

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, January 21, 2010, 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 Irene Myers, Member William Leggett, Member Jackie Robinson, Attorney Michael Dowd, Susan Driscoll and Roy Rogers, Building Inspector.

Chairman Tower called the meeting to order at 7:30 pm. Chairman Tower stated that he will be Chairman for another year and that the Board needed to elect a Vice Chairman. Irene Myers made a motion to nominate Duffy Johnson and was seconded by Peter Jeffery. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; William Leggett-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower asked if there were any additions or deletions to the December minutes. Peter Jeffery made a motion to accept the minutes as written and was seconded by Irene Myers. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Jackie Robinson-yes and 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 **January 21, 2010** at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of David Beiter, 1765 Youngstown-Wilson Road, Youngstown, NY 14174. Pursuant to Sections 401.7A, 704.2 and

710, an area Variance is requested to build a detached private garage in front of his house. Property is located in an ARR-100 Zoned District between Murphy's Corner Road and Porter Center Road in said Town.

It was noted the David Beiter was present. Chairman Tower was going to reclude himself from this application because Mr. Beiter was his neighbor and adjoining property owner. Chairman Tower stated that he had no problems with this at all.

Mr. Beiter approached the Board along with Scott Szarejko. Mr. Szarejko stated that it was a 24'x24' garage with 8' side walls. Mr. Szarejko presented pictures to the board. Peter Jeffery stated that the building will be 66' from the white line of the road. We have to judge each case by case in relation to the requirements. Duffy Johnston stated in that area there are no real driveways. Irene Myers asked Mr. Beiter was they any reason why you wouldn't add on to the existing garage? Mr. Beiter stated it will no longer be a garage.

Duffy Johnston asked if anyone from the audience wished to speak. None. Peter Jeffery made a motion and was seconded by Irene Myers to close the public part of the hearing. Duffy Johnston asked for a Roll Call Vote. Peter Jeffery-yes; Irene Myers-yes; William Leggett-yes; Jackie Robinson-yes and Duffy Johnston-yes. Motion Carried to close the public part of the hearing.

Duffy Johnston read the following Planning Board recommendations:

"David Beiter, 1765 Youngstown-Wilson Road, Youngstown, has submitted a request to build a garage in front of his house. This will be a detached private garage. Scott Szarejko, the builder representing Mr. Beiter, presented several photographs of garages that have been built in the town where the garage has been built in front of the house.

Michael Dowd, attorney for the town, recommends that the Planning Board consult the Zoning Law and examine the area variance.

The request does not change the character of the area.

Chairman Spira read from page 147 of the Zoning Law regarding conditions. Given the size of the lot, the garage is going to be sixty-six (66) feet off the road on a 1.5 acre lot. This will not substantially change the character of the neighborhood. It is recommended that the Zoning Board of Appeals APPROVE this request for an area variance.”

Peter Jeffery stated that he doesn't think we are substantially altering the character of the neighborhood. There are no significant issues.

William Leggett commented it is an area variance, not a special permit. William Leggett cited 401.7A – minimum depth from street is 60'. Why are we looking at it? Peter Jeffery stated we are allowing him to build in front of the house instead of in the back yard.

Peter Jeffery made a motion that the Board approve this area variance as presented for a single story, 24' x 24' garage with 8' side walls, 66' off the white line of the road to the front of the house based on we don't believe the variance is going to affect the character of the neighborhood and was seconded by William Leggett. Duffy Johnston asked for a Roll Call Vote. Peter Jeffery-yes; Irene Myers-yes; William Leggett-yes; Jackie Robinson-yes and Duffy Johnston-yes. All in Favor. Motion Carried.

Chairman Tower returned to the meeting at 8:42 p.m.

The next item on the agenda was:

Application of Joe Rollain, 2347 Lake Road, Ransomville, NY.

Under Sections 413.3, 705.1 and 710.13, a special permit to operate a Pizza Parlor at 2555 Youngstown-Lockport Ransomville, NY. Property is located in an UCC-60 Zoned District on the North Side of Youngstown-Lockport Road between Ransomville Road and where the Town of Porter ends in said Town.

Joe Rollain was present and gave each member a site plan. Duffy Johnston asked Mr. Rollain what did he find out about the grease. Mr. Rollain stated that he doesn't need a big truck to get it out because they have made different arrangements. We won't need any access.

Peter Jeffery stated we are looking at an area variance because he doesn't have enough parking on site. It is in an appropriate zoning district. Duffy Johnston stated he was in Lewiston for dinner on Saturday night, and there is not a lot of off street parking. You can't stop a business from coming into our area because of lack of parking spaces. Irene Myers there is not a lot of area for our Town to grow. I think Joe has been there long time. We have to have something done with the Master Plan. Duffy Johnston stated you might have to walk there. Peter Jeffery asked Mr. Rollain if he has some arrangements for employees to park. Mr. Rollain stated Joshua Newman, 2551 Youngstown-Lockport Road (I-shaped lot) has given Mr. Rollain permission to use his rear parking lot that is behind his building as extra parking for his business (3 parking spaces).

Peter Jeffery asked Mr. Rollain was he still looking at seating for 16 people. Mr. Rollain stated I have three booths for 15 people.

Peter Jeffery stated we have to weigh out is that acceptable with what is on the street and what is available on the other side. Peter Jeffery stated he would like to see a curb in front of the sidewalk to prevent parking on the sidewalk. You will have to contact the State and get a permit. It is an everyday occurrence on State roads. Joe Rollain stated in the interim he will block it off with flower pots so cars can't park across the sidewalk. Irene Myers stated we have to give him time to address the State to put in a curb to prevent parking on the side walk.

Duffy Johnston read the following Planning Board recommendations:

Joe Rollain, 2347 Lake Road, Ransomville, has submitted a request for a special use permit to operate a pizza shop at 2555 Youngstown-Lockport Road, Ransomville, and Mr. Rollain came before the Planning board to discuss this request. The pizza shop will be in the old fire hall in Ransomville; Mr. Rollain is redoing the entire building. Little Joe's Pizza shop will be moving from its current location.

Chairman Spira read a letter from the Ransomville #551 Free & Excepted Masons, Lodge Treasurer Franklin Schaefer giving

permission for Joe's Pizza to use their alley way to get to the back door for their deliveries.

Chairman Spira read a letter from Niagara County Department of Health regarding subsurface sewage disposal system dye test giving the applicant permission to utilize the existing septic system for the pizza shop restaurant as long as it functions properly with no discharge of sewage to the ground surface or storm water drains. It is noted that if a problem is found with the system in the future the health department will likely require the installation of a new septic system designed in accordance with the latest department codes.

This is a request for a special use permit and a variance on the number of parking spaces required. The Planning Board feels this is a good application for the pizza shop. After further discussion it was decided that a special use permit is not required, however a variance is necessary because of the absence of parking spaces. The applicant claims that Rite Aid Pharmacy has given permission for his staff of about 4 employees to park in their parking lot on Ransomville Road.

Dave Petrosewitz from Reid Petroleum raised a concern regarding the no parking in front of the building. He is concerned that customers for the pizza shop will park at the Crosby mart. This is not acceptable and will not be tolerated.

There is an old "No Parking" sign in front of the building that may be from the time the building was a fire hall. Roy Rogers will pursue the validity of the sign.

- . Hours of operation will be from 11:00 am until 10:00 pm
Sunday – Saturday.

- . Lighting – there will be no additional lighting added to the building, however, a sign will be illuminated.

- . Deliveries will be made from Youngstown-Lockport Road.

This is a request for a variance only. No special permit is required for this action. The Planning board recommends that the Zoning Board of Appeals APPROVE this request for a variance. The applicant

should get a letter from Rite Aid Pharmacy in Ransomville giving permission for the employees to park in the Rite Aid parking lot.

Chairman Spire read the Short Environmental Assessment form and completed the back section on behalf of the Planning Board. Donald McCollum made a motion that based on the information and analysis and supporting documentation presented, the proposed action will not result in any significant adverse environmental impacts. Jipp Ortiz seconded the motion. All in favor; motion unanimously carried.”

Peter Jeffery questioned the site plan review process – whether it was necessary or not. Attorney Dowd stated the site plan was pretty thin. It was completed in such a way as a physical drawing, no engineering drawing. I don't know if we have more than that in the past. Did we get something from the Masonic Lodge? The Planning Board recommendation stated a letter from Franklin Schaefer giving permission to use their alley. As for disposal in a dumpster and grease can behind the building, you have to confirm that a truck from Modern will get back their. Mr. Rollain stated he is not going to have a dumpster at all. Peter Jeffery stated Mr. Rollain is manually going to take out the garbage with regular garage service along the street. If the Board and the Building Inspector are satisfied with the site plan, then I am okay with it.

Peter Jeffery asked, “What is the Town's requirement for pick up?” Modern will pick up as a business. Joe Rollain will have to contact Modern to pick it up. If he doesn't contact Modern, the garbage will not be picked up.

Attorney Dowd commented on the letter from Mr. Newman saying that the employees can park on his property. It could go away some day. It is the Board's decision. As long as the Board is satisfied, you have to address it.

Peter Jeffery stated you can park two cars behind the building on the property. Attorney Dowd, you should consider it, if the neighbor doesn't allow him to park there. Peter Jeffery stated Casey's Malt Shop uses off the street parking. Attorney Dowd stated off the street parking is difficult in this area. You need to consider it in granting the variance. It is unique to the building. His area variance

is for parking. Peter Jeffery stated two parking spots are behind the building.

Jeff Baker stated that Joe Rollain has been a stable business in the Town for a long time. He provides an on-going service and is looking for a place to go to. Whatever this Board can do to make it happen would be appreciated. Casey's has no parking and uses Brad Hardison's; Ronnie Johnston has two businesses where there is little parking. It is all these things. I don't think it is a huge issue. People will park down the street and walk.

Peter Jeffery asked Mr. Weipert if he had a problem. Mr. Weipert replied I don't have a problem. If the building is not used, it will fall apart. You have solved all the problems, but make sure the garbage cans are secured. Joe Rollian stated they will be in a shed until pickup.

Chairman Tower read: Section 704.2 Area Variance.

Areas variances may be considered where setback, frontage, lot size, density or yard requirements of this 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:

- How substantial the variation is in relation to the requirement; *Done.*
- The effect, if the variance is allowed, of the increased population density thus produced on available governmental facilities (fire, water, garbage and the like); *Address It.*
- Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created; *Looked into it.*
- Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance; and
- 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. *Done*

Chairman Tower asked if there was any further discussion. Peter Jeffery made a motion and was seconded by Irene Myers that we approve the area variance with the following stipulations:

1. Joe Rollain makes arrangements with Modern for curb side garbage pickup.
2. Curb cut in front of the building raised back up to a standard curb (within six months).
3. Approve area variance based on seating of 16 people for restaurant service, evaluating parking for 8 vehicles. It is not substantial in neighborhood and existing property.
4. Septic – good working order with Niagara County Health Department on working systems.
5. Grease disposal – will be contracted and disposed of appropriately offsite.
6. Joe Rollain has current agreement for off street parking for employees at the Newman property and also a current agreement with the Masonic Lodge for deliveries to access rear building.
7. Acknowledge Planning Board input as to signage on the front of the building; light over the entryway door; clean up the front of the building.
8. Zoning Board agrees it meets area variance requirements.
9. Hours of operation 11:00 am until 10:00 pm Sunday thru Saturday.

Chairman Tower asked if there was any further discussion. Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Irene Myers welcomed Jackie Robinson as a new member to the Zoning board.

Jeff Baker stated the Board made the right decision as far as Joe Rollain goes. Peter Jeffery stated I think it is the right thing also. We need get the new Zoning manual and maps finished. We don't have enough places for businesses to go. We need to expand the district in Ransomville. Attorney Dowd stated a restaurant should be permitted. Irene Myers stated we just can't keep turning people away.

Irene Myers made a motion to close the meeting and was seconded by Duffy Johnston. The meeting was adjourned at 8:20 pm. The next regular meeting will be held on **Thursday, February 18, 2010**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals