



PLANNING BOARD TOWN OF PORTER

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Approved February 1, 2018

Thursday, January 4, 2018.

The regular meeting of the Town of Porter Planning Board was called to order at 7:00 p.m. with the Pledge to the Flag.

Present: Chairperson J. Anthony Collard, Vice Chairperson 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

Chairperson Collard stated that the Town Board held a reorganizational meeting on January 2, 2018 and at that time John "Duffy" Johnston was sworn in as the Town Supervisor and Tim Adamson and Irene Myers were sworn in as Councilmembers. He also stated that Jackie Robinson was appointed as the Chairperson of the Zoning Board of Appeals and that he was reappointed as the Chairperson of the Planning Board.

Chairperson Collard stated that the Planning Board needed to appoint a Vice Chairperson. A motion was made to reappoint Mark Fox as the Vice Chairperson by Member Bis and seconded by Member Tower. All in favor, motion carried.

Approval of the minutes from the December 7, 2017 Planning Board meeting

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

Chairperson Collard introduced the Planning Board members, Attorney Dowd, Assessor Driscoll, Secretary Freiermuth and Code Enforcer Jeffery to the audience.

Chairperson Collard stated that agenda items needed to be shifted because applicant Heffler was held up in traffic.

Preliminary Site Plan Review for Andrew Giarrizzo, 2008 Lake Road, Youngstown; Tax Map ID 33.00-2-3.2 for existing recreational pond

Mr. Giarrizzo approached the Planning Board and stated that in 2014 he presented plans to the Code Enforcement Officer for a recreational pond. He received approvals from the County for the soils and with no further feedback from the Town building department, he constructed his pond. He stated that there is a dyke 3-4 feet at the low area on the east side and only spring runoff feeds the pond. Overflow from the pond goes into a ditch which leads out to the Lake. The pond is 10 feet deep and all fill from the excavation was used under his barn and behind the pond for better drainage.

Code Enforcer Jeffery stated that Mr. Giarrizzo did get a variance for the setback in 2014, but did not get approval of the Site Plan or a Special Use Permit, hence the reason for his application. Niagara County Soil

and Water approved the pond in 2014. He stated that this evening the Planning Board would make a decision on the Preliminary Site Plan, and if approved, would go to public hearing in February for this Site Plan in order to get it into compliance.

Mr. Giarrizzo produced drawings of the current pond. Member Fox asked if the pond conforms to all Town requirements and Code Enforcer Jeffery stated it does. He stated that this application is a formality to bring the pond into compliance. He stated that there have been no complaints from the neighbors.

Mr. Giarrizzo stated that the pond was dug in very good soil and does not go stagnant.

With no further discussion, a motion to approve the Preliminary Site Plan as presented was made by Member Fox 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.

Public Hearing for Site Plan Review for Kevin Heffler, 3715 Lower River Road, Youngstown; Tax Map 59.00-1-20 for a Floating Boat Dock. Recommendation to the Zoning Board of Appeals for a Special Use Permit.

Mr. Heffler approached the Planning Board and stated that he would like to construct a floating dock with a wooden gangway off of his parcel on River Road (he owns almost 20 acres). He stated that he has approval from the Army Corps of Engineers and the NYS DEC as well as the Department of State under permit number 87-000-1. He has also completed SEQR Part I which was supplied to the Planning Board.

Chairperson Collard opened the public hearing by reading the notice of public hearing:

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, January 4, 2018 at 7:00 p.m. for the purpose of considering and hearing all interested persons concerning the following:

APPLICATION OF KEVIN HEFFLER, 3715 Lower River Road, Youngstown, New York; Tax Map ID 59.00-1-20, for a Site Plan Review for a Floating Boat Dock.

Applicant(s) must be present.

Code Enforcer Jeffery stated that the Town Engineer was asking for the permit information from the DEC prior to making a recommendation. He stated that the permit for this project was a joint application and permit and that Mr. Heffler's project was addressed by the Department of State, the Army Corps of Engineers and the NYS DEC. Therefore, all external approvals have been made. Attorney Dowd stated that it appeared that all requirements were made.

Mr. Heffler stated that he plans to have two (2) boats at the dock and his house is constructed. Currently the plumbing and heating is being installed.

Chairperson Collard asked if Mr. Heffler planned to have any guests park on the west side of the road. Mr. Heffler stated that there was not room and that his house was directly across the street so there would be no parking on the west side.

Chairperson Collard asked if there were any comments from the public. With no response, a motion to close the public hearing was made by Member Bis and seconded by Member Tower. All in favor, motion carried.

Code Enforcer Jeffery stated that a letter from the Town Engineer was forthcoming, but suspected that because there was approval from all three outside agencies, it would be a positive recommendation.

Member Fox 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 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.

With no further discussion, a motion to approve the Site Plan as presented was made by Member 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 to recommend to the Zoning Board of Appeals approval of the Special Use Permit with the condition that no parking occur on the west side of River Road 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.

Follow-up on project for Judith Fleckenstein (life estate), 1953 Balmer Road, Ransomville; Tax Map ID 61.00-1-24 for Pond/Aquaculture facility

Code Enforcer Jeffery stated that when the Planning Board approved the aquaculture facility for Mr. Fleckenstein there was a timeframe of completion for 18 months and therefore has expired. Code Enforcer Jeffery stated that he and Mr. Fleckenstein met and as a result of the meeting he has supplied the Planning Board with meeting notes. Code Enforcer Jeffery stated that Mr. Fleckenstein was looking for a source in which to remove the soil for the pond and hoped to find one within the next month.

Attorney Dowd stated that Mr. Fleckenstein is currently in violation of the Town code as the timeline was not met. Therefore Mr. Fleckenstein will need to formally request an appeal from the Planning Board. Code Enforcer Jeffery stated he would inform Mr. Fleckenstein.

Member Ortiz stated that he has concerns that Mr. Fleckenstein will not follow through on the project if the timeline is extended as he has not completed what was required to date. Member Tower stated that if Mr. Fleckenstein is not able to find someone to purchase the fill it does not seem to be an economically viable project. Member Fox stated that if this project extension is granted, the board has to stipulate that it will not be extended again.

Attorney Dowd stated that the Planning Board approval was challenged in court, but the Town prevailed. The court's decision has been appealed and a decision has not been made on the appeal. He stated that if the Town loses the appeal, the permit is revoked. He also stated that the public will most likely have the same objections with the project that they had with the original application.

Member Bis stated that there must be a time limit on when Mr. Fleckenstein needs to come before the board so that the process is not extended.

Supervisor Duffy Johnston was in the audience and stated that he was speaking as the former Chairperson of the Zoning Board of Appeals when the decision was made – not as the Supervisor. He stated that Mr. Fleckenstein wanted to use 22 acres for the project. He was granted 11 acres. He continued that it was a horrible spring regarding weather which most likely put the project behind. He also stated that he spoke with Mr. Fleckenstein during the court case and the unexpected expense of defense at about \$47,000 could also have played a role in the delay of the project.

Code Enforcer Jeffery stated that Mr. Fleckenstein's lawyer claims that the fill is not going to CWM and aside from the topsoil, all other fill has been removed as required.

Attorney Dowd, Code Enforcer Jeffery and the Board Members agreed that Mr. Fleckenstein needs to present his request for extension in front of both the Planning and Zoning Boards.

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

Chairperson Collard informed Mr. Kent that he had been removed from the agenda because Code Enforcer Jeffery had tried to contact him numerous times without success. He stated that the board would hear any updates he had because he is currently in violation of running his business without Site Plan approval or a Special Use Permit.

Mr. Kent stated that the Site Plan has changed from the one presented in December in that he will operate with only the property that he owns currently. He stated that he will be adding vegetation to the berm at the

front of the parcel in April and would like to clear more vegetation in the back for additional room. He intends to store 80 boats. He stated that the drawings that he is presenting are not to scale.

Code Enforcer Jeffery stated that Mr. Kent's parcel is 1.93 acres. Attorney Dowd stated that the Site Plan drawings need to be to scale and to show the location and quantity of the boats that he will store. Attorney Dowd asked Code Enforcer Jeffery if he felt that the presented drawing is complete and Code Enforcer Jeffery stated it was not. Mr. Kent was informed that in order to schedule a public hearing for final Site Plan Review, the plans needed to be redrawn to scale and must be approved as complete by Code Enforcer Jeffery 21 days prior to the Planning Board meeting.

Chairperson Collard informed Mr. Kent that if this Site Plan was not approved by April that he could not open his business. He informed Mr. Kent that he needs to communicate with Code Enforcer Jeffery to keep the process moving forward.

A motion was made to approve the Preliminary Site Plan with the condition that Code Enforcer Jeffery approve the updated drawings and accepted the application as complete prior to Secretary Freiermuth scheduling the public hearing for the final Site Plan. The motion was made by Member 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.

Discussion on agricultural data sheet information/process

Code Enforcer Jeffery distributed the Niagara County Planning Board Project Referral and Review Guide (dated October 2012) to the Members as a resource. He stated that he reviewed an old email stating that "the agricultural data statement should now be required of anyone seeking site plan approval, subdivision of land, special use permit, variance or zoning amendment which occurs on property 'containing a farm operation' located in an ag district or within five hundred feet of a farm operation that is located in an ag district". When he saw this, he was concerned that this requirement has not been followed.

Attorney Dowd stated that the Town created a later agreement with Niagara County that does not require the Town Planning and Zoning Boards to refer for the above situation(s).

Discussion on code/items requiring possible amendment in the planning/zoning law

Code Enforcer Jeffery distributed a page of notes with potential Zoning law amendments and stated that he felt that a committee could be formed to discuss and formalize recommendations for amendments. Chairperson Collard, Member Ortiz, Member Bis and Secretary Freiermuth indicated their interest in serving on the committee. Attorney Dowd reminded the Board that the committee must abide by the NYS Open Meetings Law and cannot have more than two board members on the committee unless the meeting is published ahead of time. He did state that notes can be distributed from the committee to all board members.

Code Enforcer Jeffery stated that he already had two additions to his notes for possible amendments including snow retention systems for metal roofs and in-law apartment specifications.

Code Enforcer Jeffery's report

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

Correspondence / New / Old / Miscellaneous Business

Nothing further to report.

Attorney Dowd report

Nothing further to report.

A motion to adjourn the meeting at 8:28 p.m. was made by Member Tower and seconded by Member Bis. All in favor, motion carried.