

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 September 24, 2020 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	Date	Present	Absent
Jackie Robinson, Chairman	09./24/2020	yes	
Terry Duffy	09./24/2020	yes	
Bryan Meigs	09./24/2020		yes
Marshall Hibbard	09./24/2020	yes	
Steve Zappy	09./24/2020	yes	
Atty Michael Dowd	09./24/2020	yes	
Peter Jeffery, Code Enforcer	09./24/2020	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 August 27, 2020 minutes. A motion was made by Steve Zappy and seconded by Marshall Hibbard to approve the minutes. All in Favor. Motion Carried.

Chairman Robinson read the following:

Application of Robert Kudel (Bandana's Bar and Grill) 930 Lake Road, Youngstown, NY. Tax Map No. 46.00-1-6 Under Article II, Section 200-9; and Article VIII, Section 200-108F(2), an area variance is requested for a 15' x 25' decorative fence five (5) foot in height in the front of the building, due to Covid-19 pandemic and state requirements. Property is located in a LDR (Low Density Residential District) on the South side of Lake Road between Creek and Cothran Roads in said Town.

Mr. Robert Kudel was present.

Code Enforcement Officer, Peter Jeffery stated Mr. Kudel did contact Supervisor, Duffy Johnston and CEO, Peter Jeffery, when the Boards were not meeting due to Covid-19, to install a fence and in order to keep the

business open. Both Supervisor Johnston and CEO Jeffery gave approval to install the fence and if the Board made any changes once they met, Mr. Kudel would agree to the changes. Mr. Kudel got the approval before the meeting due to Covid.

Chairman Robinson asked Attorney Dowd about CEO Jeffery and Supervisor Johnston giving approval. Attorney Dowd stated that CEO Jeffery stipulated due to Covid; and if the Board wanted him to do something different, he understood. He stated CEO Jeffery could issue a permit for anything or deny it. The Board can decide if the actions of the Building Inspector are correct. CEO Jeffery stated there would have been Board approval if it hadn't been Covid and trying to keep local business viable.

Chairman Johnston asked Mr. Kudel if he had anything to say. He stated he contacted the liquor authority, and they are aware of what we have done. If we did not do this, we could only have four people in the bar. We will be down to four tables in the dining room when winter comes. We want to keep everyone safe and happy.

Member Steve Zappy asked Mr. Kudel if he has a plan when winter comes. Mr. Kudel stated they have patio heaters and I don't want to enclose it. There is nothing more that I can do out front.

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

Chairman Robinson asked if there were any questions from the Board.

Member Marshall Hibbard asked if there are ballards heavy enough. CEO, Jeffery stated that he does even know if they are required. They are acceptable.

Member Terry Duffy made a motion to approve the area variance for Robert Kudel for a 15' x 25' decorative fence, five (5') feet in height in the front of the building and was seconded by Member Marshall Hibbard. Roll Call Vote. Terry Duffy-yes; Marshall Hibbard-yes; Steve Zappy-yes and

Chairman Robinson-yes. All in Favor to approve the Variance for Robert Kudel.

Chairman Robinson read the following:

Application of William Fox, 913 Lockport Road, Youngstown, NY Tax Map No. 46.03-1-13 Under Article II, Section 200-9; and Article VIII, Section 200-108F(2), an area variance is requested for an eight (8') foot in height privacy fence along the rear property line and an eight (8') foot in height privacy fence along the Eastern property line due to the clearing of land and the proposed installation of an industrial solar farm in the rear of the property. Property is located in a LDR (Low Density Residential District) on the North side of Lockport Road between East Avenue and Creek Road in said Town.

Mr. William Fox was present. Mr. Fox stated that as everybody is aware, the property off Mr. Sher is going to put in a proposed solar farm. The whole corner is cleared out. You can see my house by both 93 and Creek Roads. There is noise, motorcycle bikes from Lake Road and I want to block off the noise and lights for privacy – an eight foot high fence because of the grade difference of 2' to 3' from the front of the house to the rear property line.

Chairman Robinson read the following email received from Kazimira Rath today.

Message:

I am writing in response to the application of William Fox, 913 Lockport Rd, Tax Map No.46.03-1-13 which requests an eight foot in height privacy fence and the installation of an industrial solar farm. The notice from the Town of Porter does not provide sufficient information regarding the fence or the size and planning of the proposed industrial solar farm project. Based on the minimal information, I have concerns with public safety, view, maintenance, noise, glare, decreased property value, wildlife impact, and public health.

I will address the fence and industrial solar farm separately.

My concerns and questions regarding the eight foot in height privacy fence:

1. The size and placement of the fence at the intersection may obstruct the line of sight for drivers, bicyclists, runners, etc. to see oncoming traffic.

While accidents have decreased over the years since the installation of the

four-way light, I recall the weekly accidents occurring at Towers Corners. We should avoid any scenario which could increase the frequency of accidents, again.

-How close will this tall fence be placed to the roads?

-Has a sightline test been conducted?

2. An overly tall and large fence drastically alters the view and natural landscape of this corner. I am concerned the view of such a large fence will be a detriment to the natural surroundings as well as to property value.

-What will this tall fence look like?

-Will greenery/trees be placed in front of this fence or will there be any other measures taken to lessen the impact of what seems to be a large and imposing structure? And will there be contractual obligations for the owner to maintain the fence and greenery? (I am assuming this fence may be for security and privacy of the industrial solar farm project. Will the owner be obligated to maintain the greenery and fence for the duration of the operation of the solar farm?)

My concerns and questions regarding the industrial solar farm:

1. Noise associated with the operation of equipment (There are cited cases and lawsuits related to noise from industrial solar farms impacting the quality of life of residents/neighbors.)

2. What evidence can be provided that this project does not pose a safety or noise concern for neighbors? What precautions will be taken?

3. What evidence can they provide that it will not decrease property value?

4. How is the owner planning to minimize or eliminate "glint & glare" for passing drivers which can be a safety issue? (If the eight foot in height fence is one of the solutions proposed to minimize or eliminate "glint & glare" from the solar panels, will the owner sign a contract for the upkeep and maintenance of the fence and greenery for the life/duration of the operation of the industrial solar farm?)

5. What evidence or planning has been done to address pollutions or health impact of this project, such as cadmium runoff, etc.?

6. What evidence or planning has been done to address loss of wildlife habitat and interference with migrations?

7. What are the hours that all equipment associated with the industrial solar farm will be operating and can that be negotiated if problems occur?

I suggest the hiring of a third party to assess and analyze potential concern and suggest strategies for resolving them. Overall the goal is make sure it is a properly planned project and all concerns and questions have been sufficiently addressed.

Best regards, Kazimira Rath, 912 Lockport Rd, Youngstown, NY

(The email address is my daughter's email account. If you need to contact me, please leave a message at my home phone number at 716-745-7023.)

Chairman Robinson questioned how close to the road is the telephone line – 217 feet from the rear corner of the property line to the road. Mr. Fox stated that he originally submitted an 8' fence.

In answer to the above questions to Kazimira Rath email.

1. CEO, Jeffery had drawing to show to the Board. Discussed the site plan at the Planning Board. The property line to the road is approximately 50 feet. The fence is going to be six feet from the front property line to the front of the porch. CEO, Jeffery showed pictures Mr. Fox took with him standing near the telephone pole and the edge of the road.
2. The fence will be a black fence with black slats. There will be no greenery around the fence.

Member Terry Duffy asked Mr. Fox if he considered greenery instead of a fence. The next part of the email regarding the proposed solar farm, Mr. Fox is not responsible for the proposed solar farm.

Attorney Dowd stated you could send a letter to K. Rath. If the developer decides to put in a solar farm, there will be two public hearing.

Mr. Fox asked if the good side of the fence face him. You will see the posts. The Board stated they don't see any development soon. There is no time line established.

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

The Planning Board made a motion to recommend that the Zoning Board of Appeals approve the variance for a 6 foot high fence from the front property line to the front of the porch and an 8 foot high fence from the porch to the rear of the property, including the rear property line.

There was a discussion about the rear of the property. The Board had a discussion on the rear of the property regarding a black chain link fence with black slats eight feet high.

CEO, Jeffery stated that the person clearing the land is no longer doing it. CEO, Jeffery stated that for every 6' tree removed, it must be replaced with two 3' trees. There would be significantly more new trees planted for screening around the perimeter. You can look at the satellite imagery.

Member Zappy asked if the solar farm doesn't go in would you still need the fence. Mr. Fox stated that his yard has no privacy. Member Duffy asked would you consider a seven foot fence. Mr. Fox explained the present five foot fence. If I put up a six foot fence, it would do much more.

Member Hibbard stated he sees a problem in the front. Member Zappy stated all residential areas it should be three feet and you are 50' from the intersection.

Mr. Fox questioned the zoning district and CEO Jeffery stated the same applies.

Chairman Robinson asked Attorney Dowd if he had any objections as the attorney and a resident.

Attorney Dowd stated I don't have a problem. It is not going to affect me. I personally don't have an issue. You are looking at 100% increase in the front from 3 feet to six feet. You need to weight that – typically pretty tough on a six foot fence. Mr. Fox stated I can't plant trees due to the pole barn. Attorney Dowd stated it is not a self-created hardship. CEO Jeffery stated the headlight issue from the intersection is the primary reason for the height in the front yard. Mr. Fox stated everything he does is right where the headlights shine.

Chairman Robinson read 200-108 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) 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. ***"The only possibility would be plants; no room to plant."***
- (3) Whether the requested area variance is substantial; ***"It 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; ***"You are considering black chain link fence. Everything will be black. The fence will be black."***
Chairman Robinson asked is that the lowest feasible fence. There was a discussion on black fence versus white fence.
- (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. ***"It was not."***

Chairman Robinson asked if there were any other questions.

Member Zappy stated you described the change created by Mr. Sher. Member Duffy asked Mr. Fox if he would be open to a five foot fence versus six foot from porch to front. Mr. Fox stated he is not sure. I couldn't honestly tell you. I understand, but I am not sure if five feet will cover it. Member Duffy questioned putting the fence closer to the house. Member Hibbard questioned shifting the driveway two feet. You can put in arborviteas. They grow tall. Six foot in height opens a whole can of worms. Member Duffy stated we understand your issue. This could serve a precedent. Mr. Fox stated the grade is different. CEO Jeffery stated Storm Water Management has told Mr. Sher that he has to write a proposal to produce run off where he did the clearing. It took a month to get the DEC and Storm Water Management out. Mr. Fox stated he is back quite a ways. Chairman Robinson stated we all feel your pain. There was a discussion on what the property looks like. Member T. Duffy asked if he could consider five feet. Chairman Robinson asked if Mr. Fox would like to table this to give him more time. Member Hibbard stated he is fine with the back, it is the front. It is a big variance. Mr. Fox stated he couldn't tell the Board just sitting here. Member Zappy asked if Mr. Fox could explore the possibility of moving the driveway. Chairman Robinson stated it was Mr.

Fox decision to table. Member T. Duffy stated he would be open to tabling. Mr. Fox asked if the Board would agree to a portion of the eight foot on the East side yard and across the back yard and table the front part until the October meeting. Attorney Dowd asked if Mr. Sher could create a buffer that you could take away the expense from Mr. Fox. CEO Jeffery stated without anything on the table can we go to him? Chairman Robinson stated this is not a self-created hardship and Mr. Fox didn't create this mess.

Chairman Robinson asked for a motion. Member T. Duffy made a motion to table six foot high fence from the front property line to the front porch to allow for further consideration and review until the October meeting and was seconded by Member Hibbard. Roll Call Vote. Member T. Duffy-yes; Member M. Hibbard-yes; Member S. Zappy-yes; Chairman Robinson-yes to table the six foot high fence from the front property line to the front porch.

Member T. Duffy made a motion to approve the East side yard and rear yard eight (8) foot in height black chain link fence with black slats and was seconded by Member M. Hibbard. Roll Call Vote. Member T. Duffy-yes; Member M. Hibbard-yes; Member S. Zappy-yes; Chairman Robinson-yes to approve the above motion.

There was a discussion on the solar moratorium. Mr. Sher doesn't have an application. Neighbors are concerned. Attorney Dowd to draw up a Notice of Violation to Mr. Sher.

A motion was made to adjourn the meeting at 8:10 pm by Member Marshall Hibbard and was seconded by Member Terry Duffy. The next meeting is scheduled for Thursday, October 22, 2020.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals