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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 on July 28, 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 (arrived at 7:30), Member Irene Myers, Member Jackie Robinson, 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 June 23, 2016 minutes. None. Chairman Johnston asked for a motion to accept the minutes. Jackie Robinson made a motion and was seconded by Bryan Meigs to approve. All in Favor. Motion Carried.

Chairman Johnston stated that Terry Duffy was stuck in traffic on Grand Island.

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 **July 28, 2016 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):

APPLICATION OF PAUL DOLAN, 3705 River Road, Youngstown, NY 14174. Under Article II, Section 11 and Article VIII, Section 108 F(2) an Area Variance is required to erect a pole barn (2,880 sf) within three feet (on one corner) of North boundary. Property is located at Tax Map #59-14-1-18 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 Paul Dolan was present.

Chairman Johnston stated that the first item we will work on is the size of the pole barn. It is larger than the house. The house is 2124 sq. ft. and the pole barn is 2,880 sf a difference of 756 sq. ft. Roy Rogers stated that the pole barns are getting larger, and there are smaller houses. The second item is there is plenty of land. Why so close to the boundary line of 3 feet? Paul Dolan approached the Board. He would like to put the pole barn in line with the house. I could work with the ten feet. Irene Myers asked if Mr. Dolan was going to have a road to the barn. Mr. Dolan stated that he has an airstream that he would like to back it in. Irene Myers questioned "straight back from the lot line?" Chairman Johnston questioned Mr. Dolan, "Is your main concern for backing in the trailer?" Mr. Dolan said he would like it behind the house. Irene Myers stated for visual. You wouldn't have a problem if you just wanted the variance for the accessory structure. Chairman Johnston stated you have plenty of room.

Chairman Johnston read the following Planning Board recommendations from July 7, 2016.

"Motion made by Mark Fox and seconded by John Bix to recommend to the Zoning Board for the application of Paul Dolan, 3705 River Road to approve the variance for accessory structure in excess of primary structure size. Deny variance for side yard setback of 3 feet (maintain side yard setback of 10 feet minimum)." Irene Myers commented that in all reality, an emergency vehicle needs to have access. I don't have a problem with have a 10 foot minimum, if it is okay with you. Chairman Johnston stated if you set a precedent, the neighbor could build within 3 feet of the lot line and then you would only have six feet for emergency vehicles. Paul Dolan spoke to the

Board about the three feet from the property line and other applications that were approved. Attorney Dowd commented that each application is different. Irene Myers stated then you are not hard pressed for the three foot variance. Chairman Johnston commented that the biggest thing is the size of the pole barn.

Mr. Paul Anthony stated he would argue about the size and being so close to the lot line. I would object. It is a small Village. It is a large building, and I bought my property from Mr. Dolan. Mr. Anthony took a look at the map presented by Mr. Dolan. Irene Myers stated that she agrees with the Planning Board recommendations.

Chairman Johnston said he would entertain a motion to close the public part of the hearing. Brien Meigs made a motion and was seconded by Irene Myers to close the public part of the hearing. All in Favor. Motion Carried.

Irene Myers made a motion to approve the variance for the pole barn but to **deny** the side set back of three (3') feet and was seconded by Jackie Robinson. Chairman Johnston asked for a Roll Call Vote. Brian Meigs-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor Motion Carried.

Chairman Johnston read the following:

APPLICATION OF JOSH STACK, 786 Blairville Road, Youngstown, NY.

Under Article II, Section 13, Article IV and Article VIII, Section 107, to renew his Special Permit to operate a machine repair shop. Property is located at Tax Map #59-00-2-51 on the Southwest side of Blairville Road in a RC Zoning District between East Avenue and Creek Road in said Town.

It was noted that Mr. Stack was present. It was noted that Mr. Stack's previous permit was for five years. Irene Myers asked Mr. Rogers if there were any complaints. We haven't had any complaints recently.

Chairman Johnston read the following Planning Board recommendations dated July 7, 2016.

“A motion was made by J. Anthony Collard and seconded by Mark Fox to recommend to the Zoning Board for the application of Joshua Stack at 786 Blairville Road, Youngstown to approve the Special Use Permit for five (5) years with the following changes from the original permit: #2: Saturday hours of 8:30 am to 5:00 pm; #4: Servicing of twenty five (25) boards; #5: Storage of eighty (80) boats; New Term: Allow sale of up to 5 boats in front of property.”

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

Chairman Johnston stated we have a change in the hours from the Planning Board and Irene Myers asked Mr. Stack if he was good with everything. Chairman Johnston stated if there was something wrong, Roy Rogers could revoke the permit. Irene Myers commented that since you haven't had any problems, she would like to recommend the permit for eight years. Mr. Stack has been workable, and he is prospering. Mr. Stack stated he is fine with that.

Bryan Meigs made a motion to approve the application of Joshua Stack for a period of eight years with the changes made by the Planning Board and was seconded by Jackie Robinson.

Chairman Johnston asked for a Roll Call Vote. Brian Meigs-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Johnston-yes. All in Favor. Motion Carried.

Chairman Johnston read the following:

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. Shawn Bailey approached the Board. Mr. Bailey stated that the property was farmed for over 100 years or so. We started with a pole barn. It is in my fathers and aunts name. We keep things out in back. We decided to do it full time in 2008. We are up to five trucks with a couple of crews. Last year we tried to rearrange things. We didn't have any real complaints. We expanded the parking lot; noise reduction; and screening. What can I do to make it right? There are four employees and ½ dozen families that are supported by this. It comes down to finances. Irene Myers stated that your business has grown. Mr. Bailey stated again that he wants to make it right. Nothing is cheap. Roy Rogers has helped out with some suggestions. I don't want the operation to run like a retail operation. It scares people.

Irene Myers commented that you keep mulch, etc. for your business. Mr. Bailey commented that there are deliveries. We also have a couple of horses. I want to build a house on Balmer Road. Irene Myers asked if Mr. Bailey would consider moving over to Balmer Road. Mr. Bailey stated we looking at \$250K to move. We have the road and the infrastructure. Irene Myers asked Mr. Bailey if he thought his business would flourish as much as it did. Mr. Bailey stated I don't want 150 trucks out there. That is not where I am looking forward to going. I have always had something in mind – 10 to 15 people. Chairman Johnston commented that you are year round. Mr. Bailey stated it is pretty quiet in the winter time. I want to make people as happy as I can. I don't want to make their lives miserable. Irene Myers commented it is a small family and Mr. Bailey responded that there have been questions. Chairman Johnston stated there were recommendations and Mr. Bailey stated that he tried personally. If you want to do a dust analysis, you can come down and check it out. It is not from mine. Last week there were a lot of trucks for the milling.

Chairman Johnston asked Roy Rogers if Mr. Bailey was cited. Roy Rogers stated that he had a violation letter and was scheduled for court but as soon as he made an application my enforcement stopped.

Irene Myers made a comment that you are all family. I have known all of you people. You are doing a good job. You started out with a little business and now it is not a little business anymore. Let's say as a reference you start out with five chickens and now there are 5,000 chickens but now there is not an area for. You have a business that has flourished and you can't be there anymore. I am sure it has created a lot of animosity.

Attorney Dowd commented that you have to entertain the application. Mr. Bailey asked the question if he needed a lawyer so I can postpone. Certain things can be address such as limitations, time, etc.

Chairman Johnston stated it is a residential area. Attorney Dowd stated it is "use" variance. It is very hard to prove. You are in a residential district and it is very difficult. Chairman Johnston stated he is very happy that the business has grown. Mr. Bailey stated there are limitations and time constraints. I would honestly like to keep it back there. It is in the family since the late 1800's. Irene Myers commented it is a larger business. Mr. Bailey asked if he could put a road with limitations. Would that make other people happy? Chairman Johnston asked, "Do you have another access?" Mr. Bailey stated he has access through his Dad's property which is zoned commercial. He also stated that you are looking at \$250K for the building, etc.

Attorney Dowd stated you still need a "use" variance. The activity is still going on in the same area. Irene Myers asked Mr. Bailey if everything is mobile. Mr. Bailey stated security is another concern.

Irene Myers asked Roy Rogers about the time table. Roy Rogers stated it has been a couple of years. Mr. Bailey replied since last spring. Roy Rogers commented it has been a little over a year. I was given a site plan of what Balmer Road would look like. Irene Myers asked if Mr. Bailey if he was asked to bring a site plan here. Attorney Dowd stated that the site plan went to the Planning Board.

Chairman Johnston read the following letter with 16 signatures dated July 23, 2016

“To: Town of Porter Zoning Board of Appeals:

We the undersigned are homeowners on Parker Road, Ransomville that is the subject of a Request for Board Action to facilitate a landscaping, lawn maintenance and snow removal business currently operating on the property.

While not specified in the Request for Board Action, the current landscaping/snowplowing operation consists of number of trucks, trailers, plows, a skid loader and front end loader. There are piles of mulch, stone and dirt being stored at the site. A significant amount of dust and dirt is created from the daily operation. The supplies are delivered with tandem dump trucks. They work hard, starting their day at 7:00 am and sometimes loading mulch as late as 9:00pm. Right now they run about six trucks, but as they continue to succeed, who know how big the operation will get.

Parker Road is a low-traffic, dead-end street with about sixteen residences and until the arrival of the landscapers, no non-agricultural businesses. There are young children on the street. Having a fleet of landscaping trucks or snowplows making their way up and down the street is inconsistent with the existing character of the neighborhood.

No matter how understandable the trust’s desire to assist the landscaping business currently operating on the site, it is not sufficient to justify a use variance.

Leaving aside the fact that the landscaping operations reduces our enjoyment of our property and is inconsistent with the long-standing Parker Road neighborhood, the application describes no unnecessary hardship to the trust. The hardship here if any, exists falls to the landscaping business operating on the Trust’s property and as such is insufficient.”

Chairman Johnston read the following Planning Board recommendations dated July 7, 2016.

“A motion was made by John Bis and seconded by Robert Tower recommend to the Zoning Board for a use variance for the application

of Bailey-Baker Trust located at 2432 Parker Road, Ransomville, NY 14131. The Planning Board recommends that you deny the Use Variance for this property. The business is too commercial for the residential neighborhood location. Please note: A full discussion of the Planning Board occurred about this property and many of the board members have had members of the public approach them regarding issues with the business location. Code Enforcer Rogers has had complaints and has tried to abate the activity at the Parker Road location for over a year. Therefore the Planning Board feels that it has the knowledge to make this decision without having to make further inquiry with the applicant.”

Chairman Johnston asked if anyone from the audience wished to speak.

Julia Bailey Parker stated that she is part of the Trust. The family was a farm. It is very disheartening. Shawn’s business is improving the property. When my Dad had cows; my step-dad had sheep. Shawn’s business improved the property. They have had complaints – noise – it is quiet. They should have come to Shawn first before it came to this. Be discrete. I see the property improving instead of making it worse.

Mr. Paschke stated that it has changed since he moved here. He was looking for a rural community. If I tried to sell my house, I wouldn’t be able to sell it. Property is pretty expensive. I am not one of the guys from the old town.

Pamela Parker commented it is in a RA zoned district.

Donna Johannes stated that she is not against the boy’s business but it is the principle of the whole thing. They have gotten so large. They are now making a living and they are hard workers. It is very interruptive.

Irene Myers commented this operation has gone on. I get it. We have a job to do. We have to look to the citizens as a whole. We are in a dilemma right now—way out of control. It is too bad this wasn’t nipped in the bud a few years ago.

Chairman Johnston stated we can't compare this to another situation. You are running a growing business. Unfortunately, it is in the wrong location. There has to be more (better government) that could have guided you two years ago.

Mr. Bailey commented it has been his life since 2009. We are more efficient now. I get it we expanded. The property has been solid for five years. We have tried to do things differently. Chairman Johnston stated that there are not enough guidelines. Mr. Bailey stated he wants to make it right.

Chairman Johnston stated this Board is not any different than anybody else's. I wouldn't like the trucks going by my house. We have to make a decision.

Jackie Robinson asked Attorney Dowd. This breaks my heart about this young man. Is there any way that we could get together by giving him some time to help him and the residents to work with him?

Attorney Dowd stated that the Code Enforcer gave him the opportunity a year ago to relocate. A code violation was issued. They have been given time. If he wants an attorney present, he can and this Board doesn't have to make a decision. Mr. Bailey can come back with an attorney. He has to show proof. It is a unique hardship. Issues need to be addressed. If you don't show these things, you will be denied. Within 60 days a decision has to be made and that is as far as it is going to go.

Mr. Bailey commented that it is monetary with Balmer Road. If someone would loan me \$250K, I can make it happen. I have listened to Mr. Rogers. I have been moving material over to Balmer Road. Jackie Robinson stated this is a busy time. Mr. Bailey asked if farming is allowed. Attorney Dowd stated there are rules in place. Roy Rogers commented that if Shawn Bailey brought a site plan on Balmer Road—it would meet the requirements. I didn't see a whole lot of progress. Mr. Bailey commented you have to drive way back. There were questions about an access road and the dividing line. Irene Myers stated that the solution would be to move the business into a commercial area. Mr. Bailey stated it starts at the ditch. If we are moving 100 yards, my access is within 200 yards. I can use

Balmer Road. I only have to move 100 yards? I will move what I have to move...

Attorney Dowd stated that there are time limitations. You might have to come in off of Balmer Road. If you can, within a very short time, work with Mr. Rogers without using Parker Road. Mr. Burmaster stated that he was going to commend the Board on how it was handled. We all have to abide by the law. Two boys starting out. Good for them. Their business has grown. I wish you many more years of success but you have to be right. They have been good neighbors.

Irene Myers made a motion to close the public part of the hearing and was seconded by Jackie Robinson. All in Favor. Motion Carried.

Chairman Johnston stated that before we made a decision on this, I would like to state: (1) I understand the resident's point of view; (2) You have a great business with two young men and their maybe another opportunity. Maybe you can rent property? We don't have any control over the time line.

Attorney Dowd stated the Board has 60 days to make a decision before a cease and desist. My only suggestion is: the application is so defective – it doesn't have proof of financial hardship. The code allows the applicant to hire an attorney or do more work. It allows them to get a completed application on record. Chairman Johnston stated it is terribly unfortunate. Attorney Dowd stated to Mr. Bailey stated that this is something that he could do and also talk to Roy Rogers.

Irene Myers stated that if he is going to make a motion to deny this application. If I have to make a motion to go on the Planning Board recommendations, can we give him a lime line to move? – no.

Attorney Dowd stated if it goes before a judge, and he hires a lawyer it will get him through the summer. My only suggestion is Mr. Bailey wants to cooperate. Roy Rogers stated, I think he knows the suggestions. We are not going to lock the gates tomorrow. Attorney Dowd stated there is still time for Mr. Bailey to work it out. Attorney Dowd stated Parker Road is a residential road. It is a public road.

He can access off of Balmer Road that is zoned commercial. Shawn Bailey stated he has done work for ½ dozen residents on Parker. Irene Myers commented you know what you have to do. If you think this is the way, you know you can't do what you are doing. Shawn Bailey stated last spring is when I was told. Irene Myers stated you are in the wrong location.

Chairman Johnston stated the public hearing is closed. We have to make a decision tonight. Attorney Dowd stated there is criteria that needs to be addressed. Page 140 Use Variance. No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located. Attorney Dowd stated that I don't see any financial evidence in the application. If he meets the criteria, you need to state that in the records.

Attorney Dowd read: (1) Use Variance (a) (i)

- (i) The applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence. NOTHING
- (ii) That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood. NO. NOT UNIQUE
- (iii) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and WILL ALTER
- (iv) That the alleged hardship has not been self-created. IT IS SELF CREATED.

Terry Duffy asked what the application is missing. Attorney Dowd stated no financial hardship. Terry Duffy asked Mr. Bailey if he was told anything about the application. Mr. Bailey replied, "I asked do I need any attorney here?" Either way I have to spend some money. I want to make everyone happy.

Chairman Johnston stated you need to be aware of the Zoning Laws. Terry Duffy stated he would like to give him one month to follow

through. I would like to give him the benefit of the doubt. Chairman Johnston stated to Mr. Bailey that he should show the attorney the "Use Variance" on page 140 of the Zoning Manual. Attorney Dowd stated this is very difficult to overcome. He stated you have 60 days to make a decision.

Terry Duffy made a motion to table the application of Bailey/Baker Trust and was seconded by Brian Meigs. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Brian Meigs-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Johnston-yes. Table application for 30 days.

Chairman Johnston stated to Mr. Bailey to be a little more prepared and get an attorney. Talk to your lawyer if this is worth fighting. Irene Myers stated to you are to return to the next meeting with or without counsel. Attorney Dowd stated you need to have something supplementing your application within 15 days. It was noted that a Public Hearing Notice would be in the paper and the property owners would be notified.

A Motion was made by Irene Myers and seconded by Brian Meigs to adjourn the meeting. The meeting was adjourned at 8:35 p.m. The next regular meeting will be held on **Thursday, August 25, 2016.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals