

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 November 19, 2020 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	Date	Present	Absent
Jackie Robinson, Chairman	11/19/2020	yes	
Terry Duffy	11/19/2020	yes	
Bryan Meigs	11/19/2020	yes	
Marshall Hibbard	11/19/2020	yes	
Steve Zappy	11/19/2020	yes	
Atty Michael Dowd	11/19/2020	yes	
Peter Jeffery, Code Enforcer	11/19/2020	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 October 22, 2020 minutes. A motion was made by Terry Duffy and seconded by Marshall Hibbard to approve the minutes. Roll Call Vote: T. Duffy-yes; B. Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes; Chairman Robinson-yes. All in Favor. Motion Carried.

Chairman Robinson read the following:

Application of Elizabeth Rockett, 2505 Lake Road, Ransomville, NY. Tax Map No. 21.18-1-29 Under Article II, Section 200-10; and Article IV, Section 200-35 and Article VIII, Section 200-107, a Special Use Permit for a home occupation "Writer's Cramp Camp" in detached storage building (originally a cottage). Under Article II, Section 200-10; and Article VIII, Section 200-108F(2), an area variance is requested for a roof projection (post & barn structure) for firewood storage. Property is located in a WR (Waterfront Residential District) on the North side of Lake Road between Dickersonville and Ransomville Roads in said Town.

This application was tabled from the October 22, 2020 meeting.

Elizabeth Rockett was present and her Attorney Camille Brown was via zoom. Chairman Robinson stated that we tabled this application from the October 22, 2020 meeting for the special use permit for a home occupation and an area variance for a roof projection one foot from the property line.

Attorney Camille Brown made a brief statement via virtually. The overhang which is used for storing wood is Elizabeth's primary heat source. She did receive permits for the other improvements on the property, but mistakenly she did not get one for this. She stated that the Special Use permit was recommended by the Planning Board, and she would like to focus on the area variance. She sent an email to the Board (copy attached). She stated that there were other improvements on the property but did not get approval for this because of how it was constructed. She referred to Exhibit C stating substantial improvements to the property and looks a lot better. She stated James Cabello (neighbor) has no objection. Referring to Exhibit A – some similar issues; not in compliance with the property line and set back. This is a unique set of circumstances that warrant deviation from the Code. Due to the narrow parcel frontage (50 feet), the shed is in close proximity to the property line, so the close proximity of the shed to the property line is unavoidable. There is no change to the character of the neighborhood.

Camille Brown was asking the Board to consider the area variance. Chairman Robinson asked if anyone had any questions. Elizabeth Rockett stated that the shed was built around 1950. She showed Exhibit B, and it has already been pruned. It had a loft roof, and we were able to salvage some of the wood from the 50's. I sanded it myself and used it as paneling in the building. We are doing a good job. I was a court reporter in the legal field in New York and out of State and moved back, and I am also a published writer. I was hired by a Hollywood producer and doing a series on the War of 1812.

There were no further questions.

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. Motion Carried to Close the public part of the hearing.

Marshall Hibbard questioned the use of the building itself. Chairman Robinson stated that the Planning Board approved the application for a special use permit application and denied the request for the area variance for the wood shed.

Code Enforcement Officer (CEO), Peter Jeffery stated the special use permit is for a home office. Marshall Hibbard asked the question, "If the permit would stay with the owner and could it be transferred upon sale?" Attorney Dowd stated it is not transferrable. You might want to look to see how much was spent in respect to the number of years issued for the permit. If she sells or moves, the new owners will have to reapply. Elizabeth Rockett stated she will not use as an AirBNB or rent out. If my brother comes up and stays for a couple of weeks then he will stay there. Chairman Robinson asked if has facilities. Elizabeth Rockett stated that is the final phase in the Spring or early summer. It does have plumbing, septic approved by the County and new windows. Chairman Robinson asked about the dimensions of the building (16' x 12'). CEO, Peter Jeffery stated the deck was the entry door area and roof to store wood. Elizabeth Rockett stated she does not have a garage, and she wanted to keep her bike and the wood in back. I did talk to my neighbor in July 2019. He and I did other work together. There was a water problem and French drains were put in. We shared expenses. I wanted to put wood storage. I can stack wood, store my bike and keep them out of bad weather.

CEO, Peter Jeffery stated that he became aware of the situation by Niagara County for septic approval so I started looking into it. Elizabeth Rockett stated that she should have talked to CEO, Peter Jeffery about the deck, and it was before CEO, Peter Jeffery started that I talked to the former Code Enforcement Officer. I asked him and I said it was on the lake. He replied it is good you are fixing it up. I did not realize when I put the deck in that I needed a permit. I have learned a lot.

Bryan Meigs asked if the neighbor's shed was on the property line. CEO, Jeffery stated it is four feet off of her line. I think his is three feet. There is approximately seven feet between them. CEO Jeffery stated a survey was done showing three feet of roof extension. Steve Zappy asked some questions about Exhibit's A & B. Elizabeth Rockett stated that she uses three to four cords of wood. It is neatly stacked. When they were doing the deck, I asked them for the roof to store wood.

Chairman Robinson asked for a recommendation for the special use permit for a home office/home occupation in a detached storage building not as a rental.

CEO Jeffery state we have short term rentals. Attorney Dowd stated you can put in the special use permit not to be used as a short term rental. Chairman Robinson asked if there was a kitchen. Elizabeth Rockett replied a small kitchenette. Attorney Camille Brown stated we are asking for the duration of ownership of property; it could not be used for private AirBnB rental. Attorney Dowd stated you could tie it to the duration of ownership. We typically grant people a period of seven to eight years. Terry Duffy commented it will be a long term duration. Elizabeth Rockett stated that she plans to stay there. It is peaceful.

Terry Duffy made a motion to approve the application of Elizabeth Rockett for a special use permit for a home occupation only with an occasional guest use not an AirBnB for a period of ten years and was seconded by Bryan Meigs. Chairman Robinson asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. Motion Carried.

Chairman Robinson stated that we are now doing the Area Variance. She asked if there was any protocol since the Planning Board denied the application for an area variance. Attorney Dowd stated he will have to look into the code again. I don't believe it is in our local office. CEO, Peter Jeffery stated that our former Chairman, William Tower stated it used to be a majority plus one. Elizabeth Rockett stated that she was at the Planning Board meeting, and they did not want to make a decision. Bryan Meigs asked if there was a legal issue if someone got hurt. Attorney Dowd explained the variance. CEO, Jeffery stated that there is one foot from the overhang. There is 1'3" to the property line. Attorney Dowd questioned if you could maintain it from the deck. CEO Jeffery stated it is relatively maintenance free as Elizabeth Rockett built it. She has been mowing and weed whacking the property. Attorney Dowd stated as long as it can be maintained. Bryan Meigs commented it is maintenance free. Elizabeth Rockett stated it is pressure treated. CEO Jeffery stated it is relatively maintenance free. Weed whacking and mowing is the only maintenance. Elizabeth Rockett stated that she has been picking up renters garbage. CEO Jeffery stated in theory the property next door could sell. A fence could be put up to the property line. There is a foot that she would have to

do the maintenance. Terry Duffy stated the neighbor is in Italy, and it is a rental. CEO Jeffery stated the son is renting it, the other is the fathers; and he owns both properties. CEO Jeffery stated there are no complaints. The only concern was the construction without a permit. It was anonymous. Both Cabello's received the mailed Public of Hearing Notice.

Chairman Robinson asked if there was anything else. There was a discussion among the Board members. Terry Duffy questioned the variance on future owners of property owners next door. Elizabeth Rockett stated it is very far away from the houses. CEO Jeffery showed the satellite image of the property. He showed the property, shed, neighbor's shed and where the houses are.

Terry Duffy stated that given the conditions discussed as unique and there appears to be no opposition from neighbors, the shed is a short term entity that we approve the variance as 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 Carrie to approve the area variance.

Chairman Robinson stated that the public hearing for Joseph Niccola was published in the paper. We have two responses that came in by email to Peter Jeffery. Attorney Dowd stated that Mr. Niccola spoke to both CEO Jeffery and myself and conveyed that there is a real concern regarding the variance. It wasn't necessary for him to come tonight. With Mr. Niccola's approval to table his application with the possibility of asking the Town Board to amend the law, and leave the public hearing open.

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, **November 19, 2020 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of Joseph Niccola, 3410 Creek Road, Youngstown, NY.Tax Map No. 46.00-2-44 Under Article II, Section 200-9; and Article VIII,

Section 200-108F(2), an area variance is requested for a storage building for home business. Property is located LDR (Low Density Residential District) on the West side of Creek Road between Youngstown-Lockport and Cain Roads in said Town.

Due to COVID 19 and social distancing, we are asking for public input/comments to be submitted in writing via email or USPS mail. The Zoning Board will commit to the record all written comments for consideration in the determination in an attempt to keep the number of public attending the meetings as low as possible.

First email:

From: Frank Dadario <fadamario@aol.com>
Sent: Monday, November 9, 2020 8:50 PM
To: Peter Jeffery <p.jeffery@townofporter.net>
Subject: Town of Porter Zoning Board of Appeals

RE: Application of Joseph Niccola

I am one of the closest property owners bordering Mr. Niccola's property and I am familiar with his plans to build a storage building and its location on his property. Once constructed, it will be completely obscured from view at the road side and will not interfere with the aesthetics of his or any neighboring property.

I am totally in favor of granting his application for the variance. I see no reason for the board to delay his application and hope they will do so before the end of construction season.

Respectfully submitted,

Frank A. DaDario

CC: J. Niccola

Second email by Cristina Titta

November 13, 2020

My name is Cristina Titta and I live next door to Joe at 3434 Creek Road. My property butts up to his property. We both have 20 acres.

I remember many years ago waking up one morning to the sound of trees being knocked down by heavy equipment. My husband and I looked out back to see that apparently work was being done to the landscape. We were very happy because the old building on the property harbored various critters that would come out and cross our property day and night. The old building was an eye sore not to mention the fence falling down. Then it all came to a stop. My husband and I were very disappointed and had looked forward to the property being cleaned up.

Now, all these years later, the old building is looking worse, the broken wire fence is very much dilapidated and falling over if not laying down, not to mention overgrowth with weeds and dead trees. I've attached pictures of the old building, run down fence and the mess it currently is in. Once again, I am very much looking forward to Joe fixing this huge eyesore.

I would also like to add that I recently refinanced my house. A big concern asked of me was if this old rundown building was mine. I'm pretty sure, because my answer was, "no, it's not my property", that I was given a much better rate. They were relieved it wasn't mine.

Joe has been a quiet and respectful neighbor all these years. His property is always neat and maintained. He's a hard worker. I see him leave his long driveway early in the morning before I go to work and coming back up the driveway after dark when I'm home from work. We both sit back 300 feet or more off the road. People don't notice us being here as we are so far off the road. Farm land is on either side. Please let him do or build whatever he needs to this property. I'm looking forward to a much needed improvement.

Signed

Cristina Titta

CEO Jeffery stated he had no objection. Bryan Meigs made a motion and was seconded by Terry Duffy that on the advice of Attorney Dowd and leaving the public hearing notice open, the Application of Joe Niccola is tabled. 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 Joe Niccola.

Chairman Robinson questioned the obligation of the Zoning Board with relation to credits needed for this year. Attorney Dowd stated he can look into it. I can certainly say you would have additional time. There is a course on December 7. The Town Board has some say on acceptability.

CEO Jeffery introduced Paul Brown. Bryan Meigs term expires the end of this year.

A motion was made to adjourn the meeting at 7:40 pm by Member Terry Duffy and was seconded by Member Marshall Hibbard. The next meeting is scheduled for Thursday, December 17, 2020.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals