

**TOWN OF BENTON
PLANNING BOARD MEETING
AUGUST 27, 2019**

PRESENT: Tom Rood; Tom Goodall; Jerry Stape; Herb Cooley.

Also Present: Brianne Kirk; Blaine Minor; Antonio Arias; Robert Brenner; Fred Shelley; Cameron Marble; Donald McLaughlin; Barbara Hanford; John and Barb Halfman; Gail and Steve Knapton; Doris Martin and Lewis Martin; David Hoover; Warren and Elaine Brubacher; Richard Harper, Town Councilman; Jayson Hoover, Code Enforcement Officer, and Karen Ellis, Recording Secretary.

MINUTES APPROVAL: Goodall made a motion to accept the meeting minutes for July 23, 2019. Cooley seconded the motion. All in favor.

APPLICATION #77-SPR – Marbles Automotive of 1698 Rte. 14A, Penn Yan, for a Site Plan Review to install a new business sign on top of the existing planter. Sign is located in front of the building. Sign is to be two-sided facing north and south and lighted at night.

Rood asked if everyone had a chance to look at the location of the sign. He then commented that the sign will be facing north and south and will be lighted. Marble stated there would be two posts coming out of the ground and two steel cylinders that will be cemented into the existing planter. The frame around the sign itself will be all wood. They will have spotlights coming out of the ground on both sides of the sign. Rood indicated that the lights would need to be shielded. He then noted that we realize that this sign exceeds the size in our zoning, which is usually limited to 4 X 8. There has been precedence in the Town where larger signs have been installed. This is a fairly large business and the sign will be up away from the highway on a bank. Rood then made a motion to approve this application. He noted he sees no real objections to this particular design in this particular location with this size. Stape seconded the motion. All in favor.

APPLICATION #76 SUP-19 – Application for Special Use Permit request from Lewis and Doris Martin of 2003 Loree Road, Penn Yan, NY to operate a commercial kennel with a maximum of 15 adult dogs. (AR1 District) (18.01-1-10.2).

Goodall asked who the closest neighbor was to the Martin's. Steve and Gail Knapton indicated that they were the closest neighbor to the east and they do have a problem with dogs barking. Rood asked Hoover how far this building would be from the existing property line. Hoover noted that the south east corner is approximately 232 ft. from the property line. The front corner is about 218 ft. Hoover stated that he did hand a copy of the kennel laws to the Martin's. Goodall asked how big the kennels would be. Martin stated the actual building would be 11 ft. deep X 105 ft. long. Rood made note that in the kennel law, it is noted that a facility can only be established on at least 5 acres of property at least 100 yards from any adjoining property line. He stated that was placed in the law so as to make sure that neighbors on both sides of the property wouldn't have a problem. He then noted that there are two laws in effect. One is a breeding facility and the other is a dog control law. The only thing he sees in the dog control law is the problem with habitual howling and barking that can be bothersome to the neighbors as well. Rood then mentioned that he found an anomaly when we wrote this law 7 years ago; we didn't realize there is a difference between a breeding age of a dog and an adult dog. He stated he did some research today and found out that a dog is considered to be an adult when it reaches its

standard height. They can start breeding at 6 to 9 months of age. It might take 9 months to 15 months to reach adult age. When getting into a puppy mill situation, there are people who will start breeding dogs when they are able to. The way our law reads, 15 adult dogs is our limit, but hypothetically you could have more than that because you could essentially have puppies breeding which would exceed that 15 limit. When we get done here tonight, we will need to find out if we want to readdress this just for just a few months of breeding age. This section is called a breeding facility, even though it mentions adult dogs in it. Their limit is 15 adult dogs and it really should be 15 dogs of breeding age. Goodall asked what kinds of dogs they were talking about breeding. Mrs. Martin replied with bichon, cocker spaniels and mini poodles; primarily just the smaller dogs.

Stape asked if they would have any buffers for the noise when the animals are outside. Mrs. Martin noted that it states in the laws that they should be enclosed by a minimum 6 ft. high chain link fence. They said they have been looking at garage door panels that are insulated. Some people use them for noise and to keep any disease from spreading to the outside. They visited a kennel and while walking just outside in the exercise lots it was amazing in that the dogs couldn't hear you, so they didn't make a lot of noise and you were able to converse normally. They have an insulation barrier. Mrs. Martin noted they were interested in using this instead of the chain link fence. Rood said they wouldn't have a problem with that, although they would have to get a variance for that.

Rood asked the Knapton's for their opinion on this. Knapton stated he doesn't like breeding facilities and said they can hear the dogs now. He likes his peace and quiet to have the windows open for the fresh air in the summer and right now he can hear the dogs. Rood indicated that since we don't have the 300 ft. minimum distance from the kennel to the Knapton's, if we had the 300 ft. and people were complying with everything in our regulations, we would probably think about approving this because they fit in with what we require. But, since they are not within the 300 ft., his opinion is that we should take into consideration what people on both sides feel. Mrs. Knapton stated that there are so many unwanted dogs that need homes; why do we need more mass breeding? Rood asked if anyone else wanted to make a statement. David Hoover said they have a pretty big building there; if they are putting them in one side of the building versus the other side of the building, would that be enough to get them 100 yards? Because it's the same building, would it still disqualify if they were on the other side of the building. Stape asked if they were planning on putting runs on the south side all the way down the length of the building. Mr. Martin said ¾'s of the length. Rood asked the Knapton's if they were definitely opposed to this project being next to them. The Knapton's noted they were.

Rood made a motion stating that since the Martins are not within the 100 yards that they are supposed to be and the neighbors are objecting to it being closer, we should not agree with this project at this time, unless the Martins can figure out how to move it more than 100 yards from the property line on that east side. Goodall seconded the motion.

Ellis called on the members for a voice vote. Rood voted no; Goodall voted no; Stape voted no; Cooley voted no.

Hoover reported that this is scheduled to be on the agenda for the ZBA meeting next Tuesday, even if this was not approved. Because this Board made a negative recommendation, the ZBA will need a supermajority to override it.

APPLICATION #71 SUP-19: Application for a Special Use Permit request from Savour Finger Lakes LLC of 655 Route 14A, Penn Yan, NY for a proposed development of +/- 3000 square foot wine tasting and sales room. (AR1 District) (19.58-1-1.11)

Fred Shelley from BME Associates of the Finger Lakes led the presentation to the Board. He stated that he, along with Antonio Arios from Savour Finger Lakes, are here before the Board seeking a referral to the Zoning Board of Appeals. They have applied for a special use permit for a proposed farm related business site. The farm related business is a permitted use in this zoning district. Basically, they are consistent with their previously submitted plans. As far as the layout of the site, they are proposing one access off of Route 14 into a 31-space gravel parking lot. They will have an additional 36 grass parking spaces leading up to the proposed 3,000 sq. ft. retail and wine tasting facility. They are also proposing a 4,000 sq. ft. special events area for the purposes of erecting a tent during the favorable months for that. Site development will occur on an existing 8.7-acre parcel which extends from Route 14 all the way down to Seneca Lake with one interruption, which is where the railroad crosses the property down near the lake. The plans they submitted to the ZBA also include an enhanced site plan designed from what they previously submitted with the concept plan. They have also included a utility plan showing proposed wastewater treatment system to handle the wastewater generated on site. They have included a connection to the public water main to serve potable water for the site. They have also included some buyer retention and storm water detention areas to address storm water controls with the NYS DEC. This project will require a SPEEDIES permit coverage for construction because it will be over 1 acre. It's not simply just a farm operation, so any commercial aspects of this site do need to incorporate the structure and also the standard storm water controls. This project will require a review and approval from the NYS DOT; they submitted the access plans to them, so their review is underway on that. Also, this plan was referred to the County Planning Board, although the meeting was not held this month, so it was kicked back to the Town of Benton for their discretion. Landscaping and light plans were also submitted. Lighting plans proposed a few fixtures which were downcast, dark sky compliant and shielded lights to maintain the light spillage onto the site and the landscape plan includes some landscape commodities at the front of the building as well as a row of plantings at the end of the loop on the driveway to mitigate any glare coming off of the site onto the neighbors properties. Shelley opened it up to the Board for any questions.

Stape indicated that this has been changed since it was first proposed; it was going to go towards the lake and now it is turned and along the road there is a drop-off. He asked if they are going to build toward the lake from that, so they don't disturb the bank or are they going to put a wall in. Shelly noted there would be a portion where they come off of the roadway and again that access will be reviewed and subject to the DOT's approval. They come off for about 30 ft. to the right of way to about a 4% grade which is about the same grade as the shoulder of the road and then from that point it will curve down and into the site. The driveway is 20 ft. on site and there is about a 5 ft. grass shoulder on each side of the driveway, giving about 30 ft. and then the landscaping plans also include a row of plants to further delineate the curve on the driveway to give drivers a heads up. Stape asked how far they will be off the right-of-way for the parking lot. Shelley noted that parking lot is about 30 ft. off of the right-of-way and the bank is another 10 ft. in, so they are about 40 ft. off of the slope. Stape asked if they would put a retaining wall in there. It was noted they will maintain it and mow it and any clear areas they will turn into lawn. Generally, the site has about a 10% slope for the whole site, but there is quite a bit of a drop right off of the road. Proposed grades will bring it to about 4% for the driveway. The Board then looked at the grading plans. Shelley noted that one benefit they have is they are on the outside of the curve and all of their information that is being discussed now was sent to the DOT. They needed to

provide adequate site distance for the driveway which gets evaluated by the DOT. The minimum site distance that is recommended for a road of this speed and this nature of a rural highway is around 600 or 700 ft. and they have well over 1,000 ft. in both directions which gives them about another 50% more than what their minimums are for that.

Goodall asked what they are going to put down along the property line on the south side. Shelley stated they have proposed plantings. Where it will be effective as far as screening headlights, they have proposed landscaping down there at headlight level to cut down on any of the light spillages. They have proposed cluster staggered grouping of plantings there. Slope stabilizing plantings will be right at the front.

Stape asked where the retention ponds would be. Shelley indicated that the retention ponds will be just downhill of the grass parking area and it will be a dry pond and they are also doing a buyer retention, so the DEC makes them take a certain part of their run-off and shove it into the ground. The buyer retention cleans the water and the dry pond holds it back and slows it down before it releases.

Rood thanked Shelley for an excellent presentation.

Rood noted correspondence had been received back from our Town Attorney indicating that the Town's authority is to base its decision of whether or not a use is permitted/specially permitted on the Town Zoning Code, not private deed restrictions. It is up to the property owner(s) who benefit from the deed restrictions to enforce them through the Courts. We cannot take that deed restriction into consideration.

Rood stated that before we begin any further negotiating, if anyone has any comments now is the time. Mrs. Halfman stated that she is a little concerned that the actual use of this property is not very well explained. She said it is being presented as a wine tasting facility and in the correspondence sent to them it said they would be partnering with several wineries and having a place where they could showcase their wine and people would come in and have tastings and sit on the terrace. She said there is a 30-car parking lot with overflow which means they are expecting crowds and there is a 4,000 sq. ft. concrete pad with the possibility of filling that which means they are expecting crowds. She said there is a huge septic field. To her that means it is for a special events venue and not a wine tasting event, which concerns her because she doesn't see a wine tasting room having music every weekend or wedding receptions all summer long or corporate events where there are people out on the pavilion having a good time. She said it does not really sound like a wine tasting property, but actually being set up for large special events which means a lot of noise and a lot of traffic. She noted they deal with it with Fox Run; they have several weekends, such as the big garlic festival and a few other live events on other weekends. It is doable because they know they have only 3 events to deal with through the summer. But if this is going to be used as a special events venue where there are wedding receptions and big crowds coming in, that means continuous noise and it'll be harder to deal with. If it was just presented as a wine tasting venue where you get 5, 10, 15 cars a day and people are coming in, sitting down and tasting and enjoying it, that is a good use for the property. Its close to the road and it works for the zoning and there wasn't a deed restriction. It doesn't sound to her like it is going to be a nice quiet commercial enterprise, it sounds like something that would be dealing with a lot of crowds.

Antonio reported that he sees it as a wine tasting room and he can see it from an industry perspective, but right now the Finger Lakes is where Napa Valley was 50 years ago, when it was just starting. Right

now, in the Finger Lakes we are looking at being the #1 Wine Region in America, so it is one of those things where he can see this as a long-term thing where the Finger Lakes will become the next Napa Valley. In that case, there will be more than 5 vehicles coming to visit because when the wine produces, there are other wineries making wines that people want to drink which attracts more people that want to come. From a traffic perspective, he wishes that he could generate more traffic and he is most interested in this property because it is actually on Route 14, probably the busiest road for wineries in the Finger Lakes. He is trying to capitalize on people that are already coming. Mrs. Halfman said she is concerned with the fact that the facility is so big, and that it is built to handle large events, which concerns her. She asked him if he envisions having wedding receptions there every other weekend or having corporate events where they will need to use the overflow parking lot where they have those kinds of events every other weekend. Mr. Arios noted that this is something that is in demand for the region.

Barbara Hanford asked what happens if the DOT doesn't approve the driveway. What happens with the land purchase and the whole project? Mr. Arios stated he hasn't purchased it yet; he has made an offer, which is conditional upon the approval. Hanford asked if the DOT approves the driveway, would he sign off on the right-of-way that connects that land with them and the Halfman's. If he gets his own driveway and he builds his own spot, will he come back ten years later and say he still has access to the right-of-way and his business failed, so he will sell this property into three lots and then they would have access to the whole driveway. Hanford asked if he would sign-off on the right-of-way. She said when they bought their property, it came with the right-of-way that allowed them to drive right across Halfman's property to theirs. If they get the approval for their road, will they sign off so that no where in the future will anyone be able to come through their property? McLaughlin noted that there's enough land there that they can put their building up and theoretically still put a house down there.

Robert Brenner, Lawyer for the applicant, from Nixon Peabody out of Rochester, stated there's this restriction relative to the mean high water of Seneca Lake up 400 ft. saying they can't do anything commercial. That devalues the property. So, to say they are going to extinguish the right-of-way, and nothing is ever going to happen on that land, when the restriction is still in place and that land can't be benefited by a commercial enterprise, it's a little bit of this and that. Hanford indicated they just want to know that all of the 50 cars aren't going to go past their property. There is a concept under NY law that you can't overburden an easement, so if there's an easement that is intended to serve four residential properties and all of a sudden you have 50 cars coming down to serve the commercial enterprise you are overburdening the easement. But, if they have a dedicated road curb-cut approved by DOT and that is servicing the tasting room and then there are 2-3 cars using the right-of-way that is in place right now benefiting this property to serve a residence, that is permitted. They wouldn't waive that right. They can say that the commercial enterprise isn't going to use that right-of-way if DOT doesn't approve the curb-cut. If they couldn't use the right-of-way, they wouldn't proceed.

Rood stated that in our zoning he doesn't see anything in there that prevents us from approving this business. Hoover stated that one thing we don't see on the site plan is hours of operations and days; that should be spelled out very clearly. Rood then stated he is concerned about the concrete pad himself because he can see where the concern is that something will develop that people can't see now. He noted he doesn't see how we can legislate that, whether we set up a curfew thing or a noise level. He noted that he lives on Angus Road and they listen to music from Fox Run all the time.

Stape asked if there is any way we can restrict this? Rood noted it is a permitted use in an AR-1 zoned area. Hoover said it is permitted via special use permit, so the Planning Board can make a recommendation to the ZBA for either straight approval, disapproval, or approval with conditions. Rood said that the site plan serves all of the requirements and they have done an excellent job of preparing that.

Rood noted that when we get into hours of operation on weekends, how late in the evening would a wedding reception go on. Mr. Arios said they would like to kick people out by 11:00 p.m. so nothing will happen after 11:00. Hoover asked if they have standard operating hours to present now. Mr. Arios said that for the wine tasting room he would like it open 7 days a week from 10:00 a.m. to 6:00 p.m., just like a winery. In the summer months, they would like to stay open until 7:30 p.m. for only three days a week. Rood asked what they would think if they separated out the outside structure use on the concrete pad for us to come back at a later date with another application for that. We don't know what that will be right now and its hard to prove something for like that when we don't know what its going to be and for how long it will go on. Mr. Arios noted that now it is just for specialty events and when those do take place they would put up a tent and those events could go until potentially 11:00 p.m. There may be weeks or months without an event.

Brenner indicated he would suggest, in the context of the neighbor's comment, maybe a condition or a finding that says the tasting room use is the primary use on the property and any special events would be ancillary to that, so then code officer has discretion that if it becomes a venue or there's a special event every night and there's 200 people there, that's not consistent with the special use permit, but if it's a tasting room that is operating 7 days a week and it happens to be special events that are only a percentage of time, that is consistent and it's at Jayson's discretion to bring enforcement in.

Mrs. Halfman stated that she wouldn't have a problem with this operating as a wine tasting, but the problem she has is with the special events and the larger crowds and the possibility that it happens all the time. She noted she can see now, especially if they get a reputation, which judging from their enthusiasm, she can see people flocking to this place for wedding reservations every single weekend of the summer and that's a problem. Rood said he agrees, but he does not know of anything in the zoning law that prevents us from approving it. We would have to rewrite the law that puts something in there, which probably won't happen. Rood then noted he likes the lawyer's recommendation.

Hoover stated he wouldn't have the authority to go down and stop it, but obviously it would be documented that they had six weddings a month. We could request that the applicant come back before the Planning and ZBA to revisit the special use permit. If the ZBA and Planning Board determine that their use is not consistent with what was presented with their application, then they would have the right to revoke their special use permit not only for any special events, but they potentially would have the right to revoke the special use permit for the wine tasting as well. That would be a very good deterrent to not let things get out of hand.

Rood made a motion to make a recommendation to the ZBA to consider that the tasting room use be the primary use of the property; any special events would be ancillary to that use, and the code enforcement offer would have the discretion to do periodical checks based on neighbor complaints. Commercial primary and secondary businesses would not be allowed to use the right-of-way to the south for ingress or egress to this property for the commercial wine tastings and the outside events. Cooley seconded the motion.

Hoover said if they were the owners of the property now, they could technically use it now; they just won't be able to use it for any commercial purposes. So, hereafter if this were to get approved, they wouldn't be able to use that right-of-way for any commercial purposes unless the neighbors come up with some type of formal agreement to eliminate that. Rood stated he wouldn't allow them to use that right-of-way for construction purposes until the driveway is built. The Halfman's said they will be ruining their black top and it's a very narrow driveway. Brenner said they just need to be careful with what is allowed right now. Technically, the property owners are the owners of the driveway as well and its fair to limit patron access so there's not 40 cars in an afternoon traversing the driveway, but to say that the owner of the property or the agents can't use it wouldn't be fair.

Hoover stated that obviously they will have DOT approval prior to owning this property. He asked if they would basically start the construction up top off of Route 14, most likely limiting any access coming off of the right-of-way anyway. Shelley noted that was correct. They will not be using the right-of-way for their construction; they would be building their own driveway.

Goodall asked how long the strip of trees would be. Shelley said basically the width of the driveway where the headlights would be shining over onto the neighbor's property. Once you get to the 90-degree turn, the headlights would be cutting straight down the hill and not directly into the neighbor's house.

Rood asked if there was any further discussion on this. He then noted he would like to see the outdoor lighting shielded downward.

Stape asked if the secondary business could be prohibited to only so much at this point. Could it be limited to once or twice a month. Hoover indicated the Board could put any applicable restrictions in a special use permit they would like. Stape asked how it would be worded so these people can live with it, as well as the owners. Can it be started out small rather than with guns a blazing. Shelley stated that ultimately the hours of operation will be discussed at the ZBA and agreed upon between the ZBA and the applicant. They can do the homework with the applicant to discuss the operation hours and discuss it internally between now and the ZBA meeting and be prepared to react with the ZBA. Rood noted that falls pretty much outside of this Board's jurisdiction. Hoover stated that the Planning Board has the ability to make a recommendation to the ZBA with or without stipulations and they have the ability to table; it is entirely up to the Planning Board.

Stape asked the neighbors what they could live with. Mrs. Halfman indicated she wouldn't want it to happen every weekend. Fox Run has one function a month basically during the summer months, but that brings in a lot of people and it's a good thing. She said she would not want there to be a function every single weekend. She would not want it to be every weekend where they have to deal with it; once or twice a month would be okay. She then asked if they would be able to live with being limited to their special events to only once a month. Brenner stated he doesn't think that would work. To be bound by that, the financial liability of the business also depends on special events. He said that is not the predominant use, it's not consistent with the code and imposing conditions like that needs to be a rational basis for what you are dealing with.

Rood stated we already have a motion on the table and a second that kind of limits the kind of commercial operation they are going to have. If it gets excessive we will have to come back in for a

review. Stape indicated there is no structure there and how do we know if too much is too much. Hoover stated the other issue you have to think about is, what if they put up a tent for a day use for a business conference for a day during normal business hours; will that be considered as one of their events that they will potentially allow? Brenner said what folks are mainly concerned about is the noise, rather than the quantity of the number of evenings, maybe we impose that at 10:00 p.m. the music is off be a compromise and that helps control noise on site which is the primary concern. Rood indicated he believes that falls under the ZBA with the noise curfew.

Rood stated he doesn't know how we can regulate something like this. We are in an area that is very difficult to come up with some kind of an acceptable compromise to what is excessive so everyone will be happy. Hoover reported that ultimately this would be the ZBA's and Planning Board's decision. Assuming this goes forward and 2020 rolls around and assuming this goes on every weekend, then it will be the Board's decision to decide if it is in line with what was presented at the Planning Board. The wine tasting room is the primary use. The event portion would be a secondary use. If this does get approved, and if we get any correspondence from neighbors, then they will be asked to come back to the Planning Board and ZBA to review that. Brenner stated that if this looks and feels to a reasonable person like an event space only and what it becomes is a money maker for weddings and it doesn't look like a tasting room that patrons are visiting to go in and sample the wines as the primary use, then it runs afoul of what if he is saying. If it looks like a tasting room where people are going in to taste the wines and they have events as a special thing they are doing for folks that want to reserve a space, that is consistent with what we are proposing and that is the intent behind it. If everyone in the community says this is booked every night of the week and its not a tasting, then there will be a problem.

Stape stated that as long as they can come back if someone complains then he will agree. Brenner noted he needs to make it clear that if a complaint is received it doesn't mean they are coming back and reopening; it needs to be investigated and the town needs to take a reasonable approach. Rood said it would be the ZBA officer's job. Rood noted that if the neighbors see something they don't agree with, they should get ahold of Jayson and he will come back and discuss it with us and we can decide whether we want to bring it back or not. Halfman said she does not have a problem with the primary use of it unless it gets to be excessive; Cobb Hill went up and that became a wedding venue and people were complaining all the time about it. There are other places up the road that are going in and she knows that because the place is up and coming and know it's a winery, people are going to want to use it as a destination. She said she just wants to have recourse if it gets bad.

Rood noted we seem to be in a good spot; when this goes in there will be 8 wineries within 2 miles of him.

Rood stated we have a motion on the floor and a second and we haven't changed anything.

Rood, Stape and Cooley were in favor of the motion. Goodall was opposed.

OTHER BUSINESS: Hoover reported that there is another training coming up in the Southern Tier on Tuesday, September 10th in Corning on SEQRs.

ADJOURNMENT: Goodall made a motion to adjourn the meeting at 8:40 p.m. Stape seconded the motion. All in favor.

Respectfully submitted,

Karen M. Ellis

Karen Ellis
Recording Secretary