

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, May 21, 2009, at 7:30 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

PRESENT: Chairman William H. Tower, Member Peter Jeffery, Member Duffy Johnston, Member William Leggett, Member Irene Myers, Attorney Michael Dowd and Roy Rogers, Building Inspector.

ABSENT: Member Joe Fleckenstein.

Chairman Tower called the meeting to order at 7:30 pm Chairman Tower asked if there were any additions or deletions to the March month's minutes. Duffy Johnston made a motion to accept the minutes as written and was seconded by Peter Jeffery. Chairman Tower called for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Chairman Tower-yes. **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 **May 21, 2009** at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of Gary Rose, 3435 East Avenue, Youngstown, NY.
To renew his Special permit dated March 25, 2004 for a boat dock for noncommercial use, only two of which may exceed 18' in length, located at 3723 Lower River Road. Property is located on the West Side of Lower River Road in an ARR-100 Zoned District between Youngstown and Collingwood Estates in said Town.

It was noted that Gary Rose was present. Chairman Tower asked if there were any changes and would like to see the permit for seven years since there were no problems. Peter Jeffery made a motion to close the public part of the hearing and was seconded by Irene Myers. All in favor. Motion Carried.

Chairman Tower stated that because it is a renewal, Planning Board does not do a referral. Irene Myers made a motion to approve this permit as written for seven years and was seconded by Duffy Johnston with the notation that the boat size was 18' not 18" in length. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following:

Application of James Eismueller and Mary Beth DeFazio, 3735 Lower River Road, Youngstown, NY 14174. To renew their Special Permit dated May 25, 2006 for a seasonal L-shaped floating seasonal dock in the Niagara River at 3735 Lower River Road, Youngstown, NY.

It was noted that Mary Beth DeFazio was present. Gerianne Serchia of 3739 River Road stated that the original application was for a seasonal L-shaped floating dock. There is a tremendous amount of driftwood and large boulders to the river bank, it is not seasonal and not in compliance with the Army Corp of Engineers. The dock was supposed to come out and that is not the case. Peter Jeffery stated that it is a seasonal dock. Mary Beth DeFazio stated that the dock is seasonal with the exception of last year. It was not removed last year. Our schedules were crazy, in an out in October and November. Both Jim and I were out of town at different times until the first week of December. That is the only reason why it did not come out last year. We realize that there is a driftwood problem and we are trying to resolve and get it out of there. Chairman Tower stated that you do have to take it out. Mary Beth DeFazio stated that she apologizes. Chairman Tower stated that you have to comply with the law. Irene Myers stated could you make provisions to have someone take the dock out for you. We were trying to keep it in until after Anthony's

birthday. Peter Jeffery stated if you don't remove it, you are not in compliance with the law and your permit will become null and void.

Nan Simon, 3727 River Road stated she is the sister of Gerianne and I would like to know why I never got answers three years ago. The property had to be resurveyed. The Building Inspector was supposed to go down. I couldn't find the pins because it is not well marked. It is within ten feet of my property. What do you really need to do to put a dock in the river? Attorney Dowd stated the plan has to be approved by the Army Corp of Engineers, what the specifics are and you can contact the Army Corp of Engineers. If the applicant is not in compliance, you can contact Mr. Roy Rogers. If there is an issue, contact Mr. Rogers to see if it is property installed. Roy Rogers stated that there were some wires that had to be removed. Attorney Dowd asked if anyone notified the town that the dock was not removed. Nan Simon stated that they notified Roy Rogers and Merv Wiepert. We provide a letter from the Army Corp of Engineers date July 17, 2006 that the dock was not in compliance (copy attached). Chairman Tower stated it was surveyed and the cables were removed. If Mr. Rogers checked the survey, then it was correct. Roy Rogers stated that to the best of his knowledge it was not on Nan's property, but I am not a surveyor. Nan Simon asked if Mr. Rogers was there with the surveyor. Roy stated that he was there afterwards. Nan Simon stated that she brought the letter dated July 17, 2006 to the Town and a copy was put in everyone's mail box. It was distributed by Gail Zachary. The Board does not remember receiving a copy. Attorney Dowd stated that we will have Mr. Rogers verify if it is located on your property. If it is on your property, the applicant will have to remove it. Mr. Rogers will make sure that this is properly installed. Roy Rogers asked if the dock is in the water now. He will contact the Army Corp of Engineers. Mary Beth DeFazio stated that it is in compliance with the Army Corp of Engineers. The waves of the jet boats were pushing it in. I feel that I do have correspondence from the Army Corp of engineers and we did do a survey and the dock was on our property. At the time the survey was done, the dock was removed. It was installed on our river frontage three times. Nan Simon stated that there have been several year the dock was not brought out. We need confirmation that the dock will come out every season.

Chairman Tower stated I don't think the dock permit should be granted for more than one year. Duffy Johnston stated if they don't abide by the permit you can revoke the permit. Attorney Dowd stated if you are going to comply to the Zoning regulations, the application requires approval from the Army Corp of Engineers and the Army Corp of Engineers is for ten years.

Chairman Tower stated if it is not in compliance with the Town law, someone has to tell Mr. Rogers. Attorney Dowd stated a reasonable date of November 1 that all the moorings have to be out.

Nan Simon stated the rules should be the same for all of us. First, there is the permit, and then the number of docks not in compliance. This one has not been in compliance, and there are a lot of docks that have permits and are not in compliance but if you are friends with Mr. Dowd. . . . Attorney Dowd commented that he resents that. Nan Simon stated that when this permit was approved last time that someone was going to go up and down the river. Peter Jeffery stated it is not our job. The ZBA grants variances and special permits. It is Mr. Roger's job – Code Enforcement Officer. Nan Simon stated it was someone who had surgery. Attorney Dowd stated if there is an applicant who is violating their permit, we can bring people to court. I don't feel that the dock should be on someone else's property. Residents do comply with the law. Duffy Johnston stated how is someone supposed to know what is going on if we are not told. There will be a date of October 30. Nan Simon stated that she did tell Mr. Wiepert and Roy Rogers that the dock was not removed. Attorney Dowd stated we can correct it if there is a violation and we are notified of. Call me up, and we will make sure it is attended to.

Duffy Johnston stated it was bad last November. Irene Myers stated if you have a problem and you are not getting a response, we meet on the 3rd Thursday of each month. Feel free to come in to our meeting and address your concerns. It should have been brought to our attention. We will be more than happy to listen to you. Attorney Dowd stated to put it in writing.

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

Chairman Tower asked if there was any further discussion by the Board. Peter Jeffery stated can we approve the permit if the Army Corp of Engineers comes out again. We need to have some degree of compliance with the Army Corp of Engineers.

Peter Jeffery made a motion to approve this permit for three years contingent upon Roy Rogers getting compliance from the Army Corp of Engineers. If is not by October 30, it will be pulled out. Irene Myers stated if is not n compliance with the Army Corp of Engineers we will pull the permit,

Peter Jeffery again stated to renew this special permit with the same stipulations as the previous for three years with the stipulation it has to be removed by October 30 and inspected by the Army Corp of Engineers and was seconded by Duffy Johnston. Chairman Tower asked if there was any further discussion. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes and Chairman Tower-yes. All in Favor.

Chairman Tower read the following:

Application of David Wayda, 3065 North Creek Road, Youngstown, NY 14174. A Variance is requested under Sections 503.3A, 705 and 710 to construct a six foot fence for privacy. Section 503.3 states "Maximum Height Residential District four (4') feet. Thus, a variance of two feet is requested. Property is located in an ARR-100 District on the East side of North Creek Road between Lake Road, Rte 18 and Youngstown-Lockport Road, Rte 63 in said Town.

It was noted it should be Rte 93. It was noted that David Wayda was present. Chairman Tower asked if anyone from the audience wished to speak. None. Peter Jeffery made a motion to close the public part of the hearing and was seconded by Irene Myers. All in Favor. Motion Carried.

David Wayda approached the Board and pointed out where the fence would be. It was start at the middle of the house and go to the back of the yard.

Duffy Johnston made a motion to approve this variance for a fence on the south side of the property line and it cannot go beyond the front of the house. The good side must face the neighbor and be two feet off the property line to be maintained and was seconded by Irene Myers. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Irene Myers-yes; Chairman Tower-yes. All in Favor. Motion Carried.

The following two applicants wished to address the Board:

Steven Rhoads, 344 Brentwood Drive, Youngstown, NY 14174 for a Special Use Permit to park/store pop-up trailer. Mr. Rhoads approached the Board to discuss parking his pop-up trailer. He also showed the Board pictures of where he would like to place the trailer on his driveway in the front of his house. Roy Rogers stated that if it is out longer than 30 days, it is a problem. Chairman Tower asked if anyone is going to stay in the trailer? Duffy Johnston commented that you are going to see the camper if it is on the side or in the front. Mr. Rhoads stated that his neighbor doesn't like it. The Board stated that if we let you park in the front yard, there will be a huge issue. When we get complaints, the Board will act on it. Attorney Dowd stated it is a waterfront community, and it is up to this Board for appearance. Chairman Tower asked Mr. Rhoads, "How often do you use the trailer?" —four times a year. Irene Myers stated to Mr. Rhoads that you do have a cushion on the side of the home. Peter Jeffery stated that there are other alternatives – camper has levers, patio blocks which you can set it on. I think from my opinion that we would be putting our names on the line if we allowed you to put it in the front of your driveway. You are aware of the safety issues – there are codes. Duffy Johnston stated park it on the side and on Fridays bring it out for the weekend. You have to dry it out every weekend. Get blocks and set it off on the side. Steven Rhoads stated that he has a perfectly good driveway. Irene Myers stated that if we let you do it, then we have to let "Joe Smith" with his 30 foot sailboat. Steven Rhoads asked, "How do I get the town law changed?" Attorney Dowd stated go on line, look at the proposed Zoning law and write a letter to the Town Board. Irene Myers stated that we are in the midst of changing the Zoning laws.

Brian Winger, Sunrise Lane, Youngstown, NY to build a garage (only) on a parcel of land. Brian Winger approached the Board about putting up a garage on Sunrise Lane. He had discussions with the Board about the garage and where it will be located.

Irene Myers made a motion to close the meeting and was seconded by Duffy Johnston. The meeting was adjourned at 8:45 pm. The next regular meeting will be held on **Thursday, June 16, 2009.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals