

**TOWN OF BENTON  
ZBA MEETING MINUTES  
FEBRUARY 3, 2015**

**PRESENT:** Dwight James; Tom Davie; Steven Vaughan; Jim Willson, and Tom Goodall.

Also Present: David and Shannon Eichenhofer; Margaret Eichenhofer; Lamar Sauder; Aaron Sauder; Dan Martin; Dick Harper, Town Councilman; Jayson Hoover, Code Enforcement Officer, and Karen Phillips, Recording Secretary.

**MINUTES APPROVAL:** Willson made a motion to approve the minutes of the January 6, 2015 meeting. Vaughan seconded the motion. All were in favor.

**APPLICATION #3SUP-15:** Application from Benton Ridge Small Engines LLC of 1130 SR 14A, Penn Yan, NY 14527. Special Use Permit to amend the current Special Use Permit to increase display limit. AR1 District (TAX Map #27.81-1-5)

Sauder stated he would like to add on to his display area to allow more business to happen. He said he doesn't wish to cause anyone trouble or negatively impact anyone. He thanked everyone for all of the hard work they do to keep the Town of Benton in proper order and for all of the work two years ago to allow everything to happen for him in the first place. He noted that for two years things have been working well but in order to increase his business that will need to change. He said he feels there is a lot of extra space that still could be used. He said if there is anything he can do to the property as far as enhancing the value of the green space he would be open to any suggestions. The more change he can make now would decrease the chances for another change later on.

Dave Eichenhofer, neighbor to the south, noted that one of the biggest problems with the display area was safety. There's not a whole lot of space in front of the house in terms of the area at the road side, so the whole gist was to push things back so that people wouldn't park their cars along the road and so people would pull their cars up into the driveway as opposed to parking on either side of the road making for a safety issue. He stated we all know everyone speeds on the road and then there is a request to increase the display because people don't know it's there. Eichenhofer said that people know it is there; there is a sign that stretches out in the front. He noted that the issue is with the speed. People drive by it quickly because it appears to be a residence and the gist of the special use permit was to maintain the house as a residence and give Sauder the ability to have a business but not do it in a situation where it would be a little risky for someone along the road or it would detract from the character of the neighborhood. He then noted that the problem is also with the people coming up from town; if you go from Stape Road to Baldwin Road, Mike's Construction is in between, but the rest are residences. A person can drive by it quickly because the location is surrounded by residences. All of these conditions were done to maintain the character of the neighborhood as best as they could. Eichenhofer then said that the driveway is a residential driveway; it's not a commercial space, so again there's not a lot of space. He said that in looking back through all of the minutes, the Town Board,

Planning Board and this Board was involved and all of these conditions were made that the deal would be done in faith and all parties could benefit. This has happened, but for Sauder to come back and try to disregard the original agreement that everyone agreed to, says the residential people don't really have a standing to the level they should. He then said that they bought a house hoping to have a quiet life, and they should. Eichenhofer then read over the motion that was made in 2012 along with compromises that were made. He noted that in his business he does not do anything to renege on the deals he makes in good faith. He believes the Board made a commitment to him and the other residences in the area. He said all the average people in Benton want to buy a house and really have a nice place to live, which he believes he still does; but he is asking the Board to honor the commitment they made a few years ago and maintain the property as the way it stands.

Alexander, of Benton Planning Board, commended Lamar for a successful business which is a good thing; however he feels he is afraid that is where it ends. He noted he agrees with the Eichenhofer's completely in that there was an agreement made. Eichenhofer was generous in not pursuing opposition any further and we reached an agreement that the whole premise was comfortable with and now the applicant has come again to increase the size of his business. Alexander then noted that sooner or later we do have to start respecting the residential owners in the Town of Benton and he reminded the ZBA that there are a few hardships that are needed to grant the special use permit. One is financial hardship and the other is that the hardship is brought upon by the applicant himself. Alexander said that four out of five members of the Planning Board really don't have a concept of what this means to people like the Eichenhofer's. He then noted he is the only one on the Planning Board that has a residence out in the open; everyone else on the Planning has residences either surrounded by a number of acres or they live in the Lake District or the outskirts of town and don't have to worry about something like this happening. He said it is not that he is against enterprise, but we also have to respect what the residential owners came to the Town of Benton for. He said he hopes the ZBA has had a chance to really review the minutes, which is his reasoning for a lot of comments that were going on. There are people on the Planning Board that does not have the concept of what this can mean to their quality of life.

Vaughan asked Lamar what the next step would be if we approved the application to allow them to add more mowers; what would come next? With a business you start out small, things go well and then expansions are made. Sauder said he feels that is the only thing hindering him from using the whole place and if he needs to expand again, he will rebuild somewhere else. He said he doesn't want to change the place. He thinks he can live with this space for a number more years. Things have been working well at this point, so the next step would be to move on. Vaughan said that when you buy a property in any area it will change over time. He said he knows Sauder wants to be on the main road because of cars traveling on that road. If someone is looking for a place to buy mowers they are going to pull in. It's more common than not to have people pulled off on the side of the road to answer cell phones. Sauder noted that once in a while people will stop along the side of the road and just jump out to see something. He said he doesn't think it's a safety issue; if it were a safety issue he wouldn't do this. Vaughan said Sauder has been in business there for a few years now and people know where they are and if someone is out looking for lawn mowers they will make their rounds all along that road.

James asked Sauder if they have thought of any off-site signage to make people more aware of the business before they got there. That would help with people coming to a screeching halt. Hoover noted he is at his maximum amount of signage, but suggested possibly putting a banner underneath the existing sign directing people off the road. James then asked if this would be a year-round display or just during peak of the season. Sauder noted he has a few out on display right now. Around New Year's the snow starts falling and he can't have a large number out there because he needs room to plow. He then will store them out back. He then stated that even with what he is applying for, he doesn't think he can keep that all year around, but in the spring they could use more out there. He is looking for the time frame of March through November that he would need the large amount on display to get him through the season. Even in December things are happening, but at New Year things die off.

Willson asked for clarification on the final decision from the Planning Board. Sauder replied that the Planning Board recommended the existing five in the front increased to 10 with the additional 5 along the driveway. There are 15 in the back and they want to increase it by 5 to make a total of 20, which is what the Planning Board recommended.

Alexander again reminded the ZBA that they need to put themselves in the Eichenhofer's shoes for a moment. Eichenhofer stated that when looking at business deals in general, when you make a business deal it is honored. What does it say to the residential owner if the Board itself does not honor the commitment that was made to everyone two years ago and certainly the ZBA will make the call.

Mr. Martin stated he has been sitting in on these meetings from the beginning and the last time he didn't voice any opinions. He noted that it bothers him still today that the green space is still on the Eichenhofer's side of the fence. If it were him he would have said the fence is the line. Eichenhofer noted that the original owner put that there to protect him from something like this happening. Martin asked if Sauder tells him where to go. There is a lawn on the other side of the fence that they won't be able to see. Shannon Eichenhofer noted that again you have to think of the residents. She said she understands he has a business and that is great, but what does the resident get; it's not fair. Mr. Eichenhofer said he didn't set the hedge either; the Board made the conditions to allow it and the special use permit was granted based on the conditions. He said he wants Lamar to succeed; he likes Lamar, he just doesn't like what he is doing.

Vaughan noted that the green space was put in there to protect both parties; not one or the other. It was put there so the resident could have the buffer from the business so where there could have been a house in between, there isn't. As far as having a business at your home, what if the Eichenhofer's decided to set up an office in their house with a few parking spaces. If you own your property and you are paying your taxes, you have the right to do it if it's allowed. Vaughan said he grew up on a farm and the greatest thing was living on the farm; you walk out that door and you're at work. If you love it, it's not work. Vaughan noted that in Eichenhofer's letter longer hours were mentioned; some people like working a little later and then having certain days off. Eichenhofer said the difference in these businesses, if he did have a business at his house, wouldn't devalue the property next to them at all. There would be no noise. He would run it so he wouldn't bother anyone.

Harper stated that the zoning laws went into play in the mid 70's and they did not, at that time, disallow businesses and that is where all of the special use permits and things like that came into play. To say this is only a residential area that has never been the case from day one. We have been through two comprehensive plan changes since then involving also surveys that were sent out to people in the neighborhood. None of those came back saying people don't want businesses, so businesses have been written into the comprehensive plan. He noted he understands neighbors and residential but there's also the point that our zoning laws for many years have allowed this. Overall, someone can come in and set up shop. He can't tell farmers that they can't do certain things. We need to expect businesses if we are going to live in a town with zoning laws. The Board is here to basically enact the zoning laws. We need to make sure we deal with environmental, health and safety issues and we are not creating hazards, but it is not a "no business" town.

Vaughan noted that in looking on the bright side, maybe in a few years if Sauder is doing that much better he will relocate. Sauder stated he is not trying to make this harder for everyone and know that a line has to be drawn somewhere, but that is the way he feels. If he gets to where he can't do business in that location because he cannot expand, he might end up struggling for a while and will have to stay there longer.

Public hearing was closed.

**APPLICATION #6AV-15:** Application from Aaron Garman of 2582 Ferguson Corners Road, Penn Yan, NY 14527 for an Area variance for a new greenhouse which does not meet side yard setback requirements. AR1 District (Tax Map #7.01-1-10).

James reported that Garman wants to put a new greenhouse behind the coal frame that is already there. In the application, it states that due to elevation he cannot move this 5 to 10 feet. Garman said he can't without moving the soil around too much.

Willson asked how much of an elevation change there is. Garman said that right now, the way he has it drawn, the one corner is going up already but if it is moved 10 feet, it might be. Willson asked if he would be planting in the soil itself and Garman said yes.

Hoover noted that where the proposed dimension arrow is on the site plan, the next lot is 100 ft. wide by approximately 300 ft. deep. Under our current zoning that is a non-buildable lot so there wouldn't be a residence on that. It is not part of the one where the double wide is out back. The next lot line you see is the beginning of where the double wide is.

Garman stated they own the farm that is 300 X 100 ft. strip and right now they are farming it.

Willson asked where the woods are. Hoover stated that there's the 100 ft. and then there's 50 to 51 ft. and the woods start after the 50 ft. The woods are 150 ft. from that lot line that we are looking at. The 300 ft. is all open.

James noted the question he has is that he has 20 X 92 ft.; why did they pick that dimension. Could they have done 20 X 90? Garman said they tore the greenhouse down from there. James asked if they moved it 5 feet so the front would be 5 ft. more to the west, how much more soil would he have to take out. We are at 15 ft. and 3 is real close so they could come out with a compromise. He asked if it would be earthshaking to move the building at least 5 more feet to the west; making it a total of 8 ft. off the property. Garman said it is not that he couldn't do it, but being that they are planting in the ground he would rather not. If it takes soil off, he has to take enough off to put top soil back down again. It is not that he couldn't do that, but then he should almost grade it there so the water doesn't run down into the greenhouse. James asked if he would be grading the property now or let the greenhouse go with the slope. James then asked if it would impact him at all if he wouldn't be grading. Garman said it would definitely change, because what he was planning to do was have the greenhouse level and just having longer ground space. He would be bringing plastic down to the ground. Garman said the other reason of trying to put it closer to the land, is they have a fuel tank going down through and its wasted space and they can't really use it; it is about 8 ft. on the other end.

James again noted it doesn't have to be there; it was a spot where it would fit the nicest.

Sauder noted that what he believes that Garman is trying to say as far as moving dirt is that any plants grow better immersed in soil, so if you remove the top soil then you lose the subsoil.

Goodall asked how hard it would be to shorten the greenhouse up. Garman said it wouldn't be hard; they just wouldn't have that much space and they would have a few extra hoops for the greenhouse. The hoops are 4 ft. apart.

Public hearing was closed.

FINAL DECISIONS:

**APPLICATION #3SUP-15:** Application from Benton Ridge Small Engines LLC of 1130 SR 14A, Penn Yan, NY 14527. Special Use Permit to amend the current Special Use Permit to increase display limit. AR1 District (TAX Map #27.81-1-5)

Davie made a motion to make the Town of Benton ZBA lead agency on the SEQR form. Vaughan seconded the motion. All in favor.

James asked if everyone had a chance to look at Yates County's recommendation, which was for 10 mowers by the road and to allow 20 mowers in the back. He then noted that with the county planning board's recommendation, to override that we need a supermajority plus one.

James asked what would happen if he were to put the additional 5 mowers on the other side of the driveway to bring it up to 10. He is thinking of trying to reach a compromise with everyone by not moving more mowers closer to the neighbors. Sauder noted that he himself could probably live with that, although he can't believe the Board would want that. He said it would help serve the business's need but he would be getting in front of his residence. James said the Planning Board was talking about

lining it parallel to the driveway. Goodall said he was going to do two rows of five on the road and the rest would be back by the pine tree.

Goodall made a motion to go along with what the Planning Board agreed on; 10 mowers by the road, with two rows of five. Right now he is allowed 5 in the front display and 15 in the rear. James noted that the county has said 10 and 20, an increase of 5 and 5.

James asked if we are all in agreement that he motion is for 5 on the road in the form of a second row and 5 more in the additional display area.

Hoover read the motion from the January 27, 2015 Planning Board meeting – Stape made a motion to allow Sauder to have 5 additional mowers parallel along the driveway in addition to an additional 5 to be placed back by the pine tree which gives an additional 10 out front. The Board then talked about the rear display. Another motion was made by Stape to add an additional five out by the hitching rail. By his count, that is 15 and the county has agreed to 10.

James asked Goodall what his interpretation of the motion by the Planning Board was; Goodall noted it was an additional five on the front display; an additional five which would be parked parallel to the driveway between the two display areas (the front display and the rear display area) and an additional five at the hitching rail.

Willson made a motion to amend the motion to match the Yates County Planning Board's motion allowing five at the road as a second row and then five more in the next display area. Davie seconded the motion.

Board was polled:

James: Yes; Davie: Yes; Vaughan: Yes; Willson: Yes; Goodall: Yes.

**APPLICATION #6AV-15:** Application from Aaron Garman of 2582 Ferguson Corners Road, Penn Yan, NY 14527 for an Area variance for a new greenhouse which does not meet side yard setback requirements. AR1 District (Tax Map #7.01-1-10).

The Board went through the test questions for the Area Variance.

Willson asked if there was any correspondence or comments from any neighbors to this application. Garman noted that he spoke with his neighbor, Larry, and he said it was alright with him as long as it was alright with the ZBA.

Vaughan made a motion to accept the application as submitted. Davie seconded the motion.

The Board was polled:

James: Yes; Davie: Yes; Vaughan: Yes; Goodall: Yes. Willson noted that typically he would say this is way too close; one being there is not enough room for emergency vehicles to get by. Being that it could not be built in any other way in this lot and the fact it is all open, he will vote yes.

Copy of Towns and Topics was distributed to the Board.

Vaughan made a motion to adjourn the meeting at 8:12 p.m. All in favor.

Respectfully submitted,

*Karen M. Phillips*

Karen M. Phillips