

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 May 24, 2018, at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	Date	Present	Absent
Jackie Robinson, Chairman	05/24/2018	yes	
Terry Duffy	05/24/2018	yes	
Bryan Meigs	05/24/2018	yes	
Marshall Hibbard	05/24/2018	yes	
Steve Zappy	05/24/2018	yes	
Atty Michael Dowd	05/24/2018	yes	
Peter Jeffery, Code Enforcer	05/24/2018	yes	
Susan Driscoll, Assessor	05/24/2018	yes	

Chairman, Jackie Robinson called the meeting to order with the pledge of allegiance.

A motion was made to approve the minutes of the April 26, 2018 by Member Terry Duffy and seconded by Member Marshall Hibbard . Roll Call Vote. All in Favor. Motion Carried.

Chairman Robinson started with the following application:

Application of Niagara River Properties / Tom Dugan 3695 River Road, Youngstown, NY Tax Map #59.00-1-9

The Zoning Board of Appeals is the lead agency. Chairman Robinson asked for a Roll Call vote listing the ZBA as the lead agency and was seconded by Marshall Hibbard. All in Favor. Motion Carried.

Attorney Dowd stated Part One is the Project Information which is prepared by the applicant. Terry Duffy read Part 1 – Project Information. The following are the answers prepared by the applicant. No. 1 – no; No. 2-yes; No. 3 – Total acreage less than 0.1; total acreage to be physically distributed less than 0.01; total acreage owned by the applicant – 58 acres; No. 4 the following were

checked – forest; rural; residential (suburban); No. 5-yes; No. 6-yes; No. 7 –no; No. 8-no; No. 9-no; No. 10-no; No. 11-no; No. 12- no; No. 12b-yes; No. 13 a & b – yes; No. 14-the following were checked- shoreline; forest; No. 15-no; No. 16-yes; No. 17 a & b – no; No, 18-no; No. 19-no; No. 20-no signed by Thomas Dugan dated 2/28/18.

Niagara River Properties stated that this was the first time they ever filled out this form. The DEC and Army Corp of Engineers both approved the permit. A questioned was raised about archaeology; and Attorney Dowd stated that if you are in one of the zones, it should be mapped out.

Part 2 – Impact Assessment was read by Terry Duffy with a negative impact on all eleven questions. Terry Duffy made a motion and was seconded by Marshall Hibbard to approve the negative declaration. Roll Call Vote: Terry Duffy; yes; Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes; All in Favor.

Peter Jeffery stated that he talked to Mr. England tonight, and he answered his question. Mr. England was not able to stay for the meeting.

Chairman Robinson stated that the Planning Board approved the variance and special permit with recommendations to the Zoning Board.

Attorney Dowd stated that the variance should only be as long as the lease or the permit terminated. The primary structure is not on the parcel owned by Niagara River Properties but Mr. Dugan's home is built on his parcel. Attorney Dowd stated we have another project in the town. The property is unique that the parcels abut.

Terry Duffy made a motion to approve the variance of **Niagara River Properties / Tom Dugan 3695 River Road, Youngstown, NY Tax Map #59.00-1-9** to put the dock and deck for a period of time not to exceed the time of the lease or when the lease is terminated and was seconded by Marshall Hibbard. Roll Call Vote: Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes.

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, **May 24, 2018 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):

APPLICATION OF Tom Dugan 404 Dansworth Road, Youngstown, NY Tax Map #59.00-1-9. Under Article II Section 200-11 and Article VIII Section 200-107 a Special Use Permit is required to install a deck (30' x 30') and dock (30' x 30') with connecting stairs on the river front. The property is located in a MDR Zoning District on the West side of River Road between Youngstown and Collingwood Estates in said Town.

It was noted that Tom Dugan was present.

Chairman Robinson stated that the Planning Board approved the site plan and recommended the Special Use Permit with the following conditions: 1. No parking on the west side of River Road; 2. Special Use Permit timeframe should be equal to, or less than, that of the lease; 3. If the lease is terminated, the Special Use Permit should be revoked; 4. Permit should be contingent on final approval from the Army Corps of Engineers for the dock.

Peter Jeffery stated we have DEC approval. If the Board approves the deck and dock, the deck can be started now; and the installation of the dock with the approval from the Army Corp of Engineers.

A motion was made by Bryan Meigs and seconded by Marshall Hibbard to close the public part of the hearing. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Jackie Robinson-yes. All in Favor. Motion Carried to close the public part of the hearing.

Terry Duffy made a motion to approve the **APPLICATION OF Tom Dugan 404 Dansworth Road, Youngstown, NY Tax Map #59.00-1-9** for a special use permit to install a deck and dock as requested in the application contingent on the following: 1. The deck can be started immediately; 2.

The dock is contingent upon Army Corp of Engineers approval; 3. Timeframe for ten years; 4. No parking on the west side of River Road; 5. If the lease is terminated, the Special Use Permit should be revoked and was seconded by Marshall Hibbard. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor. Motion Carried.

Chairman Jackie Robinson read the following:

APPLICATION OF THOMAS FLECKENSTEIN AND JUDITH A. FLECKENSTEIN LIVING TRUST, 1953 Balmer Road, Ransomville, NY 14131 (Tax Map #61.00-1-24). Under Article II, Section 200-8 and Article VIII, Section 200-108, a variance is request to provide additional time for completion of the aquaculture facility. Property is located in a RA Rural Agricultural Zoning District on the North side of Balmer Road between Porter Center Road and Dickersonville Roads in said Town.

It was noted that Thomas Fleckenstein was present and Charles W. Malcomb, Attorney from Hodgson Russ.

Chairman Robinson stated that she visited the parcel yesterday with Tom Fleckenstein. She stated that there is material for the greenhouse. The crunch is getting the fish in for late September. Tom Fleckenstein stated that two to three months is a push against the time line on getting all the materials. Material is shipped from Wisconsin, and they are still digging a second pond.

Code Enforcement Officer, Peter Jeffery passed around photos of the area that were taken today (5/24) to the Board members.

Tom Fleckenstein described both ponds. He stated that the first pond is totally full. The need for the extension is because of inclement spring weather; daughter's illness and delays in the lawsuit. He stated that the court decision on the litigation is not completely over. Chairman Robinson asked if they can move forward with the litigation. Attorney Dowd briefly described the original permit with some conditions. He also talked about the Town of Lewiston and the fact that Mr. Fleckenstein indicated he has some problems. It is up to the Board if you want to give him more time. The permit expired in December. Attorney Dowd stated that there was a

need for a formal application. Code Enforcement Officer stated that he found out material was being hauled out at the present time. Attorney Dowd stated you can extend it for whatever period of time you want. To get back on track you should consider hardship. He also stated if you make a decision background was given and put in the record. In the resolution dated May 19, 2016, the applicant's application for a variance from Section 33 Farm Ponds, A(4) to exceed the time of construction from one year until the expiration of the New York State Department of Environmental Conservation Mined Land Reclamation permit granted to the Applicant dated April 17, 2015 expiring on April 16, 2020 with some conditions that at least five acres of proposed farm pond be completed stocked with perch and/or walleye within eighteen months from the date pond excavation begins.

Attorney Charles W. Malcomb stated that when we initially applied for the aquaculture facility there were questions "Is this really a farm operation or to farm clay?" Progress has been made and further progress has also been made. There is one legitimate farm operation. The reasons for the delay were the litigation; family resources were used for the health of the family member. These were reasonable excuses for needed time. This is not a sham—clay mining and a detailed description from Mr. Fleckenstein that he wants to build an aquaculture facility. When you look at the durational length of time; question when somebody asks for more time; nothing has changed. They are moving forward and issues that they have a cost delay was resolved, and they are questioning an extension of 18 months.

Code Enforcement Officer, Peter Jeffery stated that he had a discussion two week ago that they had a source for the earth material that they were excavating. It was transferred within two weeks and was not sure when he will be back working. Excavation of the pond being put in we asked for five acre initially. Is five acres achievable and what timeframe?

Tom Fleckenstein discussed the first pond that was filled within less than a year. A new pond is a little shorter in length which is adjacent to the right and a third pond should be put in close to the five acres. You are not required to keep the dirt on the farm. They don't want the dirt stockpiled. I can only work around removal of the dirt. I created pond #2 and started on pond #3. These ponds are 17 feet in depth. Code Enforcement Officer stated we do have some modifications to the permit. We are not

looking to change the permit. Code Enforcement Officer presented additional pictures to the Board members.

Tom Fleckenstein discussed the berms for the second and third ponds and will remove for one five acre pond.

Attorney Dowd asked the Board if we are going to grant the time to the existing permit. He has 18 months to get to the goal. Marshall Hibbard raised the question, "When does the 18 months start?"

Attorney Charles W. Malcomb stated that the pond is there within 18 months; they have grown fish and they are in the current pond and leafy greens will be sold. The five acre pond will be met within 18 months. He discussed the five acre pond with Tom Fleckenstein whether he thinks they can make it, and this is why we are asking for 18 months – December 24, 2019. Attorney Malcomb stated that Mr. Fleckenstein agreed to all those conditions.

Marshall Hibbard stated I think he is doing it the right way. Chairman Robinson stated the materials are already there for the greenhouse; putting the tanks in at least what I could see.

Attorney Malcomb stated the fish will be ready in 18 months. Chairman Robinson stated that the fish don't grow overnight. Marshall Hibbard stated he has no objection. Steve Zappy asked the question "Can anybody else run the operation?" Tom Fleckenstein stated his daughter (who went through cancer) expressed interest to go into the operation. She will be part of the operation going forward.

Marshall Hibbard asked if the greenhouse was going up. Tom Fleckenstein stated concrete and silplates are in. We are being sued and I am not sure what the results of it will be. I have been in court three times. Terry Duffy asked "How will the litigation be addressed?" Chairman Robinson also asked "What happens if the court finds in favor of the sue or?"

Attorney Dowd stated they are running out time; once the deadline goes by that it is.

Attorney Malcomb stated that for all intent and purposes the lawsuit is over. Attorney Dowd stated that litigation was a reason for the delay. Chairman Robinson asked if Fleckenstein lose, are you done? Attorney Dowd stated it is no longer an issue.

Terry Duffy made a motion to extend the variance for an additional 18 months (Expiration 12/24/2019); all construction be completed; fish harvesting is underway; sales of green leafy production underway and a five acre size pond be maintained and seconded by Bryan Meigs. Roll Call Vote: Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor. Motion Carried.

Chairman Robinson commented that we should take an opportunity to go over and see the facility.

Code Enforcement Officer, Peter Jeffery stated that he had wanted to have a more formal presentation before it goes to the Board. He also talked about accessory storage building. Our code does not have a definition for access. To make sure that there are enough checks and balances with Planning Board and Town Board. There are grey areas that are of concern. I hope to have something formalized for the Planning Board next month that could be presented to the Town Board.

A motion was made to adjourn the meeting at 8:16 pm by Member Terry Duffy and seconded by Member Marshall Hibbard. The next meeting is scheduled for Thursday, June 28, 2018.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals

