

**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 May, 2018 at 7:00 PM.**

**ZONING BOARD MEMBERS PRESENT**

Gerhard Endal, Chair

Kevin Elms

John England

Scott Fitzsimmons

Matthew Manning



**ZONING BOARD MEMBERS ABSENT:**

The Board reviewed the minutes of the March 28, 2018 meeting. No corrections were made. Motion to approve was made by Mr. Elms and seconded by Mr. Fitzsimmons. All in favor, motion carries with no roll call, Chairman Endal abstaining.

**APPEAL NO. 801**

A request of Michael Thorne of 2 Woodlawn Ave., 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 construct a garage that will not meet the required front setback in an R-1, One Family Residential Zoning District. This property is designated as 50.53-1-20 on the Town Assessment Map.

Mr. Thorne wants to put a garage off his mudroom. The house had two fronts. He is asking for 11 ft. relief, and he brought pictures to show that it will fit in with other houses in the area. The new driveway is already approved by the highway department. They will still have 31 ft. setbacks. Doing it on the other side would have put the driveway right in front of the stop sign. He has spoken to his closest neighbors who will be looking at it and has a letter from them saying that they have no problems. This is a 36% relief. Side setbacks in this area are 12 ft and he would have met it if this were not a corner lot.

Mr. England asked the applicant to draw the garage on the photo so he could see where it would go. Existing driveway is being removed. The new driveway will extend past the end of the house. The existing garage is becoming a master bedroom.

The Chair reviewed the conditions for granting an Area Variance and found as follows:

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 substantial.
3. That the difficulty cannot be alleviated by some practical method feasible for the applicant to pursue.
4. That granting the variance would not cause 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

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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.

No SEQR was required for this application.

Discussion followed as to whether 11 ft variance were enough to include the over hang on the roof.

Motion was made by Elms seconded by 11'6" ft relief from front setback seconded by Mr. Fitzsimmons.

Roll call vote proceeded as follows: Mr. Manning, Yes; Mr. Fitzsimmons, Yes; Mr. England, Yes; Mr.

Elms, Yes; Chairman Endal, Yes. Motion carries 5-0.

**Appeal No. 802**

A request of Janet Shaw of 55 Palmer Ridge Rd., 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 #1 will be 5 acres which complies with zoning and lot #2 will be 4.46 acres which will not meet the 5 acre minimum in an R-5, One and Two Family Residential, Agricultural Zoning District. This property is designated as 90.-1-55 on the Town Assessment Map.

Atty. Matt Keegan for Mr. Shaw, agent for Ms. Shaw, appeared.

The Chairman inquired as to the difference between this appeal and the previous appeal for the same applicant and property, to which Atty. Keegan replied that there is some difference in the size of the two lots and to which one will have the existing building.

Mr. Martin feels that it is different. It could be argued as to how much different, but he feels that it is. The one with the existing house on it is going to be 5, and on the previous it was going to be the smaller one. Each lot has right of way to a different existing road, Palmer Ridge Road and Fortsville Road.

Mr. Martin pointed out that this Appeal had had a calculated lot size off of deed descriptions and the parent parcel comes to 8.6 acres when calculated from then deed. There is now a stamped survey that it more accurate, typically, and it says 9.46 acres.

Atty. Keegan then stated that 51 Palmer Ridge is only .81 acres, 54 Palmer Ridge is only 4.3 three lots across on Palmer Ridge are 1.18, 2.36, and 1.4 and others in the neighborhood are smaller, and so this is in keeping with the character of the neighborhood.

Mr. Martin had provided an aerial photograph showing the area where some lots are smaller as Atty. Keegan said, and some are also larger than 5. Chairman stated that some substantially larger. The smaller ones would have been pre-existing non-conforming.

Atty. Keegan pointed out that Mr. Shaw has owned this land since 1946, well before the 5 acre minimum was imposed.

Chairman Endal asked Atty. Buettner for an opinion on whether this is different. The standard has been that it should be "materially different" but there is no specific definition of that, and she can't tell them how to decide. If there were litigation coming out of this, the petitioner would have to prove that they

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made a mistake with their determination of whether it is materially different. Atty. Buettner also pointed out that the original application is not available for review because it has been archived and the Zoning Dept secretary is on vacation.

Atty. Keegan stated that the new application is different because they have changed the lot size of the one with the standing house, which has been there since 1974. The original application had the lot with the existing house become the non-conforming one, and now that lot will be 5 acres and the vacant lot will be undersized. It is also substantial in that it is impossible to do anything else with the land since it is too small for agricultural uses which require 10.

Atty. Claudia Braymer, representing the Marks who live across the street on Fortsville Road, argued that this appeal is materially the same as the application already denied. She argued that the Board should deny the request. The question then was about whether to grant a variance to the acreage requirement. The requested lot sizes were 5 and 4.46. The notice from last time says 9.46 acre lot will be divided and one will meet the minimum. The application doesn't say which one. It is exactly the same as the new application. It looks different, but the question at hand is the same.

Atty. Keegan disagreed, because the pre-existing house would have been non-conforming and this time it's on a conforming lot.

Chairman Endal asked what the plan is, and Mr. Shaw plans to build a single-story accessible house.

Att. Buettner asked whether the Board has the old application before them, and they don't. She suggested tabling so that they can have the full record before them. Since the attorney is arguing that the applications are the same or different, they need the old one out of archive in order to make an informed decision.

Chairman Endal stated that he doesn't see much difference at this point. He asked the applicant if he were comfortable waiting a month.

Motion to table Appeal No. 802 to allow time to retrieve the original application for review by the Board was made by Mr. Elms and seconded by Mr. England.

Bill Lennox of 47 Palmer Ridge Road asked how many members are on the Board. There are 5. He is confused because there have been different people here, sometimes 3 or 4 but tonight there are 5.

Attorney Buettner explained that it is a 5 member Board but the members sometimes have to miss a meeting and are not compelled to be there.

A roll call vote on the motion resulted as follows: Mr. Manning, Yes; Mr. Fitzsimmons, Yes; Mr. England, Yes; Mr. Elms, Yes; Chairman Endal, Yes. Motion carries 5-0.

**APPEAL NO. 803**

A request of Carl Donaldson of 1109 Route 9, Gansevoort, NY 12831 for a Special Use Permit pursuant to Chapter 149, Article V, Section 149-29. Applicant is proposing to operate a small engine repair shop in his

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garage. This property is located in an R-3, One and Two Family, Agricultural Zoning District and is designated as 89.-2-68.1 on the Town Assessment Map.

The applicant for this appeal was not present.

Ernest Grenier 1115 Route 9, wanted to be heard in opposition to the request. Small engine repairs have to be run at high rpm and he has letters from the neighbors as well about the noise. Letters read into the record from Mrs. Grenier as well as other neighbors. She feels that the variance threatens the neighborhood. The property has been used that way for a year, and there are 50 used mowers stacked. Pictures were displayed. The mowers are washed and pollutants run off. Their water is well water and the toxins could get into the water supply. This is a residential zone. Since they are back on a hill they can see the piles of mowers directly below them. It will reduce property values. The noise can be heard anywhere in the house. It happens on weekday evenings and weekends when they are home. She would like the appeal denied as well as all the junk removed from the properties.

The letters were given to Mr. Martin as well as photos.

Chairman Endal assured him that his comments would be included in the record, but since the applicant isn't present they will not be able to do anything tonight.

Mr. Grenier said that he likes the applicant, but that he doesn't follow the rules.

Mr. England pointed out that the Board can't stop him from doing what he has been doing; that is an enforcement action. An enforcement action is the reason this individual applied for the permit. The neighbors won't be re-noticed about this, it will automatically be carried over so if Mr. Grenier is still interested, he automatically should come to the meeting next month on the 4<sup>th</sup> Wednesday. If Mr. Donaldson still doesn't show up, his application will be thrown away.

Chairman Endal explained that the Zoning is to protect from unreasonable uses.

Mr. Antis of the Planning Board had brought the complaint to the Building Department when he began to see the mowers and vehicles for sale on the side of the road, the use has been going on since 2016. He also has a sign for car detailing. All are in violation of R-5 Zoning.

Regarding the Comprehensive Plan, the Planning Board is postponing a decision until next month for more time to review. If this Board is in a similar position, it won't slow things down. Does the Board need additional time or copies to review?

The Board agreed that they would like 2 copies. Those will be ready Tuesday. A Resolution or comment will be requested in June. It still has to go to the Town Board, which will hold another public hearing and comments and revisions, and EAF, will all be done before adopting it.

Chairman Endal asked about setbacks for recreational areas, such as off of Nolan Road. Mr. Martin said that the Board should email comments to all members, including the Planning Board, so that everyone sees the possible changes being discussed.

Chairman Endal mentioned the Industrial Park. He felt that the Town should either build a road to get to it, or get rid of it.

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Mr. Martin explained the process he had used to glean useful comments from the minutes of the joint meeting and public hearing in October and make revisions as warranted.

Zoning changes can't be addressed until this is done, and there is high interest in getting those changes made.

Town Board will be Lead Agency on the adoption of the Comprehensive Plan, and the adoption is a type 1 action triggering the EAF review.

Traffic concerns were raised and DOT will get a copy of the plan.

The meeting was adjourned by the Chair at 8:02 pm.

Respectfully submitted,

Tricia S. Andrews