

# 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 28, 2018, 2018 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	Date	Present	Absent
Jackie Robinson, Chairman	06/28/2018	yes	
Terry Duffy	06/28/2018	yes	
Bryan Meigs	06/28/2018	yes	
Marshall Hibbard	06/28/2018	yes	
Steve Zappy	06/28/2018	yes	
Atty Michael Dowd	06/28/2018	yes	
Peter Jeffery, Code Enforcer	06/28/2018	yes	
Susan Driscoll, Assessor	06/28/2018	yes	

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

A motion was made to approve the minutes of the May 24, 2018 by Member Marshall Hibbard and seconded by Member Terry Duffy. Roll Call Vote. All in Favor. Motion Carried.

Chairman Robinson made the following statement. There are two public hearing tonight, and I am giving some instructions on what we are going to do. I will address one at a time and read the Notice of Public hearing. The people will explain to us the purpose, and the Board will ask questions. Then, I will open to the floor. At this time state your name, address and state your concerns without name calling or screaming. We need your name for the record. Feel free to raise your hand in a civil manner after we will close the public part of the hearing.

Chairman Robinson started with 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, **June 28, 2018 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):

**APPLICATION OF E & R HORIZONS, LLC, 38 SAINT DAVID'S DRIVE, West Seneca, NY Tax Map #47.00-1-76 (3231 Porter Center Road, Youngstown, NY.** Under Article II Section 200-8 and Article VIII Section 200-108 an area variance is requested for a side yard setback. The property is located in a Rural Agricultural Zoning District on the East side of Porter Center Road between Braley and Youngstown Lockport Roads in said Town.

Mr. Robert Battista was present as the lawyer representing E&R Horizons. He stated that the property was purchased as a tax foreclosure, and it was addressed as a two family house and substantial improvements have been made. It has been zoned a two family house since 2005, but it was never approved as a two family house in 200-8 RA. Under a special use permit the side yard setback is 15 feet, and they are requesting 7.98 feet. There have been negotiations with the neighbor to obtain additional footage. At 3:45 pm today they received notification from the neighbor's attorney an offer to purchase the four feet for \$9,000, including legal fees; install a fence but they withdrew the offer. On the 7.98 feet from the 15 feet, they plan to remove the encroachment and were originally going to remove it before this meeting. We had these negotiations and thought we had a sale. Under the variance we would remove the encroachment and have proper drainage. This is the business our clients are in. We are asking for a variance from 15 feet to 7.98 feet on the condition of removing the encroaching on the gentlemen's property and pipe the drainage.

Marshall Hibbard asked, "How are you going to access the apartment?" Mr. Battista presented the survey. Code Enforcement Officer Peter Jeffery stated the pole barn would be limited to the 7.98 feet. Mr. Battista stated the 7.98 feet is the closest. Code Enforcement Officer Peter Jeffery commented it does limit trucks to the facility. Mr. Battista presented paperwork to the Board. Chairman Jackie Robinson asked if a fire truck would be able to get back there.

Chairman Robinson asked if anyone from the audience wished to speak.

**Mr. Jeffery Skellen, 3197 Porter Center Road.** I have had numerous tenants, the eve of the house sticks out and trucks have skimmed my

house. Why does it have to be a two family instead of a one family? The are 7-1/2 feet short. I am dead set against a two family. I would like to see it denied.

Mr. Battista stated he is willing to put a fence the two hundred feet, and we are paying for the fence.

Marshall Hibbard asked, "What type of fence?" Mr. Battista stated whatever the code requires for privacy. Code Enforcement Officer Peter Jeffery stated it has to be three feet from the front of the house and six foot in the back. There are guidelines in the code, and you have to maintain it. Mr. Battista stated that he is willing to put a fence up. Chairman Robinson asked if the fence will alleviate the trespassing on the property. Mr. Skellen stated renters don't care about anything. Mr. Skellen stated that the fence would help but there is an issue with the cars. I am still against it. Code Enforcement Officer stated that the fence conditions could be stipulated on the special use permit or the variance.

**Karen Nowak, 3271 Porter Center Road.** They are from West Seneca. Who is responsible in maintaining the property? Code Enforcement Officer, Peter Jeffery stated the owner of the property or there could be an agreement with the renters. It is the owner of records choice. We have very good property maintenance laws. It is my job to enforce them. Mr. Battista stated that his client has over four decades of relationships, and we have never had issues with any Towns.

**Mr. Lee Willis, 3269 Porter Center.** We don't have three feet between our property. We bought out house. That is a one family home. Who is going to maintain it? We have mowed our grass three to four times. They have not maintained their property at this time.

**Mr. Skellen** stated that the garage is right on the property line. Peter Jeffery stated it is not true—2.125 feet on the survey closest to the property line.

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

Attorney Dowd commented that you have to remember that two families are permitted. They will have to come for a special use permit and will have to comply with the requirements. The house was vacant, and you should consider the property maintenance.

Code Enforcement Officer Peter Jeffery stated you can add stipulations to the special use permit.

Chairman Robinson read the following:

(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.

Chairman Robinson read the recommendation from the Planning Board meeting dated June 7, 2018. Recommendation is based on the condition that E&R Horizons removes any and all existing driveway that is encroaching on Mr. Skellen's (neighbor) property so as to create a legal situation. Chairman Robinson asked how long as the house been vacant – approximately five to eight years.

Bryan Meigs had a motion to approve the variance of E&R Horizons with the following stipulations: Remove the north driveway encroachment and restore the neighbor's property to the original condition; Establish and implement a drainage plan/system – approved by Town of Porter; Provide and install a fence from the West corner of the Northern garage, running west, to the road right-of-way – as per the Town's fence regulation and was seconded by Terry Duffy. 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 asked the owners to get on the landscaping and lawn maintenance.

Chairman Robinson asked if Part One of the SEQR was completed. Code Enforcement Officer went to locate the SEQR and the Board waited until copies were made.

Peter Jeffery read Part I of the Short environment Assessment Form. 1-no; 2-yes (NYS Brewery License); 3a 5.5 acres; 3b 1 acre; 3c 5.5 acres; 4. Residential (suburban) and agriculture; 5a-yes; 5b-yes; 6-yes; 7-no; 8a-no; 8b-no; 8c-no; 9-yes; 10-yes; 11-no (septic); 12a-no; 12b-no; 13a-yes; 13b-no; 14 agricultural/grasslands; and wetlands; 15-no; 16-yes; 17a-no; 17b-yes and 17-yes; 18-no; 19-no; 20-no. signed by Robert Pepperday dated 7/28/2018. Chairman Robinson noted that it should have been dated 6/28/2018.

Chairman Robinson read **Part Two – Impact Assessment** 1-moderate; 2-moderate; 3-moderate; 4-no; 5-moderate; 6-no; 7a&b-no ; 8-no; 9-no; 10-moderate; 11-no.

**Part 3 Determination of Significance** For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting probability of occurring, duration, irreversibility, geographic scope and magnitude.

Also consider the potential for short-term, long-term and cumulative impacts. Chairman Robinson commented on traffic; land use and character of community. Attorney Dowd that project is similar to a winery and discussed a winery. It is probably more smaller than moderate. Chairman Robinson to control the number of cars on any given day. Attorney Dowd stated it is a permitted use. Chairman Robinson asked if we are treating it as a permitted use and Attorney Dowd replied "yes". Attorney Dowd discussed beer making. This has an impact. Attorney Dowd asked how many parking spots – ten to twelve spots. It is small.

Chairman Robinson asked for a Negative Declaration. Steve Zappy made a motion for a Negative Declaration and was seconded by Terry Duffy. Roll Call Vote-Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor for a Negative Declaration.

Chairman Robinson read the following:

**APPLICATION OF ROBERT PEPPERDAY AND JENNIFER RAYMOND,**  
**3901 DICKERSONVILLE ROAD, Ransomville, NY 14131 Tax Map**  
**#61.00-2-13.12.** Under Article II, Section 200-8 and Article VIII, Section 200-108, an area variance is requested – minimum lot width/road frontage: 300 feet is required by regulation and they have 175 feet. Property is located in a RA Rural Agricultural Zoning District on the East side of Dickersonville Road between Balmer Road and the Town E&R of Porter Town Line in said Town.

Architect Gwen Howard gave a brief discussion. The property is on 5.5 acres and 175 street frontage; 50% of the depth is the widest at 225 feet. Construction is in the rear portion of the lot; development to the back of the lot; the parameters of the building are 100' by 100'. This is just a tasting room and we are requesting front lot line variance.

Chairman Robinson stated we have a petition in our possession.

**Mr. Tom Bradshaw, 3861 Dickersonville Road.** (North side) Bar sipping. My parents were in the business for 46 years and people don't sip beer – 3 oz. plus 3 oz. plus 3 oz. You are about over the limit, and we are living on a dangerous curve. They are going to have trucks there delivering supplies. You are guaranteed to have an accident. I think the

Board in Youngstown has been taken to the wood shed. Why not check variances? I think that they bought the property knowing that the property was not wide enough. I think it is rude. They knew what they were going to building and bought it anyway. I don't think it is fair at all. What is keeping them from building a full fledged bar? Wine tasting versus beer tasting is an unlikely comparison. It is like comparing marijuana to heroin.

**Mr. Jeffery Smith, 3880 Dickersonville Road**. We are not behind this. I own a bar. They work on volume. Gwen Howard stated they are not applying for a bar license, they are applying for a brewery license. It is not a bar. Terry Duffy asked the question if beer will be sold there.

**Karen Miller, 3891 Dickersonville Road** (South). Karen stated that Tom Bradshaw said it the best—traffic. People are doing 55 mph. There are traffic concerns and trespassing concerns.

**Karen Ayers, 3885 Dickersonville Road** (South). I have one question for the Board, "What is the definition for that place?"

Peter Jeffery read:

A. Purpose.

- (1) The purpose of the RA District is to protect the agricultural land resources of the Town, permit rural residential development, and to promote the rural character and the continued economic and operational viability of agricultural enterprises.
- (2) In the RA District, agriculture shall be the primary land use, any agricultural practice determined to be a sound agricultural practice by the New York State Commissioner of Agriculture and Markets, pursuant to Article 25-AA, Section 308, shall be deemed an appropriate use of the land and its resources and shall not constitute a private nuisance. Agricultural practices include, but are not limited to practices necessary for on-farm production, preparation and marketing of agricultural commodities, such as the operation of farm equipment; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing of farm structures.

She also stated there is no mention of a business. I chose to come to this hamlet. I cannot fathom a brewery. Go into a commercial area. Traffic is an issue – 55 mph to 60 mph. We all live in the back. To the South side

is all residential, and it would be a devaluation of the property sitting next to the brewery.

Chairman Robinson talked about farm brewery. It is not considered farm production. They are just a business and have to apply as a business. They are not considered a farm.

**Suzanne Smith, 3880 Dickersonville Road.** There are several wineries that are directly between two houses. We have a horseshoe driveway. I can't imagine have this across the street. The traffic is going to be terrible.

**Paul Miller, 3891 Dickersonville Road.** The frontage of the property is 300 feet for residents. Peter Jeffery explained 125 feet for residents; 200 feet agricultural and 300 feet other. The people will overshoot the property and turnaround in Mr. Bradshaw's property or in my property. What is going to prevent people from wandering around the property and stagger in our back yards? Public restrooms – septic – How are they going to accommodate. Code Enforcement Officer Peter Jeffery stated that they would have to satisfy a requirement for the design of the system regulated by NCHD.

**Mr. Robert Seyler, 3890 Dickersonville Road.** I live next door to Jeffery Smith, and there is a three foot ditch. I am concerned about the traffic. Someone passed me on the double yellow line.

**Mr. Thomas Hogan, 3921 Dickersonville Road.** My concern is traffic also. I am closer to the corner than anyone else. You mix this with the traffic on Friday night and who is going to control it. They are going to overshoot the driveway and property values will decline.

Mr. Tom Bradshaw asked what was the legal limit (one or two). Attorney Dowd stated .08 depends on how big you are. Gwen Howard stated that she respects the traffic speed on this road that the town may wish to address and adjust the traffic speed accordingly.

**Lois Seyler, 3890 Dickersonville Road.** We have a very wide driveway. Everyone pulls in our driveway. I can only imagine.

Bryan Meigs made a motion to close the public hearing and Marshall Hibbard seconded. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes;



Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor. Motion Carried to close the public part of the hearing.

Chairman Robinson read the Planning Board recommendations dated June 7, 2018. Recommendation is based on the condition that there are no reasonable objections from the neighbors.

Chairman Robinson stated this is a 41 % variance.

Chairman Robinson read the following:

(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.

Chairman Robinson commented that I don't think that anyone is against having a brewery in the Town of Porter. Mr. Tom Bradshaw commented that they knew what they were buying.

Member Terry Duffy stated that because of the opposition we have seen today, and of the check list, I am making a motion to deny this application due to neighbor opposition as well as considering Nos 1 thru 5 of

Article VIII, Section 200-108 of the area variance 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 to DENY the application.

Code Enforcement Officer Peter Jeffery commented that all I have to say is I have formally addressed the five proposed amendment topics formally discussed. I will run it by the Planning Board at the July meeting. I am looking for any final input. If you have any input, please get back to me by email. Tony Collard commented that the Planning Board has discussed it and are quite satisfied. Code Enforcement Officer Peter Jeffery stated that most of the discussion was on the storage.

A motion was made to adjourn the meeting at 8:40 pm by Member Bryan Meigs and seconded by Member Terry Duffy. The next meeting is scheduled for Thursday, July 26, 2018.

Sincerely,

Nancy Smithson  
Secretary, Zoning Board of Appeals