

**VILLAGE OF MONROE  
ZONING BOARD OF APPEALS  
MEETING  
JULY 11, 2017  
MINUTES**

**PRESENT:** Chairman Baum, Members Margotta, Martuscelli, McCarthy and 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. James Impallaria – Area Variances (233-5-15)**

The application of James Impallaria, pursuant to the Village of Monroe Zoning Law, Section 200-24 (H) for an area variance to permit the construction of 10' x 16' open deck attached to the rear of the main dwelling unit with less than the required minimum rear setback. The proposed rear setback is 14' from the property line, not the required minimum setback of 44'.

A second variance is sought pursuant to the Village of Monroe Zoning Law, Section 200-22 (c) for an area variance to construct an 8' x 51' roofed front porch addition attached to the main dwelling unit with a 30' front setback, not the required 40' as indicated in the Table of Bulk Requirements. The property, which is the subject of said action by the Board, is located in an SR20 Zoning District and is identified as Section 233, Block 5, Lot 15 on the tax map of the Village of Monroe and is also known as the address 27 McGarrah Road.

This was a continuation of the public hearing opened on May 9, 2017 and adjourned to June 13, 2017. The public hearing on June 13, 2017 was cancelled due to lack of a quorum. Member Zuckerman and Member McCarthy were the only board members who attended. Member Zuckerman noted for the record that no one from the public was in attendance.

Secretary Doherty advised Chairman Baum that Mr. Impallaria could not attend due to a personal emergency. Mr. Impallaria requested that the public hearing be adjourned to August.

On a motion made by Member Margotta and seconded by Member Zuckerman, it was unanimously: **Resolved to adjourn the hearing to August 8, 2017:**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

2. **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., David Niemotko, Architect, Karen Arent, Landscape Architect, Jim Nelson, Town of Monroe Historian**

- a. A review of an administrative determination of the Assistant Building Inspector (now Building Inspector) and an interpretation to permit the use of an “Assistant 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 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

Mr. Mitts began by giving a preliminary statement which is contained in the file.

Mr. Cappello distributed building plans of the first, second and third floors of the building and the basement (Exhibit A). He said that the first floor contains the common areas: kitchen, dining room, living room, foyer and recreation. These rooms are essentially the same character as they were in 1903 when the building was built. It has the original wood floors and wood moldings. Mr. Cappello said that this building was used back in the 1900’s as a summer retreat for blind people, including Helen Keller who visited the site often. This was the area where they congregated. Most recently it was used by ARC for the same purposes.

The second floor contains six bedrooms and a shared bathroom. Each of the bedrooms has access to a flat roof.

Chairman Baum asked how this information relates to the application and the use of the premises?

Mr. Cappello responded that he is presenting the position of the interpretation as it relates to the continuation of nonconforming use. On the first floor the use will be a common area for a group of people who are living in the home just as it was used by AHRC prior to the purchase of this property. The sleeping units on the second floor were used and licensed for up to 12 individuals to live in a group home as licensed by the Department of Health (DOH). Those six bedrooms will now be used in the same manner as they were used before, by adult

senior citizens who need some care. There will be a 24-hour care giver to help and assist these people just as there was previously for the developmentally disabled. The license is for up to twelve individual seniors to occupy the facility which is the same number as the number of developmentally disabled people that occupied them previously.

The third floor is for staff to sleep in or for live-in help. The AHRC had discontinued this because they couldn't afford the upkeep because this is such a large building. This will be used by Mr. Mitts as his residence which is consistent with the single family use. And it will also be used by Pamela Lee, the applicant, and who will be the operator of the facility.

There are no changes proposed to the facility as it operates in the building.

Mr. Cappello said that there are 17 parking spaces around the building which will remain (Exhibit B). There is no work proposed to the driveway other than enhancing the landscaping. There are no proposed changes, expansions or disturbances to the site. It will remain as it existed when AHRC used it previously.

Mr. Cappello presented copies of two letters from the New York State Department of Health Licensing and a letter from the Department of Mental Health / Orange County Community Mental Health Center (Exhibit C). The letters from NYS DOH state that AHRC was licensed as a Medicaid-entitled Intermediate Care Facility for the Mentally Retarded (ICF/MR). The Letter from the Department of Mental Health / Orange County Community Mental Health Center is in support of a Certificate of Need application.

Mr. Cappello also presented copies of a "Change of Operator" application to the NYS DOH from Ms. Pamela Lee and Mr. Timothy Mitts (Exhibit D) for the "Lee-Caldas Adult Home" now known as the "Rest Haven Adult Home." The application describes the "typical profile" of their residents as "middle to upper middle class female" over the age of 60 and outlines services that will be offered such as "meals, laundry, RN, housekeeping services, pharmacist medicine review and immunization shots" as well as other less critical services such as transportation to the local Senior Center and Post Office and offering different types of entertainment. Mr. Cappello summed up by saying this is not a total care facility, but rather a place where people can live independently and have meals provided, a refrigerator that they can use, someone to help make sure their medicine is dispensed correctly, etc.. Mr. Cappello said these are "in essence exactly the same as the services that were provided for the developmentally disabled folks who were living there." Mr. Cappello said the "actual use provided is essentially the same."

Chairman Baum asked if the adult use is regulated and licensed by the State? Mr. Cappello responded that it was.

Member Zuckerman asked if this would be a non-profit? Mr. Cappello responded that it would be for-profit.

Member Margotta asked if there would be a limit on the number of vehicles on the property? Mr. Cappello said there will be 17 parking spaces. The adult residents probably won't have any parking spaces and two or three spaces would be reserved for the permanent residents and the rest would be for staff and visitors.

Member McCarthy referenced the May 15, 2017 letter addressed to the Mayor and Board of Trustees to which is attached a Rezoning Petition signed by Mr. Mitts on May 9, 2017. In that petition Mr. Mitts talks about permitted uses such as, "care of persons recuperating from illness and/or providing community housing." Doesn't that leave the probability of apartments or condos?

Mr. Cappello responded no, that the petition was written in response to points made in the Comprehensive Plan, specifically the need to preserve these larger, historic homes so that they're not cut up into apartments. Two of the suggested uses are bed and breakfasts or group homes. The Village Code currently has a definition for convalescent homes which is for recuperating of illnesses. So as to not totally re-work the code Mr. Mitts used that definition with the request that it be slightly amended to allow convalescent homes as a permitted use in the SR-10 zone subject to certain conditions. Mr. Cappello continued saying that right now convalescent homes are only permitted in SR-20 zones. He posited that you could make an interpretation that this type of use would fit in that definition. Mr. Cappello said he is asking that the definition be clarified so that it specifically includes adult residences that supply some limited care. He further stated that there is no intention to alter the character of this building: no intent to divide it into condos. As we go through the use requirements in the code it is something your code almost encourages which is why we're asking for a use variance to allow us to exactly not have to do what Member McCarthy suggested.

Member Zuckerman asked about the idea of breaking up the building into smaller apartments that Mr. Cappello referenced. Is that based on it being in an overlay area? Mr. Cappello responded saying that the building is not in an overlay area. What he meant was breaking it up into a two-family residence.

Member Margotta clarified that Member McCarthy was not suggesting that the building should be divided into two separate apartments.

Mr. Cappello then discussed Building Inspector Cocks' Land Use Determination letter. In it Building Inspector Cocks said that the ARC facility was permitted based upon it being a single family home, citing New York State Mental Hygiene Law §41-34(f) which states that if certain procedures are followed a group home specifically for the developmentally disabled is considered a single-family home. Mr. Cappello distributed a copy of the New York State Mental Hygiene Law (Exhibit E). Referring to §41-34(c) which states that "the chief executive officer of the municipality be notified in writing of the specific address of the site, the type of community residence, the number of residents and the community support requirements of the program." It further states that "the municipality shall have forty days after the receipt of such notice" to respond and that "If the municipality does not respond within forty days, the sponsoring agency may establish a community residence at a site recommended in its notice." Mr. Cappello said that a review of the Village's records shows that no such letter was ever filed nor did anyone at ARC know of any such letter.

Member Zuckerman asked why that might be? Mr. Cappello said he did not know. Member Zuckerman said that §41-34(c), known as the Padavan Law, was effective September 1, 1978 and was not retroactive. Member Zuckerman asked, "What if ARC moved in there prior to that date?" Mr. Cappello responded that it goes even more to the point that this facility is entitled to go there not under the provisions of the Padavan Law but as a continuation of a non-conforming use, historically as a school of the blind or other uses which may have not been permitted.

Member Zuckerman said that Mr. Cappello was not taking into account case law. If there was case law at the time prior to Padavan which stated that these types of facilities were single family facilities that were allowable in these zones, then this would have been allowable prior to Padavan and without the letter. Mr. Cappello responded that then there would have been no need for the Padavan Law. He said what we are proposing here is a group residence for people who need some assistance, not under the developmentally disabled criterion that is specific to the Padavan Law, but as prior case law it would have been more general. It would have said that a group home can occur and that that facility is a group home. What we are proposing to do is consistent with that pre-existing non-conforming use and should be entitled to the same deference that the facility just prior used there. It's considered a group home under NYS DOH law, it's licensed by the same agency to operate, it just does not have a specific law such as the Padavan Law that says it's a single family home but if you go by prior case law and generically say "group home" then this is a group home and should be entitled to continue as a pre-existing non-conforming use.

Chairman Baum asked Mr. Cappello if he was saying that the use of the premises for adult care is considered a group home? Mr. Cappello responded adult care, living as a group, living independently, is considered an independent care facility. It's just not protected under

that specific code of the mental hygiene law. It's still living as a group and still licensed by the DOH. Chairman Baum asked again, are these considered group homes, adult care facilities, or assisted living facilities? Mr. Cappello responded that they are independent residences. There is no legal term "group home." That's a zoning term.

Chairman Baum asked about the proposed use HRR Corp. wants to make of the house now. What section of NYS Law is it licensed under? Is it mental hygiene law, social services law? Mr. Cappello responded that it was §14 NYC RR 686-3(a)3. Mr. Cappello read from the zoning code from 1967 that was in effect when ARC applied for their facility sometime around 1978:

Individual Resident Alternative which are designed for people who do not routinely require onsite clinical services. All people residing in an IRA are encouraged to actively participate along with their families in the development of their program plan. Through this participation people exercise the opportunity to shape their own futures by deciding what they like and need to learn. They offer 24-hour- a-day supervision from trained staff.

He said it would be an individual residential alternative for adults in need of assistance. Member Zuckerman asked if Mr. Cappello was saying that this section is for a developmentally disabled individual? Mr. Cappello responded that it was not for the developmentally disabled but rather for a group home.

Mr. Cappello distributed copies of pages of some old zoning code provisions (Exhibit F) that show this building was in the R75 district. Mr. Cappello believes the applicant's use is a continuation of the ARC use, independent residents facility (sic), that was permitted. At that time the special uses for the R75 zoning district referred back to R175 which permitted general medical and surgical hospitals. It could have proceeded under that. There's no record of anything. There's no record that it was allowed under the Padavan Law proceedings and if it was prior to Padavan Law or if the procedures weren't followed it would have been occupied as a group home or an independent care facility. Our position is that we are proceeding in the same manner.

Member Zuckerman asked about sovereign immunity. Wouldn't sovereign immunity oversee this? Mr. Cappello responded that if sovereign immunity oversaw it then why is there a Padavan Law? Member Zuckerman responded if this is prior to Padavan Law then sovereign immunity would take effect. Mr. Cappello responded that there are group homes all through the region where ARC follows the procedures for Padavan Law. They didn't follow it here because it may have been before Padavan Law or they didn't need to. Today they would have to.

Building Inspector Cocks gave Chairman Baum a copy of a certificate of occupancy for this building dated August 1, 1977 for a ten-bedroom year round single family dwelling structure situated in an R-75 (single family dwelling) zoning district issued to John F. and Helen M. Lantz. Mr. Cappello said Mr. Lantz was an engineer who owned the property prior to selling it to ARC. He had his office there.

Chairman Baum asked since this is the last CO we have on the structure is it possible that it was converted to a group home for the mentally disabled without any approvals from the Village? Mr. Cappello added that it didn't need it because it was a continuing use or it was a group home that wasn't covered by the Padavan Law. Chairman Baum said it wasn't continuing if the CO was issued in 1977 for a single-family home. Mr. Cappello responded that then it therefore was allowed under a group home but not under Padavan Law, under the prior case law that says group homes for those facilities are considered a single-family use. He said that they have an argument that they're doing the same thing. If it were Padavan Law that says it's specifically for developmentally disabled (there is nothing in the record that shows it) then they don't have an argument.

Member Zuckerman then read from page 1 of Exhibit F, §47-9A. Permitted Uses: (1) Single-family detached dwelling; and from page 2 of Exhibit F, §47-6C. Accessory Uses: PROFESSIONAL OFFICE IN A RESIDENTIAL BUILDING. Member Zuckerman said that John Lantz resided at this location and he had a professional office there. Mr. Capello said, "I'm not arguing, I agree with you" but there's nothing on that CO that indicates it's a permitted home occupation. Member Zuckerman then said that it was allowable under the code that existed at that time. Mr. Cappello responded that it was not referenced in the CO and the CO would have to demonstrate that the facility was the allowable size in terms of the space it occupied and the number of employees who worked there.

Member Zuckerman said that John F. Lantz and Helen M. Lantz owned this property from 1968 to 1986. ARC didn't come in until 1978, so for at least 10 years it was a single-family residence and after that John F. Lantz was the landlord to ARC.

Mr. Cappello distributed prior and present county assessments which list the facility as a health building (Exhibit G) and a letter from April McDonald, the Town of Monroe Assessor (Exhibit H). Chairman Baum read out loud the assessor's letter:

I would like to clarify that the property class codes are used to classify property based on the primary use of the parcel. The codes have no bearing on the building or zoning ordinances. After speaking with the New York State Office of Real Property and Tax Service, as well as other Assessors in the county, I found that the most appropriate class

code for this property was 642-health building. The reason for this is that all other “group home/assisted living facilities” in Monroe and the majority in Orange county use this code. One of my primary jobs as the Assessor is to make sure that the assessment roll is uniform. They are used to classify the primary use and to value “like” properties.  
Very truly yours, April McDonald.

Mr. Cappello said that the building is not listed as a group home and that the Town of Monroe’s assessment record lists it as a home for adults. Member Zuckerman asked if Mr. Cappello was conceding the fact that in the letter from April McDonald, the assessor to the Village of Monroe, the codes have no bearing on the building or zoning ordinances? Mr. Cappello said yes but he argued that it is relevant given all the ambiguity. Member Zuckerman asked if it is was Mr. Cappello’s position that he was going to obtain a 642 for this property? Mr. Cappello responded that he was. Member Zuckerman asked about a 633, homes for the aged? Mr. Cappello responded that the assessor will determine what kind of facility it is. It will be a licensed facility. He said that he believed HRR Corp. will be giving care. They will be continuing the same use. Mr. Cappello cited NYS Court of Appeals case Allen v. Adami which states that when there is an ambiguity in the records the presumption goes in favor of the property owner because zoning is in derogation of property rights. Everything that we have shown here demonstrates that there are some real questions about this and you can come to the logical conclusion that would support a determination that this is a continuation of the pre-existing use of an independent care facility, group home, giving care to individuals in a community setting and giving them freedom and accessibility. Not under Padavan law but giving everything that they’ve submitted that is a logical conclusion that you can come to.

Having summed up his arguments supporting a review of the interpretation, Mr. Cappello began discussing his arguments in support of the requested Use Variance. Chairman Baum asked if Mr. Cappello would be giving financial information in support of a Use Variance? Mr. Cappello said yes.

Mr. Cappello began by distributing a letter from William E. Krattinger, Historic Preservation Program Analyst from the NYS Office of Parks, Recreation and Historic Preservation (Exhibit I) confirming that the property is eligible not only for the national historic register but also for the national register of homes. Mr. Cappello read from the attachment to this letter, a printout from the US Department of the Interior National Park Service / National Register of Historic Places Registration Form:

This house remains an impressive specimen of early twentieth century domestic architecture rendered in a distinctive Colonial Revival vein and it maintains salient



historical associations with efforts to promote the welfare of the blind by the Migel family, Helen Keller, and others. It survives largely as built ca. 1903 with minimal alteration.

Mr. Cappello said that there is also a letter on Senator Schumer's website in support of this designation (<https://www.schumer.senate.gov/newsroom/press-releases/schumer-orange-countys-rest-haven-home-deserves-special-fed-designation-senator-cites-homes-long-history-of-providing-services-to-blind-including-icon-and-activist-helen-keller-senator-urges-nps-to-add-rest-haven-to-national-registry-designation-will-help-preserve-landmark-helen-keller-legacy-and-draw-attention-to-the-cause>). A copy of this has been added to the file.

Mr. Cappello distributed a copy of the US Department of the Interior National Park Service's National Register of Historic Places Registration Form (Exhibit J). Mr. Cappello said this is an amazingly unique building. Chairman Baum said that being a unique building is not a standard for granting a use variance. Mr. Cappello disagreed, saying the being unique to the property was one of the four standards for granting a use variance. Attorney Naughton said that the criterion is that the alleged hardship relating to the property in question is unique, not that the property itself is unique. Mr. Cappello said that the hardship is unique because it's a historic, unique property.

Member Zuckerman asked if Mr. Cappello was saying that this building was never designed to be a single or two-family home? Mr. Cappello said yes. When the home was built it was part of a larger Migel estate encompassing 225 acres of land. It was part of several homes and it was an education retreat. Over the course of years the size of the property diminished. The last person to subdivide the land was Mr. Lantz back in the 1970's.

Member Zuckerman said that the American Foundation for the Blind sold the house to Henry Rhine and Anne Rhine in 1968. Rhine sold the house and property, which was three acres, to Lantz. Then around 1974 the property was then further divided into one two-acre parcel and one one-acre parcel. Mr. Cappello said that over time the building fell into disrepair.

Mr. Cappello distributed a letter with attachments from Remax Realtor Mary Liegey (Exhibit K) which showed that in 2008 and in 2009 the home was listed as single-family. The listing expired without any buyers in 2011. Attached to the letter from Ms. Leigey is a letter from Gem Star Capital Managing Member Raymond Knox in which he concludes that this property is a "White Elephant" and that he concludes that he cannot get "funding on this project as a single-family residence." The second attachment to Ms. Leigey's letter is a printout from Zillow.com which shows the declining estimated price for the house. In 2008 zillow.com estimates the house price to be \$1,100,000. The estimated price dropped every

year until 2016 when it was \$599,000. HRR Corp. purchased the home on September 13, 2016 for \$450,000.

Member Zuckerman asked about the listing on Zillow.com. This was when the house was owned by AHRC and it was listed as a single-family residence. Doesn't that suggest that they thought of the house as a single-family residence? Mr. Cappello responded that they were advised by a realtor who said that they could get the most money by saying they were a single-family residence. He said you can sell the house for whatever use is permitted. He added that doesn't mean they weren't licensed and had a pre-existing non-conforming use as a group home. Member Margotta said that if there was another use then why wasn't that included in their listing? Mr. Cappello said that they followed the advice of a realtor who said they could get the best price as a single-family residence. But there weren't a lot of people standing around saying we want to have a home for the developmentally disabled. Member Margotta responded that he wasn't suggesting they not list it as single-family but if there were another available use why didn't they list that as well? Mr. Cappello did not have an answer. Member Margotta also pointed out that at that time there was a nation-wide slump in the real estate market. Prices were lower everywhere.

Mr. Cappello distributed financials (Exhibit L). Mr. Cappello said the house had suffered a lot of neglect over the years. He said that to date HRR Corp. has spent \$240,294 and he estimates that another \$246,291 will be necessary to complete the renovations to bring the house up to date. Most of this will be spent on the exterior. Mr. Cappello estimates that the total carrying costs per month after all renovations are finished will be \$7,200 per month and that the market rent for a single-family is approximately \$5,600 per month. There is also an estimate to convert the residence to a two-family residence.

Chairman Baum asked if Mr. Cappello had backup for these numbers? Mr. Cappello did not have any backup with him. Chairman Baum asked if Mr. Cappello could bring documentation, such as copies of invoices, to the next board meeting to substantiate the costs listed in Exhibit L.

Member Zuckerman asked if, having gotten the OK from the National Register of Historic Places does that eliminate any subdivision of this property? Mr. Cappello answered that it would require a heightened review and they might lose the designation. Member Margotta interjected, so the designation does not preclude the subdivision but the subdivision would preclude the designation? Mr. Cappello said yes, and the designation as part of any SEQRA review that you undertook.

Member Zuckerman confirmed that there were no estimates of what HRR Corp. would get if they divided the property into two one-acre lots and sells that? Mr. Cappello answered, “No, not yet.” He said he could get figures for the Board if that’s what they want.

Mr. Cappello distributed a copy of the Village of Monroe’s Zoning Code, Chapter 200. Zoning Article XIII. Parking and Loading (Exhibit M). He said that another use that is permitted in the zoning district is religious assembly. For religious assembly they would have to make changes, the most difficult of which is to the parking area. There need to be .43 spaces per attendee. Based upon being able to provide 17 spaces you would only be able to have 38 people attending a service. If you want to increase space you would have to knock a lot of the vegetation down, possibly lose the historical designation, and absorb those additional costs as well as the \$965,237 shown in Exhibit L. Mr. Cappello didn’t know of any religious group that would be willing to invest upwards of \$2,000,000 in funds in this facility.

Chairman Baum asked if Mr. Cappello that was there is no way that this could be used for a religious use because of the parking requirement? Mr. Cappello said no, in order to get a reasonable rate of return on the investment so far of \$965,000 you would have to include the repairs needed to the site beyond the \$965,000 which would be removal of a lot of the vegetation and blacktopping for additional parking. It would still have to go through site plan review for that use which would be quite costly, including variances which would bring you up to well over \$1,000,000. He said we don’t believe there is a market for that. Chairman Baum questioned this. He said we need to know, dollars and cents, through hard proof that you cannot use this for any allowed use in the code.

Mr. Cappello distributed a copy of the Village of Monroe’s zoning code §200-60. Bed and Breakfast (Exhibit N). The requirements for a bed and breakfast are limited to five bedrooms and this house has 10. That would require another variance on top of the use variance.

Member McCarthy said he was confused about this. He said, we went from a home for the blind and presumably the people who lived there were supported by the state or the county or both, then we went to a home for the mentally disabled which presumably had the same support system, and now what you’re proposing is for about 12 people. Member McCartney said he fails to see how it can be run except in the red. Mr. Cappello responded that there are eight bedrooms that would be rented to provide care.

Chairman Baum asked if the renters would lock the doors to their bedrooms? Mr. Mitts responded that it’s their room, if they feel secure that way, that’s their choice. Member Margotta asked if there are locks on those doors? Mr. Mitts said no. Member Margotta asked if adding locks would impact the designation as a historical building? Mr. Mitts said

that the big change that would eliminate this property from the historical register is the removal of walls, floors, staircases, flooring. Mr. Mitts said that in four months he was able to get the state of New York to give them “what we wanted” and now they’ve moved the file up not only to the National Registry that they’re on now but they’ve moved it up for recommendation as a National Landmark in Monroe.

Member Margotta said, what you’re saying is that you’ve spent a lot of time and money restoring this building, and you’re saying they can put their own locks on these doors, drill them in. Mr. Mitts said that the locks won’t make a difference. Mr. Margotta then said that it seems like there are a lot of destructive things that could happen throughout this building that could diminish this property. Are there going to be restrictions upon what people can do or are you just going to rent the building and forget it? Mr. Mitts said no, he is going to make sure the building stays the way it is. He doesn’t want anything to change. He is not going to subdivide the property. The building is beautiful the way it is. There is no reason after 114 years to throw locks on doors or anything else like that unless there’s I’m given a valid reason for doing it. I want to maintain it as it is.

Mr. Cappello addressed the uses of non-commercial recreation and agriculture. He said if they cannot charge for recreational use then they cannot make a reasonable rate of return on a million dollar investment. He asked Chairman Baum if he would like financials on that? Chairman Baum said the Board will take it into consideration whatever documentation he submits that he feels is necessary to prove his case. In terms of an agricultural use, Mr. Cappello said he’s not sure what they could do with two acres land. Again, he doesn’t think they would get a reasonable rate of return.

Mr. Cappello distributed a report listing homes over 5,000 square feet in this area (Exhibit O) to demonstrate the issue of uniqueness. There are only five homes on the list and two of those homes are on substantially larger properties. Being a house of this size on a small lot, the hardship is unique in trying to market and sell this lot.

Mr. Cappello distributed a copy of the recommendations from the Comprehensive Plan (Exhibit P). With respect to altering the character of the neighborhood Mr. Cappello said that the applicant believes that restoring this house and leaving it as one unit functioning as a group facility, maybe with locks on the doors but otherwise retaining the historic character will improve the character of the neighborhood rather than alter the essential character. Frankly, converting it to a two-family, which is a permitted use, would alter the essential character of the neighborhood. Allowing religious assembly or a commercial use would cause traffic and would have a greater impact on the essential character of the neighborhood than the use proposed.

Mr. Capello suggested that the provisions from the Comprehensive Plan actually suggest and promote the use of these historic homes. The plan recommends not cutting them up into smaller units. The plan specifically encourages eliminating two-family uses as permitted outside the multi-family conversion overlay zone (please see page 37) as a way to promote and safeguard the area. Mr. Cappello quote from the Comprehensive Plan, “Recommendation H2.2.3: Encourage alternative reuse of large homes in the North Main Street Area by allowing additional reuse opportunities including professional offices and group homes.” Although this references North Main Street Mr. Cappello pointed out that the applicant’s property was the largest of the homes in this area. He said that it would not be good for the character of Monroe to divide this property into 10,000-square foot lots which would then probably require the demolition of this home. He said, “I don’t think anybody would be happy if that were the end result of this.”

Member Zuckerman pointed out that the zoning code that was passed after the Comprehensive Plan does not allow for any multi-family overlay districts. Attorney Naughton said that under the new zoning code two-family homes are not permitted in the SR-10 zoning districts.

Mr. Cappello addressed the issue of self-created hardship. He provided a letter from Mr. Mitts’ former attorney, Richard J. Croughan (Exhibit Q). The technical provisions of the law require that you’re imputed with knowledge of the zoning. In March 2016 Mr. Mitts made a request for a Land Use Determination. After he received the Land Use Determination form he filed his appeal to this Board. Then he found out that a moratorium was in effect in the Village which meant that his application would not be heard. He had to move on the contract by April 2016. Mr. Mitts signed the contract to purchase the property not knowing if it could be used for the intended purpose (a group home that would be a continuing non-conforming use) because he risked losing the down payment that he made. Due to the moratorium his appeal was delayed for over a year.

Chairman Baum asked Mr. Cappello to confirm that Mr. Mitts had the Land Use Determination form before he signed the contract. Mr. Cappello confirmed that he had but he didn’t have a determination from the Zoning Board of Appeals. There is case law Center Square Association v. City of Albany Zoning Board of Appeals, a Third Department case, 19 AD3d 968 which states under the circumstances a Board can rationally decide that the hardship was not self-imposed if the applicant was under a good faith belief that the property could be continued as non-conforming.

Mr. Cappello said that he was finished with his presentation and was ready to present his witnesses. At this point Chairman Baum said that when this application was first filed it was filed under SEQRA as a Type 2 Action, but since it has been amended to request a Use

Variance it now becomes an Unlisted Action under SEQRA and the Short Environmental Assessment form must be updated before the application can proceed.

Mr. Jim Nelson, Town of Monroe Historian, came forward. Chairman Baum asked him to affirm that his testimony was true. Mr. Nelson said, "I do." Mr. Nelson gave a short history of this property. It was built in 1902 by Charles McKendrick who lived there until 1923. M.C. Migel bought the home from Mr. McKendrick and named it Rest Haven. Mr. Migel invited blind women mainly from New York City to vacation there in the summer. The twelve-day vacation, including transportation, meals and boarding, was something the visitors could have never afforded. Mr. Migel paid for everything. It was a lifeline for them. Mr. Migel spent a total of \$200,000 for these women, which in today's money would be the equivalent of \$3,500,000. Helen Keller, who was on the Board of Directors for the American Federation for the Blind, visited Rest Haven. In 1943 Mr. Migel donated Rest Haven to the American Federation for the Blind. The Foundation owned and operated Rest Haven until the death of Mrs. Migel in 1967. Mr. Nelson highlighted some of the accomplishments of Mr. Migel in enhancing the cause of the blind. He was involved in establishing a universal braille system in English. He was appointed Chairman of the New York State Commission for the Blind. After World War I, he went to France to take charge of nearly 3,000 blind American soldiers and sailors. He returned to establish the Evergreen School in Maryland to rehabilitate and educate those returning servicemen. He was responsible for instituting many of the state and federal laws and legislation to help the blind. He was a founding member of the American Foundation for the Blind, serving as its first president from 1922 to 1945. Then he served as the Chairman of the Board until a year before his death in 1958 at the age of 92. He also donated most of the money to build the headquarters for the American Foundation for the Blind in New York City.

Mr. Nelson remembers growing up on High Street and seeing the blind women with their chaperones walking around the premises and he remembers seeing them around the village. Sometimes they would gather at Paul's Pavilion, which is today Al Smith's Park at the beginning of Round Lake, and one of the ladies would play the piano while the others sang. It was always a very festive time.

Mr. Nelson said that the house has stood on High Street for 115 years and has seen better days. The building gradually fell into disrepair and decay, having broken pipes. In 1916 (sic) Tim Mitts came forward and purchased it with the dream of repairing and restoring it to what it once was in 1902. Mr. Nelson closed by saying the Mr. Mitts has done a wonderful job so far in pursuit of this and he urged people to visit the house.

Chairman Baum opened the meeting up to the public. Dawn Salka and her 24-year old daughter Colleen came forward. Ms. Salka explained that Colleen is deaf, blind and has

cerebral palsy. Ms. Salka resides at 25 Water Road. Ms. Salka wanted it noted for the record that her request for an interpreter for two deaf people who wanted to come to tonight's meeting was denied because she was told it we were not required to provide one. Chairman Baum interjected and confirmed that he had received Ms. Salka's request this morning. Chairman Baum explained that a call was made to one of the foremost authorities at the New York State Committee on Open Government. We were advised that we as a municipality did not need to provide an interpreter in sign language. Chairman Baum said that any person could attend the meeting and bring an interpreter with them.

Ms. Salkas disagreed citing ADA Title 2. She continued, saying she would love to hear why people don't want to have this house. Why, she asked? Is it because you're afraid of them stealing? You don't want people drooling, rocking on the front porch? I would love for you to meet my daughter. But if you choose to say no, please come to her face and tell her we don't want people like you living here with us.

Mona Rubenstein, 222 High Street, addressed the Board. Ms. Rubenstein lives next door to the applicant's building. Ms. Rubenstein said that she and her family have lived there for 32 years. She said that from the time she purchased her home until September of 2016 when Mr. Mitts purchased the house next door she and her family always maintained an excellent relationship with their neighbors. For decades 236 High Street was maintained by AHRC as a group home for adults with disabilities. Even though it was a group home it was organized as a family home with an average of five to eight adults at a time, three to four live-in staff members and a weekly visit from a psychologist.

There was never an undue number of cars going in and out at all hours of the night. A bus would come in the morning to take the residents for occupational schooling and return them at 5pm at night.

The home was maintained with gardeners and maintenance workers. They had a vegetable garden and would bring us vegetables. And we would bring them left-overs from the Temple services on Friday nights. Our daughters would visit and do the nails of the women who resided next door. Even though new houses were built on High Street it remained a residential street, free of commercial properties and for-profit interests.

Ms. Rubenstein said that Mr. Mitts intends to change that. Since purchasing the home Mr. Mitts has posted a large plastic sheet sign on his property, which is against the law, advertising the restoration and preservation of Rest Haven incorporate. Signage is not allowed on residential streets. In addition, without permission from the Town (sic) or his neighbors Mr. Mitts hosted photo sessions on prom night. He didn't just invite the seniors and their dates, but families, relatives and friends. Hundreds of people turned out, vehicles

lined both sides of High Street, creating a traffic nightmare. If an emergency vehicle needed to get up High Street, it wouldn't have been able to get through. Cars had been directed by people employed by Mr. Mitts, to turn around on people's lawns and driveways. Mr. Mitt's doesn't have a student that went to Monroe-Woodbury and had no reason to invite the senior class to his property except to drum up interest in his commercial aspirations and have their parents return the favor of coming out to support the change in variance law.

It's very clear that he intends to use this property for commercial purposes despite the fact that he and his associates have long known that the land is zoned for residential use only and it must remain so. The residents of High Street vehemently object to any change in zoning of 236 High Street and have signed a petition stating our objections (Exhibit R). As long-time residents, we have concerns that the type of commercial interests in the middle of our quiet residential neighborhood would decrease property values, put significant traffic problems and invite a stream of non-resident visitors all hours of the day and night. Moreover, Mr. Mitts previously indicated his intent to operate a nursing home or elder care facility but we're not exactly sure what he would like to do with this property. Not only would this affect property values and residential neighbors but it would disrupt the use and enjoyment of private homes. A nursing home would necessarily result in noise disruption caused by ambulances running in and out of the property as well as excessive visitors to the home. Further a nursing home requires around the clock employees who would be arriving or departing the property during workday evening hours.

In summary a zoning change from residential to commercial use would create a host of problems to our neighbors. Several of us purchased our homes in expectation that we would be surrounded by actual neighbors, not business, strangers or excessive noise and traffic. Given the significant taxes paid by village residents it's simply unfair and incredibly unreasonable to ask that we give up our quiet neighborhood so that Mr. Mitts can make a few bucks.

If Mr. Mitts or his partners want to reside at that property as their home we welcome them to the neighborhood. If they don't they have an option to sell the residence to a family that understands they would be living in a loving residential area where their children can walk to the park, library, movie theater, village shops, ice skating in the winter on the Pond, fishing in the Pond in the summer, enjoying the concerts, the fairs, fireworks of our village, just like our children and grandchildren love to do.

Member Zuckerman asked when Ms. Rubenstein moved here? She answered that they moved here in 1985.



Patricia Efinger of Two Chatham Road addressed the Board next. Mrs. Efinger began by saying she moved here back in 1980/81. She said that they never had a problem with the residents at the home. They would be out in their yard and we were very friendly with them. My children were very friendly with them. There's nothing to be said about someone with disabilities. This has nothing to do with that. We live in a residential area. We're not looking for a commercial enterprise. We don't mind if it's a historical site. We walk through the Village of Monroe and we see historical sites every day. I'm not looking for it to be a recreation and a fun facility or something like that. Nor am I looking to see some of the uses that I've heard ascribed to this use variance. There is no way, shape or form that Monroe should be contemplating this type of thing at this time. We need to first of all have a comprehensive idea as to what we would like our community to be and not just cavalierly say we can open it to anything or anyone. And having someone tell me that because some use was done once upon a time that it should be kept again, or that someone has a hardship because they spent money to enhance something. That's the same as anybody doing a flip on a home to get more money. That's fine, if you want to do that you take the chance. If you lose, you lose. If you win, you win. But you don't stand there and ask everybody to assume the costs because you wanted to do this.

Regarding having more or less occupants, it said that there are six rooms and up to twelve people are allowed to be there. I have no problem with that. I do have a problem if the third floor or fourth floor is now opened. I do have a problem with having this facility start to take in people who are not senior citizens because this is what the approval or the recommendation was. It's for senior citizens in need of assistance. Ms. Efinger said that she has worked in nursing care facilities and she knows what it's like. You have to have people there all the time. It's not easy taking care of those people. We cannot stand there and say that what we have with these adults is only going to be that. It's not going to give them the return on a commercial property that you're talking about, based on what Ms. Efinger pays for her mother in a nursing home now. Those kinds of things do not make for good neighbors. Having just twelve residents? It's just not working that way, not with the amount of money that you've been talking about.

Mr. Mitts is also talking about an extended family. If people are coming and they're visiting are we going to have adults and children visiting and staying for a period of time? And if so do they get to be an extended family living on that facility? If so that is not the recommendation; that is not anything that is allowed in a nursing facility. If we want a nursing home and we think we need a nursing home, we should not be doing it in a historical setting. If we want to do this as a historical home, that would be a wonderful idea, and I definitely think it should be. But historical homes have criteria that have to be met. A group home and a historical home are not conducive to being the same thing.

Ms. Efinger thanked everyone for listening to her.

Tom Kemnitz, residing at 247 High Street since 1985, addressed the Board. Mr. Kemnitz said that like his neighbors they had a very pleasant relationship with AHRC over many years. There was never an angry word between us and them. They were a welcome part of the neighborhood. We were happy that that was a residence run by a reputable non-profit organization run for the benefit of the residents there.

I am very uncomfortable with the proposal for a for-profit business in our neighborhood. On High Street there was a veterinary hospital at one point, a doctor's office at one point. If you grant this, what is to say that those people don't come forward and say we want to be able to run what used to be run at those properties? We have a residential street but where do you draw the line once you open the flood gate here? In general I have a problem with your granting this variance for a business which I really don't have for a non-profit. There's a basic difference there. A non-profit run a by a reputable organization is something we've all lived with very happily. The specifics of this worry me a lot. We've had Mr. Mitts say he's not going to operate this, he's going to have somebody else operate it. But who's he going to have operate it? Is that somebody at arm's length from him? I don't think so. That means that Mr. Mitts is in control of this. And he has by the sound of it been a less than pleasant neighbor to his neighbors.

And finally, this business that he had to close on a house that nobody had bought in a decade, then you find out that you can't just establish a business there? This is a hardship of his own making. It is not a hardship that a reasonably prudent person would have had. And I don't see the hurry to buy a house that hasn't moved in a decade. That argument just doesn't make sense. If somebody has lived in this house for a decade and then they have a financial hardship, that's a real financial hardship. But when somebody has lived there a month or six months, this is a hardship of his own making. This is not a financial hardship that has much credibility.

Mr. Kemnitz thanked everyone for their time. Member Zuckerman said that it seemed everyone liked the people from AHRC but are somewhat against this facility? What is the difference, did they go out to work? Mr. Kemnitz responded that there is no difference in terms of the residents, I don't think. I don't think there's a concrete proposal about how this is going to be used. That really troubles me. Who's going to operate it? I haven't heard who's going to be there, but if there are people who are going to require constant medical care then the inside of that house is going to get torn up for medical equipment or apparatuses that require monitoring and electricity. More than that, the thing that troubles me is moving our neighborhood from a residential to a commercial. That's open to escape because what do you say to the next guy? If an owner says this house used to be a doctor's

office and we want to re-establish it as a doctor's office how do you deny that? How do you accept this and deny that?

Chairman Baum said they are separate circumstances and you can't compare the two until you're faced with the situation. It sounds like what you're concerned about is the fear of the unknown. Mr. Kemnitz responded that they are concerned about the known. They are also concerned about what happens next if you start allowing commercial businesses on this street. He said that he lives on this street but he paid a lot of money for a facility elsewhere to run his business.

Member Margotta asked where Mr. Kemnitz lives in relation to the applicant? Mr. Kemnitz responded that he lives across the street.

Mr. Pete Efinger, Two Chatham Road, spoke next. Mr. Efinger is the husband of Ms. Efinger who spoke previously. My property abuts the Rubensteins who also spoke previously. As my wife said we moved here in 1981. I have no problems with senior citizens – I'm one. I have no problem with senior citizen housing or facilities. Both of our parents lived to their 90's+ and in the latter years we had to utilize those facilities. There have been noises over the years with respect to the property. That's not a problem.

I came here to listen. I'd like to share a few things with you about what I heard and share my opinions about what I heard. First, your records are not devoid. In August of 1977 a CO was issued for a home. Until recently the home had residents, then it was sold. It was not sold with an attachment to the deed or title that this is what you can do going forward. The buyer of that property, if there are restrictions, or there's nothing that says you can do something, such as what's carried on, you just can't do it. You have to come before the Zoning Board and make your plea.

Mr. Efinger said he liked the use of the "speculative" to describe the applicant's plans. It was a good analysis of everything we heard. I'm not sure what's concrete about the plans. There seem to be so many variables. I don't want to deal with splitting it up. That's not the issue before you. I don't want to deal with a bed and breakfast and a church. That's not the issue, perhaps it's a threat. What's before you is a piece of property that's looking for a variance to the zoning, and it happens to be for-profit.

This was an investment that may or may not have gone bad. I'm not an accountant, but if I were I would have analyzed everything. I would have looked at the numbers. I would have decided what my gross receipts were. What my operating expense is, what my net, what my net after that is, what's the P&L, what's the payback? I might have decided I'd have to put \$200,000 into it to make it look decent. That's fine. Don't come here and ask for

forgiveness because you made a bad investment. Don't come here and change the zoning because you knew what it was. Nobody forced you to sign that contract. Nobody put a gun to you and said if you don't sign you can't close.

We do know a few things. If you couldn't sell in 2008 or 9, I don't believe that had anything to do with the fact that somebody was asking for \$1.3 million. It just didn't go. I could have sold my house for \$300,000 more in 2005/6. And then March came and we got hit.

That's life, that's the way it works. Sell, somewhere down the road, bite the bullet. Just like people who bought homes in our community for \$390,000 a very short period of time ago and they're short selling if they want to sell tomorrow. So they have to bite the bullet and stay with it.

As to Zillow, ha ha. Zillow's being sued for hundreds of millions of dollars for producing bad numbers. All of a sudden your house next door goes for \$223,000 in 2008/9 and my house drops \$125,000. So, I live next door (sic) to the house that lost \$125,000 in 2008/2009. That's the way it goes. It was simply a bad investment.

As for the zoning, the point was made, you heard our opinion, you went forward, and you made a decision. It's that simple. I would urge you to not approve the application for a variety of reasons, some of which I shared with you.

Mr. Efinger thanked the Board for their consideration.

Chairman Baum asked if MaryEllen Lucks was present. Ms. Lucks sent a letter to the Board in 2016 when this application was first added to the agenda. After the moratorium ended Ms. Lucks sent another letter to the Board. Chairman Baum read both letters for the record (Attachment S). Both letters express Ms. Lucks' concerns about this application.

Nobody else came before the Board to speak.

Mr. Cappello addressed the Board to clarify a few issues that had been raised. First he talked about the issue of for-profit versus non-profit. Mr. Cappello said that one of the principles of zoning is it's the use of the property not who uses it or what uses it. He said that both profits and non-profits charge. A non-profit charged the taxpayers for the use of the group home. It's a wonderful use for a group home. He also said that the condition of that house deteriorated over the years because there wasn't an influx of cash.

Also, Mr. Cappello said some of the concerns raised were not relevant. For instance, who uses the home and whether or not a neighbor gets to approve who uses it. He asked, if I rent

out my single family house and make a profit am I no longer a good neighbor because I rented it out and made a profit on my house? Is it illegal to make a profit? That is a non-issue.

Mr. Cappello wanted to state for the record that Mr. Mitts was at a public meeting where he disclosed his plans to offer his facility for graduates who wanted to take a picture. He sat in the presence of a full board, in front of the police and in Building Inspector Cock's presence. No one told him he couldn't do it. He had no idea, just as anyone who throws a graduation party, or who throws a political fund raiser at their house, or throws any other kind of function at their house. A lot of people came and it rained. There were issues and there were complaints. He was then told not to do it again. Mr. Cappello said he was provided with the violation and Mr. Mitts did not hold that event again.

Mr. Cappello then reiterated Mr. Mitt's plan for the building. It is not a nursing home. He is proposing to have eight to 10 independent seniors who will live as a group exactly as those adults did previously. They will be ambulatory.

The last thing that Mr. Cappello commented on was the word, "threat" that was used in referring to the other uses. Mr. Cappello clarified that it is required by law to discuss the other uses and whether they could make a profit under them. It wasn't to threaten.

Chairman Baum clarified that the Board is fully aware of what the applicant's obligation is to establish a use variance and why Mr. Cappello was discussing the other uses.

Mr. Cappello said they would gather the information requested by the Board for the next meeting in August. He also invited anyone from the public to contact Mr. Mitts about any concerns they may have and to take a tour of the facility. Mr. Cappello invited the Board to go on a tour of the facility as well.

Merle Becker, a Newburgh resident, came forward to speak. Ms. Becker has been documenting some of the renovations of the house for Mr. Mitts and interviewing people who have visited it. Ms. Becker voiced her support for everything Mr. Mitts is trying to do. She said people who come to the house are very excited by it. Ms. Becker attended an event at the American Foundation for the Blind in Manhattan. She said that the entire foundation is thrilled about this house. Ms. Becker said that there is nothing like it in the United States. It is the one building that served as a vacation home for blind women that was fully paid for. They are passionate about it getting done. There has to be some financial way for Mr. Mitts to be able to do it. Ms. Becker said that from a historical viewpoint this building is very important for Monroe. It is probably going to become a national landmark, recognized by the United States of America as a one-of-a-kind building. To just give it up or divide it, or

make it difficult for Mr. Mitts is almost criminal. Ms. Becker said that she understands the concerns of the community, but speaking about the character of Mr. Mitts she said that his heart is in the right place. Ms. Becker said that she created a short video that summarizes some of the things that people are saying about this building and gives some of the history of the building.

Chairman Baum said that the public hearing will be continued at the next meeting. He advised the people in attendance that they had the right to come back and address the board at that time. He said that they had the right to examine any new information submitted to the board between tonight's meeting and the next meeting. They should contact Elizabeth Doherty, Zoning Board Secretary, if they wished to look at the file.

Toby Schack, a resident of Central Valley, spoke to the board. Ms. Schack said that she lives in a very old house. She also said that she spends a lot of time visiting the eastern portion of the United States and staying in old homes that have been converted to bed and breakfasts or inns. She is in favor of preserving old homes but said that there is a lot of upkeep. She said that one of the ways we can preserve the history of the locality is by finding ways to preserve old homes and to keep them going monetarily as well as in a way that will suit the character of the community. Ms. Schack expressed her hope that the board would take this into account.

Chairman Baum asked if anyone else wanted to speak? No one else came before the board.

Chairman Baum reiterated the board's request that Mr. Mitts submit additional documentation relating to financial hardship. The board is requesting dollars and cents proof, invoices and all receipts to document the applicant's statement and show that the expenses are real.

Mr. Cappello requested that the public hearing be adjourned to September to give them adequate time to prepare the requested documentation. Chairman Baum asked the board how they felt and no one on the board had any objections to Mr. Cappello's request.

Chairman Baum also said that there are a lot of concerns about how this facility is going to be run. He said you're comparing it to the way the prior facility was run. I would think you would want to bring somebody in who's going to operate this facility and is going to tell us exactly how it's run, who the residents are, how they're chosen, how the facility works, how much staff is there, do the people drive, do they come and go. The chairman said the he would like to hear testimony about how exactly this facility is going to work to compare it to the prior facility.

Acting Village Justice Lawrence Lezak was in attendance at the hearing. Justice Lezak advised the board that September 12<sup>th</sup>, the date of the September ZBA meeting, is a primary day. Because Village Hall is an election center the September ZBA meeting would be held on the second floor which has limited space. Justice Lezak suggested that the room might not accommodate a large crowd like the one that was present this evening.

Chairman Baum said that was a very good point. He gave the applicant the option to continue the hearing in August or wait until October. Mr. Cappello chose to continue the hearing in October.

The board watched a three-minute video prepared on behalf of Mr. Mitts giving a history of the house at 236 High Street.

On a motion made by Chairman Baum and seconded by Member Margotta, it was: **Resolved that the public hearing for HRR Corp. be adjourned to October 10, 2017.**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

#### **ADOPTION OF MINUTES FROM MAY 9, 2017 MEETING**

Several minor changes to the draft minutes were received without objection.

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

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

#### **OLD BUSINESS**

Board members were advised that they must get employee ID cards from the Police Department as soon as possible.

#### **NEW BUSINESS**

The Board was advised that no new applications were received.

**ADJOURNMENT:**

On a motion by Chairman Baum, seconded by Member Zuckerman, with all in favor, **there being no further business, the meeting was adjourned at 10:40pm.**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

Respectfully submitted,

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

Elizabeth Doherty

ZBA Secretary