

# 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 November 30, 2017 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairperson Irene Myers; Member Terry Duffy; Member Bryan Meigs; Member Jackie Robinson; Member Marshall Hibbard; Attorney, Michael Dowd; Building Inspector/Code Enforcer, Peter Jeffery; Assessor, Susan Driscoll.

Irene Meyers called the meeting to order at 7:00 pm with the pledge of allegiance.

A motion was made to approve the minutes of the October 26, 2017 by Terry Duffy and seconded by Marshall Hibbard. All in Favor. Motion Carried.

Chairperson Irene Myers 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 **November 30, 2017** at 7:00 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

**APPLICATION OF CATHERINE L. ROTELLA, 201-24<sup>TH</sup> Street, Niagara Falls, NY.** Under Article II, Section 200-10 and Article VIII, Section 200-108, a Use Variance is requested to live in existing home due to land movement from lake erosion at Tax Map #32.18-1-9 at 967 Woodcliff Drive, Youngstown, NY. The property is located on the North side of Woodcliff Drive in a WR Zoning District in said Town.

It was noted that both Mr. & Mrs. Rotella were present.

**Peter Jeffery stated that the Rotella's have an existing home. The house had some foundation issues. They have decided to build a**

**new home and live in the existing home until the new home is completed. There could be some stipulations outlined as far as timing that can be established by the Board.**

**Attorney Dowd said that several years ago a person did not want to tear down the existing home. We used to have a code provision. Peter Jeffery described where the new house will be built, and I have the plans that have been submitted. Chairperson Myers asked the Rotella's if they are living in the house now. They stated it is not habitable. Mr. Rotella stated the house is sinking. Peter Jeffery stated that he has correspondence from the architect, and I have all the documents for the building permit. Chairperson Myers stated a variance is to allow them to occupy the home (two houses on one lot) while the new one is being built. This is a very unusual circumstance. Peter Jeffery stated all the zoning requirements will be met. Chairperson Myers asked the Rotella's when do they anticipate when they are going to build. Mr. Rotella replied as soon as possible. Bryan Meigs asked if there is a time limit as to when they have to tear the old house down. Chairperson Myers asked Attorney Dowd what are your recommendations. How much time would you want them to get the house torn down? Mr. Rotella stated it will probably be February or March before they can dig. If he violates the timeframe, he would come and talk to us. Attorney Dowd stated you can give him 90 days. Chairperson Myers stated the new home will be completed with a building permit in one year. Certificate of occupancy should be within the allotted time and 60 days to take it down. Peter Jeffery asked the Board if he could give an extension with a reasonable timeframe or they would have to come back to the Board for further approval.**

**Chairperson Myers asked what was the Board's pleasure. Terry Duffy made a motion to approve the application of Catherine Rotella with the following stipulation that when the building permit is issued with a certificate of occupancy and the old house has to be torn down within 60 days and seconded by Marshall Hibbard. Chairperson Myers asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes; Marshall Hibbard-yes and Chairperson Myers-yes. All in favor. Motion Carried.**

**Chairperson Myers read the following:**

**APPLICATION OF DEREK M. SMITH, 3534 Porter Center Road, Ransomville, NY. Tax Map No. 61.00-1-34-2.** Under Article II, Section 200-8 and Article VIII, Section 200-108 an Area Variance is required for a 15' x 25' addition. Property is located in a RA Zoning District on the East Side of Porter Center Road between Youngstown-Lockport Road and Balmer Road in said Town.

It was noted that Derek Smith was present. Peter Jeffery approached the Board and showed the Board where the addition was located.

Jim Nashwinter approached the Board and stated that he was representing his sister. He is concerned about the run off and the variance for the addition. Peter Jeffery addressed the questions and explained the needed to get the variance and it will be reviewed. Jim Nashwinter asked what is the code now? Peter Jeffery stated 15 feet off the property line and he is requesting 10 feet off the property line. Jim Nashwinter stated that they should keep it at code.

The Board asked Mr. Nashwinter if he had a letter from his sister stating that he would be representing her. I am the property directly to the North of Mr. Smith. Mr. Nashwinter stated his sister and her husband own the property and asked me to keep it at code. There has been some drainage issues in the past. I don't want to take any chances. We don't want any more erosion. Peter Jeffery stated it will be addressed in the addition. Jim Nashwinter stated again keep it at code. I would say "no".

Chairperson Myers asked if anyone from the audience wished to speak and closed the public part of the hearing. Chairperson Myers asked Derek Smith about a different location. Peter Jeffery read the Planning Board minutes from the November 2<sup>nd</sup> meeting. *"At the meeting of the Planning Board on November 2, 2017, the following motion was made by Robert Tower and seconded by G. Edward "Jipp" Ortiz that the Planning Board recommend to the Zoning Board the application for Area Variance for applicant Derek Smith at 3534 Porter Center Road, Ransomville, NY."*

Chairperson Myers read the following from the Zoning Manual.

**(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 the 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;**

**(4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or distract; 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.**

**There was a discussion with the Board members and Peter Jeffery. Attorney Dowd stated the issues are drainage to satisfy the Board and Building Inspector and size.**

**Bryan Meigs commented with the run off. Jim Nashwinter stated the code is 15 feet, and he will be ten feet off the lot line. Bryan Meigs asked Mr. Nashwinter what problems do you have now. Mr. Nashwinter replied personal mostly and drainage. Peter Jeffery stated the drainage will be reviewed by the Town Engineer. It will be part of the building process. Attorney Dowd stated there is quite a bit of room between the two homes. Peter Jeffery stated the Board could wait until we have feedback about the drainage to make sure we do our due process, if the applicant consents to tabling for 60 days for the engineer to look at the plan. Derek Smith is okay with tabling for 60 days waiting for engineering input.**

**Terry Duffy made a motion to table the application of Derek Smith pending engineering input on the drainage and the size of the variance and was seconded by Bryan Meigs. Roll Call Vote. Terry**

**Duffy-yes; Byran Meigs-yes; Jackie Robinson-yes; Marshall Hibbard-yes and Chairperson Myers-yes. All in Favor to table until January 26, 2018.**

**Chairperson Irene Myers stated that we had a letter from Derek Smith asking to table his application and keep the public hearing portion open until the January meeting or as needed because he missed the Planning Board meeting.**

**The Zoning Board broke into Executive Session at 7:42. Jackie Robinson made a motion that the Board came out of Executive Session at 7:49 and was seconded by Bryan Meigs.**

**Attorney Dowd stated that we are considering the Appeal that was filed by the Lynch's from a decision that was made on October 1. It was a result of an appeal from the Lynch's challenging the Code Enforcement Officer that temporary and short terms rentals were a permitted use in the Town. The Town does acknowledge that your request for an appeal was received within 60 days of the date of the decision you are appealing from was filed as provided for in Section 200-98(J)(8) of the zoning code. For your information the Board will be considering whether you are an aggrieved party pursuant to Section 200-98(J). Attorney Dowd discussed aggrieved party.**

**The Lynch's asked for a few minutes to read the following: *"Your decision handed down in September misrepresents our appeal. Our appeal deals solely with the request that you apply the definitions in Porter Zoning law and declare the buildings in question to be "motel", operating as a commercial entity and not as a single family residences.***

***This misrepresentation of our appeal asserts that our contention is with the short term rentals of single family homes. It is not. The bulk of the arguments justifying your decision are, therefore, based on this misrepresentation and are irrelevant.***

***You have not addressed our appeal. Mark Lynch dated 11/30/2017"***

**Attorney Dowd stated I disagree. Chairperson Myers stated that when we heard your appeal in September we sought legal counsel.**

**We made a decision. We are going to stand behind with the CEO's original statement. If you did not like the decision that was made, you can pursue another step or process. A decision was made and agreed upon by the Board and unanimously decided. We cannot hear that appeal again. Attorney Dowd stated the resolution states the use of homes and short terms rentals are okay. The Board upheld the CEO decision. It is spelled out in the resolution.**

**Patricia Lynch stated that she analyzed paragraph by paragraph. We have a right to appeal as taxpayers. You did not address our appeal. We are the aggrieved party in the law.**

**Chairperson Myers stated that the two of you are the initiators of the appeal. How can you be the aggrieved party and file an appeal? Patricia Lynch brought up about they are not single family residences. There was a discussion between the Lynch's and the Board on single family residences and their use of the buildings.**

**Attorney Dowd read from the Resolution**

*"Single family homes are a specifically permitted use in Waterfront Residential district subject to obtaining Town building permits, Niagara County Department of Health approval for those homes serviced by on-site sanitary septic systems and the issuance of certificates of occupancy. Nothing in the Town Law restricts, regulates or prohibits the rental of single family homes for any stated or specific periods of time or otherwise prohibits the use and enjoyment of property in an otherwise lawful manner. No permit or approval is required for the rental of a single family home unless it is being operated as a "Bed and Breakfast Establishment" or "Boarding/Rooming House" as defined by the Town of Porter Zoning Law. A single family home is not a "Hotel" or "Motel" as defined by the code."*

Patricia Lynch stated it was a question we did not ask. She stated they are not single family homes.

Chairperson Myers stated we are not going to entertain the Appeal. If you would like you can pursue in another fashion. You are not the aggrieved party. You are the originator on the original appeal.

Jackie Robinson made a motion not the act on the appeal of Mark and Patricia Lynch and was seconded by Terry Duffy. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes; Marshall Hibbard-yes and Chairperson Irene Myers-yes. Motion Carried.

Chairperson stated the next item on the agenda was William Suitor, 3333 East Avenue which was tabled from the October meeting.

Peter Jeffery stated the application as tabled to review the drainage. We have gone through a lengthy process from the engineers.

Attorney Dowd stated he is concerned about the drainage for any of the homes being built and developed. The sub-division was approved. There was a discussion about the swales not being put in in 1993 – never addressed. Attorney Dowd stated he is going back into those records and going back to the developer. It was contemplated that swales be done before anything else be done. There are houses that are started on East Avenue for approved drainage plan with swales for water to flow from Suitor. There are no existing swales there now. Someone was supposed to cut swales. Attorney Dowd explained the swales and what happened and why it did not happen. Peter Jeffery discussed drainage plans taking water to the north. Mr. Suitor stated that everything is approved except the ditch in the back. I would like to get the barn up before the ground freezes. Peter Jeffery stated you have to figure out the proper grade. Peter Jeffery stated whether you get the approval for the barn does not affect the swales. Marshall Hibbard stated that is an impact to the neighbors. Mrs. Suitor stated if they don't get the barn we will have to sell the house. We are in a real mess right now. Jackie Robinson asked if the barn could be made smaller. Attorney Dowd stated I want to see who is ultimately responsible for the swales. Peter Jeffery thought that Phillips was the original developer. Attorney Dowd stated we want to check out the problem – legally.

Chairperson Myers asked if he approached you for a building permit for the barn, would you be able to grant the permit. Attorney Dowd stated considering upon the swales being completed. He stated we need to figure out how the swales will be put in. Suzie Korman stated she is waiting to put in her septic and Mr. Suitor stated he is waiting for septic and drainage. Attorney Dowd again stated we have to resolve this problem – swales.

Jackie Robinson stated we are looking at a 50% variance. Mr. Suitor stated he was given wrong information from the original CEO – Roy Rogers. There was a discussion on the pole barn and house plans. Bryan Meigs stated that things have happened in the past that we didn't have control over. People are trying to build new homes. I make a motion to approve the application of William Suitor with the condition of the drainage (swales) issue be resolved by the January meeting.

Jackie Robinson stated she did not like the size of the variance. Chairperson Myers asked if all the owners know about the swales? Peter Jeffery stated people have been notified. I haven't talked to Scott Szareko and Mark Webster.

Terry Duffy asked how long do you need to make a decision. Chairperson Myers stated we have a motion that has not been seconded to table until a special meeting next month. There was a discussion on the GHD letter dated November 22, 2017.

The Zoning Board broke into Executive Session at 8:35 pm and returned at 8:44 pm to resume the meeting.

Jackie Robinson read the following:

**(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 the 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; *Not substantial -- huge***



**(4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or distract; 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. *Self-created.***

**Jackie Robinson made a motion to Deny the variance of William Suitor due to size and it was self-created and impact of drainage and was seconded by Marshall Hibbard. Roll Call Vote. Terry Duffy-yes; Bryan Meigs-no; Jackie Robinson-yes; Marshall Hibbard-yes; Chairperson Irene Myers-yes. Motion Carried to Deny the application of William Suitor.**

**Mr. Suitor stated that Roy Rogers said it could be eight feet off the property line. Peter Jeffery asked the Board if the Suitors chose to revisit the building size, what would be reasonable. I am trying to help them out. Chairperson Myers stated I am sure we would be welcome to entertain it. Peter Jeffery stated that they have to make some decisions – open to a small set back. Mrs. Suitor stated is there anything you can do to help us. We need space for these cars. Chairperson Myers stated we are totally getting away from our Zoning laws. We have to follow the criteria for the variance. There was a discussion with the Suitors and the Board about the size of the barn. Marshall Hibbard made a motion to change the variance to 20 feet off the back and 15 feet on the side for a five foot variance contingent upon the drainage swale issue be resolved and was seconded by Jackie Robinson. Roll Call vote. Terry Duffy-yes; Bryan Meigs-yes; Jackie Robinson-yes; Marshall Hibbard-yes and Chairperson Myers-yes. All in Favor to approve the variance of William Suitor.**

Wally Nowacki approached the Board regarding a variance and presented documentation to the Board.

Chairperson Myers stated that tonight we have to recommend to the Town Board an appointment of a Chairperson. Per the Zoning law the person has to be on the Board more than five consecutive years. Jackie Robinson has been on the Board since 2011 and Terry Duffy has been on the Board since 2014.

Chairperson Myers made a motion to recommend to the Town Board to appoint Jackie Robinson as chairperson of the Zoning board of appeals and was seconded by Bryan Meigs. All in Favor. Motion Carried.

Meeting was adjourned at 9:20 PM by and seconded Terry Duffy and seconded by Bryan Meigs. The next meeting is scheduled for Thursday, January 25, 2018.

Sincerely,

Nancy Smithson  
Secretary, Zoning Board of Appeals