

**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, April 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 Peter Jeffery, Member Duffy Johnston, Member William Leggett, Member Irene Myers, and Attorney Michael Dowd

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. Joe Fleckenstein made a motion to accept the minutes as written and was seconded by Irene Myers. Chairman Tower called 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:

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 April 26, 2007 at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

APPLICATION OF KEITH SHAW, 1434 Lake Road, Youngstown, NY Under Sections 401.3, 705 and 710 a Special Permit is required to operate a repair garage for agriculture equipment and lawn mower repair. The property is located in an ARR-100 Zoned District on the South side of Lake Road between Diez and Porter Center Roads in said Town.

It was noted that Keith Shaw was present.

Chairman Tower asked if anyone from the audience wished to speak. None. Duffy Johnston made a motion to close the public part of the hearing and was seconded by William Leggett. 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 to close the public part of the hearing. Chairman Tower read the attached letter from Roy Rogers regarding the application of Keith Shaw (Attachment A).

William Leggett asked if Mr. Shaw was working by himself. Mr. Shaw replied "yes". Duffy Johnston questioned the days and hours of operation and number of employees. Mr. Shaw replied no employees at this time, six days a week (Monday-Saturday from 7:00 am to 7:00 pm.) Duffy Johnston made the statement that there was plenty of room in the back. William Leggett stated that it is neat and clean and plenty of acreage. Attorney Dowd stated that whatever conditions you think are appropriate for the neighborhood should be part of the permit. Chairman Tower stated that there are no problems yet. Duffy Johnston stated that there is nobody on the West side. Irene Myers asked if there will be stockpiling. Keith Shaw stated I do stockpile spark plugs. Irene Myers stated she meant farm equipment and Mr. Shaw stated "no". Duffy Johnston asked if there was going to be a sign. Mr. Shaw stated it is by word of mouth. Duffy Johnston asked about a sign that maybe later on Mr. Shaw would want a sign. Attorney Dowd stated that under ARR-100 you are limited to the size of a sign. If Mr. Shaw complies with what is permitted, he can see the Building Inspector down the road about the sign.

Chairman Tower stated that the permit could possibly be three to five years because of the expense of the shop. Duffy Johnson made a motion to approve the permit for Keith Shaw at 1434 Lake Road with the hours of operation from 7:00 am to 7:00 pm; six days a week (Monday through Saturday); length of time: three (3) years; any storage has to be screened from public view and was seconded by William Leggett. 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

Member Peter Jeffery arrived at the meeting.

Chairman Tower stated that the Board tabled the application of David Erway, 4202 Willow Road, Wilson, NY for a Special Permit to build a Convenience Store and Gas Station. Chairman Tower stated that we have everything from Mr. Erway. Chairman Tower stated that everything is approved by the Planning Board.

Attorney Dowd stated that Mr. Erway has completed the site plan, and Niagara County Planning Board has left it to this Board's discretion. This Board has to issue the special permit for the hours of operation, etc. Our Planning Board has final site plan approval. This Board's responsibility is the issuance of a special permit to operate the facility. The layout is done by the Planning Board. The tanks are subject to DEC permits. Lighting has been addressed by the Planning Board. We need to talk about hours of operation, and employee parking. It is a permitted use and the site plan has been approved.

Joe Fleckenstein asked about 24 hours a day. Mr. Erway stated if Tim Horton's came it maybe 5:00 am instead of 6:00 am. Usually a kiosk rents the site. Any other business

going in? Dave Erway stated nothing but our convenience store. Irene Myers stated she would suggest 24 hours instead of coming back here before the Board. Dave Erway stated it could possible be 24 hours within the next five years. If there is more traffic, more business, it could be open more hours. Irene Myers stated I would rather see you get it right now. Joe Fleckenstein questioned parking. Attorney Dowd stated nothing in the site plan required a variance from this Board. Mr. Erway has to maintain the restrictions set forth in the site plan. Chairman Tower questioned the gas tanks. Joe Fleckenstein stated that we are talking about the number of years for the permit – 10 years. He asked Mr. Erway how long have you been in the store now? I was just wondering if we should go more. Chairman Tower stated it is a multi-million dollar project. I would like to make it longer than ten years. Attorney Dowd stated that there should be some reasonable limit based on track record. Joe Fleckenstein question if Mr. Erway decided to sell the franchise. Attorney Dowd stated that the operator of the business is the corporation. The permit would be given to the corporation. In the event the corporation is sold, then that person would have to come in. Chairman Tower asked if there was any further discussion.

Joe Fleckenstein made a motion for the Application of David Erway to build a Convenience Store and Gas Station with the following: hours of operation from 4:00 am to 1:00 am; must follow site plan requirement as specified by the Town Planning Board; all necessary permits as required by the DEC for the maintenance of petroleum storage and sales; the hours of operation seven days a week; obtain all the necessary permits that are required by the State and County; and number of years: 20 years and was seconded by Duffy Johnston. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes; and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower asked if there was anything else from the audience. The question was raised regarding the Canadian developer. Rumor has it that they are back (property on 18F between the State Park and Fort Niagara Beach). Chairman Tower stated it belongs to Larry Elia and he is putting up a private resident.

Attorney Dowd stated that he has to talk to the Board in Executive Session. The Board left for Executive Session and 8:10 pm and returned at 8:45 pm. Joe Fleckenstein made the following resolution: “To reject the petitioner’s offer to compromise settlement under the Article 78 proceeding to allow the petitioner to go forward on a regarding for a small building” and was seconded by Duffy Johnston. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes and Chairman Tower-abstain. Motion Carried.

Duffy Johnston made a motion to close the meeting and was seconded Joe Fleckenstein. The meeting was adjourned at 8:50 pm. The next regular meeting will be held on Thursday, May 24, 2007.

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals