

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 18th day of November, 2018 at 7:00 PM.

**ZONING BOARD MEMBERS PRESENT**

Gerhard Endal, Chair

John England

Kevin Elms

Scott Fitzsimmons

Matthew Manning

The Board reviewed the minutes of the October 24, 2018 meeting. On p.2689 1<sup>st</sup> line 1<sup>st</sup> paragraph Chairman Endal asked that Mr. Music's comment be clarified that Mr. Music believes it is simple to do what he wants, while the Board disagreed. Motion to approve with corrections was made by Mr. Elms and seconded by Mr. Manning. All in favor, motion carries with no roll call.

**APPEAL NO. 813**

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 requesting to subdivide a 9.466 acre parcel. One lot will be 4.466 acres that will not meet the required 5 acre minimum in an R-5, One and Two Family, Agricultural District. This parcel is designated as 90.-1-55 on the Town Assessment map.

The Chairman asked for a statement from the Applicant and Dave Klingbiel presented for Robert and Janet Shaw. Criteria in 149-59, the first criteria is that there is no way to comply with the 5 acre requirement as the parcel is less than 10 acres. This an very small variance and there are a number of lots including direct neighbors that are less than 5 acres, so this will fit in with the neighborhood. They can't use another method. Zoning didn't exist when he bought the property in 1949. The 5 acre lot will be on Fortsville Road and the smaller one on Palmer Ridge. The neighborhood is residential. Atty. Klingbiel read a number of local lot sizes into the record.

Mr. England asked whether those were built prior to Zoning and Atty. Klingbiel said that they were, but it goes to character of the neighborhood. It is also agricultural in the area, but an allowed Agricultural use would probably not please the neighbors any more than the residential use would. The Shaws want to put a single-family home on the new lot, and there is already one on the other lot. This would be taxed at its highest and best use rather than as residual property. It is very much consistent with what is already in the local area.

Mr. England asked what would happen to the existing garage, and Atty. Klingbiel said it would remain as an accessory structure to the single-story house, which is going to be handicapped accessible.

Chairman Endal asked about the staff report. It states that the principal building doesn't meet the

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setback, and he asked if that is that for the existing house.

Mr. Martin stated that it is not non-compliant and may be an error. It is not an issue in this Appeal. These aren't corner lots.

Chairman Endal asked if this was a change. This is the same application that was seen in September 2017, it was denied 2-1 so a re-hearing was requested after a year had passed.

Chairman Endal opened the public hearing at 7:10pm.

Liz Mark, of 250 Fortsville Road, stated that her family owns 20 acres adjacent to this and 80 across the road. She brought a petition from opposed neighbors. She stated Mr. Shaw has used the building as a commercial truck repair business with insulation, heat, office, bathroom and that the property doesn't support additional development. She has goats right across the road from him, so this area is still agricultural. This application has also been denied once so it shouldn't be granted tonight. This has been a three year struggle. She presented a list of violations Mr. Shaw has incurred over time. In 2001 he asked for a Variance that was denied because of the presence of DEC regulated fresh water in the site, she states it was drained afterwards but that the DEC wasn't contacted for that. Mr. Shaw built a driveway without a permit. That what he built is not the same as the pole barn for which he applied for a permit. There is a large transformer on the property. He installed a septic system and put an RV on it, and that septic was never inspected to make sure it was running properly. Before the truck repair business, he was running a scrap metal business. His last violation wasn't the end of it, as she has photos of trucks in January and March of this year after he was notified, this continued up until July. They are also bringing trucks in with garbage on them. They began working at night, pounding, lights on. It stopped at the end of June.

Atty. Klingbiel stated that he had seen the list of concerns. He has instructed Mr. Shaw to stop that use and he has stopped. Atty. Klingbiel also stated that Mr. Shaw has friends in the trucking visit who may visit him. He doesn't think there are any pending violations, but this was addressed last spring.

He states this is a Zoning issue and there are criteria and the violations have nothing to do with whether the application meets the criteria. The neighbors can't simply state that there's no support for additional development on the lot, they need an engineering report.

Mrs. Mark reported that the DEC is working with him about the water he drained illegally. She disagrees that the property can support more development because it already has basically a house on it, and there is a high water table leading to the freshwater wetlands.

Mr. Elms pointed out that it says case closed on the DEC statement.

Mrs. Marks said she didn't know what that meant. She also stated that Mr. Shaw could retrofit his existing home to make it handicapped accessible.

Mr. Mark also stated that the water table is 2 ft below the ground and will not support a septic tank, Mr. Manning pointed out that this can be remediated.

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Mr. Mark stated this was not done on the Commercial building, let's look and see what he did with the septic did there.

Atty. John Caffry, offices at 100 Bay Street Glens Falls, represents the Marks and is filling in for Atty. Braymer. She has already submitted a letter and he brought a hard copy. The Board members had received copies of the email. Atty. Caffry stated this is identical to the previously denied application and according to Town Law 267a 13b, a 2-1 vote is a denial not just a failure to pass, and he believes that under res judicata that decision is binding and the Board shouldn't need to address this and can and should just deny it.

If the Board does consider it, it doesn't meet the criteria for an Area Variance because as others have said it is detrimental to the neighborhood, he won't repeat them.

The Board has to look at the district, under 149-59A5, the Board has to decide whether the development would be materially detrimental to the purpose of the Code for the original purpose of the district and planning policies, which he believes it is in multiple ways.

To subdivide this lot creates an accessory use, when you subdivide you have this pole barn alone on a lot which is an accessory to an Agricultural use. It complies now because it is on the same lot as the house, but when it is subdivided, it won't comply and there's no guarantee Mr. Shaw will actually build a single family principal use on the lot. So to approve would create a non-conforming use, 159a5.

According to Mr. Martin's memo on the previous application, July 24 2018, this would also make the residential lot non-conforming and prohibit the development of that lot.

Also, it is contrary to the stated purpose of the district which is to promote, enhance and protect agriculture by limiting development. To add a residential house is contrary to that purpose. 149-19a, purpose of the zone.

Dividing a 10 acre lot into two 5 acre lots makes it much less likely that an agricultural purpose would be undertaken.

Chairman Endal questioned why the 5 acre minimum was set up if 5 acres were so difficult to use agriculturally.

Atty. Caffry pointed out that one of the lots won't be 5 acres.

Also, there are other ways to find a handicapped accessible property. The applicants have not presented a strong reason to have a Variance.

Both proposed lots would be less than 250 ft wide at the 40 ft setback line, so they would be non-conforming. The exception is only allowed if it doesn't affect the development of the property. My Martins July 24<sup>th</sup> memo says that it would affect development, so no exception to the setback rule should be allowed.

Chairman Endal said that minimum lot width is measured at the building line. Mr. Martin agreed that that has been the interpretation in the past, and read the Code for the Board. Going back some time

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under the previous zoning administrator, this measurement has been taken at the building's position. That's the way that has been interpreted this far.

Chairman Endal agreed the Board had used that any number of times, and Atty. Caffry argued that he doesn't agree that the Code says that.

Chairman Endal said there are four issues:

Lot width, the nature of the district, the prior decision, that in general it doesn't meet the criteria for a variance.

Dave Pulli of 51 Palmer Ridge Road lives adjacent on the west and stated that he has lived there two years. He hasn't witnessed anything at the garage at night. He has not been disturbed.

Atty. Klingbiel stated that the Code says you can re-bring the application after a year. This is the original. The Code reads that you can't do a similar application within a year unless the Board votes unanimously, they did not and so he has waited his year.

Atty. Buettner stated that under 149b6 the Code says that after a year you can re-hear a determination that you have denied, so they would re-hear Sept 2017. This is the exact same one. Procedurally they could withdraw and the Board could decide to re-hear the first one. 159-86 says the Board can motion and vote unanimously. The application made during the summer was declined to review before a year had passed, so they have to vote on whether to rehear it.

Mr. Martin mentioned that with regards to alternatives, the Board should consider that one lot will be compliant and the other 11% undersized. One thing the Board should consider is two lots at 4.7733 each which is two undersized lots at 5%. That might be less impactful.

Mr. England asked whether additional documents filed later would still be considered if they were hearing Appeal No. 794 instead of Appeal No. 813.

Atty. Buettner said that everyone present could ask for their information to be incorporated.

Mr. Elms asked what Atty. Buettner was recommending and she stated that she has an opinion and not a recommendation. Chairman Endal asked whether they should re-advertise, And Atty. Buettner said that the same people would be notified as were notified tonight, so she would be happy to hear what they had to say.

Mr. Manning did not want to delay this another month, as the applicant and neighbors deserve answers, in the past he has seen variances with restrictions, could this one be granted with any kind of guarantee that a residence would be constructed within, say, a year. Mr. Martin agreed that would be a good idea as the subdivision would create a non-conforming lot, and that he would recommend a contingency that a c.o. must be issued, not a building permit.

Mr. Elms asked whether it would revert to a single lot if the contingency was not met, Mr. Martin agreed that it would.

Mr. Martin wanted to put on the record that the septic for the pole barn exists and there is a stamped,

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approved design and installation by a licensed architect on file, accepted by Mr. Dreimiller, witnessed by the architect. Atty. Buettner stated there is a letter from Ethan Hall on file with the Town Board and there is nothing that the Town can do at this point about that. The Marks should go to the architect if they have an issue.

Chairman Endal asked whether the only reason they can ask him to do this is because it creates a non-conforming lot, and Mr. Martin agreed. Atty. Buettner asked and Mr. Martin said he was not aware of any current infractions on the site. He was contacted by a service person going into the garage to make repairs to the sheet rock, to explain their presence, and that is the only activity there that he is aware of. Chairman Endal asked whether they were willing to withdraw this Appeal if there was a re-hearing and Atty. Klingbiel agreed.

Chairman Endal moved to re hear Appeal No.794, and Mr. Elms seconded. Mr. Manning asked about whether a new notice would be issued and Atty. Buettner said the Board had to vote in the motion first. Roll Call Vote unanimous Yes.

Atty. Buettner asked if the Board had the prior decision in front of them, and advised that noticing it as a re-hearing would be the best policy. She asked what the other attorneys thought.

The Board agreed that they should have the original application 794 in front of them, to rehear it.

The Board agreed that they should re-notice.

Mr. Martin asked for the wetland boundary and buffer be shown on the plan to make sure that a buildable site was being created, since septic issues were raised. The applicant should look into whether a suitable septic could be sited.

Atty. Klingbiel agreed this was wise.

The December meeting was previously moved to the 19<sup>th</sup>. Materials would be due by Dec 5<sup>th</sup>.

The same thing will be heard under a different number.

Atty. Klingbiel stated that the surveyor couldn't get that change done by Dec 5<sup>th</sup>. This is a permit issue and the applicant will still need to look into it after. Mr. Martin agreed it could be done before a building permit was issued but would not be required for the hearing to take place. They are willing to locate the planned building on the property map for the hearing.

Chairman Endal wanted to clarify for the public that this Board doesn't do enforcement and this Appeal is not for a Change of Use, folks with issues about the use of the property are not in the right place for their concerns to be addressed. The Board will only look at the question of residential versus agricultural uses.

Mr. Martin stated that the Marks have been very helpful. Compliance has been achieved, if not as quickly as he might desire.

Motion to adjourn was made at 7:58pm by Mr. Elms and seconded by Mr. Manning, all in favor.

After adjournment the Board became aware that Mr. James Aiken of 2 Nancy's Way Gansevoort, was present to ask about a property he is considering buying that is in an agricultural area. He wants to know

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whether he would be able to have dog grooming in the Ag District, or if not, where he could. Atty. Buettner had to leave at this time and was not present for the conversation that followed.

Mr. Martin has looked into it and dog grooming as a term isn't in the Code. He believes it relates to domestic animals, not agricultural so it is not clear where such an establishment is allowed.

There are dog kennels with dog grooming in R3, R4 and R5 districts. Kennels are defined in the Code but groomers are not defined anywhere. His wife has a Commercial business located on Route 9 that was previously an enforcement issue in the Town when they operated it at home.

Dog grooming was definitely decided as not a home business in 2014. The Board's decision was affirmed. Mr. Martin stated that dog obedience was just approved in a Commercial Zone. Existing groomers are on Route 9 in R3 and on Clark Road in R5. Atty. Buettner thought grooming might only be listed accessory to kennel.

Mr. Elms thought that Mr. Aiken could apply for a kennel in a place where it's allowed, and have grooming as an accessory.

Dog Kennel is an allowed principal use in R-P, which is a small area.

Mr. Aiken was asked to go to the Town Board and just point out that this needs to be addressed in the Code as changes are forthcoming.

At 8:12pm Mr. Manning motioned to adjourn again and Mr. Elms seconded. All in favor, the meeting was adjourned at 8:12pm.

Respectfully submitted,

Tricia S. Andrews