

STATE OF NEW YORK
BOARD OF APPEALS
COUNTY OF NIAGARA

ZONING
TOWN OF PORTER

The Regular Meeting of the Town of Porter Zoning Board of Appeals was held on Thursday, June 18, 2009, at 7:30 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

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

ABSENT: Member Irene Myers.

Chairman Tower called the meeting to order at 7:30 pm Chairman Tower asked if there were any additions or deletions to the May minutes. William Leggett stated that at the end of the minutes the date for the next meeting was June 16. It should have been June 18, 2009. Duffy Johnston made a motion to accept the minutes as written and was seconded by Peter Jeffery. 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 **June 18, 2009** at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of Audrey Smith, 2667- Youngstown-Lockport Road, Youngstown, NY 14174. A Variance is requested under Sections 503.3A, 705 and 710 to construct a six foot fence approximately 36 feet west from the corner of her garage. 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 between Ransomville Road and where the Town of Porter ends in said Town.

Chairman Tower asked if anyone from the audience wished to speak. Audrey Smith's son approached the Board and stated that he did not know at the time when he built the fence that he had to pay \$80.00. He built the fence for his mother because she is 78 years old and enjoys flowers and to pretty up her yard. I was honest and paid the \$80.00. Duffy Johnston made a motion and was seconded by Joe Fleckenstein to close the public part of the hearing. All in Favor. Motion Carried to close the public part of the hearing.

Chairman Tower stated that he didn't think that anyone has a problem with this fence. Peter Jeffery stated that you need a permit to build a fence. The \$80.00 is for a variance for a six foot fence. Joe Fleckenstein asked if there was any obstruction with the roadway. Duffy Johnston made a motion to approve this variance for a six foot fence and was seconded by Peter Jeffery. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Joe Fleckenstein-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following:

Application of William O'Connor, 2268 Youngstown-Wilson Road, Ransomville, NY 14131. To renew his Special Permit dated June 27, 2002 for sales and service of motorized recreational sports equipment and related accessories on his property at 2268 Youngstown-Wilson Road, Ransomville, NY. Property is in an ARR-100 Zoned District located on the South Side of Youngstown-Wilson Road, between Dickersonville Road and Ransomville Road in said Town.

It was noted that Mr. O'Connor was present. Chairman Tower stated that this business has been in operation for at least seven years with no problems.

Chairman Tower read the following Planning Board recommendation: "William O'Connor, 2268 Youngstown-Wilson Road, Ransomville, is requesting the renewal of a special permit for sales and service of motorized recreational sports equipment and related accessories on his property. The Planning Board recommends APPROVAL of this request."

Chairman Tower stated he is asking to approve for at least seven to ten years. This is either is second or third permit. Peter Jeffery made a motion and was seconded by Duffy Johnston to close the public part of the hearing. All in Favor. Motion Carried.

Duffy Johnston stated that we have done ten years in situations like this. There are no changes with the permit.

William Leggett made a motion to approve this permit as originally written for ten years and was seconded by Duffy Johnston. Chairman Tower asked if there was any further discussion.

Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Joe Fleckenstein-yes; and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following:

Application of Victor Sirianni, 975 Escarpment Drive, Lewiston, NY 14092. Under Sections 401.6, 704.2 and 710, a variance of 2.5% is requested for a new home construction located at 509 Lake Road, Youngstown, NY. Property is located in an ARR-100 Zoned District between Fort Niagara Beach and Creek Road in said Town.

It was noted that Victor Sirianni was present. He is looking for a 2.5% variance. My garage, workshop and new home will go 2.5% over the 10%. The old structure will come down when the new house is completed. Peter Jeffery made a motion to close the public part of the hearing and was seconded by Duffy Johnston. All in Favor. Motion Carried.

Chairman Tower stated that he has Planning Board approval from May. Victor Sirianni stated that the new house will be between 19 to

20 feet behind the current existing structure. We took the septic out and there is sewer. My father's name is on the deed and there was a little bit of a mix up. Peter Jeffery asked if we can issue a building permit and a temporary certificate of occupancy until the old structure is torn down. Victor Sirianni stated that I have no view until the old structure comes down. Joe Fleckenstein asked if we could issue fines. Attorney Dowd stated there is a current provision in the ordinance that could be issued. Joe Fleckenstein asked if there was some type of time line that the old one comes down. Chairman Tower stated maximum of one year should be sufficient. Peter Jeffery stated that he has no problem with a 2.5% overage. Peter Jeffery made a motion to approve the variance with a stipulation that the old house needs to come down within a year after temporary certificate of occupancy and was seconded by Duffy Johnston. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Joe Fleckenstein-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following:

Application of Brian Winger, 1469 Sunrise Lane, Youngstown, NY. Under Sections 704.1, a variance to erect a 30' x 40' garage on a lot approximately 100' x 200' across the right away from 1469 Sunrise Lane. Property is located in an ARR-100 Zoned District between Tower Road and Murphy's Corner Road off of State Route 18F in said Town.

It was note that Mr. Brian Winger was present. Chairman Tower asked if anyone from the audience wished to speak. None. Duffy Johnston made a motion to close the public part of the hearing and was seconded by William Leggett. All in Favor. Motion Carried.

Chairman Tower stated that Mr. Winger couldn't build it without a variance from this Board. Mr. Winger stated that his dad owns the existing garage. It is a private lane and I couldn't build a garage on the existing lot do to a septic system. The garage is behind the right away. Mr. Winger presented pictures to the Board. Joe Fleckenstein stated that I want to know exactly where the barn will be put. Is there a plot plan where the barn is going on the lot? Brian Winger discussed with the Board where the garage is going. Roy Rogers

stated that Mr. Winger is trying to do two things—a subdivision and build a garage on the lot. He is stuck until we hear this variance. Duffy Johnston stated that is why we changed the meeting. Joe Fleckenstein asked if we are going to let him build a garage without a house. I know how things worked before and fingers get point back to us. We don't need that on this Board. I don't feel comfortable without dimensions. Attorney Dowd asked "How big is the garage?" Mr. Winger replied 30' x 40'. I plan on complying with the Building Inspector and building permit. Attorney Dowd stated that about a year ago a gentlemen came in about putting a pole barn. We did have the neighboring lot with relation to other properties. When the pole barn was put up it created a wall for other neighbors. We need something from you. Give us an idea. Mr. Winger pointed on the map and pointed where the garage would be. He stated that he has no problem with the neighbors. Again, there was discussion among the Board about the dimensions, height, the right away. Joe Fleckenstein stated that he has no problem but I don't want any surprises. The Board discussed the distance of the garage from the property line. Joe Fleckenstein stated you should have enough to put a ladder up so as not to step on the neighbor's property. Duffy Johnston asked if there were any drainage issues. William Leggett asked about the right away. Peter Jeffery asked how far back. Attorney Dowd stated it appears when the subdivision was done years ago, who ever owned the land was in the estate and title never was passed on to anyone. It has been in limbo over the years. The question is setback. How far back from the line? Peter Jeffery stated at least twenty feet. Brian Winger was asking for the minimum. Attorney Dowd asked if it was a side-load garage. Joe Fleckenstein stated at least twenty feet off the right away. Peter Jeffery stated this is a very unique situation. Joe Fleckenstein stated the right away closest to the garage. If we do something different, someone is going to come in. Duffy Johnston stated twenty feet from the right away that the property touches. Joe Fleckenstein stated you have to treat it like a right away. Attorney Dowd stated you don't have to go crazy. You have to be reasonable. We are giving 20 feet, a 2/3 variance from 60 feet.

Peter Jeffery made a motion to approve a two-part variance for a 1600 square foot garage, 28 feet maximum height, six foot side yard set back and a twenty foot front yard set back and the second part of

the variance with a ten foot variance on the front lot because of the layout of the land and was seconded by Joe Fleckenstein. Joe Fleckenstein asked why do we have to grant a variance, he is getting a subdivision. Chairman Tower stated he can't get a subdivision until he gets this approved. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnson-yes; William Leggett-yes; Joe Fleckenstein-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following:

Application of Mark Chilberg, 839 Balmer Road, Youngstown, NY 14174. Under Sections 401.7, 704.2 and 710, a variance is requested to erect a pole barn at above address. Property is in an ARR-100 Zoned District on the North Side of Balmer Road between Creek and Lutts Road in said Town.

It was noted that Mark Chilberg was present. Chairman Tower asked if anyone from the audience wished to speak. None. Joe Fleckenstein made a motion to close the public part of the hearing and was seconded by William Leggett. All in Favor. Motion Carried.

Duffy Johnston asked how big is the pole barn. Mark Chilberg replied 24' x 24' with 8' side wall. It is all staked out. I want to put it where it will fit. I live in a flood zone. Joe Fleckenstein read "pole barn needs to be 25' from the center of Balmer Road." Chairman Tower read the following Planning Board recommendations: A variance is needed to builsa building in front of the residence Chairman Spira would like the barn next to the house. Jipp Ortiz and Donald McCollum would like the barn screened as it is too close the the road or try to place the building as far back from the road as possible.

Mark Chilberg pointed out where the pole barn will be – 50' from the center of the road. I staked it off. There is a flood plan all around my house. It is the only place I can put a pole barn. I will put a new roof on my house to match the garage, no floor just stone, no electricity. Duffy Johnston stated the houses are set back further in this area. There are trees by the other houses. Joe Fleckenstein stated he is not comfortable with the building being so close to the road – 25' off the road. Attorney Dowd stated that George Spira wanted the barn

closer the house. Peter Jeffery stated you would have to rework the driveway. Attorney Dowd stated that he feels you are 10' off the road. Mark Chilberg stated I am about 25' from the guardrail and it puts me back on the edge of the creek. The right side of the barn is parallel with the road. I don't have problem with screening with trees.

Joe Fleckenstein stated you are setting a precedent. This one is going to hurt. Peter Jeffery stated he does have some restrictions—wet lands and other problems.

Chairman Tower read Section 704.2 Area Variance.

Area 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:

- A. How substantial the variation is in relation to the requirement;
- B. The effect, if the variance is allowed, of the increased population density thus produced on available governmental facilities (fire, water, garbage and the like);
- C. Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created; None
- D. Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance; and
- E. Whether in view of the manner in which the difficulty arose and considering all of the above, factors the interest of justice will be served by allowing the variance.

Duffy Johnston stated to Mark Chilberg that the only reason why you don't want to put a pole barn closer to the house is because you want to put a pool in. Chairman Tower asked Attorney Dowd his thoughts. Attorney Dowd stated that the one issue is how the hardship arose – the wetlands. If you can get over that, the Board would like to help people. Can you accommodate this issue? Right now you are asking for a 50% variance. It is a 2/3 variance. Are there other ways to fit it. You might have to reconfigure your driveway. What about the next guy that comes along. Is line of site an issue. Joe

Fleckenstein stated he doesn't believe there is a line of site issue. The amount of variance and the next 100 people who want to put a barn next to the road. It will happen. Joe Fleckenstein stated someone's hardship is not our fault. You built a house, and you want to build more. You should have built on a better lot. The Board isn't responsible for the hardship. What are the repercussions if we grant it? What we are worried about is an 80% variance. I am concerned. Why not reconfigure your driveway and screen it from your house. It would be a lot more comfortable to the Board. It is creating a hardship for us in the area where you want it. Can we table this for one month to look at this. Mark Chilberg was in agreement to table this application for 30 days.

Joe Fleckenstein made a motion to table the application of Mark Chilberg for 30 days so that Mark Chilberg could re-evaluate the situation and was seconded by Duffy Johnston. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; William Leggett-yes; Joe Fleckenstein-yes; and Chairman Tower-yes. All in Favor to Table for 30 days. Motion Carried.

Joe Fleckenstein made a motion to close the meeting and was seconded by Duffy Johnston. The meeting was adjourned at 8:40 pm. The next regular meeting will be held on **Thursday, July 16, 2009.**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals