

A Meeting of the Zoning Board of Appeals for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Municipal Building, 351 Reynolds Road, Moreau, NY 12828 on the 25th day of June 2014 at 7:00 PM.

**ZONING BOARD MEMBERS PRESENT:**

Chairman Gerhard Endal

John England

Richard Kubis

Kevin Elms

Scott Fitzsimmons

**ZONING BOARD MEMBERS ABSENT:**

None

**Others Present:** Joe Patricke, Building Inspector/Code Enforcement Officer; Karla Williams Buettner, Attorney for the Town; Tricia Andrews, Recording Secretary

Chairman Endal called the meeting to order at 7:12 p.m.

He announced that regarding Appeal No. 746, Mr. Donald Lindsey has withdrawn his application.

The Board reviewed the minutes of the February 26, 2014 meeting and May 28, 2014 meeting.

Mr. Elms motioned to approve the minutes of February 26, 2014 as written and Mr. Kubis seconded.

Mr. Fitzsimmons motioned to approve the minutes of the May 28, 2014 meeting and remove the words “to the treasurer” from the title for Larry Dinali on page 3. He was seconded by Mr. Elms.

Both motions passed unanimously.

The Board reviewed Appeal No. 744, a request of James and Heather Aiken of 2 Nancy’s Way, Gansevoort, NY 12831 for a Special Use Permit pursuant to Chapter 149, Article V, Section 33. Applicants are requesting to operate a dog grooming business out of their residence. This property is located in a PUD Zoning District and is designated as 89.6-1-1 on the Town Assessment Map.

This Appeal had been tabled last month. Legal advice was requested regarding video recordings made by a neighbor about the situation and whether it would be possible to watch them. Counsel advised that the Town doesn’t have the technology and the individual had been told that he would have to bring the technology for showing it if he wanted to do so.

The Chairman set some ground rules for the public hearing and asked people to address the Board and not each other. He set a 5-minute time limit and advised the public that rebuttals made regarding statements by others are helpful, but that repeating arguments that have been stated is not helpful.

Attorney Matt Fuller appeared representing the Aikens. Topics brought up since the last meeting were a formal request for a letter, and that was satisfied. They were asked about the septic system compatibility

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with the grooming products, so MSDS Sheets were supplied and the septic system inspected and reviewed. MSDS reveals its standard shampoo. Slipperiness and eye pain were the only concerns. They don't conflict with being disposed of in the septic system. The engineer said that the septic system was capable of handling the flows, but an increase would be necessary if there were an increase in occupancy. An outside real estate broker submitted a letter stating that there is no impact to values, as the broker who sold the properties has already said. Mr. Cerrone, who owns the development, has said also that he had no issues. These things are being submitted at the meeting because the engineering took some time to be completed and Attorney Fuller just got them today. He is submitting the originals.

There are heated feelings in this neighborhood dispute, and Attorney Fuller he reminded the Board to review the Special Use Permit criteria and not the feelings in the matter.

Attorney Fuller submits that the people who originated the complaint knew about the business before they purchased their home, the Aikens claim that they told them themselves before they built. He would also like to clarify that there is no 3 acre requirement for the Permit and neither is there a requirement that it be 30 ft. away from the property line. Both houses have to meet the setbacks, so they are 150 ft. from each other, and he would like the Board to keep this in mind. This is a Special Use Permit, for a home occupation similar to a hair salon which would be allowed. Other concerns last month included traffic. Some neighbors dislike the subdivision in general. Parking concerns can be mitigated. The videos that are not part of the record and the letter say that dogs hop out of the car without a leash. The dogs are not rowdy according to the applicant, but the applicant is willing to ask people to leash all dogs before taking them out of the car.

Justin St. John of 1 Nancy's Way across the street showed a map of the neighborhood for the Board members, to show who is affected. He had a subdivision map satellite image he got on Google Earth taken in August 2013, before his house was built. He pointed out the people in the neighborhood that signed the petition in favor of the Aikens. The only access is Old Saratoga Road, so the traffic and other issues never touch Abbey Lane. If the Aikens lived further into the development those neighbors would have more issues with it. Mr. St. John said that this was never disclosed to him in spite of what Attorney Fuller says. It affects him and the residence behind him on Abbey Lane. They hear the barking. It is different from a hair salon because people leave while the dog is there, so that the vehicle goes by 4 times per visit. People on Old Saratoga Road didn't sign the petition. Some of the clients have also gone to another similar house accidentally and created a problem, and once even walked into someone's garage by mistake and startled them.

Doug Seelye from Queensbury said that no hardships had been shown, so obviously Mrs. Aiken can do her work in South Glens Falls because she has been since the issues was raised. He feels that the Aikens

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violated Zoning from the start, and this never would have happened if they had applied for the permit to begin with.

Wendy St. John of 1 Nancy's Way said that her daughters are 1 & 2.5 and she fears for their safety and additional things. They looked for a property for 2.5 years and they liked the State park and the mountains, and she's home all day, so she sees cars going in and out all day like it was a convenience store. Living across the street, she is impacted daily.

Jim Amell of 2 Abbey Lane said that as Mr. St. John mentioned, there is a minor impact for him but for the neighborhood, once a Variance is granted there is a precedent set and other people will want to do this. He believes future buyers who find out about the Zoning change will change their minds about living there.

Chairman Endal explained that there is nothing to stop home occupations, the Board is not setting precedent because it is already allowed. The Board can only set hours and some types of limits.

Shelley Walker, a client has 4 dogs and leaves them for 4 hours, that's one car in four hours. She pointed out that a house full of teenagers and parents doing sports, jobs, school, etc. is going to cause more traffic than she is. She feels there's not a traffic issue, as she's never seen anyone else there or cars parked in the road. What the neighbors are describing is not the way it is.

Iris Darrow on Nancy's Way said that there's no issue from 2 doors down. There are no cars in the driveway, it's not so, she could have friends over, she had 10 bikers in her own driveway this weekend. It's not an issue. She has had people in her driveway by mistake but doesn't mind.

Ed Robbins used to go to Heather in Glens Falls when she lived there and it was never a problem. He was glad to see them come over here. He was animal control for years. She only sees one client's dogs at a time and he's never gone around the whole development.

Penny Kofax, a client for 7 years stated that she never sees another dog or car.

Veronica Batkay, who lives on Mountain Road said she encouraged Heather Aiken to move to Moreau because it's such a great town. She stays with her dog, but she needs to have her groomer close. Heather doesn't work on weekends. There are never other dogs. She encouraged them to live on the end of the development because developments are high traffic places. Cars park there because people want to go into the State park. The area is busy and crowded. Belly rubs dogs have been in her yard on occasion from Route 9 but she doesn't think it will happen at Heather's house. Dean's another customer, and she stated that they don't even know each other because they never cross paths.

Mr. St. John pointed out that the people who are her clients are only speaking in self-interest because they like having her there. He wants to show his evidence that multiple clients are there at the same time. He has seen a dog roaming the property.

A Meeting of the Zoning Board of Appeals for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Municipal Building, 351 Reynolds Road, Moreau, NY 12828 on the 25th day of June 2014 at 7:00 PM.

Chairman Endal asked if he had a way to show his video and he got his laptop from his car.

Mrs. Dean pointed out that the move to South Glens Falls is not convenient to her so she is not speaking for her own interests.

Another neighbor had interviewed 39 people in 5 hours and 38 said they would not buy a house in this situation. These are people from all over who might potentially move into the neighborhood and she doesn't believe it makes any difference whether it's allowed, the rules weren't followed and people should have had all the information. She said that when the Board interviewed for the Bluebird Road Plumbers & Pipefitters building (last month), they were put through their paces and this Appeal hasn't been addressed that way.

Chairman Endal pointed out that this is a public hearing, and they can put conditions on the Permit and might do that later when the public hearing is closed.

Concern was raised that other people are making money for the Town, but is the Home Occupation even getting tax revenue for the Town?

Terry Wolfe at 5 Nancy's Way state that she knew, and never had any concern or saw any adverse affect. The St. Johns will be most affected, but Mr. Wolfe has 3 kids, they walk, they play, etc., and never had any concerns about excessive traffic.

A client asked how do people watching the videos know it's grooming business and not the Aikens just having a party.

Chairman Endal pointed out that that's the Board's job and they have stacks of letters to wade through on this and have to use their judgment.

Mr. St. John played his video which was taken through the picture window of his house. He stated that after the second notice to comply, he took the video because he wanted the Board to know that they were still operating after they got the letter. He was insistent that there were videos that showed clients passing and greeting each other. He also called the parking arrangements "kind of suspect."

Mary Mangona, a client, said she had been guilty of running into another client because she came in early. She lives in a cul de sac herself and they have a ton of unexpected traffic as well. They have active families who are in and out several times a day, it's a new development with a lot of families and a lot of kids. People do comment that they wish they weren't the first house in, that's life in developments.

Heather Aiken is just as concerned about safety as the St. Johns are, she has a young child too.

Mr. Elms said that in light of the large amount of information provided he wants to study the letters and wonders if the Appeal should be tabled. A package was handed to them when they came in but they can't really study it, and it's an important decision, he doesn't want to rush. Chairman Endal agreed.

Attorney Fuller wanted to address the concerns raised about precedents and the hardships, etc., and

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stated that people confuse what we're here for. This isn't a Variance request, it's a Permit, and there's no hardship test for this issue. He wants the public to understand what this Appeal is for. Covenants and restrictions aren't binding on this Board either, but this developer does allow home occupations in his covenants, and the St. Johns had access to that information. Finally, they have no proof that there's any affect on home values. The concern about leashes is legitimate and the applicant is willing to make that a condition on the Permit.

Chairman Endal pointed out that there's a leash law in the Town anyway so such a condition might be redundant.

Attorney Fuller reminded the Board that the house was designed with a double gate for that reason. The Applicant should have gotten a Permit and that's why they are here, according to the criteria, which he feels are satisfied. Clients would like to proceed tonight.

Mr. Seelye said that she is supposed to work a 4 day a week, 4-5 hours per day but people here tonight have commented that they come at night and on the weekends, so maybe the Applicant has not shared the whole truth.

The question was raised, is this a Special Use Permit, and can another dog groomer come in and not abide by regulations, because the Special Use is forever.

Chairman Endal explained that the Special Use is forever and so are the limits placed on it.

Attorney Fuller argued that the Board can limit it to just this business and tailor the review to just what was applied for.

Neighbor: It can be expensive to take care of it if it's not done correctly. You made a great point about what's going to happen in the future, that's my concern.

Chairman Endal: If the Board decides to table so we can read this, we need to not take any more comments at this time, as we've heard enough for tonight.

Mr. Elma I feel bad about asking to table but there is so much to read here.

Mr. Elms motioned to table the appeal while the Board reviews the reports and Mr. England seconded. .

A roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr.

Fitzsimmons, Yes; Chairman Endal, Yes. Motion carries.

The Chairman advised the public that this Appeal will not be advertised again so they will have to know that the next meeting is July 23<sup>rd</sup>.

The Board reviewed Appeal No. 747, A request of Rhonda Mulvihill of 272 Gansevoort Road, Gansevoort, NY 12831 for an Area Variance pursuant to Chapter 149, Article X, Section 149-19 (C) and Town Law 267-b. Applicant is requesting an Area Variance to reduce the required minimum lot area for a Permitted

A Meeting of the Zoning Board of Appeals for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Municipal Building, 351 Reynolds Road, Moreau, NY 12828 on the 25th day of June 2014 at 7:00 PM.

Principal Use from five acres to one acre. This property is located in a R-5, Agriculture, One and Two Family Residential Zoning District and is designated as 78-1-41.2 on the Town Assessment Map.

Mrs. Mulhivill wants to board 5 dogs where the garage is currently. It would be a dog boarding kennel.

R-5 districts allow this use to properties with over 5 acres.

Bailey's Bed and Biscuit owner John Telisky stated that he tore down the front of his kennel and there was a need in the Town. He sold her this property on Route 32. Measurement is 352 yards to the next home and they want to board in there. It is undersized and they want a max. of 5 dogs.

For the list of permitted uses in an R-5, Mr. Patricke directed the Board to Section 149-5 for the definition of Agriculture.

Chairman Endal felt that we are working with the definition of a farm in the law, which requires 5 acres.

Mrs. Viola Farnsworth from 115 Burt Road told the Board that she is concerned because it's a 1 acre property and on a bend which is dangerous and more cars coming in is a bad idea.

Chairman Endal felt that this is part of an adverse effect. Mrs. Farnsworth stated that people have been killed on that bend.

Maureen Telisky argued that a max of 5 dogs at a time doesn't generate more traffic than a gathering of friends and family would.

Mr. Elms stated he was concerned that the size of the Variance would be substantial.

Mrs. Telisky said that the house and kennel they have now sits on just one of their 7 acres.

Chairman Endal explained that the question is not whether we think it fits, but that the Town says that it doesn't go there. This is a substantial difference between what the Town law requires as this is an 80% change. The applicant would have to show the Board that this presents a hardship for them.

Mr. Telisky said that there are substantial wetlands behind the property and the neighbors aren't close.

They can limit the size of the business, but they can't enlarge the property, nothing nearby is for sale.

Chairman Endal stated that the Board has to look at the property. He asked if she had the intent to do this when she bought it but didn't look at the Code.

Mr. Telisky clarified that he sold it to her but not with this intention, he just thought it was good to divulge that relationship that's and why he mentioned it.

Chairman Endal said that if it were a matter of 4.5 or 4.35 acres it would be different but this is huge and it changes the definition of a farm.

Mr. Telisky asked for clarification that the area is the entirety and Chairman Endal said that changing the entire definition of a farm is not what Variances are for. It's not a pre-existing use, and it's a place where farms have to have 5 acres, and to grant this would be saying a farm can exist on less than 5 acres, way less.

A Meeting of the Zoning Board of Appeals for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Municipal Building, 351 Reynolds Road, Moreau, NY 12828 on the 25th day of June 2014 at 7:00 PM.

Mr. Telisky asked if there were any limited uses ever granted, he couldn't find online an application for that, and feels they are the first up.

Mr. Elms said they have granted Variances for undersized lots, but not something this substantial. Certainly there have been others, but not such a large reduction.

Mrs. Mulvihill said that it's only 5 dogs she's asking for.

Chairman Endal stated that it will affect the entire law, to make this change. This is one case where the possibility of setting precedence is important.

Attorney Williams Buettner recommended that the Board review all the requirements, for the sake of the applicants' understanding all of the concerns and not just substantiality.

Chairman Endal stated that in terms of character of the neighborhood, it's not been mentioned. Other feasible means have been eliminated. Substantiality has been addressed. Fourth criteria is adverse affect, and traffic might be considered. Self-created is another criteria. We have some leeway with Area Variance, but this is too much.

Mr. Telisky asked if there were letters from neighbors and there were none.

Mr. Sagnor, who lives across the street and has boarded his dog with and worked with Mr. Telisky wouldn't have a problem with his business moving closer. But he (Mr. Sagnor) has 37 acres for a reason and neighbors have 20-some acres, they like that look and the space around it, his house is away from the road, so he agrees that this Variance is substantial and he would rather have the area stay in the state that it is.

Mrs. Mulhivill stated that they don't propose to change anything on the property.

Mr. Patricke asked the Board to keep in mind that a few years from now if she were to sell, it would have full rights as a farm and the new owner could do any variety of things with it.

Mr. Telisky asked if there is any other recourse available to them.

Attorney Buettner confirmed that this is the only avenue for the dog kennel idea.

Chairman Endal said they could appeal in court.

The Chairman closed the public hearing and moved to deny the appeal on the basis of the substantial nature of the request and that it would be significant change in definition of a farm Mr. England seconded. A roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carried and the Appeal was denied.

Appeal No. 748 A request of Jason Halliday/Moreau Marketplace of 1433 Route 9, Moreau, NY 12828 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59 (A) and Town Law 267-b. Applicant is requesting to erect a sign that will exceed the total square footage allowed in a C-1, General Commercial Zoning District. This property is owned by DMMH Corp. and is designated 63.3-1-14 on the

A Meeting of the Zoning Board of Appeals for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Municipal Building, 351 Reynolds Road, Moreau, NY 12828 on the 25th day of June 2014 at 7:00 PM.

Town Assessment Map.

John Laroque, Jason Hallidays' partner was presenting the Appeal and David Rogge, owner of the parcel, was present. The Applicant wants two more signs. The Regulation is understood to be 85 sq. ft.

Additional 58 sq ft is requested, they are using 80 sq. ft. of their allotment now with the Route 9 Mini-Storage sign, which they don't want to replace. Without the signs they have a hard time drawing people to the location because the traffic moves too fast. The huge sign with the Route 9 Mini-Storage is shown. The site is now like a mini mall. He has multiple tenants and has more possibly coming in. It's no longer a single site, and it has need for multiple signs at the street and wall mounted as well and on the back of the building, too. It's the changing use of the building that's adding to their need.

The maximum signage in the Code is 40 sq. ft. and then measure façade and can use 5% of that in additional signage, with a max, of 150 sq ft. Sign law addresses all the signage on the property as a whole. The building is 50ft wide by 20 ft. high, giving them a right to 90 sq. ft. for the site. Only if the building were bigger could they get 150.

Actually they want two signs that are 32 sq. ft. each added to the 80 sq. ft. they have, which would be 144 sq. ft.

Mr. Patricke pointed out that this is one store in the front, so if they give them all the space now there is none left for other businesses that come in.

The current sign was installed by a trucking company many years ago and it's so high no one can see it. It would be expensive to bring the face of it down.

Moreau Marketplace doesn't want to be up there, because it's not seen. Mr. Rogge would like to bring it down someday, but he's had a big loss from the Y leaving and can't spend the money right now. If he gets a couple more tenants in there he might bring it down, change it for those businesses and do individual signs on the wall.

The proposal tabulates for 59 extra feet.

Mr. Elms was concerned about other businesses on Route 9, and Mr. Patricke said this is unique because the old sign has been there so long and this business site is evolving. It might be necessary to stipulate that any other new businesses would require a complete revision of the property signage.

Mr. Elms motioned to grant 59 sq. ft. extra signage for a total of 144 sq. ft. of sign space with the stipulation that additional tenants will require re-doing the sign. The applicant won't lose those 59 ft. when he makes the changes. This motion was withdrawn.

Attorney Buettner said that there should be a Short Form EAF for this because it's a Commercial Area Variance.

The Board reviewed Part I of the EAF. Mr. Elms motioned to declare Lead Agency and Mr. Endal



A Meeting of the Zoning Board of Appeals for the Town of Moreau, Saratoga County, State of New York was held at the Moreau Municipal Building, 351 Reynolds Road, Moreau, NY 12828 on the 25th day of June 2014 at 7:00 PM.

seconded. Measure called unanimously without roll call.

Part 2 was completed by the Board.

Mr. Elms motioned to make a negative declaration and Mr. England seconded . A roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carried.

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 will be no 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.

Mr. Elms motioned to grant Appeal No. 748 for 59 additional sq. ft. of signage for the property. Mr. England seconded and a roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. Motion carried.

Mr. Elms asked Chairman Endal to write a letter to the Town Supervisor requesting an informal meeting between some members of the two boards.

Chairman Endal adjourned the meeting at 9:10p.m.

Respectfully Submitted,

Tricia S. Andrews