



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 July 28, 2022 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	07/28/2022	yes	
Terry Duffy	07/28/2022	yes	
Paul Brown	07/28/2022	yes	
Scott Szarejko	07/28/2022	yes	
Steve Zappy	07/28/2022	yes	
Atty Michael Dowd	07/28/2022	Yes	
Peter Jeffery, Code Enforcer Officer	07/28/2022	yes	

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

Chairman, Jackie Robinson asked for approval of the April 28, 2022 minutes. Terry Duffy made a motion to approve the minutes and was seconded by Steve Zappy. Roll Call Vote-Paul Brown-yes; Terry Duffy-yes; Scott Szarejko-yes; Steve Zappy-yes; Chairman Robinson-yes; All in Favor. Motion Carried.

Chairman Robinson read the following:

NOTICE IS HEREBY GIVEN THAT, pursuant to Section 267 of the Town Law and Local Law No. 2 of 2010, as amended, of the Town of Porter, Niagara County, New York, a PUBLIC HEARING will be held by the Zoning Board of Appeals at the Town Offices, 3265 Creek Road, Youngstown, NY on Thursday, **July 28, 2022 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):



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Application of Keith Udut, 839 Lockport Road, Youngstown, NY 14174. Tax Map No. 45.00-1-25.6. Under Article VIII Section 108F(2), an area variance is requested for a four (4) foot fence in the front yard. Property is located in a Rural Agricultural (RA) Zoning District on the North Side of Lockport Road between East Avenue and Creek Road (Rte. 18).

It was noted that Keith Udut was present. Mr. Udut explained to the Board the fence is tucked into a setting of pines, and it is sloped down from six feet to four feet. Mr. Udut showed a diagram where the fence will be in relation to the pine trees. He also showed where his property line was on the diagram. He is asking for a four foot fence instead of three feet. Chairman Robinson raised the question as to whose property the trees were on. Mr. Udut pointed out what trees were his. He stated he would be giving up some of his property due to the fence. He tried to create a barrier. He pointed out the chicken coup with five roosters, and they now have turkeys. Chairman Robinson asked why he needed the fence. Mr. Udut stated he did not want to see debris and wants to keep his property value. I view it every day, and I deal with the noise from the chicken coup. Steve Zappy asked if they were in compliance with keeping with the animals. Neighbor had chicken coup in a fenced area near the tree line. Peter Jeffery explained the requirements. They are still noisy. Mr. Udut stated the biggest concern is the noise from the roosters. The fence is only for visual and sound. Paul Brown asked Mr. Udut, "Where is the chicken coup now?" Mr. Udut explained where on the visual diagram. Mr. Udut also stated he is dealing with hockey pucks in his yard, and they have a hockey arena and drive them towards my house. Peter Jeffery stated Mr. Udut asked for a 16 foot linear four foot fence in the front yard. Chairman Robinson if it was going to make a substantial difference. Mr. Udut stated it is tucked into the pines. Steve Zappy questioned "Is the 16' going to be sufficient?" Chairman Robinson stated that we don't want to set a precedent. You have to have a good reason to issue a variance.

Code Enforcement Officer, Peter Jeffery stated it is a 16 foot linear four foot in height fence. Paul Brown asked what type of fence and Mr. Udut explained the fence. Chairman Robinson asked if anyone from the audience wished to speak. Tony Collard verified the roosters. I can hear it, and I will verify what Mr. Udut has to say. Chairman Robinson stated she is questioning whether the variance is enough to make a difference. Mr. Udut asked to check the regulations on keeping of fowl. CEO, Jeffery stated he will follow up on it.



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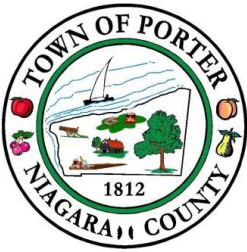
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Chairman Robinson asked if anyone else from the audience wished to speak. None. Terry Duffy made a motion to close the public part of the hearing and was seconded by Paul Brown. Roll Call Vote: Paul Brown-yes; Terry Duffy-yes; Scott Szarejko-yes; Steve Zappy-yes; Chairman Robinson-yes. All in Favor to close the public part of the hearing.

Chairman Robinson stated that there is a brand new fence on 93. Is your fence already constructed? Mr. Udut explained it was due to the scheduling and rescheduling of the meeting from last month to this month. The fence was scheduled after the June meeting due to contractors and finding good help. I had the fence contractors, and I had thumbs up from the Planning Board. Chairman Robinson stated you did not get approval from the Zoning Board. Mr. Udut stated it was not ok that the fence was put up. I will pay the contractors twice. I will take it down to three feet. I built the fence over friendship, and I am not looking for golf balls and hockey pucks in my yard. Chairman Robinson stated you have issues for the Code Enforcement Officer. Attorney Dowd stated the last fence that came before the Board was denied. There was a discussion on fences, and Attorney Dowd stated it is up to the Board to look at the fence and make a decision. CEO Jeffery explained the slope of the fence – 16 foot linear fence, four foot in height in the front yard. Attorney Dowd talked about the difference from three foot to four foot. It is up to the Board. Chairman Robinson stated this is difficult. You didn't cancel, and you went ahead and built the fence anyway. Mr. Udut explained his application to the Board; talked about scheduling and contractors would be a couple more months. Terry Duffy asked if Mr. Udut was in touch with the neighbors prior to the fence – “yes” and after that “no”.

Chairman Robinson stated it is setting a precedent, and you have to have a very good reason. I am not sure blocking noise is a very good reason. Blocking from the debris, I get. I question if the fence would block the debris. Mr. Udut stated he tried to do it with the trees to prevent unsightliness. Scott Szarejko explained elevation versus site line. CEO Jeffery showed where the six foot fence ends on the screen. There was a discussion of six foot in relation to the house. CEO Jeffery stated he gave approval for the six foot fence, and the four foot was pending approval of the variance.

Chairman Robinson read Area Variance – Page 153 of the Zoning Manual.



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(2) Area Variance

(a) In making its determination, the Zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

(1) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

(2) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

(3) Whether the requested area variance is substantial;

(4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(5) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

(b) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Chairman Robinson stated there are two questions #3 – substantial; and #2 – benefit sought. The Board discussed the options.

The Planning Board recommended approval.

Chairman Robinson asked CEO Jeffery if the property is still owned by Mr. Udut putting the fence back from the property line. CEO Jeffery stated that Mr. Udut would still be responsible for maintaining it. There was a discussion by the Board about the swale on the property.

Attorney Dowd stated it is unique situation. It is back from the edge of the road. CEO Jeffery discussed the distance from the road.



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Paul Brown made a motion that due to the swale on the property that the variance be granted for a 16 linear foot four foot in height fence in the front yard be granted and seconded by Terry Duffy. Roll Call Vote: Paul Brown-yes; Terry Duffy-yes; Scott Szarejko-yes; Steve Zappy-yes; and Chairman Robinson-yes. All in Favor. Motion Carried.

Paul Brown stated to Mr. Udut that we are a reasonable Board, but it can't happen again that the fence was put up before a permit is issued. We do understand. We are not trying to be difficult.

Chairman Robinson read the following:

Application of Lynn Bahringer, 3957 River Road, Youngstown, NY 14174.
Tax Map No. 73.10-1-4. Under Article II, Section II; Article VIII, Section 107 and Section VIII, Section 108F(2), a Special Use Permit and Area Variance is required for a home occupation in an existing accessory structure and relocation and size of sign. Property is located in a MDR Zoning District between Dockside Drive and Joseph Davis Park in said Town.

It was noted that Lynn Bahringer was present.

Chairman Robinson stated there were two issues before the Board -- One a special use permit for a home occupation and an area variance for a sign larger than permissible.

Lynn Bahringer approached the Board and presented pictures to the Board. She discussed the home occupation to the Board. The Board asked her to explain Reiki. She explained to the Board the Reiki technique. CEO Jeffery stated to the Board that Lynn Bahringer had a special permit at a different location.

Lynn Bahringer presented documents and certificates to the Board and explained what she used the building for -- 99% of the business is on line. I take the products to UPS. UPS will come to my house if I buy the product. I don't generate a lot of traffic. I just started the Reiki a few months ago -- one client a week or two at the most. My primary business is my website. The Reiki is only one customer at a time and by appointment only.



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Chairman Robinson stated it is a permitted use, and it fits into the home occupation. Lynn Bahringer asked if there were any employees – None. Hours of operation – 12 pm to 5 pm. Paul Brown asked if you have machinery running when making product – No -- only household equipment. Would your neighbors hear it? – No. They were not issued with a prior permit.

Chairman Robinson asked if there were any other questions – None. The Board asked about the hours of operation – 9 am to 6 pm; standard client one hour.

Terry Duffy made a motion to approve the Special Permit for a home occupation with the hours of operation 9 am to 6 pm Monday thru Friday. No more than five clients per day permitted. No employees (one family member) for a period of three years and was seconded by Paul Brown. Roll Call Vote – Paul Brown; yes; Terry Duffy-yes; Scott Szarejko-yes; Steve Zappy-yes and Chairman Robinson-yes. Motion Carried.

Lynn Bahringer discussed the sign and explained the reason for the size of the sign. She wasn't aware of the variance for the sign. She stated she could put the sign in front of the garage – 75 feet from the road. Paul Brown asked how big was the sign. Lynn Bahringer stated 3 foot by 4 foot. CEO Jeffery stated the size that is allowed is 1 foot by 2 foot.

Attorney Dowd stated you have to consider the circumstances. It is pretty big. Lynn Bahringer stated that she did ask all of her neighbors, and they really like the sign. Attorney Dowd stated it really is a big issue.

Chairman Robinson asked whether the requested area variance is substantial. Scott Szarejko questioned about whether the sign could be moved back 75 feet? Paul Brown asked if there were any complaints on the sign. It is a nice sign. Steve Zappy asked the reason for the sign, and Lynn Bahringer that she had this sign because of the size of the house. Pat Hooker, a neighbor, has no complaints. There was a discussion on the size of the sign and where it is located. Attorney Dowd commented that a home occupation is not to advertise that they are even there.

The Planning Board denied the request for a variance.



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Terry Duffy made a motion that due to the size of the sign, we are rejecting the 3 foot by 4 foot sign as it sets a precedent, and we would have to deal with other issues and was seconded by Paul Brown. Roll Call Vote: Paul Brown-yes; Terry Duffy-yes; Scott Szarejko-yes; Steve Zappy-yes. Chairman Robinson-yes. All in Favor. Motion Carried to Deny the variance.

CEO Jeffery stated that there can only be one sign on the property.

Chairman Robinson questioned the Animal Sanctuary and Attorney Dowd stated he will send a letter to the attorney and copy the Board.

A motion was made to adjourn the meeting at 8:15 pm by Terry Duffy and was seconded by Paul Brown. The next meeting is scheduled for Thursday, August 25, 2022.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals
