



TOWN OF PORTER

3265 Creek Road ♦ Youngstown, New York 14174 ♦ (716) 745-3730, ext. 7 ♦ fax (716) 745-9022 ♦

STATE OF NEW YORK

COUNTY OF NIAGARA

ZONING BOARD OF APPEALS

TOWN OF PORTER

The regular meeting of the Town of Porter Zoning Board of Appeals was held on October 28, 2021 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	<u>Date</u>	<u>Present</u>	<u>Absent</u>
Jackie Robinson, Chairman	10/28/2021	yes	
Terry Duffy	10/28/2021	yes	
Paul Brown	10/28/2021	yes	
Marshall Hibbard	10/28/2021	yes	
Steve Zappy	10/28/2021	yes	
Atty Michael Dowd	10/28/2021	yes	
Peter Jeffery, Code Enforcer Officer	10/28/2021	yes	

Chairman, Jackie Robinson called the meeting to order with the pledge of allegiance at 7:00 pm.

Chairman Robinson asked for approval of the September 23, 2021 minutes. Member Marshall Hibbard made a motion and was seconded by Member Paul Brown to approve September 23, 2021 minutes. All in Favor. Motion Carried.

Chairman Robinson stated that the public hearing was still open on the Application of Arthur Garabedian for a Use Variance at 3360 East Avenue, Youngstown, NY and Application of Lakeview Animal Sanctuary (Tenant) of Arthur Garabedian at 3360 East Avenue, Youngstown, NY. Chairman Robinson asked if anyone in the audience wished to speak.

Mr. Tom Johnson, 3320 East Avenue, Youngstown, NY I am opposed to it. I don't think it belongs in the neighborhood. There is enough traffic on East Avenue as it is. We have the Somewhere Bar and we have Mike Tuck's. This



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only adds to it. I don't see any advantage to it. The property does border mine. I think it is a noble cause, but it doesn't belong here.

Attorney Goldberg questioned the two items on the agenda and Chairman Robinson stated that Mr. Garabedian is applying for a use variance and Lakeview Animal for a special use permit, and they cannot proceed with the special use permit if Mr. Garabedian does not get the variance.

Attorney Ari Goldberg, Barclay Damon, 9276 Main Street, Clarence, NY

Attorney Goldberg stated that Arthur Garabedian is the majority member and manager of LLC and authorized Barclay Damon LLP to submit this use variance application and the other application for Lakeview Animal Sanctuary for approval at the property. Lakeview Animal Sanctuary can take advantage of Mr. Garabedian's substantial lack of reasonable return as well as the self-created hardship. He stated that the property is 22-1/2 acres irregular shape with 556 feet of frontage on East Avenue and no other access point other than East Avenue in an LDR District. The property is in a low density residential district, and there is a history of being dedicated to animal care, with a long-term question, tenants at least from 2004 until 2016. A use variance can be granted, and he was going to provide proof in support of that conclusion. Attorney Goldberg stated that he was going to summarize the four items to prove hardship.

Chairman Robinson asked if the Board and Attorney Dowd about closing the public part of the hearing or you can keep it open in case of any other comments. Chairman Robinson stated it has been open since August. Since Mr. Garabedian consented to all the postponements, you can keep the public hearing open, or you can or close it. It is strictly a business judgment. It was agreed to keep the public hearing open.

Attorney Goldberg indicated that he was going to address all the four criteria of Town Law 267-b(2)(b).

1. Even though the statute says reasonable return, I have a sworn affidavit from Mr. Garabedian the managing member of the LLC that he purchased it for \$175,000 in 2004 and recorded a loss and trouble finding tenants and salaries for the following: Yr. 2018-loss a shade under \$22K; Yr. 2019 loss of \$12K; and Yr. 2020 loss of \$15,100. Mr. Garabedian testifies in his

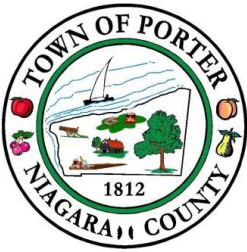


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affidavit that he has no insurance on the property. Mr. Garabedian has had people help him free of charge thereby minimizing his expenses to avoid additional loss. Property owner simply cannot realize a reasonable rate of return from the property and that lack of a reasonable return is substantial. The lack of reasonable return is due to the unnecessary hardship caused by the restrictive zoning code. All these losses are supported by certified tax allowance, and this is the competent financial evidence needed under this element,

2. Hardship relating to the Property. The second element, the alleged partnership that we are discussing is not unique. A low-density residential subdivision would prove difficult to develop because the property only has a mere 556 feet of frontage (all on East Avenue), coupled with the irregular shape, and borders 16 different properties (10 of which have houses on them) – all of which makes it difficult for multiple points of ingress or egress or appropriate fire apparatus access road. The second point is the road is too long for a second point of access. The property is located at the northern extreme of the LDR district. Immediately north of the property is the AR district where – despite being a “lower” zoning classification an “animal shelter” is permitted upon issuance of a site plan.
3. Will not alter the essential character of the neighborhood. It will not alter the character of property. The use proposed of the animal shelter is the care of animals. Agricultural activities include livestock and livestock products including cattle, sheep, hogs, goats, poultry, ostriches, emus, buffalo, alpacas and llamas. “Sound Agricultural Practice” from the NYS Department of Agriculture and Markets, the use of “livestock guardian dogs,” or use of a propane cannon were both considered sound agricultural practices. A farm operation is not just a quiet, passive, low-impact use. The LDR district permits high-intensity farm operations that can create a nuisance to neighboring properties such as a tractor at 6:00 am. Animal shelter is less impactful than certain agricultural operations. I think it’s also less impactful than a potential subdivision or neighborhood there. A subdivision means permanent clearance of all that space, more burning of utilities, more land clearance and more permanent impact.
4. The hardship is not self-created. The LLC was purchased in 2004 and the Local Law No. 2 in 2010 is six years after the property owner purchased the property. The present hardship is the result of a new zoning code and not by the property owner who purchased the property before the adoption of



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the new zoning code. We do meet all the requirements for a hardship and do appreciate your time.

Chairman Robinson asked if there were any additional questions. Member Paul Brown asked the question of the Lakeview Animal Sanctuary if the number of animals there now all still the same number as when you started? Lakeview replied that they have gotten ridden of chickens and five pot belly pigs. Nothing else has come in. There was a “make a wish” and we were contacted and sponsored a little boy dreaming of a farm. We granted that wish, and we brought him the pot belly pigs that we had and did a lesson on taking care of them.

Attorney Dowd stated that he read Ari’s presentation before we came tonight but he did not check the cases sent to show if there is a financial hardship for each use or single use tonight. I think it is important that Mr. Garabedian bought the property prior to the adoption of the new Zoning Law.

Code Enforcement Officer (CEO) Peter Jeffery stated it was in the Zoning Law prior to 2010. The AAR100 section of the code had a list of permitted uses. Farm related uses are allowed. There is not an animal shelter in there. CEO Jeffery showed a list of permitted uses and animal shelter or animal sanctuary were not in the code.

Attorney Dowd stated there are things you might want to look at – prior history and what is proposed now and is it critical to the issue -- creation of the hardship versus financial. I haven’t done a lot of work on it yet. We need to digest it. We are going to think of all these things before we take action. Not much we can do tonight and digest information from the public both legally and financial stuff that may or may not be impacting does not necessarily mean financial hardship. Recommended keeping the public hearing open and having a determination next month.

Attorney Goldberg stated there are no visitors to the site and board members that might come to the shelter. Chairman Robinson stated it is the direct opposite from what they originally told us. They do have families come to visit. They led us to believe that people come to visit the sanctuary. Attorney Goldberg stated it is a public facility. He stated he will do a supplemental letter to discuss traffic and families. Attorney Dowd stated just so we are all clear, there were other



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comments prior to tonight's meeting; and we would be happy to share them with you.

Chairman Robinson had some questions on the financials that were quoted. Affidavit No. 7 – 2016, the company performed renovations and upkeep at the time. We need more information on the value of the improvements made.

Affidavit No. 10 – 2018 – There is an agricultural operation involving sheep and goats. Mr. Garabedian stated he bought them for his grandchildren and went out weekly to visit them. Friends would also come by. So, you never really were a farm? They were like pets.

CEO Jeffery stated it does not meet agricultural activity. You have \$10K gross income in the past two years. It is deceiving to call it an agricultural operation. Chairman Robinson stated it is not an agricultural operation. How can you claim a loss on the pets? Mr. Garabedian stated the SPCA came and took them. What you choose to do with your grandchildren, you can't claim it as a loss. It is stretching things.

CEO Jeffery stated on 2018, it is a farm expense. Attorney Goldberg commented if you do remove 2018/2019 there still would be a loss.

Chairman Robinson stated depreciation is a different type of expense than what you paid for feed. Depreciation is the value of buildings or equipment over the years -- difference between expense and depreciation. It is not an expense. Attorney Goldberg stated it is in the SoHo case but you are right to question it. Chairman Robinson stated the numbers are quite high. It could be a new pick-up truck and that could be part of his depreciation. I don't know how that could be a hardship expense. Depreciation has me concerned. CEO Jeffery stated there is no action for appreciation of property.

Mr. Garabedian bought the property for \$175K and has it up for sale for \$250K. There is no accounting for return on investment. Attorney Goldberg stated there is still no guarantee for a reasonable state of return. CEO Jeffery stated you have put it into the equation.



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Chairman Robinson stated on the 2018 tax documents – rental real estate #5 other- See statement 1 - \$6250. There is no statement. 2019 tax documents – rental real estate #15 – other See statement 2 - \$1200. There is no statement. It would be helpful to see those statements. Can you produce tax returns from your previous years?

Chairman Robinson stated that No. 5 on the Affidavit – the company has never purchased insurance on the property in an effort to keep costs down. Mr. Garabedian stated that people who rented from him, he required them to carry the insurance and some carried insurance on the buildings. I charged them very little on the property. Chairman Robinson questioned Mr. Garabedian if he had an umbrella insurance policy. Mr. Garabedian replied “yes” personally, but I do not have it on the 3360 East Avenue property. Attorney Goldberg questioned why the Board was questioning the umbrella property.

CEO Jeffery stated he would like to answer some questions and answer some points that were raised. Attorney Goldberg had stated the potential of having a subdivision on the property was not a viable alternative. I would like to point out that a single access road on a subdivision with less than 30 acres is allowed on a single access fire road. A recently completed one in the Town of Porter has 21 lots. They have nearly sold half of the lots. The original parcel was in the area of 80 acres. A large portion was sold off to Ducks Unlimited as a reserve. The developed part of the parcel is approximately 30 acres. Attorney Goldberg asked if they did get variances and asked for the address of the property. CEO, Jeffery stated that a variance was issued on the river side. Attorney Goldberg questioned the International Building Code. CEO Jeffery stated a variance has to come from the Department of State not from the local Board. The property was 3881 River Road – two streets. The roads are soon to be dedicated – Dockside Drive and Castaway Court. .

Chairman Robinson stated that the Board would like to go into Executive Session for legal opinion and 7:45 p.m. and a motion was made by Terry Duffy and seconded by Paul Brown. The Board returned from Executive Session at 7:55 pm.

Chairman Robinson thanked everyone for their patience. We took no action in our Executive Session. Our attorney would like to look in more depth for



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information requested; more financial information. The problem we run into is the 4th Thursday of November is Thanksgiving. We are meeting on the 18th of November for a special meeting, if you can get us all the documentation and hopefully we can get this to some type of resolution. Attorney Dowd and the Building Inspector would like to address that there are no new animals being kept there and would like to keep an eye on it to see if it is not expanding.

CEO Jeffery and the Board Members would like to take a look at it and do an inventory (maybe weekly). It has come to my attention that some additions have been made to the building structures; access structures, and they were not permitted. You cannot keep doing this stuff. You have to do what we ask you to do. Try to get this straightened out. Mr. Garabedian leased this property to them without proper permits. He knew he needed permits, and he was here in April. This is not a permitted use; animals already there. We mean no more animals. There have been many complaints and multiple fires down there. Mr. Garabedian stated he called up the Health Department and cleaned up back of the land. Health Department said go ahead. Someone started the fire and also the grass – more than 22-1/2 acres on the property of John Bartemelow. Mr. Garabedian understands that the Town has a code that should be followed.

Attorney Goldberg stated he understands you want to check it out.

Mr. Tom Johnson commented on the fires starting two years ago with the last one three weeks ago. There is repeat fires of debris; stinks up the entire neighborhood; there is a very foul order.

Chairman Robinson asked if there were any additional questions. CEO Jeffery asked for a direct contact at Lakeview Animal Sanctuary regarding the upcoming visit. Shannon gave CEO Jeffery her business card.

Attorney Dowd stated in order to adjourn the Board needed the consent of the applicant to adjourn. Consent from applicant was granted.

Attorney Goldberg asked for copies of letters to be email regarding any complaints from the neighbors.



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The next item on the Agenda was CEO Jeffery regarding Larry Weibert – proposed zoning amendment; expressed interest; a map was shown to the Board (showed three parcels on the imagery). Discussed Creekside lane and the three separate parcels and petitioned the Town Board to change the zoning from Rural Agricultural to Rural Commercial. Chairman Robinson questioned if this comes out to another road – No .

The Planning Board asked that additional property owners be notified outside of the 500 foot limit. No one came to speak on it. The Planning Board at the October meeting did not make a final determination. They are looking for more information and tabled until November. They asked the Town Board to table another 30 days. CEO Jeffery is asking the Board for comments and concerns. Tony Collard commented that two board members felt there was “spot zoning” and they decided against it. The two gentlemen were adamant about “spot zoning”; called for a vote and they did not recommend it.

Attorney Dowd was asked about “spot zoning”, and he described how it works. There was a discussion on concerns and talk about an assessor merge.

Chairman Robinson will send a letter to the Town Board about the concerns.

The second item CEO Jeffery wanted to discuss was the RR business law. He had a draft to the Town Board and Attorney about some concerns. The Board would like to make a determination on it; put in more work and address concerns; Planning and Zoning Boards input and ask for recommendations.

CEO Jeffery passed out paperwork and there was a discussion on this subject. Attorney Dowd commented that once something is a permitted use; you can't do anything to stop it.

A motion was made to adjourn the meeting at 8:30 pm by Paul Brown and was seconded by Terry Duffy. The next meeting is scheduled for Thursday, November 18, 2021 and a training session on Thursday, December 2, 2021 at 7:30 pm.

Sincerely,



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Nancy Smithson
Secretary, Zoning Board of Appeals