

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 January, 2021 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Gerhard Endal, Chair

Justin Farrell

Matthew Manning, Acting Chair

Scott Fitzsimmons

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

Board Members absent: Kevin Elms

Mr. Manning chaired the meeting as Mr. Endal was present on-line. The minutes of the November 2020 meeting could not be reviewed because of lack of quorum of those who were present at that meeting.

Appeal No. 835

A request of Denno Contracting, LLC OF 33 Atwell Road, Porters Corners, NY 12859 for an Area Variance pursuant to Chapter 149, Article V, Section 149-59 (A) and Town Law 267-b. Applicant is proposing to create a 5 lot subdivision with a common driveway as three lots will not have frontage on a public street. This property is located at 305-309 Reynolds Rd, Moreau, NY in an R-2, One and Two Family Residential District and is designated as 63.4-4-56 on the Town Assessment Map.

Garry Robinson was present to explain this Appeal and an agent form was presented.

Mr. Robinson explained that he represents Denno contracting. This is a 5-acre lot on 197 and not far from Route 32. It sits in front of a couple of subdivisions. They would like to subdivide. It is an odd shape. One of the issues was that they wanted to limit driveways because it is close to the edge of a 55mph zone. They also thought that DOT would like fewer driveways, and the Town would not be interested in a cul-de-sac; they considered flag lots, and that was a possibility but still created a lot of driveways so this made more sense. One of the advantages is that the common driveway is one access point. They would meet all the other requirements except for frontage on a Town road. He thinks the fire department will like it. The road will be wide, there is a hydrant nearby and a place to turn around. They are looking for the Variance for the lack of frontage on a Town road because this is better than flag lots.

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 January, 2021 at 7:00 PM.

Mr. Martin stated that this can be done and that not having curb cuts on that road is an advantage. A shared maintenance agreement will be needed. It will go to the Planning Board for Site Plan Review. The cross-easements have to be recorded on all the deeds. There will need to be proper crossing rights and easements on all of them. Once it is in the deed, it is there. The other thing is a disclaimer provided at time of sale stating that it is a shared driveway and not their property. They also look for a letter from the fire department and a cross section of the road showing that the road is built to a standard that will hold a fire truck.

Mr. Martin asked Mr. Robinson what A&B are, and he explained that they are areas that will be incorporated into other lots. It is not a 7-lot subdivision. Mr. Robinson explained that he had done 6 or 7 of these shared driveway subdivisions and his lawyer is good at it, all the ones he has done recently in other towns were quite large compared to this one. They are working out well. Mr. Martin stated that another one around the corner done by Scott McKenna appears to be working out well and looks nice.

Mr. Manning asked whether they had looked at an HOA for maintenance of the road, since the turnaround looks too small for snowplows or fire trucks. He asked about maintenance and Mr. Robinson explained that it is in the agreement that they share the maintenance. It will be paved.

Mr. Endal asked whether the maintenance agreement specifies the level of maintenance.

Mr. Robinson stated that once it is in it is up to the level required by the fire department. The Planning Board and Fire Department will make sure that it meets that part of the Building Code. He stated that the fire department will likely like this better than several long driveways.

Mr. Martin explained that the whole thing has to be completed before a building permit is issued for the first house.

Chairman Endal asked why a short cul-de-sac is not an option, and Mr. Robinson said that a short road with a cul-de-sac is not desirable and he knows this from working with Paul Joseph for a long time.

Mr. Manning stated that with the five houses taking care of it someone could drop the ball on their section and that is why he thought that an HOA would be better for maintenance.

Mr. Robinson explained that the maintenance is in the agreement that they have to pay and that it has to be done every time.

HOA is an organizational issue, is expensive and no one wants to be involved. They are approved by the State Attorney General and they would not even think of doing that with such a small subdivision. The owners will split the maintenance fee. Certainly someone could balk but it is a legal issue if they do.

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 January, 2021 at 7:00 PM.

Chairman Endal stated that he could not download the drawings so was at a disadvantage but the whole notion that we shouldn't do things that are a problem for the Town to maintain resulting in a lot of private driveways, people come to the Town asking for enforcement of these agreements. This sets up a problem down the road.

Mr. Robinson agreed that it is a private matter that the Town doesn't need to get involved in.

Mr. Endal thought that this would be better as a cul-de-sac.

Mr. Robinson stated again that Paul Joseph would not take it over and it would be too costly as a cul-de-sac and they would choose flag lots.

Mr. Manning asked why they didn't want to do flag lots and Mr. Robinson referenced not wanting to have four driveways on that road. He stated that it is easier for fire as well.

The Board discussed the agreements and the legal arrangements.

Mr. Manning stated this is all well and good until one house goes into foreclosure. Mr. Farrell agreed that people will come to the Town.

Mr. Robinson stated that the Town likely gets complaints all the time for things they have no control over. The agreement is worded such that if someone is not paying, the road still has to be maintained by the remaining residents. He is not sure that is cumbersome.

Mr. Martin pointed out that it is a legally binding agreement so that it can be enforced.

Mr. Robinson stated that if they did this as flag lots they would be long, narrow driveways that people have to pay to have done anyway.

Mr. Martin mentioned that the one around the corner is a hybrid because they met the 40 ft frontage requirement but they are not using it for the driveway.

Mr. Fitzsimmons asked whether that is privately or publically maintained and it is private, all have deeds with cross easements and maintenance agreements. It has only been in a couple of years but they have not had any complaints.

Mr. Endal stated that this property does not have road frontage.

Mr. Martin thought that they could get the frontage for a few of these lots and maybe one would be landlocked.

Mr. Robinson agreed that they could. They still meet all the other size and setback requirements.

Chairman Endal asked if he was saying he could do other things, but they are undesirable, and he was inclined to say that this might be the best way to go.

Mr. Manning stated that he agreed with some of that but still liked the idea that they try to find frontage. He doesn't agree that a cul d sac wouldn't work, because making less money is not a

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 January, 2021 at 7:00 PM.

hardship. He believes the three landlocked lots could create a situation in the future. He wonders if there is some other way to optimize. They might have to lose a lot or shrink a lot but he doesn't agree with this plan.

Mr. Robinson stated that the hardship is that the lot is a funny shape already, cut up almost like a T. If they are set up to do a common driveway but getting around it by making flag lots that come out to the main road, it doesn't solve any issues. Mr. Manning stated he would need to see more information on the maintenance agreements and input from Planning and Fire, because this doesn't look to him like it works. Mr. Farrell agreed, stating he had gone to the site and couldn't envision this as it is drawn. The driveway and the turnaround didn't make sense to him.

Mr. Martin asked Mr. Robinson to get a draft of the maintenance agreement and he agreed. Mr. Martin asked for more information on the plan, although it was too early to ask for a full Site Plan they need to see a design that supports the maneuvering of bigger vehicles, a commercial plow truck for instance as well as a fire truck. The Board members need more assurance that this will work. Mr. Endal stated that this is unique. The Board doesn't want flag lots, they don't want landlocked lots, etc, so they need a good reason to grant this.

Mr. Robinson said he would talk to the Fire Department and Mr. Joseph as well.

Mr. Martin said that there is room to work on a hammerhead.

Mr. Robinson said that they would do that for Planning anyway so he will put it on there.

Mr. Martin stated that this will require a driveway permit from the State so they might want to get a conceptual agreement from the State about that.

Mr. Manning stated he would also be concerned about a place to put snow.

The public hearing was opened at 7:36. Mr. Martin allowed Robert Barody to speak and he stated that he owns the adjoining property at the rifle club, 311 Reynolds Road, he just wanted to state that the club was here first and people should not build houses next to it and then try to shut the club down. He just wanted Denno Contracting to know that he was there. Mr. Martin said he had worked on sites next to gun clubs before and it is a basic uniform concern.

Mr. Endal stated that a comment like that actually went into the plat on a development he did near the blast site at the other end of Town.

Mr. Robinson agreed he could put that on the plan.

No other members of the public were present via Zoom for this Appeal. Mr. Manning closed the public hearing. The Board agreed that they didn't have enough information to move forward and so this Appeal was tabled. Mr. Manning said that the Board needed to see dimensions on

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 January, 2021 at 7:00 PM.

the turnaround, a maintenance agreement draft, an indication on the plan about the gun club, and an indication from DOT about granting a curb cut for driveway access at that location, DEC, fire department review, and Mr. Manning stated that he thinks members agree that a common driveway is preferred, but the Board might need some kind of a hybrid to ease some of their concerns. Mr. Martin recapped the five items.

Mr. Endal stated that the public hearing should remain open if this was going to be tabled. Mr. Martin agreed. Motion was made by Mr. Endal and seconded by Mr. Farrell to table this Appeal and keep the public hearing open. Roll call vote resulted as follows: Mr. Endal, Yes; Mr. Farrell, Yes; Mr. Manning, Yes; Mr. Fitzsimmons, Yes.

The Town Hall is still closed but Mr. Martin said he was available to talk to Mr. Robinson by phone.

Appeal No 836 A request of Terri-Jo Ash Nicholson and Jeffrey Nicholson of 202 Bluebird Road, South Glens Falls, NY 12803 for a Special Use Permit pursuant to Chapter 149, Article V, Section 149-33 A, Home Occupations. Applicants are proposing to open a Therapeutic Massage Office in their residence. This property is located in an R-2, One and two family Residential District and is designated as 50.-2-19.2 on the Town Assessment Map.

Mr. and Mrs. Nicholson explained that they are looking to move her massage practice into her home. Her current rental space is being sold. They were going to do this eventually anyway. They would like to put a wall into their garage, so that the family still has access to the house and then a waiting room and a treatment room, with access for clients to their half-bath if they needed it. Currently she rents from Route 9 Orthopedic and Spine Physical Therapy. Clients come when they have an issue, a few come twice a month. It might be 5 a week. She works in physical therapy for almost 30 years, so most of her clients are referred by co-workers and a nurse practitioner, as well as occupational health. She stated she works full time for the hospital and this is a part-time or possibly a retirement thing.

Mr. Fitzsimmons stated that Home Occupancy is always a sticky issue. Neighbors tend to have strong feelings about businesses in homes outside of commercial areas.

Mr. Endal stated that he feels this meets the definition of a home occupation, and he asked if she was licensed. She stated that she is and she grew up in a home with a home occupation in it.

Mr. Endal asked whether she has a waiting room full of people and Mrs. Nicholson stated one will come in as the other is leaving.

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 January, 2021 at 7:00 PM.

Mr. Fitzsimmons asked about the operating hours which Mr. Manning read from the application. Mrs. Nicholson stated she tries not to work late or on weekends but sometimes the clients need that and she will accommodate. She does not advertise.

Mr. Manning stated that it didn't sound like a traffic concern but he wondered about the driveway being big enough for four cars. They have two themselves and they would have one or two others.

Mr. Nicholson stated he has a turnaround and he does not allow people to back out of his driveway because of the 55 mph speed limit and the passing zone.

Mr. Manning asked and Mrs. Nicholson stated that she does not want a sign but she might put a small one on the garage if she has to. Mr. Endal stated they are entitled to a small one but they don't have to.

Mr. Manning asked if there were any chemicals in use and Mrs. Nicholson stated that she was not aware of any.

Hours are 2 pm-7 pm M,W,F and T, Th 6-8pm which are if needed.

Mr. Manning asked about loud noises that would disturb neighbors and Mrs. Nicholson stated there should not be.

There are no plans to change the footprint of the building but they will need a building permit for the plans for the inside.

Mr. Martin stated that this is a Type 2 action under SEQR exempt from review because it is under 4,000 sq. ft.

Mr. Endal stated that he does not see any issues.

Mr. Martin stated that the single-user service is the main issue, as long as it is one person at a time and doesn't create a traffic or parking concern, there are no issues.

The public hearing was opened at 7:56pm, but no members of the public made any comments.

Mr. Martin stated that no written correspondence had been received.

The Board stated that she had to stick to the hours listed. Mr. Endal asked if she would have to come back if she retired and wanted to increase the hours.

Mr. Nicholson stated that it would be a few years, but Mr. Endal stated that he didn't want her to have to come back. The Board suggested that they could just limit the evening hours so that she could have daytime in the future.

Mr. Manning motioned to grant Appeal No. 836 for a Special Use Permit for a Home Occupation, with the stipulation that the operating hours are prior to 8 pm, that appointments be scheduled with minimum overlap, and that the driveway is included in the Permit and any

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 January, 2021 at 7:00 PM.

change to that requires review by the Town. Mr. Fitzsimmons seconded. Roll call vote resulted as follows: Mr. Endal, Yes; Mr. Farrell, Yes; Mr. Manning, Yes; Mr. Fitzsimmons, Yes.

Mr. Martin provided some instruction on what a flag lot is.

Mr. Manning adjourned the meeting at 8:03pm.

Respectfully Submitted,

Tricia S. Andrews