

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, 61 Hudson Street, South Glens Falls, NY 12803 on the 22nd day of May 2013 at 7:00 PM.

The meeting was called to order by Chairman Gerhard Endal at 7:04 p.m.

ZONING BOARD MEMBERS PRESENT:

Chairman Gerhard Endal

Kevin Elms

John England

Richard Kubis

ZONING BOARD MEMBERS ABSENT:

Scott Fitzsimmons

Others Present:

F. Joseph Patricke, Building Inspector

Tricia Andrews, Recording Secretary

The Board reviewed the minutes of March 27, 2013 meeting. Mr. Elms motioned that the minutes from these meetings be approved as written and Mr. Kubis seconded. Roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes; Chairman Endal, Abstain. Motion passed 3-0-1.

Appeals Nos. 735 and 737 will be addressed first because they are simpler than Appeal No. 736.

New Business:

Appeal No. 735: A request of John Donahue of 23 Cedar Lane, Gansevoort, NY 12831 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59(A) and Town Law 267b. Applicant is proposing to construct a detached garage that will not meet the required side yard setback in an R-2 Zoning District. This property is designated as 63.13-1-3 on the Town Assessment Map.

Mr. Donahue's house doesn't have enough living space, so they would like to convert the garage and add a 24' by 24' new garage. The other side of the house has the same problem as the proposed side, 5 ft. too close to the setback. The septic is in the back. The area has been surveyed. Aesthetically, he prefers the look of it from the front with a gable. The measurement for the requested variance is to the overhang of the garage.

There are no concerns from the neighbors and there was no comment from the public at this meeting. Chairman Endal felt that it's not going to create a detriment to the neighborhood. He is fairly close to his neighbor, but there is some space. They have looked at other places. Approximately 1/3 of the setback is not a substantial variance.

John England asked whether they could make the dimension smaller. The applicant says the bedrooms are big but there isn't much space for having family over. Mr. England spoke to the next door neighbor and Mr. Donahue has talked to the neighbors on both sides and no objection was raised. No adverse environmental or physical affects with this. Self- created: does not apply here. We have reviewed the

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conditions for an Area Variance.

SEQR was not required. Chairman Endal closed the public hearing 7:13pm. Motion by Mr. Elms to grant 5 ft. relief and a side setback of 10 ft. and seconded by Mr. Kubis Unanimous by roll call vote. SEQR was not required.

The Board reviewed criteria for granting the 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 requested variance is not substantial in relation to the requirements.
- (3) That the difficulty cannot be alleviated by some practical method feasible for the applicant to pursue.
- (4) 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 that there will be no substantial change in the character of the neighborhood or a detriment to the adjoining properties 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.
- (5) That the difficulty is not self-created.

Mr. Elms motioned to grant Appeal No. 735, 5 ft. relief and a side setback of 10 ft., and was seconded by Mr. Kubis. Roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes, Mr. Elms, Yes; Chairman Endal, Yes. Motion passed unanimously.

Appeal No. 737, A request of Marie Marino and Patricia Rosenberg of 28 Woodlawn Ave, South Glens Falls, NY 12803 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59(A) and Town Law 267-b. Applicants are proposing to construct a sunroom that will not meet the required front yard setback in an R-1, One Family Residential Zoning District. This property is designated as 49.68-1-3on the Town Assessment Map.

Rick Rainbow, contractor for the job appeared. Mrs. Marino is on the tax records but the applicant is Mrs. Rosenberg because she's doing this sunroom for her aged mother and her name is on the deed. This is a four season sunroom on the front of the house. Mr. Rainbow presented a blueprint picture and front and side elevations to the Board. The back of the house is all bedrooms, so it was not practical to put it

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there. The side encroaches the setback further than putting it on the front as requested.

Mr. England noted that other houses on the block have this type of front addition. Mr. Rainbow presented pictures. Some are closer to the road. The requested variance is 22' to the blacktop. Mr. England had visited the site and saw that it is going to be 4 ft., maybe 6ft., from the current stoop. There is a landing with two steps that will be replaced by this. Mr. Elms thought it didn't look like it would seem to have a Variance. There is a fountain in the front yard. There will be double glass doors instead of the current front door.

The front setback in an R-1 is 30 ft., so the relief required is 8 ft. The Board received no input from the neighbors or the public that was present.

The Board reviewed criteria for granting the 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 requested variance is not substantial in relation to the requirements.
- (3) That the difficulty cannot be alleviated by some practical method feasible for the applicant to pursue.
- (4) 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 that there will be no substantial change in the character of the neighborhood or a detriment to the adjoining properties 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.
- (5) That the difficulty is not self-created.

SEQR was not required. The public hearing closed at 7:23pm.

Mr. Endal moved to approve Appeal No. 737 with an 8 ft. Variance for a 22 ft. setback and was seconded by Mr. England. Roll call vote proceeded as follows: Mr. England, Yes; Mr. Kubis, Yes; Mr. Elms, Yes. Mr. Endal, Yes. Motion passed unanimously.

The Board heard Appeal No. 736: A request of Joshua James Craft of 24 Hilton Drive, South Glens Falls, NY 12803 for an Area Variance pursuant to Chapter 149, Article X, Section 149-59(A) and Town Law

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267b. Applicant is proposing to construct a 12' by 62' batting net that will not meet the required side yard setback in an R-1, One Family Residential Zoning District. This property is designated as 49.41-2-7 on the Town Assessment Map.

Mr. Craft has a 10 by 10 by 60 batting net for his 8 and 5 year olds to practice batting and they hit softballs. The net will come down in the fall and be back up in the spring.

Neighbors on each side have complained. Jason Taylor has the frame 3.5 ft. from his fence and Mr. Stewart can see it from his back yard.

Mr. Endal explained that there are concerns because it's already built. Mr. Craft didn't understand that it required a building permit. It is a structure according to the definition in the Code. Comments from the neighbors were received in the form of three letters. If Mr. Craft had built it 3 ft. over, it would not require a variance, but it would be in the middle of the yard and more visible from the street. He has an enclosed trailer that blocks it from view now. He feels this is the best maximization of the space in his yard. It would have avoided the need for a variance. Mr. Craft argues it's not a permanent structure. The net will last 3-5 years and be replaced or the structure will be cut down. He won't have area kids or adults swinging bats in there. He sponsors a team but is not a manager. He intends that his kids will use it, he doesn't play in any adult leagues himself. He argues the kids will hit anyway whether there is a net or not. Mr. England agreed feels that the noise of batting is annoying. Mr. Craft says that the kids' attention span is not that long, for what the letters say happened to have happened.

Chairman Endal asked for the neighbors' comments, and asked that they address them to the Board please.

Shawn Marlow, two houses down on the opposite side of Hilton Drive felt that these kids won't be 8 and 5 forever, their friends will come over, and there is a park very close by where they could practice batting. Mr. Elms agreed that these things are usually done in a park. Mrs. Mayotte listened to building all last year, doesn't want to listen to batting this year. She lived kitty corner. She wants to sit by her pool where it's quiet.

Mr. Craft works two jobs and doesn't have time to go to the school every time the girls want to practice, and they are going to hit balls in the yard whether there's a net or not. If he frees it from the ground it can legally be there and it's not safe.

Mr. Patricke agreed that they have had that conversation, and it would possibly be a legal use if it were freed. More research has been done since the complaints started and revealed that it may not be an appropriate use in a residential neighborhood. When Mr. Craft was first approached about not having a building permit and an Area Variance, complete information wasn't available. If he can move it over and put a different type of support on it, will it be legal and safe on a night like this when there is a

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thunderstorm warning?

Mr. Elms said that kids can hit balls whenever they want but a big batting cage wouldn't be expected in a residential yard. Friends and neighbors will be there. It doesn't conform with residential use.

Ms. DiLallo-Bitter said that if Joe is still looking into the use being permissible, then procedurally the Appeal should be tabled until it's determined whether the use is allowed. Pat Ball, 12 Hilton Drive, diagonal to Mr. Craft, apologizes because she knows this is important to him but opposes it because of constant noise, it appears there will be an electronic pitching machine (Mr. Craft says not at this time, but possibly), and Mrs. Ball is concerned about precedents in a neighborhood that is close. He does sponsor a team and if teams come over there will be traffic. It is quite high and out of place in a small neighborhood. His rights are infringing on other people's for quiet and aesthetically. Jeff Ball concurs. When other kids are over or if a pitching machine is added, there will be more complaints.

Regarding noise and the character of the neighborhood, Mr. Kubis pointed out that we have a noise ordinance and it is enforced by the Sheriff's Office. He advised the neighbors they could address it that way, although concerns about the character of the neighborhood are appropriate for this Board. A neighbor said that a band and DJ were there before and police came 2-3 times and did nothing. Mrs. Ball added that you can't govern the decibels of a batting cage.

Mr. Endal pointed out that construction and other noises will always happen, you can't get away from it, but Mr. England argued that it's the repetitive nature of this noise that makes it a problem.

Mr. Patricke reminded the Board that the the big concern has been that summer is here and Mr. Craft wants it in use. Mr. Patricke will commit to a decision by Friday regarding the use. If the use is approved, he will have to still decide if he wants to get a variance or move the cage a few feet. Mr. Endal said the standards are clear about the Area Variance but the neighbors are more concerned about the Use. Originally, concern was raised because they thought he had a pole barn without a permit and someone complained to the Town. Mr. Craft didn't know the neighbors had all these complaints. He had decided he might move it and had discussed that with Mr. Patricke and Duane to make it free-standing. But then when he saw it would be the middle of the yard, he opted for the Variance. These, Mr. Endal said are good arguments when we get back to that Appeal but first we must settle the Use question. Three letters received by the Board were read into the record.

The Building Inspector determines Use according to the Code with legal advice. Mrs. Ball asked whether Mr. Patricke makes the decision because it seems that he was in favor, and Joe said that new information has come to light and he is investigating. The letters are read in place of people who couldn't come to the meeting but those comments bear equal weight with those who spoke tonight. Mr. Craft knew nothing about any of these complaints until now. Mr. Elms assured everyone they are trying to be fair,

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and Mr. Craft doesn't want irritated neighbors.

Chairman Endal explained that the Board has to wait until the Use question is decided and Use Variances are difficult to get.

Ms. DiLallo-Bitter explained that this is a unique structure and the Code isn't specific about it. She read the letters into the record from Bernard Gordon, Kelly Brock, Timothy Stewart, Bridget Barlow, Jason Taylor. Mr. Stewart's letter was positive as was Mr. Taylors, giving permission to be close to the property line.

Mr. Patricke said that these complaints started when the Appeal was announced in the paper a week ago. Mr. Craft says he doesn't have nearly as much free time to hit balls around the yard as the neighbors seem to think he does.

Mr. Elms motioned to table Appeal No. 736 pending decision of the Building Inspector on Friday as to whether the Use of a batting cage in a residential neighborhood is permitted and Mr. Kubis seconded. Since noise was the complaint, a neighbor asked if it goes on, to whom should people complain.

Chairman Endal said that it is not this Board, but they can call Mr. Patricke. He enforces the Code and he will come if there's a complaint. This neighbor can hear it from 4 houses down with her inside door open. If acceptable Use is found, they will be notified again by the Town that there will be an application. This is not required, but Mr. Patricke will do it because of the unanswered situation.

Mr. Endal adjourned the meeting at 7:58pm.

Respectfully Submitted,

Tricia S. Andrews