

**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 24, 2006 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 Meyers, Attorney Dowd and Building Inspector, Roy Rogers.

ABSENT: Member Arthur King and Member Peter Jeffery.

Chairman Tower called the meeting to order at 7:30 pm.

Chairman Tower asked for the approval of last month's meeting and if there were any additions or deletions. Member William Leggett made a motion to approve the minutes as written and was seconded by Member Joe Fleckenstein. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes; 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 August 24, 2006 at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of Mr. & Mrs. Nelson Fasciano, 2109 Pine Avenue, Niagara Falls, NY 14301. To renew their Special Permit dated August 28, 2003 to operate a pizzeria or fast food restaurant on their property at 3909 Creek Road, Youngstown, NY.

It was noted that Mr. & Mrs. Fasciano were 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 Irene Meyers. All in Favor. Motion Carried.

Chairman Tower stated that he had no complaints. He asked the Fasciano's if the hours of operation were the same, seven days a week. Chairman Tower asked if there was any further discussion. William Leggett made a motion to approve this permit as previously written for seven years and was seconded by Irene Meyers. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. **All in Favor. Motion Carried.**

Chairman Tower read the following:

Application of Mary Wallace (Butters) 1709 Harrison Lane, Youngstown, NY.

Under Sections 401.6, 705 & 710, a Special Permit is required to erect a 30' x 40' pole barn, 12' high and 42' concrete posts. Under Section 401.6, maximum land coverage per buildings permitted 10%. Property is located on 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 asked Attorney Dowd that this application was for an area variance under Section 704 instead of 705. It was noted that Mr. Wallace was present.

Chairman Tower stated that they were already over the 10% with the house addition. He also asked where the septic was. Mr. Wallace replied on the other side of the property. Joe Fleckenstein commented that he had no site plan done by an engineer, didn't know where the septic was in relation to the building. Mr. Wallace stated that a gentleman came down and looked at the whole area. Mr. Wallace stated that he was just shy of an acre. Karen Schmidt replied 3/10 of an acre. Joe Fleckenstein stated he would like to see a site plan. Chairman Tower commented that he is already over the 10%. Mr. Wallace stated that when he put on the addition to the house, he combined all three lots and in the future he would be able to put on the pole barn. He stated that it was 2003 when he built the new house. Karen Schmidt stated that they have an old survey. Mr. Wallace approached the Board to show a sketch. R. Rogers stated that Mr. Wallace came to the Building Inspector for a permit for the addition. Attorney Dowd cited Section 401.1.A.3. "No other buildings, other than a residence, in excess of 1,000 square feet or 18 feet in height, shall be constructed within 50 feet of a residence on an adjoining parcel of land." He stated he might remember a subdivision approval, but he did think there was any indication about the pole barn. I don't want this Board to think that this gentleman was told something by the Planning Board. You have to take a look at granting an area variance.

Chairman Tower read the following Planning Board recommendations: "The Planning Board recommends that the Zoning Board of Appeals DENY this request because it exceeds lot coverage. The information submitted is insufficient."

William asked Mr. Wallace if he got a building permit for the addition. He replied, "Yes", from the Building Inspector. Mr. Rogers replied that he issued the same amount as the building that was torn down – 2,000 sq feet which is over the 10%. It is a sub-standard lot. It was the same amount of property coverage when the old house was there.

The pole barn would go over, and he would need a variance. The total size of the property is 13,120 sq feet of which 1,350 sq feet was the house and now is 2,072 sq feet with the addition.

Joe Fleckenstein commented that he does not like it without a site plan. We need something in concrete. It was to be filed with the paper. Mr. Wallace stated that since it is a private driveway it doesn't matter. Joe Fleckenstein stated it has to be off the lot line. Attorney Dowd commented it cannot be within 500 feet of a residence. Irene Meyers commented that she would like to table this application for a month so that Mr. Wallace could obtain the information needed – site plan and survey. Mr. Wallace stated that he now has to spend \$1,000 for a site plan and survey. I come before the Board and nobody want to hear anything. Irene Meyers stated that we don't have enough information and the Planning Board is denying this application. What I am asking is that you would bring a copy of the survey.

Chairman Tower asked, "How are you going to grant an area variance when he is already over the area?" Irene Meyer stated that she has nothing to look at. Joe Fleckenstein stated that he can see what Chairman Tower is saying. Are we going to consider it? It is going to be around 20% when done. Mr. Wallace stated that Dave & Irene Putts have less property than I do and have a pole barn. Joe Fleckenstein stated to Mr. Wallace that his house puts him over. I think we need to table this for 30 days and without Mr. Wallace spending a lot of money, he can present a sketch with the dimensions, where the house sits and where the building will sit.

Duffy Johnston asked if we can look up the other two pole barns. Attorney Dowd stated it would be a good idea to look up the other two pole barns. You have to show dimensions. Bring us enough information to make an adequate decision. We need something with dimensions. Mr. Wallace showed the Board a hand drawing. Joe Fleckenstein stated that the Board needed more information.

Joe Fleckenstein made a motion to table the Wallace application for 30 days and to look at the other properties on Harrison Lane and to have Mr. Wallace bring in a site plan with dimensions and was seconded by Irene Meyers. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. **All in Favor. Motion Carried to Table for 30 days.**

Chairman Tower read the following:

Application of Tina and Richard Brady, Jr., 1274 Cain Road, Youngstown, NY 14174. Under Sections 503.3A, 705 & 710, a Variance of requested to construct a six foot fence in the year yard, approximately 112' deep x 73' wide. Section 503.3 states "Maximum Height Residential Districts four (4') feet. Thus, variance of two feet is requested. Property is located on the South Side of Cain Road in an ARR-100 Zoned District between Creek Road (Rte 18) and Lutts Road in said Town.

It was noted that Tina and Richard Brady were present. It was noted that the fence was already up. Mr. Paul Fields, 1272 Cain Road, stated it was his understanding that the fence should be four feet off the property line. The Board stated it has to be two feet off the property line for maintenance. Mr. Fields stated that the fence was 34' off the line. The home is a duplex. He stated that he would have to put up another fence to get privacy. Joe Fleckenstein asked if they ever thought about going halves for the fence. Mr. Fields replied nothing was worked out. There was a discussion about the fence between the duplex. Attorney Dowd stated that it might look a little goofy; there is nothing we can do about.

Irene Meyers made a motion to close the public part of the hearing and was seconded by Joe Fleckenstein. All in Favor. Motion carried.

Chairman Tower read the Planning Board recommendations: "This request is for a six foot fence to safeguard the play area of the children. The fence will be 112' x 73'. The Planning Board recommends that the Zoning Board of appeals **APPROVE** this request providing there are no objections from the neighbors."

Joe Fleckenstein made a motion to approve the six foot fence 112' from the back of the house and not to encroach the property line no more than two feet and was seconded by Irene Meyers. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. **All in Favor. Motion Carried.**

Chairman Tower read the following:

Application of William Brown, 2652 Youngstown-Lockport Road, Ransomville, NY.

Under Sections 503.3A. 705 & 710, a Variance is requested to construct a six foot fence on the North side of the property approximately 85' going east and west. Section 503.3 states "Maximum Height Residential Districts four (4') feet. Thus, a variance of two feet is requested. Property is located on the South Side of Youngstown-Lockport Road in a UR-60 Zoned District between Curtis Avenue and Town of Porter line in said Town.

It was noted that Mr. Brown was present. Chairman Tower asked if anyone from the audience wished to speak. Mr. Elton Wilson stated that Mr. Brown took out the survey stakes. Nobody wants to see where the survey stakes were. There are four houses giving up 10 feet. I want to return the compliant. Did you see all the papers in front of my house? It is all his garbage. Attorney Dowd stated if you have a problem with your neighbor, you can call the Code Enforcement Office. If you have a legitimate concern where the fence is going, the fence will be two feet off the property line. There was a discussion among the Board members.

Irene Meyers made a motion to close the public part of the hearing and was seconded by Joe Fleckenstein. All in favor. Motion Carried.

Joe Fleckenstein stated he had two questions: He stated that the fence is longer than he should have on the side of the house because 30 feet from the front corner of the house to the right away. He has to stay two feet off the back lot line. We never grant a six foot fence in the front of the house. There was a discussion to clarify the fence in the front of the house. In front of the house we don't allow anything more than a four foot fence. We have to be able to control a car if a child runs out.

Chairman Tower read the Planning Board recommendations: "Mr. Brown is requesting a six foot privacy fence 85' long. Mr. Brown requests privacy from the neighbor. In the future, any referrals that are sent to the Planning Board must have sufficient information (drawings, surveys, pictures, etc.) included in order for the Planning Board to make a recommendation. In this case a member of the Planning Board understands the concept of this request; therefore, the Planning Board recommends that the Zoning Board of Appeals APPROVE this request."

Joe Fleckenstein asked Mr. Brown if he would mind three feet off the property line stating that you have to be able to maintain the fence and property. Mr. Brown agreed.

Joe Fleckenstein made a motion to approve a six foot stockade fence with the good side facing the neighbor, 10' off the East side of the right away, going on the North side of the property up to within one foot of the East line and was seconded by Duffy Johnston. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. **All in Favor. Motion Carried.**

Chairman Tower read the following:

Application of Tim Keller, 1028 Youngstown-Wilson Road, Youngstown, NY 14174. Under Sections 401.2, 705 and 710, a Special Permit is requested to operate a small mail-order/internet business from existing home office. Property is located on the East side of Youngstown-Wilson Road in an ARR-100 Zoned District between Youngstown-Lockport Road and Meadow Drive in said Town.

It was noted that Mr. Keller was present. He stated that there would be no stock and a small amount of product dropped off by post office. It is something that he would like to try. If it would take off, he would move to a commercial location. There will be no signs, no parking and deliveries by UPS only a couple times a month.

Attorney Dowd stated that UPS trucks made regular deliveries and there should be no more traffic than would otherwise be expected for a residence. William Leggett stated that we should give the applicant a written copy of the code. If you are going to approve it with the conditions set forth in Section 563.2 and attach it to the permit.

Chairman Tower read Section 563.2 and asked that a copy be attached to the permit. Attorney Dowd stated that the permit should indicate Section 401.3cc instead of 401.2.

Chairman Tower read the Planning Board recommendations: “The Planning Board recommends that the Zoning Board of Appeals **APPROVE** this request for a special permit conditioned upon 563 Home Occupation Zoning Law requirements being met; specifically accumulation of stock.” Mr. Keller thought that he was applying for a three year permit. Chairman Tower stated that he didn’t thing three years would out of line. The rates are going up all the time. Mr. Keller stated that he currently manages another business successfully. I will do this by the book. Irene Meyers and Joe Fleckenstein agreed for a three year permit. William Leggett stated we have to get this more uniform. On the basis of our past experience, we have been giving one year, but three years doesn’t bother me.

Duffy Johnston made a motion to approve this application following the condition of Section 563.2. for three years providing there are no problems with neighbors or deliveries. If Mr. Keller gets too big he will have to move and was seconded by Irene Meyers. Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. **All in Favor. Motion Carried.**

Chairman Tower read the following:

Application of Scott MacVie, Youngstown, NY. Under Sections 472.3, 705 and 710, a Special Permit is required to place a propane tank for distribution located on Tax Map No. 60.00-2.29.4 on the North Side of Balmer Road in an M-2 Zoned District between Creek Road and Lutts Road in said Town.

It was noted that Mr. MacVie 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 Irene Meyers. All in Favor. Motion Carried.

Chairman Tower stated that the Planning Board had a problem and we have to table tonight. Scott MacVie stated there was nothing on the application that I needed more information.

Attorney Dowd read Section 472.8 Yard Requirements:

- A. Front yards, minimum depth from street line:
 - 1. On major streets: 100 feet.
 - 2. On secondary and local through streets: 100 feet.
 - 3. On local streets: 100 feet.
- B. Side yards, minimum width:
 - 1. For interior lot: 50 ft.
 - 2. For corner lot: street side – same as front yard (100 ft)

Attorney Dowd stated we did this for Noco. I do recall it was a very simple site plan. Section 710.82 D. For petroleum storage, as provided in Paragraph 472.3E. Additional requirements: Site plans shall be required showing all proposed improvements. Advice shall be sought from appropriate State agencies.

Scott MacVie stated that the tank was already set up at Smoking Joes. Attorney Dowd suggested to Mr. MacVie that he have the representatives put together a site plan with documents.

Chairman Tower asked that Mr. MacVie go to the Planning Board meeting the First Thursday of September. Joe Fleckenstein stated that it has to be approved with State and Federal regulations. Scott MacVie stated that they are leasing the land from me and they are going to operate it. Attorney Dowd stated that he has have one of their representatives go to the Planning Board meeting. He has permission to speak for you. It is a permitted use. We need an expert to tell us what they are doing.

Karen Schmidt stated to Mr. MacVie that he could come to her and she will get all the information he will need.

Irene Meyers made a motion to table this application for 30 days for a propane tank advising Mr. MacVie to go the Planning Board meeting on the First Thursday of September and was seconded by Duffy Johnston. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. **All in Favor. Motion Carried to Table for 30 days.**

Chairman Tower read the following:

Application of Donald J. Robertson, 3989 Dickersonville Road, Ransomville, NY

Under Sections 503.3A, 705 & 710, a Variance is requested to construct a six foot in height paneled fence running to the rear on both sides of the house. Section 503.3 states "Maximum Height Residential Districts four (4') feet. Thus, a variance of two feet is requested. Property is located on the East Side of Dickersonville Road in an ARR-Zoned District between Balmer Road and Town of Porter Line in said Town.

It was noted that Mr. Robertson 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 Irene Meyers. All in Favor. Motion Carried.

Chairman Tower read the Planning Board recommendations: "Chairman Spira read a letter from the applicant regarding the request to construct a six foot fence 100' x 312". The Planning Board recommends that the Zoning Board of Appeals **APPROVE** this request.

Duffy Johnston asked if this was a privacy fence and Mr. Robertson replied yes. William Leggett made a motion to approve the application of the fence for Mr. Robertson, two feet off the property line and was seconded by Irene Meyers. Chairman Tower asked for a roll call vote. Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. **All in Favor. Motion Carried.**

Regarding the application of Lynn Bahringer, Chairman Tower stated that Lynn Bahringer called him today, August 24, 2006 and asks that he table her application for 30 days per her request. She agreed.

Irene Meyers made a motion to close the meeting and was seconded Duffy Johnston. The meeting was adjourned at 8: 55 pm. The next regular meeting will be held on **Thursday, September 28, 2006.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals