

**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 28th day of March, 2018 at 7:00 PM.**

**ZONING BOARD MEMBERS PRESENT**

Kevin Elms, Acting Chair

John England

Scott Fitzsimmons

Matthew Manning

**ZONING BOARD MEMBERS ABSENT:** Gerhard Endal, Chair

The Board reviewed the minutes of the December 20, 2017 and January 24, 2018 meetings. Motions to approve were carried unanimously.

**APPEAL NO. 798**

A request of Seth Weinberger and Angela Howard to 131 Feeder Dam Road, South Glens Falls, NY 12803 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59(A)A and Town Law 267-b.

Applicants are proposing to construct a single family residence at 129 Feeder Dam Road that the attached front porch will not meet the required 40' front setback in an R-2, One and Two Residential District. This property is designated as 49.10-2-17 on the Town Assessment Map.

Mr. Elms asked if the relief was for 4ft. The porch will be on Meadow Drive, as this lot has two fronts.

Mr. Elms asked for the width of the porch and it is 4 ft. Mr. Elms asked whether the 36'5" that was marked on the map is to the overhang of the roof, and Mr. Weinberger said it is to the porch slab.

They are meeting the back setback. This is new construction, not pre-fab. Ms. Howard stated that the drawings are available if the Board wants to see them.

Mr. Elms explained that the Board has to examine other possibilities before making changes to Town law.

Mr. Martin reported that there were no calls and no correspondence.

Mr. Martin explained that the house could be pushed back 3.5 feet and meet the setbacks because the two rears are considered two sides. The side setback is only 15ft. The building inspector told them that they had to have 30 ft to the back of the house, and Mr. Martin said that is usually the case but this Code is somewhat unique, specifying two fronts and two sides. He would give them a building permit tomorrow, if they moved it. He asked if there were something else on the lot preventing them from doing that.

Mr. Fitzsimmons asked to clarify and Mr. Weinberger approached so that Mr. Martin could show him on the map which was they could go. It would move back from Meadow and down Feeder Dam. Mr.

Weinberger said that there are trees on the lot line that might impact the septic system. Mr. England pointed out that 26.5 ft would not be enough room for a septic system, either.

Mr. Elms asked whether they had picked the house first, or the plot, and Mr. Weinberger said that they had asked their architect to work with the size.

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Mr. Martin advised that they want to maintain the building line with neighboring properties and the variance does that. Mr. Elms felt that it was a minimal request for relief. Mr. Martin asked about a garage and the drawing currently shows a single car garage. It is attached. Looking from Meadow it is on the Feeder Dam side.

Mr. Manning asked whether there is a roof on the porch. Mr. Weinberger provided him with the drawings.

Mr. Elms asked for public comment and there was none.

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

1. That the strict application of said dimensional requirements would not result in a specified practical difficulty to the applicant.
2. That the variance is not substantial.
3. That the difficulty cannot be alleviated by some practical method feasible for the applicant to pursue.
4. That there would 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.

Mr. Elms motioned to grant Appeal No. 798 for 5ft relief from the front yard setback on the Meadow Drive side to the overhang of the roof. Mr. Fitzsimmons seconded. Roll call vote proceeded as follows: Mr. Manning, Yes; Mr. Fitzsimmons, Yes; Mr. England, Yes; Mr. Elms, Yes.

**Appeal No. 799**

A request of Janet Shaw of 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 a 9.46 acre parcel into two building lots, lot #2 will be 5 acres which complies with Zoning and lot #1 will be 4.46 acres which will not meet the 5 acre minimum in an R-5 Zoning District. This property is designated as 90.-1-55 on the Town Assessment Map.

This Appeal was tabled at the applicant's request.

**Appeal No. 800**

A request of Anthony Gagliano of 251 Fortsville Road, Gansevoort, NY 12831 for an Area Variance pursuant to Chapter 149-59A and Town Law 267-b. Applicant is requesting to change a previously used in-law structure to a rental unit. A 5-acre minimum is required for a two-family dwelling in an R-5 Zoning District, the applicant has .69 acres. This property is designated as 90.-1-54 on the Town

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Assessment Map.

Mr. & Mrs. Gagliano explained that they were 35 year residents of Moreau and had this modular home installed next to theirs for Mrs. Gagliano's parents. They spent their life savings on it and wanted to leave it as an asset. They had a Variance to put it in, and since they passed away he has been renting it out. They didn't realize that a Variance would be required to do that. The people who live there are members of the community and spend money here as well as having their children in the school. They are paying double the taxes with it there. The Town will lose tax money. They have spoken to neighbors and no one has any problem with it except the person who complained to the Town. They have always made sure to rent to good people.

Mr. Martin further explained that the original application was from 2004. Two things to note are that on Page 2 it says that this is an addition to a single family house and it can't have a kitchen. And that a 2-family dwelling would require 5 acres. Mr. Gagliano signed that he understood this at the time. The Board should understand that you can't have two separate distinct principal buildings, so they were joined by a breezeway, which made it an addition. Secondly, a dwelling is constituted by a living room, a kitchen and a bathroom, so it appears an effort was made to remove the kitchen so that this doesn't constitute a second dwelling. Mr. Gagliano has shared that it was built with the kitchen, has always had it, and he received a permit for it. It was Mrs. Gagliano who signed the paper. They have been very forthcoming about it when questioned after the complaint was made.

Mr. Gagliano explained that he is baffled because how would they sell a modular home without one, and that the inspector could not have missed it. Mrs. Gagliano said she thought it wasn't a kitchen if it didn't have an oven, and it didn't, it had a microwave, refrigerator and a toaster. Mr. Manning thought he understood that at the time effort was made to create an in-law suite. Mr. Martin thought that this was a gray area with regards to discretion. He has seen similar things happen. They could easily put the kitchen back. He thinks it should have no plumbing or electrical or gas line for a stove, so that it wouldn't be easily made back into a kitchen.

Mr. Elms said that no one knows what really happened.

Mr. England thought that the kitchen is a side issue, the point is there are two dwellings on a small lot. Mr. Martin described it as a duplex, it is under one roof. Not a problem. But in 2004 the effort was to make it a single family dwelling by not having a second kitchen. Mr. Fitzsimmons asked and the breezeway is 14-16ft long. Mr. Martin said it was 18. Mr. Gagliano said that they also had to put in fireproof sheet rock and spend money on a new septic system because of two bathrooms.

The complaint came in from a neighbor suspicion that this was a two-family dwelling and that it is not allowed. So they looked at the plans and spoke to Mr. Gagliano, who agreed there is a kitchen, and therefore they are here for a Variance for relief from the requirement. If they don't get it, they would have to remove the kitchen again in order to be in compliance. Mrs. Gagliano stated that they would remove the whole extra house if that happened because they are paying taxes on it.

Mr. Elms opened the public hearing at 7:36pm. Liz Mark 250 Fortsville Road, has no objection to this

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variance it looks good, it fits in with the neighborhood and has never bothered her.

Mr. John Arnold, of 30 Palmer Road, said he brought it to Joe Patricke in 2004 and Mr. Patricke told him it was a remodel for a sick in-law, and assured him that it was not permanent and it was not going to have a kitchen. Because of the breezeway it was an addition and didn't need a Variance, and that it was only for the in-laws and could not be rented out. He knows people with 3 & 4 acre lots who would love to have two family houses and can't because of this law. The Building Department often has to take action on in-law apartments that become rentals. The Planning Board tries to work with engineers and get plans to fit within the Code. At Zoning, they work with hardships. This problem could be dealt with differently, such as by removing the modular. If they had simply added on a room, they would not have rented out that room when it was no longer needed. He has made similar arrangements for the future with his parents. They would not add separate entrances, heat, etc.

Mr. Elms feels that this is a difficult situation as the guidelines are clear. 5 acres are required to do this and they don't even have an acre. The changes they made were expensive and that is the hardship.

Mrs. Gagliano pointed out that it has been there for 14 years, they are paying additional taxes and they are not hurting anyone.

Mr. Elms explained that relief is for someone whose problem is not of their own making, a mistake at time of purchase or not knowing where their lines are because they didn't have a survey. In this case it was very clear that they could not have a kitchen. They chose to have one anyway knowing that it couldn't be rented. Mr. Gagliano pointed out that they didn't want her mother near a stove. Mr. Martin asked and it has a stove, sink, refrigerator now. Mr. Gagliano also asked about Mr. Patricke being reported as saying it was illegal to rent it, and Mr. Martin stated that the Zoning allows for duplexes on a 5-acre lot. How that comes to be occupied by two families, whether it is relatives, whether rent is charged, etc, there's no law about that. Even single bedrooms are rented out and no one ever knows about it. The Code is concerned with use, and the potential for adverse impact on public health, safety and welfare. Whether they get rent, is not relevant. Bill Lennox of 47 Palmer Ridge, has no problem with this. He wants to know who made the complaint. Mr. Martin doesn't think it is constructive or going to affect the Board's opinion to say who it was, and Mr. Lennox stated he thinks he knows who and that this is revenge.

Mr. Elms stated that he doesn't think they are going to be able to grant a Variance, they are limited in what relief they can give, and this is excessive. If it's not self-created, that's a consideration but they should have known what was happening. Mr. Fitzsimmons expressed concern for the precedent that would be set if they allowed this tremendous amount of relief.

Mrs. Gagliano asked and Mr. Martin said that a kitchen is constituted by stove, sink & associated mechanics (gas line). If there is no cooking capability then it is not a second dwelling anymore. This is an option in consideration for what it was approved as and allowed. The stove would have to be stubbed off in the basement so that a conscious decision and building permit would be required to put it back, preventing a future misunderstanding.

Mr. Manning agreed with concerns about precedent and he is not convinced that unplugging the stove is

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sufficient.

Mr. Gagliano asked whether they could get their taxes revised and the Board stated that they have to take that up with the Assessor, and it would be worth doing.

Mr. Arnold pointed out that they would be able to sell it if they decided to do so.

Bob Shaw, neighbor, stated that he is concerned about their water supply. He put the well in for his cows. The well is not very deep and the lot can't be big enough for their water to be clean. Maybe the Health Department should be considered. Mr. Gagliano said they had a new well drilled before he ever put the modular in. Mr. Elms stated that the Board wasn't concerned with this. Mr. Martin agreed the new well was inspected and approved.

Motion was made by Mr. Elms to deny Appeal No. 800 due to the Variance size and evidence that the difficulty was self-created. Mr. England seconded. Roll call vote proceeded as follows: Mr. Manning, Yes; Mr. Fitzsimmons, Yes; Mr. England, Yes; Mr. Elms, Yes.

The meeting was adjourned at 8:02 pm.

Respectfully submitted,

Tricia S. Andrews