

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, June 17, 2010, at 7:30 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

**PRESENT:** Chairman William H. Tower, Member Duffy Johnston, Member William Leggett, Member Irene Myers, Member Jackie Robinson, Attorney Dowd, Susan Driscoll and Roy Rogers, Building Inspector

**ABSENT:** Member Peter Jeffery.

Chairman Tower asked if there were any additions or deletions to the May minutes. Duffy Johnston made a motion to accept the minutes as written and was seconded by Jackie Robinson. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-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 **June 17, 2010** at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Chairman Tower stated that he was taking it out of order.

**Application of Paul Schmoyer, 1809 Lake Road, Youngstown, NY 14174.**

Grant a Variance under Section 503.3 and 704.2 of the Town of Porter Zoning Ordinance to relocate a six (6') foot in height fence to the West side of residential

property and another portion to continue on the line 180" to the North and 40" to the West side of the property line.

Section 503.3 states "Maximum Height Residential Districts four (4') feet. Thus, a variance of two feet is requested. Property is located on the North Side of Lake Road in an ARR-100 Zoned District between Murphy's Corner Road and Porter Center Roads in said Town.

It was noted that Mr. Schmoyer was present.

Chairman Tower asked Mr. Michael Adams if he would like to have Chairman Tower step aside for this application. Mr. Adams stated it was 15 years ago. I am sure you have an open mind. Chairman Tower stated that it was required by NYS law that he ask Mr. Adams. Chairman Tower stated to Mr. Schmoyer that you have changed your fence lines. You are relocating your existing six foot fence to the West line and continuing with the same structure fence down to the North corner of the access road and westerly 40 feet to the West property line. Mr. Schmoyer stated he wanted to change it to the original snow fence and barbed wire fencing on the two properties. Chairman Tower asked Mr. Adams if he would like to comment. Mr. Adams stated that Mr. Schmoyer came over to talk today. We had a small incident over Memorial Day weekend. Mr. Adams asked if Mr. Schmoyer is planning on replacing the snow fence. I have received copies from Paul Schmoyer, and I noticed that there are some comments in this letter that are not true. The yard debris is on the East property line. There is a snow fence and wild growth on Paul's property. The snow fence has not been taken care of for the past fifteen years. Wherever there were holes in the fence, I gathered sticks and put them on my property. It might be unsightly. I would like the Zoning Board to come down to see our property. Our property is well maintained and kept. I am sure why he wants to move the fence is to expand the campsite another 10 feet. My wife, Helen Adams wishes to speak. The fence was going to stay up another six feet on the ten foot buffer zone. Why take down the existing fence? They should keep campers where they should be. If you are given ten extra feet, they can come over. Take the existing fence down and put up another fence six feet from our property line. We are not going to have the property destroyed. He has not been maintaining it. There is a lot of debris. He can leave the fence up that is currently up on the campsite. Mr. Adams stated the six foot fence is in good shape. Why take down the snow fence and put another fence up? There is a lot of garbage. Leave the six foot fence up and extend from it. If you take the present fence down, then you don't have a buffer zone.

Chairman Tower asked Mr. Schmoyer if he was going to remove the six foot fence. Mr. Schmoyer stated he wants to take down the six foot fence and move it to the West side of my residential lot and have access to the back lot. I am not expanding the site. Before I put up the fence, there was not a fence there. I put a snow fence right out to the property line. It deteriorated. I would like to move it back and create more vacant area. I understand I could put up a

four foot fence on my property line. Everything is grandfathered in, and I have no fence there. I want to put a screened fence where the original snow fence was. I will put up a four foot fence. It is up to the Board. I thought it would be beneficial to my campers and on my property.

Mr. Adams stated that bringing it ten feet closer would make it worse. I cleaned up a portion of some of the stuff in a couple of hours. That is a bogus statement. Mrs. Adams stated to leave the existing fence there. It is a residential property. They have nine or ten feet for a driveway. The driveway was only used three or four time in the past fifteen years.

Irene Myers questioned a six foot snow fence which is ten feet off the property line. Mr. Schmoyer stated there is no fence now. Mrs. Adams stated that Mr. Schmoyer was going to leave that fence up and bring another six foot fence over ten feet. Irene Myers stated the Westerly side of the property. He still has another ten feet. He wants to take the whole fence down and move it over ten feet. Mr. Adams stated to put a four foot fence up and we have no problem. Lisa Adams, daughter, stated she lived there for 35 years. I think to kind of sum it up this parties concern is that Mr. Schmoyer wants to move the fence. The Adams have lived there 42 years and the campsite has been in existence since 1942. Lisa Adams stated the vacant area is a buffer zone. It is private property. Mr. Schmoyer stated he has ten feet to move over from the campsite. Lisa Adams stated it is not part of the campsite. Chairman Tower stated it is part of his campsite. Mr. Schmoyer stated I cannot build anything on it. Attorney Dowd stated two feet off the property line. We are wasting a lot of time. He is entitled to put up a four foot fence. I think we are beating a dead horse.

Irene Myers stated if I were living where you are living and if Mr. Schmoyer wanted to put a six foot versus a four fence, so you won't have to look at the trailer park, a six foot fence would be the way to go. Mr. Schmoyer can put up a four foot fence and we have no control over it. Mr. Adams stated let him put up the four foot. Irene Myers stated I would prefer a six foot because no one would be peeking over the fence. I don't want it any closer. Irene Myers asked if they had any problems. Lisa Adams stated "yes". The dogs were barking and people were throwing stones.

Paul Schmoyer stated that he came here to ask to move the existing six foot fence to the West buffer zone. The buffer zone has become a part of the part now. I will not put any trailers or shed on it. I don't know what the problem is.

Irene Myers made a motion to close the public part of the hearing and was seconded by Duffy Johnston. Chairman Tower called for a Roll Call Vote. Duffy Johnston-yes; Irene Myers-yes; William Leggett-yes; Jackie Robinson-yes and Chairman Tower-yes. All in Favor to close the public part of the hearing.

Attorney Dowd that by removing the fence or moving it, you can put limitations on the permit. Irene Myers stated it would be permissible for Mr. Schmoyer to move the fence over and have nothing on it.

Chairman Tower read the Planning Board recommendations. There is a request to relocate an existing six foot high fence to the west side of his residence property line. This location is a camp ground. Mr. Schmoyer presented drawings of the area and explained the purpose of this request. The neighbor has debris that is unsightly. The relocation of the fence will cover up the unsightly mess. Roy Rogers feels this is an appropriate use of the fence as long as Mr. Schmoyer doesn't go all the way to the lake. The Planning board feels that a six foot fence should be moved ten feet. The Planning Board has no objection for Mr. Schmoyer to move the fence ten feet to the west to the property and extending the fence 40 feet to the easterly boundary. Approval of this request is recommended.

Duffy Johnston stated you can't put a fence on the property line. Irene Myers stated it if was a vinyl fence you could. Duffy Johnston stated I never saw a fence on the property line.

Chairman Tower stated lets table this for 30 days. Everyone has to go down and take a look and was seconded by Irene Myers. Chairman Tower asked for Roll Call Vote. Duffy Johnston-yes; Irene Myers-yes; William Leggett-yes; Jackie Robinson-yes; Chairman Tower-yes. All in Favor to Table for 30 days.

Both Paul Schmoyer and Mr. Adams stated that they would like to be there when the Board visited the site. Chairman Tower stated that no one can discuss this outside of this room or anywhere else.

Chairman Tower asked that we notify Mr. Adams about the next meeting.

Irene Myers stated to Mr. Adams – four foot fence versus a six foot fence with limitations. If we permit approve a permit with a six foot fence – no sheds, clean and a buffer zone. There will be conditions for a six foot fence and no conditions on a four foot fence.

Chairman Tower read the following:

Application of Sarah & Matt Stephenson, 1123 Cain Road, Youngstown, NY 14174. Grant a Variance under Section 503.3 and 704.2 of the Town of Porter Zoning Ordinance to erect a five (5') foot in height pressure treated privacy fence with the good side facing the inside approximately 140' in length. Section 503.3 states "Maximum Height Residential Districts four (4') feet. Thus, a variance of one foot is requested. Property is located on the North Side of Cain Road in an ARR-100 Zoned District between Creek Road (Route 18) and Lutts Road in said Town.

It was noted that Sarah Stephenson was present. There was a question about the good side on the inside. Irene Myers stated that Zoning laws state the good side should face the neighbors.

Mrs. Stephenson stated that she doesn't want to go with the DDSO regulations. She has gone over several options the past couple of days. She is now requesting a six foot privacy fence on the one side. She stated that the neighbor is okay with this. She stated that her son has a disability. She stated that they are now going to pay for the fence by themselves and have exhausted all their options. Irene Myers asked if they could have a vinyl fence. Mrs. Stephenson stated that vinyl cost two times the amount. We can't find the resources. We are looking at a cedar fence on one side of my property starting at the garage, two feet off the property line. My neighbor is okay with the good side facing us.

Chairman Tower read a letter dated April 21, 2010 from MaryBeth Lopat-Winter, M.D. (Island Pediatrics) and a letter from Paula Newman, OTR/L, Lockport, NY.

Irene Myers stated that I understand but now she is asking for a straight line down. Duffy Johnston stated there is a creek that runs from the Truesdale property with an in ground pool. The neighbor has no objection. Mrs. Stephenson stated there is a blind spot --my neighbor's driveway. It is a source of visual impact for my son. I am not taking any trees down. I am concerned about the safety and well being of my son which is most important. I want a yard that doesn't look like a jail. I want open space.

Mr. Jason Martin, 1127 Cain Road, I want to know if there are any stipulations and what are the plans. Mr. Stephenson stated that they want a six foot fence and block off the neighbor's danger area and eventually have a picket fence around the play area.

Irene Myers stated if it is on the property line, I would like to see the good side facing out. Irene Myers stated that she needs specifics. Mrs. Stephenson stated the reason why I am changing is the DDSO takes one to two years. Irene Myers stated that if you want to go with the original document; and it will take two years, you let us know.

Mrs. Stephenson stated that all she wants is a variance for a six foot fence two feet off the property line. I just put in a playground, and it keeps my son's attention.

Jason Martin questioned which side of the yard the fence will be on. Irene Myers stated she has applied for federal money and if she takes the money, she has to comply. Mrs. Stephenson stated I need the variance today. Irene Myers stated there is a price for your son's safety. Mrs. Stephenson stated that she got

estimates that ranged from \$9,000, \$6,000 and \$3,600. There are all over the board.

Irene Myers stated they she would like to see what is going to be put up. Chairman Tower stated that he disagrees. I would like to get the fence done and two feet off the property line. Irene Myers stated I am not heartless. Now, they are going to do it themselves.

Duffy Johnston made a motion to close the public part of the hearing and was seconded by Irene Myers. Chairman Tower asked for Roll Call Vote. Duffy Johnston-yes; Irene Myers-yes; William Leggett-yes; Jackie Robinson-yes and Chairman Tower-yes. All in Favor to close the public part of the hearing.

Duffy Johnston made a motion to approve the six foot fence with the good side facing in starting from the back corner of the garage and straight back to the tree line at the back of the property two feet off the lot line to protect her son and was seconded by Jackie Robinson. Chairman Tower asked for a Roll call Vote. Duffy Johnston-yes; Irene Myers-no; William Leggett-no; Jackie Robinson-yes. Chairman Tower stated the motion was carried with a 3 to 2 vote and Planning Board approval.

Chairman Tower stated to Mrs. Stephenson, if you have any problems, come back to this Board and we will schedule you on the meeting.

Chairman Tower read the following:

Application of Steve O'Lay, 2443 Youngstown-Lockport Road, Ransomville, NY. Under Sections 401.6 and 704.2, an area variance is required for an addition to the back of the house that exceeds area coverage by 56 square feet. Under Section 401.6, maximum lot coverage by building permitted is 10%. Property is located in an ARR-100 Zoned District on the North side of Youngstown-Lockport Road between Dickersonville Road and Estes Street in said Town.

It was noted that Mr. O'Lay was present. Roy Rogers stated that he doesn't have a problem. There is Planning Board approval. Chairman Tower asked if anyone from the audience wished to speak. None. Duffy Johnston made a motion to close and was seconded by Irene Myers to close the public part of the hearing. All in favor. Motion Carried.

A question was raised, "Is there something on the books that you have to be on the books for a home occupation for a landscaping business?" Attorney Dowd stated it depend up to the degree to see if it qualifies for a home occupation. Any business occupation in the town would require a permit. Is there an application for a home occupation? Irene Myers stated I don't believe they know. Is this the only business in town that doesn't have a landscaping permit? Attorney Dowd stated if it is a home occupation, you should have a permit. Duffy Johnston

stated he is asking for an area variance. Attorney Dowd stated it needs to be addressed for a landscaping permit. Duffy Johnston stated it should be addressed by the Code Enforcement Officer. If you address Mr. O'Lay's landscaping, you should address all of them.

Irene Myers stated the Planning Board if fine.

Duffy Johnston made a motion to approve the request of Steve O'Lay to grant a variance for an addition which is over by 56 feet and was seconded by William Leggett. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; Irene Myers-yes; William Leggett-yes; Jackie Robinson-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Irene Myers stated to Mr. O'Lay that if you put on another addition or expand the garage you are over the limit. You are over the limit now and you can't come back and ask for more.

Chairman Tower read the following:

Application of Suzanne Dewey, 7320 Packard Road, Niagara Falls, NY. Under Sections 401.3(z), 704.2 and 705.1, a Special Permit and area variance to house four (4) horses at 2488 Youngstown-Lockport Road, Ransomville, NY. Property is located in an ARR-Zoned District on the South Side of Youngstown-Lockport Road between Dickersonville Road and Estes Street in said Town.

Suzanne Dewey was present. She stated that the horses are there prior to the permit. She stated that the horses were starving and at least 150 lbs underweight. I am living there now.

William Leggett read the Planning Board recommendations. This is a request for an area variance for the keeping of horses on less than 5 acres. The property is 4.6 acres in size. The four horses are family pets. Chairman Spira read the application. Ms. Dewey spoke about this request. Councilman Fleckenstein is concerned about the disposal of the manure. The Planning Board recommends approval of this request as long as the property is fenced, manure property handled, manure trucked out, rodent and fly control is addressed. A special permit will also be required from the Zoning Board of Appeals.

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 stated the Zoning law required a lot of not less than five acres and this is 4.6 acres. Personally, I have a problem. Duffy Johnston asked if it was all fenced in. Suzanne Dewey stated we are working on it. Irene Myers stated there were horses there nine year ago. My main concern is four horses is a lot for this piece of parcel.

Suzanne Dewey stated that the manure will be spread in the back and then the overage will be trucked out. I am going to section it so the horses can rotate. Irene Myers asked a few questions Roy Rogers was questioned about the regulations for five acres. Attorney Dowd stated five horses on five acres when you have five acres.

Irene Myers stated that now that you have the horses how are you going to spread the manure on a weekly basis. Suzanne Dewey stated we have a tractor. When I lived on Grand Island, I had ten horses on 21 acres and I never used more than 10 acres. I talked to my neighbors and they don't have a problem. Duffy Johnston stated, if there is a major problem and it is not resolved, we can revoke the permit. Chairman Tower asked if she is renting the property. Susanne Dewey stated it is a one year lease with rent to own. Attorney Dowd stated your permit can not be longer than one year and the same with the variance. Irene Myers asked Suzanne Dewey are you occupying as a residence-yes. Attorney Dowd stated that I would suggest that so many acres be pastured off and fenced – at least two acres pastured off within 30 days. Irene Myers stated she is cleaning up the place.

Chairman Tower stated that under an area variance Section 704.2 should be considered

“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 the adjoining properties created;
- 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.

Irene Myers stated she is cleaning the place up and no neighbor objections.

Chairman Tower also read Section 704.3 and stated if you find all these to be true you can grant a variance.

704.3 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 the use, the nature and intensity of the operations involved in or conducted in connection with it and the size of the site in respect to streets giving access thereto.
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.
4. Will not alter the essential character of or be detrimental to the neighborhood.
5. Is the minimum necessary to afford relief.

Duffy Johnston stated it is pretty close to five acres and you can always rescind it. Irene Myers stated no neighbor objections and Duffy Johnston stated you are limiting to one year. Duffy Johnston stated we are giving you this opportunity and you have to abide by it.

Irene Myers made a motion to approve the application of Suzanne Dewey at 2488 Youngstown Lockport Road with the following conditions: live at premises; two acres of property are going to be fenced off by August 1; limit to four horses and if amount decreases they cannot be replaced; property will be maintained in an orderly fashion and manure will be distributed and if it becomes overbearing you must truck it out for a period of one year and was seconded by Duffy Johnston.

Chairman Tower stated he doesn't agree with it because it is on five acres. He asked for a Roll Call Vote. Duffy Johnston-yes; Irene Myers-yes; William Leggett-yes; Jackie Robinson-yes and Chairman Tower-no. Motion Carried.

Chairman Tow read the following:

Application of Robin Radomski, 456 Barton Drive, Lewiston, NY. Grant a Variance under Section 503.3 and 704.2 of the Town of Porter Zoning Ordinance to erect a six (6') foot in height pressure treated stockade fence approximately 500' in length in the back yard at 3827 River Road, Youngstown, NY. Section 503.3 states "Maximum Height Residential Districts four (4') feet. Thus, a variance of two feet is requested. Property is located on the East Side of River Road in an UR-80 Zoned District between Riverview and Howard Drives in said Town.

Robin Radomski was present and she stated the reason for the fence is because she is putting in an in ground pool and she has two large dogs.

Chairman Tower stated that he doesn't have a problem and it was approved by the Planning Board. Duffy Johnston made a motion and was seconded by Irene Myers to close the public part of the hearing. All in Favor. Motion Carried.

Robin Radomski stated it is a back yard fence, and I am living in the residence.

Irene Myers made a motion to approve the fence at 3827 River Road as per the drawing submitted to the Town for a six foot fence and was seconded by Duffy Johnston. Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; Irene Myers-yes; William Leggett-yes; Jackie Robinson-yes; Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following;

Application of Judith Finley, 3240 Manor Drive, Youngstown, NY. Grant a Variance under Section 503.3 and 704.2 of the Town of Porter Zoning Ordinance to erect a fence over four (4) feet. Section 503.3 states "Maximum Height Residential Districts four (4') feet. Thus, a variance is requested. Property is located on the West corner of Manor Drive in an ARR-100 Zoned District between Meadow Drive and Youngstown-Lockport Road (Rte 83).

It was noted it should be changed to Route 93. Judith Finley was present. She stated she was going from the front corner of the house with a six foot fence with the good side facing the neighbor.

The Board questioned a six foot fence from the front corner and suggested a four foot with a step up to six foot because of the size of the lot. Judith Finley stated that privacy was her main concern and the neighbors have dogs. She also stated that she was having two gates – one on each side.

Planning Board recommendations: This is a request for a six foot fence even to the front of the house. There is a 29' rear yard. The Planning Board approves this request, but feels that the fence should be to the back of the house, not along the side of the house.

Judith Finley stated that Davidson is doing the fence.

The Board made a recommendation that she move the fence back to the middle of the house (directly under the peak).

Duffy Johnston made a motion to approve the six foot fence for the application of Judith Finley starting at the middle part of the house (peak of the house) because the back yard is only 29 feet, two feet from the property line so that it can be maintained and was seconded by Irene Myers. Chairman Tower asked for a

Roll Call Vote. Duffy Johnston-yes; Irene Myers-yes; William Leggett-yes; Jackie Robinson-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Duffy Johnston made a motion to close the meeting and was seconded by Irene Myers. The meeting was adjourned at 9:36 pm. The next regular meeting will be held on Thursday, July 15, 2010.

Respectfully submitted,

Nancy Smithson, Secretary  
Town of Porter Zoning Board of Appeals