

DRAFT
TOWN OF BENTON
ZONING BOARD OF APPEALS MEETING
AUGUST 4, 2020

PRESENT: Dwight James; Tom Davie; Rich Meyer; Dewey Hauman, and Steven Vaughan.

Also Present: Warren and Elaine Brubacher; Kathy Ferron; Gary Lilyea; Raymond Martin; Glenn Quackenbush, Town Councilman; Dick Harper, Town Councilman; Tom Fulkrod, 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 from the July 7, 2020 meeting. Meyer seconded the motion. All in favor.

Appeal#124SUP-20 – Application from Scenic Grove Church at 721 Thistle Street to add a cemetery to the rear of the church lot.

James noted this application has been tabled because the Planning Board did not review it at the last meeting.

Appeal #20SUP-19 – Application from Kathy Ferron of 4679 East Bluff Drive, Penn Yan, NY 14527, location of the SUP Havens Corners Road requesting permission to run a business at this location to operate a private rail bike excursion service. (AR1 District) (Tax Map #28.01-1-19).

James stated he had a meeting with Gary Lilyea, Kathy Ferron and Steve Eskildsen from Yates County Soil and Water. Ferron went over the actions for each item in question at the previous meeting regarding drainage ditches; right-of-way for the Zimmerman family; the bridge; the emergency plan; waivers and additional insured, and brush spraying.

Hauman asked what would happen if nothing was ever done to that property; if the property was left as it is with the trees, and everything growing up. Where would the stance of the town be in 10- 20 years from now if nothing would ever be done with it. Ferron noted that right now the earth is reclaiming most of the wooden ties. Fulkrod noted that the railroad has 99 years to do something with that property. So, for 99 years if they want to let someone use it in that timeframe they can. Hauman asked what the Town of Benton will do in 20-30 years with the railroad. Davie said that if the railroad pays taxes on it there is nothing we can do. Harper noted that until they go through the process of abandoning it, there is nothing that this Town can do. Ferron noted she is not sure why they took the tracks out north of Havens Corners Road. Fulkrod noted that from Havens Corners Road to Bellona Station, its still owned by the railroad; they just pulled the ties up. Harper noted that a few years ago there were 200+ railroad cars stored on the track all the way to Havens Corners and they were making serious money from it for each car, per day. Ferron noted that the activity is relatively quiet, its environmentally friendly and she will be bringing tax revenue to the Town and she is also using all but one of her vendors that are located in the Finger Lakes or Yates County.

Meyer asked if a permit is still needed to build a bridge. Fulkrod stated she does need a permit from the Town of Benton, but not from the Army Corp of Engineers. She said she would have written plans

stamped by the engineer and she will make sure the engineer will do all the calculations to tell how much weight the tracks can hold; they will be stamped and certified. They will not be putting the footers in-stream and they will not be changing the natural flow of the stream.

Hauman asked Lilyea if he is feeling any better about this project today than he was a month ago. Lilyea noted that he is sort of feeling better about it. He then stated that if he did not maintain around his property, the brush and trees would be growing up. The railroad company has not really done much since the railroad cars were removed. He said that if he did not do it, it would not get done and he must do it to farm. Lilyea then said he supposes that legally, Ferron is supposed to do it, but he truthfully wants to do it himself. He wants to know where the water is going, where his tile ditches are going, he wants to know its clean and he does not want it to be up to someone else. James noted that there is a large berm of water that can come down through there and it was very eye-opening to see it; potentially a lot of water can come down through there.

Davie made a motion to make the Town of Benton the lead agency for the SEQRA. Vaughan seconded the motion. All in favor.

The Board then went through the test questions for the SEQRA.

Meyer made a motion to check the second box indicating there is no negative impact. Davie seconded the motion. All in favor.

There being no other discussion, Meyer made a motion to accept Application# 20SUP-19 with the stipulations that we do have a copy of the emergency plan and that the proper insurance policies are given to the Town of Benton to sign. Hauman seconded the motion.

The Board was polled:

James: Yes

Davie: Yes

Meyer: Yes

Hauman: Yes

Vaughan: No

James asked Ferron to get us the information needed and asked her to be a good neighbor. Lilyea was asked to bring any concerns to the Board's attention if he has any.

APPEAL #38AV-20 – Application from Warren and Elaine Brubacker of 765 Route 14A, Penn Yan, NY 14527 for an Area Variance for a commercial dog kennel housing five adult dogs including an outside run because they do not have the proper footage for the lot, which is 300 yards. (AR1 District) (Tax Map #17.04-1-13).

Fulkrod stated it is supposed to be 100 yards from each property line. James noted that we are looking at a very substantial variance, about 80%.

James noted that anything that is granted here, if granted, will have impact down the road. If the Board cannot find a reason to grant the variance, basically what they would be doing is having to grant the

next neighbor a variance. We would be setting a precedent. James then asked there was any discussion amongst the board.

James asked the Brubacher's if they have approached the neighbors about purchasing a piece of their property. Fulkrod indicated that they are not looking to sell at this time. There was a rumor out there that they were looking at selling the entire parcel, but the family has reconvened and at this point they are not looking at selling. The property is in a family trust.

James stated he is open for discussion. Davie noted that anything can change down the road. Someone can come in and put up solar panels or building developments, etc. Things change. Right now, it is in a trust as agriculture. Something could happen to the family and they could sell it off to a developer or something, and then it would no longer be agriculture.

Meyer said it is a large difference and if we do grant it, we are putting ourselves in a situation where almost everything we have done in past years could be undone. James noted that was correct, in relationship to kennels. Typically, the Board grants a 10 to 15% variance, so 80% is very substantial.

Hauman agreed with the rest of the Board. If we approve such a monumental task, we would probably be inundated down the road with people who want to do similar things and it would be very difficult to have to say no.

James asked for a motion on the Area Variance, because if it is defeated, there would be no granting of the special use permit.

Meyer made a motion to turn down application 38AV-20 due to the extent of property lines of 300 yards that we need. Davie seconded the motion.

The Board was polled:

James: Yes

Davie: Yes

Meyer: Yes

Hauman: Yes

Vaughan: Yes

James stated that, at this point in time, we cannot grant the variance to move forward. He suggested the Brubacher's go and talk to the family and explain the situation to them. There is no one on this board, if they can come back and meet the setbacks, that would have an issue to grant the special use permit.

ADJOURNMENT: Vaughan made a motion to adjourn the meeting at 7:40 p.m. Meyer seconded the motion. All in favor.

Respectfully submitted,

Karen Ellis
Recording Secretary