

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 April, 2016 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Gerhard Endal, Chair

Kevin Elms

John England

Richard Kubis

Scott Fitzsimmons

ZONING BOARD MEMBERS ABSENT: None

Also Present: Atty. Malcolm O'Hara, Attorney for the Town; Tricia Andrews, Recording Secretary.

Chairman Endal called the meeting to order at 7:10 p.m. February and March minutes were reviewed. Motion to approve the February minutes was made by Mr. Elms, seconded by Mr. Fitzsimmons and passed unanimously by roll call vote with Mr. Endal and Mr. England abstaining as they had not been present. Motion to approve the March minutes was made by Mr. Elms and seconded by Mr. England. Motion passed unanimously by roll call vote with Mr. Endal, Mr. Kubis, and Mr. Fitzsimmons abstaining as they had not been present.

New Business

Appeal No. 767

A request of Moreau EMS of 1583 Route 9, Moreau, New York 12828 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59(A) and Town Law 267-b. Applicant is requesting to construct an addition to their existing Medical Services Offices and Training Facility. The addition will not meet the required front yard setback in a C-1, General Commercial District. The property is designated as 63.2-1-36 on the Town Assessment Map.

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 April, 2016 at 7:00 PM.

Ethan Hall of Rucinsky-Hall Architecture presenting this Appeal. He pointed out that it is 1583 Route 9 and not 1538. An existing bump-out to front of the radio room is already non-conforming, and Mr. Hall doesn't know if there was a Variance at the time it went in. They currently have an engineered metal building, which can't support an upper floor expansion. They settled on this plan which is to expand to the North, so they purchased and destroyed a house next door. A stand-alone building will be built and then connected, which allows them to stay in operation the whole time, moving into the new building and then doing some demolition and changes in the old building to make it all apparatus bays. The new portion will have an expanded training room, bigger kitchen, more offices, an additional Board room, computer labs, storage, and a bunkroom upstairs. They will convert some space to day room. They lined up the backs of the two buildings and this brings the new front even closer to the front line: to 42'4" and the setback is 50'. That 42'4" is to the roof line and nothing sticks out further. There have been some talks with Cerrone, next door, so that they can use the driveway on that side as an exit-only.

Chairman Endal asked why they can't push back instead and Mr. Hall explained that it makes the space so small they can't get any parking out back, as it is already tight there. The project meets all other (side and rear) setbacks, lot coverage proportion is good, and they are working with National Grid to get parking out back, but it is not on paper as yet. Mr. Elms: How much expansion, does it create a parking problem? You are using that bigger training room with more people- are you having parties and dinners there?

Mr. Hall: General public can't rent it out, some members do for that kind of use, but it is really meant for training, CPR, Heart Association, etc. 63 spaces required, and have 55, that's why we are talking to National Grid to use space in the back.

Mr. Elms: You said the driveway on North is exit only?

Mr. Hall: It's both directions for Cerrone, but it will be only out for our people.

Chairman Endal: You said about the total spaces required- how did you get 63?

Mr. Hall: Based on assembly space it required 1 per 5 people, and we have space for 247 people. Office is one space per 300 ft gross, that adds 6. One per sleeping room, so that requires 8. The calculations are on one of the plans. We don't ever see it getting 247 people on it. When I asked Ben about it, he said I didn't need a Variance. It's not a

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 April, 2016 at 7:00 PM.

realistic number.

The Chairman asked for comments from the public and there were none. No correspondence was received.

Reed Antis, Planning Board Member in the audience: Do they have an easement with Cerrone?

Mr. Hall: We will by the time we get back to the Planning Board.

Chairman Endal: You are getting site plan for that?

Mr. Hall: Yes.

Chairman Endal: And parking is more for that.

Mr. Antis: Don't you need a parking variance?

Atty. O'Hara: Ben (Marcantonio) didn't require them to get a variance for that.

Chairman Endal: Because you aggregate all the uses.

Mr. Hall: The largest use requires 49, so the same people sleeping and using offices are the people in the meeting room, so we could combine them.

Mr. Elms: We have had Variances before where we let them reduce parking and it's not working. I would have felt more comfortable if you already had that use in writing from National Grid.

Mr. Hall: National Grid just takes some time, we will have to get that to get through Site Plan review and we know that.

Chairman Endal: What is in front?

Mr. Hall: Septic. And we want to keep it out front in case we ever get municipal septic.

Chairman Endal: Do we need to do SEQR on this?

Atty. O'Hara: It's in the packet.

Chairman Endal: We need a County opinion on this?

Mr. Hall: Planning will need it.

Chairman Endal: On a simple Area Variance we don't necessarily need one.

Atty. O'Hara: They will do it at Site Plan.

Mr. Hall: Only thing on SEQR is that whether we are near an environmental hazard, and there are a couple monitoring wells on a building that used to be across the street, so that's what, I think, refers to.

Mr. Elms: It was Abilene Pest Control.

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 April, 2016 at 7:00 PM.

Mr. Hall: That is filled in for me, so I think that's what it refers to.

The Board members reviewed SEQR documents but did not declare Lead Agency as the Planning Board will address it further.

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

- (1)** That the strict application of dimensional requirements would result in a specified practical difficulty to the applicant;
- (2)** That the difficulty cannot be alleviated by some practical method feasible for the applicant to pursue;
- (3)** That the variance is not substantial;
- (4)** That there would not be substantial change in the character of the neighborhood or a detriment to the adjoining properties; and
- (5)** That the alleged difficulty is not self-created.

The public hearing was closed at 7:32pm. Motion was made by Mr. Elms to grant 7'8" relief from required front yard setback of 50 ft. Motion was seconded by Mr. Kubis. Roll Call vote resulted as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion Carries 5-0.

Appeal No. 768

Gardner Congdon, Individually and as Supervisor of the Town of Moreau has filed a Notice of Appeal from the Town of Moreau Zoning Administrator's decision determining that the use of the propeerty located at 1323-1325 Route 9, Moreau, NY 12828 as a propane distribution facility was a permitted use within the Town of Moreau Zoning Regulations ad Town of Moreau Zoning Regulations and comprehensive land use plan.

Chairman Endal explained that there is a similar appeal filed by English Village Apartments and that the Board might like to hear or discuss those two appeals together. Our attorney has some thoughts on that.

Atty. O'Hara: As you know I can't represent the Board in accordance with the second agenda item. I am conflicted out because my firm represents the Town.

Chairman Endal: I attended a Town Board meeting last night to ask if they were aware that we need counsel, we've received a lot of paperwork just in the last week on it and don't know, is the Board looking to get counsel?

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 April, 2016 at 7:00 PM.

Mr. Kubis: There's enough legal questions to it that it would be inappropriate to go forward without some form of counsel.

Chairman Endal: We would need to table this because we don't have counsel. The Town Board wasn't too excited to pay for that.

English Village resident Robert Brown said that he has lived there for 17 years, and it's a bad corner, lots of accidents and lots of kids. What happens if someone runs into that? There's no other exit out of there.

Chairman Endal: I hear what you are saying and there's a lot of issues there. We just got this, and we need counsel and this is complicated for us. That's a real concern. We do want to hear it.

Mr. Brown asked if he could file any paperwork to make his concerns known. Chairman Endal advised him to write his thoughts down and send it in a letter to Ben Marcantonio or the Supervisor's office.

Mr. Congdon's lawyer, Mike O'Connor, stated that the people from English Village are raising the same issues, and this is not an action against this Board. This Board hasn't taken a position. It's just an Appeal of a Code Enforcement decision. He would not have an objection if the Board adjourned Mr. Congdon's Appeal and went forward with English Village's because Atty. O'Hara doesn't have a conflict with them. His associate was going to speak to English Village as to whether they want to go forward. I would also like there to be a stand-still agreement that the people who are subject to the Appeal not take further action. I want that on the record. We filed on a timely basis and are prepared to argue and don't want to be prejudiced because you want to go get a lawyer.

Chairman Endal: There's also a question about English Village being timely, we just got it.

Atty. O'Connor: As to being on the agenda, not as to the statute for filing an Appeal.

Mr. Elms: We need time to look at that and not make a snap decision.

Atty. O'Connor: We have more reading for you.

Michael Naughton, Atty. For Blue Flame: Your instincts are correct, to take them both together, and you don't want to sit through it twice. You can see from our papers there are legal issues that need to be decided, it's something you will need counsel on, and I

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 April, 2016 at 7:00 PM.

don't think that Atty. O'Hara can weigh in on that. Blue Flame can't agree to any kind of standstill during the proceedings. We have no objection to holding it over so that the Board is comfortable.

Chairman Endal: My question is what you are saying, Mr. O'Connor, in terms of Gardner's appeal.

Atty. O'Connor: I suggest you table this and go ahead with the other, that may determine what happens.

Chairman Endal: I don't feel adequately prepared. We were handed information today. Tom Shephardson, Attorney for English Village stated that they are prepared to go ahead, but are amenable to tabling. They are asking for copies of anything Blue Flame has provided to the Board and not to them. They think it would be appropriate for the Board to stay or direct Building Inspector not to act on a building permit application, and Blue Flame doesn't have to agree to that, for the Board to do it.

BF: We have provided everything to both parties' counsel. With respect to stay, it's a jurisdictional case, there's a threshold issue whether this Board has jurisdiction to issue any directives like that.

Chairman Endal: When there's an Appeal of a determination, it stops work.

Atty. Naughton: It stops proceedings, but there are no Appeals being decided now, no proceedings except this one.

Mr. Elms: I don't feel comfortable having this discussion with all these lawyers and no lawyer ourselves.

Mr. Shephardson: This will be devastating to our community, health, safety, etc. There are 111 people living there presently and 40 additional acres backing up to this where we could potentially build. What are the evacuation and safety plans? This will be the first thing people see when they drive up. People won't even come to the rental office.

People won't want to live there. I don't know the legalese of what has to be done from here, but we will be at the next hearing. If they are granted approval by Code Enforcement, they could start construction of this.

Mr. Congdon: I couldn't hear Malcolm, were you asked if my counsel agreed to put off that, could you hear it and act as counsel for it?

Atty. O'Hara: I can act as Counsel on the English Village Appeal, but the Board doesn't

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 April, 2016 at 7:00 PM.

want to go forward with that, I just got it today, they are not comfortable, I am not comfortable.

Mr. Congdon: The statute doesn't allow a lot of time, but we did file in the appropriate time period. (To Chairman Endal) Didn't you agree that the hearing could take place? You said you didn't have to make a decision, and I agreed to provide counsel through the Town. I'm upset you couldn't decide you needed counsel, and get some. I want to express my dismay, all these professionals here who followed the law, and you waste their time and money tabling it and making them come back.

Mr. Elms: I was at Town Board and we told you we would need outside Counsel. You could have had it hired for us, as Supervisor. You have to approve the expenditure.

Mr. Congdon: I can't hire your lawyer for you!

Chairman Endal: It wasn't approved. Yes, it takes time and people have to come and come back. In order to do it properly, we need to take our time to do so.

Atty. O'Connor: It's unusual to have three opposing attorneys all agree.

Chairman Endal: We don't meet outside of this meeting, so there was really no other way to handle this. I would ask the Board for a motion to table.

Motion to table Appeals No. 768 & 770 while the Board pursues funding for and hiring of appropriate counsel was made by Mr. Elms. Chairman Endal asked Atty. O'Hara who hires the attorney in this case and Atty. O'Hara offered to make a list for the Board to select from. Mr. Elms suggested that the Chair would have to call the Board members to review the list and get opinions. Mr. Kubis seconded the motion.

Roll Call vote resulted as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carried 5-0. Appeals 768 and 770 are tabled to the May 25th meeting.

Appeal No. 769

Appeal of Determination for the application from Maurice Combs of 96 Van Dusen Street, Queensbury, NY 12804. Applicant is proposing to expand an existing Manufactured Home Park with an additional four (4) Manufactured Homes in a C-1, General Commercial District. This property is located at 2-14 Fawn Road and 16-18 Fawn Road and is designated as 77.1-1-13 and 77.1-1-28 on the Town Assessment Map.

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 April, 2016 at 7:00 PM.

Wants to move three homes and add four.

Mr. Combs owns the land that some of the Manufactured Home Park is on, but there is a portion he leases. He would like to move some trailers around on the property to generally improve it. The Board asked Mr. Combs to please come forward and demonstrate on the map what he is moving and what is already there.

Mr. O'Hara explained how to add up the moves.

Chairman Endal: The dark lines are your property? These are not?

Mr. Combs: Yes, but I used to lease it and then when he died he gave it to someone else, and we found out some were over the property line.

Mr. Elms: So you are moving two homes from property that is not yours.

Mr. Combs: But I leased it for 30 years. It was all Bob Russo's. I leased it from Liz Osborne after.

Chairman Endal: So you had operated the mobile home park in this time.

Mr. Combs: Yes.

Mr. Kubis recused himself as this is his neighborhood.

Neighbors present, the Mike Green and Debbie Smith wanted to talk about the condition of the park in general.

Mr. Combs said that Mr. Marcantonio had told Mr. Combs to come here because it's Zoned Mobile Home Park.

Chairman Endal: It's Zoned Commercial, but I think it's grandfathered. You can only expand once and you can only expand 50% of the use. You own a property with 5, you can expand by 2, that's my understanding of 50%.

Mr. Combs: We've had 7 there for 40 some years.

Atty. O'Hara: You can still lease the lot and leave them there, but they are not counted as the ones that are on your property for the 50% allowed in the Code.

Mr. Elms: You can have 2.

Mr. Combs: We've always had 7.

Mr. Elms: But 2 are taken out. As soon as that went out of his name into someone else's, it can't be counted with the rest.

Mr. England: You may own the trailers but you can't own the property.

Mr. Combs: I just want to make it better.

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 April, 2016 at 7:00 PM.

Mr. Elms: We are limited what you can do.

Chairman Endal: When we change a determination from the Building Inspector, we have to do it according to the law.

Mr. Combs: Well he told me to come here because he wasn't sure how to handle it.

Mr. Elms: You can do something, but not what you are proposing.

Atty. O'Hara: You can move the one that's on your property, and you can add two.

Chairman Endal: And you can try to buy that property.

Mr. Elms: Would you agree to us tabling it while you decide what you want to do?

Mr. Combs: Yes.

Chairman Endal: That's a Code we can't overrule.

Mr. Combs: But it's grandfathered.

Chairman Endal: That allows the increase, but once.

Mr. Elms: Motion to table, and the Applicant will come back with a reconfigured application.

Mr. Fitzsimmons seconded.

Chairman Endal: Talk to Ben and see if you even need a Variance to do that.

Atty. O'Hara: It might come under a Special Use permit, he may have to re-file.

Roll Call vote resulted as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carries 5-0.

Neighbors asked for more information and were told that the revised plan will still have to go through administrative review and make sure things are proper distances, etc.

Atty. O'Hara said because it's a non-conforming use, there are no rules. The Planning Board might put some on. Mrs. Smith asked how they will know more and was advised to come on May 25th and see whether Mr. Combs comes for Special Permit. A new Appeal would be re-notified but a hearing on the present one would not.

The Chairman informed the Board members that on May 12th at 6:30pm, the Town Board has invited Zoning and Planning Boards to attend a workshop.

Mr. Elms motioned to adjourn the meeting at 8:21 p.m., Mr. Kubis seconded and the motion passed unanimously.

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 April, 2016 at 7:00 PM.

Respectfully submitted,

Tricia S. Andrews