

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 April 27, 2017 at 7:00 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Member Bryan Meigs, Member Terry Duffy, Member Marshall Hibbard, Chairman Irene Myers, Member Jackie Robinson, and Attorney Michael Dowd and Assessor Susan Driscoll

ABSENT: Building Inspector, Roy Rogers.

Chairman Irene Myers called the meeting to order at 7:06 pm.

Chairman Irene Myers asked if there were any additions or deletions to the March 23, 2017 meeting. Jackie Robinson made a motion to approve the minutes as written and was seconded by Bryan Meigs. All in Favor. Motion Carried.

Chairman Myers 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 **April 27, 2017** at 7:00 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

APPLICATION OF PAUL & AMY INCORVAIA, 2 Treasurer Pt Road, St. George, Maine. Under Article II, Section 10 and Article VIII, Section 108F2, an area variance of four feet (4') (East and West) to build a new home and garage at 2525 Lake Road, Ransomville, NY 14131. The property is located in WR Zoning District on the North side of Lake Road between Dickersonville and Ransomville Roads in said Town.

It was noted that Paul Incorvaia was present. Chairman Myers stated that Mr. Incorvaia was requesting a variance of four feet. It is a vacant piece of property. We have a decision from the Planning Board.

Chairman Myers asked if anyone in the audience wished to speak.

Mr. Paul Vargovich, 2527 Lake Road. I feel this will be detrimental to the sale and value of my house. I had it sold and when the people found out that the new house will be that close, they cancelled the sale. Assessor Susan Driscoll showed the property and where the house will be built. The variance is for both the East & West. Mr. Vargovich is on the East side. Bryan Meigs asked Mr. Vargovich if the people did not want to buy the house because of the new home and where it is to be located. Mr. Vargovich replied he was not sure. Mr. Incorvaia is going to relocate the power poles to the boundary lines.

Attorney Dowd stated if it was kept within the 15 feet, you have no objection. If you look into the code book, there are elements you should consider. Because you have an objection you should go through each of them and ask the applicant to reply as to why he should have the variance. You don't have to show hardship. The area variance is standard.

Mr. Paul Incorvaia spoke to Mr. Rogers and he said that variances are given all the time. It is on a vacant piece of property. As far as someone backing out of the deal, it is here say.

Chairman Myers asked Mr. Incorvaia if he had a print of the new home. Mr. Incorvaia stated he did not. As of tomorrow, I will. Jackie Robinson proposed the question that originally it was one side that only needed a variance. Mr. Incorvaia replied then we changed it.

Attorney Dowd read the following on Area Variance (Page 140).

(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.
 - (i) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be increased by the granting of the area variance;
 - (ii) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;
 - (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; and
 - (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.
- (b) The board of appeals, in granting the 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.

(3) Conditions on Variances

The board of appeals, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to, and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

The neighbors on the West stated there is a lot between us, and they have no objections.

Attorney Dowd asked Mr. Incorvaia if he purchased the lot, and he replied "yes". Mr. Incorvaia indicated that we are building a three bedroom range with an attached garage. The middle of the property is 94 feet. The house we had drawn up extends further. We have already paid for all the drawings. Attorney Dowd stated it is a single family home. He stated to Mr. Incorvaia that he appreciated that you paid for the drawings, and it was not secret what the side lots were supposed to be. The four foot variance is almost 25%. It is up to the Zoning Board whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and this was a self-created issue. It is not necessary that you have to deny it.

Mr. Philip Incorvaia, 2495 Lake Road stated a preference has already been set in my neighborhood. A 3-1/2 foot variance was given. Attorney Dowd replied that perhaps no one objected. Mr. Incorvaia stated that the notification was sent out after the house was built. Mr. Incorvaia stated he was also under the impression in the Town of Porter it is only four feet on each side.

Mr. Vargovich stated that part of the property was considered a wet land.

Jackie Robinson stated that the Planning Board recommends that the Zoning Board approve the side yard set backs as requested provided there is no dissension from the neighbors at the Zoning Board public hearing for this applicant.

Irene Myers stated that there is an objection from the East and none from the West.

Attorney Dowd stated if you believe they should be provided a variance, you have to consider all of it. There is no detriment to the neighborhood; substantial over 25%; it is self-imposed. It is a sour-grape kind of thing. Attorney Dowd also asked if you could move the house. Irene Myers asked if Mr. Incorvaia had a builder.

Mr. David Juisiani spoke to Roy Rogers, and he indicated that there should not be any problem with the Board granting the variance. Mr. Incorvaia stated that the whole objection is the buyer backing out.

Mr. Vargovich stated his house is 15 feet from the lot line. Mr. Incorvaia stated that he does not want to obstruct the neighbor's view.

Attorney Dowd stated there are reasons we have side lot restrictions especially for emergency vehicles. You have some objections, and you could move the house over. Mr. Incorvaia stated it is in the center of the lot line. It would be 8 feet with any combination. It is a parallelogram. The widest part is 96 feet where we are building. Mr. Incorvaia stated it was supposed to be a buildable piece of property.

Chairman Myers asked if you could reconfigure the garage. Mr. Incorvaia replied "no". I have submitted a site survey with the application. Mr. Juisiani dropped off the copies. Mr. Incorvaia stated the back part of the garage is a mudroom.

Attorney Dowd stated Mr. Rogers isn't here tonight. Maybe we could table this and get Roy Rogers here and see what was discussed. Terry Duffy stated his biggest concern is that Roy Rogers isn't here tonight. Jackie Robinson asked if Mr. Incorvaia can come back at the next months meeting. You can ask someone to act on your behalf. Mr. Incorvaia stated that Mr. Juisiani will represent him. It was stated that the next meeting is the fourth Thursday of the month. Irene Myers stated that your plans are now on hold. Mr. Incorvaia stated that we were hoping to start some work. It was noted that nothing is stopping him from relocating the lines.

Jackie Robinson made a motion to table the application of Phil Incorvaia and leaving the Public Hearing open until the May meeting was seconded by Terry Duffy.

It was noted that the Board needs Roy Rogers input.

Mr. Phil Incorvaia stated these variances have been approved many times. Chairman Myers commented that we also had some that weren't approved. We have people reconfigure their homes. Mr. Incorvaia asked if 15 feet is standard in the Town of Porter. Attorney Dowd stated that there are still some 75' and 50' lots, and there are formulas in the code.

It was noted to send Mr. Incorvaia a letter about next month's meeting.

Application of Jacek Mazur, 2417 Lake Road.

This application was tabled from the April meeting. It was noted that Mr. Mazur was not present. Terry Duffy made a motion and was seconded by Bryan Meigs to nullify the application of Mr. Mazur.

The questioned was raised about the fence on this property. Attorney Dowd stated he did talk to Roy Rogers about the fence on Mr. Mazur's property but he has not heard back from him. Attorney Dowd stated that there are some limitations with lake property.

Mr. Jon Kallis, 2411 Lake Road stated the fence does not impede their vision. It is there summer home. Attorney Dowd talked about the fence on the lake property. Roy Rogers has to inspect the fence. The DEC has restrictions on where you can put a post hole. Attorney Dowd stated that he did see Roy Rogers at the Town Hall. Irene Myers stated the Board will email Mr. Rogers tomorrow and see if the fence is in compliance.

Attorney Dowd stated when someone gets a variance, they should have the survey' and the fence installer has to make sure they are not encroaching on the neighbor's property. It is up to the homeowner. Irene Meyers commented if it is not where it should be, he will have to take it down.

Mrs. Sheila Mooney, 2407 Lake Road raised a question about driveways. Irene Myers stated we can't find anything on driveways, and we will get back to you on this.

Mary Wallace, 1709 Harrison Lane. I had a neighbor complain on my property. There are two travel trailers on my driveway, and I have a corvette. I received a letter about the two trailers and the corvette. I came to the Town and got a copy of the code and no where does it say that I can't have two trailers on the property. One trailer is going to PA to a permanent site and the other is a trailer going to Niagara Camp grounds. The corvette is now covered. There are five houses on Porter Center Road with trucks, etc. I have

been on this property for 19 years. Jackie Robinson stated to work with Roy Rogers that he is pretty reasonable. If you have a question about drainage, you have to speak to Scott Hillman.

Mary Wallace stated the corvette doesn't have plates, but it is covered up. Both trailers are registered. She showed drawings to Attorney Dowd.

The next question brought up was seasonal rentals. Attorney Dowd and the Board had a discussion Airbnb. The Town Board will have a work session on Monday. Irene Myers, Bryan Meigs and Terry Duffy all raised the question, "who is going to enforce it?" Attorney Dowd stated that there is a threat of a lawsuit. A recommendation was made to the Town of Porter adopting a local law amending the Zoning law to include the definition of short-term seasonal home rentals as recommended by the Town Planning Board at its March 2, 2017 meeting which would permit short term residential rentals in residential districts within the Town of Porter.

It was noted to send Roy Rogers an email on the status of the fences of Jacek Mazur and Knead the Dough and the property at 1949 Lake Road –part of the silo that has fallen down.

A Motion was made by Terry Duffy and seconded by Bryan Meigs to adjourn the meeting. The meeting was adjourned at 8:40 p.m. The next regular meeting will be held on **Thursday, May 25, 2017.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals