

Bainbridge Township, Ohio
Board of Zoning Appeals
April 30, 2020

Pursuant to notice by publication and ordinary mail, the special public hearing was called to order at 7:05 P.M. by Mr. Michael Lamanna, Chairman. Members present via Zoom were Mr. Brent Barr, Alternate; Mr. Michael Corcoran; Mr. Ted DeWater; Mr. Joseph Gutoskey and Mr. Todd Lewis. Ms. Karen Endres, Zoning Inspector was present. Also present was Mr. Joseph Weiss, Legal Counsel for the Board of Zoning Appeals and Court Reporter Ms. Karen Toth of Fincun-Mancini Court Reporters. Mr. Jeffrey Markley, Bainbridge Township Trustee was present to monitor and host the “Zoom” meeting.

Others present via “Zoom” were: Ms. Kelly Clark, Appellant; Ms. Emily Collins, Legal Counsel for the Appellant; Mr. David Dietrich, Bainbridge Township Assistant Zoning Inspector/Planning & Zoning Coordinator; Ms. Lou Ann Metz, Bainbridge Township Fire Chief; Mr. Bill Lovell, Bainbridge Township Assistant Fire Chief; Mr. Dave Sage of the Geauga County Health Department; Ms. Linda Applebaum, Geauga County Assistant Prosecutor and Legal Counsel to the Zoning Inspector; Ms. Lorrie Benza, Bainbridge Township Trustee; Mr. Ian Mungall and Mr. James Demko.

Mr. Lamanna welcomed everyone to the special meeting of the Bainbridge Township Board of Zoning Appeals and explained that this meeting will be held via “Zoom”. He explained that the Board of Zoning Appeals is conducting this special meeting via internet, everybody at this point who has come into the waiting room has been allowed into the meeting. He said everyone can go onto their screen and rename themselves so that everybody’s full first and last name appears so that we know who we are talking to and everybody knows who is participating in the meeting.

Application 2019-44 by Kelly’s Working Well Farm dba Chagrin Valley School for property at 16519 South Franklin Street - Continuance

The appellant is alleging error by the zoning inspector. The property is located in an R-3A District.

Mr. Lamanna noted that this meeting has been called to deal with the above appeal which is a continuance of a previous hearing. He said the public hearing part of this application has been completed, the appellant and the appellee have had the opportunity to file briefs with the board and the board is now going to conduct a business meeting in which it will consider the evidence that has been presented and make a ruling on this appeal. He said there are a couple of orders of business to deal with on a procedural basis primarily dealing with the admission to the record of documents that were submitted after the last meeting but prior to the close of the public hearing portion.

He said one was a request to admit into evidence certain decisions made by the Board of Fire Appeals. Mr. Lamanna moves that the board accepts the request of the appellee with respect to those documents and admit them into evidence. They are being admitted based upon the fact that they are public record documents and therefore need no further authentication and these were brought up prior to the close of the meeting so that would be granted.

The second procedural item relates to the admission into evidence of certain documents that were delivered by the appellant to the Board. Most of those documents had been requested by the Board from the appellant in order to provide further evidence relevant to certain testimony by the appellant and to further enlighten the board with respect to that testimony. He said with respect to those documents the appellee has made a motion to strike certain of those records with respect to certain matters especially those regarding the income of the appellant. Mr. Lamanna said at this time he will move that the board deny the appellee's motion and the board accept the documents that were offered by the appellant, provided that they are subject to review by the board with respect to credibility and relevance, including: (i) at least one case where the documents produced appear to directly contradict testimony that had previously been given by the appellant; and (ii), in several instances the Board was seeking records that were kept in the ordinary course of business, but it appears both from the nature and format of the information provided and from previous statements by appellant's counsel, that the information presented by the appellant did not in fact meet the standard for business records, contemporaneously kept in the ordinary course of business.

Mr. Lamanna said we will move on to the consideration of the evidence before us. He said so everybody understands it is a rather complicated case with a lot of facts and testimony and a lot of things to consider and what he would like to at least start with is he would like to give each board member an opportunity to comment in general if they would like on the evidence that they have heard and to briefly say if they would like at this time as to whether or not as to how they see that evidence reflecting on the matter before us. He said again, just briefly this is an appeal alleging zoning inspector error and that error is with respect to two conclusions reached by the zoning inspector in a letter of October 25, 2019 and then a revocation of a zoning permit on November 7, 2019. He asked the board members if any of them wish to say anything at this point in time.

Mr. Joe Gutoskey stated that his take on it is to get into the facts whether it is an agricultural use or not, whether it is agritourism or not, is it a farm or not, is the primary use of the building agricultural or agritourism related and both are what he is drilling down on.

Mr. Lewis stated that he tends to agree with Mr. Gutoskey, the core basis and criteria to qualify for certain exemptions or activities and he has also spent a great deal of time looking at the economic documents submitted and CAUV and agritourism based criteria to qualify so he will be taking a continuing hard look at that.

Mr. Ted DeWater stated that several times he needs to evaluate a little further and the review of the constant use of the word that they were a school with instruction and looking through their financials that they submitted, a lack of the information refers to tuition payments and saw very little anything for agricultural based so he is continuing to look through those documents.

Mr. Mike Corcoran stated that he agrees with Mr. DeWater, Mr. Gutoskey and Mr. Lewis and let's look into as to whether they meet the agritourism requirements as well as the financial documents that would accompany those requirements.

Mr. Lamanna said what the board will endeavor to keep the process of deliberation and evaluation of the evidence more manageable by making and resolving proposed findings of fact and thereafter conclusions of law culminating in a final decision. This will be done on a piece by piece basis, because trying to resolve all these matters in a single motion would be unwieldy and will make it very difficult for everybody to try to follow what we are doing and how it connects. He thinks if we try to do it in smaller digestible pieces it may be a little easier for the board to do so basically what he will do is start off and put out the findings of facts, the board members can comment on it if they want to embellish it or change it or disagree with it so once you've had discussion we will go ahead and move to adopt that and then proceed on to the next one. He said he will start with his list with the things the board needs to address and will allow the board members to weigh in as well if they have other items that they think the Board should consider as findings of fact and then we will move on to the more difficult issues of making our conclusions of law and final decision.

1. The subject of this appeal is for property located at 16519 South Franklin Street, Bainbridge Township known as permanent parcel number 02-193100 containing six (6) acres of land which is owned by William A. Rowe and Kelly A. Clark who have owned the property since July 17, 2012.

Mr. Lamanna moved to accept this finding of fact.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

2. The subject property is located within a district classified as R-3A Rural Residential District in the Bainbridge Township Zoning Resolution Chapter 139. Chapter 139 limits the use of property principally to residential uses and their accessory structures. Section 139.02 allows uses as provided in Section 135.02 (of Chapter 135 R5A Rural Residential District). Subsection (a) thereof allows Type B family daycare centers (in home) with a zoning certificate, and subsection (b) allows as a conditional use private schools. 'Schools' are defined in Section 105 as private or parochial schools which are certified by the State of Ohio which offer courses instruction approved by the State; 'private schools' are defined therein as: educational institutions which offer a course of instruction for a fee. Section 135.02 does not allow Type A daycare centers.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

Mr. Lamanna noted that when the board concludes with what is done here it will be subject to review of the actual minutes and one of the things we will do is we will verify that there aren't any misreferences or incorrect dates or things like that that exist in what we are doing here since we are doing this on the fly so we may come back and correct matters and we will adopt those changes before the final minutes are approved just so that everybody understands what the process will be.

3. Since their acquisition in 2012 of the property the owners, who are a Not for Profit Corporation, have conducted activities at the property.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

4. The Appellant, Kelly A. Clark, filed an application for a Bainbridge Township Zoning Certificate Numbered Application 15454 for the construction of a new barn. The existing use of the lot was described as “Kelly’s Working Well Farm as a community supported suburban farm raising ducks, chickens, Guinea hens, sheep, goats, pigs etc. for their meat and eggs/fiber. Crops such as vegetables, fruit, berries, mushrooms etc. are also produced.” The proposed use of the new structure was “Agricultural storage, seed propagation, animal husbandry, space for hands-on instruction in animal husbandry curriculum (i.e. agriculture based 4H club or other similar farm production based curriculum). Indoor Farm Market for selling site-produced goods such as pastured eggs, honey, maple syrup, woolen goods, mushrooms, etc.”

Mr. Lamanna moved to accept this finding of fact.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

5. Kelly Clark on behalf of Kelly’s Working Well Farm signed an Agricultural Exemption Declaration Letter to the Bainbridge Township Zoning Inspector on May 11, 2016 in which she made a similar statement to that in the previous finding of fact and also made the following acknowledgement:

“I acknowledge that if the use or purpose of this building changes in any way I am required to apply for a change of use permit and will be responsible for any associated fees with said application. Failure to do so will be a violation of the Bainbridge Township Zoning Code and can result in fines.”

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

6. Application No. 15454 resulted in a Zoning Certificate Permit type Letter of Exemption being issued by the Zoning Inspector on May 13, 2016, with expiration date of May 18, 2018. The Letter of Exemption contained the following specific language:

“Letter of exemption for the construction of a 36’ x 26’ x 16’ high barn/accessory building to be used for agricultural purposes including an indoor farm market for selling site produced goods such as pastured eggs, honey, maple syrup, woolen goods and the like as described in the application for a zoning certificate.”

Mr. Lamanna moved to accept this finding of fact.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

7. With respect to the statements in the application number 15454 with respect to instruction in animal husbandry the zoning inspector had discussions with the applicant and determined that these programs were meant to be incidental programs available for people conducting home schooling to add enrichments to the program that they were otherwise conducting for their children being schooled at home.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

8. On September 24, 2019 the Bainbridge Township Zoning Inspector visited the Appellant's property to investigate a notice that a school was being run from the property at which time children and school activities were observed on the property along with signage identifying the school as the "Chagrin Valley School". The zoning inspector further observed that the use of the 36' x 26' barn/accessory building was being used for purposes not as described in the Letter of Exemption.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

9. The Appellant never disclosed to the zoning inspector the change of use in the barn/accessory building and the use of the property as a school at any time prior to the visit by the zoning inspector on September 24, 2019.

Mr. Lamanna moved to accept this finding of fact.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

10. On October 25, 2019, a letter was personally delivered by the zoning inspector to the Appellant advising her that a conditional zoning certificate was required for the private school and daycare use of the property which was observed by the inspector and acknowledged by the Appellant at that time. On November 7th the zoning inspector issued a revocation of zoning certificate number 15454 because “The work or use is not being conducted in accordance with the approved application and plans”.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

11. The Chagrin Valley School was officially opened in the fall of 2016. The Chagrin Valley School has an application process for enrollment with an enrollment and tuition contract which is four (4) pages in length and a student hand book that is forty-four (44) pages in length. The Chagrin Valley School regularly advertises itself as a school and in many cases often describes itself in terms that are indicative of a school setting or a school purpose. The school is a self-directed educational institution where students pursue their interests in particular subjects through their own initiative which subjects include reading, writing, practical math, cooking, animal care and other matters unrelated to agriculture as stated in the school’s brochure and other literature. The brochure for the Chagrin Valley School also describes it as a school on a permaculture farm. The hours of operation were originally 8:30 to 5:00, Monday to Friday, but have been changed to from 8:30 to 4:00, Monday through Friday to go into effect January 2020.

Mr. DeWater stated that this is where he would think that all of the Huntington Bank statements that were provided back up that they have been receiving excessive amounts of tuition.

Mr. Lamanna said we will jump on that on the dollar part.

Mr. Gutoskey asked if we reference that we have those documents as part of the exhibits.

Mr. Lamanna said that is part of the record.

Mr. Lamanna moved to accept this finding of fact.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

12. Chagrin Valley School had almost all of its income from tuition charged to students at the rate of \$52,000.00 for 2016, \$82,656.00 for 2017 and \$138,632.00 for 2018. The Chagrin Valley School earned less than a \$1,000.00 per year from the sale of agricultural products during the years 2016, 2017 and 2018.

Mr. Lamanna asked if there was anything for 2019.

Mr. Gutoskey said no because the taxes weren't filed.

Mr. Lamanna said he wanted to clarify that.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

13. The children attending the Chagrin Valley School are dropped off in most cases by their parents at the school where they are placed in the care, custody and control of the school and its staff who direct and monitor the activities that the children are involved in or otherwise provide guidance and instruction to them in those activities.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

The following was moved to be included with the information for the application process.

The brochure for the Chagrin Valley School describes it as a school on a permaculture farm.

Mr. Lamanna moved to add that to the previous finding of fact that included the application process and that information.

Mr. Gutoskey asked if we need to add in the hours of operation somewhere, like Monday through Friday, he thinks it was 8:00 AM to 4:30 PM. He sees a section in here where they changed it to operate between 8:30 and 4:00 but he thinks it was 8:30 to 5:30 and then it was changed to 8:30 to 4:00 to go into effect January 2020 and he believes that was Monday through Friday also.

Mr. Lamanna said why don't we add it into that same section that we add in that the school operated from 8:30 AM to 5:30 PM Monday through Friday until the recent hours where the hours were reduced to 8:30 AM to 4:00 PM.

Mr. Lamanna moves to add that as well as the brochure and description referenced into our previous finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

14. Chagrin Valley School has an enrollment of approximately 35 students ranging in age from 3 to 17 and preschool for ages 3 through 5 years of age and regular school for 5 through 17 years. Chagrin Valley School conducts preschool camps for ages 3-5 and full day camps for ages 5-13.

Mr. Lamanna moves to accept this finding of fact.

Mr. DeWater seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

15. The principal purpose of the Chagrin Valley School is education and development of the participant in general may use farm activities in some aspects of its program but its primary purpose is to develop life skills and knowledge. Its pedagogy may be different but its fundamental purpose is the same as any other school (as used in the broad sense of that word, not the defined term) for children of these ages.

Ms. Kelly Clark asked if she is allowed to comment.

Mr. Lamanna replied no, only board members.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

16. Certain of the activities conducted by Chagrin Valley School with respect to what are usually considered preschool age children, the type of activities that would normally be considered “daycare like activities” as that term is used in its broadest sense and not limited to the specific sense that it may be defined in the Ohio Revised Code and its regulations.

Mr. Lamanna moved to accept this finding of fact.

Mr. DeWater seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

17. The educational activities and childcare activities are the principal activities being carried on on the property and that the farm is incidental to those activities so the primary use of the property including the structures located on the property are not for agricultural purposes but are for primarily educational purposes.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

18. That the definitions of the Bainbridge Township Zoning Ordinance provide that the definition of schools, private means an educational institution which provides fee based instruction.

Mr. Lamanna moved to accept this finding of fact.

Mr. DeWater seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

19. Chagrin Valley School only posted agritourism signage after November 1, 2019.

Mr. Gutoskey asked to change the date. He believes the sign was ordered on November 1, 2019.

Mr. Lamanna moved to accept this finding of fact.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

20. The educational activities and daycare type activities being conducted by the Chagrin Valley School are neither casual nor recreational but are being engaged in by the participants for purposes equivalent to those of going to a conventional school (both generally and as defined in the zoning ordinance) and to obtain the necessary educational life skills to enable them to function as adults and continue their education beyond that offered by the Chagrin Valley School.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

21. The participants in the Chagrin Valley School go through a careful vetting process, they also must sign an agreement which has both a substantial financial commitment and substantial time commitment and therefore this highly selective group does not fit with the term “general public”.

Mr. Lamanna moved to accept this finding of fact.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

Mr. Gutoskey said he was wondering going through the bill that was passed relevant to agritourism was there anything for the use of the farm.

Mr. Lamanna said in terms of, do you want to enter in Revised Code provisions.

Mr. Gutoskey said yes.

Mr. Gutoskey said he was thinking relative to whether or not it is a farm based on agritourism act as far as what defines a farm to then be considered as part of agritourism.

Mr. Lamanna said what he was thinking of is with the Revised Code references that we deal with that in our conclusions of law and we will just make reference to the section of the Revised Code.

Mr. Gutoskey said okay, you don't really want to drill down.

Mr. Lamanna said he doesn't see entering that as a finding of fact and reciting what the standards are for the statute.

Mr. Gutoskey said okay.

Mr. Lamanna said we will make the conclusions and they are really evaluating what facts we have determined against what the state of requirements are in the Revised Code so that is where we will deal with that.

22. On the Chagrin Valley School website the word school, in their website and their marketing is used 252 times and the word farm is stated 58 times.

Mr. Lamanna moved to accept this finding of fact.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

Mr. Lamanna recessed the meeting at 8:18 P.M. for a short break.

The meeting was reconvened at 8:30 P.M.

Conclusions of Law

1. The only uses allowed in the zoning district where the subject property is located are those set forth in the applicable sections of the Bainbridge Township Zoning Ordinance. The activities conducted by the Chagrin Valley School and the owners on the property constitute a type of school and/or a type of daycare activity neither of which (as conducted) is either a permitted use or a conditional use in the zoning district applicable to the property. Notwithstanding that the zoning inspector's letter of October 25, 2019 indicated that the school required a conditional use certificate it would appear from the evidence that has been presented that although they are operating essentially as a private school, since they are not sanctioned by the state they would not meet one of the clear requirements to have a conditional use certificate. For that reason, although the statement in the letter indicated that the activities could not continue unless a conditional use certificate was required was technically incorrect because actually they could not continue because a use variance would have been required. That distinction is immaterial to the ultimate direction of the letter that the activities then being conducted were not permitted by the Bainbridge Township Zoning Resolution.

Mr. Lamanna moved to adopt this conclusion of law.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

2. The conditions set forth in certificate number 15454 were not being satisfied. The actual document itself sets forth a list of purely agricultural purposes, including an indoor farm market. The building was clearly not being used in any significant part for the uses listed in the certificate. It was principally being used for the conduct of 'school' like or 'day care' like activities. Even if one considers the requests made in the original application for the certificate (which were, for whatever reason not reflected in that final permit that was issued the school), the activities actually being conducted were far different than those contemplated either in the original application or in the discussions associated with that application. Therefore whether those additional items were deliberately omitted or were unintentionally omitted, in either case the activities that were actually being conducted by the appellant on the property were in derogation of that application's description of the use of the building and were not subject to the agricultural exemption.

Mr. Lamanna moved to adopt this conclusion of law.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

3. Neither the operation of the Chagrin Valley School, nor the other ancillary activities with respect to it, nor the structures in which it is being conducted are an exempt agricultural use under Revised Code 519.21. The primary purpose of the school and its use of the buildings is not the conduct of agricultural activities; it is the conduct of educational activities which does not qualify for the exemption. The agricultural activity in this case is ancillary to the school activity, this is essentially not a farm with an ancillary school but a school with an ancillary farm. If you carried the logic to its end, one could conceivably construct an entire agricultural college and claim it was not subject to zoning because they conducted some farm activities. Typically major agricultural colleges (including major state universities) do this on their campuses so this would not be a sound argument that these uses would be exempt agricultural use.

Mr. Lamanna moved to adopt this conclusion of law.

Mr. DeWater seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

4. With respect to whether the activities conducted by the appellant are agritourism as defined in Section 901.80 of the Revised Code, the board determines that those activities are not agritourism for the following reasons.
 - i. The definition of agritourism contemplates by its very nature that it is related to a casual or recreational type of situation. The activities being conducted here are not for casual or recreational purposes but for a totally different and almost commercial like purpose of attaining a general education.
 - ii. The clear contemplation of the description of the activities that comprise agritourism is that these activities are on a discreet basis and they are not part of a continuous program spanning an extended period of time. The participants in the appellant's activities are engaging and committing to activities that last a year at least (or in fact for many years).
 - iii. Agritourism also contemplates activities open to the general public. The clientele of the applicant are a discreet group, they are carefully vetted and admitted only if they meet its specific requirements, and they must make a large commitment of time and money. This is not an activity that is really being offered to the general public, it is a private activity.
 - iv. The property does not qualify as a farm under the definitions of agritourism in Revised Code 901.80 because if the property totals less than ten (10) acres, the land must produce an average yearly gross income of at least \$2,500.00 from that agricultural production. The board has had testimony that that amount was not reached in any of the three most recent years of 2016, 2017 or 2018. There is some conflicting evidence as to what the numbers were in 2018. The appellant indicated that they had no actual records to support the revised amount of income. The information that was produced was not a reflection of business records kept in a normal course of business (i.e. contemporaneously kept, not created after the fact). The 2018 number is not supported by the prior years' income, so there is no credible evidence that they exceeded \$2,500.00 for 2018. The board also notes that it refers to an average yearly gross income of at least \$2,500.00. In this case, the agritourism statute doesn't expressly state how to determine the average yearly gross income, but there is a related statute dealing with property tax exemptions (which is intrinsically tied in with the sections of the code related to agritourism). This statute uses a three year average so you would require \$7500 of revenue over a period of three years in order to get this Current Agriculturally Use Value (often referred to as CAUV) (*R.C. 5713*) and the board determines that this standard should also apply to R.C. 901.80. The appellant has not demonstrated three year average yearly gross income of at least \$2,500.00 from agricultural production. We would also note that this is supported by the fact that the applicant does not actually have a CAUV for this property.

Mr. Gutoskey, that section you are talking about is R.C. 5713.

Mr. Lamanna moved to adopt his conclusion of law as amended.

Mr. Gutoskey seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

5. Mr. Lamanna moved that the board finds that the appeal of zoning inspector error is not well taken and is hereby denied based on the fact that the letter sent by the zoning inspector and the revocation of the permit were appropriate based upon the Findings of Fact and Conclusions of Law previously set forth herein.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

Mr. Lamanna announced that the board was going to take a short Executive Session to consult with its legal counsel so everybody else will be pushed off to the waiting room.

EXECUTIVE SESSION

Mr. Lamanna adjourned the regular meeting to go into Executive Session for the purpose consulting with its legal counsel Mr. Joseph Weiss.

The Board of Zoning Appeals recessed their regular meeting at 8:55 P.M. in order to go into executive session.

The Board of Zoning Appeals returned from executive session, after consulting with its legal counsel and reconvened their meeting at 9:07 P.M.

Additional Matters Relative to the Board's Decision – Findings of Fact

Mr. Lamanna moved to add the following two findings of fact:

1. There are at least two items that the Board had requested the appellant to produce but were not provided; a student enrollment form and insurance information and liability releases. The board finds and determines that there is sufficient evidence before it to support the findings of fact and conclusions of law, and that information in such documents would not change **or** alter that decision, but would if anything such evidence would be detrimental to the position taken by appellant in this appeal. Therefore, there is no need to further pursue these documents from appellant.

2. There have been representations during the testimony that the appellant had permission from Judson, the adjacent property owner, to go onto their property for the purposes of conducting certain activities that they viewed as related to agricultural use but subsequent communications have indicated that they did not have such permission. Since appellant has no right to conduct such activities they cannot be considered as part of their operations. Furthermore, conducting activities on another property would create zoning issues with respect to such use of that other property so it would be unlikely that they would be able to continue those activities in the future even with permission.

Mr. Lewis seconded the motion.

Vote: Mr. Corcoran, aye; Mr. DeWater, aye; Mr. Gutoskey, aye; Mr. Lamanna, aye; Mr. Lewis, aye.

Upon consideration of the Board on review of the minutes and its adoption of the revised findings and decision, and additional finding of fact was adopted:

3. The applicant did not possess any license or approval from the State of Ohio, or its departments or agencies with respect to the operation of any school or day care facility of any kind.

Mr. Lamanna stated that with that the action on this application is complete and added that it was the only agenda item on the list tonight.

Since there was no further business, the meeting was adjourned at 9:11 P.M.

Respectfully submitted,

Brent Barr, Alternate
Michael Corcoran
Ted DeWater
Joseph Gutoskey
Michael Lamanna, Chairman
Todd Lewis, Vice Chairman

Attested to by: Linda L. Zimmerman, Secretary
Board of Zoning Appeals

Date: August 20, 2020

AUDIO AND VIDEO RECORDING ON FILE