

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 25th day of September, 2019 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Gerhard Endal, Chair  
Kevin Elms  
Scott Fitzsimmons  
Matthew Manning

Also present: Jim Martin, Zoning Administrator; Tricia Andrews, Recording Secretary  
Board Members absent:

Chairman Endal called the meeting to order at 7:01 pm. The Board did not have the July minutes for review.

Appeal No. **APPEAL NO. 819**

A request of David Dunn of 39 Oakview Drive, Moreau, NY 12828 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59A. Applicant is requesting to the Board to allow a shed that was built in 2004, that did not meet the side yard setback, to remain there. This property is located in an R-2 Zoning District and is designated as 77.7-2-27 on the Town Assessment Map.

Mr. Dunn appeared and explained that he moved in a year ago yesterday. Three or four days later he was told that the shed was put there illegally. Nothing turned up in the title search about it. The building inspector/zoning administrator got involved. The shed has been there for fifteen years, and it is built right into the blacktop. It is at an angle to the lot line and is 85 feet away from the neighbor's home.

Mr. Martin had provided the email exchanges between Matt Dreimiller and the neighbor.

Mr. Dunn stated that a number of homes in the neighborhood have sheds/outbuildings, it is not uncommon.

Mr. Martin explained that it is a violation of a side yard setback, for which the requirement is 15ft., the shed is 5.5 feet from the line, so it is 9.5 ft relief, which is 63%.

Chairman Endal explained that Area Variances are usually not hard to obtain. The Board tries to be accommodating.

Russ DeSantis, 41 Oakview Drive, stated that the shed is only 1 ft off the line, and was built without a permit by and off duty building inspector, Jim Greenwood. He objected on the day it was built without a building permit. He complained to the Town Supervisor at the time and neither building inspector would admit to building it. He considers the shed an ugly eyesore, 1 foot off his property line. Mr. Greenwood was later fired. There have been problems with enforcement in the Town. Mr. O'Leary had connections.

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So there is a problem. A few years ago the neighbor at #45 had to move his because it was too close to #43, and it was stated that Mr. Dunn was going to move the illegal shed soon, but he has delayed. So here we are. Why do we have a building department if they are not enforcing multiple violations around the Town.

Chairman Endal asked for clarification on how far the shed is from the line.

Mr. Dunn stated that he had used the property markers and had gotten the map from the Town, as well as a copy of the building permit from 2004. Mr. Desantis stated that it was a forgery.

Chairman Endal stated that he didn't believe Mr. Greenwood was fired and the Board agreed. Mr. DeSantis was told he was let go.

Mr. Martin agreed that he understands there was no permit.

Mr. Dreimiller had said that a CC was issued.

Mr. Elms stated that under 100 sq ft there is no permit required. That would explain the lack of a permit.

Chairman Endal stated that they would review it in terms of the usual criteria.

Undersirable change/detriment. Chairman Endal stated that there were a number of pictures provided of other sheds in the neighborhood, even sheds that are close to the property line. Mr. DeSantis correspondence says the same thing. Mr. Desantis argued that two wrongs don't make a right. Chairman Endal stated that he is just talking about fitting in with the character of the neighborhood.

Regarding whether the benefit sought may be realized by some other means feasible to the applicant, Mr. Dunn was asked and he has no idea how the shed is built. The driveway would have to be cut up to move it up. Mr. Elms asked if there were someplace else he could put it, and he knows that they can be moved. The cost is not horrendous.

Mr. Dunn stated that it is a big cost and it's been there 15 years, why is the issue being pressed now?

Mr. Elms explained that they have to explore alternatives.

Mr. Dunn explained again that there was no way for him to have known about this they had a title search done.

Mr. Desantis stated it was stick built, and Mr. Elms thought it was not moveable like the prebuilt ones. It is also quite large, 10 x 14.

Mr. Elms asked Mr. Martin how they would verify the property line.

Mr. Dunn said that the post is quite obvious and he measured to the corner of the electrical box.

Mr. Martin said that is a practical approach but if it is this important to these neighbors, they should have it properly surveyed and make sure they both agree that it's correct.

Mr. DeSantis said he didn't know which corner of the electric box they were supposed to use, but they are all right on the property line.

Mr. Martin said that this line is long and a pin that is off by a few inches will really affect the angle so it should be confirmed.

Mr. Dunn asked what weight there is to the building permit and that a CC was issued.

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Mr. Elms said that he would have liked to see those things.

Chairman Endal said that there are a few facts that aren't agreed upon here. Mr. Martin said in that case since this is important they should get all that tied down,

Mr. Elms said they can't give relief on a line they can't find.

Mr. Elms asked whether a motion to table was appropriate, while the get the surveyor to check for the line.

Mr. Martin recommended that the surveyor report where the shed is and what the Variance truly is. Mr. Elms explained that to do this all correctly they need all the information, and Mr. Martin said it has waited 15 years so another 30 days can't make a much difference.

Mr. Dunn was agreeable to tabling.

Mr. Elms motioned to table this Appeal while the applicant gets a survey and Mr. Martin looks for the building permit and certificate of completion. Mr. Fitzsimmons seconded.

Roll call vote proceeded as follows: Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Mr. Manning, Yes; Chairman Endal, Yes.

The public was informed that they won't get a letter again so they should expect to come on the 23<sup>rd</sup> of October.

Mr. Martin told Mr. Dunn that he has a list of local surveyors he can give him.

### **APPEAL NO. 820**

A request of Tonya Barrows and Brittany Catlin of 366 Reynolds Rd, Moreau, NY 12828 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59A. Applicants are requesting to construct a pole barn that will not meet the required side yard setback. This property is located in an R-2 Zoning District and is designated as 63.4-2-9 on the Town Assessment Map.

Mr. Elms disclosed that his company has rented this house, so he is familiar with it as he has taken care of maintenance for it in the past. It has an overbuilt septic system and a large deck.

Mr. Martin stated that there has been no correspondence.

The relief is 11 ft on the side yard, 73% and on the rear 25 ft relief or 83%. Missing from his staff notes was the location of the setback.

The property has no garage and they want to put up a pole barn where the pavement ends. They are constrained by the septic and need to keep space to turn around so they don't have to back into traffic. The septic tank is between the deck and the driveway and the leech field is behind it.

It will be a pole barn not a garage, but they also want a place to protect the lawnmower, kayaks etc. That is why the building is so deep. They want to put two cars in end to end, as there will be four adults in the household with vehicles soon.

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Mr. Martin pointed out that there is County forest land behind the rear setback. The applicants didn't realize the septic was so large when they bought it.

The building will have eaves.

Mr. Martin said that they want a 6 ft setback which is 9 ft relief, 60%- his previous calculations were wrong.

Rear is 30 ft required, they proposed 10. That is 66% relief. The rear setback is the Code is exceptionally large are 30 ft.

The applicant had provided photos of the side yard which is slanted.

Chairman Endal explained that this is a substantial variance. This is a pre-existing, non-conforming exceptionally small lot. Mr. Elms stated that they have applied pre-existing setbacks in cases like that, which would be only a 10 ft requirement.

Mr. Martin thought it was acceptable to include that reasoning. He also stated that the ten foot setback has been applied to sheds.

Mr. Martin said that these rear setbacks are subject to change in the upcoming code revisions because they are extreme. With a 40 ft setback on the front and 30 in the rear, and 15 on the sides, that leaves a very small envelope on a small lot.

Chairman Endal reviewed the criteria. The requested variance is substantial. It is an undersized lot. Character of the neighborhood. No correspondence was received.

Other method: discussed. There are constraints and safety concerns with backing out of the driveway.

Adverse affect or impact. The County forest in the back mitigates the impact of being close to the line.

Self-created these are pre-existing conditions and all they did was have four vehicles.

Mr. Martin stated that this is not subject to SEQ. R.

Mr. Manning expressed concern that they usually try to keep 15 feet rather than ten and could it be moved forward. The applicant said it was a tight turn now.

Some discussion was had about whether the measurements were to the wall or the eave, as the builder wasn't present.

Mr. Manning motioned that in light of the fact that this is a pre-existing non-conforming lot, to grant Appeal No. 820 for 5 ft side ten foot rear setback. Second Mr. Elms.

Roll call vote proceeded as follows: Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Mr. Manning, Yes; Chairman Endal, Yes.

Appeal 821 was withdrawn.

Eleanor Stein 210 Washburn Road came to express concern about a Brewery/Bar Project on Old West Road has been proposed, and to which she is opposed. She feels it is a dangerous turn off of Route 9, and they don't want a drinking establishment on a dark road in an agricultural neighborhood. Bicyclists and

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Horseback riders are often on the road. It is not an appropriate place for that kind of traffic.

Stephanie Oakley 225 Old West Road. They have young children. They have already had vandalism from intoxicated drivers. They have had drivers hit their playground equipment. It is dark in that area. She talked about the problems and damage they have already had without a drinking establishment in the neighborhood. This jeopardizes her kids.

Mark Moran, owns land in that area, Selfridge Road and others.

Mr. Martin explained that the project is a PUD. It was initially going to be a grain hub to process for microbreweries, and has changed from there. It would include a solar farm, tasting room, brewery, amphitheater. It was presented to the Town Board, was scaled back from there and is now a brewery, tasting room, possible entertainment space. Mr. Martin has to issue a determination about it now and is consulting with legal. It is M-2, and would need review. His early feeling is that the brewing is light manufacturing, but he doesn't think there is a way to have the other uses.

If it stays PUD this Board won't see it. They might see it as a Use Variance at some point.

Ag & Markets law may also come into play. As he reads it there is an Appeal/Arbiter process they might use. He invited these people to come into his office and see the plan or discuss it. They were at the Town Board last night, and something was said that made them think they should come here tonight.

The final determination is still in process.

Ms. Stein said there are about 30 other people in the area not happy with this idea.

Zoning and Planning Oct 3<sup>rd</sup> meeting changed to Thursday Oct 10 workshop about the Zoning Code. Mr. Martin invited members who can't make that to come see him with ideas/concerns.

Respectfully Submitted

Tricia S. Andrews