

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 26th day of July, 2017 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT Mr. Thompson:

Gerhard Endal, Acting Chair

Kevin Elms

Scott Fitzsimmons

John England

ZONING BOARD MEMBERS ABSENT Mr. Thompson: None

Also present: Jim Martin, Code Enforcement Officer

Tricia Andrews, Recording Secretary

Minutes Elms, John

The Board review the minutes of the May 24, 2017 meeting. Mr. Elms motioned to accept the minutes as written and Mr. England seconded. Motion carried unanimously with no roll call.

Old Business: Mr. Combs will not apply for any more permits. He will see the Planning Board for Site Plan Review. No action was taken as he had never formally submitted an Appeal.

Appeal No. 794

A request of Janet Shaw 55 Palmer Ridge Road, Gansevoort, NY 12831 for an Area variance pursuant to Chapter 149, Article X, Section 149-59 A and Town Law 267-b. Applicant is proposing to subdivide an 8.86 acre parcel into two lots. One of these lots will not meet the required 5 acre minimum in an R-5, One and Two Family, Agricultural Zoning District. This parcel is designated as 90-1-55 on the Town Assessment Map.

This Appeal has gone to Saratoga County, but did not get there in time for their meeting this month so nothing can be decided until that review is completed. They have to review it because it is on a County road. That Board meets on Tuesday or Wednesday the week prior to this Board.

Chairman Endal: Can we do SEQR without that recommendation?

Mr. Martin: I don't think SEQR is needed, but I would say not to decide without it, just in case.

Chairman Endal: I still think it's worth it to hear thoughts on this, even if we can't make a decision tonight. Please identify yourself if you speak.

Bill Thompson, Thompson Fleming Land Surveyor representing Bob Shaw, explained that the Shaws own 9.4 acres at 55 Palmer Ridge Road and Fortsville Road which they want to split into two parcels. There is an existing house/garage on Lot 1 which would not meet the 5 acre requirement. Lot 2 has a garage, and an existing drywell and would front on Fortsville Road.

Mr. England: There seems to be a disagreement, as the application states it is 8.86 acres but the map shows more than 9.

Mr. Thompson: I think that comes from the tax map, we got ours from surveying and deeds and other

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information. Sometimes they will guess on the tax maps and mark it with a 'c' for calculated. If you take the acreage on the Shaw deed it's 11 acres with a .9 exception and .689 acres for Gagliani, so that's what we did.

Chairman Endal: We go by the surveyor.

Mr. Martin: This is a typical issue with tax maps, and the 'c' is noted on the tax maps in this case. It is an estimated number of acres. Some parcels are surveyed and deeded and the remaining spaces have to rely on estimates and calculations. I have seen it be over or under.

Mr. Elms: You will change it on the application so it's less relief?

Mr. Martin: That is the case for this application. If it goes to subdivision approval, the County will pick up that it's been measured and the 'c' will go away, if this all goes through.

Chairman Endal: So the amount of relief is a little bit less than .7 acres.

Mr. Martin: Why wasn't an attempt made to leave Lot 2 at 5 and reduce the request for Lot 1?

Mr. Thompson: I thought it had to be over 5, not at 5...I can make it 5.

Mr. Elms: It reduces the amount of relief you need.

Mr. Martin: Isn't that sloped?

Mr. Thompson: Yes. There are 8 lots in this neighborhood that don't meet this requirement.

Chairman Endal: So you're amenable to going to 5?

Mr. Elms: And that will make Lot 1 4.66.

Chairman Endal: Before we get into the public hearing let me review how we make our determination.

When it comes to Area Variances there are procedures that we need to follow, and standards which are:

1. That the strict application of said dimensional requirements would result in a specified practical difficulty to the applicant.
2. That the variance is not at all substantial.
3. That the difficulty cannot be alleviated by some practical method feasible for the applicant to pursue. Other alternatives have been investigated and do not represent an improvement over this configuration.
4. That there will be no substantial change in the character of the neighborhood or a detriment to the adjoining properties.
5. 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 practical difficulty found by the Zoning Board of Appeals to affect the applicant.

So we are here to protect the Town and property owners from unreasonable application of the Zoning Law.

Peter Schmidt, neighbor: I think Bob owned all of that at one time and has subdivided a few times, did he do that before the Zoning Laws were in place, was that all he could get out of it?

Mr. Elms: It was before the 5 acres were required. We didn't have zoning until the early 70's.

John Arnold: 5 acre zoning in the R-5 didn't take effect until the 85-89 changes approved in 89. Before

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that, houses on Palmer Road were put on 1 acre lots.

Chairman Endal: So they did meet the Zoning at the time.

Liz Marks, 250 Fortsville Road: He has illegally built a commercial garage which has negatively affected us with trucks going in and out, noise, smells, can't sit in the yard. These plans are different from what he has built. He never had a permit, it was supposed to be dug up and inspected and it was never done.

We're upset with what is already there and it's not remotely agricultural.

Chairman Endal: It's Agricultural and Residential.

Mrs. Marks: He's put in a commercial building.

Mr. Shaw: He (Mr. Martin) approved it.

Richard Mark: I dealt with calling years ago about this and nothing was done.

Mrs. Marks: He doesn't have the road frontage and we're totally against it.

Mrs. Lennox: God knows what goes on in that pole barn.

Chairman Endal: This is not the place for this. You need the building inspector.

Mr. Martin: Matt Dreimiller is his name. I take exception to accusations of lack of enforcement. I have followed up to every phone call. We have followed up and there was not commercial activity. I have not had further calls.

Mr. Marks: I have been calling this week.

Mr. Martin: I have been there twice, and got no calls since Tuesday at 1 when I left on vacation. I have not been in the office. I will respond as I always have.

Mr. Marks: We went to the last meeting and they were told to have the septic dug and it never happened.

Mr. Martin was supposed to give me a call and I never got a call about why that wasn't done. They already had a letter from the engineer in September.

Chairman Endal: That's an ongoing enforcement issue. Is it your intention to put in a residence?

Mr. Shaw: Yes, I need a home that's one story for my convenience, I can't do stairs any more.

Chairman Endal: So you're not asking us to change the use. If the use isn't fitting the zoning, that's not our purview. We are only looking at dividing it in half.

Mr. Elms: I agree, that has nothing to do with this Board.

John Arnold, 30 Palmer Ridge: This could be more easily handled through the permitting process, here he won't get a building permit until he brings these other issues up to Code.

Mr. Fitzsimmons: That could be a contingency, if it gets that far.

Mr. Elms: Activities have to be brought to the Building Dept. and the Town Board, it doesn't fall into our jurisdiction.

Mrs. Lennox: The red flag went up when it was seen to have scrap iron waiting to be sold.

Chairman Endal: So the enforcement was effective.

Mrs. Marks: That time.

Mr. Schmidt: I don't believe my land has been surveyed over there, but there's a little fence, is that the marker? (Demonstrates on map.)

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Chairman Endal: It sounds like a lot of this lot is not that buildable.

Mr. Thompson: That's correct.

Chairman Endal: We really can't make a determination tonight. I do appreciate you folks coming, but again, we're dealing with dividing this lot in half, and whether having a slightly smaller lot is going to make an undesirable change. We're not looking at what goes on on that property. In the absence of further, different comment we need to move on.

Mr. England: If you are building the house down near that garage, what's going to happen to that garage?

Mr. Martin: It came in as a pole barn, at some point septic, heat, electric, a bathroom and insulation went in. It's a pretty fancy pole barn.

Mr. Elms: That can be done without a permit if it's to be used as a barn.

Mr. Martin: Correct. I can't speak to septic issues, that's up to the building inspector. I will implore Matt to call you (the Marks). In terms of the use of the garage, there was a sign there advertising the acceptance of commercial scrap metal on the site, it was taken down as soon as I called and wrote a letter. There are some unregistered, unlicensed vehicles, some of which are commercial in nature and were removed on request. I have not been there since August or September last year, in all honesty. Also there was allegation that someone with a construction business was coming and going and it appeared to be becoming a habit. The explanation given was that the driveway was being shored up. I explained then that they can't have the business operating out of that site on an agricultural residential site. I have not heard anything since about commercial operations on the site. I don't think it's that.

Mr. England: I would still like an answer.

Mr. Shaw: I will use it as a garage.

Mrs. Marks: To fix trucks.

Chairman Endal: It's a pole barn?

Mr. Martin: A fancy one.

Mr. Marksbuilding: The pole barn, which is not, it has 16 ft doors, tri-axle tandem dump trucks go in there. If he sells the house to RW Bell, he can bring his trucks in and park them there. That's my problem. That's not agricultural. It's commercial. The only difference between a pole barn and a commercial building are the footers.

John Arnold: If somebody were to buy it and start operating commercially out of it, that's an enforcement issue and can be stopped. We have a lot of buildings in that area that are not agricultural. I have a pole barn that's large enough to run a trucking company out of, that doesn't mean that they can do that. You'd call and it'd be stopped.

Mr. Elms: It'd be stopped.

John Arnold: But enforcement is based on knowledge. It can be a pole barn, even with heat and not be a commercial business as long as they are not running one. If they do, I'll call.

Chairman Endal: This is out of our jurisdiction. A pole barn is for large equipment and it's legal.

Mr. Shaw: If I had agricultural equipment, truck, combine, I'd want a door that fit it. I just make it big

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enough to start with.

Mr. Schmidt: You don't need a permit to have an agricultural pole barn?

Mr. Martin: He had one.

Mr. Schmidt: I did it and I had to have one.

Mr. Elms: But it's not very restrictive.

Mr. Martin: I understand the neighbor's concerns. There was an RV there hooked up to septic for a period of time. I thought it had been quiet of late. I may have been wrong.

Chairman Endal: I am not making light of it, I am just telling you, we don't have any power over it.

Mr. Martin: I will address it.

Mr. Elms: So the intent is to build on the small one and what, sell the other?

Mr. Shaw: Or give it to some family.

Chairman Endal: and the plan is to adjust the plans.

Mr. Martin: I recommend the Board review the next meeting date for the public's benefit.

Chairman Endal: It will remain open and the next meeting is August 23rd.

Mrs. Lennox: What about the road frontage: He doesn't have the 250 ft required.

Mrs. Marks: He has about 175.

Mr. Martin: Lot width requirement in the town in R-5 is 250 ft. Lot width is measured at the point where the front wall of the principal building is. At the garage, which is the principal building width now, he has 139ft & 159ft, so plenty. Frontage, touching the road, is 40 ft. I can show you that it in the subdivision regulations. It is oftentimes misunderstood. Terms are thrown around, but that's the explanation. The idea is you have width to accommodate access to the site.

John Arnold: I think it might be 50 in that Zone.

Mr. Martin: But he has that in both cases and he has proper lot width depending on where he puts that house. It will have to be at the back where the lot is wider.

John Arnold: Did you decide to waive SEQR?

Chairman Endal: Not yet.

John Arnold: where does this go next?

Mr. Martin: The two-lot subdivision is administrative. That and a building permit will be all he needs to do after.

Motion to table was made by Mr. Elms and seconded by Mr. England. Roll call vote resulted as follows:

Mr. Fitzsimmons, Yes; Mr. Elms, Yes; Mr. England, Yes; Chairman Endal, Yes. All in favor motion carries.

The meeting was adjourned at 7:51pm.

Respectfully submitted,

Tricia S. Andrews