

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 July 23, 2020, at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	<u>Date</u>	<u>Present</u>	<u>Absent</u>
Jackie Robinson, Chairman	01/23/2020	yes	
Terry Duffy	01/23/2020	yes	
Bryan Meigs	01/23/2020	yes	
Marshall Hibbard	01/23/2020	yes	
Steve Zappy	01/23/2020	yes	
Atty Michael Dowd	01/23/2020		yes
Peter Jeffery, Code Enforcer	01/23/2020	yes	

Chairman, Jackie Robinson called the meeting to order with the pledge of allegiance at 7:00 pm.

Chairman Robinson asked for approval of the January 23, 2020 minutes. A motion was made by Steve Zappy and seconded by Marshall Hibbard to approve the minutes. Terry Duffy abstained as he was not present. Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes. Motion Carried.

Marshall Hibbard had one question about the special permits that have expired. What is the status? CEO, Peter Jeffery, stated he has not looked into; but he will definitely look at the list supplied by the Secretary, Nancy Smithson.

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, **July 23, 2020 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of Runaway Bay, 3881 Lower River Road, Youngstown, NY Tax Map No. 59.00-1-13.1. Under Article II Section 10 and Article VIII, Section 108, an area variance is required for a riverside parcel; storage building/boathouse and patio deck. Property is located at 3881 Lower River Road in a WR & NREO Zoning Districts between Howard Drive and where the Town of Porter ends in said Town.

Chairman Robinson read the following email from Keith & Penny Pollak.

Keith & Penny Pollak
3895 River Rd.
Youngstown, NY 14174
July 21, 2020

Zoning Board Members:

We're writing with respect to the Application of Runaway Bay (3881 River Rd) for a "storage building / boathouse" on riverside parcel, due for public hearing at the Porter Zoning Board of Appeals on Thursday, July 23, 2020.

According to Zoning Variance Procedures (Town Chapter 200, Article VIII, § 200-108, paragraph D), the applicant is required to submit Building and Site Plans. **May we receive a copy?**

Similarly, the applicant is required to show that alternative plans, ones that comply with town regulations, would cause "unnecessary hardships" (same chapter, article, & section; paragraph F). **May we receive copies of the alternatives and explanations of the respective, unnecessary hardships?**

The description "storage" and "boathouse" are vague, so we would like additional details. For example:

- **Are toilet facilities** (e.g., plumbed bathrooms, outhouse, port-a-potty, etc.) **to be installed?** If so, how will the waste be stored and disposed? As we are adjacent to this parcel, environmental effects of such facilities are undesirable and detrimental.
- **What, exactly, will be stored?** Any toxic chemicals (e.g., herbicides, pesticides, bleach, caustic cleansers, etc.) or flammable materials (e.g., propane, natural gas, etc.)? Containers fail, releasing their contents into the environment. In this case, they would immediately enter adjacent Fish & Wildlife areas of the Niagara River.
- **Will refuse be stored?** As in the previous points, environmental effects are undesirable, and failures in the container are detrimental.
- **What utilities are planned?** Electricity, gas, water?

Porter's Chapter 200 has at least four articles/sections that regulate storage. Does the proposed plan comply with them all?

- Article IV, § 200-41 Requirements for Mini Storage Facilities.
- Article IV, § 200-45 Requirements for Outdoor Material Storage
- Article V, § 200-80 Requirements for Storage or Parking of Boats, Trailers, Recreational Vehicles, and Utility Trailers
- Article V, § 200-81 Requirements for Refuse Storage Areas

Cordially,
Keith and Penny Pollak

It was noted that the Pollak's were present at tonight's Zoning Board meeting. Peter Jeffery, Code Enforcement Officer (CEO) emailed copies of the building and site plans to the Pollak's today. Regarding unnecessary hardships, this would be addressed later. After reading the letter, Chairman Robinson asked the Pollak's if they would like to add anything and they replied "no".

Chris Guard answered the following questions to the above letter. There will be no toilet facilities at all. It is a private use for the houses across River Road. Golf carts will provide access the boathouse. The home owners can use golf carts to go back and forth to their homes. Regarding the question of storage -- The only items being stored will be kayaks and canoes on the north side of the house. Deck chairs will be on the patio and off season, they will go inside. Homeowners can store stuff for their boats. There will be a 20# can of propane for gas grill. There will be boat cleaners or waxes stored. There will be water and electricity to the building and dock. At the boat club in Lewiston, we have a small trash can. If you fill it up, you take it. There will be small trash cans likely in the house. We are not planning to have dumpsters. There will be 12 boat docks and twenty houses in the development. Marshall Hibbard asked if there will be gas tanks stored down there and Chris Guard replied "no". Terry Duffy asked if there will be launching? Chris Guard replied only kayaks and canoes. There will be no boat launching.

Chairman Robinson asked CEO, Peter Jeffery, this is an area variance. Can you explain and qualify? CEO, Peter Jeffery stated he took a look at the dock variance approved in 2016 and was advised by counsel to list as an area variance. As was discussed at the Planning Board meeting; hopefully you saw the minutes, all members agreed that the patio and boathouse were part of the original plan and felt comfortable making a recommendation to the Zoning Board based upon Attorney Dowd's requirement on procedure. CEO, Peter Jeffery showed the drawings to the Board that were in the original 2016 application that was put in for a permit. There was no language in the written letter of the variance that talked about a boathouse, and I wanted to be sure that this was clear at

this point without Attorney Dowd being here. This should be treated as a new request.

Chairman Robinson questioned "hardship". Is this a permitted use in the Town that is required? CEO, Peter Jeffery stated it is a permitted use along River Road. Jackie, you certainly know because you were involved in the 2016 decision. Some of the other Board members may or may not have been involved. I don't recall, to be honest, but the boat dock approval was tied to three homes being built. In terms of hardship are there any alternatives. None.

Chris Guard stated the logic that was permitted to three lots on the East Side of the property, the Planning Board agreed to make part of the HOA.

Chairman Robinson stated you have been involved numerous times. Keep in mind as we go forward, HOA is one thing you are having? Yes, they will be in charge of the clubhouse. It will be their responsibility to maintain it and own it. Chris Guard replied that the HOA will own the parcel; and it will be their responsibility to maintain and own it. CEO Peter Jeffery stated there will be an agreement with the Town on what is to be maintained. There are other components of the subdivision on the East side of River Road that the HOA will own and will have a covenant agreement with the Town to maintain. Like there is a center green space in the center of a cul-de-sac that the Town has asked that HOA take on responsibility of maintaining. Although it will be owned by the Town of Porter, they will have a covenant with the Town for them to maintain it. There is a cart path sidewalk for golf carts that run along the main dock side road that runs in and similar arrangements were stipulated. The HOA will maintain the covenant with the Town such as wide walkways for the golf carts. A preliminary draft of the HOA was done in 2016. It may have been embellished. I mean there is more detail added to the draft. It is available.

Mr. Pollak clarified it is just a boathouse. Chairman Robinson stated just a boathouse. Any other concerns? None. She asked the public if the questions were answered to their satisfaction. Replied "yes".

CEO, Peter Jeffery answered the questions on Chapter 200, articles.

Article IV, #41 – Mini Storage – not applicable.

Article IV, #45 – Outdoor storage – not applicable.

Article IV, #80 – Storage or parking of boats, etc. This applies to all districts. It will apply here. You are allowed to have licensed boats, rv's for a season beginning and ending date. Once you are in the middle of October, not allowed in the front yard. Will apply to any boats after October 15, they will have to be stored in a building or behind the house. Article IV, #81 – Refuse storage areas. In all zoning districts, dumpsters need to be screened from the road and have to be maintained. This will apply to the district.

Hopefully, this will address your concerns. The Planning Board reviews site plans and can stipulate as to site plan.

Chris Guard and CEO, Peter Jeffery both thought that it was addressed in 2016, if he gets approval.

Chairman Robinson asked for a motion to close the public part of the hearing. Terry Duffy made a motion and Marshall Hibbard seconded to close the public part of the hearing. All in Favor. Motion Carried.

CEO, Peter Jeffery showed a site plan and pointed out the golf cart path. He described the boathouse size (20' by 30' length) with a covered porch. Chairman Robinson said it is a storage building. Terry Duffy asked if there were going to be rest rooms. Chris Guard replied "none". CEO, Peter Jeffery showed the drawings for the boat house. Chris Guard stated it is pretty typical. There are seven or eight boat houses on the river. CEO, Peter Jeffery showed the floor plan. Chairman Robinson asked if this was above the high waters mark. CEO, Peter Jeffery stated they actually have it at the edge of the floodplains, so they will have to meet the floodplain requirements which means their finished floor has to be two feet above base flood elevation. Electricity; plumbing, etc. have to be water tight. There are a number of building codes and regulations to move forward. Terry Duffy questioned the lighting and will it be invasive to neighbors. Chris Guard stated it is low lighting along the path way. CEO, Peter Jeffery stated you have to have lighting regulations. There is a requirement in the code, and we will check that in the building permit process to make sure that the fixtures satisfy that.

Kelli Pollak asked about parking. Chairman Robinson stated that only golf cars are allowed. Kelli Pollak stated to the south, we have a dock. Chris Guard stated limiting to just the golf carts. Terry Duffy again questioned rest rooms. He stated that there are restrooms on the property in Lewiston. Steve Zappy asked how many people at one given time? Chris Guard stated this was a hard question to answer. Say twenty homes/ forty people. The likelihood of everyone showing up? In Lewiston there are three to four at a time. I am not trying to avoid the question. You could have 30/40 if someone was having a party.

Terry Duffy brought up a question of vehicle traffic. Chris Guard stated it is the homeowner's responsibility. We don't own any property on River Road. If someone has guests, it is the homeowner's responsibility to get them there. CEO, Peter Jeffery stated there is no parking on bank level; except for a hand rail on the stairs. Chairman Robinson asked when are you going to start construction. Chris Guard – probably next year. Chris Guard stated we are going to have three homes. Chairman Robinson asked what have you accomplished on the other side of the Road. Chris Guard stated we started clearing the land to start with utility work next. The surveying is laid out but needs to be done. The next step is to strip the top soil in the right away. CEO, Peter Jeffery stated we have a signed contract for roadwork and utilities. They are fully vested. They have invested in excess of \$100,000 of deposits they have made to the Town of Porter to pay our town engineers and storm water prevention manager and out town engineer to do the construction inspection. In my opinion, they are fully vested here.

Chairman Robinson stated they have been working with the Planning Board for four years, the engineers and have cooperated fully with the Town, Planning Board, Peter Jeffery and utility agencies. Any other questions from the Board?

Chairman Robinson stated that she spoke with Attorney Dowd, He would not be available tonight because he is out of town, but he is available by phone. We need to stipulate about the three homes under construction. There is a caveat, if the houses don't become occupied we have to be cautious if they get the boathouse and docks and then they are out of money. We have to cover ourselves. Are there any questions for Attorney Dowd. None.

CEO, Peter Jeffery stated he is confident based on discussions with the Planning Board. The Planning Board has recommended approval and they thought this was already included.

Terry Duffy stated I would like to see the house underway; moving towards construction; framed in and progress. Three home minimum. Chris Guard stated that they have one home purchased (his) and two contracts.

Terry Duffy, regarding the HOA is everyone working with the buyers; is that part of the package; responsibilities outlined. Chris Guard stated that he is the first home owner.

Chairman Robinson stated the boathouse was not part of the variance in 2016. This is a new variance for the boathouse and patio. They have a variance for the docks. Mr. Pollak asked no docks until three houses are built. Chairman Robinson stated they cannot do anything with the boat docks until three houses are occupied. They can have boathouses and kayaks and canoes but no docks until the three houses are occupied.

CEO, Peter Jeffery stated you don't have too many houses started. If they have building permit and poured foundation walls, that is certainly enough commitment. The roads will be built and dedicated to the Town of Porter. The subdivision development work is essentially or significantly completed before issuing building permits for homes. Road and utilities are over \$750,000. They are not going to be looking at turning back if they can help it at that point. Brian Meigs as if he has buyers for the homes. Chris Guard stated he has one home (himself) and two commitments.

Terry Duffy made a motion to approve the area variance for Runaway Bay and was seconded by Marshall Hibbard to cover the boathouse and patio with the following stipulations. Three homes minimum. One house has to have one foundation in place and the other two lots moving towards commitment with startup of construction; otherwise it will nullify the contract. Six months allowed as per the building permit, if there is no activity within six months, the variance will be nullified. CEO, Peter Jeffery stated construction of roads and utilities will take seven to 12 weeks. The building permit is given for one year; no activity within six months it will be null and void.

Roll Call Vote – Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor. Motion Carried.

Application of Shennen Hannam, 2584 Youngstown-Lockport Road, Ransomville, NY. Tax Map No. 62.14-1-36.2 Under Article II, Section 200-12; and Article VIII, Section 200-108, a variance is requested for a 6.5 foot fence on South and 7.5 foot fence on North due to the slope of the property. Property is located in a Commercial Mixed-Use District on the South side of Youngstown-Lockport Road between Ransomville Road and where the Town of Porter ends in said Town.

Chairman Robinson stated regarding the following application of Shennen Hannam, the applicant was not present and a motion was made by Bryan Meigs and seconded by Terry Duffy to table until the August meeting. Roll Call Vote. All in Favor. Motion Carried to table until August meeting. CEO, Peter Jeffery stated he would contact the applicant.

Wally Nowacki approached the Board. CEO, Peter Jeffery stated he was asking for Zoning Board input on Wally's fence. The fence was put up without a permit, and Roy Rogers was in office as I understand it. He doesn't want to take it down. I felt it was not in compliance with regulations as it stands.

Chairman Robinson stated it is not in compliance – built without a permit; Roy Rogers okayed but no documentation when it did go up. Wally stated the biggest issue is size. He presented five different sources of the Board explaining the terms of a fence. It is taller than the three foot requirements, and it is a specific fence to irritate the neighbor; no use for it. Chairman Robinson stated it is not up to code and too high. The fence is not in compliance with the neighborhood. It is my job to interpret the law. There was a discussion between Chairman Robinson and Wally Nowacki relating to the fence. We are not in a position to solve neighbor disputes. This is ongoing. We are not going to face it. Address the issue of the fence – if it is illegal or can you make it legal? CEO, Peter Jeffery stated to Wally Nowacki that the only reason I wrote the complaint about the fence is

because the neighbor complained about it. I t wouldn't have come up if there hadn't been a complaint. My job is to follow-up on it. Wally Nowacki questioned the caps on the tops of the poles of the fence.

Bryan Meigs stated he doesn't know what happened before you had the caps on the fence; I don't see it being as a hazard; property is will kept.

After much discussion, it was agreed that Wally Nowacki will meet with Peter Jeffery and pay a \$40 fence permit; stipulate on the diagram where the fence and height will be and it will comply with regulations. Wally Nowacki again asked if the yellow caps can stay on top of the pole.

Permit discussion – Skydiving Operation.

A email was received by Ashley D. on July 22, 2020 at 7:20 am to Peter Jeffery with concerns about the Special Use Permit on the skydiving operation. CEO, Peter Jeffery sent a reply email to Ashley dated July 22, 2020 at 1:21 pm. The documentation was passed out to the Board. There was a discussion on this subject and the Board felt everything was answered in the email.

A motion was made to adjourn the meeting at 8:45 pm by Member Bryan Meigs and was seconded by Marshall Hibbard. The next meeting is scheduled for Thursday, August 27, 2020.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals