

**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, September 28, 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 Meyers, Attorney Dowd; Assessor, Karen Schmidt; and Building Inspector, Roy Rogers.

ABSENT: Member Arthur King.

Chairman Tower called the meeting to order at 7:40 pm.

Chairman Tower asked for the approval of last month's meeting and if there were any additions or deletions. Member Joe Fleckenstein made a motion to approve the minutes as written and was seconded by Member Duffy Johnston.

Chairman Tower started with the **Application of Scott MacVie** for a special permit for a propane storage tank. It was noted that Mr. MacVie was present. Chairman Tower asked Mr. MacVie if he met all of the Planning Board recommendations and he replied "yes". A representative from TPS Petroleum Products presented a copy of the plans and explained to the Board where the tank was being placed and answered questions for the Zoning Board members. Chairman Tower stated the property is zoned commercial and Karen Schmidt confirmed the commercial zoning. The Board asked questions about the drawings. Chairman Tower read the attached Planning Board recommendations (Attachment 1).

Roy Rogers stated that he was okay with the application, and they will take another look at it. There was a question from the audience about people working off the books and what if there are any workmen's compensation issues. Attorney Dowd stat it is our hope that the business is properly insured for workmen's compensation. It is up to the employees. Joe Fleckenstein stated it is the Board's job to address zoning laws.

The Board questioned the hours of operation. Mr. MacVie stated it could depend upon the weather. There is a possibility it might be needed on a Sunday. Peter Jeffery stated it is commercially zoned. Irene Meyers stated that she has no objection if this man is working seven days a week. Joe Fleckenstein stated we cannot regulate the hours on a commercial area. Joe Fleckenstein stated that we need to mention lights in our motion.

Mr. MacVie asked if he could go closer to the road if the tank is to close to the cell tower. Joe Fleckenstein stated to Mr. MacVie that he will have to come back for a variance, it can't happen today. If you have to go closer to the road, you will have to get a variance.

Joe Fleckenstein made a motion to approve this permit for Scott MacVie for an 18,000 gallon propane storage tank, 115 feet from the road; to provide adequate lighting year round; that must point East to West; have a six foot fence with a gated lock and if the operation goes out of business the tank must be removed within 30 days for a period of five years and was seconded by Duffy Johnston.

Chairman Tower asked if there was any further discussion and called for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes and Chairman Tower-yes. Motion Carried.

Chairman Tower addressed the Application of Mary Wallace Butters, 1709 Harrison Lane, Youngstown, NY.

It was noted that Mary Wallace was present. She indicated that the pole barn would be on a slab foundation and the size was now 30' x 30'. Chairman Tower stated that she was already over the lot allotment with her house (19% total lot coverage). Irene Meyers asked if we had anything from the Planning Board. Chairman Tower stated that the Planning Board denied the application. Irene Meyers asked if anything was re-presented to the Planning Board. Attorney Dowd stated that nothing came up.

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

Joe Fleckenstein asked if this should be redone by the Planning Board. Chairman Tower said "no", it exceeds the lot coverage. Mary Wallace asked if they were being denied for a lot variance. Attorney Dowd asked Mary Wallace if she had put two applications in. If you reduced the building, you still need a variance. William Leggett asked about the septic system. Mary Wallace stated it is an oversized leech field. Chairman Tower asked how long ago the septic has been updated. Mary Wallace stated about eleven years ago. Roger Rogers stated that because it was a substandard lot and the house that was torn down was about the same size as the addition so there was no need for a variance.

Irene Meyers stated that Basile is a total lot coverage of 15% and the Wallace is going to be 19% total lot coverage. Attorney Dowd stated that you are doubling the permitted coverage. Chairman Tower stated it is a substandard lot of record. They have a degree of responsibility here. Mr. Rogers has been more than agreeable with the house permit. Attorney Dowd stated that the variance must meet all of the criteria of 704.2.

Duffy Johnston read the following 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 variation 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. Where 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.

Attorney Dowd stated that the Board has to consider the above. Duffy Johnston stated that no one is here tonight regarding letter "c". Irene Meyers stated that the purpose of the zoning change was so that they don't pile one house on top of one another. This lot is 19% total lot coverage. Attorney Dowd stated the first one was 15% total lot coverage. You have to look at the proposition. This one would be 19% coverage which would be double. You have to make a decision on the facts. Joe Fleckenstein stated if we weigh on those facts it should be "no".

Irene Meyers made a resolution to deny the application of Mary Wallace Butters request for an area variance to construct a 30' 30' pole barn. Denial is based upon the criteria set forth pursuant to Section 704.2 of the Town Zoning Ordinance.

- A. Request is very substantial in relation to the requirement of the local law related to lot coverage in that existing structure already exceed limitations.
- B. Value of adjacent properties will be affected by significant visual impact to neighboring properties.
- C. The minimum necessary to afford the requested relief has already been exceeded as a result of current owner's improvements to the property thus creating the alleged hardship.

and was seconded by Duffy Johnston. Chairman Tower asked if there was any further discussion. Mary Wallace stated why was this big deal. I understand we are over the lot coverage. Irene Meyers stated that just because you come for a variance doesn't mean that we have to approve it. Mary Wallace stated that the neighbors want us to have it. Peter Jeffery stated that under 704.2 this is 90% over what the law says is accepted. It is a big percentage and because of the severity of the amount you are going over. Vernon stated if you look at the property was the barn is going to go, I just put in all the drainage in. He stated that this lot where he wants to put the barn on was a whole separate lot and I put all three pieces of property together. Chairman Tower stated this is still a substandard lot. Attorney Dowd stated that the lots were combined because you wanted to increase the size of the home. Mary Wallace stated we wanted to put things away. It is an eyesore the way it is right now. I would have put the pole barn up first before I put on the addition. Peter Jeffery stated that Mary Wallace was creating her own hardship. Mary Wallace stated that I went to Mr. Rogers for an addition and a pole barn. At this point, I should have a choice. Mr. Rogers stated it was not accurate. Irene Meyers stated that that is the reason for the application.

Chairman Tower stated that he had a motion and called for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes and Chairman Tower-yes. Motion Denied for Mary Wallace Butters.

Chairman Tower addressed the **Application of Lynn Bahringer**, 3011 Orchard Drive to renew her special permit for a home office occupation for “mail order”.

Chairman Tower asked if Lynn Bahringer had an updated survey. Lynn Bahringer stated that she took the fence down. I spent more money taking the fence down. I took the fence out and I am being harassed.

Attorney Dowd asked Lynn Bahringer if Mr. McIntrye put the pins in and now they are gone. Joe Fleckenstein stated that the fence is gone; it is all cleaned up with flower beds inside the property line and stone on the side between the neighbor’s house. Lynn Bahringer presented pictures to the Board. Attorney Dowd stated if you took the fence down, that was the issue from the very beginning. If you have problems with your neighbors, there is no variance required. Therefore, I am going to tell these people if they have a dispute, you should go to small claims. This Board cannot tell neighbors how to live next door to one another. Joe Fleckenstein stated that Lynn Bahringer was here for a home occupation and the fence is gone. Scott MacVie stated that he lives over on Balmer Road but has property on Orchard Drive. Joe Fleckenstein stated that you are to speak when spoken to. If there is a dispute here, we are going to call the sheriff. We are her for a permit for a home occupation. Attorney Dowd stated that he understood that there was some problem with stuff outside. We are going to put a limit on the outside storage, stock and trade, hours of operation, deliveries are not going to increase, employees limited to one beside a family member and then if you violate any conditions, your neighbors can contact the Code Enforcement Officer.

Lynn Bahringer stated to the Board that she has a “mail order” business that she is here to renew tonight.

Attorney Dowd asked the following questions:

Do you have any deliveries in the house? – none for my business.

Do you have any customers? – no.

Do you have employees? – no

Irene Meyers asked that is some point in time would Lynn Bahringer want employees – no. Irene Meyers stated that she is better off to ask for one employee.

Any reason for outside lighting? – normal house lighting. Attorney Dowd stated that the point is there will be no customers coming here; lighting will be limited to the house. Chairman Tower stated the hours of operation would be the same. Lynn Bahringer stated that she bought the office and converted it to a house and work by herself. I work 24/7 and I might get up a 2:00 am and work through the next day. Attorney Dowd stated that you work with inside house light on.

Lynn Bahringer stated that she means no disrespect, but I really don't care if I get this permit or not. Irene Meyers stated that you paid your fee, you are over the hump, you did it legitimately and you had a permit with no problems.

Peter Jeffery stated that there is no need for hours of operation as long as no one comes to the house.

Irene Meyers made a motion to approve the application of Lynn Bahringer for a home office occupation for "mail order" for a period of five years subject to the condition set forth under Section 563.2 of the Town of Porter Zoning Ordinance and was seconded by Duffy Johnston. Chairman Tower called for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Irene Meyers-yes; Joe Fleckenstein-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Duffy Johnston made a motion to close the meeting and was seconded Peter Jeffery. The meeting was adjourned at 8: 50 pm. The next regular meeting will be held on Thursday, October 26, 2006.

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals

Attachment A.