



PLANNING BOARD TOWN OF PORTER

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Approved October 4, 2018

Thursday, September 6, 2018.

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 J. Anthony Collard, Vice Chairperson Mark Fox, Member G. Edward “Jipp” Ortiz, Member Jeffrey Schulze, Code Enforcement Officer Peter Jeffery, Attorney Michael Dowd, Town Assessor Susan Driscoll, Secretary Amy Freiermuth

Absent: Member Robert Tower

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

Approval of the minutes from the August 2, 2018 Planning Board meeting

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

Public Hearing for Site Plan review for Thomas and Patricia England, 3699 River Road, Youngstown; Tax Map # 59.14-1-17 for a dock, landing and stairs. Recommendation to the Zoning Board of Appeals for Special Use Permit.

A motion to open the public hearing was made by Member Ortiz and seconded by Vice Chairperson Fox. All in favor, motion carried.

Chairperson Collard read the public hearing notice:

NOTICE IS HEREBY GIVEN THAT, pursuant to Zoning Chapter 200-106 (Site Plan Review) and Subdivision of Land Chapter 165-9 (Minor Subdivisions) of the Town of Porter, a public hearing will be held by the Planning Board of the Town of Porter, 3265 Creek Road, Youngstown, New York on Thursday, September 6, 2018 for the purpose of considering and hearing all interested persons concerning the following:

7:05 p.m.: APPLICATION OF THOMAS AND PATRICIA ENGLAND, 3699 River Road, Youngstown, New York; Tax Map ID 59.00-1-13.2, for a Site Plan Review for a dock and deck with stairs.

Chairperson Collard stated that the Planning Board has spoken with the England’s extensively about their project and confirmed with Mr. England that nothing has changed in their plans. Mr. England stated that

they purchased the property a year ago with the dock and deck already installed. He stated that the previous homeowner did not obtain a Special Use Permit when the dock, deck and stairs were installed in 2002. The previous owners did have a valid permit from the Army Corps of Engineers. He stated that this permit has been transferred and is now in their name.

Chairperson Collard asked if any member of the audience wished to speak. With no comments, a motion to close the public hearing was made by Member Ortiz and seconded by Vice Chairperson Fox. All in favor, motion carried.

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

With no further discussion, roll was called:

Chairperson Collard: Yes

Vice Chairperson Fox: Yes

Member Tower: Absent

Member Ortiz: Yes

Member Schulze: Yes

Motion Carried.

A motion to recommend to the Zoning Board of Appeals approval of the Special Use Permit was made by Member Ortiz and seconded by Vice Chairperson Fox.

With no further discussion, roll was called:

Chairperson Collard: Yes

Vice Chairperson Fox: Yes

Member Tower: Absent

Member Ortiz: Yes

Member Schulze: Yes

Motion Carried.

Public Hearing for Minor Subdivision for Joshia Tan, 3881 River Road, Youngstown; Tax Map ID 59.00-1-13.2

A motion to open the public hearing was made by Vice Chairperson Fox and seconded by Member Ortiz. All in favor, motion carried.

Mr. Tan approached the Planning Board and stated that he has owned the land for 7 years and is looking to subdivide (2) 2.5 acre lots off the parcel for future residences for his family.

Code Enforcer Jeffery stated that the new parcels meet the minimum building requirements. Initially he was concerned that the new lots would be land locked, but he stated that there is an access easement attached to the deeds, so this is no longer a concern. He stated that water, power and sewer is not a part of the easement, so that would have to be considered if a home was built in the future. Runaway Bay

Subdivision may resolve this detail. Member Ortiz asked for an approximate timeframe that Runaway Bay is thinking of starting development and Code Enforcer Jeffery stated are planning for the Spring of 2019.

Member Schulze asked what will happen to the shed that is currently on the proposed property line. Code Enforcer Jeffery stated that he and Mr. Tan have already agreed that it will be removed completely from the property as it is in poor condition.

Chairperson Collard read from an email from David Britton, Town Engineer:

The only other question I have is does the shed that is located mostly outside of the lot A have to be moved?

Chairperson Collard stated that this concern has now been addressed.

Chairperson Collard asked if anyone from the public wished to speak. With no comment a motion to close the public hearing was made by Vice Chairperson Fox and seconded by Member Ortiz.

With no further discussion, roll was called:

Chairperson Collard: Yes

Vice Chairperson Fox: Yes

Member Tower: Absent

Member Ortiz: Yes

Member Schulze: Yes

Motion Carried.

Chairperson Collard confirmed with Attorney Dowd that this subdivision did not need a SEQR. Attorney Dowd stated this is a Type II action and a SEQR is not required.

Chairperson Collard read from an email from David Britton, Town Engineer:

I seem to recall that sewer and water service is available. It is important that the infrastructure is available to service the new lots as they are not large enough for a septic system.

Code Enforcer Jeffery stated he was not sure why Engineer Britton thought the lots would not be large enough for a septic system. He stated that a septic size lot within the Town is 100 x 200 feet and each parcel would be more than sufficient. However, because the lots are in a sewer district, they would be required to hook up to the sewer if they decide to build a home. He stated that the existing home may have a septic system (he was not sure) and it is grandfathered until the home sells.

Attorney Dowd stated that Runaway Bay may not grant utility access to the parcels, so if they do not, a utility easement would be needed from the adjoining parcel.

A motion to approve the Subdivision as presented was made by Member Ortiz and seconded by Vice Chairperson Fox.

With no further discussion, roll was called:

Chairperson Collard: Yes

Vice Chairperson Fox: Yes

Member Tower: Absent
Member Ortiz: Yes
Member Schulze: Yes
Motion Carried.

Recommendation to the Zoning Board of Appeals for an Area Variance for Judith Fleckenstein Living Trust, 1953 Balmer Road, Ransomville; Tax Map ID 61.00-1-24

Thomas Fleckenstein and Padma Kasthurirangan were present. Mr. Fleckenstein stated he would like to replace the 3 turbines that are currently on his property with 1 turbine that will produce more energy than the current 3. He stated that the tower is the same height as what is currently in place, but the blades are taller and more powerful.

Mr. Fleckenstein said that his aquaponics farm is moving forward and he plans to stock his pond with walleye the second week of October. He stated he needs aerators for the ponds and will need more energy to power them. He continued that the new turbine will have a cleaner look, is quieter and is higher technology than the current turbines. Mr. Fleckenstein stated that the height limits in the Town are 150 feet but the tips of the new blades will be 159 feet, hence the Variance request.

Mr. Fleckenstein stated that Padma Kasthurirangan of Buffalo Renewables, Inc is available to answer any questions that the board may have about the turbine. Ms. Kasthurirangan stated that NYSERDA (New York State Energy Research and Development Authority) is ending the turbine program at the end of this year, so they would like to move forward on this project as soon as possible.

Member Ortiz asked if the turbine could be reduced 9 feet to avoid the Variance. Ms. Kasthurirangan stated that they would have to reduce the turbine by 20 feet (it cannot just be cut down). If it was reduced that much in height, the production would decrease dramatically. She stated that in this case the poles are predesigned and cannot be reduced.

Code Enforcer Jeffery stated he has submitted the application and all supporting documents to the Town Engineer and he should have the Engineer's recommendation for the Zoning Board of Appeals meeting. He stated that the recommendation could be contingent on a favorable recommendation from GHD (the Town's Engineering firm).

Member Schulze asked how long of a lifespan the unit has. Ms. Kasthurirangan stated it has a design life of 20-25 years. At that point, the turbine can be refurbished and the technology updated. She also stated that there is not much within the turbine to wear out.

Attorney Dowd asked what will happen with the current turbines. Mr. Fleckenstein said that they will have to be removed to make room for the new turbine. The removal of the 3 old turbines will also free up 1 or 2 more acres farming. He stated that the greenhouse is up and should be completed next week. He stated that the pumps will be online soon. He stated the second pond is starting to fill and welcomed the Planning Board Members to stop over to see the progress. He stated he plans to harvest the Walleye next summer.

A motion was made to recommend to the Zoning Board of Appeals approval of the Variance contingent on a favorable review by the Town Engineer. The motion was made by Member Schulze and seconded by Vice Chairperson Fox.

With no further discussion, roll was called:

Chairperson Collard: Yes

Vice Chairperson Fox: Yes

Member Tower: Absent

Member Ortiz: Yes

Member Schulze: Yes

Motion Carried.

Attorney Dowd stated that at the Zoning Board of Appeals meeting at the end of September the SEQR will be completed.

Public Hearing for Site Plan Review for Bart Candino, 2315 Braley Road (rear lot of Track Vision LLC., 2401 Braley Road), Ransomville; Tax Map ID 48.00-1-35

Chairperson Collard stated that due to unforeseen circumstances, Bart Candino asked to be removed from the agenda. Mr. Candino informed Code Enforcer Jeffery that he may reapply for the Site Plan/Special Use Permit in 2019 and understands that it will require a new application.

Public Hearing for Preliminary Plat Review for Runaway Bay Subdivision, 3881 River Road, Youngstown; Tax Map ID 59.00-1-13.1

A motion was made to keep the public hearing for Runaway Bay open until the October Planning Board meeting. Code enforcer Jeffery stated that Christopher Guard was in agreement. The motion was made by Member Ortiz and seconded by Vice Chairperson Fox.

Code Enforcer Jeffery's report

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

Code Enforcer Jeffery updated the board on the property owned by Mr. Walker on Cain Road. Mr. Walker built an unpermitted home on his property -- most of which contains wetlands. He stated that the DEC has evaluated the property and imposed a \$33,000 fine for construction on the wetlands. Code Enforcer Jeffery stated that permanent bollards have been installed to map out the wetlands and Mr. Walker must restore some of the areas that have been modified.

Code Enforcer Jeffery met with Mr. Walker and informed him that even though the subdivision deed has already been filed with Niagara County, he must also become compliant with the Town's Subdivision regulations and complete the application for a Subdivision.

Member Ortiz asked if Variances will be needed to permit the Subdivision. Code Enforcer Jeffery stated that it complies with the regulations but Mr. Walker must still go through the process to make it legal within the Town. Member Schulze asked if the house has been completely built. Code Enforcer Jeffery stated that the house is 28x40 and must follow building code. He stated he did not inspect the home as it was being built, but the exterior appears finished. In order for a Certificate of Occupancy, Code Enforcer Jeffery stated that he will require a letter from either a professional engineer or architect indicating that all codes were followed as the house was being built. Otherwise he will not allow occupancy.

Correspondence / New / Old / Miscellaneous Business

Assessor Driscoll said that she recently attended a NYSERTA presentation on community solar projects and felt it would be a good topic for the Planning and Zoning Board to use for their annual training. Code Enforcer Jeffery stated that the boards may want to look at amending the code to allow for commercial solar in specific areas.

Chairperson Collard stated that the 4 recommendations that the Planning and Zoning Boards have been discussing have been forwarded to the Town board for review. He continued that further discussion needs to take place on referrals to the Zoning Board or the Special Use Permit process. Member Ortiz stated that he is not sure a recommendation is the right terminology to use and wonders if the Planning Board should only offer that they have no objections. If there are objections, they should be provided. He is concerned that the Planning Board recommendations may impact the decision of the Zoning Board. Attorney Dowd stated that the Planning Board takes into consideration the intention of the Town's Master Plan and it is common for Planning Boards to recommend decisions to Zoning Boards. Member Ortiz stated that he thought it might be more appropriate to only offer objections. Otherwise to leave the decision to the Zoning Board. Attorney Dowd stated that if this is what is agreed upon, the code will need to be updated as the code currently states that the Planning Board make a recommendation to the Zoning Board.

Member Schulze stated his concern with recommending items to the Zoning Board is that an applicant may think that everything is in order to be approved based upon the Planning Board meeting only to have the application denied by the Zoning Board. He does not want the applicant to be surprised at the difference of decision if the Zoning Board feels differently.

Chairperson Collard stated that the 4 recommendations have been made to the Town board and he would reach out to Supervisor Johnston to see if these items can be on the Work Session agenda for Monday.

Attorney Dowd's report

Attorney Dowd had nothing further to report.

With no further discussion, a motion to adjourn the meeting at 8:16 p.m. was made by Member Ortiz and seconded by Vice Chairperson Fox. All in favor, motion carried.