

**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, December 14, 2006 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, Attorney Dowd; and Building Inspector, Roy Rogers.

Chairman Tower stated that before we start tonight's meeting that we have a moment of silence for Arthur King, who was on the Board for 34 years, and who passed away this November.

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 Joe Fleckenstein. 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 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 December 14, 2006 at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of Elaine Bell, 1650 Braley Road, Youngstown, NY 14174. To renew her special permit dated October 25, 2001 to operate an animal boarding and grooming facility known as "Grandpaws Place" at 1650 Braley Road. The property is located on the South Side of Braley Road between Lutts and Porter Center Roads in an ARR-100 Zoned District in said Town.

It was noted that there was a representative from Grandpaws Place. Chairman Tower asked if anyone in the audience wished to speak. None. Duffy Johnston made a motion to close the public part of the hearing and was seconded by Irene Myers.

It was noted that Grandpaws is a twenty-four hour operation. Chairman Tower stated that there have been no complaints on this application. He also stated that his sister is the closest neighbor. He asked the Board how they would feel about a permit for ten years. It is an upscale facility.

Attorney Dowd stated the Elaine Bell has formed a corporation. If the business is run as a corporation, the permit should so state. You can amend the petition to name the corporation. It is the same person but under the name of the corporation "Grandpaws Place Inc." If the corporation is sold, whoever purchases the stock of the corporation would come back to the Board for a new name. Technically, they could sell the name of the corporation, and the new owner would have to come before the Board.

Joe Fleckenstein made a motion to extend the application as presented for ten years with the same hours of operation 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 read the following:

Application of Robert Slaven, Jr., 970 Lower River Road, Youngstown, NY 14174.

Under Section 401.4 a variance is requested from the minimum lot area requirement of 20,000 sq feet to 15,000 sq feet to construct 13 single family homes on Tax Map 45.00-1-2.111. Property is located on the South Side of Lake Road in an ARR-100 Zoned District between the Robert Moses Parkway and State Route 18F in said Town.

Mr. Slaven and Mr. Candella were both present. Chairman Tower stated that we don't have anything from the Planning Board. You have to subdivide the property and go back before the Planning Board first. Attorney Dowd stated that you had originally wanted a number of apartment units that exceeded the ARR limits. You are now asking for 13 homes for sale. You are going to need a variance from 20,000 to 15,000 sq ft. I think the Planning Board will give you a fair shake. You will need the variance. You have to go back to the Planning Board with some detailed drawing for a site plan. If this Board grants a variance, based on this recommendation, the Planning Board will approve a subdivision. This Board can't do anything until you go back to the Planning Board. Talk to the Building Inspector and maybe meet with Mr. Britten. The next meeting of the Planning Board is January 4, 2007. You could be at our January meeting as long as the Planning Board has enough information. You don't need another public hearing notice.

Peter Jeffery made a motion to table this application for 30 days and was seconded by Irene Myers. Mr. Candella was asked if he approved the additional time so that we could extend the application. Mr. Candella stated that we had his approval. Chairman Tower

asked for a Roll Call Vote. 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 to Table for 30 days.

Attorney Dowd stated to Mr. Candella that he should meet with the Building Inspector ahead of time to make sure that he has enough information for the Planning Board. Make sure you talk with the Building Inspector about Section 561.

Chairman Tower stated that before we could go any further tonight he stated that Mr. Vernon Wallace was turned down a couple of months ago for a pole barn on a substandard lot that was 22% over. It was noted that Mr. & Mrs. Wallace were present.

Attorney Dowd spoke that Attorney John Ottaviano is the attorney for the applicants. I told him tonight's meeting would not be a public hearing. The procedure under Section 267 of the Town Law states if someone comes in here with a new application for an administrative procedure such as this, it could be considered a request for a new rehearing. One member on the Board has to make a motion to permit a hearing, and it has to be approved unanimously. If you, deem as the Board, that there has been a substantial change from the original plan, that would justify a rehearing. At the end of Mr. Ottaviano's presentation, someone can make a motion to rehear the application and you have to have a unanimous approval of the Board. Then, their only recourse would be to challenge under Article 78.

Mr. Ottaviano approached the Board. He stated that is was his understanding that the original application was for a 35' x 40' pole barn now the application is for a 30' x 30' pole barn. He also stated that Planning Board indicated that there was insufficient information. Mr. Tabiano would like to present additional information. Mr. Tabiano presented drawings to the Board. He indicated that there are five elements that need to be addressed. It is a balancing test. If you don't make one or two, the Board has to balance with three out of five. It is creative.

. Undesirable change. Architectural drawings were presented. Pictures were also presented on neighbor's barns/garages. 1719 Harrison Lane; 1707 Harrison Lane and 1737 Harrison Lane. What the Wallace's are planning on doing is taking down a bunch of little garages, and you will have a nice home with addition. More pictures were presented.

. Adverse Effect – Presented letter from John White at 1711 Harrison Lane and Mark Orsi at 1709 Harrison Lane. Chairman Tower stated that some places are on a one acre lot.

Duffy Johnston stated that a pole barn went from a 35' x 40' to a 30' x 32'. Joe Fleckenstein asked if the three sheds were coming down and the Wallace's replied "yes".

Mr. Ottaviano stated that according to his clients the house had a cottage on it and they are trying to work with what they have to try to enhance the neighborhood. William Leggett stated that three lots were combined. Chairman Tower stated that 25% over the lot coverage as it stands right now.

Irene Myers stated that they were three parcels put together.

Attorney Dowd tried to clarify of what happened. Combined the two parcels because they wanted to put an addition on the house. The addition was slightly over the permitted area. At that time, an application was filed to put the three lots together and they would have the same house which was already over the square footage and take building down.

William Leggett asked, "When they combined the three lots and put the addition on, did they come before the Board?" Attorney Dowd stated it was judgment call by the Building Inspector. It is the subsequent structure that is putting them over. Peter Jeffery stated that the lot is bigger. The existing house and three sheds is 3,430 sq ft. If you take down the sheds and put up a 30' x 30' pole barn it is 3,160 sq ft. It is more than doubling.

Chairman Tower asked how the Board feels. Duffy Johnston asked if anybody from the Board has been down to the location. Chairman Tower and Joe Fleckenstein stated that they were there. Duffy stated that he thinks that Wallace's want it to look nicer. They are at a standstill. If we grant this, it would add to the area. They can beautify it. They have to have storage for the boat. The sheds will have to be taken down. I think beautification is what we are looking at. Joe Fleckenstein agreed. I think that part of the problem is having a substandard lot, building whatever you want on it and getting whatever you want. I agree, I would like this Town cleaned up but I don't want to set a precedent on lot coverage. The Planning Board turned this down and this Board turned this down and we all agreed. Let them fill out an Article 78. They Knew the problem from day one. It is going to create a problem for this Board.

Mr. Ottaviano stated that they have three out of five elements. It should be a case by case basis.

Attorney Dowd stated that when precedent is raised you have to rationalize why you are doing something different. In order to move it today, you need to have someone make a motion for a rehearing with unanimous consent by the Board. I think Mr. Ottaviano presented his case very well. The only way for a rehearing is if you all agree.

Joe Fleckenstein stated to the Wallace's that he commends them on what they are doing with the pieces of property, but it scares me of what this could create. Most of the lake front properties were shacks and shambles. You went into this with your eyes open.

Attorney Dowd stated the zoning regulations are unique in that you can have a rehearing. You could asked them to scale back but somebody on this Board has to make a motion to permit a rehearing with unanimous consent. If we have a rehearing, it starts from square one over again, and it would go through the whole process again.

Peter Jeffery stated it is already 1838 sq feet over the allowed lot coverage. We all had said it is quite substantial. Would the Board even consider it is they built a small garage?

Mr. Ottaviano stated from a precedent standpoint, they might come in with the same. It would be to the Town's benefit to allow a pole barn. Joe Fleckenstein stated that they are other things that create problems. I would like to make a motion to rehear this and the reason I am saying this is first of all this Town has created a problem. I think there should have been more of a handle on this building permit. There should be more conversations with the Building Officer and the Zoning Board and people are made aware they shouldn't come to the Zoning Board for anything else. I don't disagree about the garage. Irene Myers asked when the Wallace's originally came in for the addition they also asked for a pole barn permit. Roy Rogers stated the addition was putting them over the lot size and I allowed it, but I told them they would have to come before the Board for a pole barn. Joe Fleckenstein stated the only reason I am saying this is I would like to see the Town cleaned up. Irene Myers stated her thoughts on this are that I see you give someone a variance to put up a barn and it becomes full, and they need something bigger and if we give them something bigger they will ask for more.

Chairman Tower stated let them file an Article 78 and let the Court handle it. Mr. Ottaviano stated that you can put a condition on the variance that there will be no out door storage. Joe Fleckenstein stated if they do file an Article 78 and the Judge either approves or disapproves or it can be sent back. Attorney Dowd stated precedent can not be raised if you don't address or deviate from the precedent. For example, there are other neighbors that have barns (barn on a bigger lot). In the future, they give these people a barn, you can set difference circumstances.

Joe Fleckenstein asked how did it get through the Building Officer without going through this Board. Attorney Dowd stated that Roy Rogers was on the job for his first month and it was pretty close. He did say that this barn would be a problem. Precedence could cause problems when not properly addressed. It is something that we should concern ourselves. Peter Jeffery asked if there were some stipulations. Attorney Dowd stated if you decide that you want to allow a hearing, doesn't mean that you will approve it. To deny solely on the basis of precedence, that should be your single reason for denying it. Joe Fleckenstein asked if we could put some restrictions on it. Attorney Dowd stated you can put conditions on a variance such as if you start to store things outside, you can take it down. If you don't comply, you have to take it down. I think you really have to look in the neighborhood, impact because if size and if people do sell out and it becomes an eyesore. Joe Fleckenstein asked if variances are transferable from owner to owner. Chairman Tower stated that area variances go with the property. Attorney Dowd stated don't be afraid to say you might consider it. Joe Fleckenstein stated it is a little bigger than I would like to see it. Attorney Dowd stated you can ask them right now to consider something smaller. Peter Jeffery stated he would like this Board to consider a smaller garage because the house is already over or we can consider some type of garage to allowed them to clean up the property. Attorney Dowd stated if you were thinking about this, if I was a Board member, are you going to tear down all garages and have a (360) sq foot credit. How much over do you want to go?

Joe Fleckenstein stated if you took three buildings (335 sq ft) – the ½ size of a garage and put a 24 x 24 double garage (576 sq ft), you are 241 sq ft of additions to what you have

now and you are losing three unsightly buildings. You can stipulate that the shed has to come down and no outside storage. Joe Fleckenstein asked that is the total amount over and if it is acceptable. What they are giving up – three unsightly sheds torn down.

William Leggett stated that his dilemma is the addition is over 800 sq feet now and you want to go over more than that.

Joe Fleckenstein made a motion for a rehearing and was seconded by Duffy Johnston. Duffy Johnston asked what they needed the pole barn for. Mrs. Wallace stated that they have a 19-1/2' boat, tractor, classic car, two motorcycles, a four wheeler, lawnmower, tools and children's toys.

Chairman Tower stated we have a motion made and seconded to rehear this. Irene Myers stated that you have a postage stamp lot, why do you need a tractor? It think there are some things that they could do to help themselves. Granted it is their personal business, but you have to help yourselves. Chairman Tower asked if this has to go back to the Planning Board. Joe Fleckenstein stated if we do rehear, there will be strict regulations. Chairman Tower stated that they are already over what they should be allowed. You need a motion to rehear this. Attorney Dowd stated it has to be unanimous. Irene Myers stated that she knows what her limits are if she buys a house in the Village. What I am saying how can we tell if they can get everything in a 24' x 24' garage? Joe Fleckenstein stated if it is more than a 24' x 24' two car garage, I won't even consider it. Peter Jeffery stated that a 24' x 24' garage is not a huge garage but it is decent.

Chairman Tower asked for a Roll Call Vote. 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-no. The vote was not unanimous.

William Leggett 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, January 25, 2007.

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals