

**VILLAGE OF MONROE  
ZONING BOARD OF APPEALS  
MEETING  
FEBRUARY 13, 2018  
MINUTES**

**PRESENT:** Chairman Baum, Member Margotta, Member Martuscelli, Member McCarthy and Member Zuckerman; Building Inspector Cocks; Kelly M. Naughton, Esq.

**ABSENT:** None

Chairman Baum called the meeting to order at 8:05pm with the Pledge of Allegiance to the flag.

**1. HRR Corp. – Interpretation and Use Variance – 206-5-4.12**

**Present: John C. Cappello, Esq., Attorney from Jacobowitz and Gubits, LLP, and Mr. Timothy Mitts, Principal of HRR Corp. and Ms. Pamela Lee, future operator of Rest Haven, Inc.**

- a. A review of an administrative determination of the Assistant Building Inspector (now Building Inspector) and an interpretation to permit the use of an “Assisted Living Facility/Adult Care Facility” in a SR-10 Zone as a pre-existing “Adult Home for the Mentally Disabled” or as a single-family dwelling; or in the alternative,
- b. A use variance from the requirements of Section 200 Schedule 1-B, Table of Use Requirements, in the SR-10 zoning district. The current use of the property is a single-family home. The proposed use is a home for senior citizens in need of assistance.

The property, which is the subject of said action by the Board, is located at 236 High Street in an SR-10 Zoning District and is identified as Section 206, Block 5, Lot 4.12 on the tax map of the Village of Monroe.

This is a continuation of the hearing on January 9, 2018. That meeting was adjourned because only four Board members were in attendance. Three “yes” votes are needed for the review of the requested interpretation to be granted. If all five members of the Board are present two can vote “no” and the interpretation would be granted. When only four members are present the interpretation will by law be denied if there are two “no” votes. Mr. Cappello was given the option to postpone the Board’s deliberation and vote to the next meeting when there might or might not be a full Board in attendance. Mr. Cappello chose to postpone.

In reviewing the administration determination of the Building Inspector the questions before this Board are as follows:

- (i) Whether the proposed use of the property as “Group Home for Adults Needing Some Level of Intermediate Care” is the same use as an “Adult Home for the Mentally Disabled”;
- (ii) If not, whether the change in use is of the same nature;
- (iii) If not, whether the change in use is of a more restricted nature than the prior nonconforming use.

If the Board determines that the answers to these three questions are ‘no’, then the Board must decide if the use is considered a “Family” under the Village’s Zoning Code, in which case the Board must address the issue:

- (i) Whether the proposed use involves a family, which is defined in the Village’s Code as “One or more individuals living independently in a single housekeeping unit and using cooking facilities and certain rooms in common. A family shall not be deemed to include the occupants of a boardinghouse or rooming house, club, motel or hotel.”

If the Board determines the answer to this is no and the above answers were all no, then the Board will issue a denial. If this answer is yes, the Applicant will be permitted to use the premises as a single-family dwelling.

Chairman Baum began by saying he was a little hung up on the use. It’s been described as adult care versus assisted living versus group home for adults needing some level of intermediate care. Can we determine exactly what this use is classified as?

Member Zuckerman said that for him this is an adult care facility which is the least amount of care necessary under the Department of Health. You get a particular license for an adult care facility. There’s another license for an assisted living facility which is a higher level of care. And then there’s a third one which is higher than that, enhanced assisted living. Mr. Mitts has testified that he was looking for an adult care facility in this location.

Member McCarthy said that he has some reservations about running a for-profit operation in a residential zone, in a non-commercial zone. He asked, where does it stop? Can we deny the next person who wants to have an exception?

Chairman Baum said the Board needs to determine what they’re being asked to decide. He said that the application at this stage is for a change of use from one non-conforming use to another non-conforming use which in the opinion of the Zoning Board is the same or a more restrictive nature.

Member Zuckerman said he finds the first use, the use by AHRC, to be a permitted use. It's a permitted use under statute and it's a permitted use because of sovereign immunity being a state agency.

Chairman Baum said one issue that was discussed was whether it was Padavan or non-Padavan. Member Zuckerman said it's not Padavan but it's based on case law. If you read the March 23, 2017 letter from Building Inspector Cocks to Mr. Cappello (Exhibit Y) Building Inspector Cocks states:

*The property is located in an SR-10 district and was recently used as an "Adult Home for the Mentally Disabled" by ARC of Orange County. This was operated under New York State Mental Hygiene Law and was considered a permitted use for a licensed operator in any residential district, and as confirmed in your letter they are entitled to classification as a single-family residence.*

Building Inspector Cocks then quotes 41-34(f) which is the paragraph on the Padavan Law which we've already decided does not apply. Chairman Baum interjected, "It wasn't approved under Padavan Law" and Member Zuckerman agreed.

Member Zuckerman continued, saying that the only CO we can find was the one that was issued on August 1, 1977, which was the CO issued to Mr. Lantz for a single family. AHRC then moved in in May of 1978. Padavan Law was in September of 1978. As referenced in the letter of Mr. Cocks to Mr. Cappello, 41-34(f) was an interesting extension to the Padavan Law because it says that a community residence established pursuant to this section *and* family care homes shall be deemed a family unit for the purpose of local laws and ordinances. So it says a community residence established pursuant to this section which would be the Padavan Law, *and* family care homes, which Member Zuckerman said would take care of the myriad of pre-Padavan cases which Mr. Cappello supplied to the Board which held that an establishment for the developmentally disabled is considered to be a group home and a single family unit.

Chairman Baum said that he didn't see any other cases that similarly lumped adult care facilities into that. Member Zuckerman said he would find that it was a permitted use and that an adult care facility was not a permitted use.

Attorney Naughton advised that if that is the case then the Board needs to find if the use is considered a "Family" under the Village's Zoning Code.

Chairman Baum directed the Board to discuss the use and the prior use as being a permitted use as we already have a determination from the Building Inspector that that is a permitted use as a single-family. Chairman Baum asked the Board if they felt the same way with regards to the prior use by ARC, that because it was a group home it was considered a single-family unit under State law and it was treated as a single-family and therefore was a conforming use in the SR-10 zone as a single-family use?

Member Margotta said that based upon what he heard he felt it was operated as such. Chairman Baum asked Member McCarthy and Member Martuscielli if they felt the same way? They said yes. Chairman Baum summed up, saying we're not dealing with the change of a non-conforming use to another non-conforming use.

Chairman Baum directed the Board to get to the determination of whether this use as an adult care facility is considered a single-family use? He read into the record the definition of a single-family use as it stands in the code today:

*One or more individuals living independently in a single housekeeping unit, using cooking facilities and certain rooms in common. A family shall not be deemed to include the occupants of a boarding house or rooming house, club, motel or hotel.*

Member Zuckerman said Building Inspector Cocks made his determination under the old code which changed on June 13, 2017. He said that the definition he relied on was the old definition for a dwelling unit. Now dwelling unit has been changed, so we have to go back to the definition of a family as it stands today. Member Zuckerman said it's an ironic situation because of the fact that even though Building Inspector Cocks was correct we may make a determination under the present law and change it. Attorney Naughton said that for any decision this Board makes, she will include a footnote that references the Building Inspector's initial determination and how the code changed. The evidence provided will be in accordance with the new code.

Chairman Baum moved on to the second question. He asked the Board if the type of use as described by the applicant during the application and as testified to during these hearings constituted a single-family dwelling? Referencing the definition of a single family, Member Zuckerman said he felt it comes down to three words: "living independently in." If you take out the word "independently" you have, "One or more individuals living in a single housekeeping unit and using cooking facilities" there would be no question that it would be single-family.

He continued, asking what is the meaning of the part that reads "living independently in" and would people in an adult care facility be considered to be "living independently in" the facility? The original code read "living independently *as* a single housekeeping unit" (emphasis by Member Zuckerman). The only change in this section was they changed the word "as" to "in." But he felt the change put more emphasis on the word independently.

Member Zuckerman also said that Mr. Cappello made an argument in his papers that the fact that there were individuals "there at all hours to assist them is no different than an individual family hiring an aide or employee to provide home care. This is essentially eight individuals living independently as a single housekeeping unit and sharing the services of an aide or home care professional." If this were an assisted living facility I think there would also be no question that they would not be living independently. But

it's an adult care facility and there is still a degree of care that you're giving to these individuals. The question is, what is the meaning of "living independently"?

Chairman Baum responded that the term "living independently" means they don't require any assistance. They're not dependent upon anyone else for care. Member Zuckerman said that the Code Section 200-4A says that word usage shall be decided (if there's no definition) by Webster's most recent college dictionary. He read the definition of independent from the dictionary as follows:

***Independent.*** 1. Not dependent such as not subject to control by others; 2. Not requiring or relying on someone else, not contingent; 3. Not requiring or relying on others as for care or livelihood.

Chairman Baum asked, are the proposed residents of this house living dependently or independently? They're living on their own, they have their own room in the house. Member Martuscielli said but they're dependent on others to do some things. Member Margotta added that they are to a degree. Chairman Baum asked, "Do they? Do they depend on others?" He said that the application was for adults needing some level of intermediate care. Wasn't that the way it was termed in the application? Attorney Naughton clarified, saying, "A group home for adults needing some level of intermediate care." And she added that they did discuss during the hearings the degree of some of that level of care, which was maybe a reminder that somebody should take their pills for instance. Chairman Baum added, "Or prepare meals." Attorney Naughton said that her understanding was that they might prepare meals or that the residents could prepare their own meals if they wanted. Chairman Baum said that he thought that the meals were going to be prepared for them. Member Margotta said he thought the kitchen was going to be used by everybody but there would be assistance if somebody needed help.

Member Margotta asked about the definition of "family" under the Zoning Code, specifically, the sentence "A family shall not be deemed to include the occupants of a boardinghouse or rooming house, club, motel or hotel." Member Zuckerman said that in his opinion if you're licensed by the Department of Health you're not a boardinghouse, rooming house, club, motel or hotel.

Member Zuckerman read from the affidavit of Pamela Brown Lee (Exhibit Z, #14) in which she says, "At the time of commencement of the operation, I will interview and hire other qualified, responsible people to ensure there is someone present on the site to assist the residents on a twenty-four hour basis." Member Martuscielli suggested that this implies the residents would not be independent. Member Margotta said, not completely [independent]. Member Zuckerman said that we have to phrase the question with the argument that's made, is this similar to a family that has live-in help, or is the amount of assistance much larger in this type of facility?

Member Zuckerman continued, saying there was other evidence as to what was required in the adult care facility as far as the staffing requirements from a licensing standpoint.

You need someone to administer overall and oversee the daily operations. You need a case manager to evaluate the residents' needs, you need a personal services staff to provide resident services, and you need an activities director. And at least one person qualified to provide first aid must be on duty at all times.

Chairman Baum said that from those requirements it sounds like we're not talking about an independent-type facility because you're required to have staff to assist the residents with certain things. Member Zuckerman said the only question is if this is similar to a traditional single-family that has assistants such as a home aide. Chairman Baum said that would be your traditional single-family that brought somebody in to give assistance. What he has a problem with is, looking at the legislative intent of the code, and whether or not this is the type of application that the Zoning Board should be legislating or whether this is something that the Village Board ought to do at their level. If they feel this is an appropriate use in the zone then it ought to be legislated in rather than the Zoning Board carving out exceptions to the code. He said that he understands the type of application that the applicant is asking and the determination that they're looking for the Board to make as to whether this qualifies as a "single-family."

Chairman Baum continued, saying this is a very tough application for him. He said that he understands the use. He's read the affidavits and minutes on how this establishment is going to be operated. It didn't seem to him to be that different of an operation than the prior use other than the fact that you're dealing with adults that need a certain level of care as opposed to mentally disabled, mentally handicapped, except for the fact that there was a push for the mentally handicapped to be mainstreamed in to live in your standard single-family homes. It was a legislative determination by the state and he doesn't think the state has really made that same legislative determination with regards to adult care.

Member Martuscielli asked if the Board would place any restrictions or requirements on the applicant in the event they do not do what they claim they want to so that they can be at some point reviewed and perhaps denied? Attorney Naughton said the Board is allowed to put reasonable conditions on if the Board is making the determination that this is a family under the code. The facility would need to get the next level of licensing if it becomes more dependent living as opposed to independent living. The Board can then require them to return to the Building Inspector for his initial determination as to whether that still constitutes a family. Member Martuscielli said so we would rely on the Building Inspector? Attorney Naughton said it would be his interpretation in the first instance as to whether or not the change was still in accordance with the Board's decision.

Member Margotta said right now we're just trying to determine yes or no if this is permissible. We're not giving any type of variance. Chairman Baum said you're making a determination as to whether this use qualifies as a single family. Member Martuscielli asked if the Board goes along with it being a single family can they still put some restrictions or guidelines that they have to follow. Chairman Baum said I guess the Board can, it's only being considered a single family based upon the level of independence of the residents of the facility and should it change so that the residents require more care so

that they're no longer considered independent, then they would no longer classify as a single family, if that's the route that the Board wanted to take.

Attorney Naughton said it would naturally go then to the Building Inspector but she recommended that the Board include it in their decision as a reminder that should that level of care change they are required to go and see if it still qualifies for this. Member McCarthy said that it may be the type of people who are entitled to live there may change over time. They might take in people who are recovering from drugs or who have stolen or are in the process of overcoming drugs. What's to prohibit that? Member Margotta asked if we have a mechanism to check that or oversee that? Chairman Baum responded that it's licensed by the State. Member Martuscielli asked if there is a license? Attorney Naughton responded that the applicant has applied for one. Chairman Baum continued, saying that the applicant has to get a Certificate of Need from the Department of Health. Member Zuckerman said that there is a list of activities where they have to get rid of a particular person if they do it and drug use is one of them. The Department of Health does inspections once every eighteen months but they can also do random inspections. He asked if it would be a reasonable condition for the Building Inspector to do an inspection once a year? Attorney Naughton responded that if the Board finds that the use is in accordance with this the Board would not be able to do that. Attorney Naughton pointed out that there is a procedure in the Village's code where if somebody complains because they see what they think are three drug addicts there they file a complaint with the Building Inspector who would be required to follow up on it. Otherwise the Board would not be able to set regular inspections. She continued saying that the Board would also not do that for a traditional single-family dwelling. Member Margotta said if some activity is borderline you're not going to be able to see if it goes over the border unless somebody complains. He said that when you think about restrictions there's really not a lot that can be done.

Mr. Cappello raised his hand to make a comment. He said that their application is for adults so that's the interpretation they're asking for. If the Board made an interpretation based upon the fact that these are independent single-family adults over this age then that would be your determination. If it would change then we would request a different determination and proper licenses. That's not inspecting to ensure that we're doing what we applied for. If something seemed reasonable we would not object to it. Regarding the purpose there is public health law that has continuing care and independent living for adults as an important aspect. In the papers I submitted that shows there is a State intent that these types of facilities for adults for continuing care be there. Chairman Baum responded but not classifying them as single-family units.

Member Margotta asked if this was determined that it didn't meet that definition that the next stage is for the application to ask for a use variance? Chairman Baum said it was. If the Board denies the interpretations that the applicant is seeking then the applicant can present evidence regarding their use variance and their hardship. Member Margotta asked if the Board could then set conditions on the use variance? Attorney Naughton said that use variances are quite different. While there is a four-part test it is not a balancing test. If the applicant fails one part of that test the request is denied. Attorney

Naughton cautioned the Board that a use variance is not a way to impose conditions. The Board should take this step by step and focus on whether this fits the definition of a family first.

Member Margotta said that he doesn't see this meeting the definition of independent. Even though it's a very minor degree of care it's not completely independent. Member Martuscielli added that there still needs to be some assistance potentially.

Attorney Naughton said that in connection with Member Zuckerman's definition of independent, a child who is living with his family also requires some level of care. The Board should take into account the level of care that is required. Member Margotta said a child is not an adult. Member Zuckerman added that the Board should take into consideration the argument that Mr. Cappello made that it is similar to a traditional family hiring an aide or a home care professional.

Chairman Baum summed up the interpretation on a pre-existing non-conforming use and changing a pre-existing non-conforming use to another non-conforming use with the same or more restrictive nature. We've already concluded, without taking a formal vote, on whether or not we're dealing with changing one non-conforming use to another non-conforming use. Chairman Baum said he felt that we're not talking about a non-conforming use but a permitted use of a single-family dwelling. He asked if any Board member wanted to make a motion that this was not a change of use from one non-conforming use to another non-conforming use.

On a motion made by Member Margotta and seconded by Member Zuckerman, it was unanimously: **Resolved that the prior use of the property as an adult home for the mentally disabled was a permitted use and therefore this does not follow Village Code Section 200-62(c).**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

Regarding the next issue before the Board discussed the definition of independence and what it is, the question is are these proposed resident considered to be living independently in this household even though it's going to be staffed by an administrator to oversee daily operations, a case manager to evaluate residents' needs, a personal services staff to provide resident services, an activities director and at least one person qualified to provide first aid must be on the premises at all times.

On a motion made Member Zuckerman by and seconded by Member Margotta, it was unanimously: **Resolved that this does not qualify as a single family because the individuals are not living independently in a single housing unit as defined in the current code.**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

Chairman Baum advised Mr. Cappello that his next step would be to pursue a use variance. The Chairman asked the applicant when he wanted to continue and Mr. Cappello responded 60 days. Attorney Naughton suggested that Mr. Cappello notify the Village when he was ready to proceed so that the Village can re-notice the public hearing in the paper. Mr. Cappello agreed.

On a motion made Chairman Baum by and seconded by Member Margotta, it was unanimously: **Resolved to adjourn the public hearing without further date pending the applicant’s notification that he’s ready to return at which time the meeting will be re-noticed as if it were an initial public hearing.**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

**2. Hatov Springs, LLC – Area Variance – 207-4-15**

**Present: John C. Cappello, Esq. and Michael J. Sandor, Engineer**

A determination pursuant to the requirements of Section 200-62(C) “Change”, to permit the nonconforming use of a building to be changed to another nonconforming use which is of the same or of a more restrictive nature in the URM zoning district. The previous nonconforming use of the property was a laundry service. The proposed use is a retail food store.

The property, which is the subject of said action by the Board, is located at 129 Spring Street in a URM Zoning District and is identified as Section 207, Block 4, Lot 15 on the tax map of the Village of Monroe.

Secretary Doherty advised that the mailing had been done and the certificates of mailing were received in a timely fashion.

Mr. Cappello began by saying this building had historically been used as a commercial laundry facility. It took in dirty laundry from hospitals and commercial hotels, cleaned it and delivered it back to those facilities. It did not service most of the neighborhood. It was an industrial-type commercial laundry operation that made deliveries, many of which were outside the community. It was a heavy user of water and sewer facilities. It was at that time a conforming use. When the Village changed its zoning code on June 13, 2017 that use became a non-conforming use. Hatov Springs purchased the building with their

interest in converting the building to a grocery store. The grocery store will serve people who walk in as well as make deliveries to homes. With the new zoning code it's now in a URM zone so commercial use is not permitted. So it would have to be converted to a multi-family home. We believe that this use is more restrictive in use since this is more of a neighborhood grocery store serving the community, it will be using much less water and sewer. The laundry employed about 40 people; this facility will employ 20. So, there will be fewer people visiting the site. There were large vehicles going in and out of the laundry facility. There will be deliveries typical of a grocery store here but the type of traffic will be generally less. We believe it is more in keeping with a residential-type neighborhood than an industrial commercial-type laundry. Mr. Cappello said that you are allowed to change from one non-conforming use to another as long as it is of a more restrictive type. He believes this is more restrictive and more in keeping with a residential feel. The current facility was used as a laundry up until June of 2008.

Mr. Michael Sandor, the applicant's engineer, said this will be a food store called Schlomie's. It will be a retail store that has home deliveries similar to Shop Rite and Stop and Shop. It will also sell in bulk similar to BJ's. Mr. Sandor said that the previous business was probably one of the top five users of water and sewage facilities in the Village as well as gas and electric. Mr. Sandor said that he spoke with Mr. Gottlieb, the prior owner of the laundry and Mr. Gottlieb told him that the laundry operated seven days a week and they had deliveries by tractor trailer sometimes early in the morning.

Chairman Baum asked Mr. Sandor if the Board could get testimony from Mr. Gottlieb confirming these statements and how the laundry operated, how many parking spaces there were, how many employees, how many tractor trailers, etc. Mr. Sandor and Mr. Cappello said yes.

Member Zuckerman asked how long the facility had been closed? Mr. Sandor replied that it had been closed since 2008.

Building Inspector Cocks said that the non-conformity started with the zoning change about one year ago. Chairman Baum asked then if theoretically they could go back in and operate a laundry again? Building Inspector Cocks said yes.

Member Zuckerman confirmed that they're only talking about using Lot 15? Mr. Cappello said that was correct. The other lot is a vacant lot. The applicant has bought it but he understands that it is not part of this application.

Chairman Baum asked when the applicant completed the purchase of this property? He asked because the map of the property indicates the owner is A&P Apron and Linen Supply. Mr. Cappello said it was November 7, 2017. Attorney Naughton asked if he could provide an updated owner's endorsement for the Board. Mr. Cappello said he would.

Member Zuckerman asked if Hatov Springs also purchased Lot 11.1. Mr. Cappello said that he thought so. He said that there is no plan to use that. It's another Village Board

issue. If you look at the layout surrounding this it's another commercial area. Member Martuscielli asked about parking? Mr. Capello and Mr. Sandor said there is existing parking.

Member Zuckerman asked if the grocery store would be open to the public? Mr. Sandor said yes. Member Zuckerman asked about the percentage of the store that would be open to the public citing past experience where only a small area in the front that is open to the public, and the entire back is like a warehouse and trucks leave from there. Mr. Sandor said that he wanted to see what an existing facility looked like so he went to the other side of Route 17. It reminded him of a grocery store he would see in Ireland because it was small.

Member Zuckerman asked if anyone could come in off the streets? Mr. Sandor said yes. And, Member Zuckerman asked, if the Schломie's vans will deliver if you call them. Member Zuckerman asked about the size of the store, how much will be the grocery store and how much will be for storage? Mr. Sandor said that the public will be allowed to utilize the whole area not just a portion of it.

Chairman Baum asked how big the building was? Mr. Sandor said it was 10,200 sq. ft. plus a mezzanine in the front of the building. Chairman Baum asked how many feet would be dedicated to the retail space versus back storage? Mr. Sandor did not know. Mr. Cappello and Mr. Sandor said they would get that for the Board.

Chairman Baum asked about the bulk requirements because they are not out yet under the new code. He asked if the Board were to entertain this application and grant it would the Board have to establish the bulk requirements as well? Attorney Naughton said the zoning was classified as CB so the Board would follow that.

Chairman Baum asked the applicant if they had considered yet the layout of the parking, etc. and Mr. Sandor said the parking is going to be on the side, not on the front. He was told that Creyton Manning did some preliminary work and made some recommendations which the owners are going to follow. They are going to add a sidewalk to the front of the building and there will be a traffic light coming out of the building which will replace the three-way traffic light that is currently there.

Member Zuckerman said that one of the problems with this is that the Board has very little information. Mr. Cappello said that the owner needs some kind of an indication as to how the Board would respond before they finalize their plans. Chairman Baum said you're asking the Board to determine that the use as proposed is substantially similar or less intrusive than the prior use. So the Board needs testimony as to how those uses were and how they will be. Mr. Cappello said he wants to find out what the Board wants to see and what their concerns are and what the public's concerns are so that they can come back with intelligent information instead of guessing.

Attorney Naughton advised the applicant that by submitting additional material the public hearing would remain open so that the public would have an opportunity to review that as well.

Chairman Baum opened the hearing up to the public.

Mrs. Jean Hansen who resides on Franklin Avenue came before the Board to speak. She said that she has lived on Franklin Avenue since 1945. She skated next to the laundry where the water emptied into a lot and froze on winter days. Her house is her homestead; it's what she's got to leave to her children. First, she asked for confirmation that this does not include the vacant lot? She said there's a cemetery there. Member Zuckerman asked when the cemetery closed? She said it was a Mapes family cemetery but she did not know when it was closed. She also said that the cemetery is named for their son, Franklin Mapes. Mrs. Hansen also said that streets in the area are not zoned for large trucks so how are trucks going to get there from the highways? She was also concerned because big trucks would be going there day and night. Is the Board going to change the zoning for that? Mrs. Hansen said there is a handicapped playground on Franklin Avenue. Kids walk down Franklin Avenue in the middle of the road and go through the parking lot at all hours of the day and night. There are cars there day and night. It's a very busy park, not necessarily the Franklin Avenue side of the park but the main park. What road are you going to open so that these trucks can get to this grocery store? Also, if you have a great big truck it cannot get under the Erie bridge. So you can't even bring it through Lake Street. The closest road you can use is 17M. How are you going to bring it across town? The fact that the trucks will be coming in day and night this is a residential area. The park is used a lot. Mrs. Hansen repeated, this is a residential area. Do you want it going past your house at night? Well, put it someplace else. Mrs. Hansen said that regarding the employees at the laundry, most of them walked to work. They lived nearby so employee parking was not an issue. Mrs. Hansen asked if there was asbestos in that building? Mrs. Hansen asked how much property was on the left-hand side of the laundry for parking? She said there was very little parking in the front. She said she did not want Franklin Avenue to be the alley behind a grocery store. Will the average resident be interested in buying the groceries that are going to be sold in the store? In other words, is it kosher food? She said don't think you're doing us a favor if it's kosher food, because you're not. Chairman Baum said that's not relevant. It's a retail grocery. Whether they sell kosher food or Asian food or Mexican food, it doesn't really matter. It's a retail grocery. We're looking at the use.

Member Margotta asked about the space on the side of the building. There's 54' from the property line to the building on that side towards the empty lot. 54' is large enough for single stall parking and a back and forth lane.

Mrs. Hansen finished by pleading with the Board not to make Franklin Avenue an alley way leading to the grocery store. Franklin Avenue was a beautiful street until they decided to put new sidewalks in, which we really didn't need, and they cut all our trees down. And you know what happens to an area when you don't have any trees, she

asked? It goes downhill and Franklin Avenue is now considered the wrong side of the tracks. Well we're not. There are no tracks.

Bonnie Patrikis who lives at 39 Franklin Avenue testified next. Ms. Patrikis began by saying that she never received a notice about this meeting. She happened to find out from Mrs. Hansen. She said that there would be other people on Franklin Avenue who also didn't get a notice. Attorney Naughton advised her that the letter was sent to everyone within 300' of the property per Village law. Ms. Patrikis is concerned about traffic on the road. Her children used to walk to school, she said she's not sure if children on her road still walk to school or not. There is a lot of traffic there with the park and there has been an increase in traffic since she moved there years ago. She is concerned about the trucks and vans going by Smith's Clove Park. Traffic is often backed up when she gets home from work. It's very hard getting in and out of her street. That is a concern for us. She asked how the intersection would work with all this activity. It sounds impossible to her, all this activity at that light there. It's very backed up at this point so she is not sure how it would handle more traffic. She is also concerned about the walking traffic on the street. There are a lot of kids around. Are people going to be walking up and down the street all the time? We have issues too with people speeding on the street. There are concerns.

Jeff Pfeifer of 7 Charlotte Place spoke to the Board. Mr. Pfeifer said this is an interesting parcel, especially down in the town. It's a mixed bag of residential and commercial pieces. He said that he was having a tough time understanding the non-conforming use of a laundry compared to the non-conforming use of a retail grocery. There are certainly different requirements under today's zoning law that would require those sites to be much different. But I have to believe that when our Village fathers who all decided the change in zoning back in 2013 (sic), this laundry really wasn't being used at that time. So it changed that from a commercial use to a residential use / multifamily and it seemed to make a lot of sense. He said that if we look at this parcel and its location to the park, the Heritage Trail, walking distance to the amenities in the downtown, if you're an apartment dweller you want to live there you can walk down to the commutation to the bus stop, it makes perfect sense to keep that as a multifamily residential use. Mr. Pfeifer asked the Board to keep that in mind when they deliberate. Some of the impacts that you'll see from the grocery store, especially on the adjacent residents are going to be much more than you may see with other residential use. It just makes a lot of sense. Mr. Pfeifer reiterated that everyone at Village Hall was looking at that to say keep that side of Franklin Avenue residential because of the amenities that exist at that end of the Village. Mr. Pfeifer thanked the Board for their time.

Member Martuscielli said that there is a concern that if this became a grocery store it would interfere with the schools because a lot of buses go through there on a daily basis. Chairman Baum said if this were to open as a laundry tomorrow there'd be trucks. A member of the public said there won't be many trucks. Chairman Baum said that the Board will be getting testimony from the applicant as to how the place operated when it was a laundry so that we can assess the impacts of the laundry use as compared to this retail grocery use. Mr. Pfeifer asked the question how to you compare one non-

conforming use to another? We do it just by that. You had a use that existed. It was changed. If the laundry never went out of business they would be continuing and whatever impacts they would be placing on the local community would exist today but for the fact that they no longer operate. So, we have to try and look at if you have impacts from a laundry and you have impacts from the grocery store how are those impacts similar and how are they different? And if they're similar what the applicant is saying is listen, they're similar or they're less. That's the nature of their application. If it's similar or less then changing from one non-conforming use to another non-conforming use isn't imposing any greater impacts on the community.

Member Zuckerman said that prior to June 13, 2017 when the use was CB a grocery store would have been permitted. What we're facing now is that on June 13, 2017 they changed it to URM. Member Zuckerman said to Mrs. Hansen that regarding the trucks coming through, they're allowed to do local deliveries. She answered that she's talking about the big delivery trucks that will bring the products to the grocery store. Not the little ones. Chairman Baum said, you're talking about the tractor trailers. She said yes, she was talking about the great big ones that can't get under the Erie bridge because they're too tall. She asked, how do they get into Monroe now? They have to go down Route 17, don't they? They can't go down North Main because that was just changed.

Member Zuckerman responded that if the trucks are making a local delivery they are permitted to use that road. Ms. Patrikis said only if the police are there to stop traffic. She said that she called the police today. On Franklin Avenue, on Forest Avenue and on North Main a truck cannot go down without the police if they are that size. So are you going to hire a police officer to wait there for these trucks?

Chairman Baum said that part of the application is not before us, that is dealt with by another board. If this Board decides that the change of use is basically the same or less of an impact, then the applicant goes to the Planning Board. The Planning Board looks at all the traffic impacts, the parking, the traffic light. That's not something that this Board looks into at this stage.

Margaret Patrikis of 39 Franklin Avenue spoke before the Board. She said she doesn't understand why there's moderate concern for a group home for mentally disabled adults when there's the concern for a grocery store for the Hasidics. We're not going to use it, no one's going to use it but them, and I'm just disappointed about what's happening to Monroe. That's sad.

Mrs. Hansen added that she spent eight years talking to County legislators to get the light that's at the laundry. Eight years!

Member Margotta mentioned that he was brought up in that area and he used to walk through the park all the time. There weren't many cars there coming in and out of the laundry. He did remember seeing the semi truck early in the morning if he went on a school bus trip. He didn't remember seeing it at other times of the day. I wouldn't say it

was running as frequently. That was his recollection. He didn't see a lot of traffic like what you'd see at a grocery store.

Chairman Baum said that usually when you're running a warehouse you have shifts and the employees come and usually that's it. If you're running a grocery you have people coming all day long every day.

Attorney Naughton asked Mr. Cappello when he'd have the additional information ready for the Board? He said he could have it in time for the April 10<sup>th</sup> meeting. The Chairman asked if he could get the post-affidavit testimony? He said he wasn't sure. Attorney Naughton advised that additional information should be submitted no later than March 30<sup>th</sup>.

On a motion made by Chairman Baum and seconded by Member Margotta, it was unanimously: **Resolved to adjourn the application until the April 10, 2018 agenda and that any additional information be submitted no later than March 30, 2018.**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

Chairman Baum advised that the Board would not publish another notice in the newspaper and that the applicant was not required to send out another notice. Ms. Patrikis complained that she never received the first notice. Members of the Board advised Ms. Patrikis that the notice was sent to everyone within 300' of the applicant's address.

### **ADOPTION OF MINUTES FROM JANUARY 9, 2018 MEETING**

On a motion by Member Zuckerman, seconded by Member Martuscielli, with all in favor, it was **Resolved that the minutes be adopted.**

**Ayes – 4**

**Nays – 0**

**Absent/Abstaining – Member Margotta (Abstaining)**

### **NEW BUSINESS: ZONING BOARD APPLICATIONS**

The Board was advised that no new applications were received.

**ADJOURNMENT:**

On a motion by Member Margotta, seconded by Member Zuckerman, with all in favor, **there being no further business, the meeting was adjourned at 9:40pm.**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

Respectfully submitted,

A handwritten signature in cursive script that reads "Elizabeth A. Doherty".

Elizabeth Doherty  
ZBA Secretary