

**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 28, 2008, 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 William Leggett, Building Inspector, Roy Rogers and Attorney Michael Dowd

**ABSENT:** Member Irene Myers.

Chairman Tower called the meeting to order at 7:30 pm Chairman Tower asked if there were any additions or deletions to the previous month's minutes. William Leggett made a motion to accept the minutes as written and was seconded by Joe Fleckenstein. Chairman Tower asked for a Roll Call Vote. **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 August 28, 2008, at 7:30 PM for the purpose of considering and hearing all interested persons concerning the following application(s):

**Application of Catherine Wright, 889 Youngstown-Lockport Road, Youngstown, NY 14174.** Pursuant to Sections 503.3, 705 and 710, a Variance is requested to erect a six foot in height fence on the East side of the back yard for approximately 130 feet. Section 503.3 states "Maximum height Residential Districts four (4') feet. Thus, a variance of two feet is requested. Property is located in an ARR-100 Zoned District between East Avenue and Creek Road in said Town.

It was noted that Catherine Wright was present. Chairman Tower asked if anyone from the audience wished to speak. None. Joe Fleckenstein made a motion to close the public part of the hearing and was seconded by William Leggett. All in Favor. Motion Carried.

Chairman Tower stated that there were no objections to the fence. I have looked at the property. Joe Fleckenstein stated he has no objections as long as it doesn't go in the front of the house. William

Leggett stated that this is connected to the house with a gate. Joe Fleckenstein made a motion to approve this fence with the good side facing the neighbor and two feet off the property line and was seconded by William Leggett. The Planning Board recommends that the Zoning Board of Appeals APPROVE this request.

Chairman Tower asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Joe Fleckenstein-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following:

**Application of Michael Blenk, 426 Dansworth Road, Youngstown, NY 14174.** Pursuant to Sections 503.3, 705 and 710, a Variance is requested to erect a five foot in height cedar fence on the West side of the property for approximately 150 feet in length from the back of the house to the rear property line. Section 503.3 states "Maximum height Residential Districts four (4') feet. Thus, a variance of one foot is requested. Property is located in an UR-80 Zoned District from Riverview Drive South & East to Glengrove Road in said Town.

Attorney Warren Kahn was representing Mr. & Mrs. Blenk who are in Europe from 8/2/08 to 9/7/08. Chairman Tower asked if anyone from the audience wished to speak. Mr. Joseph Rocco, 422 Dansworth Road, Youngstown, NY approached the Board. He stated that he is opposed to the fence because he believes in natural beauty. The Blenk's are going to cut down trees and bushes and I don't see any reason why they need the fence. Mr. Rocco had photographs and showed them to the Board. I would allow a four foot fence, but I don't think they need a variance. Joe Fleckenstein stated that if they don't get a variance for a five foot fence, they can put up a four foot fence. They are only looking a one foot higher. Mr. Rocco stated that everything in his back yard is natural. I don't see why they need it. They are making me look at chicken wire. There are six foot structures in the front and back of the house – gazebos. Mr. Rocco also presented pictures showing trellis. Mr. Kahn stated that the reason for the fence was privacy and beautiful gardens.

Chairman Tower stated that the fence is only one foot higher. Peter Jeffery stated that they are asking for privacy. Duffy Johnston stated

that the good side of the fence must face the neighbor. Mr. Rocco stated that this is utterly ridiculous. She is trying to harass me. Mr. Kahn stated that the Blenks' have had their property surveyed.

Duffy Johnston asked if the trees are growing near the property line. Mr. Rocco stated that his problem is the fence and having to look at it. Peter Jeffery asked Mr. Kahn if he knew if the fence is on the property line. Are the Blenk's intending to remove trees, shrubs? Mr. Kahn stated that it is his understanding that they would trim everything back so that nothing would be on Mr. Rocco's property. Peter Jeffery stated that they have to maintain the fence without going on Mr. Rocco's property. Mr. Kahn stated that they would like the fence six inches off the property line. Joe Fleckenstein stated that a four foot fence is down the property line. This fence would have to be two feet off the property line so it could be maintained. Duffy Johnston stated that Mr. Kahn is representing the Blenk's. Do you know the property? I would like to see what they thought. Mr. Kahn stated that they are coming back September 7, 2008. Peter Jeffery read the attached letter from the Blenk's.

The Town of Porter Planning Board recommends that the Zoning Board of Appeals APPROVE this request.

Peter Jeffery stated it has been the history of this Board to allow higher fences for privacy. The Board does not settle neighbor disputes. Duffy Johnston stated that the beds have to be moved and it has to be two feet off the lot line. I don't want all of the beds falling under the fence. Is the fence on the ground or off the ground? Mr. Kahn stated that he is not sure they will be able to move the plants. Duffy Johnston stated that the good side must face Mr. Rocco and it has to be maintained. William Leggett stated that he talked to Mr. Blenk and he stated that he is not going to put up a fence if it has to be two feet off the property line. Attorney Dowd stated that a resolution has been made. If they come in a get a permit, they have six months to act. Joe Fleckenstein stated it is not our concern if they have to move the beds. Duffy Johnston commented that their counsel is not sure. Peter Jeffery stated that he thought you would be hard pressed to make them remove the trees—as long as they are maintained. Joe Fleckenstein stated you can't have chicken wire on the property line. Peter Jeffery asked Mr. Kahn if he felt more

comfortable with the Board making a decision tonight. Mr. Kahn replied "yes" as opposed to waiting another 30 days.

Joe Fleckenstein stated that a fence doesn't make good neighbors. This is their private property. Joe Fleckenstein made a motion to approve the five foot fence, two feet off the property line with the good side facing the neighbor and there will be no stacking or piling of material and no storage of material near any neighbor's side of the fence and the chicken wire fence must be taken down and was seconded by Duffy Johnston.

Chairman Tower asked if there was any further discussion and called for Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Joe Fleckenstein-yes; Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following:

**Application of David Hake, 3832 Ransomville Road, Ransomville, NY 14131.** Pursuant to Sections 503.3, 705 and 710, a Variance is requested to erect a six foot in height sculptured fence approximately 320' in length along the West side of the property from the front of the house and continuing on the back lot line. Section 503.3 states "Maximum height Residential Districts four (4') feet. Thus, a variance of two feet is requested. Property is located in an ARR-100 Zoned District between Balmer and Parker Roads in said Town.

It was noted that Mr. Hake was present. Chairman Tower asked if anyone from the audience wished to speak. None. Duffy Johnston made a motion and was seconded by William Leggett to close the public part of the hearing. All in Favor. Motion Carried.

Joe Fleckenstein stated that he did not look at this personally. Duffy Johnston stated that there is an existing fence in good shape. Can you butt up against it? Do you put up another fence a leave four feet in between? Attorney Dowd stated that in the past we have asked the neighbor if we can tie in the back. Mr. Hake approached the Board and pointed out where the fence would be. Chairman Tower stated the fence has to be two feet off the property line. Joe Fleckenstein stated he would feel more comfortable putting it closer to the lot line if you had something from the neighbor. Joe Fleckenstein stated we don't have a neighbor complaining about it.

Attorney Dowd stated historically we would have the fence two feet off the property line.

The Town of Porter Planning Board recommends that the Zoning Board of Appeals APPROVE this request.

Joe Fleckenstein made a motion and was seconded by Duffy Johnston to approve the six foot fence with the good side facing the neighbor and none of the fence will be less than two feet off the property line.

Joe Fleckenstein also commented that the Board needs to know what type of fence people are putting up before we approve it. We need a better description. Duffy Johnston stated we are leaving a little bit of leeway with fences regarding the bottom of the fence and if it would drain in the neighbor's yard. Peter Jeffery stated it usually is not an issue.

Chairman Tower asked if there was any further discussion and called for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Joe Fleckenstein-yes and Chairman Tower-yes. All in Favor. Motion Carried.

Chairman Tower read the following:

**Application of Shuhartha Ghose, 105 Radcliffe Drive, Getzville, NY 14068.** Pursuant to Sections 401.6, 705 and 710, a Special Permit and Variance is requested to build a new garage and addition to the home located at 2257 Old Lake Road, Ransomville, NY 14131. Under Section 401.6 "Maximum land coverage by buildings permitted 10%". Thus, a variance is requested. Property is located in an ARR-100 Zoned on the North Side of Lake Road between Dickersonville and Ransomville Roads in said Town.

It was noted that Suhartha Ghose was present. Peter Jeffery gave a little background information on the variance. There will be a two car garage (24'x24") along with an addition. They are looking for a 607 sq foot variance or 2.8% over land coverage – 12.8% coverage versus 10% coverage.

Chairman Tower asked if anyone from the audience wished to speak. None. Duffy Johnston made a motion and William Leggett seconded to close the public part of the hearing. All in Favor. Motion Carried.

Chairman Tower stated that he is familiar with the property. Duffy Johnston stated they are looking for 2.8% additional coverage.

The Town of Porter Planning Board recommends that the Zoning Board of Appeals APPROVE this request for an area variance as presented.

Joe Fleckenstein asked if open porches are in the square footage. Peter Jeffery stated if it has a roof it is considered square footage.

Joe Fleckenstein made a motion to approve this project to build a new garage and addition per the square footage supplied and was seconded by Duffy Johnston. Chairman Tower asked if there was any further discussion and asked for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Joe Fleckenstein-yes; Chairman Tower-yes; All in Favor. Motion Carried.

Chairman Tower read the following;

**Application of Lon Flick, 1587 Lake Road, Youngstown, NY 14174.** Pursuant to Sections 503.3, 705 and 710, a Variance is requested to erect a six foot in height fence along on the West side of the property for approximately 240 feet to the South of the garage and sixty (60') feet north of the Garage. Section 503.3 states "Maximum height Residential Districts four (4') feet. Thus, a variance of two feet is requested. Property is located in an ARR-100 Zoned District between Tower and Murphy's Corner Roads in said Town.

It was noted that Mr. Flick was present.

Chairman Tower stated that the Planning Board recommends that the Zoning Board of Appeals APPROVE the 240 feet of six foot fence to the south of the garage but NOT the sixty feet long section north of the garage.

Chairman Tower stated that we have never given approval of a fence blocking some ones view of the lake. The front yard is considered

along the lake. This should not block somebody's view. Mr. Flick stated that this won't block any view of the lake. His house is right on the lot line. It will only be two sections of the fence – from the corner of the patio and back -- just a couple of section so that we are not looking at each others bedrooms. Duffy Johnston stated it would not impede the view of the lake. Mr. Flick stated it is more of a comfort thing for us. Attorney Dowd stated historically Mr. Tower is right. Chairman Tower stated he would like to table this application for 30 days. Attorney Dowd stated he would suggest at we send a letter to John Brett asking if he is in agreement. Joe Fleckenstein stated it is a problem if we approve something out of the ordinary. It would put our Board in jeopardy. Chairman Tower stated it is a precedent. Attorney Dowd stated we have never done it before – six foot fence north of their house. Peter Jeffery stated the site plan doesn't show where your house is.

Joe Fleckenstein made a motion to table this application for 30 days until the Board gets a site plan and the two neighbors agree or bring in a letter and was seconded by Duffy Johnston. Chairman Tower called for a Roll Call Vote. Duffy Johnston-yes; William Leggett-yes; Joe Fleckenstein-yes and Chairman Tower –yes. Motion Carried to Table for 30 days.

Chairman Tower asked that a letter be sent to Mr. John Brett.

Joe Fleckenstein made a motion to close the meeting and was seconded by Duffy Johnston. The meeting was adjourned at 8:40 pm. The next regular meeting will be held on Thursday, September 25, 2008.

Respectfully submitted,

Nancy Smithson, Secretary  
Town of Porter Zoning Board of Appeals