

A meeting of the Town of Moreau Planning Board was held on August 21, 2017 at 7:00 p.m. in the Town of Moreau Office Building, 351 Reynolds Road, Moreau, New York.

Present:

Jerry Bouchard	Planning Board Member
Reed Antis	Planning Board Member
Erik Bergman	Planning Board Member
John Arnold	Planning Board Member, Acting Chair
Mike Shaver	Planning Board Member

Also present: Jim Martin, Zoning Administrator

Planning Board Members absent: Ron Zimmerman, Peter Jensen

In the absence of Mr. Zimmerman, the board chose to have Mr. Arnold acting chair. Mr. Arnold called the meeting to order at 7:04 pm. The Board had not seen the minutes, so approval of the July minutes was tabled.

#1 Gardner Congdon Subdivision

Mr. Bouchard recused himself from this review because Mr. Congdon is his uncle.

Short form SEQR was reviewed and there were no positive responses. Mr. Bergman motioned for a negative declaration for SEQR on the Gardner Congdon subdivision and Mr. Shaver seconded. There was no discussion. A roll call vote proceeded as follows: Mr. Bouchard, Abstain; Mr. Antis, Yes; Mr. Bergman, Yes; Mr. Shaver, Yes; Mr. Arnold.

Mr. Shaver motioned to close the public hearing at 7:08pm and Mr. Antis seconded. Motion carried with no roll call. Mr. Antis motioned to waive the requirement for separation between preliminary and final approval, and Mr. Bergman seconded. Motion carried unanimously with no roll call.

Motion to grant preliminary approval to the Gardner Congdon Subdivision was made by Mr. Bergman and seconded by Mr. Antis. No roll call, all in favor, motion carried.

Motion for final approval was made by Mr. Antis, and seconded by Mr. Shaver, no discussion. Roll call vote results as follows: Mr. Bouchard, Abstain; Mr. Antis, Yes; Mr. Bergman, Yes; Mr. Shaver, Yes; Mr. Arnold, Yes.

Motion that the Chairman and one other member sign the mylars when they become available made by Mr. Antis, seconded by Mr. Bergman. No discussion, motioned passed unanimously with no roll call.

Mr. Congdon asked Mr. Martin whether he had mylars, and Mr. Martin said he had not been in the office that day but did not think so. Mr. Martin told Mr. Congdon he would check in the morning, and Mr. Congdon said he would do the same.

#2 McKenna, Shawn

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Gansevoort Road Sketch Plan Review

Mr. McKenna of 19 Sisson Road in Moreau is proposing a subdivision on 459 Gansevoort Road just South of the Michaels Group entrance (Woodscape) and across the road from Duell's Garage.

Mr. Martin explained that there was a proposal for a 2-lot subdivision for a lot of 120 ft depth on the front, and the lot width was already granted a Variance. The applicant has decided not to act on that until he knows about this application. This proposal is compliant and doesn't need a Variance. The road frontage requirement there is 40 ft. 124-24 c states Each lot shall abut on a public street built to the town's specification. The required frontage for one principal building shall be 40 feet; and such frontage shall provide actual physical access to and from the lot to be built upon for purposes of ingress and egress to the lot by emergency vehicles such as fire trucks and/or ambulances. Mr. Martin stated this is within Subdivision Regulations and not Zoning Regulations, and can't be varied by the ZBA. But the Planning Board has some ability to waive requirements of the subdivision regulations, and that's what the applicant is asking for here because he's trying to share one driveway for three lots. The Board can choose to do that and has chosen to in the past. This is a classic case of flag lots. Mr. Martin feels that this lot isn't a great place to have three driveways on the road.

Mr. Antis brought up the question of what happens in the future. Mr. Arnold said that it will be public knowledge that it's set up this way, and if someone doesn't like that, they wouldn't buy the house there. Mr. Martin suggested that deed language be developed regarding maintenance, etc. so that problems in the future could be avoided.

Mr. Arnold pointed out that the driveway was over 300 ft. long, so it would be held to state requirements for emergency vehicles. Mr. McKenna thought that those only applied to the shared portion, but Mr. Arnold said that the whole thing would have to be that way. Mr. McKenna said they might put a hydrant there but Mr. Arnold didn't think that would satisfy the requirement. Mr. McKenna said that wasn't a problem for him, and he didn't have any specifics on the hydrant when Mr. Shaver asked. Mr. Arnold thought that if he got the hydrant within 300 ft. of the furthest house, he wouldn't have to build the driveway that way.

Mr. Martin pointed out that the driveway is quite wide before it splits. He thought that the individual lots should have turnarounds so that no one backs out the whole way. Mr. Arnold thought that was an oversight and Mr. McKenna said they would definitely include those.

Mr. McKenna owns another lot north of this one and adjacent in places. It is almost ready to go. The Board discussed tying in the fourth lot, and Mr. McKenna was amenable to it but didn't think the Board would like it. Mr. Martin thought it was better than another driveway on Route 32. Cutting across the HOA area wasn't acceptable. Mr. Martin said he can go ahead with Lot 4 but he would encourage an easement for access. Mr. Antis didn't like creating a private road. Mr. Arnold asked if Mr. McKenna knew the neighbor and wondered whether a trade would be helpful, but the location of the septic/leach line is already on Mr. McKenna's property (this is the lot labeled Griffen, though that is not the name of the

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current owner). It is on the 4th lot. There might be a legal case between the new and the former landowner regarding the location of the septic, etc. but Mr. McKenna is not involved. Mr. McKenna already moved houses back 40 ft. to keep hedges.

Mr. Martin asked what the cost differential is between an accentuated driveway and a Town road. Mr. McKenna said that the previous developer was going to put in 7 lots and clear-cut it to pay for a road, and he's not interested in doing that.

Mr. Arnold said to make sure they have width of 125ft. on that 4th lot, but Mr. McKenna said it was already done and was not a problem.

3.891 acres are involved in all the lots, and the fourth which was subtracted is just under 1. Mr. McKenna wants to know what the implications are of including the 4th, etc. Administratively this is a two-lot subdivision and another division before the Board for one of the two. Mr. Antis remarked that the applicant is about to subdivide one, there is still time to do it as 4. Mr. Arnold was worried about an attempt at avoiding a four lot requirement by dividing in 2 and then dividing those, but Mr. Martin didn't think that was possible. This could just be a four lot subdivision.

Mr. Arnold has a problem with three driveways on Route 32. If each had their own, he would say to bring them together at the road. Mr. McKenna compared it to Mr. Rourke's Cobble Creek Subdivision further south on Route 32. Mr. Arnold didn't remember that as a shared driveway. Mr. Antis feels the houses as proposed will be shoehorned.

Karen Tarantino of 6 Clark Road asked to see the map.

Mr. Arnold felt the lots complied, and Mr. Antis agreed that they do but doesn't feel it's in harmony with the residential area and maybe they don't want more homes on Route 32. Mr. Bergman pointed out that that's an opinion, and Mr. McKenna has the legal use of the property. If the Board were to use discretion in that way, it would have to be a really egregious abuse.

Mr. Antis feels using shared driveways and expecting them to stay in harmony is risky.

Mr. McKenna compared it to Woodscape, but that is a Town Road.

Mr. Shaver asked about kids waiting for the bus and parents asking for the bus to go up and get the kids, and the Board agreed that doesn't happen. Mr. Shaver was also concerned about the hydrant being deep in the lot, because a truck would have to go in, turn around and come back to it, but Mr. McKenna said that there's one on the street. Mr. Shaver said the one at Duell's is more than 500 ft away.

Mr. McKenna said he would put the hydrant before any houses so it was the first thing the Fire Dept sees. Mr. Martin suggested referring the issue of the hydrant location to the Fire Dept. for an opinion, and Mr. Martin also referred Mr. McKenna to the state regulations for shared driveways and said a wider spot somewhere on the shared driveway was still a good idea. Mr. McKenna said he could do 20 ft. wide up to where it splits. He might even do a 30 ft. apron. Mr. Arnold recommended bringing the last house forward, and they had been meeting a setback from the 125ft., which was not necessary. Then it might be less than 300 ft from the hydrant and exempted from the fire laws. Mr. Bouchard disagreed with that interpretation because the law says from the public road, not from the fire hydrant. Mr. Arnold conceded.

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The Board noted that you probably can't even get a hydrant on private lands, at least without a maintenance easement.

Mr. Antis asked whether there is other verbiage about shared access that they should be aware of and Mr. Martin said that he would do research. Mr. Antis prefers two separate entrances. Mr. Arnold cautioned that a land deal with Griffen would have created landlock.

Mr. Arnold pointed out that all the lots have 40 ft access to Route 32, if they decide they don't want to share the driveway. That counts as access. It's semantics but it's true. Mr. Bouchard read the law, which says the 40ft has to be the access, and this one won't be. Others did not agree with that interpretation. In addition, the State would have to agree to a curb cut. Mr. Arnold's point is that if the people can't agree in the future, they do have the option of another access point.

Mr. Arnold felt that the shared driveway is the issue.

Mr. Antis argued that no, a four-lot subdivision is in front of us, where each lot doesn't have access.

Mr. Martin agreed that the 40 ft has to provide access and that this requirement will have to be waived for this subdivision to happen.

Mr. Shaver asked why a road isn't an option, and Mr. Arnold said it isn't cost-effective for Mr. McKenna, and that he didn't care if it was, but even if he did build a Town road, the Town might not want a 30 ft. stub of road to take care of. Mr. Martin wondered if 25 years from now if these were still empty, that the State can't deny a permit for a right of way to a property. Mr. Bouchard wondered if the outer lots should have an easement. He felt that the question was one, two or three driveways. Mr. Shaver prefers a road. Mr. McKenna was not amused. He said it was a cost difference of \$80,000 and a road would make the price of the house too high to sell.

Mr. McKenna started with the administrative subdivision of the 4th lot because he wants to break ground now and has a buyer.

Mr. Martin's opinion is that given shape and position there is no perfect design, so the Board and applicant should consider what's the least imperfect. Easement language would be key.

Mr. McKenna stated that he would assign all maintenance to the back lot.

Mr. Arnold would prefer that the 4th house be on this shared driveway, but Mr. McKenna said the plans for that are already ready to go. Mr. Arnold recommended finding a way to put the driveway either way, but Mr. McKenna is too far along in his plans to make changes.

Mr. Bouchard asked for topo and a drainage plan which will be a sensitive subject, it is over an acre of disturbance so a SWPPP is required. He cautioned Mr. McKenna to be careful of easement language. Engineering review on the stormwater plan and the construction inspection will each require a \$2500 deposit. He asked and they would not be treated as three separate lots for SWPPP inspections, it's one plan, and that's annual until it is completed/sold.

Mr. Bouchard questioned whether 2 ft. topos were necessary and Mr. Martin pointed out that considering the water table issues in the area, it's really going to be needed and Mr. Arnold agreed. It seems unlikely Mr. McKenna will be able to avoid an acre of disturbance while building that long driveway. An application for a preliminary approval will be due Sept 1 in advance of the holiday.

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**#3 Snyder, Scott
Snyder Drywall
Route 9
Site Plan Review**

Applicant not present.

**#4 McCarvill Subdivision
Fortsville Road
Site Plan Review**

Mr. John McCarvill 442 Fortsville Road recently got this piece of property which was non-accessible until he bought a second lot, he lives behind it and wanted no one to build around him. He wants to connect the 11 acres. The lot size is 100 by 375 and he meets the setbacks, lot area etc. The question is about the road he uses to access his home, and it's already there. He submitted the easement, which goes over the gas line. It's from his neighbor who owns it.

Mr. Arnold told the applicant that a neighbor can't give him access to go over the gas line.

Mr. McCarvill explained that they drive on it, not over it.

Mr. Arnold asked whether the applicant has permission to drive on it in writing from National Grid.

Mr. McCarvill said that they have a maintenance agreement.

Mr. Martin said that the issue is, he has a driveway easement on private property but that in the rear it appears to run on a utility corridor that is separately owned. He needs an easement from the utility. The subdivision map doesn't match the tax map.

Mr. Antis asked if Mr. McCarvill has an easement for the parcel with the gas line on it that he and his neighbor don't own.

Mr. McCarvill assumes so.

Mr. Antis said the Board needs to see it.

Mr. Martin explained that the Board needs to see a properly constituted easement for this property, which extends far beyond here.

Mr. Bouchard explained that on the tax map it's a phantom lot. The utility may not own it, it's a dashed line. It's a solid line if they own it and a dashed if the utility has an easement.

Mr. Arnold pointed out that either way, it's still landlocked. Mr. McCarvill's realtor may have sold an illegal lot.

Mr. McCarvill: I bought it from a lawyer who said it was good, but I know that means nothing here.

Mr. Arnold explained that it was a trolley line. Some were bought by the railroads and some were not.

Mr. Martin asked whether Mr. McCarvill would be changing surveyors?

Mr. McCarvill thinks he has to, as he can't get a response from him.

Mr. Arnold asked if Mr. McCarvill owned this parcel, and bought this parcel?

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Mr. McCarvill said yes, and this entrance lot.

Mr. Arnold asked if Mr. McCarvill is asking the Board to let him quadruple the size of a landlocked parcel.

Mr. McCarvill said that from the gas line back to this, he wants to attach.

Mr. Arnold pointed out that it's an existing non-conforming lot. But if this is already detached, that move simplifies this. If you don't have easement and access, you can't use those lots. We need to have that proof of that. It is to your benefit to have someone do a deed search and find out whether you own that or not.

Mr. Antis pointed out that in this box on the map it talks about the deed and you can read it to see if you have access to cross the gasline. You assume you do, you have to show us. There are 60 ft of road there that the neighbors can't give you permission to cross. Your deed isn't enough, their deed has to say it too.

Mr. Martin told Mr. McCarvill that he has some rights per having used it all this time, but Mr. Martin would like to see it in a properly recorded form since the parcel is otherwise landlocked.

Mr. Arnold asked whether the owner was Benoit.

Mr. McCarvill said it was Knauss.

Mr. Martin explained again that we have the language where Knauss agreed to it and transferred it to you, but it only references the front part and not the utility strip. Railroads and utilities can get very hard to trace back.

Mr. Arnold pointed out that they were done to be in perpetuity.

Mr. McCarvill said it is owned by David Krantz.

Mr. Martin stated that these map lines and symbols have meaning. It's got to be sorted out.

Mr. Bouchard said that the hand-drawn sketch shows three parcels. One has a shed on it.

Mr. McCarvill said that's the extra, the way in.

Mr. Bouchard asked if Mr. McCarvill is proposing to put them all together, redrawing the property lines.

Mr. Arnold said he's taking three lots and making three lots.

Mr. Martin said it's a complicated situation here and you need a competent surveyor to show us clearly what's going on here.

Mr. Arnold said that no one has a major objection to what you are doing. If you own the gas line property, it might change what you do. It becomes much easier. You have until Sept 1st to resubmit.

Mr. McCarvill asked who he should call to find out?

Mr. Martin said he needs surveyor and a lawyer.

Mr. Arnold recommended he call the lawyer who did the title research on his purchase.

Mr. McCarvill said he will call his real estate attorney.

Mr. Martin said he still needs a good survey.

Mr. McCarvill asked whether it is still feasible to do what he wants to do?

Mr. Bouchard said Mr. McCarvill should find out about these things for his own protection.

Mr. Arnold stated he is not thrilled with the idea, but if the easement is there, it makes sense.

Mr. McCarvill doesn't want to run water lines and drains and electric to sell lots in there. He's getting it ready for the kids to sell off when he is gone.

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Mr. Arnold said he is more interested in how he lays out the lines in the back. He is okay with the map as you have it now, but if you don't have a right of way that changes everything.

Mr. McCarvill believes he pays taxes on it.

Mr. Bouchard said that his concern with the proposal is that you are taking an existing conforming lot, cutting it in half to create access. It gives you access to a building lot. I might want to see something that prevents future subdivision. Can we prevent another subdivision like the one we just discussed? What if the Town reduced the road frontage requirements, and more houses get wedged in there, we don't want it. The applicant would be amenable to that.

Mr. Arnold: You want a deed restriction that states it can never be subdivided again?

Mr. Bergman stated that's a slippery slope. He doesn't like it, but it's legal. The way to change it is in the Code.

Mr. Arnold: It's not fair for us to ask that.

Mr. McCarvill: I just want to make those two separate lots for my grandkids. It complies. I would be willing to say no subdivision.

Mr. Arnold: It limits future value.

Mr. Bouchard said that is to the benefit of the Town. The nature of the neighborhood is rural, it doesn't lend itself to cramming houses behind it.

Mr. Arnold pointed out that the other side of Fortsville Road is Commercial.

Mr. Martin said that he needs to shift the easement, the access, to land that he owns.

Mr. McCarvill stated that if the Board will attach it, he will drive in and out as he does now.

Motion to adjourn was made at 9:23 pm by Mr. Antis and seconded by Mr. Shaver. All in favor, motion carried with no roll call.

Respectfully Submitted,

Tricia S. Andrews