

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 23rd day of September 2015 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Chairman Gerhard Endal

Kevin Elms

Scott Fitzsimmons

ZONING BOARD MEMBERS ABSENT:

Richard Kubis

John England

Tricia Andrews, Recording Secretary, absent. Minutes done from recording.

Chairman Endal called the meeting to order at 7:00 p.m.

The Board did not review the minutes of the August 26, 2015 meeting.

Appeal No. 757

A request of Atherton's Auto Sales, LLC of 88 Hudson Street, South Glens Falls, New York, 12803 for a Special Use Permit pursuant to Chapter 149, Article VB, and Schedule of Regulations for a C-1, General Commercial District. Applicant is requesting to operate an Automobile Sales office at 1378 Route 9, Gansevoort, New York, 12831. This property is designated as 77.1.1.2 on the Town Assessment Map.

This appeal was tabled last month.

Atty. Silver appeared with Mr. Atherton. Atty. Dilallo-Bitter explained that originally they came to the Board because two principal uses are not allowed on a property their size, but there was discussion as to what had already been operating there historically. This is Auto Repair and Auto Sales uses. Auto Repair was operating prior to 1973, and Auto Sales was added to it in 1985. That is acceptable because the 1973 Code was intact at that time and it allowed two uses on one property without requiring a permit. The owners are going to put it into an affidavit that the two uses have always occurred together. They are grandfathered, and they will be going to Planning Board. Atty. Dilallo-Bitter would like the Board to formally adopt her analysis.

Mr. Elms motioned to accept Counsel's analysis that a Permit is not needed due to the circumstances. Chairman Endal seconded and a roll call vote resulted as follows: Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. All in favor, motion carries. The Applicants withdraw their Appeal as it is no longer necessary.

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The Board had only three people available and Mr. Elms announced for the Appellant's benefit that all decisions would have to be unanimous, and they are allowed to wait for a decision until more members are present, next month.

Appeal #758

A request of Shawn McKenna of 570 West Road, West Fort Ann, New York 12827 for a Special Use Permit pursuant to Chapter 149, Article V, and Schedule of Regulations in an M-1, General Manufacturing and Industrial District. Applicant is requesting to subdivide a parcel of land at 19 Sisson Road into three residential building lots. This property is designated as 50-2-25.2 on the Town Assessment Map.

Ms. Darrah, Surveyor and Mr. McKenna were present and the attorneys had reviewed the maps and determined that the deeded access is noted on Mr. Clute's deed, and his lawyer's email will be going into the Town file. Atty. Dilallo-Bitter asked Ms. Darrah to verify the filing information, and they should put that on their map.

This Appeal is to make this lot a Residence in a Manufacturing district.

Mr. Elms: If we approve that it would become strictly residential per the permit, and no longer manufacturing.

Mr. McKenna: And that would mean that there's no manufacturing at all?

Mr. Patricke: You're asking for one use.

Mr. McKenna: There would be accessory buildings.

Mr. Patricke: The Use is what we are establishing, which is Residential Use in a Manufacturing District.

Ms. Darrah: The map also shows a storage building.

Mr. Patricke: Those aren't an issue for the ZBA. They are allowed.

Mr. Elms: But if we approve the residence it's a Residential partial.

Mr. McKenna: All 13 acres?

Mr. Patricke: The Zoning Map will show Manufacturing but the Use will be Residential.

Mr. McKenna: For the entire parcel.

Mr. Patricke: For the entire parcel. If you want a second use, you have to have an appeal for that. This Appeal is for Residential Use in a Manufacturing district.

Mr. Elms: If you choose to use it for business, you'd talk to Joe about what buildings you can have and how you can use them.

Mr. Patricke: We know he wants business and home on the same property.

Mr. Elms: He would have to reapply.

Mr. Patricke: But he needs the residence first. We started with three lots, we are down to one.

Ms. Darrah: We establish the residential use and then we reapply.

Mr. McKenna: Can we do that tonight?

Mr. Patricke: We have to advertise and give people a chance to voice their concerns. Residence and

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accessory buildings that go with it, storage, garage, etc, you can have those, it's normal.

Mr. Elms: So do you want to continue?

Chairman Endal: So we have an easement, were there comments?

No response from the public. Nothing received by the office.

Atty. Dilallo-Bitter read into the record the criteria for granting a Special Use Permit from Chapter 149 - 32.

"In reviewing a special permit, the Zoning Board shall find that the following conditions are met before issuing a special permit:

(1) The use shall be of such location, size and character that it will be in harmony with the appropriate and orderly development of the district in which it is situated and will not be detrimental to the orderly development of adjacent districts or reduce property values.

(2) The location and size of the use, the nature and intensity of the operations involved in or conducted in connection therewith, its site, layout and its relation to streets giving access to it shall be such that traffic to and from the use and the assembly of persons in connection with it will not be hazardous or inconvenient to the neighborhood or conflict with the normal traffic of the neighborhood.

Reed Antis asked if Mr. Clear's property states that there is an easement and Tim Schuler, applicant's attorney has done the discovery supplied at the beginning of the hearing.

The Chairman closed the public hearing at 7:23pm.

A motion was made by Mr. Elms and seconded by Mr. Fitzsimmons to approve the Special Use Permit for Residential Use at 57 Sisson Road. Motion carried unanimously by roll call vote.

Applicant will return next month.

The Board is still waiting for reply from the County on Appeal No. 760, and Mr. Faden is not present.

Motion to table this Appeal made by Mr. Elms and seconded by Mr. Endal passed with unanimous roll call vote.

Appeal No. 761

An request of John McAllister of 363 Gansevoort Road, Moreau, NY 12828 for a Use Variance pursuant to Chapter 149, Article X, Section 149-59(b). Applicant is proposing to use an existing building at 196 Reservoir Road, Moreau, NY 12828 for a Food Truck business. This property is located in an R-2, One and Two Family Residential District and is designated as 63.2-2-11 on the Town Assessment Map.

Mr. McAllister appeared and explained that the building was listed as Commercial when he bought it, the County has it listed as such, and it is taxed as such, etc. He looked into turning it into a house when he was told that it couldn't be used as a Commercial space, and three builders said that it would be far too expensive to do so. It was used commercially before he bought it, and what he is proposing to do is get food trailers for LARAC, the fair, etc. and use this building for storage, and as a kitchen. He says it would

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have zero customers, he would ship food out, not have a restaurant. He has all his money tied up in this property. He can't get an offer for it for what he paid. He had put a heating system in it when he thought it would be used commercially. It's 1,600sq.ft. on a concrete block, two open bays. It doesn't have a foundation so it can't be used as a house.

Something in the law stated that a lack of a reasonable return on his investment is a criteria for the permit, and he believes that he has shown this to be the case. It was the Murphy's woodshop when they had Cottage Crafts. There is no building behind him. He states it is water runoff for the neighborhood. Atty. Dilallo-Bitter read the criteria for use Variance and added that the quotes he received would need to be submitted for the records.

(1) That the strict application of said use provisions of this chapter would result in a specified unnecessary hardship to the applicant which arises because of exceptional or extraordinary circumstances applying to the property and not applying generally to other properties in the same district or which results from a lot size or shape legally existing prior to the date of this chapter or topography or other circumstances over which the applicant has had no control.

(2) That the property in question cannot yield a reasonable financial return if used for any permissible use, special permit use or site plan review use applicable to the zoning district in which the property is located.

(3) That the variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same district possess without such a variance.

(4) That the variance would not 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 the minimum variance which would alleviate the specific unnecessary hardship found by the Zoning Board of Appeals to affect the applicant.

Even Mr. McAllister's sister who wanted to buy it could not reasonably do so.

Chairman Endal asked whether the letter Mr. McAllister had provided would do, and Atty. Dilallo-Bitter added that he also needs to show that it can't be used for any other permitted use.

Chairman Endal agreed he had shown it could not be made into a residence. Mr. McAllister should put it into writing, if a contractor told him but he couldn't get it in writing from the contractor.

Mr. Patricke explained that the Zoning and the uses listed by the Assessors are different things. It was used by the Murphy's as a woodshop and before that for lawn mower repair, and so that's how the County listed it.

Mr. McAllister stated that his lawyer had looked into it, and had gone to the County (pre-purchase), and so he was under the impression that due diligence was done, only to discover the information was not correct. Real estate agents and attorneys had said that it was commercial.

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Mr. Elms said that would go to whether the difficulty was self-created.

Mr. McAllister stated again that he will be inside, using it as storage and a kitchen. No one will know he's there.

Chairman Endal mentioned that it can't alter the character of the neighborhood, and the applicant believes it won't.

Atty. Dilallo-Bitter pointed out that the permit allows one particular use, it does not turn it into a long-term Commercial use of open type. Mr. Elms also pointed out that they could restrict hours of operation, etc.

Chairman Endal reminded the applicant that the hardship has to be unique to the property, and Mr. McAllister stated that there are few other places where you can buy an empty shell. He bought it in January for \$58,000 before attorney's fees, upgrades etc. It sits on a small lot, .29 acres.

Chairman Endal asked whether it was an undersized lot and Mr. Patricke said it is. Mr. McAllister says he expects the Health Dept. would require him to put in a new septic for this use, and that it has municipal water.

Given a last chance to add anything, Mr. McAllister said he wanted to talk to the public, and he said that if he gets the use he will not be able to sue his lawyers, real estate agents and the Murphy's.

Mr. McAllister wanted to know how the HOA got ahold of his letter and was told that anything he submitted to the Board for the Appeal was public record.

Resident of 8 Amber Lane, Michelle Bryan, is a backyard neighbor, and she doesn't want to open the door on something like this, that can't be closed. In spite of any conditions they put on it, the neighbors will be left holding the bag if I doesn't work out. Neighborhood shouldn't be punished. There will be a truck if he's got a trailer. Someone else will come and want to open something else in some little building and people will want to open all sorts of things. Remember, there are a lot of older people and this will happen at all hours, causing traffic, if he hires people, dogs are being walked and kids are riding bikes. She feels bad for him but thinks the neighborhood and their values will take a beating if this is allowed. Other areas have commercial areas he could have used.

Chairman Endal assured her that they do want to respect their type of neighborhood that that these variances are seldom given, only on very unique circumstances. Mrs. Bryan has seen all kinds of things pop up in Malta. She does not want this in her neighborhood.

Smiths on Ella Drive: Just moved in, built their home, want the Board to know that they would like to keep their property values and that as much as they believe in free enterprise, there's a risk that the property would not be taken care of and that the seniors section of Ella Drive is right across from this building, so it affects all those people. She is concerned about traffic, trucks pulling in and out.

Peter Firth, 6 Amber Ln, diagonal behind the property, asks if we all agree that the commercial nature of the property no longer exists. Board agreed. There are no commercial activities on Reservoir Road that he can see. Mr. McAllister stated that he bought it for commercial use. Back in January Mr. McAllister

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also applied for a poultry farm in an R-2 and had the same excuse then, that he was told it was allowed and then found out it wasn't. Shouldn't he have known better or gotten his Variance before finishing his purchase? So the hardship is of his own doing. The neighbors shouldn't have this imposed upon them to keep him from suing all the other people involved.

Mr. McAllister stated that in January when he came about the farm, it was right after he bought this building, but the complications both hit him at the same time.

He also feels his lot looks better than the neighbors'.

Sarah Juliano. Toys on the lawn are what happens when there are families with kids and that's exactly why there shouldn't be truck traffic. That building is in the shape of a house and it could certainly be done in her opinion.

Mr. McAllister said that there were 2 feet of snow on the ground when he bought it and he would be putting up a fence because he doesn't really want other people's kids playing on it, even when they go to school with his son.

Mr. Patricke pointed out that what is economically feasible for Mr. McAllister and what is possible to do with unlimited resources and imagination are not the same thing.

Tom Orlando, 9 Amber: In his Appeal he mentioned trucks, plural, not A truck, which means it's open to other business people bringing trucks in over time if he's successful and brings in other vehicles. The area isn't suited to this type of use, if it's grandfathered it would be for the same business, carts.

Chairman Endal told him it is not grandfathered at all, it is a residential lot.

Mr. Orlando said it is not ideal for his proposal, the road is heavily used. He asked who would make sure that it was operated within the regulations.

Mr. Elms explained that Mr. Patricke would respond if someone reported any restrictions being violated. The Board can restrict the number and size of buildings, hours, number of people or employees, etc. A residential irritant is difficult to remedy but a commercial one is actually easier to police. If it were passed, it would be with restrictions because it is in that neighborhood.

Mr. Orlando pointed out that food and health codes would come into play and was told that the Health Department would be involved, too.

Mary Morrell, 15 Amber speaking about restrictions, she's treasurer for Woodscape HOA, as an individual, we do have restrictions and covenants in our neighborhood and they are enforced. This property borders right on it. She's sorry for his position but agrees that he should have done more research. She spent years before she bought this house. The property in question was being advertised as a possible machine shop when she first looked into buying here and it scared her away.

Mr. McAllister was given a chance to respond and stated that he already has an account for a restaurant he tried to open in Hudson Falls. Restaurant Depot in Albany. He will go down there with his white pickup truck and get his food, not a big delivery truck from Sysco. He couldn't afford their minimums. That's not what he's interested in doing. He's looking for a small business.

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Nicholas Quinn 3 Wilson Ave. in the village but has 202 Reservoir under contract, under construction. He's a Code Enforcement Official for the State, he understands the concerns about the neighborhood. He says a kitchen comes with odors, grease etc. that will stick around. He likes the fair but doesn't want to smell it all the time like he can with local restaurants in the village where he leaves now. He doesn't think people are opposed to commercial use, but that this particular use has opposition.

Tim Powhida, 198 Reservoir, next door. Last time this building was commercial, the Murphy's owned three lots, and it looked entirely different because there were no developments, there were more trees, etc. He is also concerned about the smells.

Maureen Childs, 14 Ell Drive, wants to walk where it is peaceful and would like to keep it that way.

Linda Cottone of 5 Amber, directly behind, would like to know if the Board would like this in their neighborhood right next to their house with smells, and trucks and everybody coming and going.

Mrs. Bryan: appreciates that they will put restrictions on and they will be policed and doesn't believe that things work that way. She had an example, which the Board explained was something that the person had a right to do, which is different from this property. She thought he ought to tear it down and start over.

Mr. McAllister explained again he has no money for that. He needs a loan, a commercial loan he can only get if he's given permission tonight, to get what he needs to do it. It's for fair food, 4-5 months a year won't even operate in the winter.

Chairman Endal said that reasonable rate of return and what that rate might be is in question.

Peter Juliano of Amber Lane: If someone wants to do a commercial development, they would have a business plan in place and this is not well thought out.

Chairman Endal replied that it would go to the Planning Board, any new Commercial development does. This Permit is not the end of the process.

Atty. Dilallo-Bitter pointed out that more information was desired showing improvements, etc., which she thought is what Mr. Juliano was talking about. The Board assured him that comes later in the process.

Mr. Elms agreed that there isn't much detail.

Patty Walls 57 Ella Drive, only about a third of the people in her development received the notice and more would have been here, so she wanted to know why some people didn't get it.

Mr. Patricke said anyone within 500 ft would have gotten one, and she can see the list if she wants to. None were returned in the mail, so they all should have received one.

Atty. Dilallo-Bitter thought that more information is due from Mr. McAllister, so it would be good to give him time to supplement the documentation and go through the allowed uses and talk about why he can't do what is allowed.

Mr. Elms thought that this is Mr. McAllister's choice, he could ask for a decision tonight.

Mr. McAllister wanted to know what they needed.

Mr. Elms wanted a better description of the proposed kitchen, size, equipment, use etc. He also said for the sake of the public that they don't normally re-advertise but since there is a lot of public interest, they could ask to send new notices for the next hearing.

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A neighbor presented a letter from someone who wasn't able to come.

Chairman Endal explained again that 500ft is the standard and it's in the paper too. Mrs. Morrell complained that the notice was received last Friday, and that wasn't ample notice.

Chairman said we can't do anything about the mailing dates but people can send letters if they can't come to the meetings. There are deadlines and timings that are complex.

Mrs. Juliano wanted to know how the Board will make a final decision.

Chairman: Use Variances are very hard to get. We have the 5 criteria, and it changes the Zoning. We are saying that the Town Board made a mistake with this lot. It has to be unique, there are all sorts of things it can and can't be. One thing he has to talk about is how it's NOT going to alter the character of the neighborhood in terms of smells, traffic, and appearance. Chairman is not saying he will vote for it, but that he feels Mr. McAllister has shown that he has a hardship, which is only one part of the criteria.

Linda Cottone wanted to know if it would be based on his hardship and the Chair man said again that it is one criteria, and this doesn't open the door to anything else in the neighborhood.

She wanted to know what would make it unique and he said the size, and anything else Mr. McAllister claims.

Mr. Orlando asked whether the community has to take the punishment if a man makes a bad business decision, isn't that what demonstrating hardship means?

Mr. Elms reiterated that it is only part of the criteria.

Chairman Endal asked about the letter from Clute Enterprises. It just says we can't build on this, is it adequate? Atty. Dilallo-Bitter said that this is a beginning but the opinion needs to be more detailed with dollars and cents. He needs expert testimony by letter that \$X in modifications would create \$Y value.

Atty. Dilallo-Bitter offered to provide a list of items that the Board would like to see to support Mr. McAllister's arguments. The burden is on him, he can have more time if he needs it. Chairman Endal wanted to tell Mr. McAllister that the character of the neighborhood is the main question he is concerned about.

Mrs. Bryan said they may all feel bad for Mr. McAllister, but what about the pity for the homeowners who are losing value if he wrecks the place.

Chairman Endal reassured the crowd that the Board is here to protect the homeowners as well as Mr. McAllister.

Mrs. Morrell said that even if he wanted to only be working in the summer, that's when people are outdoors, windows open, walking, etc, so that's worse.

Mr. McAllister was asked and agreed to table the Appeal while he gathers more supporting documentation.

Mr. Elms told him he would get a letter with the list of requirements.

Mr. Patricke wanted everyone to keep in mind they've been sued twice, and the town won both times because this Board is very thorough and listens to everyone. You might think they are leaning one way or the other, but they are just gathering info. He also pointed out that the use stays with the land.

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Mr. Elms motioned to take the Appeal to October 28th per the Applicant's request, and Chairman Endal seconded. Table based on submission for requested items for Oct. 28th. Roll call vote resulted as follows: Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. All in favor, motion carries.

Chairman Endal motioned and Mr. Elms seconded to ask the Town to send out a second notice for this appeal. Roll call vote resulted as follows: Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Chairman Endal, Yes. All in favor, motion carries.

Chairman Endal adjourned the meeting at 8:31pm.

Respectfully submitted,
Tricia S. Andrews