

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 19th day of December, 2018 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Gerhard Endal, Chair  
John England  
Kevin Elms  
Scott Fitzsimmons  
Matthew Manning

Also present: Karla Buettner, Attorney for the Town; Jim Martin, Zoning Administrator; Tricia Andrews, Recording Secretary

Chairman Endal called the meeting to order at 7:00 pm. The Board reviewed the minutes of the November 18, 2018 meeting. On p. 2696 the “and m” was removed near the bottom. Reference to a prior decision on the same page said the Board discussed ‘whether; instead of ‘that.’ Mr. Elms motioned to accept the minutes with those corrections and Mr. Manning seconded. All in favor, motion carried with no roll call.

The Board reviewed

**Appeal No. 794**

A request of Janet Shaw 55 Palmer Ridge 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 subdivide an 9.46 acre parcel into two lots. One of these lots will not meet the required 5 acre minimum in an R-5, One and Two Family, Agricultural Zoning District. This parcel is designated as 90-1-55 on the Town Assessment Map.

This is a rehearing of an Appeal that was denied more than a year ago.

The attorney for Mr. Shaw, David Klingbiel declined to repeat his arguments unless the Board had specific questions. Chairman Endal stated for the record that the Board had already decided that it could and would rehear this Appeal, and asked Atty. Buettner if she had recommendations. Atty. Buettner stated that they should look at it as if it is brand new, and therefore, have a full record of the arguments.

Atty. Klingbiel stated that the proposal is to subdivide 55 Palmer Ridge Road into two, creating a non-conforming lot where the house currently is, and a conforming 5 acre lot that includes the pole barn. A strict application of the 5 acre minimum lot size is impossible, and the lot was purchased in 1946, before the subdivision regulations existed, and this is only .54 acres variance. Many properties in the area are well below the 5-acre lot size, and so this one will fit in with the character of the neighborhood. It isn't practical to retrofit the existing house and it will impact resale value. This is more practical. Atty.

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Klingbiel read some of the neighboring lots' sizes into the record to show that there are many under the 5 acre lot size. This one will have separate access points off of different roads, and this is a residential agricultural area. Mr. Shaw could use the property agriculturally, such as raising pigs, and Atty. Klingbiel imagines the neighbors wouldn't like that idea much better than they like this one. Those are his responses to the five criteria.

Mr. Martin had provided his staff notes. Nothing has changed since the original application. It is 11% relief, and he would like the Board to bear in mind that this would create an accessory use with no primary use, so that creation of a primary use needs to be a condition of approval, to avoid creating a non-conforming situation.

Atty. Klingbiel said that the applicant was comfortable with adding a time frame to commence or complete the single family home he intends to build.

Mr. Elms asked whether the applicant was willing to split the two lots 50/50, and Atty. Klingbiel said they would do whatever the Board wanted, they had been trying to avoid creating two non-conforming lots. If they did that, Mr. Elms said, the relief would be less on each.

Chairman Endal opened the public hearing at 7:13pm and Bill Lennox of 47 Palmer Ridge Road stated that the back of his house looks down over this property, that used to be a wooded wetland and is now a clear-cut area with a road built back from Fortsville Road. Construction vehicles used it. The lot has totally changed, and a structure had already appeared on it. He believes it is not a pole barn and he wants to know if the Board members have seen it. They have all driven by.

Mr. Lennox feels that how that went up is the crux of the matter. Mr. Shaw took advantage of the Town not having a building inspector for a period of time. The last nail in the coffin was his sign asking for scrap metal, which he was asked to take down, but it wasn't neighborly of him to do that. They wonder what he will do next. Mr. Lennox doesn't understand why the exact same thing can be seen again, and suggest that rule needs to be changed. Mr. Lennox thinks the Board should take into account the character of the applicant, who doesn't play by the rules and isn't a good neighbor.

Chairman Endal agreed that he understands the frustration, and that the Board feels that too. The pole barn has been looked at by the Town, and there were past violations, Mr. Martin agreed. It has been documented that the building inspector did look at the building permit and appropriate inspections of the septic system were done. There are other barns in town with a bathroom and heated spaces inside.

Chairman Endal pointed out that those are not issues before the Zoning Board. Their function is to protect the rights of property owners when the Zoning is unreasonably restrictive.

Atty. Kapra representing Elizabeth Mark, across the road, submitted a letter from last month and would like it as part of the record this time. The application does not meet the criteria, as was discussed in the letter. There are a lot of potential adverse impacts with septic issues, the ability of the property to sustain

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another septic system, and creating a non-conformity is detrimental. Also it creates an accessory use on a lot with no principal use. How will they enforce that the Applicant build the house? It prohibits further use and development of the lot with the house on it.

The purpose of the district is agricultural and residential is just an allowed use. There are alternatives to this.

The Board is supposed to look at the property, not the personal circumstances of the owner. There is no proof of any practical difficulty. This will create a Code violation on the lot width because they are supposed to have 250 feet width at the 40 ft setback, the building setback line. The Town has interpreted that to mean it has to be measured at the building line, but Atty. Kapra doesn't read the Code that way. It will adversely affect the use of the neighboring properties. The use should be limited to single family house, if it is approved over these objections, and that any new house should go to the Planning Board for Site Plan review because of the wetlands, that is a condition the Board should add.

This is all in the letter dated Nov 27<sup>th</sup> from Atty. Claudia Braymer.

Chairman Endal asked Mr. Martin about the wetland issues and whether that is covered by the building permit. That is a DEC wetland, and if they are going to disturb within the boundary or buffer (100ft), a DEC permit would be required before a building permit would be given. That doesn't normally require Planning Board involvement, but if the Board wants to consider it to mitigate this issue, they could.

Chairman Endal thought that there are a lot of wetlands in the Town and it isn't practical to send everyone to Planning when they want to develop near them.

Chairman Endal asked about the building lot line issue and Mr. Martin explained that was an Interpretation by the ZBA in the past, before he came. It wasn't determined by an Administrator.

Chairman Endal remembered the discussion and said that it was necessary because there are so many odd-shaped lots in the Town.

The public hearing was closed at 7:29. SEQR is not necessary, and the County Planning Board had no comment on the Appeal in the past.

Motion was made by Mr. Elms to approve Appeal No. 794 with the stipulation that the two lots be equal sizes for 5.6% relief on each lot. There would have to be a single family home constructed within one year, with a C.O. issued, or the property would revert back to a single lot.

Under discussion, Atty. Klingbiel pointed out that it is December and they won't be able to break ground for three months.

Atty. Klingbiel asked whether the Board would be flexible if there were an act of God preventing them from finishing the lot, especially if the house is partially built. Mr. Martin suggested that if a problem arose Mr. Shaw should come back to the Board before he was in violation. Atty. Klingbiel said Mr. Shaw would be comfortable as long as it was in the record that relief would be available if needed.

Chairman Endal asked where the lot would be divided. Mr. Elms said it is almost a straight line and it

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could be shifted simply enough. Mr. Martin explained that the mylars would be reviewed when brought into the office and it would be up to them to make sure it was compliant and stamped by a surveyor. When that is filed with the County, the subdivision is complete. Atty. Klingbiel stated it would move east, and not very much.

Mr. England asked whether they could do that in a reasonable amount of time, and Mr. Elms felt that it would be done on paper in the winter.

Chairman Endal seconded the motion.

The Board reviewed the Area Variance requirements in Section 149-59.

(1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; they found that it would not

(2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; they found that it could not

(3) whether the requested area variance is substantial; they found that it is not

(4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; they found that it would not and

(5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance, they found that it was not

Roll call vote proceeded as follows: Mr. Manning, Yes; Mr. Fitzsimmons, Yes; Mr. Elms, Yes; Mr. England, Yes; Chairman Endal, Yes. Motion carries 5-0.

James Aiken was before the Board and Mr. Martin read from the Code 149-5 farming, and about kennels. He further looked at the definition of agriculture and feels it folds in the other one.

If farms include kennels and agricultural districts allow farms, Mr. Aiken should be allowed to operate a kennel in an Ag district.

Kennels are allowed to groom as an incidental use. Mr. England compared it to sheering sheep on a sheep farm. Atty. Buettner stated strongly that the Board is not allowed to give opinions on an application that is not actually before it. They are not making a determination today on this issue. Mr. Martin's determination is the rule in the situation.

Mr. Aiken asked what kind of application she was talking about, and Mr. Martin explained that if the Aiken's build or buy in R3, R4, R5, they don't need a permit or application to have a kennel. He has to comply with all the rules for agricultural uses, lot size, setbacks etc. Grooming without a kennel is not

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allowed.

Motion to adjourn was made at 7:49 pm by Chairman Endal and seconded by Mr. Fitzsimmons. All in favor, motion carried.

Respectfully submitted,

Tricia S. Andrews