

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 Thursday, September 17, 2009, at 7:30 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairman William H. Tower, Member Joe Fleckenstein, Member Duffy Johnston, Member Irene Myers, Member William Leggett, Attorney Michael Dowd, Susan Driscoll and Roy Rogers, Building Inspector.

ABSENT: Member Peter Jeffery.

Chairman Tower called the meeting to order at 7:30 pm Chairman Tower asked if there were any additions or deletions to the August minutes. William Leggett made a motion to accept the minutes as written and was seconded by Irene Myers. Chairman Tower asked if all in favor. **All in Favor. Motion Carried.**

Chairman Tower read the following:

NOTICE IS HEREBY GIVEN THAT, pursuant to Section 267 of the Town Law and Local Law No. 1 of 1968, 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 **September 17, 2009** at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of Marc J. Fita, 1479 Lake Road, Youngstown, NY 14174. A Variance is requested under Sections 503.3A, 705 and 710 to construct a six and a half foot fence (6-1/2') approximately 65 feet in his back yard to the rear property line. Section 503.3 states "Maximum Height Residential District four (4') feet. Thus, a variance of two and a half feet (2-1/2') is requested. Property is located in an ARR-100 District between Tower Road and Murphy's Corner Road in said Town.

It was noted that Marc Fita was present. Chairman Tower asked if there was already a fence on the neighbor's property. Marc Fita-yes. He said that he could bring it down to the existing fence line. It is a nice saddle fence with lattice, although we could go to a dog-eared fence similar in height to the neighbor's height. I put it in about 14 years ago. It goes back to the original owner. I would like a continuation of the fence and a neat line. I don't want a jog in the fence line. The existing fence is 6" to the property line. The neighbor has been keeping it up on both lines. I don't think that there are any issues of not being taken care of. The original requirement was 6-1/2' with lattice. I do have specifications on the fence, and I already put a \$500 deposit. It will be commercially installed. Chairman Tower stated that you do not have to be two feet in between. Do you have any drawings of the fence?

Irene Myers asked if the fences are going to be identical. Marc Fita stated it is a very heavy fence built by the Amish. Roy Rogers stated he did not check if the exiting fence has a permit. Joe Fleckenstein commented about 30" in between. Mara Fita stated I don't want it to be maize. I would like it close to the line.

Chairman Tower asked if there was any public input. Mr. David Joseph, 1471 Lake Road, Youngstown stated that he is fairly new to the county. I would like to thank you for the public notification to hold this meeting and an opportunity to address the Board. Any time that your neighbor impacts your property, questions arise. My wife could not attend tonight. I have a few questions. (Questions in bold print)

1. **Is there an updated survey so that we know where the stakes are?** Joe Fleckenstein stated that we are not concerned with the survey. Irene Myers asked both Marc Fita and Mr. Joseph. It was seven years ago when the property was purchased. Has there been any changed to either property? Mr. Joseph stated that in 2002, Mr. Fita had a permit issued and it expired. The work was never completed. Attorney Dowd stated anything along the lot line within the last seven years that you believe might impact – a fence, encroachment.
2. **What style and color material of fence?** We are concerned about the esthetics. Joe Fleckenstein commented there is nothing on the fence.

3. **Provisions on upkeep.** Joe Fleckenstein stated enough room to maintain the fence so as not to step on your property. We usually ask for 2'.
4. **Consideration to tie into the existing fence. What does the Board feel about it?** Joe Fleckenstein stated we ask the property owners.
5. **Back fill post holes and reseeding.** Attorney Dowd – None that I am aware of. Mr. Joseph stated that Mr. Fita installed the exiting fence and did not fill in the post holes. I have a letter from the Town Board. At this point voices were raised. Attorney Dowd stated to Mr. Joseph do not raise your voice with me or the Board. Do you understand? Joseph Fleckenstein stated you are at the Zoning Board. The Zoning Board has a book to follow. We have nothing to say about being back filled or reseeded. Don't get confused between the Zoning Board and the Planning Board. I believe the variance is for 2-1/2'. We can grant up to 6" off the property line. I don't like accusations. Joe Fleckenstein asked Roy Rogers if there was an existing permit. Mr. Rogers stated that he has not researched it.
6. **Is the fence for privacy? Is it necessary?** Attorney Dowd commented. Is there an existing fence? Marc Fita replied- Yes. It was put up 21 years ago. Attorney Dowd asked Mr. Joseph was the fence there when you bought the property. Yes. We have maintained it with repairs. I would be glad to take the fence down tomorrow.
7. **Which way the fence is will affect my ability to maintain the existing fence?** Attorney Dowd commented about access to the fence to maintain it. Duffy Johnston stated the existing fence is almost on the property line. Why wouldn't you want to join the fence – 6" off the property line?
8. **The prevailing west winds with the snow will pile up along the fence and when it melts it will go into the leech bed.** It is a real problem in the spring. The ditch floods every year. Shame on the Town for not maintaining the ditch. If you allow the fence, it will be a snow fence. Irene Myers stated there will be a beautiful air flow and the snow will be on Mr. Fita's property.
9. **Mr. Joseph stated that Mr. Fita was going to put up a row of pine trees and he never put them up.** Joe Fleckenstein

stated to Mr. Joseph that does he realize that right now he doesn't have to be here tonight. He could put up a four foot solid fence to the ground, not reseed and not come before the Board. All he is asking for a 2-1/2' variance. Mr. Joseph stated that the Building Inspector should come down to see what is going on down there. A building permit was issued and never completed.

Chairman Tower stated one person at a time. Mr. Joseph stated it is a loaded Board. It is ridiculous. There was an argument and Mr. Joseph was asked to leave the meeting.

Mr. Fita stated the he apologized to the Board. Duffy Johnston made a motion and was seconded by Irene Myers to close the public part of the hearing. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers; Joe Fleckenstein-yes; and Chairman Tower-yes. All in Favor. Motion Carried to close the public part of the hearing.

Irene Myers asked if the fence has to be maintained because it is wood. William Leggett asked if the fence looks the same on both sides. Marc Fita stated that he wanted something nice. The fence is being professionally installed.

Chairman Tower read the Planning Board recommendations. "Mr. Fita came before the Planning Board to request a 2.5 foot variance to construct a 6.5 foot fence on this property. He presented a drawing showing the concept he is asking for. There is currently a fence on the neighbor's property that is 65 feet long. The neighbor is keeping up the maintenance on the existing fence. Mr. Fita is requesting a continuation of the fence to be on his property. Although the two fences will not meet, and there will be a small break in the fence. Mr. Fita intends to make the fence appealing and comparable with the existing fence on the neighbor's property. The purpose of the fence is privacy. There is a six to fourteen inch difference between the existing fence and the fence Mr. Fita is requesting. This property is located on the North side of Lake Road but is a significant distance from the lake.

The Planning Board's concern is that the height of the two fences will not match. The Planning Board recommends that the Zoning Board of Appeals approve this request providing the owner conforms to the same height of the existing fence of the neighbor."

Duffy Johnston stated that the Planning Board says that the size of the fence has to match and make similar to his height. William Leggett stated that there is a gradual slope. The two fences meet in height and when the slope goes down, the fence will still be the same height.

Chairman Tower asked Mr. Fita if the creek ever flooded. Mr. Fita stated about three times. Chairman Tower stated it drains about 150' to the West of you. It is not a Town ditch. Mr. Fita stated that he just had his property surveyed about eight days ago.

Irene Myers made a motion to approve the variance of Marc Fita for a fence that will pick up to the end of the neighbor's fence 2 feet off the property line and continue on the same height as the existing neighbor's fence and was seconded by Duffy Johnston. Chairman Tower asked if there was any further discussion by the Board. William Leggett questioned because of the dip, your fence will be on top. If you put your fence down at the dip you will need an 8' fence. Marc Fita stated it is slow grade. Irene Myers stated keep the height constant. Marc Fita the fence at the bottom there will be a void.

Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes and Chairman Tower-yes. **Motion Carried.**

The Board asked Roy Rogers to check about the complaint and to see if there is a variance for the original fence.

Chairman Tower read the following:

Application of Dawn Walker, 1495 Lockport Road, Youngstown, NY 14174. A Variance is requested under Sections 503.3A, 705 and 710 to construct a five foot front yard fence (5'). Section 503.3A states "Maximum Height Residential District front yard three (3') feet.

Thus, a variance of two feet (2') is requested. Property is located in an ARR-100 District between Lutts and Tower Road in said Town.

Mr. Walker was present. He stated that all we actually want is a simple fence. A cattle fence, electric, post and wires and barbed wire approximately 30' from the road. Attorney Dowd stated it turns out farms in Ag Districts still have to go through the process – anything that required Zoning approval. He stated for example, if they would like to keep animals and would like to put up a five foot fence. What if it is a farm fence – solid fence six foot high? It would affect public health and safety. You have to go through the process. You still have the right to review it. Joe Fleckenstein stated that he doesn't think that he needs to pay a fee. Irene Meyers stated does he really need to be here for a wire fence. Joe Fleckenstein stated I think for a farm process we could waive the fee. That is an undo burden on the person. Attorney Dowd stated we still have to pay to advertise. Joe Fleckenstein stated I know the farm law and it is an undo burden on the farmer. It does matter what the cost is. I want it on record. Attorney Dowd stated that he will research the law.

Chairman Tower read the Planning Board recommendations: "This requires a two foot variance because the request is for the front yard. This is a request for four acres to be contained by a coral fence. A three-foot variance is needed for the fence to be in the front yard. The Planning Board recommends that the Zoning Board of Appeals APPROVE this request providing the neighbors do not object."

Irene Myers made a motion that we approve this variance for a non-solid, electric wire fence not to exceed five feet in height and was seconded by Duffy Johnston. Chairman Tower asked if there was any further discussion and asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes and Chairman Tower-yes. All in Favor. **Motion Carried.**

Chairman Tower continued with the following application:

Application of Lynn Funk, 1483 Sunrise Lane, Youngstown, NY.

Under sections 401.7, 704.2 and 710, a variance is requested to erect a 14'x24' garage. Property is in an ARR-100 Zoned District on

the North side of Sunrise Lane between Tower Road and Murphy's Corner Road off of State Route 18F in said Town.

It was noted that Mr. Funk was present. William Leggett asked Attorney Dowd if he had anything on this.

Attorney Dowd stated the following: The request is for an area variance where most of the lots are of substandard size in an ARR-100 District. Under Section 401.2 permitted uses. Garage or open parking on premises. Section 504.3 – standard lots of record, parcels of land under common ownership – not the issue. Section 506.3 – reduction in the set back requirements – someone needs a variance of a couple feet. Is the Board compelled to give a variance? The Board is never compelled to give a variance. A question was raised about a detached building three feet off the lot line. I don't think that is possible. Section 506.8 – detached garage. Has to be in the rear yard or on the side yard. The rear yard on the lake is the non lake side. House is too close to the road. All you have to rely on is Section 704.2 depending upon what you can grant or deny the request. Look at the criteria.

Attorney Dowd read Section 704.2 His comments are in quotes.

Area variances may be considered where setback, frontage, lot size, density or yard requirements of the Local Law cannot be reasonably met. The Board of Appeals may grant an area variance on the ground of practical difficulty, such practical difficulty to be determined by consideration of the following:

- A. How substantial the variation is in relation to the requirement; *"Lot is a sub-standard lot of record."*
- B. The effect, if the variance is allowed, of the increased population density thus products on available governmental facilities (fire, water, garbage and the like); *"No consideration."*
- C. Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created; *"I don't think there is a change in the character of the neighborhood. Size is a detriment to property."*

- D. Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance; *“Require a narrow garage or put on the other side of building.”*
- E. Whether in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance. *“How the difficulty arose.”*
- If you think under the circumstances they are entitled to a variance.

704.3 Conditions

No variance under the provisions of this Part shall be authorized by the Board unless it finds that such variance:

1. Will be in harmony with the general purposes and intent of this Ordinance or such regulation, taking into account the location and size of use, the nature and density of the operations involved in or conducted in the connection with it and the size of the site in respect to streets giving access thereto. *“Not to huge of a deal.”*
2. Will not tend to depreciate the value of adjacent property, taking into account the possibility of screening or other protective measures to protect adjacent properties.
3. Will not create a hazard to health, safety or general welfare. *“Neighbor not to happy.”*
4. Will not alter the essential character of or be detrimental to the neighborhood. *“Won’t alter the neighborhood.”*
5. Is the minimum necessary to afford relief? *“Consideration to doing it on the other side of the building.”*

It is a tough decision and you have to decide. I think you have to carefully consider all the factors.

William Leggett asked if he could put the garage on the other side. Mr. Funk – I don’t have enough room. Mr. Funk approached the board with pictures. Attorney Dowd that they need a variance either way. Nothing isn’t an option. It is an issue to the applicant on how to move the pole. Duffy Johnston asked what to do with the pole. Attorney Dowd stated it is not your concern. Mr. Funk stated that he is approaching the board with a hardship. Attorney Dowd stated when you built the property you knew there was a neighbor there.

Mr. Funk stated the pole would have to go on the neighbor's property. Joe Fleckenstein stated is the pole on your property. Mr. Funk stated it services both my house and Danny Towers.

Chairman Tower asked Larry White about his objections. Larry White stated it is too close to my house. There is room on the other side. The Master Plan before the Town Board – including open space. You are not following Master Plan at all. Chairman Tower stated the barn is permissible under the Zoning Law. Larry White stated what are you building. You don't building unless you have a drawing.

Attorney Dowd asked Mr. Roger to do some calculations. There is a lot of room on the other side that you don't have to ask Mr. & Mrs. White. The building is 24' deep; house is 28' deep; it will be closer than five feet. Duffy Johnston's stated your concern is that if Mr. Funk's garage ever burned it would be too close to the other building. Chairman Tower stated the easiest solution would be to move the pole and put it on the North and put the addition on the East side of the house. Irene Myers stated it would be a job for Niagara Mohawk. There was more discussion among the Board members.

Attorney Dowd stated like I said before, this is the first time I have seen the aerial and the additional expense the applicant will have won't have been an issue. I see, frankly, a couple of properties being close together.

Mr. Funk stated he would like to withdraw the application until I have counsel – 60 days.

Chairman Tower asked for a Roll Call Vote to table for 60 days per Mr. Funk's request for counsel. Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. All in Favor. **Motion Carried to table for 60 days.**

William Leggett made a motion to close the meeting and was seconded by Irene Myers. The meeting was adjourned at 9:01 pm. The next regular meeting will be held on **Thursday, October 15, 2009.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals