



TOWN OF PORTER

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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 March 28, 2024 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

| | Date | Present | Absent |
|---|-----------|---------|--------|
| Jackie Robinson, Chairperson | 3/28/2024 | x | |
| Terry Duffy | 3/28/2024 | x | |
| Paul Brown | 3/28/2024 | | x |
| Scott Szarejko | 3/28/2024 | | x |
| Steve Zappy | 3/28/2024 | x | |
| Michael Dowd, Attorney | 3/28/2024 | | x |
| Peter Jeffery, Code Enforcement Officer | 3/28/2024 | x | |

Chairperson Jackie Robinson called the meeting to order with the Pledge of Allegiance at 7:00 p.m.

Chairperson Robinson asked for a motion to approve the January 25, 2024 minutes. With no further changes, a motion was made by Member Duffy and seconded by Member Zappy to accept the minutes. All in favor. Motion carried.

*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, **March 28, 2024 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):*

Application of Laurence and Christina Elia, 433 Lake Road, Youngstown, NY 14174. Tax Map No. 45.06-1-2 and 45.06-1-1. To renew their Special Use Permit No. 354-2019 for banquet/event use. Property is located in a WR Waterfront Residential Zoning District on the North side of Lake Road between Fort Niagara State Park and Fort Niagara Beach in said Town.

Mr. Elia was present.

Chairperson Robinson asked Mr. Elia if he wanted any changes. He requested that the new permit be for a period of ten years. Member Zappy asked Mr. Elia if anything changed. Mr. Elia stated that he probably would do smaller events.

Member Zappy made a motion to close the public hearing and was seconded by Member Duffy. All in Favor. Motion Carried.

Chairperson asked CEO Jeffery if he had any complaints. He stated the fireworks had issues. He stated that the fireworks were a private event and issued a permit. He had no complaints. Mr. Elia stated that he walked around the neighborhood and notified the neighbors about the fireworks, and he talked to everybody.

Member Duffy made a motion to renew the permit for Mr. Elia for a period of ten years and all the rest remains the same and was seconded by Member Zappy. Roll Call Vote. Member Duffy-yes; Member Zappy-yes and Chairperson Robinson-yes. Motion Carried.

Chairperson Robinson stated the next item was Phil Anello, 3636 Creek Road for a special use permit for an accessory apartment and a variance for side yard setback. This was tabled from the January meeting.

Chairperson asked if anyone from the audience wished to speak. None. Member Zappy made a motion to close the public part of the hearing and was seconded by Member Duffy. All in Favor. Motion Carried to close the public part of the hearing.

Mr. Anello explained the location of the structure between the property line and the fence. The structure is up to the fence. There is concrete around the pool. There is only so much room available on the side of the fence. Chairperson Robinson asked how many feet from the edge of the pool to the side of the building. CEO Jeffery stated about 20' to 24'. He pointed it out on the screen. Chairperson asked, "Where does the concrete go?" CEO Jeffery showed the survey and showed where the concrete was from the property line.

Chairperson asked Mr. Anello if you are going to take the fence down or could you move it over. Mr. Anello stated possibly 16" over. Chairperson Robinson asked what are you building the garage for. Mr. Anello stated the accessory apartment is for his father. His dad is 73 years old. The garage is for storage and the

apartment is for my dad. This is the best option for my dad. Chairperson Robinson stated you really aren't sure what you are really going to do. A question was raised about the septic system. Mr. Anello stated depending on the outcome. Chairperson Robinson asked Mr. Anello are you are asking for a five foot side yard setback from 15 feet. If the variance is substantial, we have to justify granting it. Member Zappy asked Mr. Anello if he could make it narrower. There was a discussion with the Board on the square footage and the substantial variance.

Chairman Robinson read the following variance requirements.

(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 making such determination the board shall also consider:

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

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

(3) Whether the requested area variance is substantial; **33% is substantial – 5' out of 15'.**

(4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; **CEO Jeffery explained the tax map and a discussion on the swale 6' to 8' from the South of the property line,** and

(5) 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. **Your difficulty is self-created. It doesn't mean that we couldn't approve it in case someone else wants a 30% variance.**

CEO Jeffery stated he needs to explore the swale and drainage easement. He spoke to the Town Attorney, and he thinks there was one and it is on the neighboring property. When there is a drainage, nothing can be built. If there is a drainage easement, there will not be another lot to the South.

Chairperson Robinson asked if there was anything to add. CEO Jeffery commented if 5 feet is too much let's make a setback to 12' with a 3' variance. He asked Mr. Anello if he would be able to do that. CEO Jeffery going from a

building of 30' x 70' to 28' x 70'. You would be able to get a 12 foot side yard setback.

Chairperson stated if a 33% variance was granted, we could have to have a good reason. A 20% is more reasonable. Mr. Anello asked if it was further in the back yard, could it be done. CEO Jeffery explained an accessory apartment dwelling unit within an existing building as opposed to when it becomes detached. Member Zappy stated it is quite substantial to the size of the house. Mr. Anello wants it big. His existing garage will turn into a recreation room for his children.

Chairperson Robinson asked Mr. Anello if he has any plans to run a business from that building. From our standpoint, we have parameters to follow that work out for you and us. CEO Jeffery showed the map again on where everything is located.

CEO Jeffery asked Mr. Anello if he would live with a 28' building. Mr. Anello – if you are okay with it, then I am okay with it.

Member Zappy made a motion for a variance of three feet for a 12 foot side yard setback and was seconded by Member Duffy. Roll Call Vote. Member Duffy-yes; Member Zappy-yes and Chairperson Robinson-yes. All in Favor. Motion Carried.

A motion was made to approve the variance by Member Duffy and seconded by Member Brown. All in favor, motion carried.

Chairperson Robinson stated we are going to address the accessory apartment. CEO Jeffery explained a dwelling unit for a family member that is attached to the garage. The entire second floor will be an apartment. Mr. Anello stated the existing garage will be a recreational room. The garage will hold his equipment, and the apartment will be for his dad. CEO Jeffery asked if there was anything else we should know. Mr. Anello replied nothing that I am aware of. Square footage was discussed by CEO Jeffery

Chairperson Robinson asked how big was the lot – 1.7 acres. Chairperson Robinson reviewed the Special Use Permit regulations they will be considering. Member Zappy asked Mr. Anello what is the square footage of the primary house – 3,000 square feet. CEO Jeffery stated from his recollection it was very close. He also told Mr. Anello he would have to come in for a home occupation. Member Zappy asked how tall is the proposed building. Mr. Anello stated 17 foot walls for the first floor. CEO Jeffery stated there is a maximum height of 35 feet. You couldn't go higher than the maximum height.

Member Duffy asked how long of a timeframe. Chairperson Robinson stated special use permits have to be renewed. Chairperson Robinson suggested ten years. Mr. Anello asked do you have to do a renewal for a longer time. Chairperson Robinson stated if you want to you can request it after the ten years. Member Duffy asked if it could be open ended. Member Zappy suggested we put a timeframe on it. CEO Jeffery stated if there are no significant complaints or concerns, normally they don't deny a renewal. If your Dad wasn't there, you can't rent it. Member Zappy raised the question if Mr. Anello was on septic system. CEO Jeffery was going to explore it.

Chairperson Robinson stated we could grant the permit with a time line or put it off until the next meeting but I need your (Mr. Anello's) permission. Mr. Anello is okay with the ten years.

Member Duffy made a motion to approve the special use permit for a period of ten years and was seconded by Member Zappy. Roll Call vote. Member Duffy-yes; Member Zappy-yes; Chairperson Robinson-yes. All in Favor. Motion Carried.

Chairperson Robinson thanked Mr. Anello for his patience.

CEO Jeffery had nothing to report.

A motion was made to adjourn the meeting at 8:10 pm by Member Duffy and seconded by Member Zappy. All in favor, motion carried.

The next meeting of the Zoning Board of Appeals is scheduled for Thursday, April 25, 2024.

Respectfully submitted,

Nancy Smithson
Secretary, Zoning Board of Appeals