

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 24, 2017 at 7:00 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairman Irene Myers, Member Bryan Meigs, Member Terry Duffy, Member Marshall Hibbard, Member Jackie Robinson, and Attorney Michael Dowd, Building Inspector, Peter Jeffery, and Susan Driscoll, Assessor.

Chairman Irene Myers called the meeting to order at 7:00 pm with the Pledge to the Flag.

A motion was made by Jackie Robinson to approve the minutes as written dated July 27, 2017 and was seconded by Bryan Meigs. All in Favor. Motion Carried.

Chairman Myers read the following Notice of Public Hearing:

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 August 24, 2017 at 7:00 pm for the purpose of considering and hearing all interested persons concerning the following application(s):

APPLICATION OF Millard and Elizabeth Smallwood, 2295 Old Lake Road, Ransomville, NY 14131, Tax Map #21.17-1-1. Under Article II, Section 10 and Article VIII, Section 108F(2), an area variance is required for addition to home twelve (12') feet to the South. The property is located in WR Zoning District on the North side of Old Lake Road between Dickersonville and Ransomville Roads in said Town.

It was noted that the Smallwood's were present. Mrs. Smallwood gave a brief presentation to the Board stating the addition will be twelve feet out. The leech

bed takes up the whole side yard of the house on the West. They would like to make a room for her aging parents. Mrs. Smallwood presented a list of all the neighbors (except for one who is seasonal) that they accepted the addition.

The Planning Board recommended approving the area variance as presented.

There was no one from the audience that wished to speak. Jackie Robinson made a motion to close the public part of the hearing and was seconded by Bryan Meigs. All in Favor. Motion Carried.

Chairman Myers asked the Board if they had any questions to address to the Smallwood's. Peter Jeffery stated that Mrs. Smallwood had a nice presentation to the Planning Board and the addition is for her aging parents. The front of the house was originally an office and because of the septic system to the East, it wasn't viable. This is the avenue they wanted to pursue. She got all the neighbors to agree. It will be the Board's pleasure.

Jackie Robinson stated there is limited traffic. Chairman Myers asked is the twelve feet that you want to make the addition from the front of the porch or the home. Mrs. Smallwood stated it will be an additional twelve feet from the existing structure.

Attorney Dowd stated it is an unusual circumstance and you should go through the criteria for the area variance.

Jackie Robinson read the following from Page 140 – Area Variance of the Zoning Manual.

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:

- (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 benefit 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 effect 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 decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Attorney Dowd stated it wasn't practical because of the septic system. Chairman Myers asked what the Board's pleasure is.

Terry Duffy made a motion to approve the variance of the Smallwood's as there was no opposition and was seconded by Marshall Hibbard. Chairman Myers asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes; Marshall Hibbard-yes and Chairman Myers-yes. All in Favor. Motion Carried.

Chairman Myers read the following application.

APPLICATION OF Noco Energy Group, 13613 Main Road, Akron, NY, Tax Map #34.00-1-27 (2977 Ransomville Road, Ransomville, NY). Under Article II, Section 8, Article IV and Article VIII, Section 107, to renew their Special Use Permit No. SP-289-2007 to store up to 20,000 gallons of propane at 2977 Ransomville Road. Property is located in a RA Zoning District approximately 500 feet North of the intersection of Youngstown-Wilson Road and Ransomville Roads in said Town.

Chairman Myers asked the Board if they were familiar with this application. Peter Jeffery stated that there were no complaints. Susan Chambers, Noco, provided a signed lease agreement for five years from September 1, 2017 to August 31, 2022.

The Planning Board recommendations dated 8/3/2017 recommends approval of the renewal with consideration on the lease time-frame. For example, if the lease is 5 years, it is recommended that the Special Use Permit also be for 5 years.

Jackie Robinson made a motion to approve the application for Noco for five years starting from September 1, 2017 until August 31, 2022 and was seconded by Terry Duffy. Roll Call vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie

Robinson-yes; Marshall Hibbard-yes and Chairman Myers-yes. All in Favor.
Motion Carried.

Chairman Myers stated the next item on the agenda is the **Lynch application**.
It was noted that Mrs. P. Lynch was present.

Attorney Dowd addressed the Board that they have all received the packet of information/material from the Lynch's and Peter Jeffery. Today we received a recommendation from the Niagara County Planning Board. If the Town Board adopts the local law, it impacts the decision.

NCPB Action Case No. 6527.

The Niagara County Planning Board has reviewed the proposal(s) and makes the following recommendation and comments.

The Niagara County Planning Board voted that there was no significant county-wide impact but expressed concerns regarding the following: (1) Tax implications; (2) changing the character of the neighborhood; (3) Consistency with the town LWRP plans; (4) Commercial use in a residential area; (5) Law lacks detail.

Attorney Dowd stated that regarding the question of tax implications, it maybe affects the assessed value.

Chairman Myers asked "How can we get more definitive language from the County?" Attorney Dowd stated that from the Boards perspective, we addressed details. Terry Duffy asked Attorney Dowd to explain the form that was submitted to Niagara County. Attorney Dowd explained the form (discussion). He stated that Barb Dubell sent the SEQR form in. I didn't go to the meeting. I am not sure if there was any public comment. I just don't know if you want to wait until the Town Board meeting to see if it is adopted as local law. You all have the material provided showing the details. You need to make a decision tonight. If you make the decision, there is a presumption. If you don't take any action, there is no presumption. The decision is correct. If you don't do anything, there is no presumption. You can have a work session for an additional period if you have Mrs. Lynch's approval. It is two weeks before the Town Board meeting before they take up the issue.

Chairman Myers stated all we are acting on is Roy's decision. Attorney Dowd stated to determine whether or not Roy Rogers/Peter Jeffery failed to enforce a violation of the Zoning Board. Jackie Robinson asked if we are judging the January 2016 decision. Attorney Dowd stated the Building Inspector decision on law of 2016 -- on the Airbnb site, if the CEO interpretation of the law is a permitted use under the code. If you don't, you can ask the Code Enforcement Officer to issue a violation.

Chairman Myers stated it is my understanding we don't have anything that specifically says you can rent your house out? Attorney Dowd stated that he talked to Roy Rogers about this about a year and a half ago. You may want to get Roy in here to talk about it. Jackie Robinson stated if there is nothing in the code then it is not a permitted use. Roy Rogers stated it is a single family dwelling. Roy took a look at all: (1) they are not a rooming house; (2) it is not a hotel; (3) motel-- not transient people. It is a single family dwelling. (4) WR district – no commercial activity, but there is a provision in the code for other commercial activity. Those are the factors Roy Rogers told me he took into consideration or you can defer to the Town. You have to ask the Lynch's.

Peter Jeffery commented that he said to the Lynch's that he agrees with Roy Rogers. It is a single family use. The intention of this wasn't to preclude rental units on the lake. Any other accepted piece of property being rented for a short or long term rental could be used by the homeowners.

Attorney Dowd talked about Grand Island local law that prohibited short term rental in 2015. The town lost and they appealed, but I am not sure if the appeal was finished. There are 100 Airbnb's on Grand Island.

Chairman Myers asked Pat Lynch if she would be willing to a deferral until outcome of the Town Board at their meeting. Pat Lynch stated that she is confused. There are two building put at Lakeside cottages. Are they single family dwellings? The law doesn't address this issue. Before this law is passed, you would have to give us a decision on how you treat it as a single family dwelling or part of a motel. We would wait for a good reason.

Attorney Dowd stated that Roy Rogers went through different types of facilities. It did not fit a definition of a motel. Patricia Lynch stated that the Town specifically indicated a single family must be a stable family group. The operations of the houses are just an extension of the motel across the street. They are transients—nightly, weekly, and sometimes monthly. If you have a single family dwelling, the problem cannot be settled. When you have transients, there is a potential problem and an extra burden on the police. Is this a motel or a single family dwelling? This doesn't comply with single family dwellings.

Attorney Dowd read "Single family Dwelling – a dwelling designed for an occupied by not more than one (1) family and surrounded by open space or yards and having no roof, wall or floor in common with any other dwelling. Patricia Lynch stated this is your interpretation. You cannot say it is a stable unit. This is what a single family must look like – family is permanent.

Mr. Wally Nowacki spoke to the Board about stable family. He stated that he travels out of town for holidays, and I rent out my house. This whole problem

started when the property went for sale. The Sheriff is sick and tired of getting calls. If there is a problem, I can address the problem. No one told me that I couldn't rent it. I own shares in the Wilson House. Is this going to be held against me? What is wrong with investing in the Town of Porter? I fixed it up and cleaned up. I keep everything clean. The Board cannot come over and look at my property. Please call me before you come.

Chairman Myers spoke to Patricia Lynch. You don't want to entertain to wait for the Town Board? Attorney Dowd stated the Board has to make a decision. Someone is going to have to make a decision. Have you had an opportunity to review the material; Roy's rationale; Peter's rationale? Whatever you want to consider.

Mr. Nowacki spoke again that the neighbors to the South, they don't own lake property. I give them the OK to go to the lake. Attorney Dowd stated you don't have an issue. The issue is – Is this a motel or single family dwelling? The resolution – if you are or not in favor of the Code Enforcement Officer if he correctly applied the law. Determine if this property is not a motel but a single family dwelling. Patricia Lynch stated you need more time to discuss this. I want you to take all the time you need.

Attorney Dowd stated that he could draft a resolution for consideration. Peter Jeffery stated that the Master Plan is a key instrument in making this decision. Attorney Dowd asked if the applicant was in agreement to wait until next month. Patricia Lynch agreed to a deferral of her application until the September meeting.

A Motion was made by Jackie Robinson and seconded by Terry Duffy to adjourn the meeting. The meeting was adjourned at 8:10 p.m. The next regular meeting will be held on **Thursday, September 28, 2017.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals