

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 March 28, 2019 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

| | Date | Present | Absent |
|------------------------------|------------|---------|--------|
| Jackie Robinson, Chairman | 03/28/2019 | yes | Yes |
| Terry Duffy | 03/28/2019 | yes | |
| Bryan Meigs | 03/28/2019 | yes | |
| Marshall Hibbard | 03/28/2019 | yes | |
| Steve Zappy | 03/28/2019 | yes | |
| Atty Michael Dowd | 03/28/2019 | yes | |
| Peter Jeffery, Code Enforcer | 03/28/2019 | yes | |
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Chairman, Jackie Robinson called the meeting to order with the pledge of allegiance.

Chairman Robinson asked if there were any additions or deletions to the March minutes. None. Terry Duffy made a motion and was seconded by Bryan Meigs. All in Favor. Motion Carried to accept the March minutes.

Chairman Robinson said that there was a change to the agenda and that the meeting was going to start with the application of Evan Jones Mathewson.

Chairman Robinson read the following:

APPLICATION OF EVAN JONES MATHEWSON (HI-OCTANE GUNWORKS) 2426 Youngstown-Lockport Road, Ransomville, NY 14131. Tax Map No. 62-00-1-151-12, Under Article II, Section 200-8, Article IV, Section 200-35, Article VIII, Section 200-107, a special use permit is required for a small business – painting guns. Property is located in a Rural Agricultural Zoning district on the South side of Youngstown-Lockport Road between Dickersonville Road and Ransomville Road in said Town.

It was noted that Mr. Mathewson was present. Mr. Mathewson stated that the purpose of the permit was for a basic painting of guns and other things. In order to legally paint guns, you need a Federal firearms license. He needs the permit from the Town first. This is more of a hobby. He needs the permit before he can get the license from the Government. He explained the procedure of painting guns. It is a very small operation. Each gun takes a couple of hours and bakes in an oven between 180 to 200 degrees. Terry Duffy asked the question, "How much business?" Mr. Mathewson replied one gun a week (hobby level). Marshall Hibbard asked is the material flammable? Mr. Mathewson replied no; non-toxic. It bakes in an electric oven. Terry Duffy asked, "Is it in the garage?" Mr. Mathewson replied, yes.

Chairman Robinson asked if there were any additional questions from the audience. None. Terry Duffy made a motion and was seconded by Marshall Hibbard to close the public hearing. 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.

Code Enforcement Officer, Peter Jeffery stated Irene Myers was the owner of record of the property, and she approves the small business of painting guns. The Planning Board approved this application.

Bryan Meigs made a motion to approve the application of Evan Jones Mathewson for a small business – painting guns and was seconded by Steve Zappy. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes and Steve Zappy – yes; Chairman Robinson-yes. All in Favor. Motion Carried. Terry Duffy made a motion to amend the application and was seconded by Bryan Meigs for a period of time – Five Years. All in Favor. Motion Carried.

Chairman Robinson stated the next item on the agenda was Laurence and Christina Elia, 433 Lake Road, Youngstown, NY 14174 – a special use permit for banquet/event use. Chairman Robinson stated that we had a referral from the Niagara County Planning Board.

Christina Elia stated that they could have a silent display of fireworks making sure the event can go to 11:00 o'clock. They would move the tent and face it to the West and provide a sound barrier.

Chairman Robinson asked if there was anyone from the audience that wished to speak. Christine Elia stated we want everyone to be happy. They don't want sound to be an issue.

Mr. Mark Lippman stated that he was not aware of quiet fireworks. Chairman Robinson stated that Niagara County's referral said without fireworks. Mr. Lippman commented that fireworks made noise. We are guessing what these no report (silent) fireworks are like. Maybe we could have a demonstration. Otherwise, we are going on here say.

Mr. Phil Miller, 439 Powell Drive stated he is opposed to fireworks entirely. You can't use gun powder and not hear a boom. I have a six month old grandchild who visits us. The fireworks will prevent every one of us from getting any sleep. He stated in the Zoning law it is supposed to be quiet after 9:00 p.m. Maybe we could see a demonstration of the no report fireworks.

Marshall Hibbard stated you do understand residents can have fireworks with a permit. Terry Duffy stated you have to obtain a permit prior to doing the fireworks. Chairman Robinson stated if we approved the permit to operate a banquet/event, they could still have fireworks for private events (family) or non-commercial.

Code Enforcement Officer, Peter Jeffery stated in the noise ordinance the time is 10:00 pm. It is a State law. There are requirements as to where they are aiming them and you must satisfy the requirements and recommendations. Terry Duffy stated that in the permit we could have terms and conditions adhering to the Town and State requirements for the fireworks. Code Enforcement Officer stated we have to establish the number of events permitted; times of each and stipulation as to the band direction as discussed.

Christina Elia stated that no more than ten events per year (both indoor and outdoor); no fireworks scheduled this year. Attorney Dowd stated the permit could be written up to ten events, two of which would allow the use of a fireworks display if the Board so decided. Christina Elia stated the fireworks have to be applied for at least six weeks in advance. We only have two events this year and possibly a third. Marshall Hibbard asked if Christina Elia would be opposed to only one per year? Chairman

Robinson stated the permit could be for one year and we could see how it goes. Could you have a demonstration on a no report display and see how it goes. Attorney Dowd commented that you could state the timeframe for the fireworks. Christina Elia stated that they would have a demonstration of a no report fireworks and everyone would be notified.

Terry Duffy made a motion to approve the application of Laurence and Christina Elia for a special use permit for a banquet/event use with the following conditions: Ten events per year (both indoor and outdoor); no fireworks for the first year; the Board will revisit the fireworks after the first year; number of guests – no more than 250; Hours of operation: 10:00pm for fireworks when revisited after the first year; music until 11:00 pm. Music or sound must be on the West side facing the lake with a sound barrier; Parking – No on street parking. The permit for the banquet/event use will be for a period of five years and fireworks will be revisited next year (2020) and was seconded by Bryan Meigs. Roll Call Vote. Terry Duffy-yes; Bryan Meigs; yes; Marshall Hibbard-yes; Steve Zappy-yes; Chairman Robinson-yes. All in Favor . Motion Carried.

Code Enforcement Officer, Peter Jeffery asked to be notified at least a week before the wedding event. Christina Elia stated she will email the information to Peter Jeffery. There are currently only two booked this year.

Chairman Robinson asked if a SEQR was required. Attorney Dowd stated that no SEQR was required under NY 617.5 NYCRR, Section 18.

Chairman Robinson read the following:

APPLICATION OF JASON BERGER, THOMAS NEILSON, JOHN HUBER, 1698 Braley Road, Youngstown, NY 14174. Tax Map No. 47.00-1-30, Under Article II, Section 200-8, Article IV, Section 200-48, Article VIII, Section 200-107, a special use permit is required to use the existing private airstrip and allow its use by the general public. Property is located in a Rural Agricultural Zoning district on the South side of Braley Road between Youngstown Road and Porter Center Road in said Town.

It was noted that Jason Berger, Thomas Neilson and John Huber were all present.

Code Enforcement Officer, Peter Jeffery stated a special use permit had to be issued for a private owned, public use airstrip and one for commercial recreational skydiving/parachute operation. Jason Berger stated that on the sale of the property the permit was non-transferrable. It will be for private use only and touch & go (land and take off). The skydiving is a Commercial Recreational Facility. They have over 50 years of skydiving experience between them. He stated that they would fly from the airport to Niagara Falls and circle back before dropping the skydivers. He explained how they jump together with the skydiver. Both the skydiver and one of the owners would have a harness attached to them along with the parachute. Jason Berger has been doing this for over 13 years and John Huber has twenty plus years. Chairman Robinson asked if they are just going to do sightseeing. Code Enforcement Officer Peter Jeffery stated you are not going to take people over the falls and come back. They will have to skydive. None of the owners are pilots. All three applicants are instructors. They are not looking to make any growth in the airport. It will be a private owned; public. They would be flying between 10,000 to 12,000 feet in the air. Mr. Huber stated that they are members of the United States Parachute Association and abide by all FAA regulations.. They are licensed skydivers; licensed instructors and licensed to provide professional demonstration. It is a professional operation and an international sport. He stated they are a small operation with a grass run way strip. Most pilots won't go to an unknown runway. Mr. Huber discussed the operation of the airport and hoped it helped. We only have one plane. The timeframe would be May 1 through November 1. Jason Berger stated it will be seasonal. Terry Duffy questioned the number of days. Mr. Berger replied that they have a lot of limitations due to wind. He discussed the weather and how it affects the timeframe and hours of operation. Mr. Berger also stated the time would be sunrise to sunset. In September and October it would be 5:00 pm and in summer it would be a little later probably 8:30pm or 9:00 pm. Kara Hibbard asked about the cost of skydiving. Mr. Berger stated about \$250. You have 30 minutes to an hour of instruction.

Chairman Robinson asked the applicants if they had included any of Mr. Shears information. Mr. Shears permit is non-transferrable. Mr. Neilson stated we need the special use permit before we can proceed further.

Attorney Dowd had a discussion on the FAA regulations; 249 general business law; DOT requirements. All this has to be in the applicants file.

It was noted that Mr. Shear did have everything on the DOT until 2021. Chairman Robinson asked "Do we have to have all the information in the file?" We don't have 249 resolution approval. We need a complete file including Mr. Shear's information. Attorney Dowd asked the applicants if they have an attorney. You need a check list. It was noted that there was an airport registration form that was issued to Mr. Shear dated 2005.

Chairman Robinson stated that Code Enforcement Officer, Peter Jeffery and Michael Dowd will get together with a check list. We can't approve a special use permit until all the requirements are completed. Since the Planning Board meeting Attorney Dowd has been trying to compile all necessary information. You have to be in compliance. There was a discussion on all the necessary information that was needed. Attorney Dowd commented you really have to spend time looking at all that is needed. Do you have all the documents from Mr. Shear; FAA special determination letter and General Business Law 249.

Mr. Joel Knack questioned the Board if they were going to limit the take offs and landings in a day? He stated Mr. Shear flew once a day. Are the skydivers going to land on my property? It is a concern of mine. Mr. Jason Berger stated that he could land on a target the size of a plate. Chairman Robinson asked what would be the maximum number of flights – two a day. It was explained that someone would be training in the interim while the other instruction was in the plane.

Mr. Huber stated he was a statistical person. There are only so many days to operate. Mother Nature doesn't agree with us. There is rain and wind that have to be factored into. He stated that in October of 2018 there were only three consecutive days of sunshine. July and August there was good weather but the winds kept us grounded. Terry Duffy asked how many of these operations are in Western New York John Huber stated three others. He stated there are 3.2 million skydivers across the US. Code Enforcement Officer, Peter Jeffery asked realistically how many take offs and landings in a day. It was noted that in Wilson on a weekend there was 20 and a weekday between 5 and 7. Chairman Robinson questioned the noise of the plane. Code Enforcement Officer, Peter Jeffery asked if a windmill would affect the operation. Attorney Dowd that we cannot allow another permitted use if one is already in effect if it would interfere with the first permitted use. Steve Zappy questioned the touch and go. Joel Knack asked if they were going to have fuel Jason Berger stated the DEC

regulates the tanks. Attorney Dowd stated it could be a condition of the permit. Peter Jeffery stated that there is a fire access road and a small parking area. Chairman Robinson stated that there are letters in the file from the neighbors with no objection. Jason Berger asked if there was anything they could do as far as the contingent permit. We need the permit to get FAA air space approval. The season starts in May. FAA approval could take as long as a month.

Terry Duffy made a motion and was seconded by Steve Zappy to have Attorney Dowd explore NYS DOT to move forward with the resolution. All in Favor. Motion Carried. Terry Duffy made a motion to close the public part of the hearing 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 to close the public part of the hearing.

A discussion among the Board members, Peter Jeffery, Attorney Dowd to meeting with the applicants on Tuesday, April 2 at 8:30 am to discuss what is needed. If all the paperwork is in order another Board meeting will be held.

Code Enforcement , Peter Jeffery discussed with the Board the "Solar Energy System" local law and the potential Zoning Law Amendments on the spreadsheet. There was also a discussion on Bailey, Baker Farm Trust.

A motion was made to adjourn the meeting at 9:10 pm by Member Marshall Hibbard and seconded by Bryan Meigs. The next meeting is scheduled for Thursday, April 25, 2019.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals