

**VILLAGE OF MONROE  
ZONING BOARD OF APPEALS  
MEETING  
FEBRUARY 5, 2019  
MINUTES**

**PRESENT:** Chairman Baum, Member Zuckerman and Member Margotta; Building Inspector Cocks and Richard B. Golden, Esq.

**ABSENT:** Member McCarthy and Member Martuscelli

Chairman Baum called the meeting to order at 8:23pm with the Pledge of Allegiance to the flag.

- 1. The application of Ed Triantafillou, for an area variance from the requirements of Section 200-62A. The property has two pre-existing non-conforming apartments located above a detached garage. The applicant wishes to merge them into a single apartment with a small expansion to the lower level for a foyer and a laundry room along with a new expanded entrance.**

The property, which is the subject of said action by the Board, is located in an SR-20 Zoning District and is identified as Section 230-1-2.3 on the tax map of the Village of Monroe and is also known as the address 154 Rye Hill Road on the tax map of the Village of Monroe.

**Present: David Niemotko, architect and representative for the applicant**

Mr. Niemotko was advised that there were only three Board members present. In order for a variance to be approved by the Board there must be three “yes” votes. With only three Board members present all three would have to vote “yes” to grant the requested relief. Chairman Baum said that the applicant had the option to adjourn the hearing for a month when there may or may not be a full Board in attendance. Mr. Niemotko chose to proceed with the public hearing.

Secretary Doherty advised that the certificates of mailing were received and were in good order.

Mr. Niemotko began by saying that Robert and Tiffany Wood own the property at 154 Rye Hill Road. The property includes a house and three-car garage (the garage is a separate structure from the main house). The garage already has two apartments on the

second floor. Mr. Niemotko said that they are asking the Board to allow them to combine those two existing apartments into one. Mrs. Wood's parents, Ed and Marie Triantafillou, want to live in that apartment. Mr. Niemotko explained that the apartment will have a kitchen and eat-in area, one bedroom and one and a half baths. Downstairs in the garage there will be a foyer and a laundry room.

He also explained that they would not be changing the footprint of the building except for the front overhang. Mr. Niemotko gave Secretary Doherty two pictures of the outside of the existing three-car garage. He said that they will be maintaining the character of the building. Everything in the picture will stay the same except for one garage door which will be replaced by a front door.

Mr. Niemotko explained that by combining the two apartments into one it would not only result in the structure having less of an impact on the neighborhood and services (such as water and sewer) but would also minimize an existing nonconforming condition. It would be in the best interest of the Village and the neighborhood.

Member Margotta clarified that the foyer and laundry room will take the place of one of the garages? Mr. Niemotko said that was correct. Mr. Niemotko said that near the front door there will be a reverse gable coming out which will match the existing reverse gable. Mr. Niemotko said that any siding that is added will match the existing siding and the character of the garage will be consistent with the house.

Member Zuckerman asked what the square footage of the apartment would be? Mr. Niemotko said that the upstairs area was 1,162 sq. ft. Chairman Baum estimated that the downstairs area would be about 377 sq. ft. Chairman Baum then said that they're eliminating one of the apartments but the new apartment will be larger than the previous two by 320 sq. ft.

Member Margotta asked why Mr. Niemotko didn't put the laundry room in the boiler room? Mr. Niemotko said that it was a matter of convenience for the applicant. Also, from a building code standpoint, it would have to meet fire safety standards.

Member Zuckerman said that other than the size of it, this is a perfect example of an accessory apartment because you've got the single bedroom and you've got the owners living in the main house. If it were turned into an accessory apartment rather than a non-conforming apartment it would then be within code. He asked Mr. Niemotko why he didn't choose to make this an accessory apartment? Mr. Niemotko said that it won't qualify because of the square footage; it's too large. Member Zuckerman said that they could ask for a variance on the size. Mr. Niemotko responded that they would need to

get a special use permit from the Planning Board and a deed restriction, something which would require a lot of time and effort. He said that they did not feel the need for it given that they are only adding 377 square feet to the apartment, they are not changing the footprint of the building and they are reducing the apartments from two to one.

Member Zuckerman said that they should consider that the preference of the Village is to get rid of as many non-conformities as possible. Here is an opportunity to do so, simply by making this an accessory apartment and granting an area variance on the size.

Member Margotta agreed with Member Zuckerman's point about the nonconforming apartment, that they have the chance to eliminate it because they can make it an accessory apartment.

Chairman Baum responded that the argument is somewhat semantic. If we want to eliminate the non-conforming use, we do so by granting a special permit to be a conforming use with a variance. They still need a variance.

Member Margotta said that use-wise it would be the same thing, but the overall reasoning is for one person living there to be able to rent out an accessory apartment as opposed to using it as an investment property that has a house and rentable apartment. That wasn't the idea of accessory apartments. That's why the Village doesn't want non-conforming apartments.

Building Inspector Cocks said that it is true that, regarding the accessory apartment, the new owners would have to come back and go to the Planning Board. But he said that the Planning Board would not be in the position to eliminate the apartment and say that the new owners couldn't have it. He said that you're not fixing the problem, you're changing things. Chairman Baum said you're changing one approval for another. Building Inspector Cocks agreed.

Member Margotta reiterated that if there was a new owner who wasn't living on the premises they wouldn't be able to rent out the apartment above the garage.

Attorney Golden said that although consideration is generally given for things being more conforming or less conforming, the test for an area variance does not include that. The test for an area variance addresses five factors, the closest to this would be whether the benefit sought can be achieved by some other method that does not require an area variance. But in this case the applicant needs an area variance.

Chairman Baum said again, either way the applicant is going to need a variance. The applicant would not be in compliance because of the size of the apartment. We are theoretically empowering the property owner to now rent both the house and the apartment at his discretion as opposed to having to be an owner-occupied property.

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

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

**Ayes – 3**

**Nays – 0**

**Absent – Member McCarthy and Member Martuscelli**

Chairman Baum noted for the record that this application was referred to the Orange County Department of Planning per NYS General Municipal Law §239-1, m & n. Their recommendation was to remand the application to the Zoning Board of Appeals for local determination.

On a motion by Chairman Baum, seconded by Member Margotta, it was: **Resolved to declare this application as Type 2 pursuant to SEQRA and that no further environmental review was required.**

**Ayes – 3**

**Nays – 0**

**Absent – Member McCarthy and Member Martuscelli**

Member Zuckerman said that his only concern about this application was whether the Board felt this should be an accessory apartment and give a variance on the size of it or whether to keep the non-conformity and lessen it.

Member Margotta asked if at some time in the future the owner could reconfigure this to include more bedrooms without any approvals? Chairman Baum responded that they would need building permits and it would be considered another enlargement. They would not be allowed to do any further alterations without approval by this Board.

The Board considered the five criteria for granting an area variance:

- 1) Whether an undesirable change would be produced in the character of the neighborhood;
- 2) Whether the benefit sought can be achieved by some other method feasible to the applicant;
- 3) Whether the requested area variance is substantial;
- 4) Whether the proposed variance would have an adverse effect on the physical condition of the neighborhood;
- 5) Whether the hardship is self-created.

The Board determined that there would not be an undesirable change in the character of the neighborhood; rather, the Board was of the opinion that this was more desirable than the existing two apartments. The Board felt that the only other way the applicant could achieve this benefit would be to get a special permit which would still require an area variance due to the size of the apartment. The Board also concluded that the requested area variance was not substantial. The Board determined that there would be no adverse effect on the environment; rather, the environmental impact would be reduced as the water and sewer use would probably decrease as would the parking. And finally, the Board determined that this difficulty was self-created as the applicant could have combined the apartments without a variance if they had made the apartment smaller.

The test for an area variance does not require that each criterion be met, but rather that the Board must take each one of these factors into account. Chairman Baum concluded that on balance the need for a variance was met and that the applicant should be granted relief.

Attorney Golden confirmed that it was the judgment of the Board members that this is the minimum variance deemed necessary and adequate and that it protects and preserves the character of the neighborhood and the health, safety and welfare of the community.

On a motion by Member Margotta, seconded by Member Zuckerman, it was: **Resolved to approve the expansion of the non-conforming use and to reduce the number of apartments from two to one.**

**Ayes – 3**

**Nays – 0**

**Absent – Member McCarthy and Member Martuscelli**

**APPROVAL OF MINUTES**

Approval of the December minutes was tabled to March.

**NEW BUSINESS**

The Board was advised that no new applications were received.

**ADJOURNMENT:**

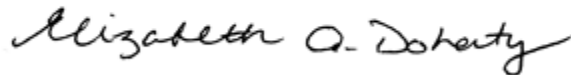
On a motion by Member Margotta, seconded by Chairman Baum, with all in favor: **There being no further business, the meeting was adjourned at 8:45pm.**

**Ayes – 3**

**Nays – 0**

**Absent/Abstaining – Member McCarthy and Member Martuscelli**

Respectfully submitted,



Elizabeth Doherty  
ZBA Secretary