

TOWN OF BENTON
ZONING BOARD OF APPEALS MEETING
MAY 1, 2018

PRESENT: Dwight James, Tom Davie, Jim Willson, Rich Meyer, and Steven Vaughan.

Also Present: Donald McLaughlin; Barbara Hanford; Peter Spinelli; Jason Martin; Ed Culver; John and Steve Hill; Steve Hullings; Tom Goodall, Alternate; Dick Harper, Town Councilman; Jayson Hoover, Code Enforcement Officer, and Karen Ellis, Recording Secretary.

CALL TO ORDER: James called the meeting to order at 7:00 p.m. followed by introductions.

MINUTES APPROVAL: Davie made a motion to approve the April 3, 2018 minutes with the following correction: 10th paragraph on 1st page, The *falling* of the Board should be, The *feeling* of the Board.... Meyer seconded the motion. All were in favor.

APPLICATION #29SDAV-18: Peter Spinelli of 11 Founders Grove, Pittsford, NY 14534 requests an Area Variance at 655 State Route 14, Penn Yan, NY 14527 for an 80' footage from 200' requirement in the AR1 portion of the proposed lot which also contains LR District.

Spinelli stated he was here last September looking for some guidance when they had a proposed sale of a lot that had both lakefront residential and agricultural residential and it was suggested that the less restrictive 100 ft. width could be used for the whole lot. While it would be narrower, there would be more restrictions in terms of use in the lakefront residential. The zoning officer said no, they would have to comply with the lakefront residential and comply with the agricultural residential but suggested that if there was a time when they had an offer on a part of the parcel they could apply for a variance. Spinelli said they have been marketing the property aggressively and they are under contract for a lot, which has 120 ft. of Lake Frontage and then would go all the way back to Route 14; it would be over 2 acres. It exceeds the LR district by 20% and it is 80 ft. off the agricultural residential. They believe it meets the requirements and the standards. It is a substantial lot more than twice the size that would be required. The deed restrictions that govern the original parcel, which is 19 acres when purchased back in the mid-80s, would apply to this parcel as well as the others and whatever other parcels. It would leave approximately 350 ft. of road and Lake Frontage remaining, which they would seek to sell as one if they could. He noted he will have his realtor try to market it at the very least for a 200 ft. lot and a 150 ft. lot, but if they could sell it as a 350 ft. lot they certainly would. He noted he believes it meets the requirements and, although it is a large reduction from the 200 ft., he thinks that is offset by the deed restrictions, the size of the lot and the excess frontage on the lakefront.

James asked if any neighbors were present that would like to speak. Steve Hill spoke and noted she has the original paperwork that was filed and as you go to the land restrictions on the last page, item C, it states that no lot containing fewer than 200 ft. of Lake Frontage shall be further subdivided without the consent of the grantors and the owner or owners of additional land subject to these restrictions. She

noted she is one of those owners and she objects. She stated both she and Jon had to follow the rules and why would all of a sudden the rules not apply anymore.

Spinelli noted that right now he is an owner of a 470 ft. lot, so he is not an owner who has less than 200 ft. If they sell to Dr. Knapp, he would have 120 ft. lot; it is less than 200 ft. and he could not further subdivide. Even if this Board were to allow him to do it, he would need a huge variance to do that both on lakefront and agricultural. What that provision applies is, if you are an owner of a lot that is less than 200 ft. you cannot make it any smaller, so Dr. Knapp would not be able to make it any smaller. Steve noted this is not how it reads; it says no lot containing fewer than 200 ft. of Lake Frontage shall be further subdivided.

James clarified that Spinelli originally owned the entire parcel; the two parcels were split off, now leaving the 470 ft. parcel remaining. Spinelli noted that each buyer came in and said what they wanted and took the original survey map and marked what they wanted. Dr. Halfman wanted 236 ft. and had a mark right on it and then the next buyer wanted that. They did not have to come to this Board because it was over 200 ft. Now he has a buyer who wants 120 ft., but it does require a variance.

James asked Spinelli if he can show the contract from the realtor where it shows he tried to sell these 200 ft. lots. Spinelli noted that they had it for sale and it said "lots for a sale with a different broker" and they didn't get any offers at all. After he came to this Board the last time, they said lots a minimum of 120 ft. When this buyer was interested, his broker called and said he might buy the whole thing. Spinelli got an offer for 120 ft., he went back to his broker and asked to see if he would go for 200 ft. and he would give him a substantial discount. It did not work so they went under contract for the 120 ft., which was the best he could do. He said that if the Board grants this variance, they have the power to deny anything less than 200 ft. that means he may only have one lot or he could have one lot of 200 and one lot of 175, which he would hope to get the whole thing or at least two lots. He noted it is an offer than what is sold to Halfman or the predecessor of John Hill.

James asked the buyer's agent what they came to him to look at. The buyer's agent said originally he was looking at the whole thing, but he decided he wanted to put more money into the house. The listing sheet said 120 ft. minimum and so that is what he went with. James then asked if they were aware when they put the offer on the property that the minimum in the Town of Benton was 200 ft. Spinelli noted that his broker told them right away that they would need to have a variance if the contract was to go through.

James asked if the Board received any other correspondence. Hoover noted he did not. Hill said that on the application for the area variance there were 5 questions. Statement #1 it says that no undesirable change will result, the parcel will be over 2 acres and only one residential home may be built by the lake. Does that mean that anyone that purchases this smaller lot with the frontage that is that deep, with the access road that cuts down the middle, does that prevent this buyer from building another house up by the road, which then would even increase more on this right-of-way? Hoover stated that you can put two residences on one property, but it has to be able to be subdivided to meet our zoning. James noted

that to clarify this, the Zoning Board has no jurisdiction over the deed restrictions; that is a civil matter. Even if we do grant him this, and it is felt that he is going against the deed restrictions he drew up many years ago, they have a civil lot. We cannot say there is a deed restriction and that is what we are enforcing. We have no power over that. Ours is only pure to what is written in the zoning law. If we grant this, and they feel it is not right, they have full legal recourse to get an attorney.

James asked Spinelli if the right-of-way to these lots would be granted through the original right-of-way. Spinelli noted that was correct; each owner will have access to both sides of their lot and everyone buying knows there is an easement going through there and they are responsible for maintaining their portion of the 15 ft. easement. Spinelli noted that the contract with this buyer requires that within four months he improve the 120 ft. driveway in front of his parcel so that people would not be parking in front of the Hanford/McLaughlin parcel and the buyer was very willing to do that. He needs to take it all the way through his property to the 350 ft.

James asked if there was any more discussion amongst the Board. He reminded the Board members that whether they make a motion to grant or deny, they must give the reasoning to grant or deny because whatever we are doing here, if we do not give our reasoning, it just opens up the next time it could be done again.

James then noted that he works around the lakes and knows the costs and value of these properties. If you are offering a lakefront lot of 120 ft. with the cost of lakefront lots, you are not going to find anyone, unless they are billionaires that come in that will say they don't want 120, they want 200. He noted he feels that they should have been marketed at 200 ft. You are now asking the people to go from smaller to larger. Spinelli noted that the 120 ft. minimum was put because they never got any offers. He noted he understands the point of the chairperson, but if he goes back and markets it again for large lots, it will just sit there. He feels that 120 ft. lot with two acres going all the way back from the lake to Route 14 is a substantial lakefront lot.

Meyer made a motion to deny the request because of the 200 ft. agricultural requirement and the substantial difference between the 120 and the 200 ft., which is a 40% variance, which is substantial. Willson seconded the motion. The Board was polled: James: Deny; Davie: Deny; Willson: Deny; Meyer: Deny; Vaughan: Deny.

APPLICATION #19SUP-18: Application for a Special Use Permit from Twin Pines Power Equipment to relocate existing business from 1171 Route 14A to 1300 Route 14A, Penn Yan, NY 14527 using the existing building, (Formerly Millers Essenhaus) with addition per site plan. AR1 District. (Tax Map #17.01-1-7).

James stated we have Mr. Martin here tonight with some revised plans. Martin noted that the dark sky lighting is on the plan. The drainage will be compliant with Yates County Soil and Water. The drainage will come out of the farmer's field. The pieces of equipment were also put on the plan, 15 on up to 85. James said his question would be that if he has 15 pieces of equipment in one spot and 85 in another in

the same sq. footage, it would be crowded. Martin said there is no square footage on there; they are still going with the 3,200 sq. ft. off from the south end of the parking lot.

Hoover stated that the Planning Board did not have a quorum last month, so there was not a meeting. James noted he wants the Board to agree or disagree that the site plan has to be approved before we can grant. He said that at the Planning Board meeting of March 27th, a motion was made by Goodall and seconded by Stape to approve and requested to see the building plans when completed. Goodall noted he made the motion that they wanted to see the numbers when completed before they would act on it. They were granting the special use but denying the site plan review. Goodall said the building plans were not completed all; there were no numbers on it whatsoever.

Martin asked what size the Board is looking for. James said he would have to have a site plan review and then the Planning Board would make a recommendation for the ZBA on the special use permit. We would then grant or deny the special use permit with conditions. Right now, the Planning Board has not granted the site plan review, but they did recommend that we approve the special use permit.

Hoover said he had to respectfully disagree with Goodall. What he thought the Planning Board did was approve the special use permit and the site plan and they asked to see the construction details for the addition. The sizes were on the plans, but it needed the roof pitch and that type of thing is not necessarily related to the site plan. Martin asked if it was the elevation drawings that they were looking for and Goodall said they were asking for something with some numbers on it. Martin noted what he has here is the same thing he brought to that meeting. Goodall asked if there were sizes on the drawings and Martin noted there are.

James asked the Board if they feel we would be overstepping our bounds if we do not wait for the site plan approval. Willson said there's a bit of interpretation of the minutes, which is what we are going by; the official record of that meeting. Hoover reminded the Board that these minutes are not official yet; they are a draft. Because there was no quorum and no meeting, they are draft only. Meyer stated he senses that since nothing has been done, we have nothing in record. If there was a quorum at the last meeting, it would be very easy tonight to go through the motions and grant it and be done with it.

The Board went over the questions of the short environmental assessment form. Willson made a motion that the proposed action will not result in any significant adverse environmental impacts. Vaughan seconded the motion. All in favor.

James noted that the only thing he would like to address is that down the road we have a gentleman that is running the same type of business he is and he was restricted because of the neighbor. He did agree to put 15 pieces of equipment out front. Martin is looking at 100 pieces of equipment. At the existing building there were 64 pieces last week between the building and the road. He said he is not saying they will ever get to 85 on the one side, but if they continue to grow he was hoping to have room to grow. Hoover noted that the gentleman to the south had a residential parcel and he was putting a commercial business on a residential parcel. This would be deemed a commercial piece of property, which is a big difference. And it was owner-occupied where this one isn't.

James asked if the ZBA wanted to make a motion contingent upon the Planning Board's site plan approval. Hoover said he believes they already approved the site plan; it was construction drawings that they wanted to look at. James asked if the Planning Board has any authority to review construction drawings. Hoover said not really, but they can ask. James said if it was a historical district, all bets would be off. A lot of things could be requested.

James asked the Board's feelings. Davie noted he feels we should go forward based on site plan approval. Willson agreed, noting they brought back everything we asked for. Meyer noted he also agrees, but in a way disagrees, because the Planning Board hasn't done their job. Vaughan agreed with Davie.

Davie made a motion to approve Application #19SUP-18 based on the approval of the Planning Board. Vaughan seconded the motion.

The Board was polled: James: Yes; Davie: Yes; Willson: Yes; Meyer: Yes; Vaughan: Yes.

Willson made a motion to adjourn the meeting at 8:05 p.m. Vaughan seconded the motion. All in favor.

Respectfully submitted,

Karen M. Ellis

Karen Ellis
Recording Secretary