

TOWN OF BENTON
PLANNING BOARD MEETING
OCTOBER 22, 2019

PRESENT: Tom Rood; Tom Goodall; Herb Cooley, and Steve Hullings.

Others Present: Lewis and Doris Martin; Lamar R. Sauder; Bill Grove; Steve and Gail Knapton; Hal Fredericksen; Dick Harper, Town Councilman; Jayson Hoover, Code Enforcement Officer, and Karen Ellis, Recording Secretary.

Rood called the meeting to order at 7:00 p.m.

MINUTES APPROVAL: Goodall made a motion to approve September 24, 2019 meeting minutes. Cooley seconded the motion. All in favor.

APPLICATION #101-SUP-19: Special Use Permit request from Benton Ridge Small Engine, Corner of Lovejoy and Rasmussen Rd. (1) to Relocate existing business from 1330 Rte. 14A to the corner of Lovejoy & Rasmussen Rd. in a new building. (2) Relocate existing sign 4'X 8' to southwest corner of Route 14A and Rasmussen Road. (AR1 District) (17.01-1-10)

Rood noted that these are the best drawings he has seen in a long time. He then stated that he could not figure out what the distance was from Rasmussen Road down to the end of the property line. He then stated that he notices there is a cemetery there and asked if the cemetery was on their property line or beyond it. Lamar stated it is not a property line, it is just a boundary. Bill Grove, the Engineer, said this is the overall view of the entire parcel and the cemetery is just a little block and it is far enough away from them. It is probably around 250 to 275 ft. from the cemetery. Grove showed the overall view of the parcel and where the cemetery was located.

Grove said it is pretty obvious what he is trying to do. He is going to try to move the small engineer repair shop there and construct 4 greenhouses in the back for storage. It will be off grounds for customers. It was asked if these are temporary or permanent. Sauder noted they are considered temporary structures. They are only planning to have a sign on the building at this point. The design of the sign will be determined, but it will be within the sign laws, 4 X 8. There will be canned lights underneath the front porch area. A wall pack light on the south side of the building, which will be dark sky compliant. There will also be three lights on the backside of the building and one pole mounted light out towards the front entrance off Lovejoy.

Hullings asked if they will have new equipment in the new building. Sauder noted that they basically will be just repairing used equipment. They have no thoughts of new equipment.

Rood asked if anyone else wanted a chance to say anything. Hoover noted that he gets a lot of compliments about Sauder's business. He has run out of room where he is at and its just a natural progression of the business.

Goodall made a motion to approve this application. Cooley seconded the motion. All in favor.

APPLICATION #103-SUP-19: Application for a Special Use Permit request from Lewis and Doris Martin of 2003 Loree Road, Penn Yan, NY to operate an appliance and furniture store/warehouse. (AR1 District) (18.01-1-10.2)

Rood asked Martin what is in the building now. Martin indicated there is mostly equipment in the back end and the front part is a shop for an inspection area, a farm shop.

Rood asked Hoover if the construction of the building satisfies the zoning requirements for a store. Hoover said it has not been inspected yet, but if this is approved, an inspection will need to be done just to make sure.

Rood asked if there are any questions or comments from the Board.

Goodall asked if they are planning on building a house there at some point. Martin said he does not have any plans for one.

Rood said there is no reference here for a sign, so they will probably have to come back for that. The permit is noting there will be five parking spaces in a 20 X 20 lot, so that fits.

Rood then asked if any neighbors had anything to say about this application. Hal Fredericksen said he has no problems as long as it passes inspection.

Hullings made a motion to accept this application as presented. Cooley seconded the motion. All in favor.

APPLICATION #102-SUP-19: Application for a Special Use Permit request from Lewis and Doris Martin of 2003 Loree Road, Penn Yan, NY to operate a commercial kennel with a maximum of 10 adult dogs. (AR1 District) (18.01-1-10.2).

Rood stated that the last time this came to the Board it was rejected because they were not within the 300 ft. limit. They have come back with pretty much the same plan that they had before. Because of that, Jayson was asked to contact the Town Attorney. In his letter back to us, it seems as if it was left up to us. Harper noted that basically when you look at the zoning laws, there are two sections under kennels. A lot of this was revised when the kennel came in on Ferguson's Corners. If you read the one section where it talks about the facility, it talks about if the facility were off the building. There is two sections there and both of those are including that into the facility so that in the distance in that first section it references the runs as well. The second one really is the same rank, as it meant the buildings and the runs. The runs are part of that facility. That facility has to be 300 ft. towards the property. If they have the building being used for other purposes that becomes up to this Board, but the facility for the kennel has to be at least 300 ft. away and that includes the dog runs.

Hullings said that since he is using this for other purposes it can't be used for kennel operations; it states it in the regs that that needs to be part of the inspection process. If there are signs that is being used and its close to the 300 ft. they would be in violation and that would be the potential of discontinuing the special use permit. The boundaries need to be set and they need to stay within those boundaries.

Rood asked the neighbors if they have changed their opinion at all since last month. The neighbors indicated they have not.

Rood noted that we are between a rock and a hard place. He then noted that Harper has many years of experience with the Planning Board, the Zoning Board, and is on the Town Board. He said he respects his opinion and Hoover has had years of experience as well. We need to get all the input we can and make sure that what we do is proper. What it boils down to is if they separate that end facility and they

keep the dogs down that way, they exceed that 300 ft. distance, so there is not much we can do if we agree to that. On the other hand, we can put in some restrictions. At last month's meeting they talked about putting in some special kennel run protection so the dogs would not see other things to cause them to start barking. The big concern the neighbors have is with the noise and they are trying to address that. If this should pass and it becomes a problem, the neighbor's recourse would be to contact the Zoning Control Officer and he would then go see them and try to remedy the situations. The neighbors would not be hanging out there on the limb. If the dogs can't be quieted, the permit could be revoked.

Gail Knapton said we do not need any mass breeding of dogs. There are too many homeless dogs out there and we don't need to keep mass breeding more and more dogs. Rood noted that unfortunately these people are applying for something that is within our zoning.

Goodall asked the Martin's how many of these kennel runs are they going to be buying. It was noted that each run has one kennel and there will be 10 runs. They are made of plastic and they will have air conditioning for the summer and heat for the summer. They will be boxed in with climate control. The dogs will be in the barn, so they will not be seen unless they are coming out in the runs.

Hullings asked what kind of dogs they would be breeding. Doris Martin replied they would be breeding smaller to medium dogs, such as bichons, mini poodles and cockers.

Rood made a motion that we accept this application with the provision that the inside space is at least a minimum of 300 ft. from the property line, that they entertain noise control standards, and a maximum of 10 adult dogs. They must be in accordance with all of the applicable zoning laws in the Town of Benton.

Cooley stated he doesn't think we are really allowed to add anything more than that. It is not our position regardless of how we feel about it. The rules are pretty clear and we are bound to stay inside and the only way that could change would be to change the code and right now, as it is written, we can't stand in the way of the business and if we do we would probably open up ourselves up to litigation.

Martin stated they will have a rejected overhead door; it will be insulated with inch and a half so the dogs will not even hear you walking around outside. When they visited another place, the dogs would not even hear you unless you tapped on them. Hullings noted it sounds like they are trying to help the neighborhood.

Hoover asked if they would consider any time frame for inspections, whether it be annual or bi-annual for conditions or quantities. Rood said the last thing in his motion was where it stated to be in accordance with all of the applicable zoning laws. Harper indicated that depending on whether this is wholesale or retail sales it would depend on whether it is under Ags and Markets or USDA, because they will do their own license and inspections.

Hoover stated that he doesn't think the zoning calls for anything after the initial inspection. An annual or bi-annual inspection would be entirely up to the Board. Hullings noted he would add an annual inspection to the motion. Doris Martin noted that it does say in the law something about an annual inspection.

Rood re-read the motion with the amendment to say they are to be open to an annual inspection by the Town of Benton Code Enforcement Officer. Hullings seconded the motion. All in favor.

Rood asked Karen to include in the minutes, the letter from Jeff Graff.

Rood noted that he feels for the neighbors, but we also have to follow what we have in front of us.

Martin has indicated they have had conversations with various people that have concrete versus the washed stones for their outside runs and they were concerned about the cleanliness of the natural floor versus the concrete. They asked if they could put in the washed stone instead of the concrete. With the washed stone they could go out every day to pick up the droppings; whereas with the concrete if they don't wash it up every day, it will go to slime.

Rood stated that when we wrote the laws, we wanted to make sure the dogs wouldn't be running all over the wire. Some places had that, as well as having cages stacked one right over the other.

OTHER BUSINESS:

Rood asked Hoover to have Bobbi put a notification in the paper that there will not be a December meeting, as it is Christmas Eve.

Hoover stated that he met with a few guys from Savour Finger Lakes Winery this morning. They turned their application into the DOT and what the DOT said was that as soon as these people make a curb cut on the guardrail, they would basically own that guardrail and have to bring it up to current standards. In lieu of that what they offered is to regrade that whole portion from Route 14 down and then eliminate the guard rail. Hoover said he doesn't think that affects the application at all; it is strictly on the DOT right-of-way so its more just an informational thing. They have decided to go ahead with that. That was the only revision that the DOT had. They are looking to get started fairly soon. They didn't mention anything as far as any studies or anything. Hoover said that with the guard rail being gone that will actually help. At least it'll be a place where you can get off the road. The guard rail is right along the edge.

Hoover then noted that he received from Tom Olney a lot line adjustment affidavit. There are two pie shaped lots there now and they are basically going to take a section of one and combine it with the other and make a new lot line. Olney is going to buy it and they are going to annex it. Hoover stated all this needed was a signature from Rood.

Hoover then stated he received a call from David Sauder today. He was from where Twin Pines used to be. When talking to him before, he noted he just wants to make sure he is in compliance. What his overall plan is – there's a special use in place for equipment. He is going to buy, sell, trade and rent equipment like he is now and in the back corner of the original shop he has a small power coating operation; all self-contained in the building. Hoover's question is whether this Board wants to see anything, such as an update or maybe a site plan review. He said his opinion is that there is really nothing changing there, per se. He is kind of doing the same thing he was and any work inside the building is as it was before and it is obviously a different brand of equipment. He is willing to come in for a site plan review next month if that is what the Board wants. There is a spray booth and then there is a big oven. He does do some sand blasting as well. Rood said he is also putting fill in on the north side and he would ask the question of whether that was actually included in the original property to do that.

He said he doesn't think we ever got a chance to investigate. We should see what the actual permit said from the business. Hoover noted he pulled the minutes and it's very vague. It was prior to when the Planning Board started honing down on the special use permits by putting more details into them. Rood noted his concern is that we eliminated Sauder on what he can do across the street and now this guy is putting fill in there. Obviously, he will be putting machines up for sale along the highway. We need to get involved with that and bring him in to find out what is going on. Hoover said he will have him come in to do a site plan and hopefully he can get it back to him in time so we can bring it to the meeting on November 26th.

Hullings asked if the powder coating ovens meet code regulation. Hoover said it appears like it does. It is self-contained. The only real issue is it has a chimney on it and its all vented up through the roof. It was a used piece he had bought from someone in Pennsylvania, so there's probably no real manual with it per se. In a visual inspection, it does look like it meets code.

Harper noted he has heard of a few people that go there for powder coating; once that word gets out, there could be some more business there. Hullings stated that in his opinion, if he is still meeting the zoning or variances it would be okay. Harper then stated that we need to really watch out about letting people do things and not necessarily come to the Board. You can't pick and choose when you're going to do that. The zoning laws are there; if it is a special use, he needs to follow the special use permit. That should be the way it is for everybody. If we let one person do something and then there is an issue, then we have a problem. If it does not follow through there and there is a problem with the neighbors and all, we are setting ourselves up. We don't want to get into an Article 78. It comes down to we are going to have to fight and get into those types of things on a legal side. Hoover indicated he does agree, but the only exception here is there is an existing special use permit which is very similar to what was being done before. Harper said the wording would have to be looked at. When the special use permit was put there, it was for lawn mowers. There were definitely no excavators or anything like that on the table when we discussed the special use permit. We need to get into a little more detail on what is going on. Like with the dog kennel, is that a retail sale or a wholesale. It would depend on what permit they would fall under. We should have an understanding if they are going to have a lot of retail customers coming in for those type of things. The whole example with the wash stone is that part of this is for Ags and Market regulations; there is regulations for USDA. It is not just our zoning law that they are going to have to meet. A special use permit does not necessarily cover everything.

ADJOURNMENT: Goodall made a motion to adjourn the meeting at 7:58 p.m.

Respectfully submitted,

Karen M. Ellis

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Recording Secretary