

The regular meeting of the Zoning Board of Appeals for the town of Moreau, Saratoga County, and State of New York was held at the Moreau Town Hall, 61 Hudson Street, South Glens Falls, NY 12803 on May 26th, 2010 at 7:00 p.m. with the following members present.

PRESENT:

Gerhard Endal, Chair
Kevin Elms
Richard Kubis
Tracy Bovair
John England
F. Joseph Patricke, Building Inspector

Others Present:

Martin D. Auffredou, Attorney for the Town

The meeting was called to order by Chairman Gerhard Endal at 7:05 p.m.

A motion was made to change the minutes from 4/28/10 to reflect deferred in place of referred and to update the Voting to include Kevin Elms and updated Richard Kubis from John Kubis. Seconded by Gerhard Endal.

APPEAL NO. 702

A request of The Heartland Community Church, P.O. Box 1039, South Glens Falls, New York 12803 for a Special Permit pursuant to Chapter 149, Article IV, Section 149-15 and 16. Applicant is proposing to utilize an existing building located at 195 Fort Edward Road for a place of worship and administrative offices. This property is in an R-2, One and Two Family Residential District and is designated as 50-2-68 on the Town Assessment Map.

Chairman Gerhard Endal: We in the past have not approved Special Permits without having a site plan first. We have done that, I know.

Martin Auffredou: I don't have a specific recollection of that, but that's okay. How do you get a site plan approval without having a right to use the property for the use? That is where I was coming from. It would seem to me that before you have the right to go to site planning you first have to have the right to use the property for the specified use. When I spoke to Joe about this about a week or two ago that is where I was coming from.

Chairman Gerhard Endal: The criteria for us for a Special Permit is essentially, that it is not even so much that, it is that it isn't going to disrupt the neighborhood, traffic pattern and there is going to be adequate off street parking. I am just saying that how do we know that without seeing the site plan?

Martin Auffredou: I don't think you can. In order to gauge those same things for a Special Use Permit. Because remember this is a use, special use not essentially as a right, but a special use. The town board when they adopted the legislation said that this is a use that is essentially in harmony with the neighborhood, but it can present certain impacts and we want the Zoning board to make sure that those impacts to traffic, ingress, egress, parking, essentially the Public Health Safety Welfare analysis is looked at.

F. Joseph Patricke: And they did receive the map. The only thing that changed from the one you have is the parking. They put the proper parking on for the number of people they expect to attend.

Chairman Gerhard Endal: I am satisfied with that. I think that the drawing does show that there is adequate parking and room for the expansion. I am satisfied to do it that way.

F. Joseph Patricke: Everyone did get a site plan, right?

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Kevin Elms: Yes. We did have that at the last meeting.

Attorney Martin Auffredou: Let me ask you this? When you say it is a site plan, if this were just the planning board and the zoning board wasn't involved, would you be satisfied that is sufficient to go to the planning board for site plan review.

F. Joseph Patricke: Yes. For two reasons. One: We did it a year and four months ago, or sometime like that, to approve it as V&H Construction Company's office and then for the professional office beside it and the only difference between that one and the one that I am holding and this one is that after we met here we went over the parking requirements and we said that you need to put all the parking on there. That is the only change they made is to increase it for the attendance number of people who would hopefully be coming.

Mr. Elms: And they had to show those spaces. They weren't shown on that.

F. Joseph Patricke: That is the only change that was made on this one and that one, and on the original one from 14 months ago was the sign.

Brad Jones: The sign will be in the exact same place where they show it on the drawing.

Chairman Gerhard Endal: I have no problem approving this. It is a matter of formality. Okay. Are there any discussions? Is this still the public hearing?

Kevin Elms: Yes. We held over the public hearing.

Attorney Martin Auffredou: This is an existing construction. There is no new construction planned. It is just a new use in a building that has been there awhile and it has been through previous review processes. It is in the report.

F. Joseph Patricke: Our response from the county was no significant county wide or intercommunity impact.

Chairman Gerhard Endal: We don't need to do a SEQR?

Kevin Elms: We did that at the last meeting. We did a short one.

Attorney Martin Auffredou: You did your SEQR? Did you do a negative declaration?

Kevin Elms: Yes. It is all set for that.

Chairman Gerhard Endal: So absent any objections I am going to close the public hearing and entertain a motion.

Kevin Elms: You entertain a motion? I make a motion that we approve.

Attorney Martin Auffredou: Remember we have done special use permits before on many occasions and we really need to make some findings for the record. If you want me to write a decision, I can always write a decision, I don't mind, I love to write, however, it what I do, that's fine. Even if you are going to ask me to write a decision you want to, for the record in the minutes with the motion just go through the review standards and that is in 149-32 of your codes. A: Mr Chairman in reviewing a special permit the Zoning Board shall find that the following conditions are met before issuing a special permit. I just suggest you go through those and deliberate amongst yourselves as to whether you made those findings, make those findings in the minutes and then go ahead with the motion.

Kevin Elms: Reads 1-12 of the standards for a Special Use Permit.

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Attorney Martin Auffredou: I am fine. I don't think you have identified any conditions based upon my conversation with Joe. No attorney can ask for more than that.

Kevin Elms: As long as we have it covered.

Chairman Gerhard Endal: Can we make a motion?

Kevin Elms: I will make a motion that we approve a Special Use Permit #702 based upon those findings.

Chairman Gerhard Endal: Let's just review. We have a motion. Is anyone interested in a time limit? I want to make sure we cover everything. Now you may poll the board.

WHEREAS, a public hearing was duly held on May 26, 2010 for the purpose of hearing all interested persons for or against this appeal, and

WHEREAS, there was no opposition present for this appeal, and

NOW, THEREFORE BE IT RESOLVED that Appeal #702 is granted:

Roll call vote resulted as follows:

Mr. John England:	Yes
Tracy Bovair:	Yes
Richard Kubis:	Yes
Mr. Kevin Elms:	Yes
Chairman Gerhard Endal:	Yes

APPEAL NO. 703

A request of The Saint Andrews Lutheran Church, 600 Gansevoort Road, South Glens Falls, New York 12803 for a modification of a Special Permit pursuant to Chapter 149, Article V, Section 149-29. Applicant is requesting to operate a NYS licensed daycare facility. This property is located in an R-1, One Family Residential District and is designated as 50-1-9 on the Town Assessment Map.

Chairman Gerhard Endal: Who is representing the church?

Hi I am Andrea.

Chairman Gerhard Endal: Can we get your last name?

Andrea Prouty. We have had a program at St. Andrews for over the past ten years as religious education for school aged children. The state has since changed their daycare regulations so now our program falls under the NYS childcare regulations. We need to make the adjustments to our programming to meet the state standards to operate such as number of bathrooms to meet the state standards. They are working with us to go through this process in filing the appropriate paperwork. There will not only some changes to the interior. We have to put in a fire alarm system and that kind of stuff. There will be no changes to our program or number. They have play time and homework time.

Chairman Gerhard Endal: Are you going to have after school?

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Andrea Prouty: Just for afternoon and summers and when the kids have half days and that kind of stuff. There won't be any expansions and different classes and groups, that kind of stuff. Because of those multiple purpose programs NYS has changed the regulations.

Chairman Gerhard Endal: This is permitted by NYS I take it?

Andrea Prouty: We are working on it.

F. Joseph Patricke: It will be. This is part of what they have to have to be able to do their childcare programs.

Andrea Prouty: We are working with a licensing agent from NYS we have also had a fire and safety inspection through the office of Children and Family Services. We are working with their inspectors.

Chairman Gerhard Endal: So essentially what you are looking for is that you have an existing program but now you need to meet state standards. We have approved a Special Use Permit for this church. This program has been a part of the church program. Now we need to prove a Special Permit for a childcare.

F. Joseph Patricke: I believe that previously under the church's special use permit this is a change in use from a church function to a commercial function and because of that modification a Special Use Permit. Nothing else will change. I think it is just the administrative portion that needs to comply with NYS law.

Chairman Gerhard Endal: You are not expanding in any way. You are not taking different types of children.

Kevin Elms: This space is where you are providing the services now.

Richard Kubis: Your existing services have effectively been reclassified by the state.

John England: Do you now or are you planning in the future at any time plan to offer any transportation?

Andrea Prouty: No. The South Glens Falls school district drops them off in the afternoon.

Chairman Gerhard Endal: You are in the church basement? That's good.

Kevin Elms: Right. That has a walk out. It is ground level because of the way the terrain is.

Gary Hartman: I am President of the church consulate at Saint Andrew. We have a walk out in the basement as well as upstairs. We will make one additional egress, similar to the one that goes out the side door. It's going to have two entrances. One is currently blocked off.

Chairman Gerhard Endal: Do you know approximately how many children will be attending?

Andrea Prouty: Twenty.

Kevin Elms: That is what you applied for is a permit to do twenty, license I should say.

Andrea Prouty: Yes.

Chairman Gerhard Endal: Your capacity is currently twenty?

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Andrea Prouty: Yes.

Chairman Gerhard Endal: Okay. Are there any comments or questions from the county or the community?

F. Joseph Patricke: We have a comment from the county stating that there is no impact, no countywide impact or community impact.

Chairman Gerhard Endal: Is this one that you have to do SEQR on all the time? Or is it because it is on a country road.

Attorney Martin Auffredou: I think this is unlisted action under SEQR. I think the applicant has provided a short assessment form. The short answer is that I think you do have to go through SEQR.

Chairman Gerhard Endal: Any other questions from the board or comments from the public. I am going to go through the SEQR questions. I am going to answer them and if anybody on the board has any problem with my answers please speak up. SEQR questions were read and reviewed and all answers were NO. The only question I have is coordinator review; no one else is reviewing this other than NYS for permitting, that's not the same is it?

Attorney Martin Auffredou: It's not the same. It is probably not even a SEQR action. It is probably on their short form type II exempt list. What they need to get from N.Y. State. You are the sole agency involved in doing any SEQR review as far as we can tell.

Chairman Gerhard Endal: Continues to read the SEQR review questions. I entertain a motion to approve a Negative Declaration.

Kevin Elms: I'll make a motion.

Richard Kubis: I'll second that motion.

Chairman Gerhard Endal: So we made a negative declaration. Is there any further discussion or questions? Can we entertain a motion? The Public Hearing is now closed and entertains a motion.

Kevin Elms: On Appeal #703 I make a motion.

Chairman Gerhard Endal: I will go over Special Permit Use Findings 1 & 2. As the answers to questions 1 & 2 are NO.

Attorney Martin Auffredou: That is exactly what you needed to do so if someone wants to entertain a motion. If there are any conditions you want to discuss or apply. Now is the time to do it. I don't know whether it does or it doesn't.

Chairman Gerhard Endal: They are requesting a Special Permit to run a childcare. Is there a limit on your capacity?

Andrea Prouty: It could be more because of the size. They will set a limit. It is based on staff ratio in regards to number of children.

Chairman Gerhard Endal: My question is if it expands will they have to come back for an additional Special Permit.

Attorney Martin Auffredou: Only if you are approving a Special Permit for a set number of students, otherwise the answer is no.

John England: What is the licensing from the state require you to have? Are there a number of students?

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Andrea Prouty: We have only based it on twenty students. They base it on the square foot.

John England: Should we make a provision as long as it is maintained within the states requirements.

Attorney Martin Auffredou: You absolutely can make that as a condition that as long as it is made and maintained within the states capacity for the number of students in accordance of the state requirements, whatever the state may oppose. Otherwise if they were going to expand beyond the States required capacity initially it would have to come back to you.

John England: That gives us a way back in.

Chairman Gerhard Endal: I don't have a problem with that.

Andrea Prouty: Twenty has been our magic number in accordance with the number of bathrooms and the number of aides it all falls within the states requirements for twenty students.

Kevin Elms: I guess we should word it is that the limit is what the State requirements are for that facility.

Attorney Martin Auffredou: Lets assume the state requirements are modified and they can have additional, per the states, does that mean it is coming back to you?

Chairman Gerhard Endal: That is my concern. The state requires a certain number of square footage and staff per student. That is open ended.

Kevin Elms: They could keep building. They would have to come back for a building permit.

Chairman Gerhard Endal: Why not? They already have a special permit. If we approve with no special conditions.

F. Joseph Patricke: They would then need a building permit and that is where I would come in. I would review your Special Use Permit and my successor would do the same. If it were out of line with what you had then I would send them back to the Zoning Board before I would give them a building permit. When they operated the church it was for specific activities. I looked at it and sent it back here for your review, as part of the review requirements. There are many things that show up in front of the Planning Board as well as the Zoning Board because it needs to be reviewed.

Gary Hartman: At any time there are rarely twenty students at one time. They are constantly coming and going.

Kevin Elms: I think we would be pretty safe with whatever the state requires. As Joe said if they wanted to expand it, they would have to come back here. As part of their process they would have to come back here for any changes.

F. Joseph Patricke: They went to the state and the state sent them over here. It is part of their process. They have to have a letter from us saying it is okay to do this.

John England: That provision "Must comply with NYS regulations in regards to capacity". It was put there for a reason. It also puts a three-year time limit on it.

Attorney Martin Auffredou: I would caution you about that provision. I think that provision is in there. Joe and I have talk about this. There are some case laws out there that say Special Use Permits run with the land. I am hesitant to tell Zoning Boards these days to limit to apply their time limitations on these Special Use Permits unless they really think there is a valid reason to do so; and then I come back to if you think there is a valid reason to do so, that means that

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maybe this use isn't in harmony with the neighborhood so you shouldn't be granting this Special Use Permit to begin with. You are correct to point out what the code provides, but I don't like that provision.

John England: I am not advocating this. I am concerned that granting something that would be in excess of what the state allows.

Kevin Elms: We should put in there that it must be in compliance with the State Regulations in regards to capacity.

Chairman Gerhard Endal: Is there is any further discussion? It is my understanding that any increase in capacity is going to require coming back before the Zoning Board. I do not have a problem with expanding. I just think it is important that the board understand where we are coming from.

Kevin Elms: On Appeal #703 I make a motion

NOW, THEREFORE BE IT RESOLVED, that Appeal #703 is granted with the following provision:

1. Must be in compliance with the State Regulations in regards to capacity.

Board Members pole resulted as follows:

Mr. John England:	Yes
Tracy Bovair:	Yes
Richard Kubis:	Yes
Mr. Kevin Elms:	Yes
Chairman Gerhard Endal:	Yes

F. Joseph Patricke: I just want to go over a couple of things before we end. There are a couple of books to read that will help you on your functions, I will get them in the mail to you this week. I want to reiterate that you need to speak up and everybody when we ask who they are, so that we have a recording and a history. We are having a problem with past history when we didn't have recordings or minutes. This is proving to be a problem for us. I want to make sure we can hear everyone and get his or her complete names. It is becoming more and more critical.

Chairman Gerhard Endal: I tend to nitpick. People get pretty rowdy sometimes so we need to know who they are. I tend to let people talk and get things out. I want the board members to speak up too.

Kevin Elms: Most of the time it is pretty civil.

A Motion was made to adjourn the meeting at 8:30 p.m.

Respectfully submitted,

DelLinda Perry

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