

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 27, 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, and Building Inspector, Peter Jeffery.

**ABSENT:** Susan Driscoll, Assessor.

Chairman Irene Myers called the meeting to order at 7:00 pm. Chairman Myers asked for everyone to stand for the Pledge of Allegiance.

A motion was made by Brian Meigs to approve the minutes as written dated May 25, 2017 and July 13, 2017 and was seconded by Terry Duffy. 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 July 27, 2017 at 7:00 pm for the purpose of considering and hearing all interested persons concerning the following application(s):

**APPLICATION OF MARK LYNCH AND PATRICIA LYNCH, 2091 Lake Road, Youngstown, NY.** Under Article II, Section 10 and on 2085, 2087 and 2053 Lake Road, Tax Map Nos. 33.08-1-3; 33.08-1-2; and 33.11-1-21.1 the property is located in WR Zoning District on the North side of Lake Road between Porter Center and Dickersonville Roads in said Town.

It was noted that Mark Lynch and Patricia Lynch were both present. Chairman Myers commented that we are here for consideration of an appeal to the Zoning Board for three properties. It is my understanding they want to appeal the January 2016 ruling by the previous CEO, Roy Rogers that declares "the properties at 2085 and 2087 Lake Road are single family residences and not commercial property."

Attorney Dowd stated this is an appeal to the January 2016 ruling by Roy Rogers. I am not sure their appeal is subject to a public hearing.

Mark Lynch read the document dated 7-09-2017 (Attachment A) and Patricia Lynch presented a binder to the board and read (Attachment B) dated July 27, 2017.

Attorney Dowd stated this is not a public hearing. You don't have to open up to the public. I think you need to take the time to digest the information given to the Board from the Lynch's. Chairman Myers also asked for information from Peter Jeffery and Attorney Dowd.

Wally Nowacki, owner of the properties, commented that he is the owner of the company, meetings are held on the property; retreats are held as a get together. I want to say it is a pissing contest between the neighbors. I didn't complain when the Lynch's used my way to the lake and I didn't complain. His roofers were working from my side. He didn't get my permission. He had the same opportunity to buy the properties as I did when they were for sale. Patricia Lynch took pictures, license plate numbers – this is going a little bit too far.

Irene Myers thanked Mr. Nowacki for his comments, and we will check this all out when we get the information. We will consult with the Town Attorney. Peter Jeffery stated we are here tonight about a decision made by the Building Inspector's ruling. They are making a decision on the past ruling and what will happen going forward.

Chairman Myers asked for a motion to table this application. Attorney Dowd stated to allow time to take a look at all the information presented. Peter Jeffery stated he will pull together all

the information that is presented on the three parcels that the Lynch's use.

Brian Meigs made a motion to table the application of Mark & Patricia Lynch and was seconded by Terry Duffy. Roll Call Vote – Terry Duffy-yes; Brian Meigs-yes; Jackie Robinson-yes; Marshall Hibbard-yes and Chairman Irene Myers-yes. Motion Carried to TABLE the application of Mark & Patricia Lynch.

Chairman Myers read the following:

**APPLICATION OF BRETT WATERSON, 3666 Creek Road, Youngstown, NY Tax Map No. 60.00-2-67.** Under Article II, Section 9 and Article VIII, Section 108F(2), an area variance is requested for building overhang encroaching on minimum setback to property line. Property is located on the West side of Creek Road in a LDR Zoning District between Cain and Blairville Roads in said Town.

It was noted that Brett Waterson was present. He approached the Board and presented his issue. Peter Jeffery stated that Roy Rogers issued a building permit to Mr. Waterson on February 12, 2016. Mr. Waterson did an addition to his home. The roof is protected. There is concern from the neighbors on the roof overhang. Roy Rogers looked at it and discussed the variance. Chairman Myers commented that the building permit was issued on February 12, 2016. Jackie Robinson questioned whether the overhang was on the original plan. Chairman Myers commented that on April of 2017, you were notified that there was a problem. How did this come about? Mr. Waterson stated that he got a letter in the mail.

Peter Jeffery commented that he believes that there was some input from the neighbors. It is my understanding but I can't say definitively. Peter Jeffery asked Mr. Waterson if he could cut a triangle off the corner as a solution. Mr. Waterson stated that he has put time and money in the structure.

Attorney Dowd explained the variance of 5-1/2 feet. Peter Jeffery stated 11.25 feet side yard setback. Chairman Meyers

stated he needs a variance of 4.25 feet. Marshall Hibbard asked Mr. Waterson are you putting on gutters. Peter Jeffery stated the neighbors expressed concerns about drainage and other safety issues. I met with Brett Waterson this month. He talked about the drainage (concern from the neighbors). He prefers not to put gutters on but to do french drainage system. He will put the French drainage system under the overhang of the roof. I will be working with Mr. Waterson on the drainage and any other safety issues.

Chairman Myers asked if anyone from the audience wished to speak. Susan Koroschetz, 3662 Creek Road stated she is the neighbor to the North of the house. Drainage is an issue. My main concern is there is a lack of privacy and not much room from the encroachment. If I wanted to be that close to the neighbors, I would live in the city. I have four windows on that side of the house – three bedrooms and one living room. I have done landscaping to create privacy. We have a fence, trees and when they are 6-1/2 feet from the property line, I am concerned about encroachment and about drainage in the winter – all the ice sheets -- all are damage issues. I am concerned about privacy.

Chairman Myers stated she understands what your concerns are about the encroachment. If Mr. Waterson just cuts off the corner, will it make a difference for you? The laws are on the books for a reason. A variance for hardship is not because someone wants it. Susan Koroschetz commented that dealing with Mr. Rogers was not very easy or accessible. Chairman Myers stated she is trying to make it work for both Mr. Waterson and Susan Koroschetz. I don't know if he cuts off the corner will it alleviate the problem. When you are given a permit and 14 months later you have a problem, I am trying to understand if it is going to make a difference. Peter Jeffery was asked how much of the roof will he have to cut off (drawings were shown to the board). The Code Enforcement Officer has the authority to stop along the way. We are all humans and we make mistakes. It wasn't discovered until later on.

**Terry Duffy made a motion to close the public part of the hearing and was seconded by Bryan Meigs.**

**Chairman Myers read the following:**

**The Planning Board recommended to the Zoning Board of Appeals that the variance be approved subject to the following conditions: (1) Gutters with leaders draining away from the neighboring properties be installed. (2) No future deck construction be allowed on the second floor. DUE TO A LACK OF CONSENSUS FROM THE PLANNING BOARD, THERE IS NO RECOMMENDATION AT THIS TIME.**

**Attorney Dowd stated the Planning Board didn't vote so they could not make a recommendation.**

**Jackie Robinson read the following from page 141 of the Zoning Manual:**

**"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 is certainly relevant. Roy Rogers saw the foundation plan. Maybe he wasn't given the full information. It is up to the Board. How big of a deviation there is? Whether or not there is an adverse impact. If you grant the variance, you can give conditions. You have all the information.**

**Peter Jeffery discussed the drainage issue—if he works with me (French drain system). As long as he is in agreement. The building permit is expired. I will look at the requirements with things going forward, and I will be comfortable with the drainage system if we renew or update the permit.**

**Attorney Dowd asked if Mr. Waterson was planning on extending the second story. Peter Jeffery commented that Mr. Waterson and I discussed it and it wasn't his intention to build a second story deck. He has no intention of putting a deck out there.**

**Attorney Dowd stated that this Board can make a condition on the variance. Duffy Johnson stated that he has a huge deck off his second story and Attorney Dowd commented that he didn't need a permit.**

**Chairman Myers asked Mr. Waterson if he was looking to putting up a second story or can you cut the corner off. Mr. Waterson stated that he doesn't want a second story. It was never part of the plan.**

**Bryan Meigs questioned cutting off the corner of the roof that is not legal at this time. Attorney Dowd stated you can't go out to the encroached area. Bryan Meigs questioned the sliding glass door. Attorney Dowd stated you have to be in compliance with the code. There was a discussion between Board members and Peter Jeffery about the overhang and sliding glass door. Mr. Waterson talked about the French drainage system, and it would alleviate the drainage issue. Marshall Hibbard asked about the timeframe.**

**Jackie Robinson read from page 140 of the Zoning Manual (2) Area Variance.**

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.

Jackie Robinson stated it is a substantial variance. Peter Jeffery stated how it affects the neighbors is another factor you want to consider. Jackie Robinson commented on the pitch in relation to the snow on the neighbor's property. Bryan Meigs commented that I don't think if you take the corner off, it will make a difference. The overhang is still there. Attorney Dowd stated you can make stipulations in the variance.

Terry Duffy made the following motion for the application of Brett Waterson as written with the following exceptions: Drainage resolved; no second story deck; no expansion on top or bottom and was seconded by Bryan Meigs. Roll Call Vote: Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-no; Marshall Hibbard-yes; Irene Myers-yes. Motion Carried.

Chairman Myers read the following:

**APPLICATION OF MICHAEL MCGRAW, 2165 Lake Road, Ransomville, NY 14131 Tax Map No.. 33.08-1-33.** Under Article II, Section 10 and Article VIII, Section 108F(2), an area variance of seven feet on side yard is requested. The property is located in a WR Zoning District on the North Side of Lake Road between Dickersonville and Ransomville Roads in said Town.

It was noted that Michael McGraw was present. Mr. McGraw approached the board and presented drawings and site plans.

Chairman Myers made a motion to close the public part of the hearing and was seconded by Jackie Robinson.

There was a discussion about emergency vehicles getting back to the property.

The Planning Board recommended to the Zoning Board of appeals that the variance be approved as presented provided:

**(1) Distance between the neighboring structure and potential structure will allow enough room for emergency access/fire protection (2) There is no dissension from the neighbors.**

**Peter Jeffery stated he thinks it is a reasonable request. He stated a variance was given on a very similar request to another neighbor. Attorney Dowd stated there is 100% of road frontage.**

**Bryan Meigs made a motion to approve the variance of seven feet on the West side and was seconded by Marshall Hibbard. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes; Marshall Hibbard-yes and Chairman Myers-yes. All in favor. Motion Carried.**

A Motion was made by Jackie Robinson and seconded by Marshall Hibbard to adjourn the meeting. The meeting was adjourned at 8:10 p.m. The next regular meeting will be held on **Thursday, August 24, 2017.**

Respectfully submitted,

Nancy Smithson, Secretary  
Town of Porter Zoning Board of Appeals