

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, October 15, 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 Irene Myers, Member William Leggett, Attorney Michael Dowd.

**ABSENT:** Susan Driscoll and Roy Rogers, Building Inspector.

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. Joe Fleckenstein made a motion to accept the minutes as written and was seconded by Duffy Johnston. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Joe Fleckenstein-yes and Chairman Tower. **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 **October 15, 2009** at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

**Application of Neal Freiermuth, 893 Youngstown-Lockport Road, Youngstown, NY 14174.** Under Sections 401.3, 704.2, 705 and 710, a special use permit is requested to operate a small home business at residence and an area variance for 10' x 22' storage building attached to the rear of existing structure. Property is located on the North Side of Youngstown-Lockport Road (Rte 83) in an ARR-100 Zoned District between Creek Road and the Robert Moses Parkway in said Town.

It was noted that it should be Rte 93. Mr. Neal Freiermuth was present. Chairman Tower asked if anyone from the audience wished to speak. None. Duffy Johnston made a motion and was seconded by Irene Myers to close the public part of the hearing. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Joe Fleckenstein-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower stated that he has Planning Board approval and that Mr. Freiermuth is applying under a hardship because of loss of job. I would ask the Board to consider this application. Attorney Dowd stated that there are two separate permits – area variance and special use permit.

Duffy Johnston read the following Planning Board recommendations: “Regarding the above request for a special use permit to operate a small business at a residence, the Planning Board recommends that the Zoning Board of Appeals approve this request providing:

- . No parts and vehicles for maintenance or repair are allowed outside of the building.
- . One employee
- . No more than two vehicles inside the garage under repair at any time
- . Limit the hours of operation to daylight hours

Please consider the above recommendations to be a site plan review prepared by the Planning Board on Thursday, October 1, 2009.

Regarding the request for an area variance for an addition to the shop behind the garage, the Planning Board is in favor of this request and recommends that the Zoning Board of Appeals approve this request.”

Attorney Dowd stated to treat it as a customary home occupation. I think under home occupation no more than one employee outside of the family. No stock and trade; nothing stored outside – it is frankly a repair shop. We have allowed as customer home occupations.

Joe Fleckenstein stated it is first class. You are not going to see anything outside of the building. Attorney Dowd stated to put the

reason for the hardship. Chairman Tower stated Mr. Freiermuth was laid off from General Motors, Tonawanda Engine Plant.

Neil Freiermuth stated that the walls are 2x6; no windows; I don't work on anything outside; it will probably be after work because I work during the day. Peter Jeffery stated that our concern is the impact with the neighbors. Neil Freiermuth stated that the neighbors have never said anything about it. Peter Jeffery stated you can appreciate our concerns. Attorney Dowd stated that reasonable evening hours should be established. Joe Fleckenstein stated that there is an 11:00 pm noise ordinance. Irene Myers stated that you don't want to upset the neighbors. Neil Freiermuth stated that he works from 5:00 am to 5:00 pm. Irene Myers commented about the noise. She also stated that she is not against it. Chairman Tower stated that we notify the neighbors as a courtesy. Neil Freiermuth stated that both Mr. Stanley and Mr. Reece would have attended the meeting if they had to. Attorney Dowd stated that the permit should be reasonably restrictive; neighbors move; it is an ARR-100 Zoned District. If you give him a ten year- permit until 10:00 pm, you are going to have to live with a ten year permit. No disrespect to Mr. Freiermuth. An automotive repair shop is not a customary home application. I think the Planning Board recommended 9:00 p.m. Peter Jeffery stated there could be some tighter guidelines. We need to establish hours of operation – remember the internet home occupation. Peter Jeffery talked about signage – DMV sign. Obviously, you have to put it up but nothing up to the front of the house. Joe Fleckenstein stated 9:00 pm with the doors open and 10:00 pm with the doors closed. Irene Myers stated remember down at the Lake. Joe Fleckenstein stated that was just stupid. Irene Myers stated that this is not a typical home occupation. Peter Jeffery asked about the DMV sign on the outside of the building. Neil Freiermuth stated it will be behind the landscape. I don't want to run a junk yard. It is not my nature. Joe Fleckenstein stated your place belongs in Better Homes and Gardens.

Peter Jeffery made a motion to approve the area variance for the addition on the back of the shop and the special use permit for Mr. Neal Freiermuth on the basis of no neighbor complaints or negative feedback. Mr. Freiermuth has a hardship, financial basis, based on

loss of job. Length of permit – one year; Hours of operation Monday to Saturday, 8:00 am to 9:00 pm, sign – limited to the DMV sign; no more than 2 outside customer vehicles at a time on the premises; no cars for sale; no stock and trade; you can't sell parts and was seconded by Duffy Johnston. Chairman Tower asked if there was any further discussion. Mr. Freiermuth stated that the car for sale near his property is his neighbor's. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Joe Fleckenstein-yes; Chairman Tower-yes. All in Favor. Motion Carried.

Tim Toohey, consultant and attorney representing Niagara Wind Developers came before the Zoning Board. Attorney Dowd stated that you have to go through the Zoning Board process. That is why we are here tonight. You are looking for a variance. You are going to have a ZBA application. I don't think that the Ag & Markets can tell the ZBA that they don't have to publicize. You have to follow the process. These are the rules.

Mr. Toohey stated that he made a presentation to the Planning Board following the guidelines set forth.

- . Prove that they are a farm
- . Certification from NYSEERDA – 110% of what you need. Both farms owners have done that.

Irene Myers stated that the Planning Board has never issued a permit. Tom Toohey stated that they were referred to this Board. Attorney Dowd stated that you are looking for a height variance. You are required to go to the ZBA to get that variance. Regarding site plan requirements, the Planning Board reviewed and applied criteria. We approved your site plan. Attorney Dowd stated that the applicant has to get approval of the variance. Chairman Tower stated I will have you on the agenda next month. A question was raised about the public hearing. Attorney Dowd stated, "You are giving the public an opportunity to say whether they approve or not." Joe Fleckenstein stated that I think it is a wasted process. We listen to objections, but as long as they are in compliance. Chairman Tower stated that you are on the agenda to discuss it. It was not advertised for a public hearing. Attorney Dowd stated that you don't need a Sch F. There was a discussion. It was noted that the farmer must provide documentation that the farm will use one hundred ten (110%) of the

energy to power farm equipment. NYSERDA will make a determination of 110%.

Mr. Toohey stated that NYSERDA doesn't accept certification for the tower until we have the building going up before the grants will be issued. They won't give you no money if they don't feel you have the correct certification. Attorney Dowd stated that that it has to be farm equipment. Mr. Toohey stated NYSERDA asks for proof of power bills for twelve months. We have to provide 12 months of receipts. There was a discussion between Mr. Toohey and Attorney Dowd on farm operation. Attorney Dowd stated let's get it on the agenda. I will check with the Ag & Markets. Irene Myers stated that we have had the opportunity to look at the information. Mr. Toohey stated when we put in a application as two farm owners, basically it cannot be denied. You cannot restrict the height. Peter Jeffery stated we have to review the material and make a decision and go through the process. Don't tell us we cannot deny it. Irene Myers stated it will be put on next month's agenda. Attorney Dowd stated that they are two procedures – grant an area variance; issuance of a building permit. Short form environment assessment – Did you fill out that form. Attorney Dowd stated that he will get it clarified. There are different definitions for farm equipment and farm operations. Irene Myers stated that we have to make sure that we don't mess up. Attorney Dowd stated that you are getting a variance for height.

Mr. Reeve Tower, 1495 Lake Road approached the board about drainage plan for applicant Michael Drennan. Irene Myers stated the Board only gave a permit to build a garage before building the house. The Building Inspector historically checks to see if it is in compliance. We gave permission to build a garage before building the home. Reeve Tower talked about the area measurement and stated that he will file an Article 78. Attorney Dowd asked Reeve if he was talking about a flag lot/driveway. Reeve Tower presented his calculations to the Board. He also stating that when the Certificate of Occupancy is issued you are in violation of Zoning laws. I have a letter from the Building Inspector stated that a Certificate of Occupancy wouldn't be issued until the draining is taken care of. Attorney Dowd stated it has been done - - MacVie is doing the work. Reeve Tower stated it has been addressed. The County Board of Health stated you have to have a trench.

Dave Britton from CRA stated that he has not been directly involved with the drainage but that he has been out to the building. He stated that he has been involved with the plan since September 2008. Mr. Britton addressed the Board with drawings and explained the drainage issue. There was discussions between the Board and Reeve Tower. Reeve Tower stated that the Board is passing the buck. Peter Jeffery stated that the barn needed to be approved by the Building Inspector. Attorney Dowd stated that the Building Inspector came before the Board and stated it met the specifications and the house had to be built with two years. Peter Jeffery stated the drainage is not this Board's responsibility.

Irene Myers read the following from the February 2008 minutes: "Joe Fleckenstein made a motion to approve the application of Mr. Michael Drennan to construct an accessory building (barn) before construction of residence at 1491 Lake Road. The house is to be completed two years after the barn has been started. If the house is not done within two years, the barn may be removed by Mr. Drennan or the Town at Mr. Drennan's expense. The barn is only to be used for storage. All loose materials should be stored inside the barn (not outside) and was seconded by Duffy Johnston. Joe Fleckenstein stated these rules are guidelines for code enforcement so that the Code Enforcer has some rules to go by."

There was discussions about the flow of the water and the swails. Irene Myers commented that there was a problem with the drainage prior to Reeve Tower building his home. Chairman Tower stated we cannot solve this problem, if you want, you can file an Article 78. Joe Fleckenstein stated he has the wrong Board. Peter Jeffery stated the Town Board sent him back to this Board. Irene Myers stated that we apologize that you had to come back to this Board. Attorney Dowd stated to Reeve Tower that he was at the Town Board meeting and he asked Mr. Reeve Tower to contact Attorney Dowd and he would set up a meeting with the Town Engineer.

Irene Myers made a motion to close the meeting and was seconded by Irene Duffy Johnston . The meeting was adjourned at 9:01 pm.

The next regular meeting will be held on **Thursday, November 19, 2009.**

Respectfully submitted,

Nancy Smithson, Secretary  
Town of Porter Zoning Board of Appeals