



# 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 August 26, 2021 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	08/26/2021	yes	
Terry Duffy	08/26/2021	yes	
Paul Brown	08/26/2021	yes	
Marshall Hibbard	08/26/2021	yes	
Steve Zappy	08/26/2021	yes	
Atty Michael Dowd	08/26/2021	yes	
Peter Jeffery, Code Enforcer Officer	08/26/2021	yes	

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

There was a moment of silence for the members of the service who died in Afghanistan.

Chairman Robinson asked for approval of the July 22, 2021 minutes. Member T. Duffy made a motion and was seconded by Member Paul Brown to approve July 22, 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.

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, **August 26, 2021**



# TOWN OF PORTER

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

**Application of Bailey-Baker Farm Trust, 2432 Parker Road, Ransomville, NY 14131.** Tax Map No. 62.00-1-31. Renewal of Special Permit No. 357-2019 to operate a home occupation for an office. Property is located in a Rural Agricultural Zoning District on the West side of Parker Road, one mile S of Rte. 93 in the Hamlet of Ransomville in said Town.

Attorney Mark Murphy was present. I'm the attorney for the Bailey, Baker Farm Trust. Attorney Murphy stated that the Board was familiar with this Special Use Permit. It was approved over two years ago under much different circumstances and under much scrutiny. There have been no complaints; one full time employee; working Monday thru Saturday; Hours: 9:00 am to 2:00 pm and no changes; not used as a common meeting area; no significant truck traffic at the property. My clients unfortunately can't be here tonight because they're traveling, but I can reach them by phone.

Chairman Robinson stated that the Planning Board meet three week ago and asked how long are we going to extend the permit, and when are they going move all of the operations to Balmer Road. Chairman Robinson asked Attorney Murphy if there were any changes to the last permit. Attorney Murphy stated "No" just a longer extension of time. Again, my client's long-term plans are to move all operations to the farm, but under the circumstances, I think the two-year term was meant to keep my clients on a tighter leash against them.

CEO, Peter Jeffery stated that there were no complaints of record since the last permit was issued. He had a conversation with a resident who questioned the length of the permit but there wasn't a conflict.

Chairman Robinson asked Attorney Murphy if they had a time frame to move the operation to Balmer Road. It was anticipated that they would have been moved by now but there were two factors – Covid and the rising lumber costs. Chairman Robinson asked if there were any additional questions. None. Terry Duffy made a motion to close the public part of the hearing 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.



# TOWN OF PORTER

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

Terry Duffy made a motion to approve the Special Use Permit for Bailey/Baker Farm Trust with a time frame of five years and the rest of the permit remains the same 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. All in Favor. Motion Carried.

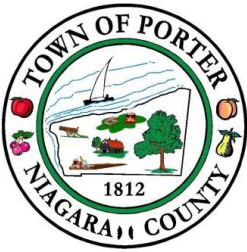
Chairman Robinson stated that she was going to change the agenda and do the following application of the Boniello Family Trust.

**Application of The Boniello Family Trust c/o David and Kathleen Boniello, 595 Seneca Street, Apt. 1, Lewiston, NY 14092.** Tax Map No. 33.10-2-2.

Under Article II, Section 200-10 and VIII, Section 200-108(F)2, an area variance is required for a new storage shed located at 18 Porter Center Road Ext. Property is located in a WR Zoning District on the South side of Porter Center Road in said Town.

Both David and Kathleen Boniello were present. Mr. Boniello stated that he is asking the Board that this shed be allowed to stay in the position of 6'4.5" off the lot line. I plan on building a house within the next two years. Currently, the shed is being used for storage of lawn mowers, equipment and chairs. The shed was delivered by the Amish to the property before Covid. Mr. Boniello stated that he was never notified when the shed was going to be delivered. Chairman Robinson asked CEO, Jeffery if there is any violation. CEO, Jeffery stated that the existing shed has to be taken down. It is in extremely bad shape. This is a replacement. The new shed is in better shape and is available for storage and property maintenance. Kathleen Boniello stated that they purchased the shed 14 months ago. I was not aware it was delivered. Before, it was our intention to start construction of a house. It will be at least another year or two before building a house. Ultimately, it will be part of the property and a home started. It is currently in the same location of the old shed. The old shed is going to be removed. Attorney Dowd stated that the shed is a Prior Non-Conforming Use, but the new shed needs the approval of an Area Variance as an accessory structure without a house.

Chairman Robinson read the following three letters:



# TOWN OF PORTER

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

In receipt of the "notice of public hearing", I'd like to voice my thoughts on:

Application of the Boniello Family Trust c/o David and Kathleen Boniello

Tax Map No. 33.10-2-2

18 Porter Center Road Extension

My property, 1817 Lake Road, where I reside, is immediately next door to the above mentioned property. I highly encourage the Board to APPROVE the application for the new storage shed.

Please contact me with any questions.

Patricia Shafer  
1817 Lake Road  
Youngstown, NY 14174  
[patsy1817@gmail.com](mailto:patsy1817@gmail.com)

"From Robert & Carol Reese  
1821 Lake Road  
Youngstown, NY

## The Boniello Family Trust

We live directly adjacent to this property and have NO issue with this variance requested for this Storage Shed."

Letter from Joanne Basta dated August 26, 2021

"According to Article VIII, Section 200-108(F) 2a and 2 b.

## 2. 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 make such determination the board shall also consider:



# TOWN OF PORTER

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

(i) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

(ii) Whether the benefits sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

(iii) Whether the requested area variance is substantial.

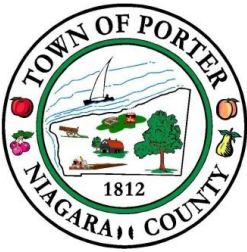
(iv) Whether the proposed variance will have an adverse or impact on the physical or environmental conditions in the neighborhood or district; and

(v) Whether the alleged difficulty was self-created; which consideration shall be relevant to the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

(b) The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

Below we list items we ask you to consider when weighing each of the factors involved in granting or denying a variance.

1. This variance is really a request to keep a new shed on a property without a home, as this shed was brought in last year. On Sept. 22, 2020 a notice was issued for unpermitted construction, "indicating removal of shed was necessary for compliance." It was moved from north of the easement to south of the easement (Porter Center Rd Ext)...For over one year this shed has not been removed.
2. Next, a plan to create a house out of this shed attached to a second shed that was to be brought in was not approved by the building inspector. This action was closed on October 29, 2020. And this closure also did not result in the removal of the violation.
3. This year an "RV" trailer was brought to the property, as well, and placed north of the easement.
4. The "RV" brought in was also not approved by the building inspector and while the owners were once again required to remove it, it remains.



# TOWN OF PORTER

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

5. This “RV” is also in violation of DEC setbacks as it sits on the structural hazard zone.

The Boniello Family created these violations and they have a track record of not correcting the violations in a timely manner. Now they are asking for retroactive permission to keep the shed, which is much larger than the existing shed and only there because the building of it into a home was denied.

Historically, the owners on the street were issued notices from the town to remediate their vacant lands with the structures on them – one structure had existed for about 30 years, another structure was on the property when the property was purchased. These owners complied.

Other citizens in the town with similar properties have not been issued notices from the Town, even though the Town has been notified of their existence.

We are not taking a position of “remove it” or “keep it” as it isn’t our place to make such a statement.

We simply ask you to consider our input and do what is fair for everyone in the neighborhood.

Joanne Basta and Fran Bolte”

Chairman Robinson asked Mr. Boniello about the trailer. He stated that it is currently for sale. It is vacant. My intention is to sell as soon as possible. It can only be moved with a certain vehicle. I am not sure of the easement. The right away easement has been there for 30 years. CEO, Jeffery stated that there was an RV there, and it was for sale. It hasn’t been moved. He understands it can’t stay. Mr. Boniello stated he was not aware of any easement on his property. CEO, Jeffery commented on the ingress and egress on the property. Joanne Basta stated it was moved from the north side to the south side of the right away. The shed had been moved.

Chairman Robinson asked if anyone else wished to speak. None. 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





# TOWN OF PORTER

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

Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor.  
Motion Carried.

Chairman Robinson said that we do have a recommendation from the Planning Board to approve this application.

Paul Brown asked, "Is the camper on the property now, and is anyone staying there?" Mr. Boniello replied "no". It is brand new. It was purchased from Colton RV. Paul Brown stated you purchased it, and they brought it there. Mr. Boniello stated we were going to use it but it is an accessory, and we can't use it as an accessory.

Steve Zappy asked if the Boniello's had a time frame for the house. Mrs. Boniello replied within the next two years. Due to Covid, we haven't agreed to a plan and when the price of lumber will come down. Hopefully within the next two years. We have nowhere to store materials. We can take down the old shed as soon as possible.

CEO, Jeffery stated pending approval of this variance, I can issue a variance to demolish the old and replace with the new and that would be my intent. Attorney Dowd wanted it put in the minutes to make it clear it is a prior non-conforming use with size being increased. It is not a use variance. Attorney Dowd also stated there should be a timeframe when taking down the old shed. CEO Jeffery stated I think you have covered my concerns.

Paul Brown asked, "How long before you issue a permit for the shed?" CEO Jeffery stated on that day as long as I have most of the documentation here showing what the construction of the shed is; site plan for a shed; certainly within a day. Attorney Dowd stated he thinks it is an area variance, and there was a discussion on the area variance. CEO Jeffery showed a set of pictures on the screen that are not in compliance with our rules. It is less than 10 feet average height; there is a fire hydrant there; and there should be a clearance from the fire hydrant.

Kathleen Boniello stated that the old shed was on the other person's property. CEO Jeffery showed how close the fire hydrant is to the old shed. I believe the fire hydrant is close to the easement and showed it on the screen.



# TOWN OF PORTER

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

Chairman Robinson asked if the shed can be moved. CEO Jeffery stated it could be moved and meet our current zoning requirements.

Terry Duffy made a motion to approve the application of David and Kathleen Boniello with the following conditions: the variance is approved because there is currently a pre-existing non-conforming structure at the Boniello property, an old shed on the property; the old shed must be removed immediately; the new shed must be placed in such a manner that there is full access to the fire hydrant on the property 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.

Kathleen Boniello asked do we need a permit to keep it. CEO Jeffery stated you need a permit to take down the old and replace it with the new.

The Board went into Executive Session to discuss any legal questions the Board might have at 7:30 pm and returned at 7:48 pm.

Attorney Dowd stated that the Board went into Executive Session and didn't take any formal action. There are two applications that are being presented at the same time for a single property. Questioned whether they should be listed concurrently or separately. We will open the public hearing to both applications. If people want to speak, they can identify the horse permit or sanctuary. The Board would also like to ask the applicant if they can inspect the property so they can see the commercial boarding of the horses or as an animal rescue. We will keep the public hearing open. No action will be taken tonight. We will hear the comments tonight and more next month. The Board will visit and see the barns, and how it will be done.

Chairman Robinson stated the property is the same property for Mr. Garabedian and Lakeview Animal Sanctuary. Chairman Robinson asked that you state your name; no screaming; yelling, pointing or swearing. Please state your name and address. Chairman Robinson asked the applicants to describe what they are requesting.

Mr. Arthur Garabedian stated that he owns the property at 3360 East Avenue. He has owned the property since 2004 when he purchased it from Dr. MacAluso who purchased it from John Bartomelow as a boarding for horses. I intended to do the





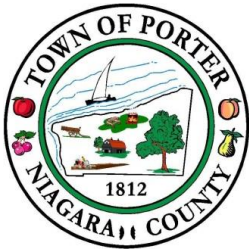
# TOWN OF PORTER

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

same. Dr. MacAluso paid for the permit. A notice was sent to the other renter, and I was never notified of getting an application. The property has been up for sale for four to five years. In the meantime, Lakeview Animal Sanctuary approached me about renting the property from me. I am allowed to have on 22 acres 25 horses. I am planning using the North Barn – 14 stalls and South barn 11 stalls. The sanctuary right now pays \$100/mo. to put horses out to pasture, and they take care of the animals themselves – moving the manure and cleaning the stalls. They want to bring in horses, llamas, alpacas. They take very good care of them. They seem like decent people. They are having a fundraiser this Saturday. Mr. Garabedian expressed several different ways to use the property, and what to do with the stalls. He discussed the area fenced off and different ways it could be used.

Attorney Dowd stated that he appreciated Mr. Garabedian talking about the property. It seems to me the activity is going to be intertwined, and there needs to be a line between the both activities. Mr. Garabedian stated he read the rules of the Town, and he is going to limit 25 horses. The previous tenant had 60 horses. Attorney Dowd commented on the number of horses for commercial stable use; no horse trading. These are two separate permits you are requesting it is not the way it works. CEO Jeffery stated he agrees with Attorney Dowd. It has to be a clear and concise operation. It is a guide to enforce. Mr. Garabedian had a discussion on the previous tenant, and how many horses they had on the property.

Alyssa Gross, Attorney for Lakeview Animal Sanctuary spoke. I feel the property would be helpful for us to use as an animal shelter. They are prepared to have limits. They are prepared to sort and separate the operations. There are two separate barns. They are prepared to have a limit just like any other sanctuary or shelter would have. You have capacity limits. They moved from Pendleton. We have a number of Board members here to answer questions. Attorney Dowd stated you understand the point I am making and Alyssa Gross replied “yes”. There was a concern on the type of animals. Mr. Anthony Crowley, President of Lakeview Animal Sanctuary. I am prepared to speak or answer any questions you might have. The sanctuary has been around for over 30 years. For the past 29 years in Pendleton. We were given five days in the spring to move. We moved to a temporary location in Burt, NY, and it is not suitable for animals in the winter and not enough stalls. We have no problem abiding with Town restrictions



# TOWN OF PORTER

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and to make it better than what it is today. We have a few more horses from Lakeview Animal Sanctuary side – alpacas, sheep, goats and donkeys. We don't take in dogs or cats. We refer them to another agency such as the SPCA. All the animals are seen by a vet; have all shots (rabies and seasonal); all animals are kept up to date; separate food area. Yes, we are looking for visitors – one or two families. Mr. Matthew Moore, Lakeview Animal Sanctuary talked about being at the barn and stated he wants to keep in consideration the community and those around. He also talked about the manure. We can operate with a tractor that we can spread out the manure once it has been degraded. We do plan on getting a new separator so we can dispose throughout the property. At the time, it is not horrible. We have a small pile near the South barn (it was shown on the map). We operate with noise limits – not too late at night or early in the morning with the tractor.

Attorney Dowd stated I think they explained it. We are not going to take any action tonight. Arthur Garabedian talked about separating horses and those I might rent out. I could divide between the North and South barn. Attorney Dowd stated it would be put in the application. The application has to be very clear. It has to be done.

Chairman Robinson stated the public hearing is open and read the Notice of Public Hearing.

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

Under Article II, Section 200-09; Article IV, Section 200-38 and Article VIII, Section 200-107, a Special Use Permit is required for a commercial horse stable located at 3360 East Avenue, Youngstown, NY Tax Map No. 45.00-1-42.2. Property is located in a LDR Zoning District on the West Side of East Avenue between Youngstown Lockport Road, Rte. 93 and Blairville Road in said Town.

and

## **Application of Lakeview Animal Sanctuary, Inc. (Tenant) of Arthur Garabedian at 3360 East Avenue Youngstown, NY 14174.**

Under Article II, Section 200-09; Article IV, Section 200-27 and Article VIII, Section 200-108(F), a Variance is required to operate an animal sanctuary for farm animals at above address. Tax Map No. 45.00-1-42.2. Property is located in a LDR Zoning District



# TOWN OF PORTER

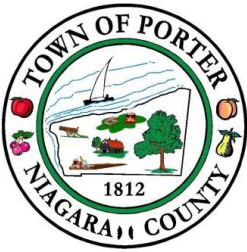
3265 Creek Road ♦ Youngstown, New York 14174 ♦ (716) 745-3730, ext. 7 ♦ fax (716) 745-9022 ♦

on the West Side of East Avenue between Youngstown Lockport Road, Rte. 93 and Blairville Road in said Town.

Mr. Dennis Ketch from East Avenue asked the question, "Where is the manure going to be kept?" Mr. Moore from the Sanctuary explained where the manure will be placed. It would be at the back end of the property. Attorney Dowd stated that the storage is required by the Town. CEO Jeffery stated 150 feet off the property line. Chairman Robinson questioned the number of animals kept. Mr. Anthony Crowley stated the animals will be kept enclosed.

Mr. Ketch stated this question was for Mr. Garabedian. You have 22 acres are you planning on use all 22 acres? Mr. Garabedian replied if I can rent them out for \$100/mo. Mr. Ketch commented if at some point you may be using all 22 acres. Chairman Robinson asked the Sanctuary the animals you have there, you take care of them on a daily basis. Are you there all day, every day? Shannon Pearson from the Sanctuary stated that Jeff (not here tonight) once the apartment is approved, he will move into the apartment to insure the animals are taken care of all the time. Twelve hours a day and they are there seven days a week. They will be able to take care of the animals. We take into consideration the neighbors. Terry Duffy commented that there was no mention of an apartment. Mr. Garabedian stated there is an apartment there. CEO Jeffery stated there is an existing what appears to be a mobile home connected to the main stall. It is not on the assessor's record. It has been there longer than Mr. Garabedian owned the property. It is in terrible shape. Things need to be added and corrected to become in compliance. Once in compliance, I can issue a certificate of occupancy. Mr. Garabedian talked about the trailer and Chairman Robinson stated that he has to deal with CEO Jeffery regarding the trailer. CEO Jeffery stated if he does, the trailer will have to have an approved septic system.

Chairman Robinson asked the Sanctuary if they have the animals there now. Shannon Pearson stated the animals are our own personal animals. CEO Jeffery stated personal animals have to be addressed by the animal code. Chairman Robinson stated this happened quite illegally. The Town code says they have to be out tomorrow. It is not helping your case. Anthony Crowley stated he was under the impression that Mr. Garabedian could rent it. Attorney Dowd stated no one has a permit. Mr. Garabedian can't lease space to anyone. Right now it is not permitted.



# TOWN OF PORTER

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

Chairman Robinson stated we need time. Correspondence came in late today. We need a better plan. There is no way CEO Jeffery could enforce it right now. We need a better plan from both of you—diagram of site; breakdown of where things are going to be kept; manure storage and general diagram of where things are stored. CEO Jeffery stated all farm animals have to have a shelter. Chairman Robinson stated we talked about horses. How are we going to keep track of them? You can't have an unlimited amount of animals on the property. Mr. Garabedian stated he was going to write up an agreement with them. What if I want to rent out the entire property to them? Attorney Dowd stated if you have a permit for commercial stables, you can't take the permit and assign it to someone else. It is not assignable. There was a discussion with Mr. Garabedian on commercial horse stables and rules that are involved. Attorney Dowd stated you have to comply. CEO Jeffery commented from the Zoning Manual on Section 200-38 Keeping of Animals. Mr. Garabedian brought up, what if the Animal Sanctuary wants to rent the entire property? CEO Jeffery stated he is going to stipulate the number of animals on the property. You can't change your mind. Mr. Garabedian stated what if I want to file for a commercial stable on 12-1/2 acres, will the number of horses be based on that. Attorney Dowd stated who would take care of manure if you rent out 25 stalls. We don't have a deal with 25 people. You have a responsibility. Mr. Garabedian stated I am allowed 25 horses for a commercial stable. CEO Jeffery stated you are responsible. Mr. Garabedian stated I am trying to find a way to help the Lakeview Animal Sanctuary. Attorney Alyssa Gross stated she will meet with Mr. Garabedian to come up with a plan. Attorney Dowd stated you are all over the place. You are very vague, and you need to narrow it down. Attorney Gross to work with CEO Jeffery.

Chairman Robinson stated to table both of these applications; leave public hearing open. We need more information and a better plan. All members are planning on coming out to see the property. Attorney Dowd stated that permitted uses in LDR require a site plan for commercial stables and a recommendation from the Planning Board. We need a site plan. The Planning Board is scheduled to meet on September 2, 2021. A question was raised if they could get on the Planning Board schedule. Attorney Dowd stated you could deny it because we don't have a site plan.



# TOWN OF PORTER

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

Mr. Crowley from Lakeview Animal Sanctuary stated we are in a time crunch where we are today and where we could be the following month. It is not safe for the animals. Attorney Dowd stated we couldn't take action until the end of October.

Chairman Robinson asked if they could have a site plan for the Planning Board meeting next Thursday. CEO Jeffery stated they have a good beginning with a little more information added. The Board asked Tony Collard if they could be added to the September Planning Board agenda on short notice. Chairman Robinson stated that if they can get a site plan together you could be on the September Planning Board for September 2 and the Zoning Board for September 23. Terry Duffy made a motion to table the application of both the above applications until September 23, 2021 if they can get a site plan and the two public hearing would remain open pending further action 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. Motion carried to table for 30 days.

Chairman Robinson stated do not bring any more animals there.

A motion was made to adjourn the meeting at 8:40 pm by Marshall Hibbard and was seconded by Terry Duffy. The next meeting is scheduled for Thursday, September 23, 2021.

Sincerely,

Nancy Smithson  
Secretary, Zoning Board of Appeals



# TOWN OF PORTER

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