

TOWN OF BENTON
ZONING BOARD OF APPEALS MEETING
DECEMBER 3, 2019

PRESENT: Dwight James; Tom Davie; Dewey Hauman, and Tom Goodall, Alternate Member.

Also Present: Bonnie Perry; Connie Terry; Rebecca Flynn Ames; Gail Knapton; Hal Fredericksen; Joe DeGeorge; Tom Rood; Lewis B. Martin; Doris Martin; Steve Knapton; Dwight James, Town Councilman; Jayson Hoover, Code Enforcement Officer, and Karen Ellis, Recording Secretary.

James began the meeting at 7:00 p.m. followed by introductions.

MINUTES APPROVAL:

Davie made a motion to approve the minutes of the November 5, 2019 meeting. Goodall seconded the motion. All in favor.

APPLICATION #103-SUP-19: Application for a Special Use Permit request from Lewis and Doris Martin of 2003 Loree Road, Penn Yan, NY to operate an appliance and furniture store/warehouse. (AR1 District) (18.01-1-10.2)

James asked if anyone would like to speak regarding this application. He noted he will open a small public hearing for people that did not get a chance to speak last month.

Joe DeGeorge stated that in terms of the building itself, he believes it will be fine for a dual use. In the care and maintenance of animals, it normally doesn't mix with another facility of another type because of the welfare of the animals. The Humane Society does not feel it is appropriate to have two businesses under the same roof.

James asked the Martins what they are planning on doing with the disposal of the units that they do not plan to keep. Martin indicated they are planning on keeping a dumpster on site. They will have no electronics, such as T.V.s, just appliances.

Rebecca Ames asked where they would store the free on, grease, etc. Martin noted that he would not be messing with any free-on at all. They do very little with the cleaning part of the appliances and it will be by appointment only. They will not have regular hours at this time.

Hauman asked where the dog facility will be in this building. Martin noted the building is 136 ft. long; the appliance store is in the east end and the kennel is in the northwest end. There is about a 60 ft. difference between the two facilities and the storage equipment will be in between that. The attached horse barn in the site plan will have nothing to do with the businesses.

Goodall asked about the heat and ventilation. Martin noted they will have floor heat and they will have to put a fan in there.

Public hearing was closed on #103-SUP-19.

APPLICATION #102-SUP-19: Application for a 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 10 adult dogs. (AR1 District) (18.01-1-10.2).

James stated that this is the second public hearing on this application and indicated that he would like to hear from only the people that did not have a chance to speak at the last public hearing. James noted

that the only way we can deny this application is if the Martin's do not agree with the conditions we place on this permit. He then read an excerpt from the Ag and Markets law of January 9, 2013 which basically states we have no legal rights to ban this operation and if the Martin's meet our conditions, we have to allow it or Ag and Markets can bring suit against the Town of Benton, which they will not hesitate to do. We are not allowed by law to ban this operation. We are here to make sure the public and animals are safe and that the neighborhood is preserved. If the conditions are not met, then the neighbors can go to the Zoning Officer and the Zoning Officer can make them meet these conditions or the special use permit can be pulled.

James then asked who in the audience would like to speak that didn't get a chance to speak at the last public hearing.

Hal Frederickson stated he is a little concerned about the barking noise.

Tom Rood noted that in the zoning law there is no provision for the flooring of the dogs inside the kennel; he is concerned that they might be running on wire inside the building. James indicated there is a provision that the kennels have to be cleaned and disinfected. The Martin's noted that the dogs will be on the floor.

A member of the public asked what kinds of dogs they would breed. Martin noted the smaller breeds under 70 lbs., such as the bichon's, mini-poodles and cocker spaniels.

Another member asked the Board if they are aware that there is bi-partisan support on both the Senate and the Assembly in NYS to change the laws regarding pet stores selling puppies and kittens out of stores. James said that is around the corner, but not on the law books for tonight and we cannot add that. She then noted that she feels like the plan is very sketchy; there are many questions that need to be resolved before starting a business like this.

Gail Knapton asked who would be inspecting. James stated that Ag and Markets do inspections yearly and our laws say that the Code Officer, along with the Dog Control officer, does a yearly inspection. This special use permit that we issue will be good for one year. It must be reissued every year. With that reissuance the code officer can inspect the facility to make sure all the conditions are met, and no complaints have been received before that special use permit gets renewed.

Joe DeGeorge said he knows that one of the things that the Ag and Market talks about is the health and wellbeing of the animals and that the Board can take that into consideration. He said he doesn't know the last time anyone from the Board has visited the Martin Farm, but if the Martin Farm is an indication of the proper way to run a farm in terms of the proper quality care that is expected for these animals and if you use their farm as an example, the Humane Society feels it will not have the proper quality care that may be expected because of the past history. He noted that one of the things this Board can consider today is the proper care that is expected because of past history.

Hauman asked if there can be more definition that a veterinarian would be required to inspect the animals. James indicated that he believes that is part of the Ag and markets law. If it is found that there is a genetic defect in an animal and it is brought back, the veterinarian has to euthanize the animal. All dogs will have to be under veterinarian care and have all health checks and vaccinations. Hauman then asked if 10 adult dogs are cast in concrete or can that be reduced. Martin noted they are obviously going to start at 4, so it will slowly increase to 10. Gail Knapton asked if they would be breeding all four dogs that they already have. Mrs. Martin said they would breed 2 of them. Gail noted that the dogs are just running willy nilly and are in the road and most recently harassed one of their cats. She then said that if they don't know what 4 dogs are doing, how will they keep track of 10 dogs. James asked if the

two dogs that are going to be bred would no longer be the family pets. There was no answer. Martin then indicated that that facility doors will be closed, so the dogs will not get out the dog noise will be isolated.

James then stated it looks like 10 pens with 10 outside areas; will they have access to the outside area so they can come and go as they please? Our law asks for a 6 ft. high chain link fence. The only concern he has is on the hot summer days is the insulated panels going to trap the heat with the sun coming down on the north side of the building where they will get no cross ventilation. He then noted he likes the idea of the noise being confined, but at the same sense, they don't want the dogs out there sweltering. Martin noted that as far as inside, there will be air conditioning and the cross ventilation, but he has not considered it for the outside; a couple of the overhead fans will take care of that. Martin noted that there will be an overhang; an extension of the roof will be about halfway over; about 6 ft. There will be insulated panels between the dogs. If they can't see each other, they won't get each other riled up and run back and forth all day long barking.

Bonnie Perry asked how many puppies these dogs have at one time and will they be bred all at one time and what will be done with the puppies when they have them. She said her attitude is that the Martin's don't know what they are doing. There's a lot to this that they do not appear to have thought of. She then asked if they plan on debarking the dogs if they do have a problem. Mr. and Mrs. Martin said they will not be debarking them. The dogs will not be bred all at once; they will go in cycles because of the number of animals.

It was then asked if there would be an isolation area for the sick puppies. Mrs. Martin said they will have an entry to a den at one end and the pens are made so that diseases won't be able to be transferred from one pen to another. James said that by law there has to be a quarantined area for the sick dogs. It was then asked what would happen to all the waste. It was stated they would compost and be cleared once or twice a year. Martin said the plan is to spread and till it on his farm. He does have a compost area that that will be regularly mixed in. Crops will be grown in that area of the compost. A member of the audience then stated that this is not well planned at all and suggested placing a moratorium, a time to think these through. James noted that a moratorium is to halt all new applications so that the law can be changed. If we just say no applications and we don't go to work on changing our law, that moratorium is null and void. The Town Board has to task the Planning Board with changing the laws and the Town Board would be the one to enact the moratorium saying they believe our laws are inadequate and from this point forward no new applications will be accepted until the moratorium has been lifted and the regulations have been changed. The moratorium is not just to put a stop to everything in place. We have an application in front of us and we cannot shut the door after the horse got out. We have the application in front of us and we must act on it.

Steve Knapton, a neighbor to the east, noted that if the dog waste is going to be spread that much, he has a well for water and he is not sure which direction the well water comes from, so he is more concerned about the seepage. James noted a septic system in NYS must be 200 ft. from a well. A minimum of 200 ft. uphill would be as close as he could spread.

Rebecca Ames stated that run-off could be an issue and it could go in a direction you would not typically expect. She thinks it would not be irresponsible to ask for an environmental study on such things because dog feces could contain things like parvo, worms, and toxia, etc. which can be spread to humans. If it does get into your well systems, you are really open to a lawsuit. This sort of bacteria can live in soil for up to 10 years. It could run off into a creek and then end up in their systems and when families get sick in the Town of Benton they would be open for a lawsuit. How will they clean off the area and rinse off the area around it?

James asked the Humane Society handles this. Joe DeGeorge said that they have a special arrangement with Casella Waste. There are drains in the floors and there is a quarantined room. James then noted that it sounds like this is a big concern for all those in the room and asked the Martin's if they would be willing to arrange to have the dog feces removed through a commercial carrier like Casella. He noted he doesn't want to find out that neighbors got sick. A dumpster, in the grand scheme of things, is not that expensive. DeGeorge noted that Ag and markets talks about human and animal safety. All of the things he has heard in both of these meetings, it is a concern that Mr. Martin does not have all of the answers. You cannot fly from the head when you are taking care of animals and the well-being of the population. That is why Ag and Market give the authority to the Zoning Board and if there is a possibility of human or animal health and welfare, the Board does have a right to say no. So far, they have no answers and have no clue as to what is going on.

James stated it is time for the Board to have some discussions. He noted one of the things he is hearing loud and clear from the immediate neighbors is the waste control and keeping the animals under control. This is where we are protecting the neighborhood and the animals. He asked the Martin's if they are open to having the waste taken away. Mr. Martin said that would be acceptable.

Hauman asked if we have put down every requirement that has been discussed. James noted that as far as stipulations, we can handle stipulations that are not covered by our laws in a motion that is made.

James closed the public hearing.

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Davie made a motion to make the Town of Benton the lead agency on the SEQR form. Hauman seconded the motion. The Board then went through the questions for the SEQR.

Davie then made a motion to check the second box on the SEQR, Part 3 which read, "check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts." Goodall seconded the motion. All in favor.

Davie made a motion to approve this application with the stipulation that there will be a dumpster for the metal and there will not be any accumulation of metal around the building and it will be kept clean and neat. This will be by appointment only. Goodall seconded the motion.

The Board was polled:

James: Yes
Davie: Yes
Hauman: Yes
Goodall: Yes

APPLICATION #102-SUP-19: Application for a 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 10 adult dogs. (AR1 District) (18.01-1-10.2).

James commented on the diagram, asking how pen 9 would be accessed. Martins noted that pen would be in the corner. There will be an outside access doorway and a breezeway. James noted the other concern is with the quarantine area. James then asked the Martin's if they want the Board to give them

25 stipulations tonight, or think through the points that have been brought up. Davie stated he feels there should be a plan in writing with everything listed on it what they are going to do, including the quarantines, the vet, etc. James said he wants to try and make this best for everyone here. Not everyone will walk out of this room completely happy, but we want to make it as best we can for all involved. Sometimes we need to do that so that we can make sure we meet the health, safety and welfare of the community, the neighborhood and the animals. He suggested the Martins visit other breeders to find out how they run their operations and talk to Casella or Cardinal about getting a dumpster in there to do the waste. If there could be diseases in the feces and we are spreading it and it does get into the waterway, and all of a sudden, someone gets ill, we are going to wonder if we caused that. If we get that waste disposed of, we won't have that hanging over our heads and he is sure the neighbors want to be good neighbors. Davie suggested the Martin's look and see if everything we are asking them to do tonight is feasible. It may look good here, but when they are all said and done, it might not look good and it may not be feasible.

Davie made a motion to table this application until next month. If the Martin's need more time to gather the information, they will let the Board know beforehand. Goodall seconded the motion.

The Board was polled:

James: Yes
Davie: Yes
Hauman: Yes
Goodall: Yes

James indicated that he appreciated everyone's input tonight.

Hoover reported that the next meeting will be held on January 7th at 7:00 p.m.

ADJOURNMENT:

Davie made a motion to adjourn the meeting at 8:20 p.m. Goodall seconded the motion.

Respectfully submitted,

Karen M. Ellis

Karen M. Ellis
Recording Secretary