

The regular meeting of the Zoning Board of Appeals for the Town of Moreau, in Saratoga County, and the State of New York was held at the Moreau Town Office Building, 61 Hudson Street, South Glens Falls, NY 12803 on March 23, 2011 at 7:00 p.m.

Kevin Elms, Acting Chairman, called the meeting to order at 7:08 p.m.

**PRESENT:**

Kevin Elms  
John England  
Richard Kubis

**ABSENT:**

James Hooper  
Tracy Bovair  
Gerhard Endal, Chairman

**Others Present:**

F. Joseph Patricke, Building Inspector  
Martin D. Auffredou, Attorney

**APPEAL NO. 713**

A request of Harold Leonelli of 610 Union Street, Schenectady, New York 12305 for an area variance pursuant to Chapter 149, Article X, Section 149-59A, and Town Law 26-B. Applicant is proposing to create a two lot subdivision. Lot #2 will not have frontage on a town road but will have an access easement from lot #1. This 21.1 acre parcel is located on the west side of Sisson Road in a UR multi-family, one and two family residential zoning district and is designated as 37.19-1-25 on the Town Assessment Map.

Kevin Elms: Are you here representing yourself?

Garry Robinson: No. I am representing Mr. Lianelli.

Kevin Elms: Okay. You want to introduce yourself and give us a little background.

Garry Robinson: Let me give you a little history on our project. It is called Moreau Acres now. Recently it was Cicero Apartments and this is a project that is essentially the same as was previously brought before the Planning Board a couple of years ago. It is an apartment complex. It consists of 144 units on about 21 acres of land. It has an access road from Sisson; it comes in and then goes around the site. It will be served by central water. There is water right now here on Sisson road. It will be served by central sewer. Pump station here. As part of our approval at the Planning Board we went to the fire department and they looked at it and all the roadways are fine. We went to the EMS. We had the Town Engineer review this and everything was fine.

Since that time, Hal has someone interested in buying it and they are interested in buying the whole parcel, however, the banks are a little cautious and they do not like to fund large projects. They like to fund phases of projects. What they want to do is; essentially, give their mortgage as, a loan on part of the project. So people that have come to Hal for this, have said okay what we want to do is split it right up here along this road. I believe it is 84 lots on this side and 60 on this side. They believe they have financing for this side, but the bank has said they are not going to finance both phases. It is not so bad that they will not finance both. The problem is that they do not want this land with it. This land is a different story. They will not finance that. So what we propose and we went to the Planning Board for is a subdivision where this line for Phase I will go right up through to the edge of, what would normally be called the right of way. Then we have this left for a little turn around, so if you are plowing snow you can go right the other way. Then it jumps to this building. This parcel is 7 ½ acres and this is 13. Back to here that line is running right up through the north edge of the property and then coming back and right here, just jutting back around to this building right here. I think the frontage that is required. Originally this started as a subdivision here, it was called, I think, South Park. There was going to be a

The regular meeting of the Zoning Board of Appeals for the Town of Moreau, in Saratoga County, and the State of New York was held at the Moreau Town Office Building, 61 Hudson Street, South Glens Falls, NY 12803 on March 23, 2011 at 7:00 p.m.

town road that came in then looped around and then it came back out and there was several lots that were there and then part of it was one big left over lot. When we did our previous project everything was combined together so now everything is just one lot again. What happened is that lot ended up with the road frontage that it has and it doesn't meet the frontage requirements. It is the UR zone so it is multifamily residential. By putting this road in through there, it is a private road, we gained frontage for these apartments. It could never be anything else. It couldn't be single family homes because we wouldn't have road frontage. It would stay one parcel. So what we are asking is that you vary the frontage down to zero so that there is no frontage there. We did think that as do we want that to be zero, splitting it, leaving just a couple of feet, something like that. It wasn't suitable for the lender. They do not want part of the road to be owned by someone else. What we did do, though, is we have a cross easement that runs up the length of this road. What it is; it's an access easement. It is something like you might see in a shopping center. Everybody needs access to the road so they have cross easement and everyone shares maintenance. That would be the same thing. It would be a cross easement across this road. Later on when they come to develop this parcel they will have access to this road. One of the things we have seen in some of the other projects we've done is that, people asks what if someone else purchases this parcel? Right now what will happen is, if this was to be approved and this project moved forward and gets approval at the Planning Board, then Hal would remain the owner of this parcel at this point and someone else would own this parcel. It may not be one owner of the whole thing all the time. But it might be. It could be. The person buying this has first refusal on this. What is hoped is that this was built and they would sell up and the same guys would come in and do this. The deals in place and we could move forward. This covers all I wanted to go over with you. Are there any questions? Can I help you out with anything?

Kevin Elms: I think that my, how to phrase this question, basically the only thing this parcel could ever be used for, is if we were to grant this somehow it would have to be stipulated in my eyes is that the only way this parcel could ever be utilized is how it is depicted in this drawing and it was a part of this. Because there is no frontage on the town road with this piece of property I would certainly never been inclined to grant this unless somehow there was a restriction that the only way it could be used is if this other phase was built just the way it is there.

Garry Robinson: I hate to hear the word exact. If someone said, like I want to put a road here and loop it a little differently. I agree that there would be one lot left. All it could only be is a one family home, if ever was.

Kevin Elms: Well. As long as it met what the Planning Board agrees to. But we wouldn't ever want it to be that.

F. Joseph Patricke: We also don't issue building permits for houses that don't front on town roads. That's our town policy. Garry, I was just answering him. I don't know if you heard me. Our town policy is that we do not issue permits for homes that don't front on town road. That is well established.

Kevin Elms: Yes. That is what I am saying. This is a big concern that I have here. We would never want to change that because our town wrote that into our code for a reason. If you read on the basis of what we could give a variance for I don't think that falls into that category.

Martin Auffredou: Truly. They need some relief here. They need 100% relief. It would seem to me that they are asking you for a huge favor here, I am not saying you cannot move forward and take care of this. What they are saying is that, due to whatever circumstances, financial or finance from the bank, or whatever they cannot do the whole thing, they have someone willing to come in and do half or more than half and it seems very reasonable to me for this Zoning Board to say if you are going to allow this that it is conditioned on the balance of that second lot, which is not going to have any frontage on the town road, to be developed for a multiple family apartment use, not necessarily as it appears in ink on that map, but....

Kevin Elms: Right. The wording that I used is that it had to be exactly like isn't what I meant; the bottom line is that it has to be for that use.

Martin Auffredou: I guess what I am saying is they are basically asking you for permission to draw a line on a map to create two lots. What I am hearing is that you are saying if you do that, the only reason why you would do that is because,

The regular meeting of the Zoning Board of Appeals for the Town of Moreau, in Saratoga County, and the State of New York was held at the Moreau Town Office Building, 61 Hudson Street, South Glens Falls, NY 12803 on March 23, 2011 at 7:00 p.m.

you are not authorizing them here to change the use of that property on both lots. They may come back and say that want to juxtapose the location of this or we want to put a driveway there or a road here or storage shed there, they can do that and go before the Planning Board down the road. But it seems to me is that they are asking here tonight is nothing more than to draw a line on a map to create two lots where there is one lot. The second lot would have no frontage. What you are saying is that if you are inclined to do that then you better make sure that the second lot that has no frontage is used as it is approved as it is intended to be used.

Kevin Elms: Absolutely.

John England: What is disturbing to me is that they have already said tonight that there is a potential that lot #2 could be sold off.

Martin Auffredou: I do not know if there is anything you can do here to restrict that obviously, but what you can do, what is being suggested here is that if it is going to be sold to another party?

John England: The second party has to build just as exactly as in Lot #1.

Kevin Elms: Exactly. That is the only way I would even consider this.

Martin Auffredou: They don't have to build anything. If they are going to build something then it would have to be apartment.

Kevin Elms: That is the only way I would consider this. If we were able to put that stipulation in.

Martin Auffredou: It doesn't seem to me that it is unreasonable for you to request that given the substantial variance that is being requested, which is 100%.

Mr. Kevin Elms: We have never done that. In my time on the board

Martin Auffredou: I think there are all kinds of things here, I know there is a concern about precedence. I think there are all kinds of things you can come up with to say that this really isn't a precedence. I don't know how this necessarily repeats itself other than for apartment complex.

Mr. Kevin Elms: Other than this exact same circumstance. A precedence would only be set if we have this circumstance with this type of development come before us in the future that would the precedence that we had set. We wouldn't be setting a precedence that we would subdivide a lot that had no frontage and say that you could use it.

Martin Auffredou: Right. That you are going to give me a 100% variance for my residential lot that doesn't have any frontage.

Kevin Elms: And I think we want to be very cognizant of that because that is very important to us. Very aware of that. Because that is very important to us. We would really be changing the intent of the code for the town and that is not our job and that is not something within our ability to do. So I think that what anybody else think about it.

John England: It is a 100% relief. That was my main concern.

Kevin Elms: I am going to read this.

Martin Auffredou: What is that?

Kevin Elms: It is about what area variances are.

Martin Auffredou: Before you do you might want to ask if anyone from the public that has any comments or concerns:

The regular meeting of the Zoning Board of Appeals for the Town of Moreau, in Saratoga County, and the State of New York was held at the Moreau Town Office Building, 61 Hudson Street, South Glens Falls, NY 12803 on March 23, 2011 at 7:00 p.m.

Kevin Elms: I am sorry. We do have people here from the public. Could you please state your name?

Richard Hughes: I live at 98 Harrison Ave. Town of Moreau. Garry I couldn't see because of where you were standing. Where is Sisson road on that? Where does that access road from the development come back on Sisson Road?

Kevin Elms: You mean you want to know where the access road comes off of Sisson Road.

Richard Hughes: Yes.

Kevin Elms: I am looking at the map here and it shows, what we have got, Kennedy on one side of it.

Garry Robinson: It is hard to see. It is wooded.

F. Joseph Patricke: Do you know where Bob Baker's garage is and then his mother's house and then there is one house the lot right there is right where the entrance is. Between two houses that Joey Marotti built there.

Richard Hughes: Yes. Now I know where you mean. What half are you going to develop first?

Garry Robinson: To the South. Towards Bob Baker's pool place.

F. Joseph Patricke: Actually, it is his mother's place. His pool place is on the other side. I just wanted to clarify which side of the street it is on.

Kevin Elms: Is there any other questions from the community?

Jeff Knox: I am the broker involved with Mr. Leonelli. I am also a developer. On the back section. In the event that the project is approved is there a possibility that they could be condominiums versus apartments. Essentially we would have the same traffic flow. But we would have ownership entity instead of an apartment.

Kevin Elms: I don't know. That is almost more of a planning board.

Martin Auffredou: There are no zoning issues with that, is there?

Kevin Elms: I think it would be because they were owners.

Martin Auffredou: It would be different because they were owners, but it would be?

Kevin Elms: But can you do that? Have multiple owners on a private road now? I thought we stopped that.

Jeff Knox: It can be done. I don't know if you can do it in Moreau.

Martin Auffredou: Well you can have condominiums in a UR zone.

Kevin Elms: In the zone. It is the private road thing that I think would be the issue.

F. Joseph Patricke: I speak for Martin here, but my opinion would be if they changed that, then I think zoning would permit it the Planning Board would make the Homeowners Association be responsible for that.

Jeff Knox: Usually condominiums have a Homeowners Assoc. and all the roads are normally private and maintained by the Homeowners Assoc.

The regular meeting of the Zoning Board of Appeals for the Town of Moreau, in Saratoga County, and the State of New York was held at the Moreau Town Office Building, 61 Hudson Street, South Glens Falls, NY 12803 on March 23, 2011 at 7:00 p.m.

Martin Auffredou: I guess I would look at it this way, I don't think there would be anything to prevent them from the South lot to be developed first. Let's say they developed them as apartments and came back to Joe and said they would like to convert these into a condominium complex. Which has happened. I don't know that you would really notice that intensity of a difference in terms of traffic, etc. I think you might have individual owners of the units and they would have individual ownership in common property as well. Overall, there is going to be an overall entity that would be responsible for the overall property. So I guess I wouldn't say to this gentleman absolutely guarantee that there is not going to be a problem. It seems to me that is a little different then asking for single family residential homes at that location. But I don't think that this board is in a position to give an advisory opinion on that this evening.

Jeff Knox: If I may, if you restrict it to multifamily apartments that kind of hand cuffs it to apartments but if you approve it for a multifamily then you are brushing with a broader stroke in the event we do have a condominium buyer. Most towns prefer condominiums over apartments. We don't have anyone looking but that is a possibility.

Kevin Elms: I am just wondering what you mean by multifamilies?

Martin Auffredou: To me condominiums are allowed use by zone.

Kevin Elms: I just think we need to be careful how we word it. Speaking for myself, my intent would be that I don't want them to end up with a parcel of land without road frontage that was used for any other purpose then what we are talking here. This is a very tough one. We are looking at 100%.

Martin Auffredou: It would seem to me, that maybe the way to do it is this, again, they are asking for an enormous favor from you this evening. The ZBA could retain jurisdiction and you could say it is your intent to allow multifamily residences as it is approved at that location. Should they desire to do something different, such as a condominium, they would have to come back and get your approval to do that. You are not precluding it. They would just have to come back and say this is what we want to do now and why. Again, it is like anything else you would have discretionary review and a discretionary decision to make. You could approve or you could deny it. It is like anything else your decision would have to have a rational basis.

Kevin Elms: Right.

John England: The benefit that is sought by the applicant is it feasible?

Kevin Elms: You want to ask.

John England: Is there another way feasible? Just have a certain number of buildings?

Garry Robinson: It wouldn't be financially feasible with only having 80 buildings on 21 acres. This is less than the density that is allowed there right now.

F. Joseph Patricke: Let me point out one thing. With Phase I; they have to put in a pump station, water lines and storm water for the entire acreage. I mean I cannot imagine anybody would ever reduce the density. It is either going to be

apartments, and I've never heard anything about condominiums, it's going to be multifamily because they are not going to put that kind of money into Phase I and walk away from it and try to sell single family homes on Phase II.

Hal Leonelli: I would never do that because of financial reasons.

F. Joseph Patricke: The pump station has to go into service 144 units from day one. The storm water has to service 144. The road isn't all 144 I understand that. If they don't build the rest so what. I think that is an important part to consider. The upfront money is all in Phase I.

The regular meeting of the Zoning Board of Appeals for the Town of Moreau, in Saratoga County, and the State of New York was held at the Moreau Town Office Building, 61 Hudson Street, South Glens Falls, NY 12803 on March 23, 2011 at 7:00 p.m.

Kevin Elms: Right. The infrastructure for the whole project is going to be in Phase I. Other than the roadways that would be for that Phase II and the water lines for that.

Garry Robinson: We have to size the basin; we have to size the water and sewer lines for the whole project.

F. Joseph Patricke: Now that they have a boulevard entrance in here that was always one of our concerns with on means of access they have designed to put in the boulevard, so that thought pattern has disappeared because they have two access points. Our emergency personnel were concerned that would now be two access points. I know that is a Planning Board concern, but I thought you should know about that too.

Richard Kubis: Can we back up a step? I am trying to understand something. If they developed this part and after it was developed they wanted to change that to condominiums would they have to go to ZBA to do that?

Martin Auffredou: I don't think so. They have to go to the Planning Board.

F. Joseph Patricke: What you said, I think, is that they can put a condition on it that if they wanted to change it from apartments they would have to come back here.

Kevin Elms: That was for Phase II.

Martin Auffredou: That was Phase II. You can do that for Phase I as well. You can impose any conditions that you felt was reasonable to a variance approval. I am hearing you are more concerned about Phase II. Not so much about Phase I. The applicants here tonight they are going to develop apartments on Phase I.

Hal Leonelli: We don't really need that for Phase I. What I mean is that to preclude that we cannot change; we would have to come back to the Planning Board if we wanted to change it to condominiums. If we were going to change it then we would have to come back. That is fine.

Garry Robinson: The development itself will not change. That is what was approved. The 144 units the clubhouse etc. That is there anyways. If this person goes away it would still be developed for 144. It is not like it would be a big change.

F. Joseph Patricke: I think it worked out better than what was previously approved.

Richard Kubis: No. In itself it is my concern that we be accommodating to the landowner.

John England: I don't want to set a precedence here.

Richard Kubis: No offense, but a good lawyer can do a lot with a little.

Martin Auffredou: This seems to me to be a good example. If you are concerned about a precedence? Why are you concerned about a precedence? What is substantial and what is not substantial? Only to the extent that this situation can repeat itself. It is not like a residential subdivision. This is not a pool, a patio or a deck. That is what you are faced with 50%, 60% or 70%. It seems to me that this thought process does not apply here. The applicant is asking for permission to put a line on a property to create two lots, one lot will have frontage and one lot will not have any frontage. The lot without frontage will have cross easement will have the right to use that drive for access ingress and egress. It seems to me that the precedence value here is only to the extent that can that situation repeat itself, and I suppose it can for an apartment complex, for a multifamily situation and that is how I see the precedent here. I have to be honest with you I am not all that concerned with precedent setting value here with this particular issue. I think it can be easily argued away and easily distinguished. If a guy comes in next month and says he needs 100% variance for his pool and you just granted Mr. Lianelli a 100% for his road frontage.

John England: The circumstances are not the same.

The regular meeting of the Zoning Board of Appeals for the Town of Moreau, in Saratoga County, and the State of New York was held at the Moreau Town Office Building, 61 Hudson Street, South Glens Falls, NY 12803 on March 23, 2011 at 7:00 p.m.

Kevin Elms: So it is not setting a precedence, I don't feel.

Martin Auffredou: It is, but only to this.

John England: I feel more comfortable now that you put it in the record.

Kevin Elms: To be fair to the applicant here because we only have three of us here tonight. I don't usually do it this way, but I want to get a feel for how you guys are feeling. I want to give him the option to hold this over because we are missing two members. It has to be unanimous and I don't usually do it this way, however, it has to be all three of us agree or he wouldn't get this variance. I guess I am looking for a little leeway because I want to give him the option to hold this over so he gets a full board. If you can give me a feeling what direction you are going to vote.

John England: I think it is his option first. If he wants to chance a decision.

F. Joseph Patricke: Except if you were favorable there would be no sense to do that.

Kevin Elms: That is fine; I just want to be fair to him because there are only three of us here tonight.

Richard Kubis: Obviously, I am not the lawyer here, I am a little nervous about the precedence. My inclination is to support the man who owns the property and to give him the options to make the most of that.

Kevin Elms: I am feeling comfortable that we can go ahead with that.

Martin Auffredou: Mr. Chairman procedurally, at some point you need to close the public hearing and do your SEQR review. The applicant has filled part one of a short EAF, which is all that is necessary. This is not a Type II action. This is an unlisted action. Joe points out that this is an area variance, but it is not a commercial property it is a residential property. But SEQR says that it is SEQR exempt in residential when you are talking one, two or three family residences not multi-families not apartments. SEQR is very clear about that. Mr. Robinson, as sharp as he is, filled out an EAF and submitted it so that you can do your SEQR review. At some point in time before you make a final decision you will have to go through your part II short EAF and answer those seven or eight questions.

Kevin Elms: If nobody else has any questions from the public then I make a motion to close the Public Hearing. Richard Kubis seconds.

Roll call vote resulted as follows:

Kevin Elms	Yes
John England	Yes
Richard Kubis	Yes
Tracy Bovair	Absent
James Hooper	Absent
Gerhard Endal, Chairman	Absent

Martin Auffredou: Do you want me to read them?

Kevin Elms: I would appreciate that. Do we have to do a roll call for the closing of the Public Hearing?

Martin Auffredou: That is up to you. You want to proceed to SEQR at this point. The action under SEQR is the area variance. No road frontage for the creation of a lot. What you are going to hear me do gentleman is on recommendation of council the answer is yes the answer is no. The answers to questions 1-7 are NO. On the results of the questions I

The regular meeting of the Zoning Board of Appeals for the Town of Moreau, in Saratoga County, and the State of New York was held at the Moreau Town Office Building, 61 Hudson Street, South Glens Falls, NY 12803 on March 23, 2011 at 7:00 p.m.  
would recommend that the board entertain a motion for a negative declaration under SEQR which will require a roll call vote.

Richard Kubis: I make a motion for negative declaration.

Kevin Elms: I second that motion for a negative declaration.

Kevin Elms	Yes
John England	Yes
Richard Kubis	Yes
Tracy Bovair	Absent
James Hooper	Absent
Gerhard Endal, Chairman	Absent

Martin Auffredou: You have completed SEQR. Now you can proceed, however you feel appropriate under the variance standards.

Kevin Elms: I guess the wording of it is what is going to be crucial to me.

Martin Auffredou: You should go through the motions and the balancing act. Depending upon what you want to do Joe & I will help you with any conditions.

Kevin Elms: Reads over the criteria for granting an area variance and found as follows:

1. There would be no adverse effect on the character of the neighborhood.
2. There are no other feasible means of achieving the desired benefit
3. The variance is substantial at 100%.
4. The Board's consideration for granting this substantial variance is that Lot II will be developed as an apartment complex as approved. Should it not be they have to come back here for further review, be it condominiums or any other allowable use.

Martin Auffredou: I would go one step further. I would like to see this indelibly stamped on the subdivision map and the terms of the deed. I think that is the best place to put it because this is a site plan. This has to go before the Planning Board. Ultimately the Planning Board has to make this decision for a subdivision. In order to make this stick it needs to

be when you create that second lot record it in the Saratoga County Clerk's office that that condition is in the deed as well so that all future owners of that property, whoever they may be, this has been approved as an apartment complex and there was a 100% variance given for this lot with no road frontage by the ZBA on March 23<sup>rd</sup>, 2011. Being concerned about a precedent. This condition goes onto the approved subdivision map, assuming the Planning Board approves it, #1 Council of the ZBA gets final review of what it says #2 Council of the ZBA gets final review of the deed before it is recorded. #3 Council of ZBA gets to look at the cross easement language. #4 Council of ZBA gets to look at the subdivision map to make sure the language is on there as well.

John England: I make a motion to accept the wording of Martin Auffredou's conditions.

Kevin Elms: Can we make a motion to do that.

Martin Auffredou: You can do that, but I bet you lunch Garry Robinson will have something to say about that.

Garry Robinson: The only thing I don't like is the going to condo's I don't see where the difference is or if it should make any difference to you.

Martin Auffredou: It is one of those things. It is easy for us to say I don't see where this should bother you, but it still remains that this was approved for apartments not condominiums. This was approved for apartments; this was not

The regular meeting of the Zoning Board of Appeals for the Town of Moreau, in Saratoga County, and the State of New York was held at the Moreau Town Office Building, 61 Hudson Street, South Glens Falls, NY 12803 on March 23, 2011 at 7:00 p.m.

approved for condos. It may be that whoever wants to develop it for condos might want to do something different in mind than what is approved here tonight. All I am saying is that you are getting a huge variance tonight and if you are going to do something different on Lot 2, even if it is an allowed use, then you are going to have to come before the Planning Board.

Garry Robinson: We have to trust the Planning Board with that.

Martin Auffredou: It could be as well.

Kevin Elms: I think what I am saying is that we are doing something that we don't usually do, that we are not comfortable doing. In recognition of that I don't think it is not unreasonable of us to put the stipulation that if it changes to condominiums then it would have to come before us.

F. Joseph Patricke: If you want to give us time to think about it then we could do that.

Kevin Elms: The only way I am going to feel comfortable granting this then I need to stipulate the conditions listed above by Martin Auffredou.

Martin Auffredou: We will make sure the Planning Board knows what your conditions and findings were tonight.

Kevin Elms: We make a motion to approve with the conditions as worded above.

F. Joseph Patricke: I just want to point out to the public that the subdivision is still open before the Planning Board.

Roll call vote resulted as follows:

Kevin Elms	Yes
John England	Yes
Richard Kubis	Yes
Tracy Bovair	Absent
James Hooper	Absent

Gerhard Endal, Chairman      Absent

A Motion was made to adjourn the meeting on March 23, 2011 at 8:23 p.m. by Kevin Elms and seconded by John England.

Roll call vote resulted as follows:

Kevin Elms	Yes
John England	Yes
Richard Kubis	Yes
Tracy Bovair	Absent
James Hooper	Absent
Gerhard Endal, Chairman	Absent

Respectfully submitted,

Dellinda Perry