

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 24th day of June, 2020 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Kevin Elms, Acting Chair

Scott Fitzsimmons

Justin Farrell

Matthew Manning

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

Board Members absent: Gerhard Endal, Chair

Acting Chairman Elms called the meeting to order at 7:06 pm. The Board reviewed the minutes of the May 27, 2020 meeting. On p. 2754 Mr. Elms stated “he thinks it’s an eyesore”- Mr. Elms clarified he actually said he doesn’t believe it’s an eyesore. p. 2761 Mr. Elms stated that “there needs” not that “here needs” to be justifiable reason. Motion was made by Mr. Manning and seconded by Mr. Farrell to approve the minutes of the May 27, 2020 meeting with those corrections. All in favor, motion carried.

APPEAL NO. 826

The property is located at 1617 West River Road. The parcel is bisected by the railroad tracks. They have lived there for 42 years and a year ago they bought a new home. They are trying to sell this house, but no one wants to own 181 acres, they want to own the part east of the railroad tracks which is 38 acres where the home, barn and all the improvements are. They currently have two parcels, one that includes the tracks and one that is woods and hayfields. They want to use the tracks to separate the two. Normally a lot line adjustment would be an administrative action because there will still be two lots, but because the lot to the west of the railroad tracks doesn’t have road frontage, it is non-conforming. Those can’t be enlarged without being made conforming. They don’t want to take a 40ft swath of land and make it part of that parcel. Mr. Lebowitz cited the 40ft requirement in 140-44 . Mr. Lebowitz thinks that the railroad will not allow any access from this side of the tracks, any building that happens here will have to have access from West River Road. He states that emergency access shouldn’t matter, as they are not proposing to build anything on it. They are not seeking to develop anything there.

Mr. Elms reviewed the criteria for granting an Area Variance and brought up the idea of cost. He wondered if they could show any comparables for their property to show that their asking

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price was reasonable. Mr. Lebowitz argued that there are no comparables, because who is selling an inaccessible piece of property of this size? They have to drive up the road and cross at one place, where there is already a railroad crossing.

Mr. Elms explained that the Town wrote this code because they don't want inaccessible properties, so why would they create one now? Mr. Lebowitz stated that it doesn't matter because it's not being built on. Mr. Elms stated that to grant the Variance is to create something that the Town doesn't want to have.

Mr. Manning stated that they are actually being asked to triple the size of the non-conforming lot. Why leave it to someone else to deal with a problem later? He stated that the applicant is asking the Board to expand a large piece of landlocked land. The Board has to consider whether this is to the betterment of the neighborhood. He wonders why we couldn't do this to the simple lot that already exists. Where is the hardship that you can't get past?

Mr. Lebowitz stated that he doesn't have a problem granting an easement up the existing driveway, across his hayfield for someone to get to the crossing.

Mr. Elms stated that the Board doesn't want easements.

Mr. Lebowitz asked if he were going to take a 40 ft swath and put it on to the rear, where would he put it?

Mr. Elms explained that if someone were going to build there it would be as the applicant says, they would have to build where they can reach that access point.

Mr. Lebowitz stated that as there already exists a landlocked piece of property, if he did the 40 ft. it will have to run through standing water, and there's no crossing the railroad there, so how is that 40 ft meaningful.

Mr. Manning stated that if it provides access that's enough for now, someone who builds will have to deal with the issue of crossing the wetlands to access a building.

Mr. Lebowitz clarified that as far as the Board members are concerned if he did a 40 ft swath that crossed a wetland and butted up to the tracks where you can't cross it, that would be fine?

Mr. Martin agreed that there are many places where the actual access is provided as a formality, but that actual access as a practical matter is provided some other way. It meets the minimum standard and is therefore buildable, even though it's nonsensical.

The public hearing was opened at 7:24 pm. There were people on the Zoom call but they did not speak up in relation to this Appeal. The County Planning Board had sent a letter which stated no county-wide impact.

Mr. Elms told the applicant that for the Appeal to pass there have to be three positive votes, and

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there are only 4 members present. This is a Type II action and no SEQR Review is required. The public hearing was closed.

The Board reviewed the requirements for granting an Area Variance and found:

(1) That the strict application of said dimensional requirements would result in a specified practical difficulty to the applicant.

(2) That the requested Variance is substantial.

(3) That the difficulty can be alleviated by some practical method feasible for the applicant to pursue.

(4) That there will be substantial change in the character of the neighborhood or a detriment to the adjoining properties.

(5) That the **variance** would 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 not the minimum **variance** which would alleviate the specific practical difficulty found by the Zoning Board of Appeals to affect the applicant.

Mr. Elms stated that it is not wise for the Board to go in that direction, that they don't want to kick the can down the road. The Town has been clear how they want properties to be set up and to do this would be to go against the Town's wishes.

Mr. Manning motioned to deny Appeal No. 826 on the grounds that there is no hardship to the applicant and Mr. Farrell seconded.

Roll call vote resulted as follows: Mr. Fitzsimmons, Yes; Mr. Farrell, Yes; Mr. Manning, Yes. Mr. Elms, Yes.

APPEAL NO. 827

Kevin Moore

Mr. Elms asked the applicant to explain. The reason for the request is that a few years back the leach field failed. It was built in 1989. They didn't remove the old leach field. The new one runs ten feet out, takes a 45 degree angle and has four spikes. The Variance allows them to build without disturbing their new leach field. They are asking for 8 ft from the Side Yard setback.

Public hearing was opened at 7:32.

Mr. Elms stated he had looked around in the neighborhood and this lot looks the same as everybody else. Mr. Fitzsimmons asked whether this measurement is out to the overhang and it is.

Mr. Martin suggested that the building inspector check the lines as the project progresses so that it isn't built wrong and that is discovered later. Mr. Moore agreed that they would need to get

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the lot surveyed to be sure they get the lines right, because they can't see the post in the front.

Mr. Elms stated that is better because then they know everything is done right.

Mr. Manning asked for the distance from the house to the property line.

Mr. Moore stated the planned access is down the right hand side of the house going past the existing two and a half car garage. The distance is 15-18 ft. There is plenty of room.

Mr. Martin had checked online with a measuring tool and thought it as 15-16 ft.

Acting Chair Mr. Elms asked whether there were any other questions or thoughts. The public hearing closed at 7:37pm. This is a Type II action with no SEQR Review.

Motion was made by Mr. Fitzsimmons to approve Appeal No. 827 granting relief of 33% from the required side yard setback with the contingency that the homeowner gets a survey and that the Building Inspector check it as-built after the foundation is dug. Mr. Elms seconded.

Roll call vote resulted as follows: Mr. Fitzsimmons, Yes; Mr. Farrell, Yes; Mr. Manning, Yes.

Mr. Elms, Yes.

Appeal No. 828

Tim Rich was not present

Motion to table Appeal No. 828 was made by Mr. Fitzsimmons and seconded by Mr. Elms. Roll call vote resulted as follows: Mr. Fitzsimmons, Yes; Mr. Farrell, Yes; Mr. Manning, Yes. Mr. Elms, Yes.

Mr. Martin provided a Zoning Law update: a land use inventory was done. This is a major milestone. The Planning and Zoning Boards will be provided with the drafts and be invited to be part of revising those. The work had been suspended for a while but has been restarted now having lost about 6 weeks during the pandemic.

Mr. Fitzsimmons motioned to adjourn the meeting at 7:43pm and Mr. Elms seconded. All in favor, motion carried.

Respectfully Submitted,

Tricia S. Andrews