

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 March, 2019 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Gerhard Endal, Chair  
Kevin Elms  
Scott Fitzsimmons  
Matthew Manning



Also present: Jim Martin, Zoning Administrator; Tricia Andrews, Recording Secretary

Chairman Endal called the meeting to order at 7:00 pm. The Board reviewed the minutes of the December 19, 2018 meeting. Mr. Elms motioned to accept the minutes with no corrections and Mr. Fitzsimmons seconded. All in favor, motion carried with no roll call.

The Board reviewed **APPEAL NO. 811**, A request of Christopher Music of 71 Harrison Ave, South Glens Falls, NY 12803 for a Special Use Permit pursuant to Chapter 149, Article V, and the Schedule of Regulations for an R-5, One and Two Family Residential and Agricultural Zoning District. The applicant is proposing to open a camp and/or recreational vehicle park with bed and breakfast lodgings at property located at 342 and 352 Gansevoort Road, Gansevoort, NY 12831 and designated as 78.-1-3.2 and 78.-1-3.12 on the Town Assessment Map.

Mr. Martin explained that the hearing was re-noticed because a length of time had passed, and that there was correspondence received regarding this Appeal. In the prior submission two letters were received into the record.

Mr. Martin read the letter from the mail first and the two that had been handed to him tonight into the record. The first letter raised concern about the already hazardous curve at the location and traffic, from Brenda Keegan of 361 Gansevoort Road and Marie and David Nass wrote a new letter stating they live across and that this project would jeopardize peace and quiet.

Barbara Holcomb wrote to state that this would adversely affect the quality of life and her property values and that they purchased in an Agricultural District, and also expressed concern about the blind curves in the area.

At the conclusion of the last meeting Mr. Martin had received an email address from someone who wanted to be informed, and he did send an email letting them know that this meeting was going to happen.

Mr. Music appeared and explained that he lives in South Glens Falls and purchased property across from the farm so that he can be close by. He is proposing a camp/RV park on his property. It is not what

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people would typically envision in an RV park. He is an engineer and believes his plan will enhance the area. He wants to provide a small-scale farm experience for his guests. It will not be rows of vehicles and it will not be a bunch of hippies smoking pot. He hopes to attract families and small groups.

The units he has chosen are wood sided and will blend in, being situated on a tree line.

He provided a map showing the parcels he owns and where he plans to live on the other side of the road as well. He has three contiguous lots and plans to leave much if it untouched for walking trails. He will resurface an existing driveway to improve drainage. The RV units would be alongside the pasture. He has a shared driveway with the newer house north of the parcel. The Christmas tree farm is to the south.

They Rvs are spread over about 800 ft.

He has had a septic system designed to serve the units.

Mr. Martin had Mr. Music point out the wetland areas and the 100 ft. setback. It is behind the proposed sites. The road will go through the buffer area. He has a permit to widen the driveway from DEC. There are also Army Corps wetlands and he is waiting for a permit to go through that, which is the easiest way.

If he doesn't get the permit he has other ways to go with the driveway, but that it is his first preference.

The units will be outside of the wetland.

Utilities: He had contacted National Grid who suggested a 200 amp service with a separate meter to power the RV sites and a proposed workshop he wants to build for the farm, which would be installed by a licensed electrician.

Water is a well. He had it tested and the flow rate is 12 gal per minute and is only limited by the pump that is in it and the theoretical yield is 80/gal minute. The well is fed by a submersible pump. This is enough to sustain all his plans.

He plans to provide cable/ internet to each unit, and propane heat with a 420lb tank at each site.

Details on the septic system are provided. It will be gravity fed into a tank and then pumped into a leach field as needed.

Outdoor storage for firewood, etc is planned. Dumpster will be enclosed in stockade fencing when volume indicates it is necessary to have a dumpster. It will be at the far back of the site. Campsites will have a site pad that can accommodate any size mobile unit as well as extra space for a firepit, seating, etc and will be surrounded by timbers. There will be no RVs coming and going these will be units he owns.

He plans a fence around the leach field area to protect it from vehicle traffic, and may have small animals in it. There will be firepits for cooking and campfires.

Buffer areas are not really necessary because he is placing the sites far apart. He will plant cedars if needed. Landscaping will also be around the unappealing parts of the campers such as to hide the axles.

Parking and truck loading areas: The new driveway will be 20 ft wide and 14 ft high clearance for emergency vehicles. It will also handle trucks for delivery. He provided an estimate for how often service delivery vehicles would need to come in.

Signage he plans to place at the entrance to the park was displayed.

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Sight lines were looked into and recommended the sign be placed 15 ft from the road. His driveway goes in about 100 ft before they separate. Within the park he plans signposts with directional signs.

Outdoor lighting there is already some in the farm area. He may add some to illuminate parking areas, but he doesn't want to light it a lot. They will put one light on a pole with a switch on each campsite but they will be downcast. No beam or floodlights.

Nick Quinn at the fire department gave him the 20 ft width and 14ft clearance guidelines and the surface to carry the weight of a 30 ton truck. A Knox Box will be in the area with a key or electronic code to each unit so that the fire department can access the units in emergencies.

The site has 24 hour surveillance because he doesn't live there. He would expand this.

Noise: a grown man shouting is 88 decibels and as distance doubles the decibels are halved. So his nearest neighbor would only hear 33 decibels, which is very faint.

Mr. Music addressed disturbance concerns. He has a plan in place for mitigation. For his neighbors' sake he would be there within a minute. He would have every guest's phone number.

Creighton Manning has looked at the sight lines. They said the sight lines were acceptable and recommended cutting vegetation as well as moving the driveway as he is doing. Pulling out, the sight line to the right is short. It was still recommended as ok because there is stopping time. Chad Corbett at DOT recommended a marker 400 ft up the road and they are working it.

The middle driveway would be shrunk so vehicles can't use it, but they do cross to Sweet Road with horses through there, so it won't be closed entirely. Patrons for the horses and the campground would use the northern driveway. Northbound trash trucks can turn right to enter on the southern driveway so they don't have to traverse the whole area.

Traffic was also studied and Creighton Manning provided statistics. This road gets 3000 cars per day. They travel about 55 mph. Mr. Music doesn't think 3000 cars is a quiet back country road that neighbors describe. He expects his business will add 5-6 cars per day. 8-10 during peak season, which he doesn't believe is significant. There will be no more than 2 cars allowed per site.

Mr. Music shared the expected number of visits.

The cottage is a permanent structure. That is in addition to 4 campsite areas.

He shared a timeline for development.

Driveway and site one would be this year and one site per year after that.

He stated that he is fully committed to addressing any concerns or criticism. This is allowed in an R-5 Zone.

Chairman Endal asked whether he already has business there now. He has been renting the cottage and the Marshall's had their horses there, and guests asked if they could ride them. Mr. Music doesn't consider it boarding. He doesn't have horses of his own, the only animals of his own are chickens. The cottage and the sites allow him to grow the farm. People who camp there are supposed to participate in the farm. He hasn't mentioned any changes to the farm part. Mr. Endal asked whether they were on

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separate parcels. Mr. Martin said both uses are occurring on both lots. The Agricultural uses are allowed by right without review. This is a hybrid.

Mr. Elms noted that there were concerns about RV's coming and going, and this is more of a campground with cottages. Mr. Music stated he doesn't plan to move them.

Mr. Martin noted that Mr. Martin has answered a lot of questions since the last meeting, but these look like tiny houses, are the wheels and axles going to stay on these? They will be able to be moved, not permanently affixed to the ground as per the definition.

Chairman addressed the concern of RVs pulling in and out which they won't be.

Mr. Martin asked about the square footage and his current model is a park model RV it is 12 x 40 and that is the maximum footprint. He might purchase a premade unit or order one and build it.

Mr. Fitzsimmons asked and Mr. Music plans to operate the business year round.

Mr. Fitzsimmons wanted to know how much further down from the split his neighbor's house was located, and Mr. Music estimated it was about 500 ft from the split.

Chairman Endal asked and the clientele are mostly couples and families. He has had people from all over the world, weekend getaways, small kids, and they stay from 1 night to two weeks. They are not summer homes. Short terms work better financially.

Mr. Elms pointed out that people can't rent the place for a year because then it's a rental property. He expressed concern for enforcement as living in tiny houses is desirable currently.

Mr. Manning asked about the parking area location and material. Mr. Music demonstrated on the map.

Mr. Elms asked whether this would go to Planning Board, and Mr. Martin said that Special Permits usually do, before they are granted but it is up to this Board to send them there.

Chairman Endal was in favor of sending him to the Planning Board.

Mary Ellen Kuznierz of Gansevoort Road asked if the houses are not moveable do they become residences and they would, which is why they have to stay on moveable chassis. Mrs. Kuznierz saw a proposal for a retail shop with produce and toiletries and asked whether that is allowed in the Ag district. As she understands, it produce has to be grown on-site to be sold.

Chairman Endal said that a campground can sell to its guests. Mr. Music confirmed it would only be for guests. Mr. Martin stated it that a camp store is an ancillary use, as would be selling the eggs from the chickens. Mrs. Kuznierz asked if they could add a shop with Christmas tree stands at their Christmas tree agricultural use lot, and Mr. Martin thought they probably could. Mrs. Kuznierz also knows how wet it is down there and is very concerned about the leach field plans and Mr. Music assured her it was an engineered system and he has had a perc test but will get another one when it is time to build.

Mrs. Kuznierz asked and the cottage has a functioning traditional septic now. She asked whether the cabins would need a CO and they would. This is here because of enforcement action. She asked about a generator backup because if the power fails the pump system won't work. Mr. Music said there would be at the pedestal. She asked whether the water supply could keep up with it and he is sure because of the

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tests he had done. Mrs. Kuznierz asked if the water had been tested for quality and he has had it tested and has a Culligan system on it. She asked about motorized bikes and dirt bikes and Mr. Music said that they wouldn't be allowed except for farm equipment operated by him, they might use a four-wheeler for tours.

Regarding the driveway, Mrs. Kuznierz asked about the driveway where Mr. Music plans a 7-8" base and says that she has a deeper 18" base and it still is sinking, even with fabric underneath.

Mr. Ron Zimmerman, 327 Gansevoort Road asked what the primary use is. There are several parcels and they are being used interchangeably.

Mr. Elms described it as a farm with campgrounds on it.

His farming consists of meat chickens in the Spring and horses. He wants to add pigs and cows but just a few. They are to enhance the guest experience.

Mr. Martin described it as integrated, agri-tourism, an experience. The farm wouldn't continue without the camp.

Mr. Zimmerman asked about limits to terms of the rental. That has not been decided, and he would like to know how it's not a mobile home park.

Mr. Elms said those are usually full sized. Mr. Martin explained that in the last year NYS has said that as long as it is permanently affixed to a foundation it is a single family dwelling and Towns can't forbid them in single family neighborhoods. The point of the question is to keep it from being a development. Mr. Martin said a written operations plan specifying hours of operation, limits to length of stay, etc, should be in place and understood before it gets approved. There would also be a written document to sign when people check in.

Mr. Music stated that he understands what they are looking for but asked for clarification in an operations plan. He can agree to anything now.

Mr. Martin didn't think it was too much to ask to have that committed to, in a complete document, what is enforceable on this site. Mr. Music was concerned about delays over small details. Mr. Martin said it would not be an endless process. Mr. Music and Mr. Martin are familiar with the plans, but the Board and the neighbors are not familiar and need more information to look at.

Mr. Manning thought that the agreements could be stipulated in the resolution.

Mr. Martin was just looking for enforceability.

Mr. Martin pointed out that a rental agreement is a good idea for Mr. Music's protection as well.

Mr. Zimmerman asked whether tents are allowed alongside a cabin, and Mr. Music said yes. He would limit it to one. That could be added to the operations plan.

Mr. Zimmerman asked whether there are additional phases planned. Mr. Music said this would take 3-4 years to develop and he doesn't have any further plans.

Mr. Zimmerman asked for quiet hours which Mr. Music said is in his rules, which are 10-8 weekdays and 11-8 on weekends.

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Mr. Zimmerman asked how often the septic would be pumped. Mr. Music wasn't sure. Mr. Elms thought it might be six months. Mr. Zimmerman asked what the shallow absorption bed was made of on the plan and Mr. Music wasn't sure, that's why he hired a professional. Mr. Zimmerman asked him to pull up one of the drawings and the cottage is shown. It has been rented out before. That is the source of the enforcement action.

Mr. Zimmerman asked where tractor trailers of hay that were mentioned would enter and Mr. Music said they come to the new entrance from the north.

John Arnold, 30 Palmer Ridge stated his interest is in the Ag District and he also lives in the Ag District. One Special Permit in the Ag District can start a trend. Agri-tourism should be defined as benefitting or being ancillary to a farm. This is actually a camping business with a farm theme, not agri-tourism. Mr. Arnold doesn't think campground is a good term because campgrounds are empty site rentals. He is not sure multiple rental cabins are allowed in the R-5. Camp and RV park is allowed. It is a rental property even though it's not monthly or annual rentals. He doesn't believe guest houses, boarding houses etc are allowed in the R-5. What is the bed and breakfast offering mentioned?

Mr. Music thought that Campground and RV Park is what it looked like in the Zoning. Mr. Arnold said it can only be a bed and breakfast if you live there. Mr. Arnold expressed concern that this looks more like a manufactured home park, though it is slightly different. The Ag District allows housing attached to wheels for farm worker housing, nothing else. The Town was very clear to him previously that you can't put a second house on the farm except for a farm worker.

Mr. Arnold said that this looks like a very nice plan, but that the Board should be careful about what they allow to set precedent.

Mr. Martin read the definition of Campground from the Town Code: A property providing four or more sites for the parking of occupied travel or pop-up trailers, motor homes, truck campers, the erection of tents and all buildings and facilities pertaining thereto.

That was his reasoning for this to be here for a Special Use Permit.

Mr. Elms felt that as long as things were in writing with time limits and size restraints that he wasn't concerned with it setting precedent.

Mr. Zimmerman explained that this is a manufactured home regardless of footprint and size. He thinks it is important to think about the precedent for Special Use Permits and the Applicant has to demonstrate a hardship. The Board has to make sure it doesn't alter the character of the neighborhoods. He thinks it does.

Mr. Music stated that the cabins won't be visible and that the character of the neighborhood won't be affected.

Chairman Endal said that there isn't a hardship requirement for a Special Use Permit. Mr. Martin explained that those are for uses that are allowed to occur as long as certain conditions are present, and that is why he wants the operations plan, to make sure the water table, wetland, traffic etc are taken into

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consideration. Another would be whether it fits in this area of the Town. The Board wouldn't issue a permit if the conditions couldn't be met.

Chairman Endal asked what this farm had been in the past. It has been a farm a long time. It was surveyed once to develop it.

Mr. Arnold wanted to clarify that Mr. Music bought some of what Mr. Rourke had subdivided. There is potential for another house on a neighboring property. Mr. Arnold wanted to clarify that there is a place in Town for mobile homes and the Ag District isn't it. Only farm help is allowed in them in the Ag District. Mr. Arnold thinks the plan looks nice. But unless it is only allowed because it can't be used as a farm, other farms could do it too and that's the danger. Mr. Arnold asked what happens if it doesn't work out.

Mr. Music said that failure was not an option.

Mr. Arnold asked whether he plans to incorporate the parcels. A driveway on one parcel that goes to rentals on another parcel is a dangerous configuration.

Mr. Music said he was willing to comply with that if needed.

Some discussion was had over the use of the term residences.

Atty. Adele Kurtz, representing Anne Kuznierz at 327 Gansevoort Road. This is an AirBnb and there are 15 Airbnbs in the Town now. The Town needs to address these in the Comprehensive Plan. The Board is being overly cumbersome for him as they have not asked any others to do. Atty. Kurtz also thinks the cottage, if it is a Bed & Breakfast, would require a permit and 2000 sq ft. Also per the definition Mr. Martin read, this doesn't meet the definition of an RV park as these are permanent, have electricity, sewer, propane tanks etc they are not moveable and are not a campsite per NYS definition either. Camp cabins don't fit either, because per NYS those don't have a stove, kitchen, cooking facilities. This doesn't fit any definitions and the Board needs to better define what they are approving, and the Board should not rush. They will be setting a precedent they can't come back from. If he adds tents, he has more than 4 sites. This opens a can of worms. The plan looks much better, but the Board doesn't have enough information to move forward tonight.

Mr. Martin responded that AirBnB is difficult to handle from a Zoning Enforcement angle. They are almost impossible to detect and enforce. People are welcome to report them if there is a problem.

Mr. Martin didn't think this individual was being treated unfairly. The Special Permit is reasonable to ask for that operations plan.

Atty. Kurtz said that they have to define what's allowed in terms of transient housing, it is almost impossible to enforce.

Chairman Endal asked for the NYS definition of a camp cabin and Mr. Music had it on one of his slides. "...hard sided shelter less than 400 sq ft, readily moveable and with no cooking facility."

The definition of campground "...5 or more sites, temporary, seasonal..."

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He apparently can't satisfy NYS and the Town Law at the same time. Mr. Music said the cottage didn't count.

Atty. Kurtz asked whether we have 4 or 5 sites, never mind that there are two or three separate plots of land involved. They are not one lot today, they are a cottage on one lot and portable /not portable cabins/RVs on another lot, and they don't meet the setback requirements.

Mr. Martin said the setback doesn't apply to structures not on a foundation.

Atty. Kurtz argued that they don't need to be on a foundation to be considered permanent.

Mr. Martin said that if Atty. Kurtz wanted to challenge his decision about setbacks or this use she should file a request for interpretation with the Zoning Board.

Atty. Kurtz said that Mr. Music could sell one lot at any time and it doesn't meet the criteria as a campground.

She asked why a campground has setback requirements. Mr. Martin stated that would be for any actual buildings on the campground such as an office or store.

Chairman Endal stated that those questions aren't applicable, they are taking a look at the Special Permit and those parts are already decided.

Atty. Kurtz asked if she could park her RV right on her property line.

Mr. Elms stated that she had a valid point about the properties being joined as one.

Mr. Zimmerman asked how the units sit on the pad. Mr. Music said that they would be on wheels. There are blocks. Mr. Zimmerman asked if something on blocks on a pad is moveable and Mr. Elms said that it is.

Reed Antis 11 Paris Road, thought that administratively the three lots would be combined.

There was some discussion as to whether all three lots would be combined or just two. Combining the front two would not land lock the third. Mr. Antis asked whether this was the land Mr. Rourke subdivided, as previously discussed. Mr. Arnold stated that the one on the back and the first one next to it were the parts of what Mr. Rourke had.

Mr. Arnold asked whether Special Use permits set precedent and Mr. Martin said that they do not because the characteristics of site and use could never be replicated. An attorney could argue that it could, but Mr. Martin doesn't think they would win because these are unique.

Atty. Kurtz asked about the fact that Mr. Music came last fall asking for three units and then changed it to four, but now he only wants one online by summer and the additional phasing. Can the Board require it to be built by a certain time frame because what happens if he never puts four in? How does the Board handle that?

Mr. Endal explained that it is a condition of the approval.

Mr. Music stated that the time line is mostly due to the make or buy decision that he has to make for each unit. He hopes it will be quicker.

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Atty. Kurtz asked if there would be bond or escrow to make it happen. It would be non-complaint with only three. Mr. Music said that he could do these things faster, but not as nice.

Chairman Endal thought that if he had built the infrastructure, he would build the whole thing to make money.

Mr. Martin said he would defer to Atty. Buettner (not present) about bond, those are usually for something with public purpose like a road.

Atty. Kurtz asked again how they would guarantee that the 4 get built. Chairman Endal said it could become an enforcement issue.

Jim Aiken of 4 Nancy's Way stated that people don't want something that doesn't fit existing definitions, and this is asinine.

Chairman Endal closed the public hearing at 9:24pm.

The Board reviewed some of the conditions they would place on this appeal, including stays no longer than 30 days, no more than one tent per site, putting the two lots together. No larger than 12 x 40 unit. Uses of south entrance, no ATV use by patrons, no more than 5 campsites overall, quiet hours after 10pm-8am on week days and 11pm-8am on weekends. Campground rules will be followed. Two cars per site. No permanent occupancy, short term transient stays only.

Mr. Music asked whether a golf cart was an ATV. He might make that available for renter use because of the size of the property. The ATV stipulation was only for guests not bringing them, as the farm would use one.

Chairman Endal asked whether the Board wanted this to go to the Planning Board.

Mr. Martin thought that the landscaping plan would have to be detailed for Planning. They would look at the depth of the driveway, which was a concern that was raised.

Mr. Martin asked whether the Board wanted a recommendation from Planning or a full site plan approval. Planning will also want a full lighting plan.

This could be seen at the April Planning Board and be back at this Board for April, and they would do SEQR then.

Mr. Music asked for clarification of what would happen at Planning Board, which is a review of the technical aspects of the plan.

Mr. Elms said Planning would only be giving recommendations and asking for specification.

Mr. Music's plans are already pretty detailed. Turn radiuses for trucks, driveway material, are issues they might look at.

He can get started consolidating the two lots tomorrow if he wishes.

Motion to refer Appeal No 811 to the Planning Board and to table it to the next ZBA meeting was made by Mr. Fitzsimmons and seconded by Mr. Elms. Roll call vote proceeded as follows: Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Mr. Manning, Yes; Chairman Endal, Yes.

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The Board reviewed **APPEAL NO. 814**, A request of Cerrone Builders of 1589 Route 9, Moreau, NY 12828 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59A. Applicant is proposing to subdivide 8.7 acres of land into four building lots that will not meet the required minimum 200' lot width in an R-3, One and Two Family Residential and Agricultural Zoning District. This property is located at 1133-1143 Route 9 and is designated as 89.-1-11 on the Town Assessment Map. This property also has road frontage on South Road, the proposed houses will front onto South Road.

Atty. Mike O'Connor of Little, O'Connor & Borie, and Johnny Cerrone appeared seeking an Area Variance on lot width of 200 ft. This is a large parcel, and large lots can accommodate setbacks etc. as well as 125 feet at the front of each dwelling. This setup doesn't cause any detriment and is in character, these lots are larger than most in the neighborhood. The driveways will be on South Road. This is a better project. At the front of each home the lot width will be 175 ft. This is not a substantial variance from the 2300 ft. requirement.

Atty. O'Connor explained that the line on the plan at the front of each dwelling is the lot width.

Mr. Martin said that this is 12.5% relief and it meets all the other requirements.

Mr. Martin had not received any correspondence and the County said no County-wide impact.

Mr. Elms asked who had suggested that there not be entrances on Route 9 and Atty. O'Connor thought it was a staff suggestion, but Mr. Martin thought they had had it that way from the beginning due to topography, and that Route 9 is a through road and driveway cuts are preferred to go on local road, although some residents may disagree.

Chairman Endal asked about the water source and Mr. Martin said that would be looked at during the subdivision process.

Steve Lapoint of 15 South Road is right across the road and he has personal concerns that it's always been rural and he doesn't want to live in a development. He would prefer it to be on Route 9, leaving his road more rural with less traffic. They already have traffic for Potter Road and the State Park.

Julie Francis, 29 South Road stated that this parcel is 8.7 acres in the notice and asked does that include the house that was already built. It is R-3 Zoning what is the acreage requirement? 2 acres per lot so they are just short 25 ft width per house. They are actually half a lot altogether. What's the frontage on the other one they just built?

Mr. Cerrone that was a pre-existing lot, not created from this parcel.

Ms. Francis said that they have 5 cars there all day and that's causing a problem.

Chairman Endal said that's not a problem on this Appeal.

Ms. Francis said that house has caused an issue in the neighborhood, but it's not the issue at hand. These builders are going to make plenty of money putting in three houses that fit without a problem, instead of asking for four. They build very nice houses. But the neighbors would rather not see it developed.

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They have appeared for any number of issues that always go through in spite of their protests.

They neighbors are tired of their concerns being ignored. They don't need a fourth house here. The Town should look out for the residents.

John Arnold 30 Palmer Ridge Road asked what is the hardship that requires this Variance. Nothing has changed, there is no previous subdivision, what is their reasoning? Atty. O'Connor explained that hardship isn't an issue for this kind of Appeal, they just have to talk about the impact. 1.6 traffic trips generated by one more house isn't going to make an impact. This builder does a nice job, that has been acknowledged, and this is a residential project. There are no detriments.

Mr. Elms asked if they had considered putting one driveway on Route 9.

Mr. Cerrone showed that there was a Variance for 165 ft lot width on this neighboring property. Why put it on Route 9 when they can put it here, it is safer.

Chairman Endal said that they have to look at other feasible methods. Other people's variances aren't relevant. Could one go on Route 9 and have more room?

Mr. Cerrone said that they wouldn't have the space on Route 9 and the topography played a part as well. He pointed out how far back they were set.

Ms. Francis said that other neighbor had 200+ ft road frontage and so did others in the area. She cited everyone's. They've been forest as long as these people had lived there. Three houses big yards, trees between, but four will require clear-cutting.

Mr. Elms told Ms. Francis that the Board understands. He lives in his family home as well and can't hunt in the back yard like he used to when he was a kid because the area has been developed.

Mr. Arnold asked the Board to consider that maybe they just shouldn't get four lots. They can meet all the requirements that way. When he saw this project some time ago he thought they had the width further back. In the initial application it was thought to be in an R-2 and it would have fit if it were.

He asked what the gradients were on Route 9 that prevented building that way. Atty. O'Connor said it was 390 2 ft intervals on the map. 20 ft over 100 ft, 20% grade. They would need longer driveways to get to a flat spot. This lot is 8.7 acres, why can't they meet the requirements when they have so much to look at?

Mr. Elms thought that there were other ways they could have accomplished all that.

Atty. O'Connor said that they had played with it and gotten side line setback issues.

Matt Steves had said that it wasn't feasible according to Atty. O'Connor.

He also stated that the Cerrones don't clear cut their lots. They leave as much of the trees as they can, except to run power and septic.

Reed Antis 11 Paris Road stated that they bought the land knowing what the rules were.

Atty. O'Connor argued that self-created isn't a bar to an Area Variance, it is just a consideration. This is to get a reasonable return on the property.

Mr. Arnold asked whether reasonable return was guaranteed in State Code. Atty. O'Connor said that it was.

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Mr. Elms stated that the right to do reasonable things with the land is a factor.

Chairman Endal explained that Area Variances weigh detriment vs. benefit. He is inclined to say that they meet the tests.

Ms. Francis stated that well water is an issue in the area as well, their concern isn't just aesthetic.

Mr. Endal said that these lots comply size-wise and wells are not an issue here.

Mr. Martin listed in staff notes the 11 local lots and their approximate sizes. 5 of them have lot widths less than 200 ft.

Mr. Lapoint wanted to know where the houses would be in relation to his and Mr. Martin pointed out that there would be subdivision review by the Planning Board and the neighbors would get a notice about it.

Mrs. Lapoint said that lights would come right in her window, and Atty. O'Connor stated that they could move things like that per neighbors' concerns.

Chairman Endal closed the public hearing at 10:11pm.

The Board reviewed the criteria 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. How substantial the requested variance is in relation to the requirements.
3. That the difficulty cannot be alleviated by some practical method feasible for the applicant to pursue.
4. That there will 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.

Motion was made by Chairman Endal to approve Appeal No. 814 for 25 feet relief from the required lot width and Mr. Elms seconded. Roll call vote proceeded as follows: Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Mr. Manning, Yes; Chairman Endal, Yes. Motion carries 4-0.

The Board reviewed **APPEAL NO. 815**, A request of Monsour Enterprises of 41 Revere Rd, Queensbury, NY 12804 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59A. Applicant is requesting to subdivide .70 acres of land into two building lots, one lot will not meet the required minimum lot area for a single family dwelling in a C-3, Residential and Professional Zoning District. This

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property is located on the corner of Route 9 and Merritt Road and is designated as 49.68-1-6 on the Town Assessment Map.

Atty. Mike O'Connor of Little, O'Connor & Borie presented with David and Joseph Monsour, principals. They would like to build 2 single family homes on this lot. One lot is 1,396 sq ft larger than required, the other 2,204 sq ft smaller than the 15,000 sq ft requirement. They have looked at different configurations and they couldn't meet the setbacks, so they are asking for a lot size variance on the interior lot. They are not asking for a Variance for the one on Route 9.

The same family also owned the parcels across the street and the Monsours bought that and divided it into two to put two homes on that. They build more spot lots than subdivisions. It doesn't change the character of the neighborhood, isn't substantial, and a difference of 2,000 sq ft is not a significant impact. They have examined different configurations, but that created other issues. It is self created. This should not substantially impact the decision unless they are asking for a substantial Variance, which this is not.

One of the lots is a corner lot, so it has to use the front yard setbacks on both of those sides.

Atty. O'Connor demonstrated on the drawing for the Board how they had tried to change the configurations.

David Monsour explained that they tried to adjust the lot lines to fit the homes, one is a colonial and the other is a single story ranch. There is a garage in the corner and they will have a turn-around so they are not backing onto Route 9.

Mr. Antis of 11 Paris Road asked whether the lot was already subdivided, but it can't be until this is done.

Mr. Antis asked why they need to build two houses, when one is feasible.

Mr. Endal asked the lot's size and it is 29,292. There is no way to make 2 lots without a variance.

Michael Thomas is asking if they are doing the same thing they did across the street, zigzagging the lots. Is that normal in the Town? They came for a Variance for that lot but they didn't get it, but the back yard still zigzags.

The minimum lot size is 15,000. Mr. Elms said he felt that too many houses were going onto small lots.

Mr. Thomas asked what would happen to the farmland next to it. The Board has no way to know that.

Mr. Antis asked what it was zoned and Mr. Martin said that it is C-3.

Mr. Endal agreed that lot sizes are getting small and these adjustments are what Zoning is about.

What about Palmer Ridge and Fortsville? In that recent case the Board divided another lot that was just a little too small to make two conforming lots.

Mr. Arnold answered that the lot was designed before the Zoning happened. These lots are already the smallest lots allowed in the Town. It's 1/3 of an acre which is very dense. It hasn't sold sooner because it requires this Variance to make more money. This would be an undersized lot in an area where the lots are already really small.

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Atty. O'Connor argued that this is preexisting and almost twice the size of the present requirement. On a 1950's map it was shown as fitting two lots. That was before lot size requirements existed. This owner has owned the land a very long time.

Cathy Thomas mentioned that traffic is already congested in that area especially with the school, and there are many accidents on that corner, when two new houses were just added across the street.

Atty. O'Connor said that the parcel was owned by these owners in 1962 as one parcel. It is a conforming lot as it stands almost twice the size required.

Mr. Thomas mentioned that Route 9 was going to be widened and a light added there and a turning lane. He read these plans online. Wouldn't that take away from the size even more? He stands to lose 15-18 ft on his front yard.

Atty. O'Connor asked the Board to consider the 5 tests, and it would pass.

Mr. Manning thought his would be extending the Route 9 corridor where it isn't supposed to be. It's a very difficult use and he thinks it is detrimental.

Atty. O'Connor asked whether a setback variance would be more desirable. They could do different setback.

Chairman Endal pointed out that there would be no back yard.

Mr. Antis stated that the applicant took a risk, and this is a one-lot property and that's all that should be on that corner.

Atty. O'Connor reminded the Board that it is a balancing act.

Mr. Martin pointed out that adjoining lot sizes are provided in the staff notes for comparison.

Chairman Endal stated that he is having trouble seeing how one lot would benefit the applicant. The Board has done this before and it's not unreasonable.

Mr. Arnold pointed out that it's very hard to fit a house on a corner lot in this zone of small lots. That's why most of the corner lots in the area are large lots.

Mr. Monsour said that they try to push houses away from Route 9, and people have commented positively about their last two houses across the street. It will look nice when they take out the scrub trees.

The Board reviewed the criteria 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. How substantial the requested variance is in relation to the requirements.
3. That the difficulty cannot be alleviated by some practical method feasible for the applicant to pursue.
4. That there will be substantial change in the character of the neighborhood or a detriment to the adjoining properties.
5. That the variance would be materially detrimental to the purpose of this chapter or to property in

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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.

Chairman Endal felt that this plan was the best available, and that the detriment is not substantial as other lots in the area are small.

Chairman Endal motioned to approve Appeal No. 815 for 2,104 sq. ft. (14%) variance from the required minimum lot size. Mr. Fitzsimmons seconded. Roll call vote results as follows: Mr. Elms, No; Mr. Fitzsimmons, Yes; Mr. Manning, No; Mr. Endal, Yes. 2-2 Motion fails to pass.

Mr. Manning stated that he doesn't like this lot size in the area. The space is open, and he doesn't want to close it in. It has happened at several places in the neighborhood. Mr. Manning doesn't want to bring the Village out past Feeder Dam.

Atty. O'Connor said that in some towns they are trying to get smaller lots, so that more affordable housing is available.

Atty. O'Connor asked if the Board would consider a smaller Variance.

Mr. Martin cautioned that a new application has to be substantially different from this one in order to be heard within a year.

Motion to adjourn was made at 10:51 p.m. by Mr. Elms and seconded by Chairman Endal. All in favor, motion carried.

Respectfully submitted,

Tricia S. Andrews