

**TOWN OF FENTON
ZONING BOARD OF APPEALS**

IN THE MATTER OF
CHARLES AND SUSAN PRAEFKE

DECISION

217 NYS ROUTE 369 TOWN OF FENTON
BROOME COUNTY, NEW YORK

Members Present: Dale Gregory, Chairman
Timothy Brown, Cynthia Cook, Mikel Lidell, Michael Ward

FACTS

A public hearing was held on January 17, 2017 at 7:00PM in the Fenton Town Hall to hear the appeal by Charles and Susan Praefke, hereinafter "Praefke", for an interpretation or administrative appeal of the permits issued by the Town Building Inspector and determinations of involved town officials for a development project at 197 NYS Route 369, tax map ID No. 113.06- 1-1.1 involving a farm brewery operation.

Praefke expressed concerns that permits should not have been granted because it was felt that the development posed a potential risk of magnified flooding that would negatively impact his property. Jim Cummings of Shumaker Engineering pointed out it was his opinion that necessary forms had either been prepared incorrectly or failed to consider the commercial nature of the development. Cummings' feeling was that the only way to determine whether or not the development posed an adverse effect was to conduct a Hydrologic and Hydraulic (H & H) study to measure the amount of rise (or fall) that might be expected during the 1% opportunity of a flood at the 100 year level. John Mastronardi of Griffiths Engineering (the contract engineering firm utilized by the town), explained distinctions within a Special Flood Hazard area. Rick Armstrong, Assistant Town Engineer, reviewed the information obtained to clarify development in a floodplain and the considerations of the Planning Board prior to recommending that the project be allowed to proceed. The Planning Board assumed the role of Lead Agency for this project in a meeting held October 25, 2016. A Section 239 l & m review was filed with Broome County Planning & Economic Development and recommendations returned September 27, 2016. The case file was routed to listed agencies. NYSDOT, Broome County DPW and Broome County Health Department offered comments to be addressed; BMTS had no comment. Gary Farneti, Esq. representing Praefke, suggested that there were issues pertaining to the determination and treatment of the parcel as an agricultural use and indicated he would submit a letter to the Deputy Town Attorney, Tina Fernandez, for consideration. Cummings felt that several key aspects of NYSDEC requirements had been either misstated or overlooked. Chuck Rhoades, a principal involved in Willet Hop and Grain, LLC affirmed the agricultural basis for many of the decisions made regarding the manner of submissions and application of related questions. He expressed the sentiment that it was unfortunate the project was the cause of any unease with Praefke but assured him that the development would not adversely affect neighboring properties.

A motion was made and unanimously approved to hold the hearing over pending a HEC-RAS study to be provided by Willet Hop and Grain LLC, as project applicants, which would quantify the impact of the development on flood water elevation. Additional information regarding the exemptions and allowances granted to agricultural uses was to be garnered.

A Public Hearing was held on February 8, 2017 to continue the review of the application for an interpretation of the Town of Fenton Zoning Code regarding: (a) whether a farm brewery project is a permitted use within the Agriculture Residential A District (Town Code §150-17); and whether the farm brewery project can be granted a development permit pursuant to Town Code Chapter 81 – Flood Damage Prevention.

The ZBA noted that the Town Administrative officer procedurally determined that the project did not pose an adverse effect and to that end, John Mastronardi, PE – Griffiths Engineering - was consulted and concurred. Pertinent elements of the Town Code (Chapter 81) were cited to substantiate a thorough review by the Planning Board and Building Inspector (as Local Administrator) prior to issuance of the Floodplain Development Permit.

Given the nature of the continuance, a HEC-RAS study performed by Urda Engineering, PLLC, was submitted into the record which demonstrated that a minimal impact would be posed by the development on water surface elevation, thus providing the requested quantitative data to support a conclusion. The determination as cited was that the project would have no adverse impact on the floodplain. Praefke and Cummings asserted that even a half inch change in water elevation posed an adverse effect. John Mastronardi pointed out that more conservative standards were used for data comparison and based on 2010 “preliminary” figures.

A letter submitted by Gary Farneti, Esq. as attorney for Praefke suggested that the ZBA ignore NYS Agriculture and Markets Law and instead rely on fundamental concepts pertaining to agriculture and those activities that might historically transpire. Whether the proposed activity constituted “agriculture” was questioned leading to a request to consider this a non-permitted use.

A letter submitted by Alan Pope, as attorney for Charles Rhoades, Brendan Harder, Chris Rhoades, Willet Hop & Grain LLC and Beer Tree Brew Co., LLC regarding the development project, outlined the various permits, reviews and considerations pertinent to the project. The agricultural nature of the operation and pending inclusion of the parcel into the BC Agricultural District #4 following a determination by the BC Farmland Protection Board were cited. Several aspects of the Town’s Comprehensive Plan were referenced to support the nature and importance of agriculture within the town and the favored status of such with reference to the NYS Department of Agriculture and Markets.

The ZBA also referred to many of these documents, Agriculture and Markets Laws and publications such as “Guidelines for Review of Local Laws Affecting Farm Operations Which Produce, Prepare and Market Crops for Wine, Beer, Cider and Distilled Spirits”.

The aspect of submitted documentation and ongoing revision to coincide with the lengthy permitting and approval process was discussed with the understanding that necessary elements would be resolved to the satisfaction of the involved agencies and departments.

DECISION

Pursuant to Fenton Town Code §81-17(B), §150-45 B(1) the Fenton Zoning Board of Appeals hereby denies the Appeal by Praefke as detailed within the "Notice of Appeal and Application for Appeal" dated December 12, 2016 and attached to the application. A further motion was passed that considered that (a) the farm brewery project was a permitted use within the Ag-R-A district (§150-17) and (b) that the farm brewery project was properly granted a development permit under Town of Fenton Code Chapter 81.

The Board reviewed and considered the HEC-RAS study submitted to quantify the impact of the floodplain development aspect and the determination of no adverse effect. Objections were considered but many were subjective in nature and relied upon determinations based on the agricultural nature of the project. Other documentation concerns were areas deemed to be procedural in scope and resolved by the ongoing communication and submission process. Other factors were outside the purview of the ZBA with respect to this matter.

The strength of the agricultural segment of the project was bolstered by clarifying documents pertaining to farm operations as detailed in AML §301 or §305 and other activities related to the application and pending inclusion within the Agriculture District. Additionally, the Town of Fenton Comprehensive Plan was used to clarify agricultural significance within the town.

Actions by the Building Inspector and Planning Board were deemed to be substantial and purposeful throughout the permitting processes involving both floodplain development and considerations of proper use within the subject zoning district. Roll call votes were taken by the Town Clerk on the separate variations of the appeal as shown.

Members in Favor: Tim Brown
Cindy Cook
Mike Lidell
Mike Ward
Dale Gregory

Dated: February 10, 2017