

**Town of Chatham
Meeting Minutes December 1, 2015**

**Zoning Board of Appeals
Draft Copy**

ZBA Members Present:

David Everett, Chairman
Mitchell Khosrova, Deputy Chairman
Robert Leary
Adrian Ooms
Jeffrey Lick
JP Henkel
Kary Jablonka

Public Present: Terry Moag, Cris Schrader of Seed Engineering

The meeting was called to order at 7 PM and the Pledge of Allegiance was recited. Mr. Khosrova made a motion to accept the meeting minutes from the October 22 meeting. Mr. Leary seconded, all members were in favor and the motion was carried.

1.) Application for an Area Variance for Terrance Moag, 391 Riders Mills Rd, Chatham, NY 12037, to meet the setback requirement for the drain field of a septic system for a new house.

Deputy Chair Khosrova recused himself for the record from the application at this time.

Terry Moag, owner of the property, explained that he is building a house. He referred to the narrative he submitted with his application for the septic design and said it was designed according to the NYS Health Department code. He explained he walked the property with the health department and they deemed it could be built. With regard to the septic that would be installed, he went by the state code not realizing the Town of Chatham had a different code. The county approved of his plan and at this time Mr. Moag introduced Cris Shrader, the engineer who designed the septic. The leach field will need the variance. Mr. Moag indicated that one neighbor is supportive, but the other is not. The county engineer approved the design. He explained that the location he is requesting for the setback is his only option. He has a lot of money tied up in the project.

Chairman Everett asked if Mr. Moag started construction on the house. Mr. Moag replied that the building permit was issued so he was able to construct the driveway and the foundation is in. Mr. Moag was asked by the chairman if the County had any other requirements. Mr. Schrader, the engineer for the project said the County has signed off on it. They do comply with the requirement of ten feet from the property line and the setbacks as well as state requirements from water bodies. Mr. Schrader addressed a letter to Mr. Simonsmeier and it complies with the 50 ft. setback because it's an enclosed raised bed filter. Chairman Everett referred to a line on the map that said they looks like they would be beyond 100 foot from the stream and asked for clarification on the map of the stream location and where the setback is. Mr. Schrader explained there are two portions to the septic system design. First is the raised sand filter which is just beyond the fifty foot and is an enclosed line sand filter, it doesn't have to comply with the 100 ft., and it actually falls under the 50ft. setback. It is in compliance according to Mr. Schrader. He explained that it then goes to the pump tank and then pumped up to the mound system and that has to be 100 ft. setback, which is why it is pushed off to the northern part of the site. He indicated on the map where the actual part of the septic is that needs approval and that it is the part that contains the sand filter. It is encroaching within 50 feet of the setback of the property line. Chairman Everett asked how far it will be from the property line. Mr. Schrader replied that it is going to be ten to fifteen feet from the

property line. They can alter the way it is going to be set up as far as multiple laterals going in one direction. Mr. Schrader said they can make it one lateral to give more of a "buffer."

Chairman Everett asked if they would need to grade any trees or clear an area that would be closer to the property line and Mr. Schrader replied that there will be a little bit of grading and only one or two trees that may need to be cleared. Mr. Schrader then indicated where the grading would start on the map for the mound system.

Chairman Everett asked if there was a rail bed or utility right of way or both. Mr. Schrader said he believed it was a utility easement and a rail bed and it is generally clear. Chairman Everett asked if the neighbor has any views from his house of Mr. Moag's property. Mr. Schrader believes that it will be a negligible view of the mound system. Chairman Everett asked if there trees that will screen Moag's house from the view from his property. Mr. Moag explained where the house is, where the old rail bed is, and where the septic is. He said that the ground soil is mostly coal so much doesn't grow there. Mr. Lick asked where his house is located on the map and in the middle of the trees.

Mr. Lick wanted more information about the mound system. Mr. Schrader showed on the map that the larger box on the map is the mound system. He explained that due to wet soil conditions by bringing in sand for usable soil to treat the effluent and by that point because the matter is already going to be pretty clean because it will be going through the sand filter first. Mr. Schrader explained that the neighbor was concerned about the environmental impact to the stream but this system is much better than a traditional system, more expensive but works well for this use. He went to explain the other box adjacent to this one on the map is a 50% expansion area in case of expansion in the future required by DOH. Mr. Lick inquired about the elevation of the Moag property with respect to the neighbor's property. Mr. Schrader showed this on the map.

Mr. Leary said that he lives on the same road and has been there to view the property. He said there is a clear view from Moag's foundation to Gruen's. Mr. Moag stated that the one story house is 800 sq. feet with a detached garage. He explained that the house is very low level because of the way it slopes off. The house is built on piers and all the neighbor will only see is the back of the house. Mr. Moag said that he spent \$15K on an architect and believes the neighbor will not see the house once more trees are planted and grown. He explained he was trying to limit the amount of aesthetic impact to the site and that the neighbor won't be able to see much of it.

Mr. Leary asked why they had to put the septic in that location and not somewhere else on the property. Mr. Schrader explained that there was no feasible technology that would have been able to accommodate the system due to the shape of the property that meets both the 50 ft. and 100 ft. setbacks. Chairman Everett said his preference would be to see the location in a place where it doesn't violate the natural habitat (the stream) and that this proposed area is the only location it can go, this area is cleared and it is an appropriate place to do it. He stated that the septic complies with the state requirements and they have those requirements to ensure environmental safety and public safety. In the past the ZBA has approved these septic setbacks in these types of situations.

Chairman Everett stated his concerns that this house could spill over the setbacks at some point and that there should be a mechanism set up so that the setbacks are staked out before construction is started so that this doesn't happen. He asked Mr. Moag if his surveyor had marked the setbacks. The response was yes. Chairman Everett wants to be sure that the foundation actually meets the building setbacks and if it's over the setback, Mr. Moag will need to return to the ZBA. Mr. Moag inquired if it would need to be at the next meeting or would it take another meeting.

Chairman Everett replied they would discuss it at the next meeting. Mr. Moag wanted to know if someone had brought this issue to them and Chairman Everett stated at that point that the ZBA had received an email from Mr. Gruen. Copies were distributed to Mr. Moag at this time. Chairman Everett wants to be sure that the setbacks are being met and that it's set and approved so there are no further issues.

Mr. Leary wanted to know how the 50 ft. issue came up. Mr. Moag replied that it came from the Mr. Gruen, who brought it to his attention. Chairman Everett said that they would require the dimensions of what's proposed for construction placed on the survey and what the survey is from the septic dimensions to the property line so the ZBA knows what variance to give Mr. Moag. Mr. VanAlstyne, the surveyor, needs to take the plan, blow it up, get the detail on there, and add the dimensions and then it will be clear as to what is granted. The chairman asked Mr. Moag if he can have this ready by the next public hearing. Mr. Moag will have to provide written notice and bring all the return receipts from notification to the neighbors. The ZBA clerk will provide Mr. Moag with this information. Chairman Everett asked if there were other questions stating he wanted to review the neighbors email.

Chairman Everett addressed the email that was received from Mr. Gruen, the neighbor to the ZBA:

1.) *Coordination of variance application with review of plans for house and garage.* Mr. Gruen is incorrect when he says the house is 2500 sq. ft. Mr. Moag responded that he is not sure what Mr. Gruen is looking at as Mr. Gruen hasn't seen the plans for the house. The foundation is 800 ft. in the main living area. He said the building plans are on file with the building inspector. The chairman asked the board clerk to obtain a copy of the building plan application and permit from the building department that shows this is a one story house and the size that Mr. Moag states that it is. Mr. Gruen is concerned that the house will extend outside the buildable area.

2.) *Insufficiency of the variance application.* If the house is smaller than it would require a smaller septic that wouldn't require a variance. It is not possible as it is a relatively small house. Mr. Gruen is concerned of the impact of the stream. The chairman said it is important to comply with the state requirements and everyone was in agreement.

a. The application does not address the first factor of impact on the neighborhood and on neighboring property.

Chairman Everett noted that this doesn't have to comply with SEQRA because it is an area variance relating to a single family home which is a Type 2 action. Mr. Gruen's point is that it will have an adverse impact on the neighborhood, but the Chairman does not see that it will and asked the board what they thought. The building is within the setback requirements. Mr. Leary lives on the road as well but can't see it from the road.

b. The application also does not address the feasibility of any alternatives
Chairman Everett stated that they explored this already.

c. It does not acknowledge that the "variance is substantial," the third factor. Here, the property is only 1.9 acres and the applicant is requesting much to squeeze a relatively large house into a very small legally permissible area.

Chairman Everett believes it is substantial but that's not dispositive of the variance. He did think there are good reasons for it to be substantial.

d. The application does note, with respect to the fourth factor of effect on physical or environmental

conditions that the property contains archeological features (EAF item 12), but does not describe them.

The Chairman asked Mr. Moag is there any truth to this statement. Mr. Moag replied that he went to Hartgen Archeological Associates and DEC before he bought the property. DEC said there is no wetland and Hartgen said this is not a regulated archeological site. It is noted as potentially archeological but it is not regulated. Chairman Everett asked if Mr. Moag received a letter from them stating this information. Mr. Moag said he knows someone who works at Hartgen and thought he would have someone come in to look at the site for his own personal information and stated again that the property isn't an archeological sensitive site. Chairman Everett asked him to go on the SHPO website and download this map to show that it is not archeological sensitive so we can have this on record. Mr. Moag was asked if there any foundations on the site. Mr. VanAlstyne told Mr. Moag that there were but not near his house. Mr. Moag indicated on the map where the old Rider's Mill road was and where these foundations were. Mr. Moag said there was a big water tower there, not a depot. He went back as far as the early 1800's and asked Middlebury College, as they have the repository for the Rutland Railroad, for pictures and none could be found other than one of a shed and the water tower. Mr. Moag said there are some stone foundations. Chairman Everett asked if he knew why it was cleared where the septic is located. Mr. Moag replied that it is probably from poor soil conditions from the railroad. He stated that he grew up near a railroad and there was a lot of coal in the soil and grass didn't grow well.

Chairman Everett asked the board that if they start digging, what if they run into railroad artifacts? Mr. Moag replied that the state doesn't have anything on his property. Chairman Everett thought maybe it could be listed in the historic registry. Mr. Moag said there is nothing that precludes anyone from excavating on that site and his house doesn't interfere with anything in relation to the railroad. Mr. Moag said they dug and didn't find anything but dirt. Mr. Moag did test pits under the engineer's supervision with a pick axe. He did three test pits and was asked by the chairman to get a letter from the engineer stating that the test pits were done in the septic area and nothing was found. Chairman Everett wants to be sure there are no archeological issues they have to be concerned with. Mr. Moag will need to provide the archeological map. The board has received testimony that Mr. Moag didn't hit anything when he dug the foundation and there are three test pits with nothing found. Chairman Everett stated that if Mr. Moag can get the stone foundations put on the survey that prove they are far away from where the septic is, he then believes Mr. Gruen's issue is addressed. The board agrees that having this information is important.

Mr. Moag didn't agree with Mr. Gruen's statement that there was a pond on the property that had been filled in. Mr. Lick asked if there was a pond and Mr. Moag replied no, that it is a wet area. Mr. Moag said a local excavator did some tree clearing and when the trees were done that Mr. Gruen wrote a letter stating that they were impacting the stream. Mr. Moag stated that the area is wet in the spring and the stream runs seasonally depending on the weather. Chairman Everett asked the engineer if there is anything else to be concerned about as a wetland in the septic area and Mr. Schrader replied no.

Mr. Henkel asked how the stream is channeled with the driveway going over it. There are big rocks and an existing culvert there. It is not interfering with the septic. There are no federal wetlands on the site according to the state and federal maps. Chairman Everett stated that these issues have been addressed.

e. The applicant does state that there is no self-created hardship even though he bought the property undoubtedly aware of it being very much undersized, and began construction even though the planned sewage system quite obviously did not meet Town Law standards with respect to its location.

Chairman Everett said the hardship is created by the lot configuration more than anything else. Mr. Ooms stated that the lot size must have been approved by the town previously. Mr. Moag didn't seek to subdivide this. It is pre-existing. Chairman Everett stated that Mr. Gruen mentioned an existing well on the property but there isn't one on the survey. He referred to the one that is on Mr. Moag's plan which is proposed. Chairman Everett stated that the well driller will have to make sure the well complies with the setbacks for septic systems. Mr. Moag said Goold Drilling will be doing the work. Mr. Schrader indicated on the surveyor's map where the well will go and will comply.

Mr. Jablonka referred to the DOH requirements for the well setback requirement then isn't a concern as it meets the 50 setback

Chairman Everett asked if the applicant knew where Mr. Gruen's well is on his property. Mr. Schrader replied that it is greater than 100 ft. away. He believes it is on the other side of the house. Chairman Everett asked him to provide a letter stating this fact. Mr. Schrader will check with the code enforcement office to see if he has a record of it or to check with DOH. Mr. Henkel said that Mr. Gruen said in his letter that his well had been moved.

Mr. Henkel asked for clarification on the septic system. Mr. Schrader explained that it is a pressurized mound system. It's passing thru the enclosed sand filter and much cleaner than going into a leach field system. Chairman Everett asked for photos of where the septic and where the foundation is going.

Mr. Henkel asked if it was okay for the board to check out the site. Mr. Moag replied yes. Chairman Everett asked they are under any construction deadlines or time constraints. Mr. Moag explained that his mortgage company is an issue, he has a construction loan, and he told them that that he had to go to the Zoning Board.

The public hearing/meeting is tentatively scheduled for Tuesday, December 29th. The clerk will check to make sure the board room is free and let everyone know. The town attorney will have to prepare a resolution and the ZBA findings and determine whether or not there will be added fees (escrow) for the preparation of paperwork.

Chairman Everett asked if there were any other questions or comments. He asked that they have Peter VanAlstyne find out as soon as possible whether or not the foundation extends beyond the setback lines and if it does they will have to do an amended application for an area variance. This would need to be included in the public hearing notice.

A motion to adjourn the meeting was made by Mr. Lick and seconded by Chairman Everett. All members were in favor and the meeting adjourned at 7:58 PM.

David Everett, ZBA Chairman

Respectfully submitted by
Shari Franks, ZBA Clerk