

# TOWN OF PORTER

3265 Creek Road ♦ Youngstown, New York 14174 ♦ (716) 745-3730, ext. 7 ♦ fax (716) 745-9022 ♦

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 December 16, 2021 at 7:00 PM, in the Town Hall Auditorium located at 3265 Creek Road, Youngstown, NY 14174.

	<u>Date</u>	<u>Present</u>	<u>Absent</u>
Jackie Robinson, Chairman	12/16/2021	yes	
Terry Duffy	12/16/2021	yes	
Paul Brown	12/16/2021	yes	
Marshall Hibbard	12/16/2021	yes	
Steve Zappy	12/16/2021	yes	
Atty Michael Dowd	12/16/2021	yes	
Peter Jeffery, Code Enforcer Officer	12/16/2021	yes	

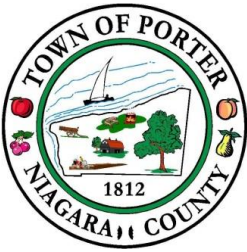
Chairman, Jackie Robinson called the meeting to order with the pledge of allegiance at 7:00 pm.

Chairman Robinson asked for approval of the October 28, 2021 minutes. Marshall Hibbard made a motion to approve the minutes and was seconded by Terry Duffy. All in Favor. Motion Carried.

Chairman Robinson asked for approval of the November 18, 2021 minutes. Paul Brown made a motion to approve the minutes and was seconded by Terry Duffy. All in Favor. Motion Carried.

Chairman Robinson stated that we are here for the Application of Arthur Garabedian for a use variance. The public hearing is still open. Chairman Robinson asked if anyone objected to her taking off her mask to speak. None. Chairman Robinson stated that the Board received a letter dated November 30, 2021 and read the following:

RE: Special Permit Application, 3360 East Avenue, Arthur Garabedian



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"It is our understanding that at the next meeting of the Zoning Board to be held in December, a final decision will be made regarding the above application.

There is a matter that has been revealed to us regarding this application that we think should be taken into consideration. As you know, one of the resounding concerns of this sanctuary is dealing with the small, flies and disease that would be brought to our neighborhood. It has been a very common problem with past renters of this property and has for many past years rendered our backyards unusable and unpleasant because of flies and odors. PAST Building Inspectors, did not hear our pleas for help over a series of 3 years...and we learned to just live with the matter.

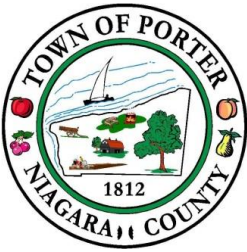
Over Thanksgiving our 2 granddaughters visited us from Georgia, and we took them to the "Sanctuary" to see the animals. It gave us an upfront chance to see the manure build up and stench that obviously had never been cleaned since all of these "illegal" animals had been brought in without approval. Our 9 year old granddaughter, who takes riding lessons and is very aware of the horses, actually gaged several times from the smell and we were forced to leave. She has been exposed to horses for over 2 years now, and learning to take care of them is part of her training. All of this...with temperatures at 34 degrees...and not hot summer temperatures which would make the smell and sights unbearable.

It is our hope that before a final decision is made by the Board, that members would take a look at the conditions that these animals and residents will be exposed to. It is our belief that this sort of facility would be better housed in a more rural area; not where there are so many homes and residents to deal with this vulgar exposure. We pay high taxes...and it is our right to be able to use our yards and outdoor facilities as Board members do. We ask this revelation to be part of your consideration for this application.

Regards, Janis Dutko and Donald Dutko, 3338 East Avenue"

Chairman Robinson asked if anyone else from the audience wished to speak.

Brenda Bank, 75 Lockport Road. I have been at the Sanctuary as well as we have a farm. Maybe my nose is a little less sensitive. There has never been a



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smell. I am not sure where they think flies and stench are. It should be normal. The stalls are clean and food organized.

Chairman Robinson asked if anyone else wanted to comment. Steve Zappy made a motion to close the public part of the hearing and was seconded by Terry Duffy. Roll Call Vote. Paul Brown-yes; Terry Duffy-yes; Marshall Hibbard-yes; Steve Zappy-yes and Chairman Robinson-yes. All in Favor. Motion Carried.

Chairman Robinson stated that the Board would like to break into Executive Session at 7:10 pm. The Board returned from Executive Session at 7:28 pm. Chairman Robinson thanked the audience for their patience and that no decision was made.

Paul Brown read the following Resolution.

## Town of Porter Zoning Board of Appeals Resolution Denying the Use Variance

WHEREAS, an application for a Use Variance has been made to the Town of Porter Zoning Board of Appeals (ZBA) by 3360 East Avenue, LLC related to real property located in the Town of Porter identified by SBL# 45.00-1-42.2; and

WHEREAS, the ZBA has had an opportunity to review the application submitted by the applicant seeking a use variance to permit the use of the property as an Animal Shelter; and

WHEREAS, the ZBA has reviewed relevant zoning district regulations and definitions set forth in the Zoning Law including but not limited to §§200-7 Permitted Uses Table, 200-27 Animal Day Care, Kennel, Shelter, 200-8 RA Rural Agricultural Zoning District, 200-9 Low Density Residential, and

WHEREAS, the ZBA has held public hearings as required by law and heard comments both for and against the proposed use variance, and

WHEREAS, the ZBA has carefully and thoroughly reviewed the applicants application and submissions of counsel for the applicant, including, but not limited



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to correspondence with supporting documents of Ari M. Goldberg, Esq. dated October 20, 2021 in support of granting the use variance, and

WHEREAS, the ZBA sought counsel from the Attorney for the Town regarding the standards required for consideration of use variances pursuant to §200-108(F) which states:

Variance standards.

(1) Use variance.

(a) 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.

[1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;

[2] 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;

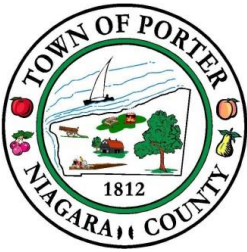
[3] That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

[4] That the alleged hardship has not been self-created.

(b) The Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.; and

WHEREAS, the ZBA has considered the Town's Comprehensive Plan in relation to the requested variance; and

WHEREAS, the ZBA has determined that



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- 1.) The applicant's affidavit and tax returns included in the October 21, 2021 correspondence does not demonstrate a lack of reasonable return based on competent financial evidence. The current zoning permits numerous permitted uses for the applicant's property which the applicant fails to adequately address, the application is supported only by conclusory statements of the applicant and the application is not supported by appraisals, proof of marketing efforts or other competent evidence.
- 2.) The alleged hardship is not unique to the applicant and applies to a substantial portion of the neighborhood which is widely comprised of large and small tracts of agricultural and residential land;
- 3.) The variance requested would not alter the essential character of the neighborhood;
- 4.) The hardship was self-created and not a result of the adoption of a subsequent more restrictive zoning ordinance since the animal shelters were not a permitted use at the time the applicant purchased the property, and

WHEREAS, there has been substantial opposition to the proposed use variance, and

WHEREAS, the Town of Porter Planning Board has recommended denial of the use variance.

NOW, THEREFORE, BE IT RESOLVED by the ZBA of the Town of Porter that:

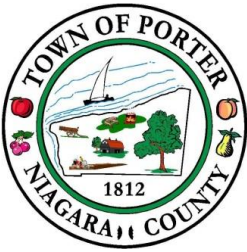
The Applicants request for a use variance is denied.

PASSED AND ADOPTED this 16<sup>th</sup> day of December, 2021 by the Zoning Board of Appeals of the Town of Porter.

Ayes: 5

Nays: 0

Terry Duffy seconded. Roll Call Vote: Paul Brown; Terry Duffy; Marshall Hibbard; Steve Zappy; Chairman Robinson. Motion Carried



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Chairman Robinson stated that now because the use variance has been denied the application of Lakeview Animal Sanctuary for a use permitted for a sanctuary at 3360 East Avenue is no longer relevant. Thank you.

Chairman Robinson asked Code Enforcement Officer Peter Jeffery if he had anything to report. CEO Jeffery stated that he has nothing to discuss at this last meeting of the year. I sent out my monthly report to the Board and I don't have anything additional. CEO Jeffery wished everyone a Merry Christmas.

Attorney Dowd wished everyone a Merry Christmas.

A motion was made to adjourn the meeting at 7:40 pm by Terry Duffy and was seconded by Paul Brown. The next meeting is scheduled for Thursday, January 27, 2022.

Sincerely,

Nancy Smithson  
Secretary, Zoning Board of Appeals