

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
MEETING
JUNE 12, 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 8:00pm with the Pledge of Allegiance to the flag.

**1. Hatov Springs, LLC – Determination – 207-4-15
The applicant was not in attendance.**

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 is located in a URM Zoning District and is Section 207, Block 4, Lot 15 on the tax map.

This is a continuation of the public hearing on May 8, 2018 which was adjourned to give the applicant time to get more information for the Board.

Chairman Baum read for the record a letter received from John Cappello in which he requested an adjournment of one month for the applicant, Hatov Springs, LLC:

Dear Mr. Baum:

I am writing to request that the Planning Board (sic) adjourn the hearing and any subsequent determination on this matter which was scheduled for your June meeting for one month to your July ZBA meeting agenda.

I have had discussions with the Village attorney and ZBA attorney. I am hoping in the next few weeks to discuss my client’s petition to rezone the property back to its original business zoning designation for the above-

referenced subject lot and adjoining lot to provide for a more unified development with appropriate buffers.

I therefore seek the adjournment of the ZBA proceeding to allow time to fully discuss and analyze this zoning amendment. Please do not hesitate to contact me if you have any questions regarding the same.

*Yours very truly,
John C. Cappello
Jacobowitz and Gubits LLP*

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

Ayes – 5

Nays – 0

Absent/Abstaining – None

2. The application of BMG Monroe I, LLC, for an interpretation of the Building Inspector’s denial of building permit applications to construct duplex homes.

Present: Robert S. Rosborough IV, Esq. Whiteman Osterman & Hanna LLP, attorney for the applicant

The property, which is the subject of said action by the Board, is located in a URM Zoning District and is identified as Section 203-6-45 on the tax map of the Village of Monroe and is also known as the address 1 Van Arsdale Road and Section 203-6-46 on the tax map of the Village of Monroe and is also known as the address 3 Van Arsdale Road.

Mr. Rosborough began by saying that he was here to appeal the denial of building permits for two duplex homes in the Smith Farm subdivision, part of which is in the Village of Monroe (the rest is in the Town of Monroe). He said that the Planning Board granted approval in 2015 which included as a condition the SEQRA findings promulgated by the lead agency in that matter. The SEQRA findings are basically intended to restrict the construction to a certain set of criteria to ensure that no adverse impacts to the environment will occur, specifically visual impacts. The Building Inspector’s denial of the permits was based on visual impacts criteria.

The Building Inspector determined that the homes do not exactly comply with concept layout plans that were included in the Planning Board approval in the SEQRA findings. The applicant’s position is that these were just that: They are concept drawings for what the homes would typically look like. But that doesn’t limit any minor deviations so long

as those deviations don't incur visual impacts that would otherwise violate the SEQRA findings.

The Building Inspector's denial highlighted three issues. The first is that changes were made to the rear and side elevation drawings. Mr. Rosborough said that these changes were minor. There are no adverse environmental or visual impacts that you would notice and therefore there is no basis to deny the permits on those grounds.

The second issue before the Board is the roof pitch. What the SEQRA findings state about the roof pitch is that the main roof line shall be 12 by 12 pitch. It doesn't restrict the entire roof line when it says the main roof line. The applications that were submitted for these two duplex homes comply with that provision. The main roof line on the homes is 12 by 12 pitch and it varies as the SEQRA findings intended the community to look. The homes aren't going to have just a straight down roof. The homes are going to have varied roofs to make them look attractive and conform to what the other homes in the Village typically look like.

The third basis for denial was a siding issue. The SEQRA findings restrict how the homes look. It's not about the actual building siding material. The siding should look like shiplap or stucco or brick or natural stone materials. The SEQRA findings have no basis and provide no restriction on the actual materials that are used as long as those materials won't create any adverse environmental impact on what the houses look like. Mr. Rosborough said that substituting vinyl siding doesn't create an adverse environmental impact that would justify denying the building permits since vinyl siding is present on most if not all the homes throughout the Village.

Member Zuckerman commented that the original application to the Board did not include plans for lot #203-6-45 and lot #203-6-46, it included plans for lots 1 and 2. Member Zuckerman continued, saying that after the original application was filed additional plans were submitted. He said that the Board needed copies of those plans as well. Member Zuckerman then read the actual findings, "The homes... will follow a strict architectural code... will to the extent practicable reflect the architectural styling of the drawings presented in the Draft Environmental Impact Statement dated June 9, 2005 enumerated below and appended to the SEQRA findings statement as Attachment 3 and attachment to this resolution." And the findings talk of streetscape 1 drawing, streetscape 2 drawing, streetscape 3 drawing, architectural drawing of duplex building style, architectural drawing of patio homes, architectural drawing of detached single family style and typical rear elevation drawing. We can't make any decision without seeing all of those documents because we're talking about the typical rear elevation drawing and we're talking about the streetscape drawings.

And then it goes on to state some of the critical architectural criteria to be adhered to. "The main roof lines shall be steeply sloping with 12 by 12 pitch or greater, building siding shall vary among the units and consist of shingles shiplap, stucco, stone, or brick siding materials." And last but not least, #10, "All sides of the buildings shall be architecturally detailed... as depicted in the Typical Rear Elevation Drawing."

Mr. Rosborough said the concept drawings are just that, concept drawings. They don't limit the actual building applications in any way. The intent is for the homes to be varied throughout the community to create a cohesive vision, not that homes are the same on every lot throughout the entire development. The concept drawings are showing exactly what the houses might look like. They don't restrict the applicant from applying for Building Permits for plans that are just slightly varied from the concept plans.

Member Zuckerman interjected, saying that the Board is trying to stand in the shoes of the Building Inspector without seeing any records that the Building Inspector saw. He asked Mr. Rosborough to submit the items listed on page 17 Exhibit D of the original application as well as the true original plans, and the plans that have now been submitted that caused the Building Inspector to change his original letter to the letter of May 7, 2018.

Chairman Baum said that he wished to make clear exactly what was going on with this application. This is now an amended application based upon Mr. Rosborough's letter of May 18, 2018 and it is considered an appeal from the May 7, 2018 letters.

Chairman Baum continued, saying the whole purpose of SEQRA is to mitigate environmental impacts. If you go through the SEQRA process and you come up with a findings statement that says the way we're going to mitigate visual impacts from this project is to design the buildings in a certain way, he asked Mr. Rosborough if he was saying we should ignore that because the SEQRA is just a guide?

Mr. Rosborough answered no, the SEQRA findings make sure that there will be no adverse environmental impacts. The minor deviations from the concept plans don't create any adverse environmental impacts.

Chairman Baum asked how is that a minor deviation? The SEQRA findings specify how the buildings have to be designed, how the roof pitches have to be designed, they rely on certain elevations to make sure that there are no impacts. Why can't we use that as a guide post?

Mr. Rosborough responded that you can. Starting with the roof pitches, the SEQRA findings state that the main roof line must have a 12 by 12 pitch. But what they do not say is that the entire roof line has to be 12 by 12 pitch and you can't have gables and you can't have some varied roof lines throughout it. The main roof line itself is 12 by 12 pitch, so it complies. The issue isn't that we don't think the SEQRA findings isn't a visual impact, it's that we are in compliance with the SEQRA findings. What's at issue with the siding is that the SEQRA findings, because it's a visual thing, it can't restrict building materials. That's not within the purview of SEQRA because that doesn't create any different actual environmental impacts as long as what it looks like are the styles that are there. Vinyl siding looks very similar if not identical to what a shiplap looks like. Some of the homes have vinyl, some have rock on the side. The development has the varied look of the community and it complies with the intent of the SEQRA which is that

these homes don't stick out from everything else. If the homes looked identical throughout the subdivision and used the restricted materials it would be very different from what the rest of the community looks like. What we're trying to make sure is that this development is integrated into the community and looks like all the homes here. The vinyl siding doesn't create any additional environmental impacts that would justify denying a building permit on that ground.

Chairman Baum asked Mr. Rosborough why the applicant didn't challenge the findings statement rendered by the Planning Board when it was issued?

Mr. Rosborough answered that's not the issue. It's not that the SEQRA findings are wrong it's that the materials restriction is not actually a SEQRA issue.

Chairman Baum disagreed with that because he said they're very specific on the types of siding in their SEQRA findings. If the applicant thought that was too restrictive they should have brought that up with the Planning Board. They should have said they wanted to use vinyl because it will look the same. The Planning Board might have said, show us the samples, show us the elevations, tell us what it will look like. And maybe they would have said permission granted.

Mr. Rosborough said that when you're looking at the SEQRA issue you're looking at whether a significant adverse environmental affect is going to be created from the difference between a shiplap and a vinyl siding. And it's his position that there is virtually no visual difference between those at all.

Chairman Baum said SEQRA found the visual impacts played carefully into the determination to make this project a certain way so that any potential impacts that were identified could have be mitigated. This is one way the Planning Board wanted to mitigate visual impacts. To say that it's just a guide, that it will look just as good, throws out the whole proceedings. It throws out the whole point of them doing their SEQRA review and adopting those findings in their resolution.

Mr. Rosborough said if we were saying we can build larger homes and would create more impervious surface or something different substantially different like that, I would agree with you. But the intent of SEQRA is to establish a look and our position is that this is a minor deviation.

Chairman Baum said, let's get the drawings and take a look at them. Let's see if what was in the SEQRA statement show us what you're proposing now.

Member Zuckerman added as far as the roof lines are concerned, one of the difficulties of this case frankly is if you're looking at the Planning Board they're talking about 2300 square foot buildings. These are twice the size according to the original plans. That's what's screwing up the roof line, because you have too much on the top.

Mr. Rosborough disagreed, saying that's not at all what the issue is here. It's not an issue for this Board to consider.

Attorney Naughton said that the Board needs to see the plans to identify exactly what the roof lines are, etc.

Member Zuckerman said he was only interested in the square footage to find out why they have to go over 35' in order to abide by the SEQRA finding of 12 by 12.

Mr. Rosborough said that's why the varied roof line is important because the buildings as designed comply with the 35' height limit because you have a main roof line of 12 by 12 and varied roof lines throughout to ensure that the visual impact is very refined, it looks identical.

Member Margotta said that's what also resulted in the increased square footage to maintain the height. Mr. Rosborough said there is not an increase in square footage from the plans.

Member Zuckerman said show us. All we have before us is a statement from the Planning Board and SEQRA saying that they're going to be 2300 square feet and the plans are apparently larger. And when we see it we'll see whether it's 2300, 4600, 1800 which these started as back in the early days.

Mr. Rosborough said we did address this issue with both the Village attorney and the Building Inspector before. The SEQRA findings contain frankly no limitations on the size of the homes. All that's contained here is making sure the footprint of the homes is a certain size and we comply with that requirement. The Building Inspector didn't use that as a basis for determination because the plans do comply with that requirement. And the roof lines, as long as we're under 35', comply with the requirement that the main roof line be 12 by 12. That satisfies the SEQRA and it is not a basis to deny the building permits.

Member Zuckerman reiterated his need to see the plans to clarify the main roof line, the rear elevation drawing, etc.

Mr. Rosborough concluded saying that the concept drawings are just that, they're a concept. They don't need to be actually identical for every home because that would violate the intent of the SEQRA process which is to have a varied look throughout the community.

Chairman Baum said that's where you're losing me. You're going to have to show me case law on that. Show me case law that says, you don't have to follow a SEQRA findings statement because it's just a guideline and it's not intended to be a final determination with regard to the look for the purpose of mitigating the visual impact or the environmental impact. You go through this process of SEQRA, you identify impacts, you spend a lot of time trying to figure out how you're going to mitigate these impacts,

and you incorporate them into your decision, and then somebody says you don't really have to follow that. It's just a guideline. What about drainage? Can you change the drainage, too?

Mr. Rosborough responded that the drainage had not been changed.

Chairman Baum said if you can change the mitigation for the visual impact then can you change the mitigation for the drainage, can you change the mitigation for the plantings, can you change the mitigation for other things? At what point is SEQRA not to be followed?

Mr. Rosborough said he's not saying that they're changing anything from the SEQRA findings. He said that the plans that they submitted comply with the SEQRA findings and in the concept drawings. The intent of the SEQRA findings and the intent of the Planning Board is to create a varied look throughout this subdivision so every home is not identical. If you go through this subdivision where every single house looks identical, that doesn't look good. What does look good is when there's a little bit of difference from home to home, so that you have a varied look. If we were to follow the concept drawings exactly then every single home would look exactly the same. Our position is that the SEQRA findings prohibit that. The SEQRA findings say the homes have to have varied looks, so the concept drawings were provided to the Board as a basis to judge what the houses might look like. This is a typical concept of what a house might look like but if there's a slight deviation, for instance one house has a deck and one house has a patio, that isn't a violation of the side elevation or the rear elevation because that's exactly what the SEQRA findings intended. Homes that look a little bit different on every block.

Attorney Naughton asked if that was the introductory paragraph to that section of the SEQRA findings though? Didn't the SEQRA findings also say that it would follow a strict architectural code?

Mr. Rosborough said it did, but the strict architectural guidelines are informed by what the intent of the SEQRA findings are. The intent was to create a varied community. It isn't to have the same house on every single lot throughout the development.

Member Martuscelli said that the applicant should have stated that.

Mr. Rosborough said that it does state that in the SEQRA findings.

Member Margotta said that you're saying that there are strict architectural guidelines but they don't have to be strict as long as they follow the intent.

Mr. Rosborough said what the position is here is that it's strange to have a SEQRA findings become a condition of an approval. Usually there are a separate set of architectural guidelines that are set by a Board. But in SEQRA findings like this, the intent of SEQRA is to make sure there's no adverse environmental impact. It changed

from a shiplap siding to a vinyl shiplap style siding. There is no visual impact because they look exactly the same.

Member Margotta said if you knew that was going to happen you could have raised the issue during the SEQRA finding.

Attorney Naughton asked if that condition (shiplap siding) was carried forward into the resolution? So then it's not a mitigation of SEQRA it's a condition of the Planning Board resolution. Chairman Baum said that it's in their resolution on page 17 of Exhibit D (the Resolution). Attorney Naughton said findings is actually a condition of the resolution.

Mr. Rosborough responded that as long as the siding looks exactly like those materials there is no difference.

Regarding the rear elevation drawing, Member Zuckerman added that the rear elevation on the building plan does not comply with the final resolution of approval. Member Zuckerman read from Building Inspector Cocks' letter of May 7, 2018: "The rear elevation drawings approved in the SEQRA findings statement show the two duplex units clearly dissimilar in appearance and depicting two separate and distinctive units as well as show an offset between the two units. The rear elevation sheets of the building plan you have submitted for both lots are a mirror image of each other, are inherently similar, and do not indicate any offset between the units."

Mr. Rosborough said that the restriction is for the entire community. There can be two homes in the same community that look the same. As long as it's varied throughout the community.

Member Zuckerman said, but apparently these are mirror images. The duplex has two homes on it and they're mirror images of each other while the SEQRA findings and the findings before the Planning Board state that the two duplex units will be clearly dissimilar in appearance in depicting two separate and distinctive units as well as show an offset between the two units. This is not there. These are just copies of the two units and there's no split between the units. They're just the same.

Mr. Rosborough reiterated that it has to be varied throughout the community.

Member Zuckerman said I assume that's the case because I assume that what's submitted here on the particular lots 1 and 2 are the same plans for 45 and 46. But I won't know until you show us the plans for 45 and 46.

Chairman Baum said that he also wants the same drawings that are referenced in the resolution.

Member McCarthy said that units that have already been constructed in the Town of Monroe have a "cookie cutter" appearance. If these two units were built according to the provisions of the Planning Board resolution it might break up that look.

Member Margotta said he wouldn't be satisfied until he could see the plans.

Chairman Baum opened the meeting up to the public.

Don Weeks, a resident of 99 Gilbert Street, spoke to the Board. He said that he agreed with the Board, there isn't enough information to make a decision. He said that he would like to see a map showing exactly what they're doing and where. We need a lot more information before we can move forward.

Jim Purcell, a resident of 71 High Street, spoke to the Board. He said that he was mayor of the Village of Monroe for eight years. He said that this project has been in the works for about 15 years and has undergone changes over the course of time. He urged the Board to make decisions using the information that is provided factually. This development is critical to the community and it's important that we get it right for everybody.

Chairman Baum asked the public if anyone else wanted to make a statement; nobody did.

Chairman Baum asked Mr. Rosborough to submit the following documents to the Board:

1. Plans that were submitted as part of the building permit that was most recently denied;
2. All of the plans that are listed on page 17 of Exhibit D (the resolution);
3. Attachments to the findings statement, Exhibit C.

Mr. Rosborough was advised that the submission deadline was June 30, 2018.

On a motion by Chairman Baum, seconded by Member Margotta, with all in favor, it was: **Resolved that public hearing be adjourned to July 10, 2018.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

APPROVAL OF MINUTES FROM MAY 8, 2018 MEETING

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

Ayes – 5

Nays – 0

Absent/Abstaining – None

OLD BUSINESS: ZONING BOARD APPLICATIONS

Chairman Baum received a copy of a letter from Village Attorney Alyse Terhune, Esq. to John C Cappello, Esq. dated June 12, 2018 in which she responded to a request by Hatov Springs, LLC, SBL 207-4-15.1, to change the zoning. The zoning will not be changed.

NEW BUSINESS: ZONING BOARD APPLICATIONS

The Board was advised that no new applications were received.

ADJOURNMENT:

On a motion by Member McCarthy, seconded by Member Margotta, with all in favor, **there being no further business, the meeting was adjourned at 8:44pm.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

Respectfully submitted,



Elizabeth Doherty
ZBA Secretary