



# PLANNING BOARD TOWN OF PORTER

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

*Approved December 7, 2017*

**Thursday, November 2, 2017.**

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 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 introduced the Planning Board, Secretary, Code Enforcement Officer, Attorney and Assessor to the audience.

## **Approval of the minutes from the Planning Board Meeting on October 5, 2017**

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

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

Mr. Kent was not present.

Code Enforcer Jeffery explained that he spoke with Mr. Kent prior to the meeting and showed him the Site Plan and Special Use Permit as approved for the previous owner. Special Use Permits are not transferable. He stated that Mr. Kent was willing to follow the requirements set forth in the past, but would be updating his Site Plan to present to the board. Chairperson Collard stated that Mr. Kent has been cleaning up the area and getting rid of "junk boats" that were left on the property when sold. He said that Mr. Kent has planted 4 new trees and plans to continue with landscaping work. Member Ortiz asked about the drums of oil that were on the property. Chairperson Collard stated they were left from the previous owner but Mr. Kent has found a way to properly dispose of them.

Code Enforcer Jeffery stated that long term storage of boats will be alongside and behind the building, with no plans of any in the front of the building, however, Mr. Kent would like to store 80 boats as was allowed on the last Special Use Permit. Chairperson Collard stated that Mr. Kent did not intend to sell any boats. Member Tower stated that many concessions were made for the previous owner and along with that came many complaints. It was agreed that Mr. Kent needed to be present in order to answer any questions and concerns, therefore, this application would be discussed at the end of the meeting if Mr. Kent arrived.

**Preliminary Site Plan Review for Nadia Shahram, 1723 Harrison Lane, Youngstown; Tax Map 33.13-1-25**

Code Enforcer Jeffery stated that Ms. Shahram owns a parcel on Harrison Lane that has a home as well as a garage with an apartment above the garage, which is not legal without a Variance (side yard setback because it is a dwelling rather than just a garage) and Special Use Permit. Because a Special Use Permit is required for accessory apartments, a Site Plan for the property is also required. Code Enforcer Jeffery received a violation complaint about the property when the home was put on the market for sale and that is when he became aware of the situation. He stated the garage would be ok where it is located, but the accessory apartment is not in compliance with Town code.

Member Ortiz asked how close this garage was to the neighbor's garage. Code Enforcer Jeffery estimated five to six feet. As a garage, this distance may not be an issue, but with a dwelling there is concern of fire and the close proximity. Code Enforcer Jeffery stated that a dwelling does require a one hour fire wall. In reviewing the specifications, he saw on the construction, the walls were built using materials that would be compliant with this requirement.

Ms. Shahram stated that she purchased the property in 2016 and at that point worked with a contractor to build the garage. That contractor worked with Code Enforcer Roy Rogers (retired) for the building permit and code requirements. Ms. Shahram stated that Code Enforcer Rogers was on the property numerous times. Attorney Dowd asked if a Certificate of Occupancy (C of O) was issued for the garage or if the building permit included an apartment over the garage. In quickly reviewing the files, Code Enforcer Jeffery stated it seemed the permit was only for the garage, but he stated he would look further into the situation. Ms. Shahram stated that the apartment was built at the same time the garage was built.

Member Fox asked Ms. Shahram was planning to use the apartment full time. She stated that she intended to use it when her daughter visit, however she may sell the property as she has purchased another property where she is spending more of her time.

A motion to approve the Preliminary Site Plan was made by Member Tower 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.

Chairperson Collard stated that in December the Planning Board would hold the public hearing for the Site Plan as well as complete the SEQR. The Planning Board would also make a recommendation to the Zoning Board of Appeals on the Variance and Special Use Permit for their January meeting. Assessor Driscoll provided Ms. Shahram with the SEQR part I to complete prior to the Decemr meeting.

Attorney Dowd did state that because the garage was an accessory structure, he was going to further investigate the Town Code to see if an accessory apartment can be located inside. He thought that an accessory apartment can only be located inside a primary dwelling. He stated that this could be an issue, especially if the property sells.

**Recommendation on Use Variance to the Zoning Board of Appeals for Catherine Rotella, 967 Woodcliff Drive, Youngstown; Tax Map 32.18-1-9**

Code Enforcer Jeffery explained that Catherine Rotella has a home on Woodcliff Drive in Youngstown that she had hoped to expand. The DEC has informed Mr. and Mrs. Rotella that because of new regulations due to erosion, they are not able to conduct any structural repairs or to expand the home. Therefore, the Rotella's would like to build another home on the property while living in the current home. The current home will be demolished once the new home is built – hence the request for a use variance.

Attorney Dowd stated that the Town has had issues in the past with residents building two homes on a lot and then not demolishing one of the homes. He stated that the Zoning Board of Appeals could require a bond for the amount of demolition. Mr. Rotella stated he would sign an affidavit stating the current house would be demolished once the new home was complete. He stated that DEC made it very clear that they cannot “touch” the ground where the current home sits because it is within 100 feet of the lake bank.

Chairperson Jeffery stated that this variance request is based on a hardship because of the new erosion regulations. Attorney Dowd asked if the new home would be built south of the driveway and Mr. Rotella stated it would be south of the right of way (driveway) and 105 feet from the shoreline. He stated the road is a utility right of way.

A motion to recommend to the Zoning Board of Appeals approval of the Use Variance 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**

Chairperson Collard stated that a new application was being added to the agenda so that the Planning Board does not hold up the recommendation to the Zoning Board of Appeals until their January meeting.

**Recommendation on Area Variance to the Zoning Board of Appeals for Derek Smith, 3534 Porter Center Road, Ransomville; Tax Map 61.00-1-34.2**

Mr. Smith approached the Planning Board and stated that he would like to build a 15 x 25-foot addition to his home and needs a 5-foot variance. Code Enforcer Jeffery stated the ZBA public hearing is scheduled for November 30.

Attorney Dowd stated it seemed that there was plenty of room between Mr. Smith's home and his neighbors. He asked Mr. Smith if there were other options for the location of the addition. With the driveway, pool, garage and septic system, other options were limited. Attorney Dowd stated that the ZBA has a set of Code regulations that will help to determine if the variance is granted.

Chairperson Collard asked all members if they had an issue with the project and they stated they did not see problems.

A motion to recommend to the Zoning Board of Appeals approval of the Area Variance was made by Member Tower 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.

Chairperson Collard stated that a letter was received from GHD (the Town's Engineering firm) regarding the application of Lewis Robinson, 3575 East Avenue for a recreational pond. The Planning Board approved the Site Plan in October with the condition that Code Enforcer Jeffery felt that the final drawings met all code. GHD also reviewed the updated site plan and survey. Member Tower read the letter from GHD. It was stated " . . . at this time, we find the site plan in conformance with general engineering practices." The letter and stamped survey is submitted to the record and will be filed with all of the applicant's paperwork.

### **Attorney Dowd report**

Member Ortiz and Code Enforcer Jeffery had a few questions of Attorney Dowd about policy and procedure which lead to a brief discussion. It was decided that a committee would be formed to review the Town Code and to make recommendations to the Town Board to update procedures/codes (ie. public hearings for Site Plan and Special Use Permit — does it make sense to have two?).

Attorney Dowd had nothing further to report.

A motion to table the Preliminary Site Plan Review for Derek Kent was made by Member Bis and Seconded by Member Ortiz. All in favor, motion carried. Code Enforcer Jeffery stated that the public hearing of the Zoning Board of Appeals was left open for the Special Use Permit from the October meeting.

### **Code Enforcer Jeffery's report**

Code Enforcer Jeffery distributed his report.

Chairperson Collard asked for an update on the illegal construction on Lutts/Cain Road for the Thomas Walker Subdivision application. Code Enforcer Jeffery stated work has continued on the house and it is at the point that a court date will be scheduled to address the code violations and stop work order.

Code Enforcer Jeffery stated that drainage issues have come to light for the new home construction on 3333 East Avenue for William Suitor. The Town Engineer is requesting more information so that a plan can be created to address the issues. The parties were going to meet this evening, but because some information has not been supplied yet, the meeting has been postponed.

A motion to adjourn the meeting at 8:40 p.m. was made by Member Tower and second by Member Bis. All in favor. Motion carried.