



PLANNING BOARD TOWN OF PORTER

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Approved July 5, 2018

Thursday, June 7, 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, Member Robert Tower, Member G. Edward “Jipp” Ortiz, Code Enforcement Officer Peter Jeffery, Attorney Michael Dowd, Town Assessor Susan Driscoll, Secretary Amy Freiermuth

Absent: Vice Chairperson Mark Fox, Member John Bis

Approval of the minutes from the May 3, 2018 Planning Board meeting

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

Recommendation to the Zoning Board of Appeals for an Area Variance for E&R Horizons, LLC, 3231 Porter Center Road, Youngstown; Tax Map #47.00-1-76 to allow for a two-family residence in a Rural Agricultural zone.

Code Enforcer Jeffery stated that the agenda had the incorrect application for E&R Horizons. The correct application being heard this evening is for a variance for a side yard setback. Robert Battista was present as the lawyer representing E&R Horizons as well as Angiolina Passucci from E&R Horizons. Mr. Battista explained that Town code requires a 15-foot side yard setback, but currently there is only 7.98 feet from the front of the home, hence the request for the variance. He stated that the house is on an angle and the back of the house is 15.23 feet from the property line.

Mr. Battista also stated that they are looking for a Special Use Permit to allow for a two-family home on the property. Code Enforcer Jeffery stated that this topic is not on the agenda for this evening as the variance must be approved by the Zoning Board of Appeals first. If they ZBA denies the variance, the Special Use Permit cannot move forward. A site survey was displayed showing the setbacks and the angle of the home.

Code Enforcer Jeffery stated that prior to E&R Horizons purchasing the property, the home was added onto illegally (no building permit and setbacks not adhered to). The home was also made into a two-family home, which requires a Special Use Permit. E&R Horizons purchased the property with the violations. Mr. Battista stated they were unaware of the violations when the property was purchased and stated that because it was a foreclosure the timeframe in which to complete the sale was limited. Therefore, they did not have a survey and did not know what limitations were already existing.

Code Enforcer Jeffery stated that originally it was understood that E&R Horizons was going to purchase a strip of land from the neighbor, Mr. Skellen to make the setback whole. E&R Horizons also spoke with Mr. Skellen about purchasing only a 4-foot strip to decrease the variance needed. Code Enforcer Jeffery stated that he informed E&R Horizons that a 7-foot strip (at minimum) would be sufficient to make the setback legal.

Chairperson Collard stated he thought it was odd that no survey was done prior to the purchase. Mr. Battista stated that it was because of the limited timeframe in which to complete all paperwork. Member Ortiz stated that he understood the situation, but still was unsure about the variance request because it could be made whole as the neighbor was willing to sell E&R Horizons the strip of land.

Attorney Dowd stated that he has represented many buyers on foreclosures and stated that sometimes a stub search is provided, but often there are steps not taken that would be a part of a “normal” sale. He stated that the ZBA will need to determine if this variance meets the criteria for allowance and stated that E&R Horizons did not create the hardship originally. He stated the prior owner is responsible for the violations and stated that in reality, it would be better to have the home fixed and occupied rather than staying a “zombie home” due to variance issues. He stated that if the two neighbors could not come to an agreement on the sale of the strip of land, the Planning Board recommendation should be looked at generously as this is an improvement to the property.

Member Tower asked the applicant why they were not planning to purchase the strip of land. Ms. Passucci stated that they only wanted to purchase 4 feet from the beginning, but it was recommended that they needed 7-8 feet and felt that it was too expensive. Code Enforcer Jeffery stated that he never informed them that 4 feet would be sufficient. He stated he informed E&R Horizons from the beginning that he recommended that they purchase at least 7 feet.

Mr. Skellen was present. Chairperson Collard did state that although this was not a public hearing, he would like to hear from Mr. Skellen to understand his perspective. Mr. Skellen stated that he spoke with the real estate agent prior to the home being sold. He claims he also informed Mr. Battista of the setback issues prior to purchasing the land. Currently Mr. Skellen owns 1/3 of the north driveway as it is located on his property. He stated that if E&R Horizons decides not to purchase any property from him, that he wants the driveway removed from his property.

Attorney Dowd stated that he did not realize the driveway was an issue and that the Planning Board cannot make a recommendation to the ZBA on the variance if there is an outstanding issue with a neighbor — in this case the driveway encroaching on the neighbor’s property. He stated that if the two parties agreed to the 4-foot or 7-foot strip purchase they could move forward with the recommendation. Attorney Dowd stated that the Town will not get into a civil matter regarding the sale. Member Ortiz agreed and stated that the dispute with the neighbor needs to be solved first. If 4 feet was purchased, he would entertain recommending the variance. Chairperson Collard stated that at this time no recommendation was going to be made and suggested the two parties go into the hallway to see if they can come to a resolution. Attorney Dowd stated that if E&R Horizons agrees to remove the driveway, they can move forward with the request for the variance.

Secretary Freiermuth verified with Attorney Dowd that if an agreement is made to sell any portion of Mr. Skellen’s property, a subdivision must be completed.

Code Enforcer Jeffery stated that he has inspected the property a few times since E&R Horizons purchased the parcel and said they have done a great job cleaning up the interior and have invested time and money into the home. He said that the two-family home is illegal, but the Special Use Permit cannot be entertained until the variance is resolved. Chairperson Collard stated that it is good to not have another “Zombie home”

in the Town and wondered when the original house was built. Assessor Driscoll informed the Board it was constructed in 1989.

Recommendation to the Zoning Board of Appeals for a Variance for Robert Pepperday and Jennifer Raymond, 3901 Dickersonville Road, Ransomville; Tax Map #61.00-2-13.12 for 175 feet road frontage / minimum lot width (300 feet required lot width).

Architect Gwen Howard was present in addition to applicants Robert Pepperday and Jennifer Raymond to discuss the request for a Variance to allow 175 feet of road frontage for “other use” as opposed to the required 300 feet. The intent of the property is to build a micro-brewery that will also have tastings (as determined to be similar to a winery in permitted uses). Ms. Howard stated that she has permission to speak on the applicant’s behalf to answer any questions. She stated that the parcel is a large lot that has 175 feet of frontage. She stated that the property becomes wider towards the back and on the diagonal, is widest at 218 feet. Code Enforcer Jeffery states that the brewery is permitted but the variance is needed because it falls under “other uses” in the code – hence the need for 300 feet frontage.

Attorney Dowd asked if the applicants intend to sell the raw materials to brew. Mr. Pepperday stated that this parcel is not large enough and at this time do not intend to farm the product. Attorney Dowd stated the reason he asked is if this venture because a farm operation, the applicant would only need 200 feet of frontage, thus decreasing the Variance request. Member Tower stated that NY Ag and Market would need to make that determination if farming was pursued. Chairperson Collard stated that this would be similar to a winery tasting house as opposed to a vineyard as no raw material is being produced on site. Ms. Howard did state that 80% of the raw materials would be purchased locally.

Member Tower stated that if they planned to have weddings on site, he could not see how it would fit into a farm operation. He stated that he thought the project is a good idea, but asked why the applicant didn’t purchase enough land to forgo the variance. Ms. Howard stated that the building on the parcel will be approx. 90 x 100 feet enclosed with overhangs with the brewery and tasting room located inside. She stated at most 200 people would fit inside. Mr. Pepperday stated that he lives four houses down the road. Ms. Raymond stated that they were drawn to the property because it is wooded and looks like a destination. They intend to only clear what is needed for the driveway and the building and to keep the rest of the parcel wooded.

Chairperson Collard asked if the applicants had spoken with their neighbors about the project. Ms. Raymond stated that they sent out 30 letters to their neighbors informing them of the plans for the project. She stated that the responses they have received are all positive. Chairperson Collard stated that because the property is in a residential area, he is glad that they are positive. Member Ortiz stated that it is crucial for the neighbors to be ok with the project.

Ms. Howard stated that the building will not need a Variance for side yard setback because of the position of the building and the land. Code Enforcer Jeffery stated that the agenda item is a recommendation from the Planning Board to the ZBA for the frontage Variance. He stated that the Planning Board can make the recommendation contingent on no reasonable objection from the neighbors as the ZBA will have a public hearing prior to making a determination. Member Ortiz stated that he felt that a recommendation should be made provided the public hearing is “clean.”

Member Tower stated that if they intended to become a Farming Operation, NY Ag and Markets would need to approve that this would be a viable farm. Attorney Dowd stated that the only reason he suggested looking into a Farm Operation was that the variance would only need to be 25 feet rather than 125 feet. Therefore, the Variance would be less substantial. He stated that a Variance was needed either way.

Ms. Howard stated that there will be no kitchen at the brewery and would not be a wedding venue on a regular basis. The intent is specifically for tastings and the brewery.

Member Ortiz stated that the concept is reasonable and at this point the ZBA needs to do their job regarding the Variance. He stated he does not have a problem recommending the Variance if the neighbors do not object.

A motion was made to recommend to the Zoning Board of Appeals that the Variance be approved contingent on no reasonable objections from the neighbors. The motion was made by Member Ortiz and seconded by Member Tower.

With no further discussion, roll was called:

Chairperson Collard: Yes
Vice Chairperson Fox: Absent
Member Bis: Absent
Member Tower: Yes
Member Ortiz: Yes
Motion Carried.

Informal update from Runaway Bay Subdivision on the Preliminary Plat submission, 3881 River Road, Youngstown; Tax Map # 59.00-1-13.1

Chairperson Collard stated that he asked Christopher Guard to attend the meeting this evening to give the Planning Board an informal update on the project. Sean Hopkins, Mr. Guard's Attorney was also present.

Attorney Dowd explained that the Preliminary Plat was filed with Code Enforcer Jeffery and that the Town's Engineering Firm, GHD would be reviewing and approving the paperwork as needed. He stated that the Environmental Review will need to be completed and therefore a lead agency needs to be appointed. There is a 30-day review period to allow for comments once a lead agency is named. Attorney Dowd suggested that the Planning Board become the lead agency and stated that Dave Britton, from GHD, would be responsible for the coordinated review for lead agency status. Mr. Britton would act for the Town in filing all needed paperwork to numerous agencies including (but not limited to) the County, the Army Corps of Engineers, the DEC and the State (because of the Parkway). Attorney Dowd stated that the Long Environmental Assessment will be required and that the Planning Board needs to pass a resolution adopting the lead agency status.

Mr. Hopkins asked if the applicant could be on the agenda for August for the public hearing of the Preliminary Plat and stated that any comments could be address about the lead agency status in July.

A motion to request Mr. Britton and GHD to act on behalf of the Town to apply for Lead Agency Status was made by Member Ortiz and seconded by Member Tower.

With no further discussion, roll was called:

Chairperson Collard: Yes
Vice Chairperson Fox: Absent
Member Bis: Absent
Member Tower: Yes
Member Ortiz: Yes
Motion Carried.

Code Enforcer Jeffery stated that as per Town Code, there will be an Engineering Cost Recovery Fee and that a deposit may be required. Mr. Hopkins stated he understood that and had no issue with this.

Return to: Recommendation to the Zoning Board of Appeals for a Variance for E&R Horizons, LLC, 3231 Porter Center Road, Youngstown; Tax Map #47.00-1-76 for a side yard setback (amended).

E&R Horizons and Mr. Skellen were asked if an agreement had been made. Mr. Battista stated that E&R Horizons would remove the driveway that currently sits on Mr. Skellen's property and would move forward with the variance request without purchasing any land from Mr. Skellen. Code Enforcer Jeffery stated that a Certificate of Occupancy has not been issued for the home. Attorney Dowd stated that the recommendation for the Variance can be made contingent on the driveway that is encroaching on Mr. Skellen's property be removed. Code Enforcer Jeffery stated that Mr. Skellen informed him that he has concerns and would like to speak with his lawyer prior to agreeing to any sale. Member Ortiz asked if the driveway would still be usable once a portion was removed. Mr. Battista stated that there are two driveways on the property and that the residents can use the south driveway if necessary. Mr. Skellen stated that he either wants legal counsel if they are going to discuss the sale further or he would like the driveway to be removed from his property. He stated he has had issues with E&R Horizons in the past and would like his concerns to be resolved.

Member Tower asked if the driveway removal would have any effect on the house being used for a two-family home. Code Enforcer Jeffery stated that a two-family home is an allowed use in an RA district with a Special Use Permit. That Special Use Permit can contain parameters for parking, buffering, etc., as deemed important or necessary. Secretary Freiermuth asked if there needs to be a side yard setback for the driveway and Attorney Dowd stated no. The driveway can butt right up to the property line.

Member Tower verified that if the Variance was approved, the intent is that E&R Horizons will apply for a Special Use Permit for a two-family home. He asked if the intent was for the home to be a rental unit. Ms. Passucci stated they were not sure of the final use. They may rent the home or they may sell it. Attorney Dowd stated again that a two-family home is a permitted use with a Special Use Permit.

Chairperson Collard stated that he understood the position Mr. Skellen was in and if he had objections, he could voice his opinion at the ZBA public hearing. Member Ortiz stated that this situation is a mess that was existing that the Town is trying to resolve. He did feel it was fair that Mr. Skellen does not want anybody trespassing on his property but did not feel it was reasonable to not grant the Variance as the applicant would have a hardship tearing down the building.

A motion to recommend the approval of the Side Yard Setback Variance as requested was made by Member Ortiz and seconded by Chairperson Collard.

With no further discussion, roll was called:

Chairperson Collard: Yes

Vice Chairperson Fox: Absent

Member Bis: Absent

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

Attorney Dowd was dismissed to attend to personal matters.

Discussion on Potential Zoning Law Amendments

Code Enforcer Jeffery stated he did not have any further Code Amendments prepared for the meeting this evening. He stated he would send an email to both the Planning Board and ZBA with the draft language for the items already discussed.

Code Enforcer Jeffery's report

Code Enforcer Jeffery's report was distributed. A brief discussion of some of the items ensued. Code Enforcer Jeffery stated that "Zombie Homes" are still an issue, but in October 2017 there were 22 homes and to date 9 of those have been sold, improved or are on the market. Therefore, there are 13 remaining, 4 of which are condemned. He stated that the process of finding the owners to hold them accountable is very hard and in some cases next to impossible because of the bank transfers, etc.

Correspondence / New / Old / Miscellaneous Business

Code Enforcer Jeffery stated that Thomas Fleckenstein was granted the extension of 18 months from the ZBA to complete his 5-acre pond. He stated the intent is to double the size from last year. Member Tower stated that there are fish on site and that if the Members had the opportunity to schedule an on-site tour it would be worthwhile to see the current status.

Chairperson Collard stated that he and Supervisor Johnston went to a meeting at CWM. He stated that the process is moving forward on the State level and he anticipates that the Site Plan Review for the Planning Board is about a year out.

With no further discussion, a motion to adjourn the meeting at 8:42 p.m. was made by Chairperson Collard and seconded by Member Tower. All in favor, motion carried.