given their approval for a 20' x 30' building with some conditions. The conditions include the removal of some buildings on the property. There are three building that need to be torn down in order for the approval to be final. Jipp Ortiz made a motion to approve this request for the construction of the 20' x 30' pole barn as long as the three sheds are removed within sixty (60) days after the completion of the garage. Anthony Collard seconded the motion. All in favor; motion unanimously carried.”

Attorney Dowd noted that this barn has never been approved by the Zoning Board. When I explained it to them that the Court had made a comment about this case. The majority of this Board would have considered a significantly smaller building.

Duffy Johnston stated we are talking about 23%. Joe Fleckenstein asked “Are there any other properties over that percentage?” Roy Rogers stated “yes”. Joe Fleckenstein stated that when they applied for the building permit they were told at that time that they were over when they built the house. Roy Rogers stated when they did the addition, they were over. I explained to Mrs. Wallace that they would need a variance to build a pole barn. Joe Fleckenstein stated I am talking about 23%. I don’t want to set precedence. Duffy Johnston stated the lot size was grandfathered. Attorney Dowd stated these folks inherited the house. It is not self imposed. It was his grandmothers. Duffy Johnston stated are you not setting precedence. Mr. Wallace inherited this parcel of land which allows him to build something nicer. Irene Myers stated if you buy a home on Curtis Avenue in Town and you bring in goats and chickens. You either have to sell the home or get rid of the goats and chickens. Irene Myers stated to Duffy Johnston – I can’t go with you on that. William Leggett asked if you can get the name of those that are over. Roy Rogers stated that from his limited experience, some are lake front lots – some lots with oversized homes. I have only been doing this a year. There are many over the 20% limit. Karen Schmidt stated that the 20 homes in Fort Niagara Beach are over.

Irene Myers asked Mrs. Wallace when you propose to start. Mary Wallace replied as soon as we can. Irene Myers stated that I don’t have a problem with this being constructed with a maximum height of 15’. I am not in agreement with the 60 days to remove the sheds. I would like to see 30 days from the completion period. Duffy Johnston asked if Mr. & Mrs. Wallace building this. Mary Wallace replied yes with a couple of friends. Duffy Johnston stated it is quite a project. Attorney Dowd stated 30 days from completion – not until next spring. Joe Fleckenstein stated he thought a date should be put on it. Duffy Johnston stated you will be able to keep track of it. Attorney Dowd stated there is already a time limit on the building permit. Roy Rogers stated we are doing a building permit. I have a certificate from the manufacturer from the trusses. I will go down to take a look at it when it is finished. Thirty days from Date of Occupancy.

Irene Myers made a motion to recommend construction of a 30’ x 20’ pole barn, 14’ in height for Vernon and Mary Wallace at 1709 Harrison Lane as shown on the plan as presented and also a blue print that will show the correct drawing of the proposed barn. Thirty days after completion of the proposed pole barn per the Building Inspector all shed on the property are to be removed and all of the things that Mrs. Wallace stated will be housed in the garage. That is the purpose of the garage and was seconded by William Leggett. Vice Chairman Johnston asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes and Joe Fleckenstein-yes. All in Favor. Motion Carried.

Irene Myers also stated to Mrs. Wallace, who is present, that she is fully aware she is over the maximum lot allowance for any further type of construction that this was noted for the record.

Chairman Tower returned at 8:10 pm.

Chairman Tower read the following:

Application of Noco Energy Group, 13613 Main Road, Akron, NY. Under Sections 402.3(c), 704.1 and 705.1 to renew their Special Permit dated July 22, 2002 to store up to 20, 000 gallons of propane at 2977 Ransomville Road. Property is located on the East side of Ransomville Road in an ARR-100 Zoned District approximately 500 feet north of the intersection of Youngstown-Wilson and Ransomville Roads in said town.

A representative was present from Noco, Chip Olsen. Chairman Tower asked if anyone wished to speak. None. Duffy Johnston made a motion and was seconded by Irene Myers to close the public part of the hearing. All in favor. Motion Carried.

Chairman Tower stated that ten years was permissible. William Leggett asked if they had any changes from the original permit. Chairman Tower stated that there were no complaints. It was noted that Noco has one dedicated driver.

Chairman Tower read the following Planning Board recommendations:'

NOCO Energy Corp, 13613 Main Road, Akron, NY is requesting the renewal of a special use permit to store propane at 2977 Ransomville Road. David Kruger, representing NOCO Energy Corp. stated that the storage of propane at the site is for rural delivery to farms, businesses and homes. This is a remote site. The Planning Board recommends that the Zoning Board of Appeals approve this request for a special use permit for ten (10) years.

Duffy Johnston made a motion to approve this application for ten years and that all the terms and conditions are met and were seconded by Irene Myers. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes and Chairman Tower-yes. All in Favor. Motion carried.

Chairman Tower read the following:

Application of Dawn Walker, 740 Blairville Road, Youngstown, NY. Under Sections 401.3DD, 705 and 710.01, A Special Permit is requested to dig a recreational pond at 1495 Youngstown-Lockport Road. Property is located on the North side of Youngstown-Lockport Road in an ARR-100 Zoned District between Lutts and Porter Center Roads in said Town.

It was noted that Dawn Walker was present. Chairman Tower read the Planning Board recommendations:

Dawn Walker came before the Planning Board to request their approval to dig a recreational pond at her residence at 1495 Youngstown-Lockport Road. The purpose for the pond is to use the dirt to backfill and grade her house. Chairman Spira read a letter from the Niagara County Soil and Water Conservation Department regarding their pond site evaluation. Based upon the mapped soils at the property, the proposed site should provide suitable conditions for a functional pond the approximate size of the pond is one acre. The home owners will follow everything in the local law regarding recreational ponds. No soil will be removed from the site. The Planning Board recommends approval of this request for a recreational pond.

Duffy Johnston made a motion and was seconded by William Leggett to close the public part of the hearing. All in favor. Motion Carried.

Chairman Tower stated this pond has gotten engineering standards and all the fees have been paid. It is on 54 acres.

Irene Myers asked if they were going to use all the soil to back fill on their residence. Joe Fleckenstein asked if there was any reason why we would decline a recreational pond. Attorney Dowd stated as long as it complies what our code requires. As long as they meet the minimum standards. William Leggett asked how far from the house. 400 to 500' away. Joe Fleckenstein asked do you now about the green space and keeping it up. The Wallace's asked how long the permit was good for. Chairman Tower stated that the permit will be good for one year. They questioned about only building half a pond this year depending on time and money. He stated he should be able to finish next year. Attorney Dowd stated that the code call for designs approved by Soil & Water. The Board is limited to issue a permit by the recommendations of Soil & Water. Attorney Dowd stated one year to make a full acre. Attorney Dowd stated if you decide to sell you house the permit should indicate that the house and pond must be sold as a single 10 acre parcel.

Duffy Johnston made the following recommendation and was seconded by Irene Myers to approve the application of Dawn S. Walker to build a pond approximately 200 feet by 200 feet, which equates to a surface area of approximately 1.0 acre. The pond will be excavated to a depth of 12-14 feet utilizing a 3:1 side slopes. If the house was subdivided from the 54 acres, the house would have to be sold with the pond and 10 acres of land as one parcel. If it was to be divided less than 10 acres the pond would have to be filled in. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes and Chairman Tower-yes. All in favor. Motion Carried.

Chairman Tower read the following:

Application of William Wolf, 439 Old Lake Road, Youngstown, NY. Under Sections 401.6, 705 & 710, A Variance is required to erect a 22' x 20' garage. Under Section 401.6, maximum land coverage by buildings permitted 10%. Property is located on the

North side of Old Lake Road in an ARR-100 Zoned District between Fort Niagara Beach and Creek Road in said Town.

A relative representing Mr. Wolf was present. Chairman Tower read Planning Board recommendations: William Wolf, 439 Old Lake Road, Youngstown, has submitted a request for an area variance in order to build a garage (22' x20") on his property. His lot is 6,000 square feet which is substandard. Most of the residents of the area are over the allowable limit of lot coverage already. The Planning Board recommends that the Zoning Board of Appeals approve this request for a garage.

Chairman Tower stated that he has been down at 439 Old Lake Road and it should be approved. Duffy Johnston commented it looks pretty nice. What is the amount? Attorney Dowd replied 27.8% Duffy Johnston stated that they are just squaring it off. Chairman Tower stated it will be fine when it is done.

Duffy Johnston made a motion to close the public part of the hearing and was seconded by Irene Myers. All in Favor. Motion Carried.

Chairman Tower stated it is a visible project.

Joe Fleckenstein made a motion and was seconded by Duffy Johnston to approve the application of William Wolf. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. All in favor. Motion Carried.

Irene Myers made a motion to close the meeting and was seconded Duffy Johnston. The meeting was adjourned at 8:40 pm. The next regular meeting will be held on Thursday, August 23, 2007.

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals