



PLANNING BOARD TOWN OF PORTER

3265 Creek Road • Youngstown, New York 14174 • (716) 745-3730 • Fax (716) 745-9022

Approved June 1, 2017

Thursday, May 4, 2017.

The regular meeting of the Town of Porter Planning Board was called to order at 7:02 p.m. with the Pledge to the Flag.

Present: Chairperson Peter Jeffery, Vice Chairperson Anthony Collard, Member Mark Fox, Member John Bis, Member Robert Tower, Attorney Michael Dowd, Code Enforcer Roy Rogers, Assessor Susan Driscoll,

Approval of the minutes from the Planning Board Meeting on April 6, 2017

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

Public Hearing of Minor Subdivision Mark and Andrea Woodcock, 1567 Lake Road, Youngstown, for the property located at 1575 Lake Road, Tax Map ID: 32.16-1-23.11 and 32.16-1-23.2

Chairperson Jeffery stated that meeting is a public hearing for this subdivision and asked if any members of the audience had any input. There were no comments.

A motion to close the public hearing was made by Member Bis and seconded by Member Fox. All in favor, motion carried.

Chairperson Jeffery stated that Town Engineer Amico stated in a letter to the Planning Board "... the proposed action will not have an adverse impact on Town drainage facilities."

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

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

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

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

With no further discussion, roll was called:

Chairperson Jeffery: Yes

Member Collard: Yes

Member Fox: Yes

Member Bis: Yes

Member Tower: Yes

Motion Carried.

Chairperson Jeffery stated that proper notice of the subdivision was published in the Niagara Gazette and neighbors within a 500-foot radius were notified via mail.

Preliminary Review of Minor Subdivision Thomas Walker, 1340 Cain Road, Youngstown, Tax Map ID 60.00-2-25.11

Mr. Walker (son) explained to the Planning Board that his parents' home is located on Cain Road in the front of the property and they would to subdivide the land so his brother can have the rear of the property where he is currently building a house (off of Lutts Road).

Member Collard asked if the house was built. Mr. Walker stated that it is framed, but nobody is living in it yet.

Chairperson Jeffery stated that the subdivision should have been applied for (and approved) prior to construction. A building permit should have also been obtained. Chairperson Jeffery asked for lot size. Mr. Walker stated it is approximately 200 x 475 feet with the road frontage at the 200-foot measurement.

Attorney Dowd asked who maintains the ditch on the property. Mr. Walker Sr. (father) stated the Town maintains the ditch, but it is located on his neighbor's lot.

Mr. Walker Sr. stated he does not have sketch plans or surveys of the property at this point. Code Enforcer Rogers stated that there are wetlands on the property. Mr. Walker stated that the house is being constructed 190 feet from the road and about 100 feet from the side yard. Code Enforcer Rogers stated that Mr. Walker Sr. has been cited for the violation of building a second home on a single piece of property.

Chairperson Jeffery stated that when the survey is done, the house will be included on the survey and that all the setback requirements must be met as construction has already started. Mr. Walker Sr. stated the house is 28 x 40 and he did not anticipate that the setback requirements would be an issue.

Code Enforcer Rogers stated that the wetlands could be an issue and must be taken into account. Mr. Walker stated that most of the wetlands are in the middle of the property.

Member Tower asked if the property had been subdivided in the past. Chairperson Jeffery stated that it was subdivided previously but it is irrelevant now because the previous subdivision was done years ago. He stated that at this point there is only one lot being subdivided into two parcels.

Chairperson Jeffery stated that the potential issues of the proposed subdivision include the setbacks and the wetlands. He asked Attorney Dowd and Code Enforcer Rogers what happens if the framed house is within the wetlands boundaries? Attorney Dowd stated it could be a major issue with the DEC (New York State Department of Environmental Conservation). Mr. Walker Sr. stated that he did not feel it was in the

wetlands and that the land is not wet. Member Tower explained that wetlands are a definition and not based upon if the land is wet.

Chairperson Jeffery stated that the Town has no control over the establishment of wetlands or the definition. Attorney Dowd stated that if the house is located within the wetlands, the DEC has the authority to make the owner tear the house down. Attorney Dowd stated that they could may be able to apply for a wetland amendment, but this amendment is not easy to achieve.

Assessor Driscoll provided Attorney Dowd with a wetlands map and he stated that the house appears to be constructed in the wetlands. Attorney Dowd also stated that permits cannot be issued through the Town if the proposed building is in a flood plain. Mr. Walker Sr. stated that he has brought in dirt to help fill in the area.

Attorney Dowd stated that the dimensional aspects of this application seem to be legal to subdivide the parcel. However, if subdivided, a building permit may not be issued based on the location of the wetlands. There is an accessory building on the potential lot to be subdivided and according to Town Code, the building cannot be there unless a home is constructed on the parcel. It is a circle of violations.

Attorney Dowd stated that the DEC as a 100-foot buffer rule for a wetland stated that nothing can be built within a 100-foot boundary of the wetland.

Chairperson Jeffery asked Mr. Walker Sr. if he wanted to pursue the subdivision prior to looking into the wetlands. Mr. Walker Sr. stated that years ago he had a contractor look at the property and it was only wet in the back corner.

Chairperson Jeffery stated that the Planning Board could subdivide the parcel, but wanted to state on the record that the house that has been started is not proper and may be a huge problem when he applies for a building permit because of the wetlands.

Member Tower pointed out that the garage that is constructed on the land could also be an issue because once subdivided, the accessory building cannot be on the parcel without the house.

Attorney Dowd stated that Mr. Walker Sr. should check with the DEC to determine where the wetland is located. Member Tower stated that certain plant growth can designate a wetland.

Chairperson Jeffery restated that Town Law states that two homes cannot be built on one lot. He also stated that in this zone an accessory building cannot be on a parcel without a vacant lot that doesn't already have a home built.

Attorney Dowd stated that the Planning Board can give Mr. Walker Sr. a preliminary approval with a condition that the DEC wetland will not prohibit construction. Member Fox stated that the board cannot approve the subdivision with the garage already built on the parcel.

Attorney Dowd stated that he knows of a biologist that will be in the area and can help Mr. Walker Sr. determine if the area is a wetland. He asked Mr. Walker Sr. if fill was brought onto the property. Mr. Walker Sr. stated that fill has been brought in. Attorney Dowd stated that this could be an issue as well.

A motion was made to table the preliminary subdivision application pending investigation by the owners of the wetlands location by Chairperson Jeffery and seconded by Member Bis.

With no further discussion, roll was called:

Chairperson Jeffery: Yes

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

Assessor Merge for applicant Zachary Zasucha, Youngstown-Wilson Road, Youngstown, Tax Map ID: 33.00-1-36 and 33.00-1-41

Chairperson Jeffery stated that Mr. Zasucha has two large parcels with a boundary line between the two that he would like to “erase”. One parcel is 29.7 acres and the second is 13.5 acres. He stated that there appear to be no zoning infractions.

A motion was made to approve the Assessor Merge by Member Collard and seconded by Member Tower.

With no further discussion, roll was called:

Chairperson Jeffery: Yes
Member Collard: Yes
Member Fox: Yes
Member Bis: Yes
Member Tower: Yes
Motion Carried.

New / Old / Miscellaneous Business

Assessor Driscoll stated she had a last-minute assessor merge request for Mary Lorenzetti of 975 Lake Road to merge property Tax Map IDs: 32.18-1.13 and 32.18-1-14. She stated that the deed was already filed with Niagara County, but she wanted approval from the Planning Board.

Chairperson Jeffery stated it appeared that the property lots were 50 x 175 feet and 50 x 180 feet which would make the property approximately 100 x 178 feet – a standard size lot if joined. Chairperson Jeffery stated that Ms. Lorenzetti has maintained the empty lot of years.

A motion was made to approve the Assessor Merge by Member Bis and seconded by Member Collard.

With no further discussion, roll was called:

Chairperson Jeffery: Yes
Member Collard: Yes
Member Fox: Yes
Member Bis: Yes
Member Tower: Yes
Motion Carried.

Attorney Dowd stated that the Zoning Board of Appeals will be making a recommendation to the Town Board on short term rentals based upon including a definition rather than a list of regulations – similar to the recommendation by the Planning Board.

Chairperson Jeffery stated that he received an email from Anita Muzzi from the Town of Lewiston Zoning Board of Appeals stating that the Town may conduct ZBA training over the summer. He stated that if board members were interested in attending, he could request further information.

Attorney Dowd stated that the Bailey Brothers violation is now at trial and scheduled for June 13. He anticipates that the entire operation will move to Balmer Road.

Code Enforcer Rogers' report

Code Enforcer Rogers' report was issued to Board Members in their package. He stated there were a few complaints that are being addressed and/or investigated.

Attorney Dowd report

Attorney Dowd stated he had nothing further to report.

A motion was made to close the meeting at 8:11 p.m by Member Tower and seconded by Chairperson Jeffery. Motion carried.