

**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 September, 2017 at 7:00 PM.**

**ZONING BOARD MEMBERS PRESENT**

Gerhard Endal, Acting Chair

Scott Fitzsimmons

John England

**ZONING BOARD MEMBERS ABSENT: Kevin Elms**

Also present: Jim Martin, Code Enforcement Officer; Tricia Andrews, Recording Secretary

The Board reviewed the minutes of the July 26, 2017 meeting. Mr. Endal motioned to accept the minutes as written and Mr. England seconded. Motion carried Roll call. 3-0.

The Zoning Board has been invited to schedule a joint meeting with the Zoning Board on Oct. 16, 2017 at 6:00pm and at 7:00pm for public comment. Members agreed that they would attend.

**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.

Mr. Martin reported that recommendations for approval have been received from the Saratoga County. The survey has been changed as a result of July's meeting. The proposed subdivision is for 1- 5 acre lot and 1-4.466 acre lot. Mr. Fitzsimmons asked which lot the well was on and Mr. Shaw approached and pointed it out. The smaller lot has the house on it.

Chairman Endal pointed out that any decision tonight would have to be unanimous as the Board has only three members present this evening, so the applicant may choose to wait if he thinks it would be more in his favor.

Chairman asked for public comment. Bill Lennox, 47 Palmer Ridge Road, stated that nothing has changed since July. This is a surveyor's map, and he asked what if the neighbors don't agree with it, do they have recourse.

Mr. Martin: This is stamped and signed by a NYS licensed surveyor. You are welcome to verify it. These things aren't exact, but it is signed for credibility the surveyor's license is at stake.

Mr. Lennox: It's a minute difference, right?

Mr. Martin: Tax maps are not always accurate, a licensed survey is usually the controlling document, although it is possible for them to be wrong, it is uncommon.

Chairman Endal: This was held over from the last meeting for County Planning Board Review, not for changes in the survey.

**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 September, 2017 at 7:00 PM.**

Mr. Martin: We also asked him to divide the plots more evenly to get the second lot closer to conforming.

Chairman Endal: So that it's the minimum variance required.

Mr. Lennox: What will deny a variance? How many people? How does the process work?

Chairman Endal: To some degree, opinions of the neighbors matter. We are concerned about that. The factors we have to consider are: (reads from Code) undesirable change, some other method, substantial, adverse affect on conditions, self-created. It seems you are arguing it's an undesirable change. How will it do that?

Mr. Lennox: You guys don't want to hear about all the things Mr. Shaw has done illegally. Pole barn, trucks coming and going, letters, documentation, that's what we are dealing with. He's not a good neighbor and that's why he shouldn't be allowed a variance. He has not followed the law and we have proof. I am here to represent my sister and brother in law who live right across the street from him.

Chairman Endal: Those are enforcement actions. We can't determine whether these are violations or not, but we can't use Zoning to punish or reward behavior.

Mr. Lennox: It affects the environment that we live in that's one of your stipulations.

Chairman Endal: Cutting it in half-what is your plan?

Mr. Shaw: I might fence it and put pigs or cattle in there, it's agricultural land. I may stay where I am. It's dairy land.

Chairman Endal: There are requirements about how you operate it that you would have to be within.

Mr. Shaw: It's my land, I can do just about anything I want to with it that's agricultural.

Chairman Endal: I don't see that as a possibility, that we can use the Zoning as reward or punishment.

Ken Chester: Why do we have Zoning laws if you can give everyone a Variance? They are there to protect the landowners.

Mr. England: It's to serve the best interests of the community.

Chairman Endal: Our job is to create relief if the Codes create an undue burden. For instance 5 acres is the minimum in this area. The lot is almost 10, so subdividing that, the requirement is that it be minimal and fit in with the neighborhood and there are smaller lots than 5 acres in that area. I have to hear how subdividing it is a problem, will make anything better or worse.

Mr. Lennox: I disagree 100%. The issues of the past are not your thing. You said to bring it to Mr. Martin and the Town Board. We have 7 people who are against this and want to keep the neighborhood as it is.

Tony Gagliano, 267 Fortsville Road right next door: If he's gained half an acre, someone's been paying taxes on that for 30-40 years, someone lost a half an acre.

Mr. England: Or it wasn't taxed.

Chairman Endal: I hear you, but I'm not sure what the answer is to that. We don't have much to do with taxes.

Mr. Gagliano: The Tax Assessor is part of the Town.

Chairman Endal: Comparing the two maps that we have, add the two lots together the second drawing has less acreage. The total acreage on the two is the same.

**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 September, 2017 at 7:00 PM.**

Mr. Fitzsimmons: We've updated the two lots proposed sizes, but the total is the same.

Mr. Lennox: He's talking about the tax map.

Mr. Martin: We're using the survey, it's been more accurately measured.

Chairman Endal: The written appeal was based on tax map descriptions. I don't know how much that would affect taxes.

Mr. Gagliano: Someone paid thousands in taxes on it.

Chairman Endal: You'd have to take that up with the Assessor. I don't think it would make that big of an impact on your taxes but the survey says this man has 9.4666 acres. To tell him he can't subdivide that causes a hardship. It's generally not a problem, most people don't object to that. You are objecting to some enforcement issues as to how he uses this land.

Mr. Martin: Speaking of taxes, combing lots will causes taxes to drop, so having two separate lots is probably, likely going to increase the taxes. I am not the Assessor but that is often what happens.

Mrs. Lennox: Does road frontage come into this?

Mr. Martin: Yes, it's 40 feet. And there is lot width, which in the R-5 zone is 250 ft and the required depth is 250 ft.

Chairman Endal: Both lots would meet that. Lot width has to be measured where the building goes.

Motion was made by Chairman Endal to approve Appeal No. 794 for an Area Variance for relief of .534 acres from the required minimum lot size as described in the plans provided. The Board reviewed the criteria. Mr. Fitzsimmons seconded.

Mr. Martin: clarified the size of the variance.

Roll call vote resulted as follows: Mr. Fitzsimmons, Yes; Mr. England, No; Mr. Endal, Yes. 2-1 Appeal is denied.

**Appeal No. 795**

A request of Valerie Green of 1711 Route 9, South Glens Falls, NY 12803 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59 A and Town Law 267-b. Applicant is proposing to subdivide a .84 acre parcel. One lot will have the required square footage but will not have the required width for a C-3, Residential and Professional Zoning District. This parcel is located at 1664-1666 Route 9 and is designated as 49.68-1-7 on the Town Assessment Map.

The lot designation was amended from the advertisement which listed it as 49.68-1-7.

Brian Borey, Little O'Connor and Borey, attorney for the applicant explained that the proposal is for two parcels. Lot 1 is conforming in sq. ft, lot depth, and lot width. Lot 2 has the required sq ft. and depth but

**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 September, 2017 at 7:00 PM.**

not width. The requirement is 100 ft., but Lot 2 would have 87.12 ft. in width so that is a variance of 12%. The proposal is to build one residence on each lot. Atty. Borey brought the proposed buildings in case the Board would like to see that. They are not necessarily relevant, but provide guidance.

Michael Thomas asked to see the pictures.

Chairman Endal: My thought in approving a variance for lot width is that the side setbacks would be adhered to by any building. I would make that a condition. On the current projected house, they do.

Atty. Borey: On Woodlawn alone, and I don't have the tax map for everybody, there are 7 lots that are out of compliance out of 9 there. So with respect to the approximate size of other lots it is consistent as well.

Mr. Martin: Was there any consideration given to a non-conventional subdivision line, meaning that the lot width is measured at the front building line, with a jog in that dividing line you would establish 13 extra feet and a building could go in that is compliant, although one might be set back further than others. On a different tangent or something. I just wonder if that was looked at.

Chairman Endal: Road frontage and lot width are different measurements.

Mr. Martin demonstrated on map for Atty. Borey.

Atty. Borey: I can discuss that with my client.

Chairman Endal: Is that a consideration?

Atty. Borey: I'd be happy to discuss it.

Chairman Endal: With whom?

Atty. Borey: With Ms. Green. I'd prefer to do that out of the public forum.

Chairman Endal: We can put this on hold while you do that.

Atty. Borey: I just need ten minutes.

Chairman Endal: Setting one house behind the other might also affect the look of the property as well.

Atty. Borey: I discussed with Ms. Green and she plans to sell them to Mr. Mousour when they are subdivided. So he was on the conversation too. For Ms. Green that doesn't make much sense because she doesn't want to set one building back from the rest of the neighborhood, and the proposal for development is to leave trees between the property and Thomas' as well as on Route 9 and she doesn't want to lose that buffer.

Mr. Martin: All very justifiable reasons, I just wanted to make sure it was out there.

Atty. Borey: Dave Monsour can answer any questions about the proposal.

Mr. Martin: That's something that can speak to impacts, if you could embellish more about the proposed buffer, it may allay some concerns.

Mr. Monsour: We want to leave a tree buffer, and it's a corner lot so 40 ft on both sides and we want to leave a tree buffer on the back line. We only want to clear back 100- 150 ft. One's a colonial one's a ranch, products we build quite a bit.

Chairman Endal: So you are not opposed to a condition that all side setbacks be met.

Mr. Martin: Put a notation on the plat about the vegetation too to codify it.

Atty. Borey: You are talking about leaving vegetation, not adding it.

**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 September, 2017 at 7:00 PM.**

Mr. England: Is that for noise abatement?

Mr. Monsour: And safety. And just to have the least amount of impact.

Chairman Endal: If we were to disapprove, you could still do what Mr. Martin suggested without our approval.

Mr. Monsour: Yes, but this is better.

Mr. Martin: Maintaining a consistent front building line is a good concern too.

Melissa Chester, of 1662 Route 9 on corner of Woodlawn: All three neighbors surrounding this are here in opposition to this. It is one of the busiest intersections in town, it's directly across from Merritt Road. Children and grandchildren are in the area and it is dangerous. She has seen accidents. Mrs. Green should know this. She owns other properties and the Motel in the area. Mrs. Chester doesn't know why these houses have a Route 9 address and will face Woodlawn. It is much too dangerous. There is no tree line there to leave. It's personal to Mrs. Chester that it is not safe. Sizes on Woodlawn are not that small. They have huge lots. They have trees. She doesn't want to try to squeeze someone in there. People built with room. Third, this isn't a new neighborhood; those houses will look out of place in an older community. This is the first taste people get of our community and it won't look nice. Mrs. Green just wants to make more money and the builder doesn't want to pay that much and put in one house. This sets a bad precedent. They have one for sale on the corner of Merritt across the street, they will be back looking to subdivide that. Busses are coming in and out every day. She just let her kids ride their bikes to the end of the street and two more houses will make it unfeasible.

Chairman Endal: You're across from this?

Mr. Chester: Yes, and it's 100 by 300 ft deep.

Chuck McCabe 29 Woodlawn will share 194 ft border with these. He agrees with Mrs. Chester. He and his wife are against this. It is a dangerous road to get out of. People come right up on the Chester's lawn to get into Merritt Road. People don't slow down, all day long. It would endanger health and safety. It would endanger the character of the surrounding neighborhood and health and safety of families with children. It was a big selling point when we bought it to have pine trees there, what happens when we squeeze two houses and two septic systems on there, it could damage those trees and I have a financial and safety risk. I would be ok with one house facing Route 9, no problem.

Michael Thomas, this has a Route 9 address so why is it being changed to Woodlawn? There is hardly any vegetation on that property worth salvaging. Most of those trees are garbage trees. It's infested with vines that are killing it. Wildlife is encroached upon. Deer bed down there. The trains from Saratoga to Glens Falls railroad bed there remains.

Alice Costak (applicant's sister and adjacent landowner): This may all be true, but Val has been paying taxes all this time, she should have the benefit of selling it to pay for her retirement,

Mrs. Green: They do need a red light there. Ken and Melissa, you told me you plan to move.

Mr. Chester: I asked about Zoning before to make a point. Subdividing a 9 acre lot is very different from subdividing into a .84 acre lot when everything around it is 1 acre that's different. One house on Route 9

**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 September, 2017 at 7:00 PM.**

is acceptable.

Chairman Endal: They are different zone, it's not the same rules. Any thought to what they are saying about Route 9?

Atty. Borey: We don't want a property pulling out onto Route 9, which people say is dangerous. Pulling onto Woodlawn keeps the situation less dangerous.

Mr. Chester: One house there could have an extra driveway onto Woodlawn.

Mr. Thomas: The congestion is on the corner. You are adding to it. Until the State steps up with a light, there's going to be a problem. They shouldn't put it on the corner. I have lived here for 35 years and have never had a problem.

Mr. England: If it's on Route 9, does it have to be approved by the State?

Chairman Endal: Yes and on Woodlawn it needs approval too.

Mr. Martin: A Town permit for a driveway, yes.

William Clemons, 27 Woodlawn. On motorcycle, concerned with more cars on Woodlawn, it is a bad traffic area.

Mr. McCabe: We have about 4-5 other people from Woodlawn who couldn't be here.

Mrs. Chester: Mrs. O'Malley and another. Some are asking if they can send a letter or make a phone call, I visited a few and they couldn't be here. My last thought was in the winter- the State tries but snow removal is a nightmare. They put it all on the side road, what will they do when there are two more driveways there and they can't dump it there? That's one more instance of why this won't work with houses this close together this close to Route 9. EMS responds to that intersection multiple times per week.

Mrs. Green: They do a beautiful job with snow, it will be taken care of.

Mr. Monsour: I completely understand what they are saying. They want houses on Route 9 rather than on a side street. That doesn't make sense to me. They just don't want houses across from them to look at, but I think that's more dangerous.

Chairman Endal: They want one house, not two.

Mr. Monsour: We could get two in without a variance, and it wouldn't look good.

Mr. Fitzsimmons: I heard whispers about 1 but not 2.

Mr. Chester: On Route 9.

Mrs. Chester: Past the intersection.

Mr. Fitzsimmons: You would be willing to work with your neighbor on one residence not facing the side street.

Mr. Chester: We don't have a problem with that. But two is unsafe.

Mr. Fitzsimmons: You would still object to one on Woodlawn?

Mrs. Chester: Yes.

Mr. Chester: We don't mind facing it. We may move soon. We do have another house we can move into. But it's dangerous.

**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 September, 2017 at 7:00 PM.**

Mr. McCabe: One house, minimal damage to my trees but two, disaster waiting to happen.

Mr. Monsour: We wouldn't be disturbing the property line at all, we are 18-20 ft from him

Mr. McCabe: Pine tree roots are shallow and if they are damaged wind will take them out.

Chairman Endal: Just so we are clear. If we do not approve this variance, the property owner can still exit onto Woodlawn if they build one house. All they need is a building permit and a permit to put a driveway onto Woodlawn. Whether or not this one or two exits onto Woodlawn, I don't think we or you have control over that.

Catherine O'Malley 23 Woodlawn: the road is curved, and she is convinced she will run over somebody because she cannot see.

Mr. Martin: There is another alternative. You could have a shared driveway on the center lot line.

Mr. McCabe: That defeats the purpose of me saying two houses is too much.

Mrs. Chester: Same amount of cars.

Mr. Chester: Still on Route 9.

Mr. England: If he turned it sideways and put they both exiting to Route 9, one legal size, they'd be identical in size.

Mr. Martin: It would be slightly less relief.

Mr. England: So that's another option.

Mr. Monsour: We prefer to go with Woodlawn for safety purposes, not exiting on Route 9.

Mr. England: Taxes would be lower on Woodlawn because it's not State highway.

Mr. Monsour: I don't think that matters on taxes, but I could be wrong. Drawing the axis differently, we could still build two, whether on Route 9 or Woodlawn.

Mr. Martin: They could make conforming lots.

Mr. England: In the requirements we review whether it can be done by any other means.

Chairman Endal: And the character of the neighborhood. You said there were several other lots with less width. Understanding that the widths are measured at the building line, do you have evidence of that?

Atty. Borey: No, but they are rectangular lots on the other side of the street. Talking about the character of the neighborhood and size of lots, it is very close.

Mr. England: This is C-3?

Chairman Endal: Yes.

Mrs. Chester: In the last hearing, you read the rules and talked about the decision being made with the neighbors' feelings. Multiple people are here saying this doesn't fit. Route 9 is being ignored because it's not a good business opportunity, it's to the best interest of the builder and not the residents who pay our taxes and build our lives here.

Chairman Endal reviewed the Code.

We have heard neighbors say there could be detriment to their property, their trees. That's just one.

There is concern about increased traffic on a busy highway.

Mr. Chester: We've seen too many people get hurt there.

**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 September, 2017 at 7:00 PM.**

Chairman Endal: So traffic is a legitimate concern. Benefit sought can not be achieved by any other method: We have given you several other possibilities. The variance is not substantial: 12% is not substantial. Adverse effect: I don't know. I am not sure it would.

Mr. England: Comments have been made, whether or not they can be proven, there is opposition.

Chairman Endal: Which goes more to the first condition. Self-created: Not seeing that. It is a lot bigger than what's required, but not big enough for two.

Mr. McCabe: How many times have we got to say this?

Chairman Endal: It can be subdivided legally without a variance by jogging the property line and that's not up to us. The builder doesn't want to do that. He wants to have them look nice in a line, to fit the character of the neighborhood. But he doesn't have to do that.

Mr. Chester: For Route 9 or Woodlawn?

Chairman Endal: Either way.

Mr. Chester: Even though it's a Woodlawn Address?

Chairman Endal: Yes.

Mr. Chester: Can you just change your address?

Chairman Endal: I believe so. I just want you to know that he has two options that don't require a Variance. They can get the proper width by setting the buildings front and back. They could also put them both on Route 9 with a slight jog. There's adequate total acreage to have two lots.

Mr. Chester: What's the size?

Mr. Martin: It's 15,000 sq ft with public water, 22,500 without, and it is with. The lot width is 100.

Mr. Chester: And there's room for septic behind there?

Mr. Martin: I'm not the building inspector, but it appears so.

Mr. Chester: We can do it too, then.

Chairman Endal: So there are other ways to subdivide this. I am hearing from the neighbors, and it's not just that they don't want it, they have specific concerns. Traffic is a very real concern. And two more driveways coming out there can be a difficulty.

Mrs. Green: There's more and more traffic and people moving in here.

Mrs. Cornak: You can't stop the growth. But the thing about the trees is pure speculation, anything could destroy his trees. I just came through a hurricane in Florida and lost mine. They have had the use of these empty lots.

Mr. McCabe: Those trees have been there 100 years or more and as long as no one damages the roots they will stay and you can't promise you won't.

Mrs. Green: Sometimes trees roots just die without explanation.

Chairman Endal: We can't guarantee any trees.

Mr. McCabe: I just want to avoid damage.

Chairman Endal: The public hearing is closed. This does not require SEQ. R.

Atty. Borey: We would like to table this to consider more options.



**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 September, 2017 at 7:00 PM.**

Motion to table Appeal No. 795 was made by Mr. Fitzsimmons and seconded by Mr. England. Roll call vote resulted as follows: Mr. Fitzsimmons, Yes; Mr. England, Yes; Mr. Endal, Yes. All in favor motion carries.

Mr. Fitzsimmons: Be aware it won't be re-advertised. Our next meeting is Oct. 25<sup>th</sup>, a Wednesday, but you won't get a notice, so tell your neighbors.

Mr. McCabe: Can I bring my attorney?

Mr. Martin: Yes.

Mrs. Chester: The State does a traffic study every year.

Chairman Endal: Get ahold of it. Talk with neighbors.

The meeting was adjourned at 8:40pm.

Respectfully submitted,

Tricia S. Andrews