

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, December 10, 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, 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 November minutes. Duffy Johnston made a motion to accept the minutes as written and was seconded by Peter Jeffer. 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 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 **December 10, 2009** at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

Application of Reid Petroleum, 100 W. Genessee Street, Lockport, NY. To amend their Special Permit No. SP-295-2008 dated June 26, 2008 to allow 24 hour gas dispensing at their Convenience Store, Gas Station located on Tax Map #62-14-1-24, 25, 26, 27, 29.2 on the Southeast Quadrant of the intersection of Youngstown-Lockport Road and Ransomville Road in an Urban

Commercial 60 Zoned District located between Academy Street and Ransomville Road in said Town.

It was noted the Mr. Dave Petrosewitz, Real Estate Manager for Reid Petroleum Corporation was present. He stated they were asking for an amendment to allow twenty-four hour sales of motor fuel. Present hours of operation are seven days a week from 4:00 am to 1:00 am. He indicated that in the summer there is a high demand for fuel for the Ransomville Speedway and especially this time of year for snow plow operations late in the night. He explained panic buttons, the fire suppression system is heat activated which works the same way after hours. Peter Jeffery questioned the operation of the pumps when the store is closed. Mr. Petrosewitz stated no one will be in the building. It will be electronic. He explained that they have a pretty sophisticated surveillance system. If you hit the panic button it shuts the pumps off. The pumps have to be manually reset. Once the button goes off, everyone that needs to know will be notified. They have two other locations: Corfu, NY and the Mobil at Triway Bridge in Lockport that operate 24 hour sale of motor fuel.

Mr. Joseph Calato, 2559 Youngstown-Lockport Road stated he is worried about noise. It is actually young kids. Chairman Tower stated it is not this gentleman's responsibility. Joe Collato stated just because it is open, people don't respect it. Peter Jeffery questioned the noise ordinance. Attorney Dowd suggested to Mr. Calato to go over to the store and ask them to have the patrons keep the noise down. Mr. Calato stated that the people stop in the store and have the music blasting in their car. Mr. Calato stated it is a good neighborhood, and he doesn't have a problem with them being open 24 hours. Peter Jeffery asked if the light are on 24 hours. Mr. Petrosewitz stated he didn't think so. To save energy we operate one band of lights. Peter Jeffery commented it certainly is pretty bright. Dave Petrosewitz stated they are now going to LED lights. Irene Myers asked if all the bases are going to be open for distribution and Mr. Petrosewitz stated yes. We will leave them all in operation. Attorney Dowd stated if the noise is a problem, contact the Code Enforcement Officer. If it becomes a persistent problem, the Board can take action.

Duffy Johnston made a motion and was seconded by Irene Myers to close the public part of the hearing. All in Favor. Motion Carried.

Chairman Tower read the following Planning Board recommendations: "The Planning Board recommends that the Zoning Board of Appeals APPROVE this request for 24 hour unattended gas dispensing providing the panic alarm is installed as required by code."

Chairman Tower stated he is asking this Board for approval. Joe Fleckenstion questioned whether the Board can limit the time when the tanks can be filled. Chairman Tower stated I don't think we can do that. Joe Fleckenstein stated the he would like to see no refills of the tanks from 11:00 pm until 9:00 am. Attorney Dowd stated you can't restrict the hours of delivery. He stated he didn't think anyone thought about restricting hours of delivery when the original permit was issued. Maybe there hasn't been any problem. Chairman Tower stated we are amending the hours of operation. Joe Fleckenstein stated that we should revisit it. I am for restricting the hours of delivery time. Irene Myers asked Joe Calato if the had any problem and he replied "no". Joe Fleckenstein stated delivery times between 7:00 pm to 11:00 pm. Dafe Petrosewitz stated that it would have a huge impact. Attorney Dowd stated it is a period of time when the store is empty. Delivery can be made when the store is open. You can put reasonable limitations. Dave Petrosewitz stated that they don't have a set day or time. We deliver to over 200 locations in New York. When it is critical (low on fuel) they are in need of a delivery. Those hours can make a difference if we have to have a truck sit and wait. He stated that they own the trucks that deliver the fuel. He also stated they have safety controls – everything is metered. Irene Myers asked if there were any complaints with the neighbors?

Chairman Tower stated the hours of operation are the only concern. The Planning board recommended that we amend the permit so that someone can get gas at 1:00 am or 2:00 am by credit card. No complaints from anybody.

Peter Jeffery stated that the sign across the street was supposed to be down. Mr. Petrosewitz stated that they do repair work during the winter. It is on our project board. Typically, it is taken care of during

the wintertime. Peter Jeffery asked if the sign will be coming down. Mr. Petrosewitz stated if the deliveries become an issue we will address it. Joe Fleckenstein stated when they take the sign down, it should be cleaned up. It has already been a year and a half since the permit was issued. Peter Jeffery stated that we need a commitment. Joe Fleckenstein stated that he has heard complaints about the sign. People on the Town Board are aware of it. Dave Petrosewitz stated they he will take care of it and get it on the schedule.

Chairman Tower made a motion to amend the permit for 24 hours a day for dispensing of motor fuel and was seconded by Peter Jeffery. Chairman Tower asked if there was any further discussion and called 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 read the following:

Application of Mr. James Eismueller and Mary Beth DeFazio, 3735 Lower River Road, Youngstown, NY 14174 . To amend their Special Permit No. 302-2009 to eliminate the requirement to remove a seasonal dock in the Niagara River. Property is located n an NRE-Zoned District on the East Side of Lower River Road between Youngstown and Collingwood Estates in said Town.

It was noted that Mary Beth DeFazio was present. Chairman Tower stated that these people have a permit from the Army Corp of Engineers indicating that the dock can stay all year long and leave the dock in the water.

Nan Simon, 3727 Lower River Road stated that she objects to the dock – driftwood has collected; dead body found. I would like it there as little as possible. The driftwood is still there. Chairman Tower stated that both he and Roy Rogers visited the site and there was no driftwood only one log. Nan Simon stated that last year there was lot of driftwood that backed up to the neighbors. They don't care about our property. Joe Fleckenstein asked if there is anything going on about the land property. He indicated that we are not here about the water. They need a Town permit for a dock. Attorney Dowd stated that the Army Corp of Engineers has given their approval. Joe

Fleckenstein stated as far as debris, it is up to the Army Corp of Engineers. Duffy Johnston stated the dock can stay in for a full year. Joe Fleckenstein stated debris has nothing to do with us. We don't have control over it. You should talk to the Army Corp of Engineers. They are hired to do a study. Twenty-five feet back is owned by the Army Corp of Engineers. Nan Simon stated she is very disappointed. Joe Fleckenstein stated we cannot take the permit away if the Army Corp of Engineers has given a permit. The Army Corp of Engineers does the survey. It is not the Town.

Geri Serchi, 3739 Lower River Road stated, "Why wasn't this brought up at the last meeting?" What has changed? Attorney Dowd stated people can have docks so long as it complies with the Army Corp of Engineer's design. The Army Corp of Engineers stated the dock was acceptable to leave all year long. Attorney Dowd stated that Ms. DeFazio is seeking to modify to allow for year round and the Army Corp of Engineers has approved. Joe Fleckenstein stated they are not concerned and we cannot tell them to pull it out. Irene Myers stated all it pertains to is the dock. All we can address is the dock. Chairman Tower stated we are doing a notification now. Irene Myers read the following from a letter dated September 7, 2009 from Joseph Kassler, Monitoring and Enforcement. "Under the terms and conditions of this permit, there is absolutely no requirement for seasonal removal of a structure, even if described in the application or permit letter as being either floating or seasonal. Our permit does allow you to keep this dock in the waterway permanently, although it must be properly maintained or removed if it becomes dilapidated or abandoned in use." **Nan Simon** stated it was to be removed in the fall. Irene Myers stated that they are allowed to keep it in permanently. Nan Simon stated that they have to site each and everything – take out in the Fall. It is difficult to live next door to these people. Attorney Dowd stated it is a neighbor dispute. I would like to get to the bottom of the dock. Irene Myers read the following from a letter dated December 3, 2009 from Diane Kozlowksi, Chief, Regulatory Branch from the Department of the Army. "I thoroughly considered your request, and based on my review and your assertion that the additional 10 foot length of dock has been in place since the original installation was performed in May 2003, I concluded your request will not result in any unacceptable environmental or navigational impacts. Therefore, I am modifying Department of the

Army permit No. 2003-00795 to reflect the changes outlined in your request and identified on the attached drawing.”

Mary Beth DeFazio stated they were under the impression that the dock was always permanent but they put “seasonal” in the permit. Joe Fleckenstein asked if they removed the 10 foot section? Mary Beth DeFazio stated they pulled the dock in the fall but the waters were low. We applied for a permit modification and received the letter dated December 3 from the Army Corp of Engineers. Peter Jeffery asked, “Is your intention for the dock to stay in all year long?” Mary Beth DeFazio stated they would like to take it out next year to paint. Peter Jeffery asked if we can tell her to take it out from October to May. Attorney Dowd stated I am not sure. Depending upon the way statutes were drawn, a local municipality can be more restrictive. I will have to research it. The Army Corp of Engineers is charged with maintaining. I don’t know if the Board would want to be more restrictive. Generally, we have allowed the application to do what the Army Corp of Engineers has allowed. Chairman Tower stated the Army Corp of Engineers is the lead agency in the river. Duffy Johnston stated if the dock sinks in the water, they would have to have it removed to be repaired. Nan Simon stated there could be more restrictive rules. The Board has rules and they should be following and there have always been exceptions. Joe Fleckenstein stated I have seen docks that need repair. What is the problem with this dock? Nan Simon stated she could take care of the driftwood. Do you want docks up and down the river? Attorney Dowd stated our job is not to limit people enjoying their property. Joe Fleckenstein stated you are restricting another land owner of their legal rights. Driftwood is an act of God. You don’t have any control over driftwood. Nan Simon stated I know we are nitpicking. Joe Fleckenstein stated I think you want us to overstep the Army Corp of Engineers. It needs to be the Army Corp of Engineers. The dock is in good repair. There is nothing in the permit about driftwood. We are overstepping our jurisdiction. I feel for you. If we tell her to take it out, we are opening up something in the Town. She is in compliance. Geri Serchia stated back in 2006 there was a letter dealing with non-compliance. At that time, the dock was on our property. Nan Simon stated it was not rectified in a timely manner. Attorney Dowd stated that in the past you have contacted the Army Corp of Engineers. Nan Simon stated we have come to you folks over the years and you said

it would be taken care of. Attorney Dowd stated you came to this Board about the dock on your property – it was taken care of. The person had it surveyed and moved the stake. The Army Corp of Engineers said that she is in compliance and this Board is satisfied. Irene Myers stated you have not gotten the answer you want. There is a neighbor dispute. Peter Jeffery stated we have listened to you. We have tried to address your concerns to the best of our ability.

Duffy Johnston made a motion and was seconded by Irene Myers to close the public part of the hearing. Chairman Tower called for a Roll Call Vote. Peter Jeffery-yes; Duffy Johnston-yes; Irene Myers-yes; Joe Fleckenstein-yes; and Chairman Tower-yes. Motion carried to close the public part of the hearing.

Chairman Tower stated the Army Corp of Engineers is the lead agency on the river. Attorney Dowd stated Section 404 of the IRS Code – navigable waterway – people have the right to use the water but they can't stop anyone from use it

Duffy Johnston made a motion to amend SP-302-2009 of Mary Beth DeFazio and James Eismueller to eliminate and remove “seasonal” from the permit so long as it is in compliance with the permit issued by the Army Corp of Engineers and this special permit shall become immediately null and void in the event that said premises are not at all time maintained and kept in full compliance with the laws of the State of New York and the ordinances and regulations of the Town of Porter and was seconded by Peter Jeffery. 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 read the following:

Application of Joe Rollain, 2347 Lake Road, Ransomville, NY.

Under Sections 413.3, 705.1 and 710.13, a special permit to operate a Pizza Parlor at 2555 Youngstown-Lockport Ransomville, NY. Property is located in an UCC-60 Zoned District on the North Side of Youngstown-Lockport Road between Ransomville Road and where the Town of Porter ends in said Town.

It was noted that Joe Rollain was present. Mr. Rollain stated he has presently been operating a pizza shop in Ransomville for several years. I would like to move across the street.

Peter Jeffery stated that this is a UCC-60 zone and Section 413.3 and 710.13 are UR-60; Sections 464 and 710.65 are UCC-60. I would like to make sure we are referencing the right sections. In a UCC-60 a restaurant is an accepted use. Mr. Rollain will need a variance for parking. Peter Jeffery also stated you should have a site plan review. Does Rite Aid have extra parking to share? If they don't have enough then it means nothing. Mr. Rollain stated two employees live across the street. Only three employees need parking. Mr. Rollain stated the Post Office said people can park their. Peter Jeffery stated parking is an issue as well as septic. Joe Rollain stated if I can't get this done, I am not a young man. Peter Jeffery stated we need to get it done right. The septic has been there for 50 years. Mr. Rollain stated it was passed by the Health Department. Peter Jeffery asked how much property is available on site. Chairman Tower stated they are only look for three spaces from Rite Aid. Peter Jeffery stated sixteen people need eight parking spaces. There was much discussion about the parking spaces at Rite Aid. Peter Jeffery commented on Page 89 of the zoning manual – required parking. This would be Rite-Aid's requirement. Chairman Tower commented on the "no parking" sign when the fire hall was in existence and never removed. We are addressing off street parking. Peter Jeffery stated if you have seating for 16 people, you need eight parking spaces. Peter Jeffery stated he would like to see a curb in front of the building. There was much discussion on the square footage of Rite Aid and the number of parking spaces required. Attorney Dowd stated this is an area variance – practical difficulty. Chairman Tower read 704.2 Area Variance.

- 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 government facilities; non applicable
- C. Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created; not a detriment

- D. Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance; doesn't think it is possible.

Irene Myers asked if there was a concern for a grease bucket that Modern cannot get to it. Joe Rollain stated I have permission from the Masonic to get access to the property.

Attorney Dowd stated you have to have permission from the gentlemen on the corner.. It has to be on record that you have proper approval of both land owners. Peter Jeffery questioned the septic. Do you have a contingency plan? Joe Rollain stated Mr. Erway is willing to put in a new system if it doesn't take it. The Board again looked at the tax map and questioned curbing in front of the fire hall to prevent parking.

Attorney Dowd told Mr. Rollain you need to take it to the other owners. We really need to have a map showing parking; letters on official letterhead and a site plan referencing parking locations. Duffy Johnston stated it needs to be more precise. Peter Jeffery stated we need this to cover the Zoning Board. Joe Rollain stated he thinks he is going to withdraw the application. I don't have the time to do this. I understand where you are coming from. Attorney Dowd stated it is not very well prepared. Irene Myers stated it needs to be mapped out where the septic system is. Chairman Tower stated he has the okay from the Health Department. Attorney Dowd stated you need a better presentation.

Chairman Tower stated he has Planning Board approval. "The Planning Board completed the site plan review as follows:

- . signage will be on the face of the building as permitted in the district.
- . House of operation will be from 11:00 am until 10:00 pm Sunday-Saturday.
- . Lighting – there will be no additional lighting added to the building, however, a sign will be illuminated.
- . Deliveries will be made from Youngstown-Lockport Road.

This is a request for a variance only. No special permit is required for this action. The Planning Board recommends that the Zoning Board of Appeals APPROVE this request for a variance. The applicant

should get a letter from Rite Aid Pharmacy in Ransomville giving permission for the employees to park in the Rite Aid parking lot.”

Several Board members told Mr. Rollain that they would help him prepare a site plan and help him with the documentation. Irene Myers made a motion to table the application for 30 days with the consent of the applicant and was seconded by Peter Jeffery.

Chairman Tower asked if there was any further discussion.

Joe Fleckenstein made a motion to close the meeting and was seconded by Duffy Johnston. The meeting was adjourned at 9:25 pm. The next regular meeting will be held on **Thursday, January 21, 2010**

Respectfully submitted,

Nancy Smithson, Secretary
Town of Porter Zoning Board of Appeals