

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, August 20, 2009, at 7:30 PM, in the Town Offices, 3265 Creek Road, Youngstown, NY 14174

**PRESENT:** Chairman William H. Tower, Member Peter Jeffery, Member Irene Myers Member William Leggett, Susan Driscoll and Roy Rogers, Building Inspector.

**ABSENT:** Member Joe Fleckenstein, Member Duffy Johnston, Attorney Michael Dowd.

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 Peter Jeffery. Chairman Tower asked if all in favor. **All in Favor. Motion Carried.**

**PLEASE NOTE THAT ON SEPTEMBER 24, 2009 AT 6:00 PM THERE WILL BE A CLASS FOR FOUR HOURS FOR ANYBODY THAT NEEDS THE CLASS FROM THE ZONING AND PLANNING BOARD.**

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 **August 20, 2009** at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

**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 both Mr. & Mrs. Funk were both present. Chairman Tower asked if anyone from the audience wished to speak. A neighbor stated that five feet from his lot line is too close. Houses are quite close. I object to the garage being that close. Chairman Tower stated that it is illegal in a substandard lot of record. A substandard lot of record is 20,000 square feet.

Peter Jeffery stated because it is substandard, the proportion part is 11.3 feet. Chairman Tower stated that he assumes everyone had been down to Sunrise Lane so that we know what we are talking about.

Irene Myers asked what is between where your home ends. Mr. Funk stated there is approximately 19 feet on the other side of the home – 19.53 on the plan. There isn't any other place you could put the garage. The home is in the middle of the property. There is a utility pole on the other side. And the fact that we do not have access on that side with that pole there. The driveway is Danny Tower's driveway. We are allowed to use it and that continues East to West to the Tower property line and utility pole.

Peter Jeffery asked about the setbacks West of the North-South property line. Mr. Funk replied I would guess maybe eight to ten feet. I have never really measured it. Peter Jeffery stated there is a right away that runs east to west parallel to the East property line. Mr. Funk it is a private driveway. It is not on our deed. We only have a right away that is divided on our deed. The only right away is Sunrise Lane running east to West. The East side of our house has a kitchen window and entrance doors. Irene Myers asked do you have an entrance on the garage at the house. Mr. Funk stated there will be entrance from the garage into the house. It will be attached. The peak of the roof would be the same configuration as the house. Peter Jeffery asked where the front of the garage is. Mr. Funk stated it will be four feet to the South that would allow a man door on the Southeast corner of the garage. Irene Myers commented that the garage peak will be above the house. It won't be flush. Peter Jeffery asked if we were confident that the back property line will be five feet.

Roy Rogers replied it looks like it will be about five feet. Peter Jeffery commented that this house isn't new. Mr. Funk replied that it was originally built in 1972. We rebuilt it. He approached the overhead map and explained the right away. Irene Myers stated that she would like the garage on the East side instead of the West side. Mr. Funk stated that the only thing I can say is that we can build a building on the lot line. I have to have a place to put my lawn mower, wheel barrels, etc. We do not building now. I guess I can put up a chain link fence with a light and blue tarp. Peter Jeffery stated there is a lot of other property. How is this a hardship? We have to prove hardship. Mr. Funk stated it is the most logical place to put the garage – easy access to Sunrise Lane and it would allow you to come down Sunrise Lane.

Irene Myers stated it is a substandard lot. Mr. Funk stated historically speaking there are not many standard lots on the lake. Irene Myers stated we really have to prove in our minds that you do have a hardship. She also asked "How long have you owned that house?" Mr. Funk replied 1996. Irene Myers stated you were aware that it was a substandard lot. Mr. Funk stated I was not aware it was substandard until we got into this project. Peter Jeffery stated we have to evaluate from knowing when you purchased the lot. Mr. Funk stated I think it is pretty simple and straight forward. It think it is a hell of an improvement from when we built the house. The garage is well planned. Peter Jeffery stated tonight you are asking to build closer to your neighbor's property line as to what the Town allows as standard. We have a neighbor that is concerned about it. Mr. Funk replied this is an aesthetic concern. Peter Jeffery replied, "No, it is Zoning". Isn't there another way to do this?

Chairman Tower read Section 704.2 and 704.3

Irene Myers asked if it would be possible to put the garage on the North side of the house – either way you have to put a driveway in. Is that out of the question? Roy Rogers stated the lake side is the front of the yard. Chairman Tower stated would you be setting a precedent for the Town of Porter when this is supposed to be the front yard. Mr. Funk stated that we park pretty much on the East side. I don't have a pad on the West side. We have been allowed by

Dan Tower to use that driveway. No garage on the North side of the house. It is the front of the lake.

Peter Jeffery asked if he would be willing on the West side if you went out 11 feet; slide the garage further to the South and have the dimensions wider on the 11 feet on the South. The garage would be L-shaped. It could still be in the 11 feet non-variance set back. Peter Jeffery stated if you are willing to compromise we are well within the law and you will not need a variance. Mr. Funk stated 14 feet is not a bad looking addition. It blends in and fits. I don't think I can do 11 feet. I think there is a line that you have to maintain North and South with your neighbors. Peter Jeffery stated I am looking for a compromise – either you or your neighbor. Irene Myers asked if he does build the garage with cinderblocks, “What is the distance between the home and the garage?” Roy Rogers stated that under fire code as close as three feet to the house and three feet to the property line. If he attaches it, it has to be fire resistant under Section 506.3. Irene Myers stated he would be closer to the road. Peter Jeffery stated 14 feet to the right away. Peter Jeffery stated on the East side, he can only come out 11 feet without a variance. Irene Myers stated it would give him more width. Mr. Funk stated it can't be attached to the house on the East side because of windows – kitchen, mudroom and bathroom.

Chairman Tower asked the Board if they would like to table for 30 days and get the lawyer's input.

Chairman Tower made a motion and was seconded by Irene Myers to table the application of Lynn Funk for 30 days to address legal counsel.

Chairman Tower asked for a Roll Call vote. Peter Jeffery-yes; William Leggett-yes; Irene Myers-yes and Chairman Tower-yes. All in Favor to table the application for 30 days.

#### Application of Mark Chilberg, 839 Balmer Road, Youngstown, NY

William Leggett asked Mr. Chilberg, “Have you considered all the alternatives. Mr. Chilberg approached the map and explained why he wants the garage here. Life is too short. The space on the corner

from the center of the road is 55 feet. The building will be approximately 24' x 24'. It is where I want to put my trailer and boat. He also pointed out the flood zone. If I can't put a garage there, where can I put it? Roy Rogers stated that under current zoning, he cannot build in the front. Irene Myers stated you can make it aesthetically pleasing. Mark Chilberg stated I want to do it cheap. Peter Jeffery stated you are creating the hardship for yourself. You chose not to build there, and it makes our job harder to give you a variance. It does establish precedence in the Town. William Leggett stated this is self-imposed. Peter Jeffery asked Mr. Chilberg is you can't build next to the road where you want it; you are not going to building.

Irene Myers made a motion to **DENY** the application of Mark Chilberg under Sections 704.2 and was seconded by Peter Jeffery. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; William Leggett-yes; Irene Myers-yes and Chairman Tower-yes. All in Favor to **DENY** the application of Mark Chilberg

Irene Myers made a motion to close the meeting and was seconded by William Leggett. The meeting was adjourned at 8:40 pm. The next regular meeting will be held on **Thursday, September 17, 2009.**

Respectfully submitted,

Nancy Smithson, Secretary  
Town of Porter Zoning Board of Appeals