

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
MEETING
JULY 14, 2015
MINUTES**

PRESENT: Chairman Baum and Members Margotta, McCarthy, Alternate Member Zuckerman; Attorney Kelly M. Naughton, Esq., Assistant Building Inspector Jim Cocks

ABSENT: Member Proulx and Member Vitarelli

Chairman Baum called the meeting to order at 8:03 pm with the Pledge of Allegiance to the flag.

1. Remo – Area Variance – (205-4-87)

Present: Mr. Thomas Remo (Applicant), Mrs. Thomas Remo and Marty Remo (Applicant's Son)

Chairman Baum advised Mr. Remo, the applicant, that with only four Board members present in the event of a tie vote an application would, by law, be denied. Mr. Remo had the option to postpone his appearance another month when there might or might not be a full board. Mr. Remo chose to proceed with the appeal at this meeting.

Secretary Doherty said that the certificates of mailing had been received in a timely manner.

The applicant was seeking relief for a prior installed shed and pool. The shed was the first issue addressed. Mr. Remo began by talking about the drainage easement that runs through his property, restricting the usable area of his yard. Trees in the applicant's yard, some of which have since been removed, exacerbated those limitations. The builder was supposed to install a drainage system in all the properties of his neighborhood. Instead, one was installed in the applicant's yard only. This has resulted in runoff from his neighbors coming onto his property. The applicant said he was trying to avoid the easement because he hoped that someday they would continue the pipe through [to the other yards].

The applicant needed to build a shed for his son-in-law's HVAC tools. His son-in-law moved in with him so that his autistic son (the applicant's grandson) could benefit from the school programs in this area. In the past a shed had been built without a building permit in a different location but it was near a tree that was struck by lightning which destroyed the shed. The applicant built the current shed, also without a building permit, last year.

The applicant and his extended family made the decision to move to Connecticut. Member Zuckerman asked about the sale of the applicant's house. How far along is it? Marty Remo, the applicant's son who is also the realtor for the sale of this house, responded that the contract is out and this is one of the issues they are waiting on before the sale can be finalized. Member Zuckerman asked, "How important is the shed to the buyer?" Marty Remo responded that the shed and the pool were both relevant to the sale of this home. Given the taxes of the school district and the fact that this property is in a flood zone, if the applicant starts removing things from the sale it is going to be hard to sustain the value.

Member Margotta asked how long the house was on the market and Marty Remo said it had been about a month. Member Margotta asked at what point the applicant realized that this shed did not have a permit? Marty Remo responded that he had always known. So, Member Margotta continued, there's no rush with this then. It is the applicant's fault for not getting to this sooner. The applicant said that he never realized he was going to move. He thought that once he was retired he would be able to get all the paperwork done. Then "everything fell through" with his daughter and her son, "everything got pushed up."

The applicant responded he would have fixed the problem first before putting the house on the market but his son, Marty Remo, wanted to get the house on the market before school starts in September. Member McCarthy said when the shed was built about a year ago the applicant didn't contemplate getting the permit. He asked, "At what point did you contemplate correcting the problem?" The applicant responded that he had just retired and he was going to address the issue. Marty Remo continued by saying that the applicant hadn't planned on installing a shed but for the fact that his daughter, son-in-law and grandson moving in with him. Family problems put the applicant, "into a panic because my sister had to get her son into Monroe-Woodbury Schools" and the applicant was focused on that rather than the house.

Member Margotta again asked at what point did the applicant plan on getting a permit? The applicant said he was going to wait until the spring as there's no sense going in the wintertime, you wouldn't be able to see anything. He said, "I messed up, I admit it, I messed up."

Member Zuckerman asked what evidence the applicant could give the board why he can't put the shed in the area next to the pool? The applicant responded that a tree used to be there; now there's a garden because the water is so bad. Member Margotta said, however, that the shed is on concrete piers so that shouldn't be a problem. Marty Remo said that the area is like a swamp. Member Margotta said that today when he walked there it was dry. Marty Remo responded that the placement, in the middle of the yard, would be odd. Member Margotta said in this area it is not uncommon to have odd placement because of easements. Member McCarthy said they were talking about the shed in terms of the applicant's present needs not with regard to the needs of whomever may buy in the future. Marty Remo said what was in the backyard was a factor in buying this house. Member Margotta said that a narrower shed or smaller shed might have worked in that area.

Marty Remo went on to explain that several houses on that street are either in foreclosure or close to foreclosure and that as more houses foreclose the value of surrounding properties will go down. The applicant added that they wouldn't be in this predicament if it weren't for the urgency to move for the sake of their grandson.

Chairman Baum said that what he's hearing is that the applicant is getting the permit only because he has to and that if he weren't moving he wouldn't be doing this.

Moving on to the pool, Mr. Remo said the same factors affecting placement of the shed existed with the pool. They had to avoid the drainage easement and a large tree in the yard. Chairman Baum asked when the pool was installed? Mrs. Remo said about 30 years ago. The pool was installed, rusted, and was replaced; then about thirteen years ago it was replaced again. Marty Remo said that there is a deck on the back of the house leading to the pool. Without a pool the deck will be rendered essentially useless. The sale of the house will be negatively impacted.

Member Zuckerman asked what happened back in 1996 when the applicant applied for a permit? The applicant responded that he did not apply for a permit in 1996, the pool was already in by then. Member Zuckerman showed the applicant a copy of a pool permit that the applicant submitted in 1996.

Member Margotta asked if the applicant ever had plans to apply for a permit for the pool? The applicant said no. Member Margotta said if you weren't planning on selling the house would you ever have applied for the permit? The applicant said yes, they knew at some point they would be moving and that they would need the permit to sell the house. It's just that this move is happening faster than they anticipated. Mrs. Remo said it was "our bad" that they did not get permits. She said once her son Marty became a realtor he told them many times that they would need permits to sell the house and she said they weren't planning on selling the house so they didn't do it. But she said they are paying the price now and they are trying to do the right thing.

Chairman Baum asked about the deck. Was it already in when the applicant bought the house? The applicant said it was but the lower deck was not. Member Margotta asked if there was a permit for the lower deck? Assistant Building Inspector Cocks said the applicant just applied for a building permit for the lower deck.

Chairman Baum said the 1996 building permit application shows a 7 foot side-yard setback but the application submitted by the applicant shows a 5½ foot setback. What happened? The applicant said that the pool was moved when it was first replaced. Member Margotta asked, when you replaced it, same thing, you didn't go before the board? The applicant responded, "Guilty." Member Zuckerman asked why they didn't go to the Zoning Board? Marty Remo said that the board already covered that; they didn't think they would be moving.

Mr. and Mrs. Remo and Marty Remo said that there are several houses in the immediate area that are in foreclosure or facing pre-foreclosure. Member Margotta responded that it seems like the applicant is trying to pressure the board into accepting a problem that was created by the applicant and could have been alleviated over the previous 30 years. Mr. Remo said we're basically at your mercy here.

Member Margotta said that variances set a precedent for others in the neighborhood, something the board has to consider. The applicant asked, but how many other people have drainage easements? Member Margotta said it's not as uncommon as you expect. Member McCarthy said there's probably a lot of that along that street.

Member McCarthy asked the applicant if he was on the Board of Trustees at one time? The applicant responded that he was a trustee from 1994 to 2006. For three years he served as mayor when Bob Bonney passed away. Member McCarthy said so you're familiar with the requirements about the Planning Department and ZBA? You ignored the fact that you should have addressed these problems sooner. In response the applicant gave a brief description of his career at that time.

The Chairman opened up the hearing to the public; no one from the public was in attendance.

On a motion made by Chairman Baum and seconded by Member Margotta, it was unanimously: **Resolved to close the public hearing.**

Ayes – 4

Nays – 0

Absent – Member Proulx and Member Vitarelli

Discussion ensued about the application before the board. The board discussed the variance for the shed first.

Chairman Baum summed up the application by saying that it is pretty clear that the applicant was aware of the requirements, he didn't bother to comply with the requirements and but for the fact that he is moving he wouldn't be coming in for a permit. However, the Chairman noted the unusual shape of the applicant's property, the drainage easement and significant constraints in developing the rear of his property. The Chairman said that if the applicant had done things in the right way and come in for a variance prior to building anything the Chairman would have voted to grant the variance. The Chairman noted that nobody came from the community to object. The Chairman felt the variances should be granted.

Member Margotta said however, that perhaps the variances would have been granted but they may have been less severe. Member Zuckerman felt that legally there was little to sustain the granting but he felt that the pool was a main feature in selling the house and it

would be bad for the Remo's and the buyer to remove the pool and change the deck to conform to code. The shed, though, Member Zuckerman had reservations about. Member McCarthy agreed about the property and pool but he reasoned there was not the same requirement for a shed with the new owner. Member Zuckerman and Member McCarthy felt it should be removed. Member Margotta said that the shed could have stayed in that spot but it should have been a different size so that it was more in compliance with the law.

Chairman Baum said that the purpose of the Board is to provide relief to applicants who cannot for some reason comply with the law. As long as they're not hurting anybody, not being detrimental to the community, not changing the character of the community, not creating any environmental impacts, and their variance is not that significant, the board is here to help them.

On a motion made by Chairman Baum and seconded by Member Zuckerman, it was unanimously: **Resolved to classify these variances as Type 2 SEQRA not subject to any further environmental review.**

Ayes – 4

Nays – 0

Absent – Member Proulx and Member Vitarelli

Member Margotta motioned to approve the application for both variances with the condition that the variances expire when the pool or shed is replaced. The motion died.

On a motion made by Member Margotta and seconded by Member McCarthy, it was unanimously: **Resolved to approve the application for an area variance for the pool for a reduced side setback with the condition that the variance expire when the pool is destroyed or replaced.**

Ayes – 4

Nays – 0

Absent – Member Proulx and Member Vitarelli

Chairman Baum motioned to grant a variance for the shed. The motion died.

On a motion made by Member Margotta and seconded by Chairman Baum, it was unanimously: **Resolved to approve the application for an area variance for the shed for a reduced side setback with the condition that the variance expire when the shed is destroyed or replaced.**

Ayes – 2 (Chairman Baum and Member Margotta)

Nays – 2 (Member McCarthy and Member Zuckerman)

Absent – Member Proulx and Member Vitarelli

The motion was denied. The applicant will have to remove the shed or move it into an area in compliance with the Building Code.

ADOPTION OF MINUTES FROM MAY 12, 2015 MEETING

On a motion made by Chairman Baum and seconded by Member Zuckerman, it was unanimously: **Resolved that the minutes be adopted.**

Ayes – 3

Nays – 0

Absent – Member Proulx and Member Vitarelli

Abstaining – Member Margotta (Absent from May meeting)

ADJOURNMENT:

On a motion by Chairman Baum, seconded by Member Margotta, with all in favor, **there being no further business, the meeting was adjourned at 9:03 pm.**

Ayes – 4

Nays – 0

Absent – Member Proulx and Member Vitarelli

Respectfully submitted,



Elizabeth Doherty
ZBA Secretary