

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 June 23, 2016 at 7:00 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairman Duffy Johnston, Member Bryan Meigs, Member Terry Duffy, Member Irene Myers, Member Jackie Robinson, Building Inspector, Roy Rogers, and Attorney Michael Dowd.

ABSENT: Susan Driscoll, Assessor

Chairman Johnston called the meeting to order at 7:00 pm.

Chairman Johnston asked if there were any additions or deletions to the May 19, 2016 minutes. None. Chairman Johnston asked for a motion to accept the minutes. Terry Duffy made a motion and was seconded by Bryan Meigs to approve. All in Favor. Motion Carried.

Chairman Johnston read the following application.

Application of Paul Lozzi, 1442 Lake Road, Youngstown, NY.
Under Article VIII, Section 108 an area variance is requested for a garage nine feet from the center line of abandoned Tower Road. Property is located on the South side of Lake Road in a RA Zoned District between Tower Road and Murphy's Corner Road in said Town.

It was noted that Paul Lozzi was present. Chairman Johnston stated that the Board tabled this application last month for 30 days. Chairman Johnston had some questions that he presented. Why did this application go to the Planning Board? Mr. Lozzi was not present at the Planning Board Meeting and was not able to defend his application. Attorney Dowd stated that the applications do go to the Planning Board and that is why the Zoning changed their meeting dates so that we could receive the Planning Board recommendations.

Chairman Johnston stated that Paul could not defend himself , because he wasn't notified of the meeting.

Roy Rogers commented that the Planning Board puts out an agenda, and it has a list of the people. I don't know if the people are ever notified of the meeting. Chairman Johnston stated that the homeowner should be there to defend himself. Attorney Dowd stated that the applicant should be there. Chairman Johnston asked "Whose job is it to notify the applicant?" Paul Lozzi stated that he filled out the application. Roy Rogers commented that the Planning Board meeting is First Thursday of the month and the Zoning Board is the Fourth Thursday and that is why we changed the dates. The Planning Board makes a recommendation. The Zoning Board is now the Fourth Thursday of the month and the Planning Board the First Thursday.

Chairman Johnston asked, "How can we find out whose job it is?" Roy Rogers commented that I think we need to review our procedures. Attorney Dowd commented that maybe in the past the Pam Parker notified the applicant. Irene Myers stated we had this discussion before. When people come into make an application, I think they should be given direction as to where to go. Attorney Dowd stated we did have this problem before. Chairman Johnston stated the Planning Board makes recommendations without the applicant being there. Do we need to table this again?

Attorney Dowd commented that he has known about this problem on Mr. Lozzi for a while. Mr. Lozzi's building will encroach on the right away. This Board cannot grant a variance because the building is in the Town right away. The Town Board needs to abandon the road and then Mr. Lozzi can come in for a variance. You can't give a variance because it is impossible. In order to build in that area, the Town would have to abandon the right away. Some time ago, it was turned over to the Town. It has to be worked out with the Town Board. We can't do anything until the Town Board abandons a portion of it.

Irene Myers stated that basically on Mr. Lozzi's application it is impossible to take action. Attorney Dowd stated he can go to the

Town and see if they can do it. It would have to be 15 feet off the lot line.

Paul Lozzi commented that actually he owns to the center of the road. When Tower separated it, it was family land. He actually owned the road. Attorney Dowd commented probably you own the land, but it doesn't mean you can build. Legally, the Town has to abandon it. Paul stated that he would like to see if the Town actually owns it in writing. Should I go to the County? The tax map classifies it as a Town road. Questions were raised about the different sites. It was the Town's a long time. Attorney Dowd stated that he understands Paul's frustration. It is still a Town road. I think you have to petition the Town.

Attorney Dowd stated that the public has the right to access that property. You can't stop them because it is a Town road.

Chairman Johnston commented that it cost Paul Lozzi one hundred dollars (\$100.00). Irene Myers stated the application should have never been taken in the first place. It is a miscommunication. Chairman Johnston stated we cannot act on it because it is a Town road.

Irene Myers made a motion that the application for Paul Lozzi be null and void and Mr. Lozzi's one hundred dollars (\$100.00) be returned to him. If he approaches the Town then he can refile the application if he needs to and was seconded by Jackie Robinson. Chairman Johnston called for a Roll Call vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes; Irene Myers-yes and Chairman Johnston-yes. All in Favor. Motion carried.

Chairman Johnston 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 **June 23, 2016** at 7:00 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

APPLICATION OF GARY ROSE, 3485 East Avenue, Youngstown, NY 14174. Under Article II, Section 10 and Article VIII, Section 107, to renew his Special Permit #SP-301-2009 for a boat dock, for not more than four (4) boats for non-commercial use. Property is located at Tax Map #59.14-1-21 on the West side of Lower River Road in a WR & NREO Zoning Districts between Youngstown and Collingwood Estates in said Town.

It was noted that Gary Rose was present. Chairman Johnston questioned why Mr. Rose had two permits. Roy Rogers commented that they were two separate permits. Mr. Rose stated that he no longer has to renew the parking permit. This application is for a dock.

Chairman Johnston asked if anyone from the audience wished to speak. None. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Byran Meigs-yes; Jackie Robinson-yes; Irene Myers-yes and Chairman Johnston-yes. All in Favor to close the public part of the hearing. Chairman Johnston stated that this is a unique situation and that Mr. Rose owns the land. He would like to recommend that we grant this renewal.

Irene Myers made a motion to renew the application of Gary Rose for a period of ten years and was seconded by Terry Duffy. Chairman Johnston called for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes; Irene Myers-yes and Chairman Johnston – yes. All in Favor. Motion Carried.

Chairman Johnston read the following:

APPLICATION OF CHRISTOPHER GUARD, 1085 Pletcher Road, Youngstown, NY. Under Article II, Section 10 and Article VIII, Section 107, a Special Permit is required for a private boat dock for non-commercial use for a **maximum** of twelve boats. Property is located at 3881 Lower River Road in a WR & NREO Zoning Districts between Howard Drive and where the Town of Porter ends in said Town.

It was noted that Christopher Guard was present along with Attorney Sean W. Hopkins. Mr. Guard passed out some additional drawings to the Board and Attorney Hopkins had a presentation. Attorney Hopkins stated that Mr. Guard needs three things –a special permit for a private boat dock and two area variances—one for a private boat house and one for a maximum of twelve boats without principle residence. The property is located at 3881 River Road on 104 acres,. There are 3 different zonings – West of River Road – NRO; East of River Road – WRD and Medium Density Residential. Pertaining to the property on the West side of River road, it was presented to the Planning Board on June 2, 2016; and they recommended in favor of the variance and granted sketch plan approval. There are three conditions on the property located on the West side of River Road. It must be owned by the Homeowners Association. If you buy a lot, you have dock rights, and it will be maintained by the Homeowners Association. No commercial use of the property on the West side of River Road. It will not be a commercial marina. Only home owners on the Project Site will have the right to utilize the private dock. Slips will not commence until at least three homes are sold. Attorney Hopkins stated that they will be going back to the Planning Board with a couple of steps. He also commented that this is a boating community. He stated that Chris Guard and a few friends are interested in building homes here. The driving force is its unique opportunity. Permit from the Army Corp of Engineers for anchor pier with floating docks if that was the final plan.. The Planning Board made the recommendations for the Zoning Board follow. Attorney Hopkins read the Area Variance (pge 140) of the Zoning Manual.

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 determination of the board shall also consider:

- (i) 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.

- (ii) Whether the the benefit sought by the applicant can be achieved by some method, feasible fo the applicant to pursue, other than an area variance. No
- (iii) Whether the requested area variance is substantial.
- (iv) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Short Environmental Form has been submitted.
- (v) 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.

Attorney Hopkins stated it is a huge investment. Mr. Guard stated that there will be no parking on River Road. We are outside of the fishing habitat. The floating docks will be pulled out on a yearly basis. You can't even put cars down there. Absolutely no parking on the Niagara River side. We have talked with the Army Corp of Engineers.

Irene Myers commented that the lots will be sold. Just to clarify, "Are you going to sell the lots prior to construction of the docks?" Are the homes actually going to be built? I just want clarification.

Mr. Guard stated that three homes will be under construction before any docks are built. Irene Myers asked about the timeframe of occupancy – building permits are only for one year. Attorney Dowd stated that they are having a model home. Mr. Guard stated he is planning on building and three friends are also interested. Terry Duffy brought up Riverwalk and French Landing.

Bryan Meigs brought up about the application for a maximum of 12 boats. Your SEQR form is minimum of 12. Chairman Johnston stated he read the SEQR and there is no swamp land.

Attorney Dowd stated that someone has to declare lead agency – possibly the Planning Board. Jackie Robinson asked if there was anything we could decide on tonight. Attorney Dowd stated you can grant a variance, the site plan has to be approved. They have to apply all the site plan recommendations.

Chairman Johnston asked if there were any more questions from the Board and then asked if there were questions from the audience.

Mr. John Whiteman on River Road. There is still a For Sale sign on the house. You were here in December, and you were going to buy the property right away that you had until the end of June. It is in two weeks. He also stated that the Nature Conservancy is interested in this property. I know you have been talking to all of us. We are homeowners, single family homes on lots with a small dock. What happens when all the slips fill up, and you have more property to sell. Are you coming back to the Board wanting to expand? To build multi docks without home property, it is going to open up a can of worms. The property hasn't been sold yet and you are changing rules before you get the property. You are getting ahead of yourselves.

Chairman Johnston asked if there are 104 acres, how many docks are you allowed? Attorney Dowd stated based upon the maximum no more would be allowed. If you have 300 foot lots, you would have four. If you have three acre lots, the density is not any different than the 300 foot lots. Chairman Johnston stated that the design is for 20 lots.

Irene Myers stated she commented to Mr. Whiteman that the application is based on the parcel on the river not across the street. Chairman Johnston stated you are allowed 12 slips. What is the size of the dock? The Army Corp of Engineers dictates the size. Mr. Whiteman commented that if you build a few houses; and the lots are selling slowly, can someone rent a dock?

Mr. Guard stated they are going to build the main pier. A question was raised if they will be able to regulate the HOA's? Roy Rogers would have the enforcement.

Attorney Dowd stated that there are people up and down the river who rent their docks out. Mr. Guard stated there are no parking lots. We are not going to allow parking on River Road, and there will be no commercial use of those docks. Mr. Whiteman stated once they do it, there is no reinforcement. I really doubt it will happen.

Irene Myers asked, "Is there is a problem down there now?" Mr. Whiteman stated that per house nobody has four boats. Mr. Whiteman stated there is no problem now.

Regarding the Homeowners Association, the Attorney General can enforce the provisions. There will be guidelines. You want to do it the right way.

Chairman Johnston talked to Mr. Guard and stated he is taking a chance and stated as long as we have a way to enforce it. Jackie Robinson asked if you can have more than two boats? If you only have three houses are you still going to have the 12 slips?

Mr. Guard commented that is going to be expensive to put the road in. Attorney Dowd stated this is a major subdivision. There was a discussion about the number of boats in relation to the homes built and the number slips through the HOA. Irene Myers questioned "What is to prevent myself being house #4, and I come with a boat and my brother wants to put his boat there?" Mr. Guard stated that the boat has to be registered to the home.

Mark Lahey stated he originally objected the plan. I would like to say on Chris Guard's behalf that he has answered all my questions. Mostly all of my intial objections have been answered. Because my wife and I lived in an Assocation with HOA's and they have to be powerfully written because people play fast. It can work, if there is strong legal backing.

Attorney Dowd stated he has to review the HOA's, and we will participate in granting it. Mr. Lahey stated my property is right next to Chris Guard's property. We have had to live with despicable conditions of the property for 13 years. This is going to be taken care of. This will raise property value. I am concerned about the waterfronts.

Chairman Johnston asked for a motion to close the public part of the hearing and was seconded by Irene Myers. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes; Irene Myers-yes and Chairman Johnston. All in Favor. Motion Carried.

The recommendations from the Planning Board were read into the minutes from their June 2nd meeting with the following recommendations:

“A motion was made by Chairperson Jeffery and seconded by Member Bis to recommend to the Zoning Board of Appeals:

1. The approval of twelve (12) slips to be owned by a New York State Approved Home Owners Association (HOA) created in conjunction with the sub-division being proposed for v/l located on the Niagara River and upon the following additional requirements being met:
 - a. The construction on a minimum of three (3) homes must be started prior to any slips being built.
 - b. The creation of the HOA which will title to the parcel adjoining the Niagara River and the Town’s appeal of the rules and regulations of the HOA relative to the installation and maintenance of boat slips.
 - c. Compliance with all other rules and regulations of the Town of Porter Zoning Law.”

Irene Myers stated that the three homes will be occupied.

Chairman Johnston stated we need a variance for the slips and a special permit for the building. It hinders on an awful lot. Jackie Robinson stated that no matter what decision we make it still has to go before the Planning Board – process of SEQR and Homeowners Association. Chairman Johnston stated that we asked for this month’s ago. Attorney Dowd questioned where the property backs up against, and it should go to the Niagara County Planning Board for a variance. When you want to make site plan approval, there are a lot of things that necessarily have to go to the NCPB for their recommendations.

Irene Myers commented that she doesn’t have a problem with what you are trying to do, but I want to make sure it is done right and with proper direction. Attorney Dowd commented on 500 feet within the town or property. Irene Myers state we can table this, and we can schedule a special meeting. The NCPB meets on the third Monday of every month. We would have their decision by our next Board meeting. You can call a special meeting. Attorney Dowd stated I

think you are safe to take action. If things turn out that it will have to be referred, we will discontinue on my recommendation.

Irene Myers read the Section on Area Variance (page 140) and she also read the Planning Board recommendations.

“A motion was made by Chairperson Jeffery and seconded by Member Bis to recommend to the Zoning Board of Appeals:

2. The approval of twelve (12) slips to be owned by a New York State Approved Home Owners Association (HOA) created in conjunction with the sub-division being proposed for v/l located on the Niagara River and upon the following additional requirements being met:
 - d. The construction on a minimum of three (3) homes must be started prior to any slips being built.
 - e. The creation of the HOA which will title to the parcel adjoining the Niagara River and the Town’s appeal of the rules and regulations of the HOA relative to the installation and maintenance of boat slips.
 - f. Compliance with all other rules and regulations of the Town of Porter Zoning Law.”

“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 determination of the board shall also consider:

- (vi) 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. No
- (vii) Whether the the benefit sought by the applicant can be achieved by some method, feasible fo the applicant to pursue, other than an area variance. No
- (viii) Whether the requested area variance is substantial.
- (ix) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. None.
- (x) 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.”

Irene Meyers made a recommendation and was seconded by Terry Duffy to approve the variance of Christopher Guard with the following conditions:

- . Not just the construction of the home but homes must be sold and the slips cannot be built until the homes are occupied by the actual residents.

- . At least three (3) homes must be occupied by the residents before the slips are built and contingent upon confirmation that it does not have to be sent to the Niagara County Planning Board.

- . Also, contingent on final approval from the Army Corp of Engineers for the permit for the dock.

- . Homeowner’s Association approval by our Town Attorney

- . There will be no commercial use of the dock in relation to the permit.

Chairman Johnston called for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes; Irene Myers-yes and Chairman Johnston –yes. All in Favor Motion Carried.

A Motion was made by Irene Myers and seconded by Terry Duffy to adjourn the meeting. The meeting was adjourned at 8:38 p.m. The next regular meeting will be held on **Thursday, July 28, 2016.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals