

**VILLAGE OF MONROE  
ZONING BOARD OF APPEALS  
MEETING  
AUGUST 13, 2019  
MINUTES**

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

**ABSENT:** Member McCarthy and Alternate Member Jason Czerwinski

Chairman Baum called the meeting to order at 8:02pm with the Pledge of Allegiance to the flag.

Chairman Baum began the meeting by recognizing the service of Member Martuscelli who joined the Zoning Board of Appeals on December 12, 2016 and resigned effective July 31, 2019. Member Martuscelli was thanked for his dedication and service. Chairman Baum welcomed Member Gilstrap as a permanent member to the Board effective August 6, 2019.

**1. APPLICATION: Timothy Mitts – Interpretation – 206-5-4.12**

**Present: David Niemotko, Architect for the Applicant, and Mr. Timothy Mitts**

The amended application of Timothy Mitts, for an interpretation of Local Law #2 of 2019 – Adaptive Re-Use of Buildings listed on the National and State registers of Historic Places, sections 200-61.1F(2)(b) and 200-61.F(4) regarding maximum height allowed in this district. In the alternative, the applicant is requesting an area variance to exceed the maximum permitted building height and number of stories for the existing structure.

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 206-5-4.12 on the tax map of the Village of Monroe and is also known as the address 236 High Street on the tax map of the Village of Monroe.

This is a continuation of the public hearing from July 9, 2019. Chairman Baum confirmed for the record that the public hearing for the amended application was published in the newspaper and the mailing was completed.

The applicant was advised that there were only four Board members in attendance. In the event of a tie vote the application would, by law, be denied. Mr. Mitts was given the option to postpone the hearing to next month when there might or might not be five Board members in attendance. Mr. Mitts opted to continue this evening.

Mr. David Niemotko, architect for this project, addressed the Board. He said that last month he requested to amend the application for an interpretation and to include an area variance for the height and the number of stories of the building. The zoning code allows a maximum height of 30 feet and a maximum of two stories. Mr. Niemotko explained that the building is different heights and that the average maximum height is approximately 40' according to a survey that was recently done. He also said that they are requesting a three-story variance.

Mr. Niemotko mentioned that the National Park Service has qualified this property as a historic landmark because of its distinctive architecture. It is artistic in character and in nature. He then addressed the five criteria needed to grant an area variance. First, as to whether an undesirable change will be produced in the character of the neighborhood, Mr. Niemotko said, "Unbiasedly it doesn't." He also said, in reference to the second criterion as to whether the benefit sought by the applicant can be achieved by some other method, he said it could not. The third criterion is whether the requested area variance is substantial. Mr. Niemotko reiterated that they're not changing the height or the number of stories. The size of the building will remain the same. Mr. Niemotko said that he believes the intent of Local Law #2 would allow this to occur.

The fourth criterion is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood. Mr. Niemotko again pointed to the National Park Service who commented and qualified the building as something that is very desirable and artistic.

Lastly, the fifth criterion is whether an alleged difficulty is self-created. Mr. Niemotko responded that any restoration work that Mr. Mitts did within the building has been done very well and was done to bring it up to code. There are other alterations that need to be done as a result of the building code, not because of the desire of Mr. Mitts.

Member Zuckerman asked Mr. Niemotko to clarify his application statement that, "Therefore Local Law #2 currently applies to only one building and this building serves as a model of this law." Is this suggesting that this is spot zoning? Mr. Niemotko replied that he was quoting Member Zuckerman from the last meeting. Chairman Baum noted that Mr. Niemotko has given several different measurements for the height of the building. He asked if Mr. Niemotko knew exactly how tall it was? Mr. Niemotko said that Mr. Mitts hired a surveyor at his own expense to get the average grade around the building. From that point to the highest peak of the roof is 40.16 feet. Chairman Baum asked if they took an average because of the gable or does it go right to the peak? Mr. Niemotko responded that it goes right to the peak. It's the average of grade to the highest part of the building.

Member Zuckerman asked the Building Inspector where he got 50 feet? He responded that it was drafted from Mr. Niemotko's plans. Mr. Niemotko responded that at that time the number was a "guestimate." He said that the number now can be verified by an independent professional.

Member Zuckerman asked Mr. Mitts if he wanted to bring up anything about additional information that he submitted after the close of the last meeting. Mr. Mitts said that he had previously forwarded an email about an "odd issue" with the Building Inspector's decision. He

said that at the time he had sent questions to the Village attorney. He also submitted the Village attorney's response that the height was not an issue in this case. Mr. Mitts said he had, "asked the Board (of Trustees) at their last meeting just to address the issues with... alterations and there was a piece they gave me now that was sent to you that shows you how the Village got where they were. There were trying to give me an understanding of their understanding of it. Mr. Cocks was at that same Board meeting when they spoke about it on July 16<sup>th</sup>. But she (the Village Attorney) specifically said in her email as to this, the height is not an issue with this."

Member Zuckerman clarified that Mr. Mitts was referring to the email of October 31, 2018. Mr. Mitts agreed. Mr. Mitt's quoted from the email, "We're also revising the proposed law to essentially apply the bulk requirements only to houses or buildings that are seeking expansion to accommodate a use. So height, for example, will not be applied to existing structures."

Member Zuckerman gave a timeline of events to help the Board to understand. This law appeared for the first time at a public hearing on November 8, 2018. That public hearing was then adjourned when the Board of Trustees realized that among other things that they did not have the Planning Board's report subject to §200-77 of the code. So, it went over to the November 20, 2018 public hearing when they closed it out. But the Planning Board had met the day before, on November 19, 2018. The Planning Board handed their decision to the Board of Trustees on November 20, 2018. As of November 20<sup>th</sup>, which would take into consideration anything that occurred before the 20<sup>th</sup>, the public and the Planning Board and the Building Department were looking at a particular statute that was before them. What I would like to do is read the particular statute that was before the public and the Planning Board as it pertains to the only two sections relevant to this discussion.

As far as F2(b) is concerned, it is exactly the same:

*Where an existing building is to be converted for a use allowed herein without alteration, the dimensional requirements of said historic building shall be deemed conforming, notwithstanding requirements set forth in subsection 4.*

Reading Subsection 4, Lot Area:

*The minimal lot area shall be 20,000 sq. ft., which may be greater as per the regulations of subsection 4, below. The following dimensional standards shall apply and a variance shall be required for any application that does not meet these standards.*

Member Zuckerman skipped the first five standards. Quoting (F), Maximum Building Height/Stories: 35/2.5. Section 4 said that it requires variances, if the building height or number of stories exceeded that amount. It says nothing about alterations in that particular section.

There was a question that was asked by the Chairman of Building Inspector Cocks as to whether he was involved at all with the drafting. Member Zuckerman asked Building Inspector Cocks if

he was involved at all in the drafting of the final law? Building Inspector Cocks responded that he never saw the final until it was approved. He had only seen the original version that was sent to the Planning Board.

Member Zuckerman then concluded that anything Mr. Mitts has prior to November 2018 has to do with this earlier draft statute and is totally irrelevant to the sections that are before us today. Member Margotta concluded that the October email is previous to what is before the Board today. Member Zuckerman continued, saying that after that October email, this is the number four that came about on November 8<sup>th</sup> and November 20<sup>th</sup>. Chairman Baum said that would make more sense because in one section it says you need the variance and in the other one it says notwithstanding the fact that that says you need a variance, if you're not making any alterations and you remain existing, you would be compliant. That would seem to make sense. Member Margotta said that the Board shouldn't be referencing anything before that adoption. Chairman Baum agreed.

Mr. Mitts said that the house was built in 1903 and the Board is primarily excluding the history that it existed well before the zoning came into effect.

Chairman Baum said all we're trying to do is interpret a statute that the Village Board drew up and determine what they meant by these sections of the Code.

Member Zuckerman asked Mr. Mitts if he would like to retract his statement that Building Inspector Cocks lied. Mr. Mitts would not change his statement. Member Zuckerman reminded Mr. Mitts that per the minutes Chairman Baum asked Building Inspector Cocks if he was involved in the drafting of it and Building Inspector Cocks replied, "Not whatsoever." And the Chairman was talking about the current law, not the law as it was back then.

Chairman Baum reopened the hearing to the public. He asked if anybody had comments to please step forward.

John Zonneveld of 10 Chatham Road addressed the Board. He said that he has lived directly behind Rest Haven for the last 20 years. He has seen Mr. Mitts fixing up that property every day and the building itself inside and out is beautiful. Mr. Zonneveld also noted that Mr. Mitts has cleaned up the property. He said that he considers Mr. Mitts to be a good neighbor.

Nobody else from the public came forward.

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

**Ayes – 4**

**Nays – 0**

**Absent – Member McCarthy**

Chairman Baum stated for the record that this was a Type 2 SEQRA Action. Attorney Naughton noted that the amended application for a variance is also a Type 2 SEQRA Action.

On a motion made by Member Zuckerman and seconded by Member Margotta, it was unanimously: **Resolved that the Board's interpretation of the law does not negate the finding of the Building Inspector and that an area variance is required due to the fact that structural alterations are being made to the premises.**

**Ayes – 4**

**Nays – 0**

**Absent – Member McCarthy**

The Board discussed the criteria for granting an area variance.

1. Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance.

Chairman Baum I don't see any change in the neighborhood whatsoever. The building has been there a long time and there are no changes being made to the building exterior.

2. Whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance.

Chairman Baum didn't see how that would be possible. The house has to be adapted for ADA compliance which will require the elevator and some interior alterations. The only way to avoid the variance is to not do any alterations. That's not an adaptive re-use and that's not the purpose of the statute. The intended benefit cannot be achieved by some other method.

3. Whether the requested area variance is substantial.

Chairman Baum said the difference in height varies at most by 10' which is not that substantial. It's an existing house. We're not adding anything to the structure.

4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Chairman Baum said no. No one from the Board disagreed.

5. Whether the alleged difficulty is self-created.

Chairman Baum said he agrees with Mr. Niemotko that it isn't self-created, they had to do this in order to make it ADA compliant. Member Gilstrap disagreed, saying that this is self-created because Mr. Mitts has chosen this alternative use of the property. This is of his making. Chairman Baum said that his view is that his desire to change the use is separate from the requirement that he make the building ADA compliant. The renovations are not of his own volition. Member Gilstrap responded that when Mr. Mitts

embarked on that effort to change the use of the property he took on the responsibility of making those alterations.

Member Gilstrap said that even if on the third and fifth criteria there is some reason to look more closely at the variance you have to find that granting the variance is appropriate here on the whole.

On a motion made by Member Zuckerman and seconded by Member Gilstrap, it was unanimously: **Resolved that area variances should be granted for both the height of the building and the number of stories.**

**Ayes – 4**

**Nays – 0**

**Absent – Member McCarthy**

**2. APPLICATION - Ziad Abou El Ardat - Area Variance**

**Present: The applicant was not present.**

The applicant was informed by telephone that only four Board members would be in attendance. He chose to postpone his hearing date to next month when there may or may not be five Board members in attendance. No new notice will be mailed.

On a motion made by Member Zuckerman and seconded by Member Gilstrap, it was unanimously: **Resolved to adjourn the hearing to September 10, 2019.**

**Ayes – 4**

**Nays – 0**

**Absent – Member McCarthy**

**ADOPTION OF MINUTES FROM MARCH 12, 2019 MEETING**

On a motion made by Chairman Baum and seconded by Member Margotta, it was: **Resolved to adopt the minutes from March 12, 2019.**

**Ayes – 3**

**Nays – 0**

**Abstaining – Member Gilstrap**

**Absent – Member McCarthy**

**ADOPTION OF MINUTES FROM JULY 9, 2019 MEETING**

On a motion made by Chairman Baum and seconded by Member Margotta, it was: **Resolved to adopt the minutes from July 9, 2019.**

**Ayes – 3**

**Nays – 0**

**Abstaining – Member Margotta**

**Absent – Member McCarthy**

**NEW BUSINESS: ZONING BOARD APPLICATIONS**

Chairman Baum noted for the record that an application was submitted by Agron Previzi requesting a review of the administrative decision of the Building Inspector. That matter will be placed on the Board's September 10<sup>th</sup> agenda.

**OLD BUSINESS: FAR LEGISLATION**

Member Zuckerman noted for the record that he will be giving the Secretary of the Planning Board a copy of the approved minutes from July 9, 2019 pursuant to a request he received from her. The Board discussed the FAR legislation at the July 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 8:41pm.**

**Ayes – 4**

**Nays – 0**

**Absent – Member McCarthy**

Respectfully submitted,



Elizabeth Doherty  
ZBA Secretary