

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 21, 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 William Leggett, Member Irene Myers, Member Jackie Robinson, Attorney Dowd, Roy Rogers, Building Inspector and Susan Driscoll.

Chairman Tower asked if there were any additions or deletions to the September minutes. Duffy Johnston made a motion to accept the minutes as written and was seconded by Peter Jeffery. All in Favor. Motion Carried.

Chairman Tower read the following:

Application of Neal Freiermuth, 893 Youngstown-Lockport Road, Youngstown, NY 14174. To renew his special use permit, under Sections 401.3, 704.2, 705 and 710, to operate a small home business at residence. 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 to change (Rte 83 to Rte 93). It was noted that Mr. Freiermuth was present.

Chairman Tower asked if anyone from the audience wished to speak. Attorney Robert Koryl stated that he had a complaint from Mrs. Serianni; 808 Youngstown-Lockport Road. He stated that the application for the permit is detrimental to her property value. She stated that she had a potential buyer that had complained that the area is becoming too commercial. Chairman Tower stated that there is only one business in the area. Mrs. Serianni is also concerned about noise and increased traffic. Mr. Koryl stated that he also represented Mr. Richard Burns and David Webb. Mr. Burns had an

application for a variance some time ago for a pole barn that was turned down. He had to purchase property on Lutts Road which is zoned commercial. Attorney Koryl presented letters from Mr. Webb and Mr. Burns. Chairman Tower questioned "How does this affect Mr. Webb and Mr. Burns with their property on Lutts Road?" It is seven miles away from Mr. Freiermuth. He also stated that the cement and car shop is entirely different. It is operating as a full time business seven miles away. How does Mr. Freiermuth affect them? Attorney Koryl stated it would have an affect on commercial property, and it would be a way to get a variance in a residential area.

Peter Jeffery stated that each permit that we grant we try to set the criteria by site. This is a hardship case and part time. Chairman Tower stated that Dave Webb is a full time business. Peter Jeffery stated that there are differences between the applications. We are not entertaining Mr. Burns and Mr. Webb.

Attorney Dowd stated a use variance comes from the NYS law. The original permit was granted under a hardship. Chairman Tower stated that Mr. Freiermuth lost his job at the Chevrolet plant in North Tonawanda. Attorney Dowd stated we would like to think, as a Board, that we do not regularly give variances to anybody. This Board needs to be satisfied. Whatever the criteria is that justifies the hardship and have a rational reason for coming up with the decision. We applied the criteria. Chairman Tower stated I don't think that somebody six miles away has the right to complain. Attorney Koryl stated that the people in a commercial district will have their value decrease. Attorney Dowd stated you have to apply the criteria that we don't uniformly allow people to operate business in their back yard and particularly take into consideration that there are complaints. Chairman Tower stated Dave Webb is on a special permit on Lutts Road. Attorney Dowd stated special permit versus a variance. This Board just doesn't give permits to anybody who wants one. Chairman Tower stated this is a hardship and part time. He also stated that the people who live next door there are no complaints. Attorney Dowd stated that Mr. Freiermuth is here tonight to have his permit renewed. Chairman Tower stated that he did not get his job back at Chevrolet. Attorney Koryl stated that Mr. Burns lost his job. Attorney Koryl stated that Mrs. Serianni lost a buyer on her home. Attorney Dowd again stated to take a look at the criteria.

Roy Rogers stated that there are no complaints. Duffy Johnston stated that there are no immediate neighbors complaining. Duffy Johnston also stated his house is the nicest in the neighborhood. Duffy Johnston asked Mr. Koryl if he met with the three people complaining all at one time. Attorney Koryl stated that Mr. Webb is on vacation. Irene Myers asked if they were aware it is a renewal. Attorney Dowd stated it was a one year permit so that you can have people come back. I am suggesting that you be careful.

Duffy Johnston stated that he doesn't remember Mr. Burns coming before the Board where he was told absolutely not. He never came before this Board. Irene Myers stated that she doesn't remember him coming before this Board and being denied.

Attorney Dowd stated please take into consideration Mr. Koryl's comments about the complaints and what the code requires. You should certainly recite the reasons and may want to consider tabling for 30 days so that a resolution can be prepared. If you are going to grant or deny, you should put it in the form of a very detailed resolution. Chairman Tower asked Attorney Dowd to prepare two resolutions – one in favor and one not in favor. Irene Myers asked Mr. Freiermuth if anything changed with the situation in regards to his employment. Mr. Freiermuth replied no. 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 to close the public part of the hearing.

Duffy Johnston commented that he goes by at least four or five times a day and hasn't seen any cars. Mr. Freiermuth stated that he hasn't worked on a car in over a month and a half. Duffy Johnston stated you haven't had much activity. Mr. Freiermuth replied that he only works on one car at a time. Attorney Dowd asked if he still needed the number of vehicles in the permit. Mr. Freiermuth replied that he doesn't need more. I have a driveway that goes 50' across. I have a nice looking home. Irene Myers asked if he does vehicle inspections. Mr. Freiermuth replied "no".

Chairman Tower stated that we were very lenient with Mr. Burns as a first time permit.

Duffy Johnston asked about the hours of operation 8:00 am to 9:00 pm – Monday thru Saturday. Are they okay? Could you trim the evening hours down? Mr. Freiermuth stated the vehicles go inside the ship. It is a framed building. It is quite. Duffy Johnston asked if he worked on customers cars in the evening. Mr. Freiermuth stated if somebody dropped the vehicle off, I work on the vehicle until 9:00 pm. Mr. Freiermuth stated that he works at a trash firm in Niagara Falls 40 hours per week. Irene Myers stated that this just supplements your income. Duffy Johnston stated that when there is a complaint, it is a neighbor next door or across the street. This isn't a problem. This is somebody down the road. Mr. Freiermuth stated that he drives down Lutts Road. This is my residence, and it will always be my residence. Peter Jeffery asked Mr. Freiermuth if it was his intent to continue in a part-time fashion as long as you can. Mr. Freiermuth stated it is not a commercial operation. My operation is part time so it can supplement my income.

Attorney Dowd asked if Mr. Freiermuth was looking to sell cars or stock and trade. Mr. Freiermuth replied no. Is there any outside storage of cans? Mr. Freiermuth replied no. Peter Jeffery asked how to you handle your waste. Mr. Freiermuth stated I take it to the waste plant where I work.

Irene Myers made a motion to table for 30 days so that we can gather more information. Attorney Dowd stated a resolution should be drafted based on your findings you have gotten and state your reasons why or why not you will be willing to grant your use variance. Chairman Tower stated should we do this now? Chairman Tower 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 circumstance and not to the general conditions in the neighborhood; **Chairman Tower stated Mr. Freiermuth was laid off from Chevrolet.**
- C. The use to be authorized by the variance will not alter the essential character of the neighborhood and is compatible with the area. **Chairman Tower stated will not alter the area of the neighborhood. No neighbors came into complain. The one complaint is from a** neighbor 6 miles away. Absolutely nothing until tonight.

Peter Jeffery read Section 704.3 Conditions.

“704.3 Conditions. 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 and 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. **Duffy Johnston stated that the key word is intensity.**
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. **There are not a lot of cars.**
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. **Chairman Tower and Irene Myers both stated that are no complaints. You can't even tell there is a garage back there.**
5. Is the minimum necessary to afford relief.

Irene Myers stated to Mr. Koryl that the two letters that he gave to the Board, that on one the bottom half was missing.

Chairman Tower stated that the Board granted Mr. Burns a permit for 20 years. Attorney Dowd stated it is a commercial property. Chairman Tower stated that you normally only grant a new permit for one year.

Irene Myers asked the Secretary to go back to look to see if Mr. Burns was ever denied a permit.

Peter Jeffery made a motion to table the application of Mr. Freiermuth and was seconded by Jackie Robinson. Chairman Tower called for a Roll Call Vote. Peter Jeffrey-yes; Duffy Johnston-no; Irene Myers-yes; Jackie Robinson-yes; Chairman Tower-no. **Motion Carried to Table for 30 days.**

Chairman Tower read the following:

Application of ABC Nursery School (Ransomville Free Methodist Church), 3924 Ransomville Road, Ransomville, NY. To renew their special permit under Sections 710.01F and 705.1 to operate a Nursery and Day Care facility at above location. Property is located on the West side of Ransomville Road between Balmer Road and Lewiston Town Line in the Town of Porter.

A representative was present. Chairman Tower stated that the applicant has run the nursery school for over 30 years. We have never had any complaints on the nursery school. I would entertain a motion to approve this application for 20 years. There is no one from the audience that wishes to speak.

Peter Jeffery 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 following Planning Board recommendations:

“RANSOMVILLE FREE METHODIST CHURCH/ABC NURSERY SCHOOL
This is a request for the ABC Nursery School, 3924 Ransomville Road, Ransomville, to renew their special use permit to operate a Nursery and Day Care facility. The Planning Board recommends that the Zoning Board of Appeals approve this request to renew the permit and recommends the special permit be renewed for ten (10) years.”

Duffy Johnston made a motion to approve the application for 20 years and was seconded by Peter Jeffery. Chairman Tower stated it is clean and neat and everything is taken care of. 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 Ben Sutherland, 2311 Old Lake Road, Ransomville, NY. A use variance under Sections 704.1 to build a garage on the vacant land at Tax Map 21.17-1-52.12. Property is located on the South side of Old Lake Road in an ARR-100 Zoned District between Dickersonville and Ransomville Roads in said Town. Chairman Tower stated that the Board was not going to take any action on this tonight as Mr. Sutherland is going to put the two lots together. He will not need a variance on that property. Peter Jeffery stated he would like some more input. You have a couple triangular lots. Roy Rogers stated when the two lots are combined he will have more than enough acreage. Attorney Dowd stated it was similar to the houses on River Road. They are contiguous to the satisfaction of the assessor. Peter Jeffery stated you can't build anything on the river front lot. I am not sure it is a very good idea. There was a discussion between the Board about the location of the property and where the garage will be going. Peter Jeffery stated it doesn't make any sense. A neighbor from the audience presented a picture to the Board about two dump trailers. Peter Jeffery stated this is lake front property. This is a tough decision. His house is literally on the lake. It will be closer to Route 18, and we are compounding the problem. Attorney Dowd stated if he uses the property illegally then it becomes an enforcement issue. Peter Jeffery stated the question is "If they combine the two lots?" Attorney Dowd stated that the two gentlemen should go to the Planning Board meeting in November. Peter Jeffery stated the Planning Board doesn't go forward based on concerns. Where the front yard is? Where the rear yard is? Where the stuff is going to be stored?

William Leggett read the following Planning Board recommendations:

"This is a request of Ben Sutherland who owns a house along Old Lake Road. He would like to purchase a vacant lot from Ms. Buckley in order to build a garage across from his home. The lot being referenced is 21.17-1.52.12 on the tax map. There is a letter in the file giving Mr. Sutherland

permission to act in Ms. Buckley's behalf. A variance is needed in order to build a garage on a vacant lot without a home on the lot.

Perhaps a deed restriction could be put in place to stop the owner Mr. Sutherland) from selling the garage parcel without the house parcel. The lot is almost one acre in size. A sketch drawing was presented that shows the concept of the garage on the lot. The entrance will be on Old Lake Road. This will be a two or three car garage. Michael Dowd, attorney for the Town, would like to make this a single tax map comparable to the lots on River Road that are owned on a single deed. The tax maps were examined in order to determine if the lots are contiguous.

The Planning Board recommends that a site plan be presented to the Zoning Board of Appeals at their next meeting in order to determine the exact size and placement of the garage. The ideal resolution is to combine the lots into one lot. Mr. Sutherland is advised to contact the town's assessor and building inspector in order to gather information regarding combining the two lots. The Planning Board would prefer that the two lots be combined into one lot."

Chairman Tower stated I don't think we have anything to do about combining the two lots. Attorney Dowd stated that this Board doesn't have any authority to tell the Planning Board if they can divide or subdivide the property. Once it becomes a single lot it will be up to the Building Inspector what is a permitted use. We can't stop people if they legally do something within the law. Peter Jeffery asked if the code says the lake front is the front yard? The new proposed code does. Attorney Dowd asked Roy Rogers if he sat down with Mr. Sutherland. Roy Rogers stated that he hasn't come in for a building permit. He is looking at a single car garage. Mr. Rogers stated that he doesn't have a square footage. There are two adjoining property owners here tonight. They have no ill will. This could essentially be a commercial operation. I would like Mr. Sutherland to clarify what the use of the property will be. It was noted that there is firewood and Mr. Sutherland has it split on his property and has it taken away. Irene Myers stated that she thinks Mr. Rogers should pay this gentleman a visit. There is nothing we can do on this. Attorney Dowd stated that no action has to be taken. You can send a letter to the Planning to look at this gentleman's operation. They should go down and take a look at it so that they can fully understand what this gentleman is

doing. Attorney Dowd stated Mr. Sutherland has withdrawn this application because he is combining the two pieces of property.

Chairman Tower addressed 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 Mr. Destino was not present. Attorney Dowd stated that Mr. Destino is probably waiting for the change in the new zoning to be zoned commercial. He stated that the Board should deny the application. As we said her today, it is not a business zone. The pizza shop is on a different lot. Attorney Dowd stated that Mr. Destino is not here tonight to withdraw it. Chairman Tower had suggested sending a letter to Mr. Destino to appear at next month's meeting and to table for 30 days. Jackie Robinson made a motion to deny this application and was seconded by Peter Jeffery. Chairman Tower asked for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Jackie Robinson-yes and Chairman Tower-no. **Motion Carried to Deny this application.**

Chairman Tower addressed 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. She stated that she went to the Town Board meeting and they stated that they make the laws and the Zoning Board has the jurisdiction to amend. Attorney Dowd stated that he apologized to Mrs. Dell' Aria that he was late for the Town Board meeting. It is very unlikely to grant this variance based on the facts. You can amend the local law. She went to the

Town Board and wanted to amend the local law. The Zoning Board isn't going to give her a variance. We can't give you legal advice. You have to go to the Town Board to file a petition to amend the local law. Section 901 of the Town Board you may amend the local zoning law following the instructions or you can get a lawyer. Sandra Dell' Aria asked the Board to do a breakdown of the law and the Zoning Board can grant a variance. Attorney Dowd stated the Zoning Board will not grant a variance. The Town Board can amend the local law. There are instructions on how to amend the local law. They might change the definition. You can go to the Town Board and petition a change. I apologize for the wrong information. You have to change what type of animals might be allowed on this property. Chairman Tower asked how long does it take to change the definition? Attorney Dowd stated it take several months at least. Chairman Tower asked Attorney Dowd what his recommendation is that the Zoning Board should do. Can we postpone the variance until Sandra Dell' Aria can petition the Board to change the law? Sandra Dell' Aria asked is there more cost involved? Attorney Dowd stated that he doesn't think it is free to petition the Town Board. Sandra Dell' Aria asked if it is different from the application for a variance. Attorney Dowd stated that going for a variance is the right way to start. The Board won't grant it. If you want us to go forward tonight, the Board should take a look the requirements for a use variance – why or why not grant it and take action or you can adjourn it tonight. Attorney Dowd stated if it is denied you can go to the Town Board to change or amend the law. You can still go to the Town Board. Sandra Dell' Aria I have everything I need. I have three acres of land. It is a miniature horse not bigger than a very large dog.

Attorney Dowd stated it is in ARR-100 District and read Uses requiring a special permit. 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. Attorney Dowd stated she is leasing the neighbor's property, and I don't think she can maintain a 50' buffer. Irene Myers discussed the three properties (3 individuals – which included the two leases). We have to work within the parameters of the zoning. We are not even close. Peter Jeffery asked if she was going to use her neighbor's yard. Sandra Dell' Aria stated no. Irene Myers stated that now the shed becomes a barn. We are giving you a permit to

consider, and we are going to house a horse in that barn. We have to protect the integrity of the Town. Attorney Dowd stated the definition of a horse needs to be amended. All this Board can consider is a horse. Irene Myers stated it is nothing personal. We have to go with the code. If you were close we would be happy to work with you but you can't even come close.

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."

Attorney Dowd asked Sandra Dell' Aria what she wants to do. She stated that she is done tonight. I think you all have the information. I will board the horse. Chairman Tower stated that he would entertain a motion to deny this application under Section 401.3Z on a site less than five acres. Peter Jeffery read Section 704.2 Area Variance. Area Variance 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.
Sandra Dell' Aria only has one acre. She would be keeping the horse on her own property – substantial variance.

- B. The effect, if the variance is allowed, or the increased population density thus produced on available governmental facilities (fire, water, garbage and the like); **Not a concern.**
- C. Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created; **I think there is a substantial change to the neighborhood.**
- D. Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance; and **Board the horse as an alternative.**
- E. Whether in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance.

Peter Jeffery made a motion to deny the application of Sandra Dell' Aria because of the stipulations as previously stated and Jackie Robinson seconded. Chairman Tower called 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 Deny the application.**

Chairman Tower addressed 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 Mr. Ronald A. Angiers of 63 Brockmore Drive East Amherst, NY was designated as a representative of Mr. Ricciardelli (presented a letter dated August 8, 2010).

William Leggett read the following Planning Board recommendations:

"Michael Ricciardelli, 1757 Lake Road, Youngstown, is requesting a side set variance from fifteen (15) feet to five (5) feet in order to build an addition on

the west side of his property. Linda Scott came before the Planning Board to represent this request. There is a letter in the file giving Ms. Scott permission to represent Mr. Ricciardelli. The construction is necessary on the west side because the septic tank, electric service and telephone service are on the east side of the building. The lot is 100' by 160'. The addition cannot be on the north side because of the erosion of the bluff along Lake Ontario. The Planning Board is concerned about the safety access with only five feet between houses. The cottage to the west is approximately 15 feet from the lot line according to a relative of Garrett Owler, the owner of the cottage to the west. That being the case, twenty feet would be left between the houses if the variance is granted. The Planning Board recommends that the Zoning Board of Appeals approve this request to allow a five (5) foot side set variance. Thomas Oddy recommends that the Zoning Board of Appeals confirm the twenty feet between the Ricciardelli dwelling and the Owler dwelling before final approval is given."

Chairman Tower stated it is a substandard lot. Roy Rogers stated it was purchased with two lots at one time. I was down there and there will be twenty feet between the homes. Chairman Tower stated that he doesn't have a problem. It is a substandard lot of record. Peter Jeffery stated it is a hardship that the utilities and septic are on the other side. It is the only way he can go. Duffy Johnston made a motion to approve the application of Mr. Ricciardelli for a side set variance and that Mr. Rogers should get a final look at it before it goes into play and was seconded by Peter Jeffery. 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.

Duffy Johnston made a motion to close the meeting and was seconded by Irene Myers. The meeting was adjourned at 9:25 pm. The next regular meeting will be held on Thursday, November 18, 2010.

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals