

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 January 24, 2019 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	Date	Present	Absent
Jackie Robinson, Chairman	1/24/19	yes	
Terry Duffy	1/24/19	yes	
Bryan Meigs	1/24/19	yes	
Marshall Hibbard	1/24/19	yes	
Steve Zappy	1/24/19	yes	
Atty Michael Dowd	1/24/19	yes	
Peter Jeffery, Code Enforcer	1/24/19	yes	
Susan Driscoll, Assessor	1/24/19	yes	

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

Chairman Robinson said our first order of business was to nominate a Vice-Chairman. Bryan Meigs made a motion to nominate Terry Duffy and was seconded by Marshall Hibbard. Roll Call Vote. Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor. Motion Carried.

Chairman Robinson also asked Attorney Dowd if we have to do the SEQR Form before the public hearing notice. Attorney Dowd stated this is a variance request. This has to go before Niagara County. I am not sure if a SEQR has to be done for a variance. We need a motion to adopt the Zoning Board as the lead agency. Steve Zappy made a motion and was seconded by Marshall Hibbard to nominate the Town of Porter Zoning Board as lead agency. 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 read Part II of the SEQR form. 1-no; 2-no; 3-no; 4-no; 5-no; 6-no; 7a-no; 7b-no; 8-no; 9-no; 10-no; 11-no. Terry Duffy made a motion for a negative declaration on the Impact Assessment and was 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.

A motion was made to approve the minutes of the December 13, 2018 by Member Steve Zappy and seconded by Member Marshall Hibbard. Roll Call Vote. All in Favor. Motion Carried.

Chairman Robinson said we are going to open the public hearing in which the public can speak in an orderly fashion and politely. This is for the banquet use only.

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, **January 24, 2019 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):

APPLICATION OF LAURENCE AND CHRISTINA ELIA, 433 Lake Road, Youngstown, NY, Tax Map Nos. 45.06-1-2 and 45.06-1-1. Under Article II, Section 200-10, Article VIII, Section 108F(1), a use variance is requested for banquet/event use. Property is located in a WR Waterfront Residential Zoning district on the North side of Lake Road between Fort Niagara State Park and Fort Niagara Beach in said Town.

It was noted that the Elia's were present. Christina Elia stated that they have the ability for five to ten indoor and outdoor events in the course of a year. The same as we proposed at the Planning Board meeting. Approximately 250 people outdoor with a tent with the noise ending at 11 pm and that is pretty much it. We will have professional parking and two caterers that we will use their own equipment—no dumpsters. Fireworks would be limited, and we would notify everybody. They will be no longer than 30 minutes between 10 pm to 10:30 pm. They will be the same licensed fireworks as the Town of Porter uses, and they would handle the permit. No public parking on the street. There will be a traffic pattern and no parking on the beach. We would put temporary signs on our property for service staff. No more than 3 to 4 outdoor events. Possibly moving the tent closer to the park to project the noise. Moving more towards

within 50 feet of the west side of the property with a back drop to deflect noise away from Fort Niagara Beach..

Chairman Robinson read the following letter from Nancy Sanger.

"We are the property holders immediately adjacent to the Elias on Lake Rd. I spoke with Mr. Elia yesterday to hear from him exactly what the plans were that required this variance.

My wife, Nancy, and I are in complete support of what the Elias have in mind for their property. They have a wonderful property that suits itself perfectly to hosting weddings and other events. I think it will be a benefit to many people to have them share this unique location with them.

Nancy says that historically this site was a local gathering spot, as it used to have a bar and roadhouse where members of the community would gather. Bringing groups of people together who would not ordinarily come to Youngstown would have an economic benefit to local businesses as well.

We are not able to attend the public meeting on January 24 as we will be at quite a distance away, so we wanted to write this letter so that it can be part of the consideration for the Zoning Board of Appeals."

Mr. Phil Miller, 439 Powell Drive. He stated that he is 100' from the Elia property. We strongly object to the fireworks between 10 pm and 7 am – no noise. It is not a neighborhood to have fireworks. I want stipulations on the variance no fireworks. Chairman Robinson stated that fireworks are permitted in the community. They are allowed to have fireworks. Mr. Miller stated no fireworks between 10 pm and 7 am. He read a passage from the Noise Ordinance obtained from Code Enforcer, Peter Jeffery Article V. Requirements Applying to All Districts Section 200-75. Noise Limitations

"The playing of any noise-producing devices such as radios, electronic devices, televisions, CD players, loudspeakers, public address systems, musical instruments, and other amplification devices in such manner or with such volume as to be audible beyond the property line of the premises upon which it is being used between the hours of 10:00 pm and 7:00 am, or audible at a distance of 50 feet beyond the property line of the premises

upon which it is being used between the hours of 7:00 am and 10:00 pm.”
We can't think when the fireworks are going off and we have to wait for them to be over. It is a residential area.

Mr. Mark Littman, 443 and 445 Powell Drive. I was going to offer my support tonight and several of my neighbors didn't come tonight. We felt the Elia's took the fireworks off the table. We want them off the table. I am no longer a supporter. This is a residential area for this project and the impact it will have. It is not what the neighborhood wants. The Planning Board only supported the bed and breakfast. This is a very different scenario. Are fireworks going to be put on this – yes or no? Mrs. Elia stated that the fireworks would be for one or two events, and you could be notified. We are not in the fireworks for monitorial compensation. They are for the enjoyment of the guests. I don't want to limit myself.

Attorney Dowd spoke to the people and asked them not to argue. Mrs. Elia stated that they are willing to work.

Mr. Miller stated the following: (1) the impact in a residential area. You can do nothing else East of the property – fireworks and any debris; (2) band – real stipulation. West side of the yard for the band and face the park. Music and live bands not to go past ten o'clock. It has severe impact. There is community concern. You could limit the variance as to how many events in a year. Let them have to come back in one year. If everyone is in agreement, it can go beyond year.

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

Chairman Robinson asked if we could draft a motion pending on Niagara County Planning Board approval. Code Enforcement Officer Peter Jeffery stated that the Elia's are on the agenda for next Monday. Attorney Dowd stated that you can take action tonight or wait until the Niagara County recommendations and table the application.

Chairman Robinson stated that the Town of Porter Planning Board recommends approval of the variance with stipulations to address noise and firework concerns as voiced by the neighbors.

Terry Duffy asked if the county will address fireworks. Attorney Dowd stated they are making a decision on whether to approve. If the County says they don't have a problem you need a three out of five members approving. If they have a problem, you need four out of five approval.

Peter Jeffery stated fireworks were not specifically called out on the application. I don't know if the County will act on it. We submitted a letter of intent. It doesn't talk about fireworks. Chairman Robinson stated that if the application is within 500 feet of a State park, the County Planning Board has to approve this. This Board has the final decision.

Bryan Meigs asked about fireworks by private owners. Attorney Dowd stated anyone in the Town of Porter can apply for a permit. Is there any difference between commercial and backyard, I don't think so.

Chairman Robinson asked if the Elia's decided to have a party on the fourth of July are they are able to have fireworks because they want to have a party and fireworks for a private party. Code Enforcement Officer, Peter Jeffery stated in the Noise Ordinance, there is no decibels. The Ordinance does say 10 o'clock. Attorney Dowd stated anyone living near Ransomville Speedway, they are able to operate until 11:00 pm with their special use permit.

Chairman Robinson asked the Elia's if 10 o'clock was acceptable or would you need an extension of time for the music to stop after 10:00 pm. Mrs. Elia said some people want it until 11:00 pm. I think it should go until 11:00 pm. Marshall Hibbard stated there are two issues – fireworks and the band. He also stated that Christine Elia stated the Planning Board meeting that they wouldn't do the fireworks. Bryan Meigs asked Mr. Littman for his comments. Mr. Littman stated the West property line for the band. The fireworks are unbelievably intrusive.

Attorney Dowd commented you can wait until the County Planning Board recommendation.

Terry Duffy suggested we table this until we hear back from Niagara County Planning Board until the February meeting. If Niagara County has a problem, we would need a unanimous vote. Code Enforcement Officer, Peter Jeffery stated they are meeting on Monday, January 28, 2019 at 2:00

pm. Attorney Dowd stated we have to asked Mr. & Mrs. Elia would be in agreement to wait until the March meeting. Chairman Jackie Robinson will not be at the February meeting. A comment was made that everyone has to apply for a permit for fireworks whether private or commercial. Terry Duffy amended the motion to reflect that we wait for Niagara County's determination and input until the March meeting for a full Board and with the applicant's consent 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 table the application of Mr. & Mrs. Elia until the March meeting.

Code Enforcement Officer, Peter Jeffery asked if the Board want from the applicant a drawing of where the band will be located to mitigate some of the sound and address some of the concerns.

Code Enforcement Officer, Peter Jeffery talked about the Special Use Permit. He sent out a chart/spreadsheet for the Board to consider. Chairman Robinson stated anything that would streamline the process would get my vote. Peter Jeffery explained that some applications require two Public Hearing notices and it should be one. This is what we are trying to clean up. Peter Jeffery explained the process between the Planning and Zoning boards. He asked the Board to please look at the spreadsheet. At the February 7th Planning Board meeting, they will work on the spreadsheet, and it will be updated based on their input. He will forward all the Board members and updated spreadsheet.

Code Enforcement Officer, Peter Jeffery also touched briefly on the Solar training session last week. We want to revisit commercial and community solar. It is a changing scene, It is not going away. Community Solar is viable. We might amend our book. What areas of the town are we going to allow it? I thought it was very informative. Assessor Susan Driscoll handed the Board members a document on the Second Case on Solar Farms. They are not taxable.

Several additional questions were raised to Code Enforcement Officer, Peter Jeffery on windmills and upcoming court cases.

A motion was made to adjourn the meeting at 8:05 pm by Member Marshall Hibbard and seconded by Steve Zappy. The next meeting is scheduled for Thursday, February 28, 2019.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals