

BENTON PLANNING BOARD MEETING
JANUARY 27, 2015

PRESENT: Tom Rood, Gary Griffin, Jerry Stape, Skip Jensen, and Tom Goodall.

Also Present: Lamar Sauder; David and Shannon Eichenhofer, and Mrs. Eichenhofer; Bob Clark; Dick Harper, Town Councilman; Jayson Hoover, Code Enforcement Officer, and Karen Phillips, Recording Secretary.

Rood brought the meeting to order at 7:00 p.m. with introductions.

APPROVAL OF MINUTES: Goodall made a motion to approve the December 18, 2014 meeting minutes. Griffin seconded the motion. All in favor.

APPLICATION #3SUP-15 – Benton Ridge Small Engines LLC of 1330 SR 14A, Penn Yan, NY; Special use permit to amend the current Special Use Permit to increase display limit. AR 1 District (Tax Map #27.81-1-5).

Sauder noted he would like to use all the space up that they can to display lawnmowers and to possibly do what they can to use the space that they already have. The restrictions they had for two years was good for the first year and too tight for the second, but the 3rd year is going to be even tighter which is why he would like to expand this space to as many as they can easily do. Other than that, all of the regulations have been perfectly in place and they work well with him. The only hardship has been with the display.

The following letters were received, recorded, and read by the board:

1. Letter dated January 22, 2015 from George Alexander.
2. Letter dated January 27, 2015 from Andrew Leja, counsel to David and Shannon Eichenhofer.
3. Letter dated January 21, 2015 from David Eichenhofer and family.
4. Letter dated January 22, 2015 from Yates County Planning Board noting approval subject to a recommendation that the Town closely consider the number of mowers allowed; the board's suggestions was to allow 10 mowers by the road and allow 20 mowers in the back.

Eichenhofer noted that two years ago the Town ZBA and he put a ton of effort into this application which he was thankful to. In his view, the property was small and everyone knew it was small, so the way to protect them was to have conditions in place that would protect everyone and would also set some parameters on the use of the property. He stated his contention is that the deal was made in good faith two years ago; he didn't like it, but he went with it because he thought it was a fair compromise in terms of what everyone needed. What he really doesn't like is the fact that two years ago a deal that was made in good faith is now being stomped on or tried to be amended. A good

decision was made and there was restrictions because the property was small; ideally would not have been a good location because of the size. He noted he generally does not want to see anyone fail at all; he just wishes it were somewhere else that had more size to be able to do some of these things, but to him it kind of flies in the efforts everyone made two years ago.

Rood opened the discussion up to the Board.

Goodall asked Sauder how many lawnmowers he expects to grow into. Rood stated he is limited to five now and he wants to go from 50 to 30 at the trailer and at the roadside 20. We limited him to five two years ago. The county is suggesting he be allowed to go to 10, but it is up to this Board as to what we want him to do.

Stape asked Sauder if he expects to put more lawnmowers ahead of the sign. Sauder said he will not be parking any before the sign. The sign is placed as close to the right-of-way as they could, maybe give a foot or so. Stape asked how the tractors would be displayed. Sauder said most likely he would make more rows because the usable space is about 45 ft. to the driveway south to the green space, which comes out to be about 5 mowers side-by-side. To be able to walk around them, it would come out to be about 4 rows of 5. Stape asked Sauder if he would be opposed to putting the lawnmowers parallel to the driveway; facing them towards the driveway. Sauder said it was up to everyone else; but it would look funny to him; he would rather not see that himself but if everyone wanted him to do that he could. Sauder said he would not be totally opposed to it. Stape stated this way it would get them away from the Eichenhofer's property and he could still display them even if he puts them parallel, either faced towards the driveway or towards the road. Sauder noted that he would like to keep the pine tree there, but if it needs to be taken out he would be willing to address that later. Stape said it is narrow back there and commended Sauder for doing an excellent job; he put the fence up right away, he's keeping it neat and mowed underneath the mowers. He has done an excellent job; it looks nice and its one of those things that he needs to keep it as neat as possible with as many mowers that's allowed. Sauder said he has been trying to do that and he did try to follow the guidelines closely so that people see that he tries to follow the guidelines. Stape asked if he had any issues with pick-ups going in with trailers; can they turn around without problems. Sauder noted that once in a while someone comes with a longer trailer and someone else is parked in the way. But so far it's been going pretty good.

Jensen asked Hoover if other lawnmower businesses in the area have a limit on the number of machines they can have out front. Hoover stated that the original Twin Pines had no limits to their display area or to the amount of mowers they could display on their special use permits and he was uncertain whether Dewick's had any. Sauder mentioned that he is open to any suggestions, as this is a bottlenecked business. If this Board goes with application that he applied for there will be no need to reapply because there won't be any more room; he feels this would open up the bottle neck and he doesn't believe he will have to amend the special use permit in any other way going forward because the other restrictions haven't been a problem, as he tries to do what he can with his space. He stated he's been keeping the extra lawnmowers inside his outside storage area behind the picket fence where he used to

have a big garden. He has gone to pick-up lawnmowers from auctions in the past, but at this point he won't be going to pick up more until he sells more. The 20 they have there now is full size and the only bottleneck that they would really have is they can't really buy anymore unless they sell some. Along the picket fence he usually parks customer's mowers.

Stape asked Mr. Eichenhofer if Sauder has been a detriment to his property at all; has he been to the point where it's been unacceptable. Eichenhofer stated he has abided by the terms of the agreement, but his issue is that there was an agreement made in good faith. Stape noted that anyone can come back and go through the process again. Eichenhofer asked if the conditions that were enforced to allow this really don't have a say based on everything that people put into this. He said it's a big change in the number; 150% change in the number that was agreed upon by everyone two years ago. He said his position is that the initial agreement should be abided by which he feels is the right thing in this situation.

Rood commented that we worked hard coming up with this compromise two years ago. The agreement was that this property was really small and the agreement was that we wanted to preserve the residential property that was part of this business and because the vacant lot on the side has an exclusion in the deed that the business cannot be expanded to that site, he is limited really to the sight between that vacant lot line and the driveway, which he has room for 5 vehicles there right now. He noted that Stape is suggesting putting 5 more down the side of the driveway. We hammered this out two years ago and it was one of the most difficult things to go through. The only thing that is changed is that the business is growing. We are trying not to prevent free enterprise from taking place in the Town of Benton but at the same time we have the responsibility to protect the property of 900 residences. We don't want to turn someone down that is trying to expand their business; however, this site is not the best site for the business; it's just small.

Eichenhofer noted that by honoring the original agreement, this Board is honoring the residential owner and expecting the average guy who bought a house and is enjoying his place, to respect the residential guy as well. All these compromises were made to protect everybody. Does the residential owner have rights as well; when you can make an agreement in front of everyone in this town and then come back two years later and want to amend it at the expense of someone else is not fair.

Hoover noted that the County Planning Board has made a recommendation to the ZBA. The Planning Board has to make a recommendation to the ZBA as well. If the Planning Board was to make a recommendation to deny, the ZBA would have to have a majority of the vote plus one to override.

Jensen stated he agrees with Rood, and we are certainly a rock between a hard spot. He said he is certainly has been a supporter of small businesses in the Town of Benton all his life and there's been a lot of changes in the Town of Benton. He noted he hates to put the brakes on someone who is doing a good job with a small business, yet fully realizing what do you do to protect the neighboring property owners; it's kind of a no-win situation for any of us and puts us all in a tough spot. He stated he

supports Lamar and his business and what he is trying to do to support his family, but it puts us in a bad situation; this Board has to protect the neighborhood as well. He said Lamar does have a bit of a green space between what he can do and the neighbors and it's not like he can go up 15 ft. from the lot line.

Griffin said he does believe this change would adversely affect the neighboring properties and he doesn't think that any more than 5 at the road should be allowed and if there were any way of putting restrictions at the other businesses he would highly go for that, but that is just his thoughts.

Rood asked Eichenhofer if he would have any objections if the Planning Board put a few more mowers alongside the driveway at a right angle to where he has them now, not parallel to Rt. 14, but parallel to the driveway. Eichenhofer again stated that an agreement was made in good faith two years ago. He said he loves small businesses as well, but in the proper areas and we have an agreement.

Hoover noted that one point of confusion that has been here since day one and probably something the Planning Board should address is the fact that there's a lot of talk about this not being an allowed use. This is happening in an AR-1 district, with multiple special use permits that are allowed. It's the Planning Board's decision, but there are multiple businesses that are allowed in an AR-1 district so to say that this is strictly in a residential district is not accurate. Everyone has their use table and 12 years ago the Planning Board went through the zoning use table and updated it, so maybe this Board should think about the Ag-Residential district classification; it may be a little deceiving because there are a lot of businesses that can be allowed by a special use permit. To say it's strictly a residential district is not accurate.

Stape asked how many lawnmowers are placed up by the pine tree. Sauder noted that right now the limit is 15. Stape asked if they are on the stone or in the grass. Sauder said they are mostly on the grass and some might be on the stone. The one thing they face is they have to move the mowers every time they mow their grass. He said they need to be able to go one row in front every time or sideways. They've had to move a row at once in order to mow. He said he wouldn't be opposed to putting in more arborvitae to use as a buffer. He has no problems and the green space is there for that purpose and also used for that purpose.

Rood asked for a feeling of how many feel like we should stick with the rules we had set two years ago and how many feel we should make a change to that tonight. Stape noted he is sure he put more on the sketch than he actually wants, but he, without Sauder making it look like a used trailer lot, wouldn't be opposed to putting at least five more there. He has them in storage behind the fence and he would just have to bring some out when he sells the others off. Stape noted that Mr. Eichenhofer has a point, but we don't want to stymie anything either. It's a give and take type of thing. He then asked Sauder if he ever expects to move or go to a different location. Sauder said he probably doesn't plan to live there all his life, but he does not know if at some point he would move his business. Sauder said they do need to stay where they are and grow some roots before they do that. Maybe in five years, but they are going to stick to their limits and see if that is what they need until they get to a situation or unless they reach a

bottleneck to do what they need to do. Stape noted part of that comes with age as far as the business being there; people realize he is there and it keeps getting bigger until he gets to the point where he will be saturated and that's the end of it.

Jensen stated he think its worthy for us to consider changing the numbers; this is a new application and the business has expanded and he would be certainly open to more talk about that.

Goodall said both sides of this are terrible and he respects everyone; this is like a bottleneck or between a rock and a hard place. We could suggest putting three more out there but he doesn't want to offend anyone. He was hoping there would be a place to put more stuff, but there isn't any.

Rood noted that his feeling is that this was quite an experience a few years ago and we all worked very hard to come up with this compromise and everyone at that time was happy with it. He then noted that he believes we should stick with the original agreement, even though it's bad for the business, but we did work this out for a lot of the reasons that we're talking about now.

Stape made a motion to allow Sauder to have five additional mowers parallel along the driveway in addition to an additional five to be placed back by the pine tree which gives an additional 10 out front. Goodall seconded the motion.

Stape suggested that the pine tree cover as many mowers as possible for the neighbor's point of view, which is why one row of five could stay on the stone and three rows of five between the stone and the pine tree.

Sauder then asked about the five additional in the back and Rood stated another motion would need to be made, as that was not in the original motion. Stape then made a motion to add an additional five out back by the hitching rail. Goodall seconded the motion.

The Board was polled for their vote:

Goodall – yes; Jensen – yes; Stape – yes; Griffin – yes, and Rood – no.

Motion was carried with a 4-1 vote.

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

Respectfully submitted,

Karen M. Phillips

Karen Phillips

Recording Secretary