



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 July 22, 2021 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	Date	Present	Absent
Jackie Robinson, Chairman	07/22/2021	yes	
Terry Duffy	07/22/2021	yes	
Paul Brown	07/22/2021	yes	
Marshall Hibbard	07/22/2021	yes	
Steve Zappy	07/22/2021	yes	
Atty Michael Dowd	07/22/2021	yes	
Peter Jeffery, Code Enforcer Officer	07/22/2021	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 June 24, 2021 minutes. Member T. Duffy made a motion and was seconded by Member Marshall Hibbard to approve June 24, 2021 minutes. Roll Call Vote: P. Brown-yes; Terry Duffy-yes; Marshall Hibbard-yes; Steve Zappy-yes; and Chairman Robinson-yes. All in Favor. Motion Carried.

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. The same rules apply -- be nice; be polite; no screaming; no shouting; no yelling; no cursing. The public hearing is still open. We did not receive any new communication by either email or mail. Is there anyone here that did not speak that would like to speak?

Mr. Ian Kinney, 220 Elm Street read the following:

“Good evening and thank you for this opportunity to speak.



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My name is Ian Kinney. I'm a writer, and I run a small publishing company based out of Stella Niagara. I actually attended school at Stella Niagara when I was a child. After that I graduated from Lewiston-Porter High School. And now all these years later, I'm just tremendously proud to still live in this area and be a part of this community.

However, having said that, in all my years of living here, I believe this might be the very first time I've ever attended a Town Meeting. But that's not because I haven't been paying attention. It's because I have. And, up until now, I've never really had any issues with the decisions made by this council.

But that changed when I began to hear about the proposal for a solar energy system and its unlikeness to be approved.

The truth is, I'm not an expert on energy. But I don't think any of us have to be these days to recognize the advantages of solar power. We all know it's better for the environment. We're all aware it's safe, clean, and cost effective. So I just don't understand why our town would be considering turning down this opportunity.

And sure, people will complain about the solar panels being ugly. But it's like, honestly, guys, have you maybe heard about pollution? Because traditional sources of energy are causing a whole bunch of pollution and that's making our entire world grown uglier by the day. Meanwhile, solar energy generates almost zero pollution. So I'll be the first to admit that we live in an absolutely beautiful town, and I definitely want it to stay that way. But it won't forever unless we start making changes.

And I know another concern I've heard voiced was that the structures and equipment involved with the solar energy system might pose a danger to children should they attempt to climb and/or play on it. And, honestly, that just seems bonkers to me. There are countless businesses and yards throughout Youngstown and Ransomville with structures or equipment that would pose a threat to anyone who attempted to trespass and play with it. In reality, a bunch of solar panels would in all likeliness rank pretty gosh darn low on the whole "danger" list. Ya know, right after like 8 thousand different types of tractors. But, I get it.



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Of course people are going to worry about their kids. And that's exactly why we should care so much about this proposal. It's our chance to actually do something for our kids. It's our chance to start building them a better world.

And, speaking of our kids, that's exactly who is making this proposal. Richard Ries and Mark Carella aren't two random strangers coming into our town and looking to change it. They're two kids who grew up here. They're hometown success stories. Just like myself, they attended our schools, went to our churches, played on our sports teams. This town shaped their childhoods and that helped make them who they are today. And who they are today is both hugely respected experts in their fields. We're not handling this project over to just anyone, you guys. These are two people who know what they're doing and who love this town as much as we do.

I'm sure there are plenty of other counter-arguments to address, but I don't want to take up much more of your time here. Like I said, the truth is I'm not an expert on energy. Plus, in all sincerity, I'm just not sure any of you really care what I have to say.

But, either way, I am a member of this community and I fully support the approval of this proposal.

Because I do care.

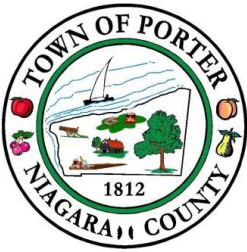
I care about the environment. I care about my nieces and my godson. I care about our future.

And I care about this town.

Do you?" Letter written by Ian Kinney

Chairman Robinson responded we do care what you have to say.

Terry Duffy made a motion to close the public part of the hearing and was seconded by Marshall Hibbard. Roll Call Vote. Paul Brown-yes; Terry Duffy-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. Motion Carried to close the public part of the hearing.



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Chairman Robinson addressed Mr. Ries. I have a question on emf radiation and you said you would come back with some information. Mr. Ries stated that the only information that I could find was from a study from the University of North Carolina; and they did some studies on EMF and the majority of the solar farm is the solar panels themselves, and those are all DC which wouldn't have EMF but the converters themselves would and they said that. The only other portion would be the inverters, and they do not have enough EMF to cause damage to anyone's DNA and to someone outside the fence perimeter there would be no negative health impacts to the EMF producing disorder. So, your cellphones produce that as well as power lines. You know, it is all around us, and there is no danger.

There was also another question about the humming from the inverters. So, they did some testing on it, and the most noise of this would be if you were within 50 feet from it and that would be the sound you hear from like a refrigerator humming. The other noise that you would hear is construction noises and those are typically done in about one month and another would be a snow plow to do removable snow. Those noises that you get are the quietest you ever had.

Mr. Bryan Stumpf – I am a representative from the safety aspect. I talked to the Fire Department regarding EMF and to let them know that this is completely safe when it comes to EMF. So most of the lines with the project are underground and it doesn't even get to overhead until closer to the interaction point by the road. Most of the distribution lines will have EMF and this so far from the road and the lines are all underground, so it is completely safe.

Andrew Kowalyk, 1012 Youngstown Lockport Road. Are the products made in the US? Mr. Stumpf replied "I am not sure". What landfill are they going to be put? Mr. Stumpf stated the panels themselves do not go to the landfill. Twenty-five years from now they could be recyclable. Mr. Stumpf stated any concerns about how long they last, even after twenty-five years, they will be used somewhere else. Mr. Kowalyk stated he was an electrician by trade and has been trained on solar panels.

Code Enforcement Officer (CEO) Peter Jeffery stated NYS legislators have passed a law for recycling for commercial grade solar panels. So, if there are any new installations, you know from here on there will have to be supervisions.



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Mr. Matthew Rajczak stated my thoughts are we will have to deal with what will be done with it.

Member Steve Zappy stated he would like to see the decommissioning things.

CEO Jeffery stated if they grant a permit, there will have to be site plan approval. I believe our code would require if it went forward and a plan for a bond would be submitted with that application. The bond would be prior to construction but the plan would be submitted with the application which would be the next phase.

Chairman Robinson stated she has one concern – understanding and misunderstanding this site being farm land. Just because there is not an operating farm on it doesn't mean that it is the environment. NYS AG and markets take it very serious about use of farm land and farm land being used for other purposes. This bit of farm land is a pretty important farm land. It's the ground. If you make any changes, you stop the farm from being a farmland for ever. We have to protect it. Gravel on good farm land could potentially change the farm land. It is bigger than this Board. The ground is pretty good.

Mr. Bryan Stumpf that he grew up on a farm myself. I am a bee keeper. I have worked on a lot of family farms in which a portion we used for solar panels. We make sure it actually helps us with the eco system and pollinating the crops. This is good for the suppliers income even if you allow just allow me this 10% to be solar panels, and I will be cultivating and nurturing the agricultural ground. So what I am saying, it could end up being zero percent agricultural if I don't get the ten percent.

Helene Pavlock, 3389 Creek Road. Asked Mr. Stumpf, "When was the last time you worked on a farm?" I was there yesterday working on the cattle farm. I was bailing today. Helene Pavlock asked "Where did you go to school and did you finish?" I went to Syracuse University.

Chairman Robinson stated that the Board was going to break into Executive Session at 7:20 pm for some legal advice.

The Board returned at 7:31 pm.



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Member Terry Duffy stated with regards to this action, I am going to put forth a motion. It is a resolution to deny this request. It is somewhat lengthy.

TOWN OF PORTER ZONING BOARD OF APPEALS

Resolution Denying Use Variance

WHEREAS, an application for a Use Variance has been made to the Town of Porter Zoning Board of Appeals (ZBA) by Richard Ries on behalf of Mark Carella, contract vendee of unimproved real property located in the Town of Porter identified by SBL# 46.00-2-51.2; and

WHEREAS, the ZBA has had an opportunity to review the application submitted by the applicant seeking a use variance to permit the construction of Tier III Solar Energy System as defined in the Town of Porter Zoning Law §200-52 in a Rural Agricultural District; and

WHEREAS, the ZBA has reviewed relevant zoning district regulations and definitions set forth in the Zoning Law including but not limited to §§200-7 Permitted Uses Table, 200-52 Solar Energy Systems, 200-8 RA Rural Agricultural Zoning District, 200-14, 15 & 16 Light General and Heavy Industrial Districts, and

WHEREAS, the ZBA sought counsel from the Attorney for the Town regarding the standards required for consideration of use variances pursuant to §200-108(F) which states:
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] That the alleged hardship has not been self-created.

(b) The Board of Appeals, in the granting of use variances, 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.; and

WHEREAS, the ZBA has, prior to this appeal, considered and been involved in numerous work sessions and meetings, both as an individual board and jointly with the Town of Porter Planning Board to consider the adoption of a local law or ordinance regarding Solar Energy Systems and; and

WHEREAS, due to significant public concern, a subsequent moratorium was enacted into law suspending the construction of Tier III solar energy systems within the Town, and



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WHEREAS, numerous meetings were held by members of the public, elected and appointed town officials to consider revisions to §§200-7 Permitted Uses Table and 200-52 Solar Energy Systems to insure compliance with the Town's Master Plan and; and

WHEREAS, after these deliberations a Town Law was adopted limiting the construction of Tier III solar energy system to industrial zoning districts in the Town; and

WHEREAS, the ZBA has determined that 1.) the applicant has not demonstrated a lack of a reasonable return based on competent financial evidence, 2.) the alleged hardship is not unique and applies to a substantial portion of the neighborhood, 3.) the variance requested would alter the essential character of the neighborhood, and 4.) the hardship was self-created, and

WHEREAS, the ZBA has held public hearings and heard substantial opposition to the proposed use variance, and

WHEREAS, the Town of Porter Planning Board has recommended denial of the use variance, and

WHEREAS, there is adequate property located within the Town's industrial zones to accommodate Tier III solar energy systems,

NOW, THEREFORE, BE IT RESOLVED by the ZBA of the Town of Porter that:

The Applicants request for a use variance is denied.

PASSED AND ADOPTED this 22nd date of July, 2021 by the Zoning Board of Appeals of the Town of Porter.

Ayes: 5 – Member Paul Brown; Member Terry Duffy; Member Marshall Hibbard; Member Steve Zappy and Chairman Jackie Robinson.

Nays: 0

Terry Duffy made a motion and was seconded by Paul Brown to accept this resolution denying the use variance. Chairman Robinson asked for a Roll Call Vote. Paul Brown-yes; Terry Duffy-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes.

Chairman Robinson stated nothing else on the agenda.

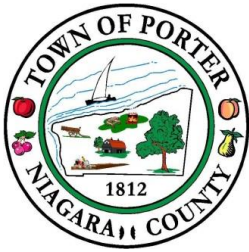
CEO, Jeffery - nothing

Attorney Dowd – nothing.

A motion was made to adjourn the meeting at 8:25 pm by Terry Duffy was seconded by Marshall Hibbard. The next meeting is scheduled for Thursday, August 26, 2021.

Sincerely,

Nancy Smithson
Secretary, Zoning Board of Appeals



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