

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, September 16, 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 Jackie Robinson, Attorney Dowd, and Susan Driscoll.

ABSENT: Member William Leggett and Roy Rogers, Building Inspector.

Chairman Tower asked if there were any additions or deletions to the August minutes. Peter Jeffery made a motion to accept the minutes as written and was seconded by Jackie Robinson. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Tower-yes. **All in Favor. Motion Carried.**

Chairman Tower read the following:

Application of Frank Destino, 3909 Creek Road, Youngstown, NY 14174. Under Section 401.3, 705 and 710 of the Town of Porter Zoning Ordinance, a Special Permit is required to display and sell cars at above location. Property is located in an ARR-100 Zoned District on the East Side of Creek Road between Calkins Road and where the Town of Porter ends in said Town.

It was noted that Frank Destino was present. He approached the Board and talked about the Planning Board meeting. 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 Irene Myers. All in Favor. Motion Carried.

Chairman Tower read the Planning Board recommendations. "Frank Destino, 3909 Creek Road, Youngstown. This is a request to display and sell cars in the Destino's Pizzeria parking lot. The

parking lot is a separate parcel from the pizza shop. Mr. Destino requests permission to display a few cars (2-4) for sale. There would not be an auxiliary building on this local. This is zoned ARR100. Chairman Spira read from the zoning law to determine that this request is not allowed in an ARR100 zoned area. This location has operated as if it were a commercial operation for at least forty years. It truly does act as if it is a commercial application. This action will require a special use permit issued by the Zoning Board of Appeals. The Planning Board recommends that the Zoning Board of Appeals approve this request. The Planning Board recommends that the Zoning Board of Appeals limit the permit to the sale of two (2) cars at one time. The Zoning Board of Appeals should contact Mr. Dowd to see if this is setting a precedent. This does not give permission for anyone to sell cars in an ARR100. This should be granted for one year and revisited at that time. Mr. Destino does not own the property, but leases it.

There is a letter in the file giving Mr. Destino permission to act on behalf of the owner, Nelson & Phyllis Fasciano.”

Peter Jeffery asked for a site plan showing the number of cars in the parking lot of the pizza show. Duffy Johnston asked Mr. Destino if he was going to extend the lot. Chairman Tower stated the South side is cleared up. Mr. Destino stated he would extend the lot (cleared spot) and flatten out. He will put stone in, and it wouldn't be in anybody's way.

Attorney Dowd stated this is a use variance not an area variance. It is not zoned for it. Whether it qualifies for a use variance, it was requested as a special permit. To sell automobiles is not a permitted use. The restaurant is a prior non-conforming use. There is a separate lot. There are two separate parcels. The parking lot to the South was added several years ago. We required more parking for the restaurant.

Irene Myers asked Mr. Destino if Mr. Fasciano has given his permission to act on his behalf. Mr. Fasciano stated we are allowing him to move over past the lot to sell two to three cars. I am trying to make it convenient for him. I have no problem with it.

Attorney Dowd stated I am not sure whether he is entitled to a use variance. You have to go through the criteria whether you want to grant a variance. I wasn't at the meeting at the Planning Board. This is the first I heard of it tonight. Mr. Dowd asked Mr. Fasciano how long has the restaurant been there. Mr. Fasciano replied since 1945. This was a prior non-confirming use. They don't need a use variance for the restaurant. Peter Jeffery stated on the application is has checked use variance. Attorney Dowd stated you need to go through the criteria of Section 704.1 (page 140 of the Zoning Manual). Irene Myers stated it is zoned agricultural. I don't like the way it is zoned. Attorney Dowd asked what was to the North of Destino's. There are houses and there is quite a distance between them. Irene Myers stated you would be setting a precedent. Attorney Dowd stated I think the Board should be careful and that you apply the rules. Attorney Dowd stated you have to go through the process.

Peter Jeffery read 704.1 Use Variance.

Before the Board of Appeals may grant a use variance, unnecessary hardship must be established based upon all the following criteria.

- A. Based on actual monetary values, the land in question cannot yield a reasonable return if used only for a purpose allowed in that zone;
- B. The plight of the owner is due to unique circumstances and not to the general conditions in the neighborhood;
- C. The use to be authorized by the variance will not alter the essential character of the neighborhood and is compatible with the area.

Attorney Dowd stated I don't know Mr. Destino, but I have to protect the Board. Duffy Johnston stated the Planning Board should have told Mr. Destino. Attorney Dowd that if he had been at the Planning Board meeting, he would have told Mr. Destino, it is a commercial use and it requires a site plan. Irene Myers stated that there are two parcels there. We have to watch how we take this on so as not to set a precedent. We have to go by the laws on the books. Peter Jeffery stated we need a site plan that shows how many parking spaces you have and outline exactly what is causing the hardship. Attorney

Dowd stated this property could be zoned for commercial use. Maybe the Board could write a letter. It is a big enough lot.

It was suggested that a letter be sent to the Town Board asking if the property could be zoned commercial. It probably should have been done years ago.

Attorney Dowd stated right now he might have a problem. Look at the laws on the books. Mr. Destino asked if the property is zoned commercial will his taxes go higher? Attorney Dowd stated the tax rates are based on what the property is assessed.

Irene Myers made a motion to table the application of Frank Destino for 30 days and was seconded by Duffy Johnston. 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 to table for 30 days.

Peter Jeffery told Mr. Destino to see Roy Rogers to help him out with the site plan.

Chairman Tower read the following:

Application of Lorraine Keese, 902 Lockport Road via Duane Murray at 908 Lockport Road, Youngstown, NY. Under Section 401.7, 704.2 and 710 of the Town of Porter Zoning Ordinance, an area Variance is required for a side yard set back from 15' to 9.6'. Minimum width for side yards is 15 feet. The property is located on the South side of Lockport Road in an ARR-100 Zoned District between East Avenue and Creek Road in said Town.

It was noted that Duane Murray was present. Chairman Tower asked if anyone from the audience wished to speak. None. 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 read the following Planning Board recommendations. "Lorraine Keese 908 Lockport Road, Youngstown, represented by Duane Murray, this is a request for a side set back variance. Lorraine Keese has life use of the

house, but Mr. Murray owns the house. This is a request for an addition of a 12 foot mud room off the kitchen. The new addition will leave 10.8 feet from the building to the property line, not the required 15 feet. The Planning Board recommends that the Zoning Board of Appeals approve this request. Anthony Collard made a motion to recommend approval, seconded by Donald McCollum. All in favor; motion unanimously carried.”

The Building Inspector has no problems. Peter Jeffery stated that the project has already been started. Duane Murray stated there was a side patio that was taken off. Peter Jeffery stated that the neighbor to the East is graded higher. You are almost at grade. There could be a potential water problem. The neighbor is sloped right towards the addition. Mr. Murray stated my house is to the East. He stated he is doing the project himself. It was suggested that Roy Rogers take a look at it. Mr. Murray stated he will get it graded by the building code.

Irene Myers made a motion to approve the Area Variance for Lorraine Keese of 902 Lockport Road provided all the building codes are met and was seconded by Duffy Johnston. 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:

Application of Sandra Dell’Aria, 3765 Ransomville Road, Ransomville, NY 14131. Under Section 401.3(z), 704.2 and 705.1, A Special Permit and Variance is required to house a miniature horse at above location. Property is located on the East side of Ransomville Road in an ARR-100 Zoned District between Balmer and Parker Roads in said Town.

It was noted that Sandra Dell’Aria was present.

Chairman Tower asked if anyone from the audience wished to speak.

Mr. Ted Hogan stated that he had talked to Mrs. Dell’Aria and I have several questions. I have a problem with the lot size only 78 feet wide. It is a horse and it is going to be outside.

Cindy at 4235 Williams Road, Ransomville stated that you only need ¼ acre for a miniature horse. You don't have to have a large area for a miniature horse.

Sy Hogan at 3779 Ransomville Road stated that is near the school and that are 200 children at the Ransomville recreational program during the summer.

Claudia Fleckenstein 3771 Ransomville road stated that she doesn't have a problem with the horse next door to her, and there is no problem with the school. I think it is good for a teenager to be interested in horses not in electronic devices.

Irene Myers made a motion to close the public part of the hearing and was seconded by Duffy Johnston. 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.

Mrs. Dell'Aria stated that there is a portable round fence. Irene Myers stated that it would be better for two animals instead of only one. I am a horse person, and I don't think that it is a good idea that you have one horse. It is not appropriate in that area. Chairman Tower stated it is in the Hamlet of Ransomville.

Chairman Tower read Section 401.3Z. Keeping of not more than five horses for private use only on a site of not less than five acres providing a greenbelt of not less than 50 feet is maintained on all sides. Chairman Tower stated it specifically states not less than 5 acres for five horses. I don't think we can variate. We are setting precedence.

Attorney Dowd stated this is an 80% reduction. It is a very substantial variation with side lot restrictions. It is zoned ARR-100.

Chairman Tower read the following Planning Board recommendations. "Sandra Dell'Aria, 3765 Ransomville Rd., Ransomville requests a special permit to own and house a pet miniature horse at her home. This property is located south of

the Stevenson Elementary School. The lot is 80 X 575. This is over one acre in size. The manure will be composted. The Planning Board recommends that the Zoning Board of Appeals deny this action in order to not set a precedent. This request to house a horse is too close to everything in the hamlet. Because of the size of the lot and the proximity to home owners the Planning Board recommends that the Zoning Board of Appeals **reject this request**. Although Ms Dell'Aria made a wonderful presentation for the benefit of having the miniature horse on the property, the Planning Board feels this would be setting a very indefensible position for the town. "

Irene Myers stated you need a minimum of five acres and it is still classified as a horse.

Attorney Dowd stated there was an application for horses on 4.7 acres with pastures and already has a barn. It was a reasonable variance. I have horses and I empathize. The variance is very significant for what is permitted.

Sandra Dell'Aria stated if I had five acres, I could have five horses. I am asking for a miniature horse that is no bigger than a dog. Attorney Dowd stated we are limited to what the law says today. Mrs. Dell'Aria questioned if she was training the animal as guiding eyes for people, could horses be used on that site. Attorney Dowd stated we could take those things into consideration.

Mrs. Dell'Aria stated I have three acres of land for a miniature horse. I have letters from Tracy Kropp and Claudia Fleckenstein to use the property as I need it. Irene Myers stated if we let you, we have to follow the rules.

Ted Hogan stated she doesn't have three acres. Chairman Tower stated that his problem is the five acres. It doesn't specify the size of the horses. It's probably not addressed in the new Zoning book either. Duffy Johnston stated that a St. Bernard could be the size of a miniature horse. The Zoning law is the law. I feel horrible about it.

Chairman Tower asked if we could table for 30 days. Attorney Dowd stated I don't think the area variance is so great you are going to find

uses with other people requesting a variance. The variance is very severe – 80% variance. Irene Myers said, I don't think there is any way we can do it. Duffy Johnston stated I feel terrible. Maybe address the Town Board about different sizes of animals. This is something we have never dealt with. It is going to come back to haunt us. Irene Myers stated we couldn't set precedence. We need to define horses. Chairman Tower stated it is not a rule where we are. The Zoning Laws are here to protect everybody.

Peter Jeffery stated that there needs to be a change between miniature and other horses. What you have to do is go to the Town Board for a more specific definition.

Attorney Dowd stated this Board enforces the zoning laws. The Town Board makes the laws. Peter Jeffery discussed recreational ponds. He stated the new proposed Zoning will tighten things up.

Sandra Dell'Aria stated that she is a single working mom and has two neighbors kindly leasing the land to her.

Sy Hogan stated that their deed states "Class 1 Residential". Attorney Dowd stated that deed restrictions have nothing to do with the Zoning. They would be a private issue between various land owners. Chairman Tower stated that he doesn't think the Board can grant this permit. Do you want to table for 30 days? Mrs. Dell'Aria said yes.

Duffy Johnston made a motion to table this application for 30 days 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. Chairman Tower-yes. All in Favor to table for 30 days.

Chairman Tower read the following:

Application of Michael W. Ricciardelli, 4328 Country Brook, Dallas, TX. Under Section 401.7, 704.2 and 710 of the Town of Porter Zoning Ordinance, an area Variance is required for a side yard set back from 15' to 5' at 1757 Lake Road. Minimum width for side yards is 15 feet. The property is located on the North side of Lake

Road in an ARR-100 Zoned District between Murphy's Corner Road and Porter Center road in said Town.

It was noted that Ms. Linda Scott of 1759 Lake Road was representing Mr. Ricciardelli (presented a letter dated August 8, 2010).

Chairman Tower asked if anyone from the audience wished to speak. The Planning Board had no input.

It was noted that Mr. Garrett Oowler, 742 Oak Hall Lane, Manchester, MO did not receive a letter. Chairman Towers stated it was in the paper. It was noted in the file that Mr. Oowler was on the list to receive the notification.

There was a discussion about substandard lots. Attorney Dowd stated if you have a substandard lot, the side lots are reduced by 50%. Chairman Tower stated we need a site plan. Peter Jeffery also stated he would like to see a site plan. Attorney Dowd stated you have to go the Planning Board.

Peter Jeffery made a motion to table for 30 days until we have Planning Board input 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; Chairman Tower-yes. All in Favor to table for 30 days.

Chairman Tower asked if there was any further discussion. Gentlemen from the audience made an observation that can the Planning Board and Zoning Board have a check list when a person comes in for an application? It was noted that Roy Rogers has been doing a great job in keeping the applicant informed.

Duffy Johnston made a motion to close the meeting and was seconded by Irene Myers. The meeting was adjourned at 8:40 pm. The next regular meeting will be held on Thursday, October 21, 2010.

Respectfully submitted,

Nancy Smithson, Secretary

