

**VILLAGE OF MONROE  
ZONING BOARD OF APPEALS  
MEETING  
SEPTEMBER 10, 2019  
MINUTES**

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

**ABSENT:** Alternate Member Jason Czerwinski

Chairman Baum called the meeting to order at 8:00pm with the Pledge of Allegiance to the flag.

**1. APPLICATION: Ziad Abou El Ardat – Area Variance – 230-2-3  
Present: Ziad Abou El Ardat**

The application of Ziad Abou El Ardat, for an area variance from the requirements of Section 200-26.3B for an existing above-ground pool. The pool is located six feet seven inches from the main dwelling, not the required fifteen feet.

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 230-2-3 on the tax map of the Village of Monroe and is also known as the address 97 Fredrick Drive on the tax map of the Village of Monroe.

Mr. Ardat stepped forward to address the Board. He said he has lived at 97 Fredrick Drive for the past few years with his wife and two children. They had previously done a few projects to improve their house; the required permits for these were handled by the contractors. When Mr. Ziad decided to get a pool the pool installers asked him to take care of the permit himself. Mr. Ziad got the required permit and then there was a “time gap” before the installers came to build the pool. Mr. Ziad said that when the installers came to his house they looked around the yard for the best location for the pool. Mr. Ziad said that they “overlooked” the fact that the pool was supposed to be 15’ away from the house. Mr. Ziad said that if he were to move it down (away from the house) it would require a lot of excavation because there is a steep hill and the pool would be under the trees. If he moved the pool to the other side of the house it would be close to the neighbor’s windows. Mr. Ziad said it wasn’t feasible for them to put the pool in any other place. Mr. Ziad also pointed out that he submitted letters from the neighbors indicating that they liked the location of the pool.

Member Zuckerman noticed that in the application submitted by Mr. Ziad the requested variance was listed as 7’ from the back of the house. Member Margotta said that according to the

schematic it's 6' 7". Member Zuckerman also noticed that the building permit is for a 16' round pool but Mr. Ziad's pool is 18' round. Mr. Ziad said his plans changed after he applied for the permit because of the pricing. He said he didn't think it would make that much of a difference. Finally, Member Zuckerman pointed out that the building permit clearly states that there should be a minimum 15' setback from house and property lines.

Chairman Baum asked when the pool was installed? Mr. Ziad said it was towards the end of August 2017. Chairman Baum said that the permit was dated August 2<sup>nd</sup>. He asked if the pool company asked for a copy of the permit before the installation? Mr. Ziad said that they just asked if he had the permit and he said that he did.

Member Zuckerman asked how high the pool walls were? Mr. Ziad said 52". He said that the water in the pool is four feet deep. Member Margotta asked Mr. Ziad if he read the permit after picking it up? Mr. Ziad said yes, he thought so. Member Gilstrap suggested that perhaps Mr. Ziad didn't know there were restrictions stated on the permit that the installers needed to know. Member Margotta noted that the permit clearly states that it should be kept on the premises at all times.

Mr. Ziad addressed the five criteria needed to justify an area variance. He felt that the first four were, "not an issue." Regarding the last, whether the difficulty is self-created, Mr. Ziad acknowledged that it could be described that way. He said that it was a "spur of the moment decision" to overlook "that detail" and that there was no place else he would want to put his pool.

Member Margotta asked Mr. Ziad more questions about the layout of his back yard and where the pool is located. Mr. Ziad pointed out the sloped area and an area where there is a retention pond and an easement. The Board members discussed the survey showing the retention pond, the easement and the property lines. Member Zuckerman asked Building Inspector Cocks if there would have been any problem putting the pool 15' from the house? Building Inspector Cocks said no.

Member Gilstrap asked how the pool came to be located in that part of the back yard. Reading from the "Project Description" in the application it says:

*Reasons for placing the pool in that location:*

- 1. Most private;*
- 2. Gets the most sun without having to cut down trees;*
- 3. Closest to hang out area to keep close watch over the kids when they swim;*
- 4. Provides best drainage location into detention pond.*

Member Gilstrap concluded that the applicant made a calculated decision to place the pool where it is. Member Gilstrap pointed out that this doesn't fit with what the applicant had said in his opening statement. He said that it sounded as if Mr. Ziad had previously said that his contractors showed up and they placed the pool where they thought it was appropriate and Mr. Ziad just let them do it.

Mr. Ziad responded that before the installers got to work that day they looked around the yard to decide where to put it. The ideas Member Gilstrap mentioned factored into their decision. Mr. Ziad said that it looked like the best place to put the pool and they just overlooked the fact that it was supposed to be 15' from the house. Member Gilstrap concluded that by not following the permit the applicant made his own call based on the criteria that came to mind. Member Margotta asked if that criteria was noted before or after Mr. Ziad applied for the permit? Mr. Ziad responded that it was after he applied for the permit. He said that it was made "spur of the moment" when the installers came to put in the pool on the day of the installation. Member Margotta asked if the installers, Royal Pools, asked about the permit and did they ask about any restrictions? Mr. Ziad reiterated that they just asked if he had a permit.

Member Zuckerman asked how many gallons of water would be contained in an 18' round pool with a 52" wall. He said that according to the computer it's 8,602 gallons of water. 16' which is what the applicant originally asked for would be 5,068 gallons of water. Member Zuckerman read from an article on the internet ([https://www.ehow.com/decision\\_6880808\\_far-install-above-ground-pool.html](https://www.ehow.com/decision_6880808_far-install-above-ground-pool.html)):

*National building codes, as outlined by the National Fire Protection Association (NFPA), require an outdoor above ground pool to be at least 10 feet away from the walls of a house. This helps ensure that leaking or splashed water cannot contact any electrical wiring and cause a short.*

Member Zuckerman said that is why there should be a 15' gap. There could be a short if water touches the wiring by splashing. Or if the pool fails all that water could drain towards the house. Either way it could cause a fire. Mr. Ziad said that he wasn't aware of this. He said that he had a contractor in his house who had an architect with him. Mr. Ziad said that he asked about the restriction on having the pool at least 15' away from the house. (This was after it was built.) Mr. Ziad said that the architect responded that there is concern about the utility lines. Member Margotta said that there could be damage to the foundation as well.

Chairman Baum said that if that pool collapses another eight feet is not going to make a difference. The water is going to get to the house whether it's 6' 7" away or 15' away. Mr. Ziad said that the architect said that because his yard is sloped the water will flow away from the house. Mr. Ziad said that the architect signed off on the drawing because, "There is no risk of the pool being there." Chairman Baum asked Building Inspector Cocks if there were any safety issues with the pool being 6' 7" away from the house as opposed to 15'. Building Inspector Cocks said, "Not that I know of." Mr. Ziad said that he does not have a basement, his house is built on a slab. There is no concern about water flooding to the basement.

Member Zuckerman wondered why there is a 15' setback requirement. Chairman Baum said the setback is to allow sufficient separation between an accessory structure and the main dwelling in the event of a fire; however, there was no chance of a pool catching fire.

Chairman Baum opened the hearing up to the public.

Mr. Riaz Rahman of 93 Fredrick Drive addressed the Board. Mr. Rahman said that he and Mr. Ziad have been neighbors for eight years. Mr. Rahman said that Mr. Ziad is a man with good character who looks out for his neighbors. Mr. Rahman also said that given the retention pond and the slope of Mr. Ziad's yard he didn't see how the pool could go anywhere else in the yard without a lot of excavation. Chairman Baum asked where Mr. Rahman lives in relation to Mr. Ziad? Mr. Rahman said that there's Mr. Ziad's property, the retention pond, another property and then his property.

Chairman Baum asked if anybody else had any comments? Nobody else from the public came forward.

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

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

Member Margotta asked Mr. Ziad if the installers had to excavate or build up the ground when they put in the pool? Mr. Ziad responded that they had to do a little leveling. Mr. Ziad said that they "put it on top of the slope. They didn't have to excavate as much." Member Margotta said there was minimal excavating done and asked, if they had moved it they would have had to do a lot more excavating? Mr. Ziad said, "A lot more."

Nobody else had any questions or comments.

Attorney Naughton noted that this is a Type 2 Action with respect to SEQRA and no additional environmental review is required. The application was not required to be referred to Orange County Planning Department.

On a motion made by Chairman Baum and seconded by Member Margotta, it was unanimously: **Resolved to classify this as a Type 2 Action with respect to SEQRA and not subject to any further review.**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

Chairman Baum said that he has looked at the aerial pictures and driven by the house. The location of the pool is as harmless as you can put a pool but for the fact that it misses the requirement by 8' 5". The Building Inspector has indicated he doesn't see any safety issues behind the requirement of 15'. Chairman Baum said although this is a self-created problem he doesn't like to see people rip down pools unless there is a valid reason. People make mistakes all the time and they shouldn't have to pay a huge expense for that. Chairman Baum said that he doesn't have a problem with granting the applicant relief. The only proviso would be once the

pool comes down they cannot rebuild it in the same location unless they get an additional variance.

Looking at the factors, they're not changing any character of the neighborhood. Nobody can even see it where it's tucked away. The applicant has over an acre of land that is burdened with a retention pond. The only thing the applicant could do is move the pool which would be a lot of work. It doesn't make any sense for meeting a 15' requirement that's in our code when there's no real need for it. There are no safety reasons such as it's a hazard, it's going to impact the health or welfare of the community. Chairman Baum said that his feeling is even though it's self-created and maybe it's a little bit substantial it's not going to create any impacts to the neighborhood and the expense to the applicant to move it would be significant.

Member Margotta agreed with Chairman Baum but he did have a point of contention about the permit. The applicant got the permit but then he never looked at it. Chairman Baum said he can understand how it could happen. The schematics attached to the building permit show the rough location of the pool, not the exact measurements.

Member Gilstrap said he was concerned about the precedent that this sets. Member Margotta responded that this is exactly the same type of variance the Board has granted before. Chairman Baum explained that any time the Board rules on a variance it sets a precedent but every application is different. Just because we grant one variance to allow a pool 6' 7" from a home doesn't mean that anybody else would be granted one. It all depends upon the facts of the case.

Member Zuckerman said that the five criteria to allow an area variance sway towards the neighborhood. Attorney Naughton said that this is the balancing test. You have to grant the minimum variance that you deem necessary and adequate and at the same time preserve and protect the character of the neighborhood, and the health, safety and welfare of the community. It really isn't about protecting an individual property owner from himself. It's about how it relates to that community and how it impacts the neighbors. Member Zuckerman said that he will probably be voting to allow the area variance only because of the strict interpretation standards of the Village law. He felt it could have some effect on the house itself and there's where the problem would lie, be it electrical shorts or damage to the structure. These are things Mr. Ziad is going to have to take into consideration.

On a motion made by Member Margotta and seconded by Chairman Baum, it was unanimously: **Resolved to grant the variance to allow a setback of 6' 7" from the main dwelling to the existing above-ground pool. This variance will expire when the pool has to be replaced.**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

**2. APPLICATION: Agron Previzi – Review of Administrative Decision – 201-1-7.21  
Present: Richard Croughan, Esq., Attorney for the Applicant and Mr. Previzi**

The application of Agron Previzi, 11 Dana Drive, for a review of the administrative decision of the Building Inspector that the property is in violation of §200-68 and §200-48 of The Code of the Village of Monroe. The property is approved for one single-family dwelling, a detached garage and one stone shed. The existing use is one single-family dwelling, a detached garage, and a stone shed that is being used as an accessory apartment.

The property, which is the subject of said action by the Board, is located in the URM Zoning District and is identified as Section 201, Block 1, Lot 7.21 on the tax map of the Village of Monroe.

Chairman Baum noted that the application includes a letter dated August 15, 2018. The letter is a municipal violation search in response to a title insurance company. The applicant then applied for a Land Use Determination Form to legalize the conversion of a stone shed to an accessory apartment. In response to that, the Building Inspector wrote a letter of denial dated October 26, 2018. Chairman Baum said that he has been advised by the Village's attorney that the application to the ZBA should have been filed within 60 days of the determination.

Attorney Croughan said that he had previously given notice to the Building Inspector that the applicant would be appealing the decision. Attorney Croughan said they needed to get affidavits from the prior occupants of the property which resulted in the delay in submitting the application.

Chairman Baum asked Attorney Naughton if they could entertain an application that's untimely? Do they have legal jurisdiction? Attorney Naughton said, "Not that I'm aware of." She continued, saying, "It's well passed the 60-day time limit for the appeal." She also noted the second item which is checked off on the application, "Certification of an existing non-conforming structure or use" is not actually an action that this Board has the authority to take under State law. She said the request is an appeal of the determination of the Building Inspector. The applicant is saying that this is a legally pre-existing, non-conforming use of this structure. Attorney Naughton said that they can adjourn the hearing and she can research State law to see if she can find any casework; but, as far as she knows the Board cannot consider it because it is beyond the time limit. The deadline was December 26, 2018.

Attorney Croughan said that they have spoken to the Building Inspector about the accessory use and having to get a use variance for that, and also an area variance would be required as well. Member Zuckerman said that there's no statute of limitations for area or use variances.

Attorney Croughan said that there has been an extended use of the shed as an apartment. He said that he has provided affidavits of prior owners having rented the space or having used the space. There's heat, electricity, and running water in the shed. Mr. Previzi had the advice of council when he bought the property. He was represented by Attorney Levinson. Mr. Previzi relied upon the information that was previously provided.

Attorney Croughan asked if the Board would consider an application by Mr. Previzi for an accessory use? Member Zuckerman said the property is located in a URM zoning district where multi-family is permitted but accessory use is not. Member Margotta asked isn't that the same? Building Inspector Cocks said multi-family is for three or more families. Member Zuckerman said that the problem the applicant faces is that since under the zoning code no accessory apartments are allowed in the URM area, the only choice is to make it either a multi-family or a two-family. Attorney Croughan said that it's currently a multi-family. There is a basement apartment and then there's the accessory structure as well. Member Zuckerman said that the applicant must abide by the area bulk requirements. The minimum square footage for the apartment and the accessory structure is 1,000 sq. ft. of livable space each. Attorney Croughan responded that the applicant would need to get an area or use variance. Attorney Naughton said that for a use variance they would have to provide dollars and cents proof that that's the only use they can have with that property.

Member Margotta asked if the applicant lives on this property? Does he rent out the basement apartment and the accessory structure? Attorney Croughan said yes, the applicant lives there. He has family in the basement and in the accessory structure.

Chairman Baum asked Attorney Naughton if the Board can take any other action other than to deny the application as untimely? Attorney Naughton said no. She can research this if the Board wants her to but she is unaware of any way in which the Board can act on it. At the next meeting she can have a draft decision prepared which, instead of acting on tonight, can be acted on then. If the Board cannot act she will draft a decision that dismisses the application. Building Inspector Cocks asked if in the meantime the applicant can file for a use and area variance? Members of the Board said yes. Building Inspector Cocks suggested to Attorney Croughan that while he was waiting for the decision he could file an application for an area variance and use variance.

On a motion made by Member Margotta and seconded by Member McCarthy, it was unanimously: **Resolved to adjourn the application to October 15, 2019.**

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**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

### **ADOPTION OF DECISION FOR TIMOTHY MITTS**

On a motion made by Chairman Baum and seconded by Member Zuckerman, it was unanimously: **Resolved to approve the decision for Timothy Mitts.**

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**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

**ADOPTION OF MINUTES FROM AUGUST 13, 2019 MEETING**

On a motion made by Chairman Baum and seconded by Member Margotta, it was: **Resolved to adopt the minutes from August 13, 2019 with a minor change.**

**Ayes – 5**

**Nays – 0**

**Abstaining/Absent – None**

**NEW BUSINESS: ZONING BOARD APPLICATIONS**

Secretary Doherty noted for the record the receipt of the application of Michael Abuladze for Spring Hill Apartments located at 129 Spring Street.

**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 9:05pm.**

**Ayes – 5**

**Nays – 0**

**Absent/Abstaining – None**

Respectfully submitted,



Elizabeth Doherty  
ZBA Secretary