



PLANNING BOARD TOWN OF PORTER

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Approved January 4, 2018

Thursday, December 7, 2017.

The regular meeting of the Town of Porter Planning Board was called to order at 7:01 p.m. with the Pledge to the Flag.

Present: Chairperson J. Anthony Collard, Member Mark Fox, Member Robert Tower, Member John Bis, Member G. Edward "Jipp" Ortiz, Attorney Michael Dowd, Code Enforcement Officer Peter Jeffery, Town Assessor Susan Driscoll

Approval of the minutes from the November 2, 2017 Planning Board meeting

A motion was made to approve the minutes as presented by Member Tower and seconded by Member Bis. All in favor, motion carried.

Public Hearing for Site Plan Review for Nadia Shahram, 1723 Harrison Lane, Youngstown; Tax Map 33.13-1-25 for Accessory Apartment

Chairperson Collard opened the public hearing. Code Enforcer Jeffery stated that Ms. Shahram has applied for a Special Use Permit for an Accessory Apartment which needs a Site Plan Review. She also needs a side yard setback variance. She presented her Preliminary Site Plan to the Planning Board in November. Code Enforcer Jeffery stated he thought that there is approximately 7-8 feet between the accessory structure (where the apartment is located) and the neighbors garage.

Attorney Dowd stated that accessory apartments are typically attached to the main dwelling and allow for a relative to reside in the apartment. Attorney Dowd stated that perhaps the local law should be modified to include detached in-law apartments (such as this) in the future.

Member Tower asked if the original building permit for the garage did include the apartment – he thought it was only for a garage with an attic. Code Enforcer Jeffery stated the permit is only for a garage with an attic, however, he spoke with the previous Building Inspector/Code Enforcement Officer who remembers that he was aware that an apartment was being built. Code Enforcer Jeffery stated that in reviewing the photographs that were taken during construction, it appears that the apartment was built to code as a dwelling in which to live.

Attorney Dowd stated that the Zoning Board will need to issue a Special Use Permit and will consider if this was a self-inflicted hardship created by Ms. Shahram. Attorney Dowd stated that when Ms. Shahram purchased the property and built the garage and apartment, she did so with approval of the Building Inspector. And therefore, he does not feel that this was a self-inflicted issue.

Member Ortiz verified that at this point the application in front of the Planning Board was to remediate a violation. Member Bis asked if a Certificate of Occupancy was issued after the apartment as constructed.

Code Enforcer Jeffery stated that he was not aware of one being issued, but would issue one if the Site Plan and Special Use Permit were approved.

Member Bis asked Code Enforcer Jeffery if the apartment meets the codes for occupancy and Code Enforcer Jeffery stated yes.

Neighbor Mary Lynch claims that when she spoke with the previous Building Inspector he did not know that the building would include a living area. She stated that the building is a residence with a garage underneath. She had issues building her garage and is disappointed this was allowed to happen. She stated that basically there are two houses on one piece of property.

Code Enforcer Jeffery stated that he was not the Building Inspector prior to June and at this point cannot change what happened, but can remediate the situation. He did state that it should not have happened as it did.

Neighbor Andrea Wright owns the garage directly next Ms. Shahram's building. She stated that there is only about 4 feet between the two structures. She stated that the previous garage was smaller than the current garage (the length was extended but not the width). She feels that the buildings are very close together.

Attorney Dowd stated that the Zoning Board can make it a condition of the Special Use Permit that the apartment cannot be used as a year-round rental and only family members can reside in the dwelling. He stated again that he felt that Ms. Shahram only built the apartment and garage in good faith with Town approval.

Ms. Lynch asked what happens if the property is sold. Attorney Dowd stated that the Permit will only allow for family members regardless of who owns the property.

Member Fox stated that if a new owner purchases the property the conditions would remain. It would become a policing issue if family did not reside in the apartment.

Code Enforcer Jeffery stated that the side yard setback is the same as the original garage, but the length of the garage changed. A variance is needed for the side yard setback.

Ms. Lynch asked how the property would be taxed. Assessor Driscoll stated it is now taxed as an apartment above the garage.

With no further comment from the audience, a motion was made to close the public hearing by Member Bis and seconded by Member Tower. All in favor, motion carried.

Member Fox read the Engineer letter from GHD that stated "we find the proposed site plan acceptable and in general conformance with engineering practices." (Entire letter entered into record and filed with application.)

Member Bis read each question to Part II of the SEQR. Question 1 and 2 were answered with "no or small impact will occur" with agreement from all present Planning Board Members.

Member Bis felt that question 3 (Will the proposed action impair the character or quality of the existing community) may be a moderate to large impact because there will be two dwellings on one parcel. Attorney Dowd stated that attached accessory apartments are an allowable use in the Town and although

this dwelling will be detached he stated it may not be a large impact as it is only one person who will be living in the dwelling. Member Ortiz stated that because it was a remediation for the current violation, he felt the impact was small. Member Fox stated that as the accessory apartment will not be a rental and use will be limited, a small impact will occur. Member Tower stated he felt there would be minimal impact. Chairperson Collard stated he agreed with Member Ortiz.

Member Bis read the remaining questions of the SEQR and each question was answered with “no or small impact will occur” with agreement from all present Planning Board Members.

A motion was made to issue a negative declaration for the SEQR by Member Ortiz and seconded by Member Fox.

With no further discussion, roll was called:

Chairperson Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

A motion to approve the Site Plan as presented was made by Member Ortiz and seconded by Member Fox.

With no further discussion, roll was called:

Chairperson Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

Chairperson Collard stated that a recommendation to the Zoning Board of Appeals for the Special Use Permit and Variance was needed.

Member Ortiz stated that the Special Use Permit could state that the apartment be restricted to family members and asked if this restriction should be attached to the Deed. Attorney Dowd stated that deed restrictions are tough to establish and recommended that the Board recommend the restriction on the Special Use Permit instead. If the neighbors complain, Code Enforcer Jeffery will need to investigate. Member Bis asked if the Special Use Permit was for the current owner only or would it transfer with the property if sold. Code Enforcer Jeffery stated that the permit can be added to the property records in the Town so that if the deed is transferred, it would be a reminder to inform the new owner of the restrictions of the permit.

Member Tower asked why there were two electric services to the property. Ms. Shahram stated that originally her daughter was going to move in and she wanted her to be responsible for the electricity she used. All other services are combined for the property.

Member Fox asked how many people can live in the apartment. Code Enforcer Jeffery stated that the apartment is only one 10x10 foot bedroom and that Town code dictates how many people can occupy a dwelling based on the square footage. He also stated that the recommendation for the Special Use Permit can limit the occupants to two family members only.

Ms. Lynch stated that rentals are a nightmare and does not want to have this dwelling rented to members outside of the family. She stated that the neighborhood is on a private road and would like for it to continue to be quiet.

A motion to recommend to the Zoning Board of Appeals that the Special Use Permit be approved with the condition that the permit be limited to only allow family members to reside in the apartment with no more than 2 occupants was made by Robert Tower and seconded by Member Fox.

With no further discussion, roll was called:

Chairperson Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

A motion was made to recommend to the Zoning Board of Appeals that the variance for side yard setback be approved as presented by Member Ortiz and seconded by Member Bis.

With no further discussion, roll was called:

Chairperson Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

Public Hearing for Site Plan Review for R.C. Bailey and Carol L. Bailey, Balmer Road, Ransomville; Tax Map 62.00-1-35 for Landscaping Operations

Member Ortiz stated he was going to recuse himself from the Site Plan discussion and decision because of his relationship, both professional and personal, with the Bailey family.

Chairperson Collard opened the public hearing by reading:

NOTICE IS HEREBY GIVEN THAT, pursuant to Section 35 of the Town of Porter Zoning Law a public hearing will be held by the Planning Board of the Town of Porter, 3265 Creek Road, Youngstown, New York on Thursday, December 7, 2017 at 7:00 p.m. for the purpose of considering and hearing all interested persons concerning the following:

*APPLICATION OF R.C. BAILEY AND CAROL L. BAILEY, Balmer Road, Ransomville, New York; Tax Map ID 62.00-1-35, for a Site Plan Review for Landscaping Operations.
Applicant(s) must be present.*

Code Enforcer Jeffery stated that the Preliminary Site Plan was presented a few months ago and the final drawings were provided to the Planning Board. The project will be phased with coordination between himself and the applicant. Attorney Dowd asked if all paperwork and the application was complete and Code Enforcer Jeffery stated it is. He informed the Board that he has reviewed everything and that the applicant is keeping within the zoning requirements and has implemented moving his business to the Balmer Road location.

Chairperson Collard asked if any members of the public would like to comment. Mr. Clyde Burmaster stated that he is pleased that the process was moving along and stated it was a shame that it dragged on this long due to the previous Building Inspector. He stated he hopes that the neighborhood can once again become peaceful with neighbors being friendly to each other. Chairperson Collard agreed that it was time to move forward.

With no further comments, a motion to close the public hearing was made by Member Bis and seconded by Member Fox. All in favor, motion carried.

Member Fox read into record the Engineering letter from GHD that stated “drainage from the site is not a concern and is in general conformance with engineering practices.” (Entire letter entered into record and filed with application.)

Code Enforcer Jeffery read the phases as proposed and presented by the Applicant on August 3, 2017 (filed with the application). Member Tower asked what the timeframe would be for Phase I and II considering that originally, they were slated to be complete by the end of the year (2017). Mr. Sean Bailey stated that he is moving forward, but was waiting for approval of the Site Plan for some of the items, including arranging with National Grid to set up utilities for the fueling station and building. He stated that the bulk salt delivery was made to Balmer Road under a metal roof carport type storage area. He also stated that he anticipated that large equipment would be moved to Balmer Road within days.

Code Enforcer Jeffery stated that Mr. Bailey has applied for a building permit and he was waiting to approve it based upon the Site Plan approval.

Attorney Dowd asked when the fueling operation had to be moved as per the court decision. Mr. Bailey’s attorney, Michelle Bergevin, stated that they had until June. Attorney Dowd informed the Planning Board that if they choose, they could put a timeline on the Site Plan phases. Attorney Bergevin stated that her client hoped to move forward as soon as possible. The court ordered that bulk storage be moved to Balmer Road and Mr. Bailey has already done so.

Chairperson Collard read each question to Part II of the SEQR. Each question was answered with “no or small impact will occur” with agreement from all present Planning Board Members.

A motion was made to issue a negative declaration for the SEQR by Member Fox and seconded by Member Bis.

With no further discussion, roll was called:

Chairperson Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Recused

Motion Carried.

Attorney Dowd asked if the Planning Board was going to impose conditions on the Site Plan including hours of operation, etc. Mr. Bailey stated that weather conditions will dictate whether the trucks will need to pick up salt and if they do, there may be trucks loading salt on the property during the night. Member Fox stated that the property is zoned industrial. Code Enforcer Jeffery stated that the building is 100 feet from the property line and is 439 feet wide making it a decent distance from any neighbor.

Attorney Dowd stated that because the Court has imposed a June 1, 2018 date for the fuel operation, the Planning Board could set a different timeframe or use that one already established. Attorney Bergevin stated that if her client decided he didn't want to fuel on Balmer Road if it would be an issue (for example if he decided to instead use a commercial gas station). Attorney Dowd stated that it would not be an issue as long as there was no fueling on Parker Road after the court imposed date.

A motion to approve the Site Plan as presented was made by Member Bis and seconded by Member Fox.

With no further discussion, roll was called:

Chairperson Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Recused

Motion Carried.

Preliminary Review of Minor Subdivision for Robert Edwards, 3582 Dickersonville Road, Ransomville; Tax Map 61.00-1-38.1

Mr. Robert Edwards addressed the Planning board and stated he would like to subdivide his property with the potential to sell one or more of the parcels.

Code Enforcer Jeffery stated that Mr. Edwards owned one large parcel between Balmer Road and Route 93 (on Dickersonville Road) that he would like to divide it into three pieces to make it more saleable.

Mr. Edwards explained that the red parcel on the color-coded map he provided (as filed with the application) has an existing house, garage, barn and shop. The other parcels are vacant land. He owns 30 acres on the west side of Dickersonville Road and 21 miles on the east side. He stated that the division of property may change based upon the request of a potential buyer. Currently the proposed division line is straight, but it may be angled to include all of the creek that runs through the property.

Attorney Dowd stated that conceptually this subdivision looks OK and that the Town Engineer will make a recommendation on the final proposal. Mr. Edwards stated that the land is in the 100-year flood plain, but is not wetland.

Code Enforcer Jeffery asked if there was an easement for cleaning the creek. Mr. Edwards thought there was, but was not positive. Code Enforcer Jeffery stated he would check with Highway Superintendent Hillman to verify.

Mr. Edwards asked if it would be a problem if the final subdivision was two parcels instead of three. He stated that the subdivision would be based upon the potential buyer. Code Enforcer Jeffery stated that he could subdivide the land and if needed he could always merge the parcels in the future. Member Ortiz asked if it made sense to survey the land prior to determining what the buyer wanted because a survey can be costly. Attorney Dowd suggested to Mr. Edwards that he discuss the logistics with the buyer prior to the survey and subdivision. Code Enforcer Jeffery stated that Mr. Edwards could take some time to solidify the parcel division. Mr. Edwards was informed that when he was ready for the final subdivision he would be added to the agenda once all documents were received 21 days prior to the meeting.

Member Tower informed Mr. Edwards that the tile lines cannot block drainage to creek.

A motion to approve the Preliminary Review of Minor Subdivision was made by Member Bis and Seconded by Member Tower.

With no further discussion, roll was called:

Chairperson Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

Preliminary Review of Minor Subdivision for Cyrus Ardalan, 3677 Porter Center Road, Ransomville; Tax Map 61.00-1-29.11

Mr. Ardalan approached the board and stated that he has a pending sale for his house on Porter Center Road if he can subdivide the parcel from a larger parcel. He stated that the garage on one parcel is about 10 feet from a pole barn on the proposed second parcel. Code Enforcer Jeffery stated that the rear yard setback should be 50 feet once subdivided, but if approved it would only be 10 feet – therefore a variance would be needed. The split would separate 15 acres off a 140-acre parcel.

Mr. Ardalan stated that the only area on the property where the rear yard setback is not 50 feet is behind the accessory building. He stated that there is a large amount of land behind the actual home.

A motion to approve the Preliminary Subdivision was made by Member Bis and seconded by Member Tower.

With no further discussion, roll was called:

Chairperson Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

A motion to recommend approval of the Rear Yard Setback Variance to the Zoning Board of Appeals was made by Member Ortiz and seconded by Member Bis.

With no further discussion, roll was called:

Chairperson Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

Recommendation on Area Variance to the Zoning Board of Appeals for Lakeside Cottages, 2087 Lake Road, Ransomville; Tax Map 33.08-1-3 for a Fence

As per a request from the applicant, this agenda item is on hold until further notice.

Preliminary Site Plan Review for Derek Kent, 786 Blairville Road, Youngstown; Tax Map ID 59.00-2-51 for Marine Repair and Storage

Code Enforcer Jeffery stated that the Planning Board briefly discussed this application in November, but with the applicant absent, there were outstanding questions.

Mr. Derek Kent stated that he plans to continue the business with marine repair but without any boat sales. He anticipates his hours to be Monday-Saturday from 8:00 a.m. until 5:00 p.m. He plans to repair the driveway and parking area and has a milling delivery scheduled for this week. Mr. Kent stated that all winter storage will be behind the building with only 6 boats in front that will be moved to the back once repaired.

Chairperson Collard asked Mr. Kent to clarify where his property line was on the drawings provided. After a brief discussion, Mr. Kent stated that he misunderstood where the property line was and would need clarification from the previous property owner and neighbor. Attorney Dowd stated that the Planning Board could not approve the Preliminary Site Plan without the correct property line drawn. Mr. Kent stated he would look into the situation and get back to Code Enforcer Jeffery when he was ready to continue with the Planning Board process.

Interpretation of Permitted Use for Michael McCabe, 2384 Lake Road, Ransomville; Tax Map 34.00-1-5.22

Code Enforcer Jeffery informed the Planning Board that a complaint has been filed for Michael McCabe, 2384 Lake Road, Ransomville. Currently company vehicles from Parkill Tree are being parked inside his barn and personal vehicles are being parked outside during business hours. He wanted to discuss with the Board if this is a permitted use in a Rural Agricultural Zone and felt that this was storage of vehicles as there are no office facilities and no servicing of vehicles on the property. He stated the employees come the property in the morning, park their personal vehicles and then get into the company vehicles and leave for the day, returning at the end of the business day. Code Enforcer Jeffery stated there is nothing currently applied in Code 200-7, Section B (Permitted uses table) specific to this situation. He stated that if the Planning Board had a suggested use that is similar to this situation, he can use that for his determination on the complaint.

After a brief discussion, it was decided that there is currently nothing in the use table that is similar. Code Enforcer Jeffery stated he would keep the board updated on his action for this case.

Preliminary Site Plan Review for Kevin Heffler, 3715 Lower River Road, Youngstown; Tax Map 59.00-1-20 for a Floating Boat Dock

Code Enforcer Jeffery stated that Mr. Heffler is building a home on River Road and would like to include a floating dock in the river off his property. He stated it was straight forward and that the Army Corps of Engineers has approved his application.

A motion to approve the Preliminary Site Plan as presented was made by Member Bis and seconded by Member Ortiz.

With no further discussion, roll was called:
Chairperson Collard: Yes

Member Fox: Yes
Member Bis: Yes
Member Tower: Yes
Member Ortiz: Yes
Motion Carried.

Correspondence / New / Old / Miscellaneous Business

Nothing further to report.

Code Enforcer Jeffery's report

Code Enforcer Jeffery handed out his report. A brief explanation of some of the items ensued.

Attorney Dowd report

Nothing further to report.

A motion to adjourn the meeting at 9:37 p.m. was made by Member Ortiz and seconded by Member Fox.
All in favor, motion carried.