



PLANNING BOARD **TOWN OF PORTER**

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Approved June 7, 2018

Thursday, May 3, 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 John Bis, Member Robert Tower, Member G. Edward "Jipp" Ortiz, Code Enforcement Officer Peter Jeffery, Attorney Michael Dowd, Town Assessor Susan Driscoll, Secretary Amy Freiermuth

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

Approval of the minutes from the April 5, 2018 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.

Recommendation to the Zoning Board of Appeals for a Variance on Niagara River Properties LLC (Tom Dugan), 3695 Lower River Road, Youngstown, NY. Tax Map #59.00-1-9 for a deck and dock with connecting stairs.

Code Enforcer Jeffery presented a map to show Mr. Dugan's property in relation to Niagara River Properties and explained that the Planning Board should make a recommendation on the Variance prior to the Site Plan and Special Use Permit actions.

Member Ortiz asked Mr. Dugan if he owned the property (at 3695 River Road). Mr. Dugan explained that he and Mr. Paul Anthony own Niagara River Properties as business partners. Niagara River Properties will lease to Mr. Dugan. A variance is needed because the dock is accessory to a principle structure, however, the parcel that Niagara River Properties owns does not have a principle structure. Mr. Dugan's home is built on his parcel.

Attorney Dowd stated that the dock can be removed if the lease is terminated. He also stated that if Niagara River Properties was owned by one person, they would need to merge it to another parcel with a home on it in order to allow for the dock. Member Tower stated that he thought this solution made sense even though it was unorthodox. Attorney Dowd agreed that it is unique but works in this situation. He did state that there can be no parking on the west side of River Road.

Code Enforcer Jeffery stated that the Planning Board needs to make a recommendation to the Zoning Board of Appeals for the variance because the ZBA cannot move forward without making a decision. He also stated that if the Planning Board choose to not recommend the variance, that the ZBA could approve it with a majority plus one vote.

Member Bis asked Mr. Dugan if the dock is removable and Mr. Dugan stated it would be. Code Enforcer Jeffery stated that the dock can be removed, but the stairs are permanent. Stairs are not accessory to a structure, so they can remain regardless of circumstances. A building permit was issued for the stairs and the project is complete.

A motion to recommend to the Zoning Board of Appeals that the Variance be approved as presented was made by Vice Chairperson Fox and seconded by Member Tower.

With no further discussion, roll was called:

Chairperson Collard: Yes

Vice Chairperson Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

Public Hearing and Site Plan Review for Niagara River Properties LLC (Tom Dugan), 3695 Lower River Road, Youngstown, NY. Tax Map #59.00-1-9 for a deck and dock with connecting stairs. Recommendation to the Zoning Board of Appeals for a Special Use Permit.

Code Enforcer Jeffery presented drawings for the site plan for the deck and dock. He stated that Niagara River Properties has 66 feet of river frontage and the stairs have been built. The intention is to build the dock within reason to the center of the property which will allow for the 15-foot side yard setback from the property line. He stated that the DEC has approved the stairs and deck and that the Army Corps of Engineers has the proposal to approve the dock. They have not given the final approval, but it is anticipated. Mr. Dugan added that the dock is a two-pier system and will be shaped like a U. They are using the Town's guideline (which is more stringent than the Army Corps) for side yard setback. He also stated that they are allowed 100 feet into the River, but anticipate being about 30 feet to be more in line with the neighbor's dock. Code Enforcer Jeffery stated that the Special Use Permit should be contingent on approval from the Army Corps.

Chairperson Collard opened the public hearing and asked if any members of the audience wished to speak. Pat and Tom England, neighbors to the south, stated that they have spoken with Mr. Dugan about their concerns about approaching their dock from upstream. They are concerned with the setback it may be difficult to dock parallel. They stated they are new to the area and have not boated yet and therefore are unfamiliar with the current on the River. Code Enforcer Jeffery stated that Mr. Dugan should have the same opportunity to use a dock as the England's and he is meeting the setback requirements. Attorney Dowd stated that he feels the current should not be an issue as he is an avid boater. He also stated that the setback requirements cannot be reduced to benefit the neighbors. Mr. Anthony stated that the dock can be moved if the England's find they are having major issues. He stated they are willing to work with everyone to accommodate the needs of all those involved.

Member Ortiz asked where Mr. Dugan planned to have guests park. Code Enforcer Jeffery stated that on the east side of the road there is a 6-foot strip of gravel road that can accommodate parking. There is no parking on the west side of the road.

Vice Chairperson Fox read the engineer letter from GHD (as filed). Chairperson Collard read an email from Superintendent Hillman (as filed) indicating that the only concern he may have is the relation of the stairs to the path. Code Enforcer Jeffery stated that the stairs which were built with a building permit will not block the path and there is about 10 feet of room between the two.

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

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

With no further discussion, roll was called:

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

A motion to recommend to the Zoning Board of Appeals that the Special Use Permit be approved with the following conditions:

1. No parking on the west side of River Road.
2. Special Use Permit timeframe should be equal to, or less than, that of the lease.
3. If the lease is terminated, the Special Use Permit should be revoked.
4. Permit should be contingent on final approval from the Army Corps of Engineers for the dock.

The motion was made by Member Ortiz and seconded by Member Bis.

With no further discussion, roll was called:

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

Request to waive indicated Subdivision Regulations — cul-de-sac and wetland setback for Runaway Bay Subdivision LLC, 3881 River Road, Youngstown. Tax Map #59.00-1-13.1.

Code Enforcer Jeffery displayed a map with a potential cul-de-sac highlighted and explained that Town Code does not allow a cu-de-sac in subdivision, however, the Planning Board can waive that subdivision regulation. Mr. Guard has requested a waiver. Materials to support this application are included in the file.

Attorney Sean Hopkins, Christopher Guard and Mr. Guard's architect, were present. Mr. Hopkins explained that his client is looking for two waivers, the first a waiver from the code, section 165-25D which does not allow a cul-de-sac. Mr. Hopkins presented a larger map with the proposed cul-de-sac displayed. He also had a map with a hammerhead which is what would be required if the wavier was not approved. Mr. Hopkins stated that if they went with the allowed hammerhead, they would actually be able to increase the lot count from 21 to 23, however they would prefer a cul-de-sac as it fits better in the character of the neighborhood. Mr. Hopkins stated that New York State fire code does allow cul-de-sacs in subdivisions as long as they are 96 feet. He stated that the one they are proposing is 200 feet which should certainly accommodate all heavy machines that would need access to the road — snow plows, fire trucks, school buses. They want this project to be done right and prefer a cut-de-sac to the T turnaround.

Mr. Hopkins stated that the second waiver is eliminate the 100-foot buffer on the wetlands on the individual parcels as in section 165-26B(2) of the Code. He stated that the DEC only regulates wetlands that are 12.4 acres or larger and that an individual cannot impact that buffer without a permit. He stated that the wetlands on this property is a federal wetland that does not have requirements for a buffer as per the Army Corps of Engineers. He stated these wetlands are not on the federal inventory and the limitation right now is only in the Town Code.

Mr. Hopkins stated that the design they are presenting does allow for future expansion with the potential to connect to Collingwood. He stated that the 98.5 acres would take time to develop and they are currently only planning the 21 lots for Phase 1. Therefore, they did not survey the entire property at this time for the wetlands.

Code Enforcer Jeffery stated that he has spoken to both Superintendent Hillman and Youngstown Fire Chief Greg Quarantillo. He stated that Youngstown Estates has three cul-de-sacs and feels that the proposal is similar to the Youngstown Estate cul-de-sac Fox Point Circle. He stated that the only potential concern Superintendent Hillman has is in regards to snow removal. He claims that Superintendent Hillman said it may be more difficult to remove the snow, but is not saying he is against the proposal. Code Enforcer Jeffery also spoke with a few DPW employees who plow and he says they would prefer that the middle is paved, not green space, but there was no significant pushback from the employees. He stated they would prefer the drive area to be a little bit wider than proposed. He also stated that Chief Quarantillo did not seem to have major concerns. Mr. Hopkins stated that the cul-de-sac is larger in diameter than Fire Code requires. He stated that the minimum out to out measurement is 96 feet. The proposed cul-de-sac is 166 feet. Mr. Guard said he did not feel that increasing the width of the road to 30 feet would be an issue to help the DPW. Code Enforcer Jeffery stated that Chief Quarantillo believes that the radius of the cul-de-sac in Youngstown on Carrollwood Court measures 62 feet to the outside. He stated he would double check so that he has a measurement to compare the proposed cut-de-sac.

Member Ortiz stated he felt that the cut-de-sac is much more attractive than a hammerhead which doesn't seem as functional. He also states that a cul-de-sac is not unusual in a subdivision and feels it is a good idea. Vice Chairperson Fox agreed. Member Bis seems to think it would be a safer layout. Member Tower stated that it seemed like a good idea and was not sure why it was removed from the Code to begin with. Attorney Dowd stated that the Planning Board can waive the code if it doesn't violate the intent. He stated that residents may have objections to the waiver if they feel a cut-de-sac is inappropriate. He felt that if the Planning Board feels that cut-de-sacs should be an allowable use within a subdivision, then they should recommend that the Town Board include them in the Code.

Attorney Dowd asked if Mr. Guard had plans for the rear portion of the property and he stated he did not at this time. After Phase I, Mr. Hopkins states that gravity will not be enough for the sewers and pump stations may be needed. These would be a large expense and they want to make sure the Phase I is complete and homes sold before moving onto Phase II.

Mr. Hopkins stated that they are able to build homes without imposing on the wetlands during Phase I. He stated the largest wetland is on the 2-acre lot and feels there is still room to build a home on that lot.

Member Ortiz states that the Planning Board should move forward with a recommendation to the Town Board to change the law to include cut-de-sacs. Vice Chairperson Fox stated that if anyone objected to the waiver of the cul-de-sac, the risk lies on the applicant if challenged.

A motion was made to waive the section of code that does not allow cut-de-sacs for Phase I of this subdivision. The motion was made by Vice Chairperson Fox and seconded by Member Bis.

With no further discussion, roll was called:

Chairperson Collard: Yes

Vice Chairperson Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

A motion to waive the 100-foot buffer for wetlands for Phase I of this subdivision was made by Member Tower and seconded by Member Bis.

With no further discussion, roll was called:

Chairperson Collard: Yes

Vice Chairperson Fox: Yes

Member Bis: Yes

Member Tower: Yes

Member Ortiz: Yes

Motion Carried.

Discussion on Potential Zoning Law Amendments:

Section 200-7 — Permitted uses table — Interior Storage of Vehicles/Boats/Equipment

Section 200-107 — Special Use Permit

Chairperson Collard announced that the two topics of Zoning amendments would be switched and the board would first discuss section 200-107 Special Use Permits. Code Enforcement Officer Jeffery stated he feels that the process is confusing and a burden to applicants. He stated that in 2010 the Planning Board issued Special Use Permits. Prior to that the Zoning Board issued the permits. He said that within the last few years the permits were transferred back to the Zoning Board to approve, but left the Site Plan portion with the Planning Board. This means that to obtain a Special Use Permit there are three meetings and two public hearings that are required. What is being suggested is that the Site Plan for a Special Use Permit move to the Zoning Board of Appeals with a recommendation from the Planning Board. Therefore, there would be a need for only two meetings and one public hearing. Code Enforcer Jeffery stated that he distributed notes that included his suggestion with wording to clean up the process. Member Tower stated it did not seem that there was a negative to changing the process. Member Bis stated he feels it is a good suggestion to have one public hearing rather than two and feels that if a resident has concerns, they can still address them. Vice Chairperson Fox felt that having one public hearing would be timelier for the applicant. Member Ortiz agreed and suggested that Attorney Dowd submit a proposal of the wording for the Code to the Planning and Zoning Boards. He also suggested that Attorney Dowd include an amendment to include cut-de-sac(s) in the Code. Vice Chairperson Fox suggested that cul-de-sacs should be a 96-foot minimum. Code Enforcer Jeffery stated he would measure Fox Point Circle to use as a reference.

Attorney Dowd was excused from the meeting to attend to personal matters.

Code Enforcer Jeffery stated that discussion was still needed in regards to permitted uses for storage in the Code. He stated that right now there is nothing similar to use as a guide for interior storage for situations he has run into which means that that type of use is therefore not permitted. He feels it makes sense to have three types of storage defined:

1. Seasonal Storage

2. Business Equipment Storage

3. Interior Accessory Storage

Member Ortiz stated that a resident cannot run a business out of a vacant building without a permit (unless commercially zoned). Code Enforcer Jeffery stated that it tough to enforce if there is a complaint because it is not in the permitted use table. Member Bis asked if something is not in the permitted use table, does it make that action illegal? Code Enforcer Jeffery said that he is trying to help define storage so that he has a clearer guideline to enforce. He stated that accessory storage is not currently defined in the code and feels that business storage should also be included. He feels that boats or RVs should not be included under business storage as they are not moved in or out of storage on a regular basis. To answer Member Bis' question, Code Enforcer Jeffery stated that if a complaint is received, he must investigate. Because the use table does not define interior storage, and if the compliant is not spelled out in the permitted use table, it would be a code violation. He feels that having general definitions would help guide him so that he can answer and rectify the complaint.

Member Tower stated he agreed with seasonal storage but does feel that a business is a business and does not fall under a storage usage. Therefore, he feels a Special Use Permit would be appropriate and Code Enforcer Jeffery could shut down the business if violations occurred. Member Ortiz stated that if a company is moving items into and out of storage five times a week, it is a business and cannot be done without a Permit.

Assessor Driscoll said she is aware of a personal barn where the owners use it for storage of their recreational vehicles. She stated she feels that this is an issue as the owner is coming and going often and the vehicles and guests can be loud and disruptive.

Member Bis stated he feels that further discussion is needed and Member Tower agreed. Code Enforcer Jeffery stated he would appreciate any input including alternate concepts. He would like to clarify the Code so that he can enforce the Code as necessary.

Correspondence / New / Old / Miscellaneous Business

Nothing further to report.

Code Enforcer Jeffery's report

Code Enforcer Jeffery's report was distributed. A brief discussion of some of the items ensued.

Attorney Dowd report

No report.

A motion to adjourn the meeting at 9:01 p.m. was made by Member Tower and seconded by Member Bis. All in favor, motion carried.