

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 25, 2016 at 7:00 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairman Duffy Johnston, Member Bryan Meigs, Member Terry Duffy, Member Irene Myers, Member Jackie Robinson, Assessor Susan Driscoll, Building Inspector, Roy Rogers, and Attorney Michael Dowd.

Chairman Johnston called the meeting to order at 7:00 pm.

Chairman Johnston asked if there were any additions or deletions to the July 28, 2016 minutes. None. Chairman Johnston asked for a motion to accept the minutes. Jackie Robinson made a motion and was seconded by Terry Duffy to approve. All in Favor. Motion Carried.

Chairman Johnston read the following application.

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 25, 2016 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):

APPLICATION OF MARK AND ROSEMARY LAHEY, 3895 River Road, Youngstown, NY 14174. Under Article II, Section 10, and Article VIII, Section 107, a Special Permit is required for a dock. Property is located at Tax Map #73-06-1-1 on the East side of River Road in a WR Zoning District between Collingwood Estates and Youngstown Estates in said Town.

Chairman Johnston stated that the property is located South of Collingwood Estates.

Mr. Lahey was present. Mr. Lahey stated that everything is presently in order. The Army Corp of Engineers has accepted; it is a floating dock; everything will come out by October 15. Variance is for two small insets in the river bank for cables. I have a contract with a boat works and everything will be put back in the spring. Chairman Johnston asked if anyone from the audience wished to speak. None. Jackie Robinson made a motion and was seconded by Irene Myers. All in Favor. Motion Carried.

Chairman Johnston stated that everything looks in order. No opposition. Chairman Johnston read the following Planning Board recommendations:

“A motion was made by Anthony Collard and seconded by John Bis for the application of Mark & Rosemary Lahey at 3895 River Road, Youngstown. The recommendation is subject to the following conditions: Site Plan approved. Planning Board recommends that the permit be approved with the condition: No parking on the West Side of River Road.”

Irene Myers made a motion to approve the Special Permit for Mark & Rosemary Lahey, 3895 River Road with the site plan that has been approved by the Army Corp of Engineers with the condition that no parking on the West side of River Road for a period of ten (10) years and was seconded by Bryan Meigs. Chairman Johnston asked for a Roll Call Vote. Bryan Meigs-yes; Terry Duffy-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion Carried.

Chairman Johnston read the following:

APPLICATION OF MICHAEL WELCH, 425 Hawthorne Place, Youngstown, NY 14174. Under Article II, Section 11 and Article VIII, Section 108 F(2) an Area Variance is required for one foot (1') beyond the 25' limit to park boat in the driveway in front of house. Property is located at Tax Map #59-14-2-14 on the North side of Hawthorne Place which runs E. from Dansworth Road to Glengrove Road in said Town.

It was noted that Mr. Welch was present. Chairman Johnston stated that Roy Rogers measured the boat and this is accurate. Mr. Welch stated the boat is 26'. Chairman Johnston verified in the code the size of the boat and the trailer (Section 2) not to exceed 25' in length. Chairman Johnston stated that you are actually asking for a 9' variance. Mr. Welch stated it was not discussed at the Planning Board. There are things in my yard that are larger than that. Mr. David Mills, 430 Hawthorne Place stated we need to keep this in line. It was seven days now it is a full season. I don't think 31' is realistic.

Mr. Welch stated my boat is the issue. I have gone through the proper channels. It is 50' from the street. It is a 9' difference. Everyone is looking at the boat. You have to look at it case by case. Chairman Johnston stated you have valid point. Mr. Welch said that the boat is less than one foot off the ground. The back of the boat goes to the garage. It is 50' from the street. I have talked to the neighbors. No one objects. There are 120 families in Youngstown Estates, and this is the first time that I have had an issue. Roy Rogers stated that a neighbor complained but that he was not here tonight. Mr. Patrick Gray, 406 Hawthorne Place stated that they were all part of this. I have been here 40 years. You were always allowed to keep it in the driveway. Youngstown Estates wanted boats in the driveway and we thought 25' but nothing was ever mentioned about the trailer length. I don't see a problem with Mike's boat. He keeps it up against the garage being it is a 26' boat. We were all part of that. Originally, we didn't want them all year. Back yard, side yard storage rule is a little crazy. I don't see a problem with Mike's boat.

Mr. Welch stated it is not a safety issue. It is well behind the road, and it doesn't block any signs. It is not a safety issue. My neighbors have no issues. I didn't see this as an issue for the last five years.

Irene Myers questioned if all the setback were consistent. Roy Rogers stated the older home are closer – 40' set back and the newer homes are 50' set back. Chairman Johnston stated that there is no grandfather clause and that is how the law came about. The association started that law and our Town made it a law. Attorney Dowd stated there were neighbor complaints; a lot of people; and a lot of input. We addressed everything.

Mr. John Frosolone, 424 Hawthorne Place stated his boat doesn't bother me, and I have lived here for 24 years. The rule came through in 2011. I never got a notice and never invited to the meeting. Attorney Dowd stated if you read the newspaper a lot of work went into this. Mr. Frosolone asked if a flyer went out. Attorney Dowd stated it was in the newspaper – notice. Mr. Welch stated that the Planning Board input recommends the 26' boat. Roy Rogers stated it is 75' from the roadway. Attorney Dowd stated he has more than 20'. If the Board see it as unreasonable. It is your decision.

Chairman Johnston asked if anyone else from the audience wished to speak. None. Irene Myers made a motion to close the public part of the hearing and was seconded by Terry Duffy. All in Favor. Motion Carried.

Chairman Johnston stated that he understands that the boat with the trailer. These laws were made up, and we put time into it. I understand the tongue not in the way. A lot of this is for safety. It is a case by case scenario. I don't think this will happen or set a precedence.

Mr. Welch stated I think these variance issues exist. This is the situation. Clearly, this is not an issue. You look at it case by case or a safety issue. Chairman Johnston stated you have had the boat here for five years, and the person who made the complaint is not here.

Irene Myers commented that it is all relevant. Attorney Dowd stated he had the boat before the variance was changed. Chairman Johnston stated this is the first time that we have had an issue for a boat. It would be for that size boat.

Bryan Meigs made a motion for that boat and that boat only for a seasonal basis for as long as you live there and was seconded by Terry Duffy. Chairman Johnston asked for a Roll Call vote. Bryan Meigs-yes; Terry Duffy-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion Carried.

Chairman Johnston read the following:

APPLICATION OF ALISON DORRIES & SCOTTY JONES, 3735 River Road, Youngstown, NY 14174. Under Article II, Section 11 and Article VIII, Section 108 F(2) an Area Variance is required for side setback of barn for horses. Property is located at Tax Map #59-00-1-18 on the East side of Lower River Road in a MDR Zoning District between Youngstown and Collingwood Estates in said Town.

It was noted that both Alison Dorries and Scotty Jones were both present. Alison Dorries spoke to the Board that they knew about the situation of the barn and talked to Roy Rogers when they bought the property with the 40 x 100' concrete pad. It is a big eyesore in the backyard. The past owners never finished. Alison Dorries stated that she grew up in Lewiston and they bought the property one year ago. We are asking for a small area variance on the barn itself for two horses for personal use. We are investing quite a bit of time for improvements. The change of the pad should make an improvement. The property is long and thin (looked at the map) and it is 207' wide. Drawings were presented to the Board. We have neighbors on all sides. There was a discussion about where the barn will be put and what is going to be done. Scotty Jones used a pointer on the overhead map and explained the size of the property and the neighbors. The barn will support two horses for private use.

Chairman Johnston asked how many acres – 12 acres in total. Scotty Jones referred to page 6 "Regulatory Review and Compliance Plan Discussion and read this page (attached). Scott Jones that we are talking about putting a barn up (30' x 40' barn). We need a little room on the left and right. 10' variance on the North and 25' variance on the South. I need a little on the North and South (8.8% variance) is a small variance. The barn is way in the back. We have talked with all our neighbors—two families are okay and Gerri Anne Serchia is opposed. Scotty Jones went through pages 7 through 13 (attached) and clarified each requirement. They are going to capture the manure and put in a trailer and haul it off. We are not going to spread it. We are going to keep the grounds picked up. He talked about the fence and the safety for the horses. We are looking at two horses. On page 10 he described why they are justified; on page 11 there is no detriment in the health of keeping the

horses. Horses and cows are currently stabled along Lower River Road and Pletcher Road and 100' set back is intended for the maximum allowed loading horses on the property.

Mr. Jones stated that they did go the Planning Board and we are agreeable to all of their suggestions. Keeping the horses behind the barn – the problem with that is bad for the property/land/horses, that is the only thing we would not like to agree to.

Gerri Anne Serchia, 3739 River Road stated that she lives next door. I am concerned about the smell, potential impact to the value of my property. A 35% variance is closer than 17%. The eyesore is a result of lack of enforcement. Should the horses be allowed, I am concerned about the enforcement. There will be mosquitoes and flies. In an article from Thorpe, hay and manure will compost. There is a potential fire hazard. I would recommend that the barn be put on the opposite end. This is primarily a residential area. It will change the character of the neighborhood. Regulations should preserve the neighborhood.

Chairman Johnston stated they can have horses there. Gerri Anne Serchia asked that the variance would not transfer should they sell the property and will be negated. Chairman Johnston stated that the permit will not go with it. Gerri Anne Serchia asked, "If the barn be put on the other side and could a special use permit be issued?"

Chairman Johnston stated it is something new for this area that you are in. Do you check on the removal of the manure? Roy Rogers stated we only had one other situation. Chairman Johnston asked Roy Rogers if he periodically investigates. He responded if there is a complaint, I would go and investigate. Attorney Dowd stated on the conditions of the variance only two horses, removal of the manure. If he violates it, the variance would be revoked. Irene Myers stated two horses – in reality he can have eight horses. We are only allowing two horses. There is a little bit of reign on this. It will be closer to the lot line on the other side of the pad. Scott Jones stated that completely to the North I would be 21' from the lot line. I would need a 79" variance. Irene Myers stated you would need a greater variance. Irene Myers stated I would have an objection with a 79% variance.

Scotty Jones stated that Gerri Anne and Frank are the best neighbors. This has strained our relationship. This is not a neighbor war. I would be willing to slide the barn back and forth on the concrete pad within reason using existing the walls; reasonable location on the South side. Gerri Anne Serchia stated that the walls are concrete blocks. Chairman Johnston stated that the footers are on the outside. Scott Jones stated that the concrete pad is well engineered. Jackie Robinson questioned the 324' on the property to the West. Scotty Jones stated it is wooded, mowed lawn with walnut trees and behind the area is a strip of jungle and the easement. Gerri Anne Serchia would like a commitment from the Town that there would be enforcement. We found this lacking in the past – the eyesore exists for seven years.

Chairman Johnston stated that Scotty and Alison Jones are trying to comply. We understand your concern. Gerri Anne Serchia stated I am here doing the right thing that will add value to mine and my neighbor's property.

Irene Myers made a motion and was seconded by Terry Duffy to close the public part of the hearing. Chairman Johnston asked for Roll Call vote. Bryan Meigs-yes; Terry Duffy-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor to close the public part of the hearing.

Chairman Johnston asked the Board if they understood the variance as set forth.

Irene Myers stated that she would like to approve the variance for Alison and Scotty Jones for 10' to the North and 25' to the South with offsite removal of manure as stated in Scotty Jones submission to the board with a limit of two horses and the variance/permit stays with Dorries/Jones and is non-transferable if property is sold and was seconded by Bryan Meigs. Chairman Johnston asked for a Roll Call Vote. Bryan Meigs-yes; Terry Duffy-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion carried.

Chairman Johnston commented that he knows Scotty Jones and Alison Dorries, and they keep a very clean place. If the manure is not removed in a timely fashion, Roy Rogers will have to come out and do the right thing. Good luck.

Chairman Johnston read the following:

APPLICATION OF MATTHEW VALINT, 3962 Calkins Road, Youngstown, NY 14174. Under Article II, Section 9 and Article VIII, Section 108 F(2) an Area Variance is required for keeping of fowl less than 50' from property line. Property is located at Tax Map #59-00-2-68 on the Northwest side of Calkins Road in a LDR Zoning District from Creek Road S.W. then to S. to Pletcher Road in said Town.

It was noted that Matthew Valint was present.

Chairman Johnston stated it is very close to the lot line. Irene Myers asked what kind of fowl. Mr. Valint replied "chickens – eight". Irene Myers asked is that all you want is eight? Yes, replied Mr. Valint.

Mr. Valint stated that he went to Roy Rogers for a permit for a chicken coup. It will be in the front. Mr. Erick Cramer, 3954 Calkins Road stated he is happy with the chicken coup. My garage is in between. Mr. Valint stated he won't have a rooster. He replied that the coup is 10' x 12' and it is not stationary.

Chairman Johnston asked if anyone else from the audience wished to speak. None. Jackie Robinson made a motion and was seconded by Irene Myers to close the public part of the hearing. All in Favor. Motion Carried.

Chairman Johnston stated that he doesn't have a problem with it and Roy Rogers is not opposed to it. It is up to the Board.

Irene Myers asked if we can put the number of chickens in the permit.

Irene Myers made motion to grant a variance to Matthew Valint for 25' from the property line with no more than 10 chickens and was seconded by Jackie Robinson. Chairman Johnston asked for a Roll

Call Vote. Bryan Meigs-yes; Terry Duffy-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in favor.
Motion Carried.

Chairman Johnston stated that we are moving back to the last month on:

APPLICATION OF BAILEY-BAKER TRUST, 2432 Parker Road, Ransomville, NY 14131

Under Article II, Section 15 and Article VIII, Section 108 F(1), a Use Variance is required to run a non-retail operation to complete daily operations of agricultural farming, landscaping and lawn maintenance storage of bulk material and equipment. Property is located at Tax Map #62-00-1-31 on the West side of Parker Road in a RA Zoned District one mile S of Rte. 93 in the Hamlet of Ransomville.

It was noted that Shawn Bailey was present. Mr. Bailey stated thank you for what you are doing. I apologize to the neighbors because we have gone this far. It has gone on for more than a couple of years. I didn't think it was this big an issue. I am moving the operation of to a piece of property. We still are looking for approval of land, etc. I am not sure where to go from there.

Chairman Johnston we are in a pretty hard place. There still is a lot of action – mulch getting dropped off and moved. Shawn Bailey stated we are moving over to Balmer Road. We are pushing the stuff back and storing equipment. Chairman Johnston stated I talked to your Dad on the 15th – you had to say something. I got a message today. Shawn Bailey stated he left a message to Chairman Johnston and he never got it.

Shawn Bailey asked about the Planning Board. I never wanted to be a nuisance. I still have to go up and down the road. Irene Myers stated you are still serving clients. It is a residential area. Your business has flourished, and it can't continue there. It is not an ambush to you. It is not an appropriate place to be. Now you have to move. There has been juggling. The past 2 years you have grown. Attorney Dowd asked "Are you suggestion you are moving and you need time to move?" Shawn Bailey stated I am trying to comply as best as I can. Irene Myers stated, "It is everything and it

doesn't comply with the area." It is a commercial business in a residential area. There was a question raised by Shawn Bailey if he was zoned residential/agricultural or MDR.

Attorney Dowd stated 2432 the property they drive through is MDR and goes back to RA. Chairman Johnston stated the access is MDR and the actual farm is RA on the other side of the creek – that is what is causing the problem. Shawn Bailey asked, "If I was off Parker Road and I had a different access what could I do to stay there?" Attorney Dowd stated if he built a road off of Balmer Road. There was a discussion on the correct zoning. Chairman Johnston asked Shawn Bailey if he was moving product. Shawn Bailey stated it is going to Balmer Road right now. It is my father's property. I started to apply for loans but it is not in my name and I would have to purchase it. An uncollectible loan doesn't look good. Chairman Johnston stated this has been going on since April. If he didn't access from Parker Road would it appease people? Attorney Dowd stated whether or not you can do it? Shawn Bailey asked what part of the operations can or cannot be done. Chairman Johnston stated it is a MDR and got to RA. Shawn Bailey stated the financial is tough to swallow. Chairman Johnston stated we have to make a move on this tonight. As far as today, we have to vote on this. Irene Myers stated we have to act on this tonight. Mr. Johannes, 2494 Parker Road questioned a different access and if it would put dirt on Jose's place. Chairman Johnston stated if it is permitted, he can to it. Jackie Robinson asked if we voted on this, then could it go back to the Planning Board. Shawn Bailey asked the question to the Johannes, "What do you guys want from me?" They replied, "We don't want the business on our road." It is a business. Shawn Bailey asked the Johannes if they were upset with him before his aunt came to them? Mrs. Johannes stated clearly you are making a good income. You should not be there. It is not permitted. Chairman Johnston stated that the public part of the hearing was closed. We are going to have to make a decision and will be able to make more direction after that. We have to act on this tonight, Shawn.

Terry Duffy made a motion on the application of Bailey/Baker Trust use variance be denied and that the applicant be directed to approach the Planning Board for his business and was seconded by Bryan Meigs. Chairman Johnston asked for a Roll Call Vote. Bryan

Meigs-yes; Terry Duffy-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion carried to DENY the application.

Chairman Johnston stated I am sorry. There is too much use and it affects the neighbors and property value. Attorney Dowd stated he has exhausted everything now Roy Rogers can pursue enforcement. It will take a few months. The applicant can file an Article 78 but it is expensive. He suggested that the applicant get an attorney and have him get in touch with Attorney Dowd. There may be a way for you do do what you want to do. You have to spend money to make money. We will have a chance to work with you. Shawn Bailey stated I want to work with you. I want to know what I am allowed or not allowed. Roy Rogers stated we will have to work with what is reasonable. Shawn Bailey stated his parents live behind there and that he has family members.

Irene Myers stated work with Roy Rogers and get direction. Your business has to be moved. You and Roy Rogers can come up with a plan. Running thorough a residential area has to be stopped. The Board suggested to Shawn Bailey to set up a meeting with Roy Rogers and attorney Dowd.

A Motion was made by Terry Duffy and seconded by Irene Myers to adjourn the meeting. The meeting was adjourned at 8:35 p.m. The next regular meeting will be held on **Thursday, September 22, 2016.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals