

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 August 2014 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Acting Chairman Kevin Elms

John England

Richard Kubis

Scott Fitzsimmons

ZONING BOARD MEMBERS ABSENT:

Chairman Gerhard Endal

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

Acting Chairman Elms called the meeting to order at 7:04 p.m.

The Board reviewed the minutes of the June 25, 2014 meeting. Mr. Fitzsimmons motioned to approve the minutes as written and Mr. Kubis seconded. Motion carried unanimously.

The Board reviewed Appeal No. 749, a request of Gregory Duell of 466 Gansevoort Road, Moreau, NY 12828 for an Area Variance pursuant to Chapter 149, Article X, Section 59 (A) and Town Law 267-b. Applicant is proposing to construct a single family dwelling on a lot that does not have the required minimum lot width in an R-2, One and Two Family Residential District. This property is designated as 64-1-36.1 on the Town Assessment Map.

Mr. Duell explained that he wants to take down his old home, it is 200 years old, and is beyond keeping up. They want to replace it with one with more living space, about the same total size.

Mr. Patricke explained that Mr. Duell is subdividing two lots and putting the new home on the new lot, this is allowed as long as there is 40 ft. of road frontage. The issue is that he wants to put the home in line with the adjoining houses, and he lacks 12 ft. of 125ft. required at the building line. Pushing the house way back where the lot is wider is an option, but it wouldn't be attractive or convenient to do so. Fred Duell: Width should be 125 ft. at the road, but it's 123.3 ft., making them short 1.7 ft. The house will actually be further away from the current building and in that sense is more compliant.

Mr. Patricke: That number's not right. It's not 123 at that line. It doesn't matter what the frontage is, at the building line they have to meet the requirement, but it's still not substantial.

No correspondence was received and there were no neighbors present for this appeal.

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

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- (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.

Public hearing closed at 7:09 and Acting Chairman Elms motioned to grant the request for Appeal No. 749 for 12ft. relief from the required minimum lot width at the building line. Roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Fitzsimmons, Yes; Mr. Elms, Yes. Motion carries.

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 in June. Chairman Elms asked that as the Board has had a lot of people speak on both sides, that people not repeat information shared in the past two hearings but only speak to add new information.

Attorney Matt Fuller with Myer and Fuller in Lake George represents the applicant. A brief was submitted by the neighbors across the street, he has countered those. This Appeal has little to do with impacts from the dog business, but her performance and the use proposed are before them. They are here on a violation. It is not a cascade of 4-5 dogs piled, up, waiting, caged, there is no storage. They are dropped off and inside the whole time. The video shown here in June did show dogs off their leashes and the Applicant is willing to ask for dogs to be leashed for their own safety. In response to the brief, they have thrown everything at this. The traffic impact is nominal, no different than UPS deliveries, etc. This is probably less than a lawyer or doctor or beauty shop, which is allowed. They contested whether this is a home occupation. This is not a full-blown kennel or a large operation. Exactly what's presented here is what the Board has to rule on; the references and examples that were in the brief are untrue. It demonstrates a lack of understanding what's going on here and what's been raised at the meetings. Special Use Permits aren't limited, it says included but not limited to in the Code, and this is similar to those included. We've talked about traffic, we've submitted letters from real estate brokers that it makes no difference in values, from the builder that it's allowed in the covenants and restrictions on the deed,

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and the complainant could have known this from the start. The septic has been evaluated and can handle the current use. The house was built with traps in the drains and things with this use in mind. Weighing the Special Use criteria, the neighbors' opinions don't count, and they meet the requirements for Special Use. It can be conditional, a time frame and other issues raised can be placed on it, such as the leash requirement.

Sandra Mancini, client of applicant, spoke with regard to the excellent arrangements and parking and other expectations at the business. Ann Dickinson of Glens Fall commented along the same vein.

Attorney Jack Lebowitz is here on behalf of Justin St. John. They have no argument with that Mrs. Aiken is a good groomer and takes good care of the dogs, but the clients' opinions are not relevant. The reason the permit should not be granted is that dog grooming doesn't fall within the definitions of home occupations and it's not a traditional use. The list is not exhaustive, it is exemplary and other uses can be added, but the definition says on pg 149-9 that an accessory use of a service is characteristically customarily undertaken by the residents and shouldn't have any exterior evidence. Customary means that it's usually done that way. Atty. Lebowitz submits that grooming is not the kind of home occupation that is on the list or that the Town has this use anywhere else. Accessory home occupations are not supposed to be out of character with the neighborhood, such as a mom and pop store on the corner in a residential neighborhood. The best analogy to this use is professional zone in Glens Falls on Bay, Ridge, and Glen Sts. in Glens Falls where there are doctors, realtors, lawyers etc. and it's just like having a visitor for a cup of coffee. It's not the same situation as with animals. The films shown in June demonstrate (he distributed stills) dogs are off leash, multiple cars and clients present at once, dogs penned or doing their business in the yard. These appointments can't be tightly controlled. The Aikens have asked people to drive around the neighborhood with their dogs when they are early or she is running late. They can't put conditions on it and communicate them to clients without signage, which also isn't allowed. The Aikens have shown by their previous unpermitted operation in Queensbury in a zone where it was not allowed, attested to by their Code Enforcement Officer, and that it took two cease & desist orders from Town of Moreau Code Enforcement to get them to stop this time. That doesn't make it seem like they will willingly adhere to any conditions placed on their Permit if it were granted. Differences Are: their brief doesn't address the major point that this definitionally doesn't fit into home occupations because no similar business operates in Town of Moreau or Glens Falls in this way. A supposed photography business of Mr. St. John is mentioned in the brief, consider it a red herring, there was no evidence of studios when that claimed was examined.

Landowner's rights perspective says the Board has to construe the restrictions narrowly and basically let people do what they want with their own property if it's not a nuisance. Zoning is intended to separate

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incompatible uses. This case is a Single-family Residential zone, a 27 lot high-end subdivision, every lot of those has to have a market value of more than \$300,000. Low traffic, large lots, cul de sac, are in the covenants. A realtor did attest – he reads into the record- that this does impact the character of an R-1 district. From a resale vantage point it will have a negative impact on price, since it's noticeable enough to have come before the Board. This realtor wouldn't be obligated to mention to a prospective neighbor, but a selling realtor would want them to know. If homes were identical, a buyer would likely not buy next to the business.

There's no evidence it's a traditional use. Even if you got past that, under Article V, the standards for a particular business regarding being compatible with the neighborhood can't be surmounted. A business must be found to be in harmony with appropriate and orderly development within the district and adjacent districts, and not to reduce property values. That's contestable. According 149-33 there's got to be some explanation why this is in the public interest and there's nothing in the materials that speaks to this. Is there no room elsewhere to do this? Is it a critical need to accommodate it in this area? Is there social value? It's not a single-family residential character business. Traffic issues. It's not similar to anything listed or traditional in the area. This is the wrong use in the wrong place that affects the neighbor, who has standing because he's within 300 ft.

Atty. Fuller spoke again. As Mr. Lebowitz said, people in the neighborhood do have a say, and there are many neighbors on record who support this business. Can't compare this to Glens Falls or Queensbury, Moreau still has a rural character in places, and that's why it's necessary to allow this in a rural area. The photos submitted show that the dogs are in and out, not running rampant all over the neighborhood. She doesn't operate around the clock. It's very easy to police requiring leashes, it's doesn't require a sign. Regarding the letter, no one likes to be blind-sided, and this letter is dated July 19, Attorney Lebowitz could have shown it to us, but the letter says that the controversy is what diminishes the value, not the actual business. Three lots have been sold since this came up, and houses are under construction, so clearly this has not affected home sales. This specific limited operation is not noticeable and not affecting the neighborhood. Having to prove that there are other uses in the Town or there isn't enough land elsewhere for this- that's not law. You wouldn't have to prove that to build a Stewarts. That's not a valid argument. This is closer to a home occupation. If it were bigger it might be different but in context, we have shown that there's no impact to home values, that wouldn't help his clients either, they want it to be innocuous and preserve the value of their home too. We have satisfied the tests for home occupations.

Mr. Fitzsimmons: Do we allow grooming in specific areas?

Mr. Patricke: We currently have it associated with kennels in the Town.

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The public hearing was closed at 7:50 pm.

Mr. Kubis: I think that from the standpoint of whether or not it's a valid home occupation, I find that the customary aspect is compelling for me. I don't see it established that this is a customary home occupation. Joe tells us it's associated with kennels in the Town now, and I can't think of where I've seen this as a home occupation. That's an important consideration. It would fail on that alone.

Mr. Fitzsimmons: That's not for us to decide, it's for the Town to decide how to list that.

Mr. Kubis: But they have.

Mr. Fitzsimmons: If it's not in black and white, it's a Town decision.

Mr. England: Nobody on this Board would say she's a bad groomer, her service is not in question.

Mr. Elms: We've studied this at length, and if there's not more discussion, could we have a motion?

Mr. Fitzsimmons: Motion to deny Appeal 744 for Special Use Permit based on the proposed business not meeting criteria set forth in 149-5, 149-32 and 149-33 of Zoning Code. Reviewing the definition of a home occupation, the Board finds that a dog grooming business does not fit within the definition and therefore is not a home occupation. Even if it were a home occupation, the ZBA finds that the operation of a dog grooming business as a home occupation is not in keeping with the harmony of the neighborhood and the appropriate and orderly development of the Palette Stone Corporation PUD.

There is sufficient concern and evidence in the record to demonstrate there is not adequate off-street parking, there are insufficient safeguards involving the dogs exiting their vehicles unleashed and being walked up and down the roadway, increased traffic causes a safety concern for the neighbors, the character of the neighborhood is residential, and this is a high end neighborhood. Although the Declaration specifically permits home occupations, the Declaration is not binding on the ZBA, which must look to the Town Law and the New York State Town Law to grant a special use permit. The ZBA finds that under the totality of the circumstances the use is and will continue to be hazardous or inconvenient to the neighborhood, and adversely affects the safety and general welfare of the neighborhood.

The motion was seconded by Mr. Kubis. Roll call vote proceeded as follows: Mr. England, Yes; Mr.

Kubis, Yes; Mr. Fitzsimmons, Yes; Mr. Elms, Yes. Motion carried 4-0.

Acting Chairman Elms adjourned the meeting at 7:56 p.m.

Respectfully Submitted,

Tricia S. Andrews