

**A Meeting of the Zoning Board of Appeals for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Town Hall, 351 Reynolds Road, Moreau, NY 12828 on the 28th day of January 2015 at 7:00 PM.**

**ZONING BOARD MEMBERS PRESENT:**

Kevin Elms

John England

Richard Kubis

Scott Fitzsimmons

**ZONING BOARD MEMBERS ABSENT:** Chairman Gerhard Endal

**Others Present:** Joe Patricke, Code Enforcement Officer; Stephanie Dilallo-Bitter, Attorney for the Town; Tricia Andrews, Recording Secretary.

Acting Chairman Elms called the meeting to order at 7:02 p.m.

The Board reviewed the minutes of the December 17, 2014 meeting. Mr. Fitzsimmons motioned to approve the minutes as written and Mr. England seconded. Motion carried unanimously.

The Board reviewed Appeal No. 751, a request of Stewart's Shops Corp. of P.O. Box 435, Saratoga Springs, NY 12866 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59(A) and Town Law 267-b. Applicant is requesting to construct a 747 sq. ft. addition to their store at 43 Bluebird Road that will not meet the required side yard setback in an R-1, Single Family Zoning District. This property is located is designated as 50.69-1-5.2 on the Town Assessment Map.

Mr. Elms looked at the map presented and asked why the applicant had chosen a layout that requires a Variance when there are other possibilities. They want a larger cooler and back room. Proposal is to move the existing line of coolers and move the side of the building to the back left corner of the property. The extension creates more counter space and more product availability. The extension on the front will be brick and the side will be the same siding currently used.

Mr. Fitzsimmons asked and the back right will be all storage.

Delivery will remain in the back, while the existing storage will be pushed back.

The Board reviewed the criteria for granting an Area Variance and found as follows:

Robert Kory from 566 Gansevoort Road asked what is the hardship Stewart's is having? They knew the regulations when they moved in here.

Mr. Marsall: The goal is to introduce more products to better serve.

Mr. Kory asked which side is the front. He owns all the land that they share boundaries with.

Mr. Marshall: The hardship is there's no other way to expand the store and we want to.

Mr. Elms: This is a special circumstance because you are in a residential area and you had to get a Special Use Permit to be there in the first place. If you have a situation where there's a need that can't be met by other means, I am not seeing this here. 9 feet is a large amount of variance.

Mr. Marshall: It's 15 now, we want 5 feet, not 9. Rainwater gets collected by gutters and sent to our

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stormwater system.

Mr. Elms: It's difficult to grant setback variances. We do it based on special circumstances and need.

Mr. Kubis: What's the setback in R-1?

Mr. Elms: 15 ft.

Atty. Dilallo-Bitter: The existing on this lot is 15 ft., we require 12 ft.

Mr. Fitzsimmons: That's about 60% variance.

Mr. Elms: It's much greater than the guideline we usually use.

Atty. Dilallo-Bitter: Because it's in R-1, I'd like to add that the 12 ft. is for residences, municipal & commercial use buildings in that area can range from 30ft.-40ft. or 12ft., when it's a commercial use it is distinguished.

Mr. Elms: Those setbacks are usually larger.

Mr. Kory: Is a corner lot addressed differently?

Mr. Elms: Sometimes, because it will be 40ft. on both sides which impedes building on a lot.

Mr. Kory: I understand you have two fronts and two backs.

Elms: Backs and sides are about the same.

Mr. Kory: Backs are 30.

Mr. Elms: You are right.

Mrs. Kory: If it's granted, and then in the future one of the two adjoining parcels came and asked for a setback change, would it be given to them as well?

Mr. England: It doesn't impact adjacent properties in the future because we look at those case by case and why they might need relief.

John McAllister of 363 Gansevoort Road: He's trying to use more of his property. It's going to be 3 feet away from the line?

Atty. Dilallo-Bitter: It's going to be 7 feet away.

Mr. Elms: A 12 ft. setback for a commercial building is pretty small.

Mr. McAllister: This is a local company. They are good for the community. It's going to be the back where it won't even be seen.

Mr. Elms: It's a side line for a neighbor, that's going to be noticeable. The Town makes these rules to protect neighbors and get the Town the way they want it. We can modify things a little but it's a delicate thing, the Town has structured this the way we want it and we have criteria we have to look at it to vary from that. There are sometimes circumstances, but I don't see them here, speaking for myself.

Mr. McAllister: It's an extension nobody would see and I don't think it would affect anybody.

Mrs. Kory: It will also lead to increased volume, traffic, parking, and the status of the store, the litter, the parking do affect our lots. We have a garage on one side and a small residence on the other side.

Mr. Marshall: There will be no increase in parking.

Mr. Elms asked that comments be addressed to the Board. The Board wants to be fair and they are fans of Stewart's Shops, they are good to have in the community but that's not the ZBA's role tonight. We don't

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want to deviate from the Town's plans.

Mrs. Lillian Nevins of 375 Gansevoort Road- I'm comparing what he wants to do and the restaurant and bar across the road. You had to give a clearance for them on one corner...

Mr. Elms: That was built before Zoning, and that's an example of why you have Zoning in a town.

Mr. Fitzsimmons: Is it different on one end than the other?

Mr. Marshall: It is.

Mr. Fitzsimmons: Is there a bare minimum you can do?

Mr. Marshall: It's our handicap bathroom and the majority of the cooler.

Mr. Kory: What's the criteria for calculating parking space? Doesn't it go by gross?

Mr. Elms: The Planning Board would have required when it was built the max. parking that you can have.

Mr. Kory: So wouldn't they need more when they expand?

Mr. Elms: They are maxed what they can have.

Mr. Kory: So the Planning Board has to determine that.

Acting Chairman Elms closed the public hearing at 7:26p.m.

Mr. England: It's very substantial.

Mr. Kubis: Seems very snug to the line.

Mr. England: It doesn't meet the criteria.

Mr. Elms: I don't see that either. Any further discussion or a motion?

Atty. Dilallo-Bitter: The applicant could also table.

Mr. Elms: Would you like to table to see if you can make some adjustments?

Mr. Marshall: Yes.

Mr. England: Move to table Appeal No. 751 at the applicant's request. Mr. Elms seconded. Roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Fitzsimmons, Yes; Mr. Elms, Yes. Motion passed unanimously.

The Board reviewed Appeal No. 752, a request of John and Sally McAllister of 363 Gansevoort Road, Moreau, NY 12828 for a Use Variance pursuant to Chapter 149, Article X, Section 149-59(A) and Town Law 267-b. Applicant is requesting a Use Variance which would allow them to maintain an agricultural use on the parcel. Specifically, the applicant would like to maintain chickens and turkeys on the property, which is currently not a permitted use in an R-2, One and Two Family Zoning District. The parcel is approximately 7 acres in size with a small portion of the property zoned R-5, Agricultural, One and Two Family Residential along Gansevoort Road and the majority of the property is located in an R-2, One and Two Family Zoning District. This property is located on the west side of Gansevoort Road, south of the Intersection of Route 197 and Gansevoort Road and is designated as 77.-1-28.1 on the Town Assessment Map.

Mr. McAllister was present at the meeting. He is a retired federal agent and he moved up here and was

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told the land was agricultural and he could sue them. Rules for chickens are under discussion. He wants 50 chickens, a dozen turkeys just for him, and a plastic rooster. He's not trying to start a farm except to sell eggs at the farmers' market in his retirement.

Atty. Dilallo-Bitter: The law change was tabled by the Town but will be looked at again Feb. 19.

Mr. McAllister: They want a set of rules for all the R Zones. I have a barn with a horse stall, the land used to be a tree farm, and the pen will be far back in the woods, with about a 1/4 acre free range pen space. That's all I am trying to do. I have to use a four wheeler to get back to it.

Elms: How much of the land is in the Ag Zone?

Mr. McAllister: Two in Ag and 5 in R.

Mr. Fitzsimmons: And you need a minimum of 5 to be Ag.

Mr. McAllister: I have had the land for sale since May so I can move to Mott Road where chickens are allowed. This is all I do, I am home for my son.

Dan Hutchins present with this wife Kelly. 369 Gansevoort Road in back and to the right of John. We've lived in Moreau our whole lives. We wanted to get out and buy land and get away from neighbors, have peace and quiet. It took us 4 years to find our 7 acres. That means that our newest neighbor John – he was told no months ago. Why are we here today? It's been residential for years. We have letters from others and others are here in both directions, opposed to this. He says he was lied to. He should have looked into it. He could have looked it up. Buyer beware. I am irritated that this is even being considered, had to lose a day's pay to be here and defend his way of living. One person shouldn't be able to change the rules for the whole area. Some of us have paid taxes for 50 years. I don't know if he wants 50 or 100 chickens, you make this change, you open the door for problems. If you change his property to Ag, what's to stop him from changing his mind and getting a horse for his son or his wife and doing whatever he wants? I am directly behind him. I don't want to listen to it, smell it, etc. Let him sell and go get what he wants somewhere else. If down the road I or any of us sell our house, how would this affect our property value and how long it takes to sell our house? We moved here to get space from neighbors. He can say what he wants about his intentions, but what's to stop him from adding pigs later? If it were the Board's neighbors would they want them next door?

Mr. McAllister: I don't want to see or smell animals either. You can stipulate in the Variance what I am allowed to have.

Mr. Hutchins. We have a small creek behind us that runs through both properties. He's to the left of his and my property. We own 90 ft. from the corner of my house, then he has some woods. It sounds like he wants to put the pen there. That's quite close to my house. Yes, I can see it and certainly I'll be able to hear it. We have bedrooms on that corner.

Kelly Hutchins: If you approve and he sells the people that move in can do whatever they want? Mr.

Elms: We can place limits but it's very hard to control.

The Board reviewed the criteria for granting a Use Variance:

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- (1) That the strict application of said use provisions of this chapter would result in a specified unnecessary hardship to the applicant which arises because of exceptional or extraordinary circumstances applying to the property and not applying generally to other properties in the same district or which results from a lot size or shape legally existing prior to the date of this chapter or topography or other circumstances over which the applicant has had no control.
- (2) That the property in question cannot yield a reasonable financial return if used for any permissible use, special permit use or site plan review use applicable to the zoning district in which the property is located.
- (3) That the variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same district possess without such a variance.
- (4) That the variance would not be materially detrimental to the purpose of this chapter or to property in the district in which the property is located or otherwise conflict with the description or purpose of the district or the objectives of any plan or policy of the town and that the variance requested is the minimum variance which would alleviate the specific unnecessary hardship found by the Zoning Board of Appeals to affect the applicant.

Mr. Elms: Use Variances are very difficult situations.

Atty. Dilallo-Bitter: It also states that the difficulty can't be self created or change the character of the neighborhood.

Milton Nevins. 375 Gansevoort Road. Did you say it can't change the character of the neighborhood?

Atty. Dilallo-Bitter read from the Code.

Mr. Hutchins: There's no hardship being proven here. Just like the prior case. Nobody's getting hurt if he can't have chickens. He just wants them. He can buy eggs at the store.

Mr. McAllister: The financial hardship is that I'm trying to sell my house and have gotten no offers.

Mr. Elms: But the house was sold without being Agricultural before. I'm not sure that falls into a hardship. There are some missing items in the application.

Atty. Dilallo-Bitter: Because this is a Use Variance and not a Special Use Permit, the standards are higher. You have to show us dollars and cents why you can't do other things with the land.

Mr. McAllister: Across the street you allowed a development in an AG zone. You are gonna have chickens in the Town soon anyway.

Mr. England: Isn't it a moot point because the Town is going to address it anytime anyway.

Mr. McAllister: It's going to be any property over 4 acres can have chickens. Can I table it then??

Mr. Elms: I think we could table it and see what the Town decides about chickens?

Mrs. Nevins: We have 2 lots. Our neighbor at 384, her kids wanted chickens as pets and we had no objections at the time. But they had bantams. Eventually they got rid of them. We don't ever want to have them again.

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Mr. Elms: I recommend you attend the Town Board meeting in the 19<sup>th</sup> of Feb., because they may change the law for the whole town.

Mrs. Nevins: We loved those kids but it came with noise, predators, feathers, etc.

Mr. McAllister: That side of the street is Ag anyway.

Mr. Elms: I think it's wise to table it.

Mr. Hutchins: Specziales want a handful in a Residential district. This is different. He wants to change the zoning to benefit himself. We don't want it.

Mr. Elms: His application wasn't complete and he should have the opportunity to complete it. It's not saying he'll get what he wants next time. We want to see the application complete. In light of the Town dealing with it, it may resolve itself anyway.

Mr. Kubis: It's logical to let it resolve itself.

Mrs. Hutchins: But you are still looking for a hardship?

Mr. Elms: We will.

Mr. Hutchins: Will it be the same Board next time, do we have to be here again?

Mr. Elms: We've taken note of your concerns, you will be re-notified.

Atty. Dilallo-Bitter: Since it's not a specific date requested, we will re-notify.

Mr. Kubis: There's not guarantee the Town will resolve their chicken debate at the Feb. meeting It could be ongoing.

Mr. Fitzsimmons: If you do make it back here, could you provide a plot plan?

Mr. McAllister: Yes.

Mr. Fitzsimmons: Show us how close you are going to get to his house.

Mr. Elms: That plot plan is very important to allow us to be fair. The more information we have the better.

Mr. McAllister: I am not trying to be a pest to my neighbors.

Mr. Elms closed the public hearing at 7:59p.m.

Motion to table Appeal No. 752, pending Town decision on chickens and completion of the appeal paperwork made by Mr. Fitzsimmons. Roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Fitzsimmons, Yes; Mr. Elms, Yes. Motion passed unanimously.

Mr. Elms mentioned to the neighbors present that the Town would appreciate input on the issue, so come to that meeting.

Mr. Elms motioned to adjourn the meeting at 8p.m. and Mr. Kubis seconded. All in favor.

Respectfully submitted,

Tricia S. Andrews