

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 June, 2018 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT

Gerhard Endal, Chair

Kevin Elms

John England

Scott Fitzsimmons

Matthew Manning



The Board reviewed the minutes of the May 23, 2018 meeting. Motion to approve was made by Mr. Elms and seconded by Mr. Manning. All in favor, motion carries with no roll call, Chairman Endal abstaining. P2661 2nd pp motion made by Elms should say 11 ft 4 in. p. 2663 2/3rds' zoning to protect from unreasonable uses'...should say 'unreasonable applications of the Zoning Law.' p. Comprehensive plan, same page, 2nd from bottom. Setbacks for recreational uses- cross out setbacks and say recreational uses such as the setback. All in favor motion carries not abstentions.

Mr. Martin explained that Mr. Shaw's attorney asked about a week ago that Appeal No. 802 be tabled. Elms motioned and Mr. England seconded, all in favor motion carries.

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 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.

Mr. Donaldson apologized that he had neglected to come last month and thanked the Board for seeing him tonight. He does small engine repair full time and a little at home. He is trying to better himself and make a better living for his family. His wife lost her job. He stated that he does a lot of quick work without charging. He brought a business plan and 36 signatures from neighbors who are all for it. Showed the facilities he has for disposing of oil.

Regarding the stacks of mowers appearing to be stored for parts, Mr. Martin had a discussion with him. He stacked the mowers because he was asked to get them out of sight. He plans to install a fence to keep them out of sight. He has ceased to see mowers on the roadside.

This is an application for a home occupation. Mr. Martin read the definition of a home occupation into the record and the applicant stated that they do want a sign. The ordinance says that the occupation can't

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be visible from the outside. It also says that it can include the stock and trade of commodities to the general public. This is the rationale for the application. Mr. Donaldson said that the ladies said the Board could contact them to make sure.

Mr. Endal said that many of the letters may be customers who don't live in the neighborhood. Mr. Donaldson said that they do.

The letters submitted last time with photos were made available to the Board but they also have a new letter from Mr. Grenier expressing his concerns again. The two women who had sent a note last month in opposition also signed his letters in favor of the application. Mr. Elms agreed that many are on Route 9. Mr. Martin wanted to bring to the Board's attention that Mr. Grenier's most recent letter stated that the south driveway wasn't legal and is to be closed, but hasn't been enforced by the Town. Mr. Martin has researched it. On the plat, it shows that in 2011, 3 lots were made accommodating a proposed house, existing house and a proposed vacant lot. Lot 1 was sold and Mr. Donaldson lives in the home now although he was not the original buyer. The plat says that the existing lot was to go south 14 ft and that the existing driveway was to be removed. Those notes are the responsibility of the applicant (the subdivider, Mr. Grenier) and have nothing to do with Mr. Donaldson. Mr. Claudia Braymer, Mr. Grenier's attorney says that he closed the driveway and it's not his fault. Mr. Martin pointed out that it was supposed to be removed, not closed. Mr. Donaldson's co-applicant says that it is paved.

Mr. Grenier said that they put dirt there at the request of the buyers. Mr. Martin feels that removal would have solved the problem. Mr. Grenier said that he followed the advice of the building inspector. He doesn't know if the Board is asking him to remove it now or not.

Mr. Endal said he didn't think it was relevant to the conversation about the Appeal anyway. Mr. Martin said that now that it's been brought to his attention he will seek to bring that into compliance, and that it was a condition placed upon the applicant. The only reason it came up is that it was brought up by Mr. Grenier in the letter.

Atty. Buettner agreed that Mr. Martin was clarifying the letter but that the Board was at liberty to disregard the question of the driveway for the time being. The driveway is not before the Board today. Mr. England said that it might be an issue with traffic and Mr. Grenier agreed. Mr. Martin pointed out that the third lot would never get an approved driveway curb cut from DOT.

Stacy Holcomb co-owner with Mr. Donaldson talked to Chad Corbett at DOT. DOT will not force that driveway to be closed because 7 years have passed. The only thing that would cause them to get involved is if they asked for permission to make any changes/updates. Mr. Donaldson said that the horseshoe driveway was a selling point for them when they bought the house and that they didn't want to have to back out on Route 9.

Mr. Endal asked how many neighbors were complaining, and Mr. Grenier explained that his sister-in-law would be building on the vacant lot and he is sure she would not like it. He hasn't been to DOT for a

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driveway permit. If it does get shut off there is only one entrance into the small business.

Ms. Holcomb pointed out that one of the pictures shows how the mowers look from Mr. Grenier's property line, and they brought a letter from Chris Sweet stating that they recycle the oil to him. Mr. Donaldson explained that fuel is drained into approved containers over cardboard. Fuel that needs to be burned he puts in his truck, as it burns hotter. He does not spill oil or gas and is very methodical about it. He keeps his property very neat.

He brings things to work to dispose of them. Mr. Donaldson argued that he is meeting needs in the Town. He works with people on payments who don't have much money. Hours are 9am-9pm, allowing two extra hours in the morning and evening around the quiet hours. Mr. Donaldson explained that traffic noise is very loud on Route 9 so he doesn't think the mowers are that noisy by comparison.

He only does small engines, chain saws, lawn mowers. Nothing with a license plate. Work is done in the garage, and will be behind the fence when it goes up.

Mowers stored for parts are another issue and they will be shielded by the fence. He has done work outside in the past, but he will not now.

Mr. Fitzsimmons asked and Mr. Donaldson said they have been there 2.5 years. Mr. England asked about a home office and how a separate garage would be interpreted since the Code refers to the residence, not an outbuilding. Mr. Martin said that he had considered dwelling as referring to the house and the garage, and that it was detached was not really part of his thinking. To him it is still part of the residence.

Chairman Endal thought that the Board had seen plenty of home occupations in detached garages. Mr. Donaldson does tinker on the weekends although he is often at his other property on weekends. He works at his full time job Tues-Saturday.

Noise ordinance in the Town is before 7am and after 11pm. Mr. Martin pointed out that limiting the hours is within the Board's purview when granting a Special Use Permit and that they can also limit the amount of outdoor storage, etc. The Board has latitude.

Mr. Donaldson was asked and he has found that selling on Facebook and Craigslist is very difficult and not selling them out front has made sales almost impossible.

Mr. Grenier said that there are still mowers for sale behind the fence.

Ms. Holcomb stated that they had a garage sale.

Mr. Donaldson said that his daughter goes to bed at 8:30 so he would stop then anyway.

Mr. Elms asked whether he would agree to 7:30pm.

Mr. Grenier said it is like someone mowing next to your house 8 hours a day.

Mr. Elms agreed and said that he is very concerned about the noise. He is a proponent of home occupations and second incomes, but it has to be limited and regulated.

Mr. Grenier said that it has gone on til 10-11pm. He has 50-60 mowers stacked along the driveway, he could come right over to their home, the surplus never ends. Mr. Elms explained that they could stipulate 30 mowers for instance. Mr. Donaldson said there are 4-wheelers there now.

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Chairman Endal stated for the record that the public hearing was open. People can have 3 or 4 4-wheelers. Mr. Grenier said it amounts to constant racket. Chairman Endal stated that those are enforcement issues.

Atty. Braymer stated that she reads the home occupation differently because it isn't inside his residence. It says there should be no exterior evidence but they are proposing to fence off an entire area for the storage and for work, so it violates that part of the definition. These are for lawyers, realtors, salons, etc. A lot of this will be outside.

Also the garage doesn't have a floor or proper electricity so they are doing a lot of this outside. She also pointed out that what he is doing meets the definition of a junkyard in the Code. If the Board does look at home occupation, it does not meet the criteria. Noise goes til 1 am, and he works full time so he is working much later than what he stated. The motors are loud because they run at high rpm, and they are all over the yard. She displayed photos.

Mr. Donaldson asked what is louder- traffic, lawnmowers or race cars. Mr. Grenier said he runs his race car two hours a week. Mrs. Brayer stated that extra traffic trips add traffic and it isn't safe at 55mph traffic, people coming in and dropping off and picking up. Does DEC approve of putting down cardboard? Also he is washing equipment outside.

Chairman Endal asked how many mowers he is working on at a time- Mr. Donaldson said just a few. Chair asked if they could limit that, as a way to set it apart as not a full time business.

Chairman asked whether there is a concrete floor. Mr. Donaldson said it is and Mr. Grenier said it is broken. Mr. Martin stated that an EAF should be done, and Atty. Buettner agreed that they can't do anything tonight, because there isn't a Short Form EAF included in the packet.

Mr. Donaldson said that he does pressure wash, but all oil has been wiped off before he does that and he is methodical about it.

Mr. Elms doesn't think that number of mowers is acceptable and asked whether Mr. Donaldson is willing to be limited.

Mr. Donaldson said that they accumulated because he couldn't sell them out front. People do trade-ins when they buy one. It wasn't something he planned.

Mr. Elms asked him if he could still do this with a limited number. Mr. Donaldson said he was willing to work with whatever.

Mr. Elms said that he agreed it was a valid concern.

Atty. Brayer said that they don't run. Chairman Endal argued that they are not salvage for sale they are for useable parts.

Mr. Grenier said that he had grown it slowly and no one noticed. Does Mr. Martin want to be called 2-3 times a week? Mr. Elms asked Mr. Grenier not to assume that Mr. Donaldson will break all the stipulations.

Chairman Endal told Mr. Donaldson that the Board is considering limited him to working in the garage,

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limits to outside storage of both salvage mowers and work in progress. He asked him to think about that and the Board and the applicant will discuss at next meeting. The fence is to shield. Mr. Elms recommended that they could make that look better.

Mr. Manning doesn't think this is appropriate, he prefers home occupation inside the residence, and that an outbuilding with a fence and the potential for growth, is a small engine repair shop and it doesn't belong in the residential area. Trough, drains etc are all things that the Board can't regulate and he isn't a fan of it at all.

Atty. Buettner the Board has dealt with Home Occupations before, and questions as to whether or not it is a home occupation is not for the Board to decide. The decision has already been made by the Zoning Administrator. If they want to appeal it they can. They are just looking at the Special Use Permit.

Atty. Braymer disagrees that the Board can do that.

Mr. Martin said that he is more than open to people appealing his determinations- he would rather they are determined in a public setting.

Mr. England asked how they would do it. Atty. Braymer said they make the Appeal to the Board.

Atty. Buettner reminded that Board that such an Appeal has happened recently in the Town.

Atty. Buettner explained that someone could file an Appeal within 60 days, and that it comes before ZBA for a vote on simple majority. Anyone can appeal.

Chairman Endal raised a concern about the DEC and hazardous materials. Beauty parlors do it so chemicals are not prohibitive. Most of the definition is professionals, but they have looked at others before- gun repair, etc.

Atty. Buettner said that the Board can contact DEC about it and Mr. Martin said that they might have best management practices.

Chairman Endal said that the applicant should do that and Atty. Buettner agrees.

Atty. Braymer asked for clarification on whether they can do it while the Board is looking at the permit.

Mr. Martin said that where there is an application in active review usually he stops enforcement action because it isn't practical to pursue it. He does have the authority to stop it if he wants to (Mr. Dreimiller does, not Mr. Martin actually).

Chairman Endal went back to the driveway and advised the applicant to do whatever might make the situation more palatable for traffic considerations, but Atty. Buettner repeated that it was not the applicant's responsibility.

Applicant was advised that the EAF application can be gotten at the Town or online, and Mr. Martin said that he would put the decision about the home occupation in writing and that would start the clock on any potential appeal. Chairman Endal motioned to table Appeal No. 803 for further information and SEQR Application and Mr. Elms seconded. Roll call vote resulted as follows: Mr. Manning, Yes; Mr.

Fitzsimmons, Yes; Mr. Elms, Yes; Mr. England, Yes; Chairman Endal, Yes. All in favor, motion carries 5-0.

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Some Comprehensive Plan suggestions included:

A clearer definition of home occupations in residential areas. That the Route 197 corridor be looked at for Commercial use, that argument should be strengthened. Traffic is heavier on 197 than Route 9.

Provisions for new infrastructure to go along with the sewer because more new business growth brought in by sewer is going to add to traffic and other issues.

Improved Definitions to eliminate ambiguities

Recognize that the residential center of Town is on both sides of Route 9 and there needs to be recognition that there are needs for public transportation, walkways and biking. Say there are issues to address.

Need to identify that we are part of the County but also a tri county or Greater Glens Falls area with Hudson Falls and Glens Falls, Queensbury.

Definition of farming uses should include fiber farms and other kinds of agricultural uses not mentioned. Made some suggestions in terms of executive summary, it wasn't clear and easy to read. Focus on clear goals.

Mr. Martin read the resolution into the record and will include the letters received to it. Minutes of this meeting will be included when the resolution is forwarded to the Town Board.

Mr. Elms motioned to approve the resolution to endorse the Comprehensive Plan to the Town Board and Mr. England seconded. All in favor, motion carries with no roll call.

The meeting was adjourned at 8:27 pm. Motion was made by Mr. Elms and seconded by Mr. England.

Respectfully submitted,

Tricia S. Andrews