



TOWN OF PORTER

3265 Creek Road ♦ Youngstown, New York 14174 ♦ (716) 745-3730, ext. 7 ♦ fax (716) 745-9022 ♦

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 June 24, 2021 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	Date	Present	Absent
Jackie Robinson, Chairman	06/24/2021	yes	
Terry Duffy	06/24/2021	yes	
Paul Brown	06/24/2021	yes	
Marshall Hibbard	06/24/2021	yes	
Steve Zappy	06/24/2021	yes	
Atty Michael Dowd	06/24/2021	yes	
Peter Jeffery, Code Enforcer Officer	06/24/2021	yes	

Chairman, Jackie Robinson called the meeting to order with the pledge of allegiance at 7:10 pm.

Chairman Robinson asked for approval of the May 27, 2021 minutes. Member T. Duffy made a motion and was seconded by Member Steve Zappy to approve May 27, 2021 minutes. All in Favor. Motion Carried.

Application of Arthur Garabedian, 5334 Elm Drive, Lewiston, NY 14092.

Chairman Robinson stated that the application for a special use permit for Arthur Garabedian was withdrawn by the applicant, Arthur Garabedian. The application was a last minute withdrawal. I am sorry if anyone in the audience was here tonight for this application.

Regarding the Application of Richard Ries of E21 Ventures (Owner Rep) 75 Bird Avenue, I would like to thank you for coming and glad that you are here. I would like to explain to you what is happening here tonight. The Town of Porter has a law that went into effect on March 8, 2021 which was done over the public concern of solar development in the town. We want our town to be rural



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agricultural. A committee was formed over a course of one year and nine meetings which they presented to the Board with a law. The law went into effect on March 8, 2021 keeping our rural agricultural town. R&A is 80% of our town. The law states that Tier 3 solar farms are only allowed in our industrial districts – M1, M2 and M3; 3 tier; 25.89 acres; 6.6 acres. This application requires a use variance because it is not allowable because of zoning law.

Chairman Robinson read the variance standards.

(1) Use variance.

(a) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship, in order to prove such unnecessary hardship, the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located.

[1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

[2] That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.

[3] That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

[4] The Board Appeals, in the granting of use variance, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Chairman Robinson stated the Zoning Board of Appeals will address these issues; we make our decision; have a public hearing; get input from the Planning Board and their recommendation. The Planning Board recommended that the use variance be **denied** tonight. Before I open the public hearing, there are some rules – be nice; be polite; no screaming; no shouting; no yelling; no cursing. I have the power to ask you to take your seat or leave. Let's be polite and treat each other respectfully. Please state your name and address. We will listen to anyone who wants to talk. If someone says something that you agree with, please



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state your name and you will be on record. We don't need to revisit everything. Any questions about the rules? None.

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, **June 24, 2021 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):

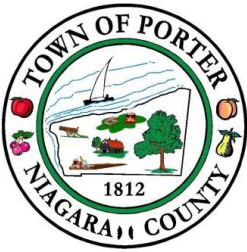
Application of Richard Ries of E21 Ventures (Owner Rep) 75 Bird Avenue, Buffalo, NY; Mark Carella (Contracted Land Owner) 14 Alder Ln, Liverpool, NY 13090, Tax Map No. 46.00-2-51-2. Under Article II, Section 200-8; and Article VIII, Section 200-108F(1), an use variance is requested for a tier 3 solar energy system. Property is located in an RA Zoning District on the East Side of Creek Road between Lockport Road and Cain Road in said Town.

Peter Jeffery, Code Enforcement Officer (CEO) showed on the screen the parcel in question.

Chairman Robinson stated that if you didn't get the notice you are more than 500 feet from the property.

Mr. Richard Ries made a presentation to the Board and the audience. He stated a couple weeks ago that he met with the Planning Board, and they had a few concerns about the solar farm in general. For the most part, they really liked it; very well screened; hidden from all the neighbors. He went through a list of concerns and responded.

. So the first concern was that originally there was a solar farm that was go to be developed on the corner of 93 and Creek Road, and it was kind of going up to the backside of a lot of residential homes and people were not happy about it. Right now, they were concerned that the developer would come back and potentially sue the Town. Our solar farm is much smaller and much different from theirs. It is much further away from residential homes. It has natural screening.



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Developer never applied for a variance. At least give us a chance as to what we are all about. So, the solar farm is a lot smaller. Like I said, it's a 1,000 feet to the nearest home surrounded by trees. This really sets us apart from other developers that have much taller solar farms.

The second concern is we don't want to let the community down. We listened to your concerns. We took them into consideration, and we moved the soil from way back to the rear of the parcel surrounded by trees. As you know, it is not on a farmland, which is big. Another concern is I need to prove hardship. The current code breaks solar farms down into three different tiers. They get bigger and bigger as they go up and a tier 3 tier solar energy system is considered 25 kilowatts; 1,750 square feet. The average solar farm that is produced across NYS is around 5,000 kilowatts and around 25 meters so substantially larger and around 10 to 15 feet in height. When we developed the solar farm, we tried to take all the considerations of the neighborhood residents; and we don't want to upset anyone. It is only going to be 3.6 acres, and it is 16 inches off the ground. The highest wire will be the fence that goes around which should be at seven feet and that is just a requirement. Our solar farm is 80% smaller than the average. The new solar code doesn't really distinguish between the scales of solar farms. Our solar farm is 80% smaller than another solar farm categorized in the same tier. Now the hardship is simple. Based on current solar code, I should have the right to do that. The industrial district is not much different between the industrial district and rural agricultural district right now. The big difference is that it is heavily wooded and a lot of wetlands that we can't really develop. The areas that we are allowed to put solar farms on are also near residential homes, but there are also on areas where we can develop because of the wildland. There are some areas that are not about land; but we have to take down the trees and it doesn't seem very environmentally friendly to knock down a whole forest. This site is perfect. It has a lot of clear area in the area that we want to develop. There are a lot of benefits to solar farms. The Town itself could make a lot of money off the taxes and payment taxes on the pilot land. So, there will be a generation of money for the town. Clean energy generated right in the Town, and it will go to the grid and power all the homes in the area. Then local residents can also sign on and get 10% off their electric bill. There was a concern about deer. We will be willing to relocate panels or shift them around if it can help with the hunting trails or whatever people need of if they want additional trees. We would be willing to put trees in an area if the panels are visible. A solar panel image was shown. It just sits right on top of the ground. If



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in 25 years when they get decommissioned, it is just picking them up off the ground, put in a truck and take them away. There really is not a whole lot there. We don't dig into the ground. They just sit right on the dirt.

Terry Duffy read the following email from Rose Rajczak.

From: Rajczak, Rose <RRajczak@nfschools.net>
Sent: Thursday, June 24, 2021 3:30 PM
To: Peter Jeffery <p.jeffery@townofporter.net>
Cc: Rajczak, Matt <mrajczak@nfschools.net>
Subject: Regarding solar farm application by E21 ventures & M. Carella

Good afternoon- I am writing in opposition to the application for a solar energy system requested by E21 Ventures (Richard Ries) and Mark Carella on Creek Road, between Lockport and Cain Roads, in the Town of Porter that will be discussed at tonight's meeting.

My husband Matthew and I own an adjacent parcel to this property. Being that it was zoned rural/agricultural, we purchased this land several years ago and have enjoyed the peacefulness and beauty that it provides. My husband is a sportsman and enjoys hunting. We both enjoy nature and have created walking trails throughout the property, which we use and maintain regularly. The last thing we want is any intrusion into this experience. There are many reasons why we feel this is an inappropriate setting for this venture including: land clearance and habitat degradation for wildlife, loss of property values, extra traffic and noise on the roadway during construction and land clearance, upkeep/maintenance and eventual removal of the solar panels, "humming" noises reported to be associated with the transformers, and eventually perhaps a new owner taking over this property, which will now be zoned differently, and doing something else industrial with it.

We feel like this is a money grab from people who don't even live in Niagara County that will decrease the value of the properties surrounding theirs and ironically, ruin the immediate environment despite the intention to create "green" power. In our conversations with our neighbors, they object as well. While we are in favor of furthering the use of solar power as a viable energy source, we do not



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feel that this location in the Town of Porter is an appropriate venue for this venture.

We respectfully request that you deny this application.

Regards,

Matthew & Rose Rajczak 716-622-5502 (Rose cell)

Chris Schulze, 3309 Creek Road. I agree with everything said in above letter. I have 28 acres to the North of the property in question. All the concerns are the same as mine.

Helene Pavlock, 3389 Creek Road. I agree with the Rajczak's. No need to put a solar farm here. I have been living here for over thirty years and again I enjoy the serenity. There is no reason to put something like a solar farm here. I work on a cattle farm down the road, and there is nothing like peace and quiet and listening to the cows. I would rather listen to the cows than humming. I agree with everything she said. Granting a variance, regarding of hardship for a piece of property is rather silly. If it has apple trees on it, we'll cut it back and start farming apples.

Andrew Kowalyk, 1012 Youngstown Lockport Road. I agree with everything that was said. This is an agricultural town. No need to put in a solar farm.

Town of Porter resident (Dick), 3390 Creek Road. What would the Town get to justify this? Electricity goes into the grid and then to my house. Can this give solar to everyone in this town? Mr. Reis said 200-400 homes. It was noted that they are over 400 homes in the town. Mr. Reis said you can subscribe to get 10% off your bill for the life – indefinitely. The question was raised will be rezoned. It will stay rural agricultural land with community solar farm.

Mr. Reis stated that he had a couple of comments on some of the questions. The landowner lives in Liverpool Now. We was actually born and raised in this area, and he went to school in Syracuse and now he is coming back. He wants to actually build a house too. So, once we put the access road in there, we are going to build from a bridge to get back and then he will be able to build. That



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was one of his goals. We will pay for the bridge and then he will be able to develop his home. So, it will also bring you tax revenue from the new built house. As for the humming sound I haven't heard that one. The panels are 1,000 feet from the nearest house on the southern side. Solar farm is going to be the quietest neighborhood -- little to no sound. Construction period is pretty short on it as well. Since we are only doing a ballast system, we can fit the entire ballast system and the rack for those in about four different trucks. A comment was made by a resident regarding additional green projects – if you give them an inch they will take a mile.

Chairman Robinson commented that you are going to be building a bridge to handle tractor trailers. I think that is another big problem.

William Suitor, 3327 Creek Road. I worked for 32 years for the Power Authority, and I know what a megawatt is. There are 4 to 5 megawatts per line. It is a small solar site. It takes a whole lot of megawatts to run a community. It takes a lot to run a community. The Town has adopted the law as written; case closed. There is an old saying; and I don't know the whole way it goes, but once the camel gets his nose in the tent you are going to wake up with him in bed with you. I feel the law is written. You are going to make one example and then somebody's going to get a lawyer. We are going to be doing this for ever. I am against it.

Josh Reed, 970 Lockport Road. I agree with the letter. It is a small concern. My question is EMF radiation in affecting homes. Do you know the distance in which that could affect homes? The homes on Creek Road, would the families have any issues with that radiation from the substation and transformers? Mr. Reis stated he doesn't know the specific information but that shouldn't be an issue.

Brian Aiduk, 3337 Creek Road. I agree with everyone here. Where are the stepped down transformers going to be placed during construction. I have a small child, so hearing this construction, we are going to have that large bridge stuff in there and worry about my child's safety along with this and also worry about radiation. I also have concerns about where the transformers are going to be located to our property. Yes, the solar panels you may not be able to see them but the house would be able to. I am assuming that the step down transformers are going to be somewhere close to main power line. Mr. Reis said all transformers are going to be in the fenced area.



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Russell Barker, 1108 Lockport Road. I agree with everyone and the law is on the books to protect our area. I am not against clean energy or solar power, but it is too big for our area specifically.

Brenda Bank, 785 Lockport Road. I concur with everyone. It seems like a waste of time.

Town of Porter resident stated they took into consideration the concerns of the Town. The Town has spoken that is why the law passed. You save perhaps \$5.00 off your entire electric bill in total. \$5.00 a month or a year? So, it is just on the service provided not on all the delivery fees.

Another resident questioned the trucks and the bridge and getting supplies over the bridge.

Matthew Rajczak asked the question, "Are the panels 16 to 18" off the ground sloped. Mr. Reis replied "yes". Mr. Rajczak stated it is going to be pointing toward our property and so we will see them. Mr. Reis stated the panels are designed to absorb the sunlight and they don't reflect it out. They are designed to trap it in so they don't cause the glare, and there is antiglare coatings. Chairman Robinson asked if they are fixed or are they going to be setting there. Mr. Reis replied on the ballast system. They are locked together, and they just sit on the ground with a stem bit on them. There is a stone bed underneath this. The reason for the stone is you can't really mow underneath.

Another question was raised about herbicides. Mr. Reis commented that they are going to use pesticides but will provide scarcity. There are plenty of different herbicides that we can use. Terry Duffy asked if there is a maintenance road. Marshall Hibbard commented "a gravel road". The road will be snow plowed and to keep it cleared for safety reasons.

Rose Rajczak raised the question on how much the homeowner is going to be paid. Mr. Reis replied a yearly monetary rate about \$850 to \$1,000 per acre.

Another question was raised about the bridge. When I bought that property a few years ago, my first idea was to build a bridge across that creek and put in the



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development but that is a retirement project if that ever happened I was told that the EPA will be all over you if you tried to build a bridge. How is that going to stop me from building a bridge? There are bridges there now and those are probably grandfathered in. CEO, Peter Jeffery stated there are ways to build bridges within the law. There are codes and environmental impacts that would have to be followed to do it. I mean as long as you are willing to do that, I don't think you are not disallowed, but there is significant work to building a bridge and complex coding.

Chairman Robinson stated this is the first step to getting approval for this use variance. There is a whole level that has to be done within the Planning Board and DEC. Please keep that in mind. Another question was raised on the power lines over the creek. What type and how high. What size polls am I going to be looking at.

Mr. Reis stated that Mr. Carella just purchased the property. It closed two weeks ago. The law was in effect.

Attorney Dowd commented to leave the public hearing open and finish the due diligence between now and the next board meeting.

Chairman Robinson stated that Attorney Dowd recommend that we get all comments in from everyone who did not come in tonight. Are there any more concerns or comments? Helen Pavlock asked the question "Who would like the solar farm?" Only one person raised their hand.

Chairman Robinson stated we need all the input from everyone. We will do due diligence. The next meeting is July 22, 2021. You can attend. It will be on the agenda. Minutes are posted on the Town website. I would like to entertain a motion to table until July 22, 2021

A motion was made by Steven Zappy to table the about application and was seconded by Paul Brown. Roll Call Vote. Paul Brown-yes; Terry Duffy-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor Motion Carried to table for 30 days.

Chairman Robinson thanked everyone for coming and for their input.



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Chairman Robinson stated that Chris Guard asked to be on the agenda tonight to query the Board on the timing of work related to the boat house and docks.

Mr. Guard stated that he wanted to query the Board, and they are near the end. We did our final painting yesterday and the only thing left is the installation of street lights. National Grid took until two weeks ago to approve them. We had ordered the lights so we are about two weeks out. The lights will be here and then we can install them. Covid really screwed up our whole process, but we are almost there. When we originally applied for the area variance for the boat dock, there were conditions such as HOA approval and 3 homes must be occupied. To sell lots and start construction Partners State basically shut down until October of 2020, and then they were six months back. We just got HOA approval today, and I don't have any paperwork to prove that but I was told it was approved.

We got a process to go through with CEO Jeffery but our work is done, so now basically it's the paperwork process at this point.

Attorney Dowd commented on maintenance bond – two year bond. This is an essential investment, I am feeling very comfortable. Mr. Guard stated he put his application on Lot 18, Address 224 Castaway Court. Three houses were to be built before we built docks. As you know, three years ago, the Zoning Board asked for the three houses to be under construction before we started out on the water to show that we weren't going to be a commercial marina. I think we've pretty much shown everybody that we are not going to be a commercial marina. I have an opportunity with a marine contractor from Buffalo that would like to come up and start work. I would ask the this Board if they would let us starting building the dock and the storage building down by the water that was approved in the design by the Army Corp of Engineers and the DEC. I would like to start building within the two to three weeks. Otherwise, we are finally there.

Chairman Robinson asked Attorney Dowd if he had any concerns. If the Board is inclined to at this kind of investment, we have a permit. We don't have a Town permit issued yet but that is normal. Some of the documents needed will be issuing a building permit, certificate of occupancy; boat permit that is going to have to be issued. We have digital permits and Army Corp of Engineers and DEC



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approval. So, I'm comfortable if you want to say what you can, start that construction with the understanding that we are not going to consider and finalize your permit until some of the other criteria is completed. I think we have enough enforcement there.

CEO, Jeffery stated the Town has to issue a permit as well as the Army Corp of Engineers and the DEC in order to finalize the permit.

Marshall Hibbard questioned the roadway.

Attorney Dowd stated the Town issues the permit for the variance. We have enough enforcement and power.

CEO, Jeffery asked "You are not intending to start mooring boats until the houses are built"

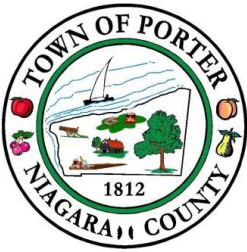
Chairman Robinson stated you are not intending to start mooring boats until the houses are built.

Terry Duffy asked about the dock construction this Fall. Chris Guard stated I think before Fall. I have pier permit figures. CEO, Jeffery stated I have seen the paperwork. I don't have it with me. Chris Guard stated he will resend.

Attorney Dowd stated I have no problem. Chris Guard stated he got the deck and boat house drawing today. CEO, Jeffery showed the original drawings. CEO, Jeffery asked how far is the dock in the water. Chris Guard stated 40 to 50 feet away from the shoreline. In 2019 it was noted there is a breeding area of sturgeon. This is why we had to move out further. CEO, Jeffery asked how close are you to the neighbors. Chris Guard stated 180 feet from the pier construction that connects to the land, 250 feet to the neighbors to the South.

CEO, Jeffery stated he needs the final plans and detail and permit from the Army Corp of Engineers and DEC. Chris Guard said they were sent in October 2019 but he will resend.

Chairman Robinson asked if there were any further question from Mr. Guard.



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Attorney Dowd commented I think the building inspector should get a permit from the Town. You don't have to do anything on the recommendation of the Board that it is allowed. I think we can handle it that way.

Terry Duffy made a motion as per Attorney Dowd's remarks to the process that was needed and grant Mr. Guard construction and was seconded by Marshall Hibbard. Roll Call Vote; Paul Brown-yes; Terry Duffy-yes; Marshall Hibbard-yes; Steve Zappy-yes; Chairman Robinson-yes. All in Favor. Motion Carried.

Chairman Robinson stated nothing else on the agenda.

CEO, Jeffery asked that the Board members take a look at the new quantity law on all solar panels in Niagara Falls. Possibly incorporate in the special use permit.

Attorney Dowd – nothing.

A motion was made to adjourn the meeting at 8:25 pm by Terry Duffy was seconded by Member Paul Brown. The next meeting is scheduled for Thursday, July 22, 2021.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals