

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 24th day of February, 2021 at 7:00 PM.

ZONING BOARD MEMBERS PRESENT:

Gerhard Endal, Chair

Kevin Elms

Justin Farrell

Matthew Manning (Zoom)

Scott Fitzsimmons

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

Board Members absent: None

The meeting was called to order at 7:00pm.

The Board reviewed the minutes of the November 30, 2020 and January 27, 2021 meetings. Mr. Elms motioned to approve the minutes of the November meeting and Mr. Farrell seconded. All in favor, motion carried. Chairman Endal motioned to approve the January minutes and Mr. Farrell seconded. All in favor, motion carried with Mr. Elms abstaining.

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 representing Denno Contracting explained the revisions. They prepared a draft of a shared access agreement that was included with the application. It talks about the different responsibilities that the residents would have. They added a note on the plan for the common drives stating that there is a common drive. They added elements to make the driveway compliant with NY Fire Code, 20 feet wide, T-turnaround. A note was added that it complies. A note was added regarding the gun club. A detail was added on the curb cut, DOT has a standard and does the design and that detail is added. There is a cross section of paved road that they have used in the past that supports 7,500lb. fire vehicles.

He spoke to everybody that he was asked to reach out to, but couldn't get letters from all of

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them. DOT did provide comments, and they allow up to four common driveways, so the main entrance hasn't changed but they will try to use an existing curb cut. That will require a permit, but he can't get anything other than that letter for now. He spoke to Pete Corlew and sent him a copy of the plans, and Fire stated that this is fine with them. Mr. Martin said that the Building Department had received a phone call from Mr. Corlew stating the same. Mr. Robinson talked to the Highway Superintendent to see if his comments about cul-de-sac were correct, and that was confirmed. The Highway Superintendent also said that the cul-de-sac radius has been widened and they might not have enough room anyway. This also reduced the amount of pavement versus a cul-de-sac, which is a point in its favor. Mr. Fish at the Water Department was contacted because of the fire hydrant, and they discussed whether this was a private hydrant. Mr. Robinson stated the hydrant is not required back there but it would be covered by an easement. This was something the owner had planned. Mr. Fish recommended against it. There is an existing hydrant 20 feet west of the planned driveway, so they may just go with that since the hydrant is not required and the Water Department doesn't want it.

Chairman Endal asked and there will be Town water it is on that side of Route 197 now.

The existing drive is about 17 feet wide now. Usually they are about 12. Mr. Manning asked and they are bringing water along the shared driveway in the drainage ditch. There is a cross culvert 50 feet from the driveway, they will have culvert under theirs. Mr. Manning asked how they will get it to drain when there is no pitch, concrete gutter.

Mr. Robinson stated that the site needs fill, so it will be graded to slope down toward the road.

Mr. Martin stated that it will go to the Planning Board and they will look at the stormwater, etc.

Mr. Manning asked if they look at the driveway and they do.

Mr. Elms expressed concern that the lots don't touch the road and compared it to the McKenna subdivision. Depending on the people who live there, this shared driveway might not work out.

Mr. Robinson stated that he hasn't had issues on the ones he has done in the past, but that the easement language covers all the possibilities, including letting the buyers know that the Town is not involved in any disputes. DOT also reviews the draft ownership and maintenance agreement when they apply for their driveway permit.

Mr. Elms asked and Mr. Martin knew of two of these in the Town, the Board then counted more that they could think of as well.

Mr. Martin said that he didn't like shared driveways in the past but has warmed to them with the proper procedures in place. It's not a Town road and that saves the Town money, and it

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involves fewer curb cuts. The easements have to be properly recorded, maintenance agreements in place and the public safety elements addressed in terms of being properly constructed per Fire Code. Subdivision plats are enforceable with regard to the standard of the driveway being kept up.

Mr. Farrell thought that safety hazards and legal issues would be the chief concern.

Mr. Elms said that in spite of legal documents these things end up in court because people don't want to cooperate.

Chairman Endal agreed that doing a lot of these will result in people coming to the Town with complaints. If this were all Town road, then they would have recourse. People won't want to pay taxes if the Town isn't going to keep their roads up. That is the extreme possibility.

Chairman Endal asked for more information about why it couldn't be a cul-de-sac.

Mr. Robinson explained that there would be more issues with the people who live behind this parcel, who would not want a road running behind their house as well as in front.

Mr. Elms didn't see how that would make any difference, people wouldn't drive into that if it were a cul-de-sac or a private road, they wouldn't know the difference.

Mr. Robinson stated the Town wouldn't be interested in taking it because it only serves a couple of houses. Mr. Elms said there is one off of 197 down by the river with only 4 houses on it.

Mr. Robinson said the Town would have to maintain it. He talked to the Highway Superintendent and he would rather not have it. This is less costly for the Town and the builder. Additionally he thinks it is more appealing to potential residents.

Mr. Farrell asked whether the second driveway was absolutely necessary and Mr. Martin agreed that it is necessary. Mr. Farrell expressed concern about the traffic with two driveways so close to the intersection.

Mr. Elms questioned a plow in there.

For the McKenna subdivision, he did not have to come to Zoning because he had lots that were technically compliant. These similar concerns were handled in Planning Board.

Mr. Manning stated that every farmer with a lot of land could throw in a private drive and four houses and the Town could end up with 15-20 of these, so there should be some description of them in Zoning to delineate where they can be done, etc. The Town's hands might be tied when there are legal disagreements, but they will still happen. Mr. Manning stated he is struggling with the hardship that would need to be demonstrated to allow this. What is unique or different about this lot? The Highway Superintendent might have opinions but this Board has to look at the whole Town and do things for safety and per Town Code.

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Mr. Robinson stated they had looked at different things they could do, they had considered the McKenna subdivision, and they wanted to minimize the number of driveways. While this Board might not like it, the Planning Board does like them. The Planning Board wouldn't want four driveways. They would rather have nice lots. The Variance is about frontage on a shared driveway.

Mr. Elms said that he asked the Town to eliminate flag lots when the Zoning Code was re-written. He thinks they are detrimental, but they are currently allowed.

Mr. Farrell suggested it could be given to the Planning Board to deal with.

Mr. Martin stated that frontage on a Town road is an issue as well as lot width, which is measured at the building lot in Moreau. There are ways to define those things and set those things up that eliminate flag lots, but it is not easy to do. There are various schools of thought on this. He explained that usually these things happen when parents or grandparents sell off lots to younger generations.

Chairman Endal asked what the question is before this Board and it is the lack of required 40 feet of frontage on a public right of way. Chairman Endal asked if they would create flag lots if this were denied. Mr. Martin was not sure they could actually fit houses on lots that way, and thought that they might be able to get only two or three houses in there in the back.

Mr. Robinson said that if that happened, they would go to the Planning Board and ask for a common driveway. They were also trying to avoid driveways on 197. Mr. Martin wasn't sure the State would allow that.

Mr. Manning pointed out that they were only going from 3 to 2 by granting this. This is a dangerous road. The lot is not subdivided currently and he fails to see the hardship or the advantage to allowing this. He can't control the Planning Board or Town Board but he has a vote here in Zoning.

Chairman Endal said he would like to see how it would look as a cul-de-sac in order to compare.

Mr. Farrell stated that the rules are the rules. This presentation may make the most sense for the developer, and he is torn but what is the real hardship, and to Gary's point it would be helpful to see the cul-de-sac and see why it wouldn't work.

Mr. Martin said he wasn't sure the cul-de-sac wouldn't work, especially since lot 4 has some extra space.

Mr. Manning stated that would be preferable because the drainage would be handled by the Town and it can be done without a Variance.

Mr. Robinson said that the road would have to be wider for a cul-de-sac and he didn't think it

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would fit, they would lose two lots, maybe three.

Mr. Martin thought they would lose only one.

Chairman Endal stated that rather than guesses he would like to see a plan so he could compare.

Mr. Elms stated that the Board would be giving them permission to do something the Town doesn't want done, and he hasn't seen information that this is a hardship.

Chairman Endal agreed there is nothing unique about this that makes it qualify. McKenna subdivision had wires, and hills. This just looks like a small subdivision. He asked whether there was public comment and Mr. Martin stated that there have been none.

Mr. Robinson asked if he should prepare something showing the cul-de-sac and the flag lot options, and the Board agreed it would be easier if they could see it and be sure.

Mr. Farrell stated he thought there might still be a way to configure it so that they didn't need this, and Mr. Elms stated he would be more comfortable with a cul-de-sac than driveways spaced down the road. Chairman Endal stated he needed to see how this is different.

Mr. Martin asked what had happened to Area A & B and Mr. Robinson said that they were just lot line adjustments with A going to the left and B going to drainage as part of the common area.

Mr. Manning asked and the lot was purchased 4 months ago, so he stated that the lot was in this Zone and this shape when the purchase was made, so their need to make more money from this is not a hardship that he will consider.

Chairman Endal asked Mr. Robinson if he wanted to table the Appeal and Mr. Robinson stated he didn't want to waste a month if there was nothing that could convince them, but that if it was still possible he would do drawings showing that flag lots would be undesirable and that the cul-de-sac doesn't work.

Chairman Endal stated that with Area Variances they have some liberty to weigh alternatives, so he would like to, but that doesn't guarantee they will agree to it. Mr. Elms stated he would agree with it if he could. Mr. Robinson stated that if it was tabled he would go back to the owners and ask what they wanted to do, and that they might go to the Planning Board instead.

Mr. Martin asked him to formally withdraw if they do that and Mr. Robinson agreed that he would.

Mr. Elms motioned to table Appeal No. 835 and leave public hearing open, and Mr. Farrell seconded. Roll call vote resulted as follows: Mr. Farrell, Yes; Mr. Elms, Yes; Mr. Fitzsimmons, Yes; Mr. Manning, Yes; Chairman Endal, Yes.

The Board turned to a discussion of the Draft Solar Law. The draft was based on a State model

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but the Town Board has made revisions and the Town's attorney has been working on it as well. She is available by phone if needed tonight.

Mr. Elms thought that including the 110% standard for Tier 1 would be prohibitive for some people. He's like to see the reason behind it. Chairman Endal thought that was a State provision to get people to go to the next tier.

Mr. Farrell asked why it couldn't be built on prime farmland which is most of what is available around here. Mr. Martin explained that this is the crux of the discussion about the law. Mr. Farrell thought that would be very limiting. Mr. Elms agreed.

Mr. Martin asked what he would like to see and Mr. Farrell asked how prime farmland is defined, and whether this is the same as other municipalities.

Mr. Elms suggested maybe a percentage of tillable land could be made available, as another way to limit it.

Mr. Martin explained that there are no solar treatments at all except in Manufacturing districts, because 'power plants' are listed as allowed there. Farmers have become interested in generating on their properties. They have to be located near transmission lines, which Moreau has, but mostly in the Ag District.

Mr. Farrell asked whether the Town gets any benefit from these. There is a PILOT from the Solar provider to the Town. That provides more revenue than the taxes on farmland.

Mr. Martin shared that in Glenville they are getting a recreation fee in addition to PILOT.

Mr. Elms thought that this less intensive use that doesn't require water or sewer or schools and doesn't cause traffic issues, would be desirable.

Why was building-integrated solar not Tier 1?

Restriction on prime farmland is too restrictive, prime farmland should be defined.

Percentage utilization at 40% is too low.

The possibility of a provision requiring system upgrades as the technology involves.

Suggestion was made to include electrical diagrams for Site Plan review.

Definition of ground-mounting is limited to on-site consumption, why doesn't it include off-site?

Mr. Martin invited the Board members to send him additional thoughts by email.

The meeting was adjourned at 8:35pm.

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Respectfully Submitted,

Tricia S. Andrews