

**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, August 23, 2007 at 7:30 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairman William H. Tower, Member Peter Jeffery, Member William Leggett, Member Irene Myers, Attorney Michael Dowd and Building Inspector Roy Rogers.

ABSENT: Member Joe Fleckenstein and Member Duffy Johnston.

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 Irene Myers. Chairman Tower called for a Roll Call Vote. Peter Jeffery-yes; William Leggett-yes; Irene Myers-yes; and Chairman Tower-yes. **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 August 23, 2007 at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of James Trzaska, 3 Porter Center Road Ext, Youngstown, NY A variance is requested under Sections 503.3A, 705 and 710 to construct a six (6') foot in height fence, replacing an existing four (4') foot fence, to run approximately 83' in length on both sides of the backyard from the house. 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 (Agricultural Rural Residential) Zoned District between Lake Ontario and Lake Road in said Town.

It was noted that James Trzaska was present.

Mr. Paul Wizner stated that the Mr. Trzaska is trying to replace Mr. Wizner's fence that was torn down when the house was built. His bushes were also damaged. I know that he is going to replace the fence, and I am okay with that. Peter Jeffery stated that the good side of the fence has to face the neighbor. Mr. Trzaska stated that he was planning on putting up a vinyl fence, and he had a proposal from Fox Fence that he presented to the Board. Chairman Tower stated that there can be no fence 65' back from the high bank. If it goes beyond the 65' feet you need to contact Rebecca Anderson from the DEC.

Chairman Tower stated that he cannot give Mr. Trzaska permission from the DEC 65' from the high bank. Peter Jeffery stated that the fence would be on the NE side for about 80' and end 30' from the road. Irene Myers asked if this fence is going to be replacing a pre-existing fence and are you going to be in the same path. James Trzaska stated the pre-existing fence was on our property. Peter Jeffery stated 65' from the high bank to the lake. We couldn't let him put a fence from the lake to the existing 65' from the high bank. Peter Jeffery stated that the lot is 53' wide. The 6' (six) fence would be on the side of the property meeting in front between the house and the road. James Trzaska stated potentially a 3' picket fence, just across the front. Attorney Dowd stated you wouldn't need a permit for that. Peter Jeffery stated that fence is East and West on the property but it runs North and South. James Trzaska stated the plan would be to replace the fence beyond the North corner of the house. Roy Rogers stated his house is right at 65'. He cannot go towards the lake. Peter Jeffery stated our code allows a four foot fence and in order to put in a six foot fence you need a variance.

Attorney Dowd stated we are looking for an area variance – two feet higher. You don't have to show a hardship for a use variance. It is not going to detract from the neighborhood. The standards are different and this gentleman certainly qualifies if the Board thinks it is appropriate. Peter Jeffery stated his only concern is that we clearly define where the fence will be. Attorney Dowd stated that there should be a drawing showing where the fence will be. James Trzaska stated he could draw where the fence will be. Mr. Wizner asked what type of fence and Mr. Trzaska replied a vinyl privacy fence. Irene Myers asked if Fox Fence was doing the construction. James Trzaska replied "yes".

Irene Myers made a motion to close the public part of the hearing and was seconded by William Leggett. No further discussion. All in Favor. Motion Carried.

Chairman Tower read the following Planning Board recommendations: "James Trzaska, 3 Porter Center Road Extension, has submitted a request for a six foot fence. William Rolland made a motion to approve the request providing the front of the house is considered on the lake, not the road."

Chairman Tower read Section 704.2 – Area Variance.

Area variances may be considered where setback, frontage, lot size, density or yard requirements of this Local Law cannot be reasonably met. The Board of Appeals may grant an area variance on the ground of practical difficulty, such practical difficulty to be determined by consideration of the following:

- A. How substantial the variance is in relation to the requirement;
- B. The effect, if the variance is allowed, of the increased population density thus produced on available governmental facilities (fire, water, garbage and the like);
- C. Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created;

- D. Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance; and
- E. Whether in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance.

Chairman Tower stated this is a substandard lot of record. Peter Jeffery stated he thought putting the fence on the property line is reasonable. Peter Jeffery made a motion to approve this area variance for this six foot fence (matching the diagram); running East and West property lines and it should start at the perpendicular North corners of the house and proceeding to the South for approximately 80' and no closer than 30' of the right away with the good side facing then neighbor and was seconded by Irene Myers. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; William Leggett-yes; Irene Myers-yes; Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following:

Application of Nancy Sanger, 2298 Youngstown-Lockport Road, Ransomville, NY 14131. A Variance is requested under Sections 503.3A, 705 and 710 to construct a four (4') foot in height fence in the front yard. Section 503.3A states "Maximum Height front yards three (3') feet. Thus, a variance of one foot is requested. Property is located on the South Side of Youngstown-Lockport Road in an ARR-100 Zoned District between Dickersonville and Ransomville Roads in said Town.

It was noted that Nancy Sanger was not present. Chairman Tower asked that a letter be sent to Nancy Sanger that she must be in attendance at next months meeting (September 27, 2007) and to bring in a diagram indicating the location of the fence.

Irene Myers made a motion to table this application for 30 days and was seconded by William Leggett. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; William Leggett-yes; Irene Myers-yes; Chairman Tower-yes. All in Favor. Motion Carried to Table for 30 days.

Chairman Tower read the following:

Application of Richard Burns, 3694 Lutts Road, Youngstown, NY 14174. Under Sections 472.3, 705 and 710.51 a Special Permit is required to operate an Automobile Repair Shop. Property is located on the West side of Lutts Road in a M2 Zoning District between Cain and Balmer Roads in said town.

It was noted that Mr. Burns was present. Chairman Tower stated that Mr. Burns is looking for a permit longer than one year. He stated that the Board set a precedent for Tom Tower for his market to be 20 years. Chairman Tower stated that this parcel is in an M-2 zone. This is the first one in a commercial zone during all his years serving on the Zoning Board.

Peter Jeffery stated it is a good location. There are no close neighbors that should have any concerns. I don't have a problem for a longer term. Irene Myers asked if the shop was only in half of the building. Dave Webb contractor is on the other half.

Chairman Tower asked if anyone in the audience wished to speak. None.

Peter Jeffery read the following Planning Board recommendations: "Richard Burns would like to get a special permit for an automobile repair garage. This request meets all of the requirements of the zoning law in a M2 zone. The property is located on the West Side of Lutts Road, North of Balmer Road. The Planning Board recommends that the Zoning Board of Appeals approve this request with the understanding the property be kept neat and orderly with the number of vehicles being limited and the parking addressed."

Mr. Burns asked about how many vehicles. He replied about twenty. Peter Jeffery stated that unregistered vehicles should be screened from the public.

Tony Collard stated this is an excellent place for this. That is what the zoning is designed for. In some cases the amount of cars got away from the owner then it stated not to be the way we wanted it to be. We have experienced that before. I am sure Mr. Burns will keep everything neat and orderly. Irene Myers stated if Mr. Burns keeps his business the way he keeps his residence then I don't think we will have a problem.

Attorney Dowd stated I don't think you can have any junk cars. If you do, they should be stored indoors. Peter Jeffery stated it might be valid to state the number of licensed cars in the front of the building so it can't be construed. Attorney Dowd stated whatever code requirements are necessary. Chairman Tower stated I think 20 cars are reasonable – cars he is servicing. Peter Jeffery stated I doubt you will have twenty cars for servicing at one time. If it becomes a concern, you can come back before the Board so something can be worked out. Tony Collard stated if the cars can be used for other parts, you should specify. Peter Jeffery stated that unlicensed or unregistered vehicles should be stored and screened from the public view. Attorney Dowd stated you should put a limit on the number of vehicles.

Irene Myers asked about the size of the building 80' x 40' so that half would be 40' x 40' – 1600 square feet. Peter Jeffery stated that you could put approximately 8 – 9 cars behind the building.

Chairman Tower asked if there was anything else from the audience. Irene Myers made a motion and was seconded by Peter Jeffery to close the public part of the hearing. All in Favor. Motion Carried.

Peter Jeffery made a motion to approve this special permit for an auto repair shop at this site stipulated and keep the site neat and clean. No more than 20 licensed vehicles parked on the side at one time and no more than 10 unlicensed and unregistered vehicles. The unlicensed and unregistered vehicles must be screened from the public view either inside

the building or behind a fence for twenty years and was seconded by Irene Myers. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; William Leggett-yes; Irene Myer-yes; and Chairman Tower-yes. All in favor. Motion Carried.

William Leggett made a motion to close the meeting and was seconded Irene Myers. The meeting was adjourned at 8:18 pm. The next regular meeting will be held on Thursday, September 27, 2007.

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals