

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 27th day of May 2015 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Chairman Gerhard Endal

Kevin Elms

John England

Richard Kubis

Scott Fitzsimmons

ZONING BOARD MEMBERS ABSENT: None

Others Present: Brian C. Borie, Attorney for the Town; Tricia Andrews, Recording Secretary.

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

The Board reviewed the minutes of the January 28, 2015 meeting. Mr. Fitzsimmons motioned to approve the minutes as written and Mr. Elms seconded. Motion carried unanimously with the Chairman abstaining as he wasn't present at the January meeting.

Appeal No. 752

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 submitted site maps showing what he wants to do with the property, which is to keep chickens for eggs and some turkeys to sell for Thanksgiving. He wants to build a mobile henhouse, 50-60 chickens on sleds, using an existing logging road. The ground is wet and not useful for anything else, but is an atmosphere that chickens will like. He states that from 50 ft. into the tree line, you can't see the neighbors' houses, or see anything at 100 ft. Because he discovered this use not allowed, the house has been for sale for a year and he hasn't had any offers to make a return on his investment.

Mr. McAllister pointed out on the maps where his and the neighbors' houses were. He referred to a lady who didn't want the chickens to draw wildlife, who has herself got chickens and ducks, which are free range and on his property, as well as fish. He wants to move a couple miles down the road where he can have a farm.

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Chairman Endal: A Use Variance is very difficult. We are essentially changing the zoning when we allow those.

Mr. McAllister: No, it's just for me.

Chairman Endal: Actually, it stays with the property. We understand your situation, that you have 2 acres of Agricultural land, but it isn't useable for much else. It's an issue for the Town Board and not for us, we can't decide to change that Zoning, it's the Town Board's decision. You're here to appeal.

McAllister: How can I appeal when we haven't had a decision?

Chairman Endal: All you are doing is moving the line over 300 ft., but it isn't for us to do. I don't see what makes this different from the property next door or on either side that happens to straddle two districts, and in my book we shouldn't be changing that line, the law doesn't allow us to. The variance rules say it has to be unique, and it isn't.

Mr. McAllister: The property doesn't have to be unique, the situation has to be unique.

Chairman Endal: It's the same thing.

Mr. Elms: We do have a letter from before you bought the house, stating that it was agricultural.

Mr. McAllister: They lied to me.

Mr. Elms: That is a case of buyer beware. The Town Board makes the decisions on how Zoning is, we can't grant a Variance for such a situation.

Mr. England: If we pass it, anyone with 2 acres in an Agricultural Zone can have chickens, anyone residential can have chickens.

McAllister: Yes, they can!

Mr. England: They can have six! That's not what you are asking for!

Mr. Elms: So other people with the size property that you have can't do what you can and that wouldn't be right. I understand that someone sold you a bill of goods.

Mr. McAllister: What's the harm to move it 300 ft.?

Mr. England: There are criteria we have to go by.

Mr. McAllister: I have established all those.

Mr. England: I would disagree.

Mr. McAllister: I can request a Variance if I can't get a return on my investment, I can appeal.

Mr. England: We have to make a decision based on what's before us, if it doesn't go in your favor, you could speak to the Town Board about changing that, they have the ability to change it.

Mr. McAllister: You don't have that ability?

Mr. Elms: We have the ability to issue a Variance, which isn't the same.

Mr. McAllister: It's a swamp, you can't build in it.

Chairman Endal: It's a swamp on your land and your neighbors. If we change it for you, but they don't get their rights...

Mr. McAllister: If you deny me, I can go to the Town Board?

Chairman Endal: Yes.

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Mr. Elms: Not to speak for them, but I don't know many instances where that has happened.

Mr. McAllister: I understand that, I'd have to take them to court.

Chairman Endal reading from the January minutes, the Board reviewed the criteria for granting a Use Variance:

- (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. McAllister: I find it strange, that I can fire guns all day at the edge of my property because there are no houses within 500 ft., but can't keep 50 chickens?

Chairman Endal: All of these standards have to apply, whereas with other types of variances some conditions can apply and others not. This Board, a Board of Appeals, is governed by strict standards to protect everyone's property rights. You don't have a unique situation, so the Town has to deal with it.

Mr. McAllister: So if I can get them to change the Zoning 300 ft., you're ok with it.

Mr. Fitzsimmons: That wouldn't be up to us.

Mr. McAllister: So you're denying it.

Dan Hutchins, neighbor: I believe we thought you were going to be in charge of this, yes or no, so I am a little agreeing with John that I didn't know that it could go on to somebody else. I think he said that a neighbor wrote a note, who has chickens. The Purdy's have over 5 acres of Agricultural land, so they can have the chickens. I'm not saying I am happy that they are free range and in John's yard, but they are legal. John is irritated that he can't sell his house, I want to point out that it's 1843- 170+ years old, even before he moved in I helped the former neighbor pump out his cellar, he has hoses out all year round, 25-30ft. from main road where people do 55mph. Not a lot of people want to move young kids to a house

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that close to the road on 7 acres- it's not not selling just because he can't have chickens. Yes, he has a lot of wetlands, I have some, probably not as much as him. These are additional reasons. It's a non-issue.

Don't let them kid you. He shouldn't have listened to the salesman.

Mr. Elms: I know you both mentioned that you thought we are the end all. We are the Zoning Board of Appeals. You come to us with an issue with Zoning. We are saying he has the same options everyone else has, to go complain to the Town Board. He can take legal action and any member of the community can do so. We are to protect the property rights of every member of the Town, it isn't always easy.

Hutchins: I don't think any neighbor on any side wants this to happen.

Chairman Endal: There are times that in spite of what the neighbors say, we have to go with the law, and I think the law is clear there.

Atty. Borie: The Board's primary consideration is compliance with the Code. Public opinion can be considered, but meeting the standard set forth in the Code and statute is key. You have looked at those. I wanted to point out regarding the financial effects- you only have an opinion letter from your real estate agent, and we'd need to see a more dollars and cents breakdown from what you need to make a return, and what comparable properties are going for, etc.

Chairman Endal: Any other comments? Public Hearing closed. 7:21pm.

Mr. McAllister: If I go to the Town Board and ask for Change and they tell me to go back to you,

Chairman Endal: That's not what's going to happen.

Atty. Borie: Town Board makes the decisions as to what the zones are, if you are unhappy, you can go ask for a change. The Town Board will consider all the interests of the Town, they write the law and they interpret the law.

Mr. Hutchins: Will this meeting's notes and records go with it?

Chairman Endal: Yes. Close public hearing, 7:23pm. Did we do SEQR on this? Do we need to? I'd just as soon have a motion.

Mr. Elms: Motion that Appeal No. 752 for a Use Variance be denied due to lack of substantial evidence of uniqueness and lack of evidence for financial hardship.

Mr. England: Second.

Roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion passes unanimously and the Appeal No. 752 is denied.

Appeal No. 754

The Board reviewed Appeal No. 754, A request of Chris Hamelin of 191 Redmond Road, Gansevoort, NY 12831 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59(A) and Town Law 267-b. Applicant is proposing to construct a garage that will not meet the required side yard setback in an R-2, One and Two Family Residential District. This property is designated as 62-1-22 on the Town Assessment Map.

Mr. Hamelin: I am looking to add a 24 by 24 garage, side setback is the property line that splits our driveways, 15ft takes half my driveway up...(demonstrated on map). They live back behind me, the side

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setback is 15ft.

Chairman Endal: That's a very large variance.

Mr. England: That's 66%.

Mr. Elms: Is that line the eave of the roof? We have to measure to the roof line, not the side of the building.

Chairman Endal: What's the reason you can't build it on the other side?

Mr. Hamelin: Leach field.

Mr. Elms: Couldn't you set it back behind the house?

Mr. Hamelin: I want to tear down a shed and gain some grassy space.

Mr. England: Could you eliminate the breezeway? That would give you 50%.

Mr. Hamelin: If I had to do that to get approved, I would do that.

Mr. Fitzsimmons: And you are set on the 24ft?

Mr. Hamelin: Yes.

Chairman Endal: That's standard.

Mr. Hamelin: Roof overhangs about a foot.

Mr. England: You'd be at 55%.

Chairman Endal: Looking at your property, I understand- you can't put in a new leach field, that's not a good alternative- you could get behind the house, but you have another house back here, it's a unique property.

Mr. Hamelin: Would the neighbor's approval help?

Mr. Elms: It helps that they said that, it is in the record.

Chairman Endal: There's another driveway here. I think the Variance is A) the look of the neighborhood, it won't look bad. The other thing is fire safety, fire trucks passing, and that's not going to be an issue.

Mr. Elms: So if you move it over towards the house, if we gave him 7.5 ft relief he'd have 7.5 feet...I agree it's not going to impact the neighborhood or cause a safety hazard, he can probably still have a small connector.

Chairman Endal: Why is it not connected?

Mr. Elms: Roof lines, snow dump.

Mr. Hamelin: It's easier to build.

Mr. Elms: If we can do 7.5 ft, which is 50% which is a lot, it's a unique, I think you could squeeze 24 ft. in.

Mr. Kubis: You say it's 5, the map says it's 3. I don't want you to decide you need 8.5 ft...

Mr. Hamelin: It's 5 ft, did I write 3?

Mr. Elms: I don't want to put it right up to it.

Mr. Hamelin: What if I shift the roof around?

Mr. Elms: You could do that.

Chairman Endal: That's up to you. I have that setup and show comes off in front...

Mr. Hamelin: Good point.

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Chairman Endal: That's a practical consideration we can include in the findings. We don't usually give more than 50%.

Mr. Elms: I think 7.5 would give him what he needs.

Mr. England: That's cutting it real close then.

Mr. Elms: He's going to need a foot on each side for overhangs etc. So it's 26 ft, can you squeeze that in?

Mr. Hamelin: I'll have to do some measuring.

Mr. Kubis: You could check that, before we approve something.

Mr. Elms: I went to the property. It's unique. There's never going to be a house there. We've had the 50% rule but we've deviated from it. I think in the future we could justify it with the uniqueness of it. I don't want him to have to come back again, and the neighbors said that they don't care. I would consider 9.5ft., to give him some flexibility.

Mr. Fitzsimmons: I have taken a look at it as well and I agree with Kevin.

Chairman Endal: Close public hearing 7:37pm. We have changed the application to 9.5 ft relief to a side setback of 5.5ft.

SEQR Review. No objections were heard. Motion to make a negative declaration regarding the SEQR Review made by Kevin Elms and seconded by Mr. Kubis. Motion passed unanimously with no roll call.

Chairman closed the public hearing again at 7:42pm.

Motion to approve Appeal No. 754 for 9.5 ft relief from the 15ft. required side setback for 5.5ft. to the overhang of the garage roof, because the situation is unique with 2 driveways side by side and there will never be a house there, and it won't change the character of the neighborhood, was made by Kevin Elms and seconded by Mr. Fitzsimmons.

Roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion passes unanimously and the Appeal is granted.

Appeal No. 755

The Board reviewed Appeal No. 755, A request of St. Andrew Lutheran Church of 600 Gansevoort Road, South Glens Falls, NY 12803 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59(A) and Town Law 267-b. Applicant is proposing to construct an addition to the existing entryway that will not meet the front yard setback in an R-1, Single Family Zoning District. This property is designated as 50-1-9 on the Town Assessment Map.

Carole Glidden, Church Administrator appeared with the church property manager. The existing building entryway is very crowded and they want to widen it by 8 ft. It is already over the 80 ft. setback. She is not sure when it was built or when the 80 ft. setback was determined, but an architect did drawings when they were going to build a new church. They bought the church from the Episcopalians.

Mr. Elms: It was built in the 50's before Zoning.

Chairman Endal: We look at these looking for alternatives. This is the sanctuary?

Ms. Glidden: This is the sanctuary, this is where we come in, this is a handicap...we come straight in this

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way and we have stairs going down, a bathroom and a closet, we have people with walkers, canes, wheelchairs, it gets a little close.

Mr. Elms: What you are proposing is?

Ms. Glidden: Going out 8 ft towards Route 32, not the whole building, just the narthex. We have some computer generated images.

Mr. Elms: What will be the distance from the addition to the road?

Ms. Glidden: We are currently about 6 ft over.

Mr. Elms: And you want to add 8 ft. so that's 14ft.

Chairman Endal: So 14ft. out of 80 ft. Are you looking for a gathering place?

Ms. Glidden: Well we go downstairs, but we are looking for space to move.

Chairman Endal: I don't see where else it could go. My feeling is it's reasonable to put it there and not someplace else.

Atty. Borie: Have you addressed character of the neighborhood?

Chairman Endal: It's residential.

Mr. Elms: Most of the houses aren't 80ft. back, by a stretch, so you wouldn't notice this as you drive by.

Chairman Endal: So there's no other method and it's not substantial by our standards, and it doesn't have an adverse affect or impact and it's not self-created as the church pre-dates the Code and they just want to have reasonable fellowship space.

Public Hearing closed at 7:52pm and the Board proceeded to SEQR Review. Short EAF was included in the packet. Reviewed with no comments or objections heard.

Motion to make a negative declaration on SEQR was made by Mr. Elms and seconded by Mr. Kubis. All in favor, no roll call vote.

Mr. Elms: What's crucial here is that we make the right relief. 6 ft. was already existing, so we really have to give them relief for 14 ft.

Chairman Endal: Do we have to go to the County Planning Board because it's within 500 ft. of a County road- unless we are unanimous, a supermajority?

Atty. Borie: You could condition it on approval by the County, that should go smoothly.

Mr. England: Since it's 14ft., do we have to consider that original 6 ft. over?

Mr. Elms: If it was pre-existing.

Atty. Borie: You might as well cover it, we don't know all the history, it appears it was pre-zoning but we don't know, so let's cover them for the future. It's still not a large Variance, 14ft. out of 80 ft.

Chairman Endal: Motion to Approve Appeal No. 755 to grant 14ft. relief from 80 ft. setback requirement, given review of all the requirements for an Area Variance and conditional on approval by Saratoga County. Seconded by Mr. Elms. Roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion passes unanimously and the Appeal is granted.

The Chairman adjourned the meeting at 7:59 p.m.

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Respectfully submitted,

Tricia S. Andrews