

**Zoning Board of Appeals
Town of Berne
Berne, NY 12023**

Date: March 21, 2018

Present: Ronald Jordan (Chair), Rick Otto, Samuel Clayton, Denise Manning, Donald Bauer (ZBA alternate), Bill Conboy (Town Attorney), Dawn Jordan (Town Board Liaison), Kathy Brown (Secretary), and other interested citizens.

Regular Meeting: Mr. Jordan called the meeting to order at 7:05 p.m.

Review of Minutes: The Board reviewed the minutes from the November 15, 2017 ZBA meeting. Mr. Otto moved to approve the minutes. Mr. Clayton seconded and the motion passed, 4-0.

Mr. Jordan encouraged board members to attend planning and zoning board meetings in nearby municipalities for informational purposes.

Ms. Manning moved to close the regular meeting. Mr. Otto seconded and the motion passed, 5-0.

Public Hearing: Mr. Jordan opened the public hearing to public comment at 7:05 p.m.

Use Variance – 555 Helderberg Trail/John Wright, SBL #91.-2-29: The applicant is seeking a use variance to locate an automotive repair business. The parcel is zoned RAF and is .93 acres. Mr. Jordan discussed New York State laws pertaining to use variances and reviewed the town code regarding the four criteria for granting an area variance. Mr. Wright gave an overview of property and his intentions to open a small automotive repair shop on the lot. He mentioned that there were several similar businesses already operating within the Town without proper approval or having obtained a use variance or special use permit. Mr. Otto said that, contrary to the Planning Board recommendation and report, the property is not in a designated flood plain and that the culvert might be inadequate for proper drainage.

Timothy Lippert spoke in favor of granting the use variance on grounds that the property was taxed previously as a commercial property and there are already several properties in Town that are being used for similar purposes that do not have Town approval. He also discussed how small businesses can function on small lots.

Mr. Wright submitted pictures of some properties within the Town.

Mr. Vincent discussed the draft schedule of uses and definitions that the Town Board is currently considering. He said if it is adopted, it would help the planning/zoning process with siting business. He also spoke in favor of having more small businesses within the Town.

Scott Green stated that due to modern operational procedures, environmental hazards such as oil and gas should not be a concern.

Dawn Jordan, speaking as a resident, stated that her family had operated an appliance store on the property and that after it was sold was when it became a gas station/garage (years 1915-1970).

Mr. Jordan closed the public comment period.

Mr. Jordan read into the record; a letter from Nancy Michaels, the Planning Board recommendation, the Albany County Planning Board decision and the Conservation Board report (see attached). He said that because the Albany County Planning Board was opposed to the application, the ZBA vote - if it favored the applicant - would have to be a super majority.

Mr. Otto stated that he had issue with some of the Conservation Boards findings in that he felt they were arbitrary.

Mr. Wright said he was concerned that he was being singled out in regards to property contamination issues and that he was frustrated with the application process.

Mr. Clayton moved to deny the application based on the decision by Albany County and the recommendations of the Planning Board and the Conservation Board. There was no second and the motion failed.

Mr. Otto moved to approve the use variance with conditions similar to those of a special use permit. There was no second and the motion failed.

Ms. Jordan said she was concerned that there were still gas tanks in the ground on the property. Town Attorney Mr. Conboy stated that the SEQRA process would address that.

The next meeting is scheduled for April 18, 2018.

Mr. Otto moved to close the public hearing. Ms. Manning seconded and the motion passed, 5-0.

Respectfully submitted,

Kathy Brown
Zoning Board Secretary

Cc: file