

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 26th day of June, 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 7:01 pm. The Board reviewed the minutes of the April 24, 2019 meeting. Chairman Endal had given the secretary his minor corrections on page 2720 in written form. As Mr. Elms wasn't at that meeting, approval was postponed.

The Board reviewed **APPEAL NO. 816**, A request of Rebekah Ripley of 47 Sweet Road, Gansevoort, NY 12831 for a Special Permit pursuant to Chapter 149, Article V, Section 149-33. The applicant is requesting a Home Occupation for a home based business involving the application of polymer-ceramic coating on metal, plastic, polymer and wood. This property is located in an R-5, One and Two Family Residential and Agricultural Zoning District and designated as 77.-1-43.2 on the Town Assessment Map.

Mrs. Ripley was represented by her husband Bart Ripley. Mr. Ripley explained that they would be working with a protective coating that is sprayed on and then baked on. It goes on firearms, auto and ATV parts, tractor parts and other applications. It protects from heat. It can be customized with different colors. He was trained in Oregon. He is applying for a permit through ATF, which requires local zoning approval.

The process is to remove original surfacing with sand blasting. Then they paint on a thin coating, baked on at 180 degrees for an hour. They will have an oven on site. This is something new that he has not done from home previously. Mr. Elms asked and his shop will be set up to work in a 9 x 9 x 8 ft high booth and a 4x4x6 oven. The oven is electric, built and wired for this use. It runs on regular residential electric. The booth has exhaust filters, but there is minimal overspray. Odor is minimal as it is all sealed in, but isn't noticeable outside. Sandblasting is also done in a sealed cabinet and doesn't make any more noise than a vacuum cleaner.

This is wholesale and customers will not be coming to the house. He will contract with gun shops.

The Chairman let the members of the public who were present know that they could speak to the Board when the applicant is done presenting the project.

Mr. Elms asked and the MSDS for the materials was supposed to be in the package that he provided for

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the Board. He presented copies that were missing. The material is flammable but not combustible, like many household products.

Mr. Ripley showed the Board a small bottle of the material from his jacket pocket and said that he has 12 bottles at home which he takes 6 weeks to go through. The shelf life is about a year so he's not going to stockpile it.

The house is on just under 5 acres and 1 acre is cleared.

There is no discharge. He doesn't even have a sink in his work space. There is minimal waste. Mr. Elms asked for a copy of the federal and state regulations. Mr. Ripley offered to explain them, but Mr. Elms wanted to be able to see it. He asked whether it was for firearms only. This is what is required to possess someone else's firearms. To get State, he has to have Federal, which he is working on.

Mr. Manning asked and air is filtered going in and twice going out. There are no requirements and regulations for the filters. Mr. Martin stated that there are a lot of hobbyists around they are not regulated. Mr. Elms pointed out that if he doesn't keep the filter clean, the fan won't work and he won't be able to do the work. Mr. Ripley explained that his is sealed off.

Mr. Fitzsimmons asked and Mr. Ripley's closest neighbor is 60-70 yards. Others are 100 yards, 80 yards. Chairman Endal asked the Board whether they thought this fit the description of a home occupation.

Mr. Martin read the definition of a home occupation, which is an accessory use of a service character conducted in a residence that doesn't change the character of the neighborhood or have exterior evidence other than a sign or name plate, with examples listed.

Letters were sent but no correspondence was received.

Mick Lobarski owns property on Sweet Road where his parents live. They are concerned because painting involves lacquers, etc that make odors. He is a neighbor, he has a big concern. This is not a commercial area you can't run a business unless you are a farmer.

Chairman Endal explained that if it's approved as a home occupation he can,

Mr. Elms stated that from the MSDS sheet there are no lacquers or dangerous chemicals, it is limited.

Mr. Lobarski was worried about growth, additional traffic and fumes.

Chairman Endal explained that he can't change it to operate a business. Mr. Lobarski stated that if it became a traffic issue or they could smell it, the Board would be the first to know. Mr. Elms stated that if there were a problem the enforcement department would come and look into it. It would be regulated, as the applicant would have agreed to there being no smell and no traffic. This will be easier to regulate than a neighbor painting his own car in his garage. Mr. Lobarski stated again that he is worried about growth and not wanting to deal with that. Mr. Elms explained that he has built a limited facility and agreed to his own set of stipulations such as no signage and no retail sales. Mr. Elms offered his copy of the stipulations, but Mr. Ripley said he didn't want the layout of his house handed out. Mr. Lobarski just got

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the part that detailed conditions.

Roger Dillon of 28 Sweet Road asked if there were guns. Mr. Elms explained that he will be coating parts of guns, and he has applied for ATF permit. Is it a completed firearm? Yes, he is taking them apart and yes there will be pistols, which is why he is getting permits from ATF and the State. He won't be a dealer. He will be getting a Level 1 gun-smithing/gun dealing license, but he isn't going to sell. He may be transporting the guns himself, which is part of why he needs the permit. He has to sign to receive them, per ATF regulations.

Chairman Endal asked and Mr. Ripley plans to deal primarily with gun dealers. It does have other applications. He's still not going to have people bring guns to his house, they will go to one of his middlemen.

Mr. Lobarski Sr. was concerned about groundwater. Mr. Elms reminded him how small the bottle was. Mr. Lobarski argued that he can buy whatever size bottles he wants. Mr. Ripley said he uses very small amounts of acetone and a paper towel which he puts in the trash as the liquid evaporates. Mr. Lobarski doesn't think you can clean a paint gun with nail polish remover, he is going to blow air through it and get it into the air. Mr. Lobarski was more concerned about the smell as the air is clean now and that's why they live there.

Mr. Ripley stated that he has three kids in the house, one with special needs who is very susceptible to illness. No one has noticed or smelled it for the last six months when he was using it every other day. Mr. Elms stated again that an approved business can be regulated if a problem arises.

Mrs. Lobarski stated that she has COPD and is allergic to chemicals.

Mr. Lobarski worried about sales value with a business next door.

Mr. Elms stated that the Board takes that into consideration and Chairman explained that that is one of the criteria, but this isn't a concern here as no one will know this business is even there. They have more power as neighbors here than if someone was just ordering from Amazon and had daily UPS deliveries. Mr. Dillon asked whether the bottles would be considered hazardous waste. Mr. Ripley said that the bottle in his pocket would be regular trash. Mr. Elms explained that the paint would have to be allowed to dry to dispose of any can of paint. Mr. Ripley said he hadn't gotten there yet. It is not a household use. Chairman Endal thought he remembered a gunsmith application and Mr. Elms said it wasn't approved because there would have been three businesses on one site, which the zoning administrator at the time didn't allow.

Mr. Elms said he agreed that this is a home occupation. Chairman Endal stated that it is an accessory/secondary use, is of service character, and will have no outward signs or change the character of the neighborhood.

Mr. Martin read the disposal instructions from the MSDS into the record, which says to not mix it with water and that it is not EPA regulated but should be done in accordance with local regulations in a licensed facility. This could be a stipulation of approval.

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Mr. Martin stressed that he prefers measurable, enforceable restrictions when there are restrictions. No customers is enforceable, hours of operation is really not because he could do it at 3 am and no one would know.

Mr. Manning stated that this is basically an industrial paint booth in his basement. The chemical is heavier than air, it doesn't spread. Mr. Ripley has addressed most of the concerns but Mr. Manning doesn't know the conditions of his shop, what if something breaks or leaks and we don't know where it is going.

Mr. Martin asked and Mr. Ripley changes the filters once a week.

Mr. Martin thought that language about the disposal of the filters and empty bottles should be included and that was the extent of what he could ask for. Mr. Manning wondered if Mr. Ripley could be asked to keep a log so that if there were a question, Mr. Ripley could show that he had done it. Mr. Ripley pointed out that the changes are tied to usage, and Mr. Martin stated that he could log that it was done every so many hours of painting or bottles of paint, not necessarily by hours, days or months.

Mr. Ripley was asked if he were comfortable with that, and he said he was if the Board deemed it necessary.

Mr. Dillon didn't like that the limits proposed by Mr. Ripley said 'not limited to the above' but Mr. Manning pointed out that the size of the work box still limits what he can do.

There are three locks to get into the garage, as well as a gun safe.

Mr. Lobarski asked if he could make a phone call for enforcement if he stood 30 feet from the garage on his parents' property and smelled something, and the Board agreed that he could. Mr. Ripley indicated that might be harassment.

The Chairman reviewed the criteria again and stated that the presence of the business wouldn't even be known if this hearing hadn't happened.

Chairman asked and Mr. Martin stated that he thought this was a Type II action and the Board should formally agree, if they wanted to. Mr. Elms motioned to declare this a Type II action and Mr. Manning seconded. Roll call vote resulted as follows: Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Mr. Manning, Yes; Chairman Endal, Yes. Motion carries 4-0.

The limitations on this permit were listed as follows: The operator must dispose of waste per State and Federal regulations; must keep a written log of filter changes; can have no employees; engages in no retail sales; has no customers on the premises; has no signage; has no employee or customer parking on site. These are in addition to what Mr. Ripley already listed and agreed to in his application.

Chairman Endal closed the public hearing at 7:57pm.

The Board reviewed the criteria for granting a Special Use Permit and found as follows:

- 1.) Such usage will not endanger the health, safety, morals or general welfare of the neighborhood or adversely affect the environment.
- 2.) Off-street parking spaces are adequate to handle expected attendance.

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3.) The neighborhood character and surrounding property values are not endangered.

4.) Such use thereof will not cause undue traffic congestion or create a traffic hazard.

Motion was made by Mr. Elms motion to grant Appeal No. 816 with the stipulations spelled out by the applicant as well as those listed above.

Roll call vote resulted as follows: Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Mr. Manning, Yes; Chairman Endal, Yes. Motion carries 4-0.

Mr. Martin stated that he will give Mr. Ripley a notice of decision that he can submit to the ATF and State, and it will also serve as an enforcement document.

Appeal No 817, A request of Matthew Stewart for an Area Variance pursuant to Chapter 149, Article X, Section 149-59A. Applicant is proposing to construct a garage that will not meet the required front yard setback in an R-2, One and Two Family Residential Zoning District. This property is designated as 63.8-1-43 on the Town Assessment Map.

Mr. Stewart appeared and explained that he wants to add onto his house and convert the garage into a great room and build a new two car garage 20 feet deep. The width is what's in question here. Most garages in the area are in front of the house a little, his is not.

Chairman Endal asked and the green space on the photo is not the exact lot lines. It is 15 ft from the side of the road to the front of the property. The houses are 60 ft back.

They have two cars now. The electric comes on one side and the natural gas on another, which limits where he can do anything. He could have gone to the side, but it wouldn't match the neighborhood. If he does 20 by 20, he could extend his driveway up the side of the garage to get his truck out of the way and make space for visitors. Mr. Elms pointed out that 20 by 20 is a small garage and Mr. Stewart said he doesn't park in the garage. Mr. Stewart added a foot for the eave so he really needs 19 ft of relief, which is 47.5%. This is 21 ft from the eave to the property line.

There are no deed restrictions on adding to his house, and the neighbors have not presented to the meeting or sent and letters. Mr. Stewart said he had talked to his neighbors and they didn't have any problems with it. The Board discussed whether this will looked markedly different from the rest of the neighborhood. The Chairman asked if he had considered building on the back, but the septic is 12 feet away and the pool is in the side yard.

, 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. That the variance is substantial, but still less than 50%.
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.

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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.

The public hearing was closed at 8:20pm with no neighbors present to speak in regard to this Appeal. Motion to grant Appeal No 817 for Area Variance for 20 feet relief front yard setback to the roof overhang was made by Mr. Elms and seconded by Mr. Fitzsimmons.

Under discussion, a survey plot plan must be provided by the applicant when they apply for building permit, showing the distance to the edge of the eave. Roll call vote resulted as follows: Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Mr. Manning, Yes; Chairman Endal, Yes. Motion carries 4-0.

Mr. Music had written a letter. He was not present. The assessor doesn't want to merge the two lots in question on his Appeal from April 2019. Mr. Manning said that makes two non-conforming lots. Mr. Elms was concerned because there were a lot of people at that meeting who were led to believe that would happen, and he doesn't want to go back on it while no one is here watching. It was done for good reasons. Mr. Manning wanted more time to look back at the minutes. For one thing, he could sell off one of the lots and that would be very messy. That was just a part of the discussion. Mr. Elms doesn't think the impact to Town revenues is that severe, and Chairman Endal thinks it had more to do with setbacks, but either way, they merged them for good reasons. If they are merged, he does have a right to re-subdivide but it would have to be reviewed.

In his letter, Mr. Music asked for an amendment. It's up to the Board whether they want to have a public hearing in it. Mr. Elms wanted to leave it as originally decided. The public interest was so high that it would have to be re-noticed and re-heard publicly. Mr. Manning pointed out that tax rolls are not a consideration in any other Appeals, so it doesn't make sense to allow that to color their decision about this site.

Mr. Elms moved to deny the request for amendment in the letter from Mr. Music dated June 12, 2019. Mr. Fitzsimmons seconded. All in favor, motion carries with no roll call.

Motion to approve the minutes with amendments was made by Mr. Fitzsimmons and Mr. Manning seconded. All in favor, motion carries with Mr. Elms abstaining.

Mr. Martin said that revisions to Zoning Code have begun. Will have meetings to revise but a local committee may be formed with Planning, Zoning members and some local residents to have dialogue about special circumstances. Mr. Manning suggested including business people. Mr. Martin wanted to emphasize the importance of including the public.

Map districting and the Special Permit process may be controversial. Adult uses have to be allowed,

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zoning them out is not allowed. Technology such as solar and electric vehicle charging stations are two examples of things causing change. This is an opportunity while the town is on the edge of growth. Code Enforcement is expensive and a heavy Code makes it more so.

The meeting was adjourned 8:51 pm .

Respectfully submitted,

Tricia S. Andrews