

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 December 15, 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, and Attorney Michael Dowd.

**ABSENT:** Assessor, Susan Driscoll and Building Inspector, Roy Rogers.

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

Chairman Johnston asked if there were any additions or deletions to the October 27, 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. Chairman Johnston called 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.

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 **December 15, 2016 at 7:00 PM** for the purpose of considering and hearing all interested persons concerning the following application(s):

**APPLICATION OF ROBERT REESE, 1821 Lake Road, Youngstown, NY**

Under Article II, Section 8 and Article VIII, Section 8, an area variance to repair & replace pre-existing fence at 1821 Lake Road. The property is located on the North side of Lake Road in an RA Zoning District between Murphy's Corner Road and Porter Center Road Roads in said Town.

It was noted that Robert Reese was present.

Chairman Johnston stated that he talked to council about this application. He asked the members if everybody looked at it. This fence was repaired as constructed years ago before Mr. Reese bought the property, and he repaired it the same way. The whole fence is exactly the same except for a chain link fence repaired in the same order it was inherited. Chairman Johnston stated that he doesn't know if a variance is even needed. The existing fence was inherited.

Mr. Reese was asked the question by Chairman Johnston, "How long have you had the house?" Mr. Reese replied 25 years and the fence is approximately 50 years old.

Attorney Dowd stated that there is no record of a permit for a fence back that far. The Zoning code was from the 80's. Section 267 of the Town Law and Local Law No. 2 of 2010 as amended and before that it was the 80's and before that the 60's. Attorney Dowd stated that a complaint has been filed by the neighbor.

Mr. Reese filed a request for a variance. I talked to Mr. Reese, and he didn't think that they needed a variance because they were repairing the fence.

Attorney Dowd commented on non-conforming structure. It appears this fence has been there for so long. Attorney Dowd read Section 113 Nonconforming Structures (page 148 of the Zoning Law). A. Continuance. Any nonconforming structure which is devoted to a use which is permitted in the zoning district in which it is located may be continued so long as it remains otherwise lawful, subject to the restrictions in this Section. B. Enlargement, Repair or Alterations. Any nonconforming structure may be enlarged, maintained, repaired

or altered provided no additional nonconformity is created or the degree of the existing nonconformity is not increased. C. Damage or Destruction (1) In the event that any part of a nonconforming structure which contributed to its nonconformity is damaged or destroyed, by any means, to the extent of more than 50% of the fair market value of the structure before being damaged, such part shall not be restored unless it shall thereafter conform to the regulations of the zoning district in which it is located. (2) When such a part of a nonconforming structure is damaged or destroyed, by any means, to the extent of 50% or less of the fair market value of the structure before being damaged, no repairs or restoration except in conformity with the applicable zoning district regulations shall be made unless a building permit is obtained and restoration is actually begun within six (6) months after the date of such partial destruction and completed within one (1) year. D. Moving. No nonconforming structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved,.

Attorney Dowd stated if it is a prior nonconforming structure and the repair that is being made is 50% or less of the fair market value of the structure you can repair in the same manner it was originally sold. I don't know how much was repaired by Mr. Reese. If the neighbor is not happy with that answer, you can overturn the code enforcement. I don't think a formal complaint was ever filed. If the neighbor is not happy they can file an Article 78.

Chairman Johnston stated Mr. Reese fixed the fence exactly the way it was. I don't see why we have this variance in front of us. Attorney Dowd stated the Board may consider a prior nonconforming use and not require a variance. Chairman Johnston again stated that I don't understand why this is even in front of us. The fence has been there for a very long time. He is fixing the structure that was built 50 years ago. Attorney Dowd asked have you determined how much fence was repaired. Chairman Dowd asked Mr. Reese why he filed an application and he said that Roy Rogers told him he had to. Irene Myers commented that you repaired only one little section. Mrs. Reese stated 150 feet of repair. Attorney Dowd stated that he does not know for sure but that Roy Rogers went there and said it was a

prior nonconforming and just go ahead and repair it. This doesn't come up very often.

Bryan Meigs stated why would you repair a fence and change it the other way. Chairman Johnston stated it shouldn't be here, and I see that you repaired the fence the way you did. I would like to have the neighbor's input.

Fran Basta, 13 Porter Center Road, Youngstown, NY and Joanne Basta were both present. On September 4, I filed a notice of violation with Roy Rogers that the repair was actually 248 feet; the fence goes all the way down the property. My opinion is that they repaired what they can see from their house. Mr. Rogers is derelict with his duties. I want it known to the Board I never got a written determination from the Building Inspector. I have a pending lawsuit against the Town Board. This was all done without a permit. The fence is done. You are not repairing if you remove it entirely. You are erecting a new fence. Mr. Fleckenstein stated Mr. Reese put the slats on both side. The post is right out of the ground and the town has done nothing. I don't have any beef with this Board. I wrote my formal complaint in September to the Town Board. Mr. Weipert chastised Roy Rogers, and I am putting together a class action lawsuit. The fence is neither here nor there. 500 feet and only repair the part that faces your house. If you don't have to repair the posts out of the ground, I feel that is unfair. No one has been willing to stand up. You can decide whatever you decide. I am going to have my attorney make the determination. Mr. Reese was only replacing 148 feet. They replaced a portion of the fence. You are allowing the property owner to replace a portion. They actually removed 148 feet and replaced everything with a new fence.

Bryan Meigs commented if the fence was the same on both sides, what is the problem.

Roy Rogers has never given us a determination, and I have a lawsuit with the other issues before you make a determination.

Attorney Dowd stated that Town Board is a separate board from the Zoning Board of Appeals. You can't say to the Town Board that they have to repair the fence. The ZBA is a separate Board from the town

Board. If any resident has a problem with the Code Enforcement Officer, this Board determines if the Code Enforcement made a bad decision. Roy Rogers is not a lawyer. He made a decision that they were just repairing an existing structure. Frankly, you don't need a variance because it is a prior nonconforming use. Mrs. Basta stated she never received a letter of determination from Mr. Rogers. Attorney Dowd stated it is a shame your determination letter wasn't sent sooner.

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

Chairman Johnston stated to the Board that he wants them to think about this. I don't think Mr. Reese needed a variance, and I think he should get his money back. I think Mr. Reese repaired it and put it back the in the same place it was supposed to be.

Chairman Johnston read the Planning Board recommendations dated December 1, 2016. The Planning Board recommends the approval of the requested variance to keep consistency with the remaining fence that was not replaced.

Attorney Dowd read Section 113 again (see above). Chairman Johnston stated that Mr. Reese repaired it, and he inherited it and put it back the way it was. Chairman Johnston also stated 22 people were sent out notices about this variance.

Irene Myers made a motion and before I do, Mrs. Basta you complaint is not here with us. Motion made to rescind the application for a variance for Robert Reese, and I believe we should refund him the \$100 fee based upon the determination of the Zoning Board code book of the Town of Porter that the structure is a prior nonconforming structure (Section 113, pg. 148) with that being said no increase in the nonconforming structure and was seconded by Bryan Meigs. Chairman Johnston asked for a Roll Call Vote. Terry Duffy-yes; Bryan Meigs-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Johnston-yes. All In Favor. Motion Carried.

Chairman Johnston stated that he was sorry you had to go through all of this and will forward to the Town Board to see if Mr. Reese can get a refund of his \$100.00.

Irene Myers commented about nonconforming structures. Chairman Johnston stated we are running into this a lot.

Mrs. Basta asked if Mr. Rogers can issue a determination letter.

A Motion was made by Irene Myers and seconded by Jackie Robinson to adjourn the meeting. The meeting was adjourned at 8:00 p.m. The next regular meeting will be held on **Thursday, January 26, 2017.**

Respectfully submitted,

Nancy Smithson, Secretary  
Town of Porter Zoning Board of Appeals