

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
MEETING
FEBRUARY 11, 2020
MINUTES**

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

ABSENT: Member Margotta, Member McCarthy and Alternate Member Czerwinski

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

**1. APPLICATION: 123 Elm Street – Area Variance – 207-1-3
The applicant was not in attendance.**

The application of 123 Elm St. LLC for an area variance from the bulk requirements and special use requirements of Section 200-51. The application proposes front, rear and one side-yard setback of less than the required distances. In addition, the proposed lot area is 25,264 sq. ft. but the required lot area is 40,000 sq. ft.

The property, which is the subject of said action by the Board, is located in a GB Zoning District and is identified as Section 207-1-3 on the tax map of the Village of Monroe and is also known as the address 123 Elm Street.

Chairman Baum was advised in writing that the applicant wished to adjourn the hearing to March 10, 2020.

On a motion made by Chairman Baum and seconded by Member McCarthy, it was: **Resolved to adjourn the public hearing to March 10, 2020.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member Margotta (absent)

**2. APPLICATION: 208 Business Center, LLC – Area Variance – 201-3-7
Present: Kirk Rother, PE and Joseph Haspel, Esq.**

The application of 208 Business Center, LLC, for a review of the Building Inspector's interpretation; or, if the interpretation is upheld, an area variance from the requirements of the Table of District Uses and Bulk Regulations. This is a corner lot with two front yards

and multiple varied front lot lines. The required front yard setback for a Shopping Center in the GB district is 150', and the application proposed setbacks are 82', 72' and 65'.

The property, which is the subject of said action by the Board, is located in a GB Zoning District and is identified as Section 201-3-3, Section 201-3-4, Section 201-3-7 and Section 201-3-8 on the tax map of the Village of Monroe and is also known as the address 401-403 NYS Route 208 and the address 23-25 Gilbert Street.

Chairman Baum advised the applicant that only four Board members were in attendance. Three "yes" votes are needed for an area variance to be granted. If there are five Board members in attendance and two vote "no" the application may still be approved if the remaining three Board members vote "yes." With only four Board members in attendance if two "no" votes are received the application will by law be denied. Chairman Baum said that the applicant had the option to adjourn the public hearing to next month when there may or may not be five Board members in attendance. Mr. Rother chose to proceed with the meeting.

Chairman Baum recapped what transpired last month for the benefit of Member McCarthy who was absent. The issue before the Board was the interpretation of what the front lot line was. He said that the Building Inspector had made an interpretation that the front lot lines are those lines shown in red. The applicant felt that the front lot line should be Gilbert Street and Route 208. If you use those streets as the front lot line then the applicant has more than enough area, but because the Building Inspector determined that the front lot lines were those lines behind the Jemro Home Improvements, Inc. and behind Macs Realty LLC, as well as the property to the west, the YMCA, they were deficient. The distance, if measured from Jemro and Macs Realty, is not enough to meet the front setback requirement.

Mr. Rother said that the view on the right side of the map showed the point from which they felt the front setback should be measured. That was based on the code specifying that the setback is measured from the front lot line which was then defined as the street line along the right of way. But the ZBA sided with the Building Inspector's interpretation and as a result the applicant is now asking the Board to grant them a variance on the front yard setback.

Prior to coming to this Board the applicant went before the Planning Board with a plan similar to the one before the Zoning Board. The Planning Board agreed that the building met all the front yard setbacks and the Planning Board deemed that the use was retail/office which at that time was acceptable. The applicant then found a grocery store who expressed an interest in occupying about 30,000 square feet of the bottom floor of the building. The question posed to the Planning Board and the Building Inspector was what the use now would constitute? Mr. Cocks had indicated that the shopping center would constitute an "anchor store" (not necessarily a grocery use) which now would put the building into the shopping center category. That shopping center category of the anchor store has some other things that go along with it, such as it should be a

group of buildings. A single building that is an anchor store would be part of a retail chain which this is not. But the point is, if it weren't for that anchor store triggering the shopping center use, this building could be built exactly as it is proposed. Mr. Rother explained that if they had made the entire first floor all grocery store, or all one use, this building could be built the way it is. If we had the anchor store and it wasn't 30,000 square feet, if it were chopped up into smaller areas – the question of what square footage requires it to be an anchor store has not been answered yet – if it were chopped up into smaller retail spaces this building could be built as shown without any variances. Mr. Rother said it was that the one criterion of it being a grocery store, deemed an anchor store, which is related to a shopping center use, which then leads to it requiring 150' front yard setbacks.

Mr. Rother said that as far as what they perceive as the potential impacts regarding the front yard setback variance should the Board grant it, we go full circle to the conversation we had last month about measuring the front setback, the lot line, which coincides with this street line. So, if you were to measure from the right of way of Route 208 or from the street line of Gilbert Street, we meet the 150' setback. It's really only from the rear of the gas station that's Macs Realty, or from the parking lot of the YMCA, or the parking lot of the Jemro Home Improvements, that we would be substandard on the 150' setback. The argument is the true spirit of the Code as far as the measuring of the setback from the street. We meet that criteria. It's just given this very irregularly shaped parcel of land and how that concept was interpreted is forcing us into this situation where we have deficient front setbacks with the rears and sides of these other properties.

Mr. Haspel said that by seeking this variance the Board should not consider this a waiver of the legal issues they still have independent of which includes the determination that was ratified earlier tonight and we are also putting on the agenda a question to interpret the definition of shopping center which is on for another night. Not for tonight. We're proceeding based upon the actions this Board has already taken. Mr. Haspel emphasized that there was no waiver by coming here. We're not conceding that we need a variance, we're not conceding that this is a shopping center, we're not conceding that we don't have the 150' setback as the plan is currently now. Chairman Baum responded, "Duly noted."

Chairman Baum wanted to understand the reason for the 150' setback. Based upon the uses of this building as proposed it would be considered a shopping center. Mr. Haspel said, "Correct, and that's what changes the actual setbacks." He said that if it hadn't been deemed a shopping center it would meet the setback requirements.

Chairman Baum reviewed the Code for the definition of "Shopping Center." He read aloud the definition of "Neighborhood Shopping Center":

A tract of land with a building or group of buildings planned as a whole and intended for one or more retail or allied purposes. A neighborhood shopping center has no retail anchor store and will not exceed a total of 30,000 square feet in gross leasable floor area.

Chairman Baum then read the definition of a “Shopping Center”:

A tract of land with a group of buildings planned as a whole and intended for one or more establishments for retail or allied purposes. A shopping center has a retail anchor store as a leading tenant and a total of 30,000 square feet or more of gross leasable floor area.

Finally, Chairman Baum read the definition of “Anchor Store”:

A major retail store used to drive business to smaller retailers. These larger stores, or grocery stores, are generally part of a retail chain and are the prominent business in a shopping mall.

Chairman Baum summed up the applicant’s arguments as follows. But for the fact that they’re classified as a shopping center because they have an anchor store they would meet the front setback requirements of 60’.

Mr. Haspel said that’s what the interpretation of the Building Inspector was because they had suggested that a grocery store would be going there that may be 30,000 square feet.

Chairman Baum asked if prior to that they were classified as office/retail? Mr. Haspel and Mr. Rother said yes.

Member Zuckerman said for the record that in the applicant’s supplemental affidavit they mentioned that there were no residential properties in the vicinity. Jemro is a business in the front and has a residential apartment in the back.

Mr. Rother mentioned that this applicant has a right of way, or an easement, to use their parking lot.

Chairman Baum noted for the record that this application was referred to the Orange County Department of Planning pursuant to General Municipal Law 239 l, m and n and their response was as follows:

The Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area, it does not appear that inter-municipal or county-wide impacts would result if the Board finds that granting relief is warranted in this matter. We note that the applicant has requested a zoning interpretation regarding the measurement of front yard setback. Planning does not give official interpretations of municipal codes as that responsibility lies with the municipality. However, in this instance we support the interpretation of the Village of Monroe Building Inspector.

Chairman Baum noted that their recommendation was for local determination.

Chairman Baum opened the hearing up to the public. No one came forward.

On a motion made by Chairman Baum and seconded by Member McCarthy, it was: **Resolved that the public hearing be closed.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member Margotta (absent)

Member Zuckerman said this matter is pending before the Planning Board which has been designated the Lead Agency on SEQRA. The plans that were submitted to them are preliminary. So there have not been final plans set up because of whatever their investigation leads and changes you have to make for them, and whatever the Planning Board would do. They haven't even designated the Zoning Board of Appeals as a coordinating agency. So, when it comes down to the only thing we look at, which is the five-prong test, you get to item four, whether the proposed variance would have an adverse effect or impact on the physical or environmental condition in the neighborhood or district. How can we make a determination on that without having what the Planning Board and their engineer determines?

Chairman Baum responded that we're not looking at the environmental impact from the project we're looking at the proposed impact, if any, or adverse effect, if any, based upon the variance. Mr. Rother responded that were either the retail use or not the shopping center use this site plan and the impacts associated with it, subject to going through the SEQRA process, would be allowed.

Chairman Baum pointed out that the applicant would still have to do a SEQRA review. So, the question is should this be a coordinated SEQRA review such that should the Planning Board to act as Lead Agency and make a determination regarding the significance for our Board or whether we should be tasked with making our own SEQRA determination.

Member Zuckerman added that the applicant should look at the letter submitted to us by the YMCA talking about the fact that there are some issues where there is some relevancy with the setback because of the fact that the way it's set up then the property lines are right on the YMCA, they're right on Jemro, and they're right on Macs. Certainly, the YMCA has come up with a complaint that until they know what has been happening with certain things, because of the elevation differences and the grading, etc., they have no idea what kind of effect it's going to have on them. We don't have an engineer. There's an engineer working for the Planning Board and we have no idea what the final result will be. It will be a very difficult variance to give based on the five standards that we must use under State law.

Chairman Baum said that he understood that issue but under SEQRA the granting of individual setback lines is considered to be a Type 2. Based upon SEQRA regulations the granting of these variances as requested by the applicant is deemed not to have any significant impact on the environment. While I think you make a good point other than the fact that the DEC regulations say it's not going to have an impact, he didn't know how the Board could draw themselves into the SEQRA determination where these variations are deemed not to have an impact. It's almost like that's been decided for us as to whether or not SEQRA applies. We still have to factor it as one of the factors. You think you're going to have a difficult time making a determination as to whether you think the variance will have an adverse effect or impact on the physical or environmental condition?

Chairman Baum continued, saying that under SEQRA the granting of front setbacks are deemed not to have a significant effect on the environment. The Board may look at whether these proposed variances may have an adverse effect or impact, but not the project in total.

He said that he understood the issues that were raised by the YMCA, but they all seem to be site plan issues, grading, drainage, slopes, and storm water. These are all site plan issues to be looked at by the Planning Board as part of the SEQRA process. The question is what negative environmental impacts or adverse impacts are being created just by the granting of the variances.

Member Gilstrap asked Member Zuckerman what he meant when he said that the proposed building would be on Jemro and it would be on the YMCA.

Member Zuckerman responded that what happens is, if we take the Board's decision that the lot line is the property line these are now right now on the property of the YMCA and right on the property of Jemro, what is now considered to be the front line. And it makes it so it's a negative effect to these particular properties.

Mr. Haspel said that Member Zuckerman is saying that the lines are changing. What's changing is the setbacks only. The 150' would then encroach on the property but if you're looking at it nothing's changing.

Mr. Rother said that he drew on this map here the effect of what they're asking for. These red lines are the property lines that will be affected by the variance that is requested. Because these lines were considered front lot lines/street lines we now have to measure the building setback, only the building, from those locations. The existing lot lines between the applicant's building and the YMCA or Jemro, obviously that's going to change by the proximity of the parking lot and other improvements. This is a sketch and we have a lot of fine tuning to do as we go through the Planning Board, and we may move the parking lots around, but that is a planning issue and unrelated to whether we are allowed to place our building within 150' of street lines. That's the only thing we're asking this Board to consider. Our argument is if it weren't for an anchor store that turns it into a shopping center use we wouldn't even be here.

Member Gilstrap responded that the problem was that they have an anchor store. Mr. Haspel said probably but not effectively at this point. Member Gilstrap said, "It is so until we come to grips with it and say that it isn't so. The Building Inspector has said so."

Mr. Rother said even if they do have an anchor store, as far as impacts, what difference does it make?

Member Gilstrap responded that the usage is very different.

Chairman Baum said that it must have been determined that a shopping center would have a greater impact such that a greater setback requirement was imposed.

Member Gilstrap said that to him it seemed quite obvious. The traffic in and out of a shopping center could be much greater than in and out of an office space and the deliveries to and from a shopping center could be much greater than from an office space.

Mr. Haspel responded that this building was never office space. It was always retail office and its retail component hasn't changed except for the fact that one of the retail stores may be larger. The split between retail and office is not the issue. The question is if there's going to be one store that is bigger than others.

Mr. Rother added that the portion proposed has always been two stories and that the second story was going to be the office. The first story was always going to be retail.

Chairman Baum asked Mr. Rother to clarify on the plan where these proposed bulks are of the 82', 72' and 65'. Mr. Rother answered that Building Inspector generated those numbers. Mr. Rother pointed out the numbers on one of the diagrams. Building Inspector Cocks said that the 65' is to the front right corner. Chairman Baum said that the 72' is closer to the YMCA and the 82' is to the rear of Jemro Home Improvements.

Chairman Baum said he could understand why Member Zuckerman was concerned and he agreed with Member Zuckerman except that for SEQRA purposes this is a Type 2. How can this Board apply SEQRA? He said you can look at the impacts in granting the variances but in terms of SEQRA review it's considered a Type 2.

Member Zuckerman responded that it's also difficult to figure out what the impacts will be since that is going to be reviewed by the Lead Agency.

Chairman Baum asked if he meant the impacts from the shopping center or the impacts from the variance? Obviously, there are potential impacts from the shopping center itself on a Part 1 and Part 2 Environmental Assessment Form.

Member McCarthy asked where the entrances and exits to the project were from a traffic viewpoint? Mr. Rother answered that the main entrance was on Route 208 with a

secondary entrance onto Gilbert Street. The Planning Board identified very early on that traffic is a very important aspect of this project. That is one of the main reasons that the plan remains in a preliminary state of design along with the need for this variance. Because the New York State DOT is going to be very involved in what the applicant does as far as traffic. There have been some proposals already. There's a traffic engineer on their end and there's a traffic engineer on the village's end.

Member McCarthy said that it looked like there would be a lot of problems at that intersection of Gilbert Street and Route 208. That's a crazy intersection.

Mr. Rother agreed. He said one of the alternatives that was presented was making two lanes of traffic on Route 208, realigning with Gilbert Street and adding traffic signals. Mr. Rother said that they met with the New York State DOT who asked the applicant to consider creating a large round-about around the gas station but in simulations it didn't work as well as they had hope it would. Mr. Rother said that the area from Gilbert Street, past their site, including Schunnemunk Street and North Main Street is going to need improvements. Until that is resolved the site plan is in limbo because that may dictate where the entrances will be and the parking, drainage, etc. Mr. Rother called this, "enormous" and said it's being coordinated and re-reviewed under SEQRA.

Member Zuckerman said that it is why he had problems with this project. He asked if the building might end up being smaller. Mr. Rother said that it was possible the building might change.

Member Gilstrap said if we were to allow the variances, the only thing we can consider is that this allows a bigger building than the Building Inspector's interpretation will allow, so the building is now encroaching towards some of its neighbors. The problem is that we don't know what the other factors are, such as the layout of the parking lot, where the entrances will be and how that larger building fits within those things. And, Member Zuckerman added, will the building be moved, making those three numbers different.

Member Gilstrap continued, saying we have in hand one thing, which is the area of the building that would be allowed, but we don't know the rest. So how do we judge the impact if we only have one of the variables but not the others?

Mr. Rother asked, if the Board were to grant a separate variance for the front yard setback the applicant would be locked into that? Even if the applicant decided to change the building orientation a little bit? Member Gilstrap said the applicant couldn't come any closer but they could make the building smaller or move it to a slightly different location. Member Gilstrap said that the applicant was not locked into it, they've been given the maximum area needed. We know the maximum area of the building, but we don't know where the entrances are. We have a building that's fitting within a certain space, but we don't know what the other factors within that space are. Where is the parking? We don't know, because that's not defined. Where are the entrances? We don't because that's not defined. So, it's hard to say what the impact is of this building

fitting into this unknown, undefined space. We can't say because we only have one factor, the maximum area of the building. We don't have the other factors.

Chairman Baum said that he understood the point but he looks at it as what impacts are being created? Member Gilstrap responded that a certain size building in a space with other properties that are unknown. So, since those properties or combination of properties that are unknown are, they ok or are they not? We cannot perform this methodical calculation because we don't know.

Chairman Baum asked if Member Gilstrap was saying that he couldn't adequately judge this application based upon the standard until we know what their final layout will be?

Member Gilstrap responded by saying we know the size of the building and that the building is going to be fairly close to Jemro. Jemro is a residence. Chairman Baum felt that this characterization was misleading. Jemro is a commercial use in a GB zone that has an apartment. It is not a residence. There is a tenant living there but is it our duty to protect any tenant who decides to take up residency in a commercial zone in the middle of commercial uses?

Member Gilstrap responded let's suppose that there weren't a tenant there but there was another business there. And there is going to be traffic going by closer than what the law would allow. Is that a problem or is it not? I don't know. Chairman Baum asked, traffic going behind the building, in the parking lot? Member Gilstrap said yes and he added, is that a problem or is it not? You might want to know the layout of the parking lot to decide that or you might wish to know where the entrances are.

Chairman Baum responded that he should assume that the layout is the way that it is now. We understand this layout could change. They have interior traffic circulation issues, we don't know what the final ingress and egress points are. But, Member Gilstrap responded, given all of that we shouldn't assume that it would end up just like this.

Attorney Golden said in the decision, if you were to grant variances, you can condition those variances reasonably and if you're judging the impacts from this proposed plan, which is the only one before you, you could say that you're going to grant these provided that this configuration doesn't change, and if it does change they need to come back.

Member Gilstrap said if we're going to say that the other physical properties of the layout aren't going to be as presented to us then I will make my best judgment on that. But if we're not to know the other physical properties of this setup then I think it would be very difficult to make that judgment.

Mr. Rother said if it gives you any solace, we're hoping that we're not going to reinvent the wheel. He said we're at the mercy of the DOT. And that's sliding the entrance a little bit. I don't understand how the measurement of the front setback of the building affects where we can or cannot place the access roads for parking. There are other

criteria in the Code that dictates that, as far as where access roads and parking spaces should be. I don't see how the front setback of the building connects to that.

Member Zuckerman but if you change the size of the building or if you move the building a little bit you're changing the actual setbacks.

Mr. Rother responded that if the board were to grant the variances that we are requesting we're going to have to live with that. I would assume unless we choose to make them bigger, by making the building smaller and the setbacks are greater than what was granted. But if we were going to make them any less or switch them we would have to come back before this Board.

Chairman Baum said that they certainly can't move the building any closer to what's been established as the front lot lines than the relief they're granted. They can move away. Member Zuckerman pointed out that this may bring another problem, the distances to the rear.

Chairman Baum said well they're going to have to maintain that or come back for another variance. Mr. Rother said that they meet the rear and side yard setbacks. Member Gilstrap said but if you move the same sized building away, you can't do that without potentially encroaching on the other setbacks. Chairman Baum repeated that they would have to come back for another variance. He said, in my mind but for the fact that you have these awkward lot lines that impose this greater setback because they're considered front lot lines based upon the reading of the Code, they wouldn't be here at all. Member Gilstrap responded yes.

Chairman Baum said you have to take into account the fact that the uniqueness of this property with its two front yards and the jogs and lot lines are creating this hardship for the applicant. Member Gilstrap asked, "Didn't the applicant create this property with those attributes?" Member Gilstrap pointed out that certain tracts were combined to create this property which has these attributes.

Chairman Bam said well it's not a cookie cutter. They didn't create it, it's the way these properties are configured. You have these varied lot lines with the setbacks and then you have the interpretation by the Building Inspector that these are considered "front lot lines" imposing the requirements that they set back even further from those lines than they already have.

Chairman Baum asked the Board what they wanted to do?

Member Zuckerman said there are two choices. Take no action until we know what the final plans are; or make a decision without specifically going into each one of these five particular items and say we're either granting it because of the unique nature of the property itself or we really can't answer factor four, whether there will be an adverse effect based upon the information we have before us at the present time. We're just deciding on whether to grant a variance because of the uniqueness of the particular setup.

Chairman Baum said we still have to go through the factors. He asked if it were an option to not to take any action until the applicant gets their plans and the Board knows what they layout is going to be?

Attorney Golden said that the Board has to issue a decision within 60 days because the public hearing was closed today. He said that in cases which have this interplay between Planning Boards and Zoning Boards in need of variances, that it may be the Zoning Board is uncertain as to whether or not they're going to grant the variances. The applicant can consent to holding the time period open until the Planning Board finishes its project and therefore the impacts would be more knowable. The Board could, with the applicant's consent, so delay until the site plan is more finalized so that some of the Board members can feel that they know the impacts of the environment. The Board would then need to issue a decision one way or the other within 60 days.

Mr. Haspel said that his preference would be to table it and to carry it at least to the day when we determine whether this is a shopping center at all. I think this may put an end to the whole debate.

Mr. Rother asked, without this Board granting a variance what plan was he supposed to present to the Planning Board for them to proceed with for their SEQRA review?

Attorney Golden responded that Mr. Rother could put together whatever plan he wanted. And then at some point in time it's going to be finalized, even before they get to their decision-making, at which point in time he would come back to the ZBA. Even though the Planning Board might still be working on other issues, they would not be impacts that the ZBA is concerned about. They're not going to change the location of the building. At that point the applicant would come back to the ZBA asking them to grant the variances now that the environmental impacts may be more knowable. If the ZBA grants the variances it doesn't slow the applicant down at all.

Mr. Rother asked what would happen if they didn't?

Attorney Golden responded that if they don't either now or later then you have no variances and you can't vote.

Mr. Rother responded that the applicant will have to go through this lengthy SEQRA process just because of the complexities of the project, without knowing this Board's disposition on whether they would grant this variance?

Attorney Golden said, that's right, but the impacts are such that they can imagine them being great without any further information from you given the precise location of the building vis a vis the setbacks and therefore they could demur. What would likely happen is, if the applicant didn't like that and it was challenged, the Article 78 would likely take longer than the SEQRA process. And so what would effectively happen is the applicant would still go back before the Planning Board with that pending Article 78,

which would then be finalized and the applicant would come back to the Board at that point in time. Hypothetically what some of the Board members are concerned about is how to figure out the impact to the surrounding properties and the environment as part of their test, not part of SEQRA but part of their test. They're struggling with that. If they knew where the building was at this point in time they would have less of a problem with respect to that issue.

Mr. Haspel responded that what they have been saying is they have this building that is set. He said that they recognize that if it's changed they have to come back. We're in a chicken and egg situation. The Planning Board is saying they won't go forward with this application process until the applicant has a variance. That's why it's before the Zoning Board.

Attorney Golden responded that he didn't know what the Planning Board was thinking. It happens on a regular basis that Planning Boards go through their process when a project needs variances and they don't get the variances until after the Planning Board is finished. In coordinated actions that's what would happen because the ZBA wouldn't be able to make their decision until SEQRA is closed.

Mr. Rother and Mr. Haspel asked if Zoning Boards don't give some indication as to where they're headed? Attorney Golden responded that some do and some don't. Some do not want to make a decision until SEQRA is completed on the coordinated action. They don't want to go very far down that road until they know that because it could inform their decision-making.

Mr. Rother said that in his experience there is generally some inclination from the ZBA. Attorney Golden said that the inclination from this Board is mixed. Mr. Rother said he was reluctant to lock the entrance where it was because it's so heavily influenced by the DOT. As far as the building shape and placement we're comfortable with it and if we change it we'll have to come back.

Attorney Golden said if the Board is going to evaluate the impacts of the environment on the adjacent properties, etc., they would be assuming that everything on the site plan stays the same. That's the only way they could do that. He said that he is trying to articulate the sentiment expressed by some of the members of this Board. Those members have said that unless the applicant will say that nothing is going to change, they have difficulty trying to figure out the impacts.

Mr. Rother said that nothing will change with regards to the building.

Attorney Golden said that the impact of the setbacks vis a vis the building also has to do with if the building is closer it has certain impacts, if the building further away it has different impacts, both with respect to traffic and circulation. Attorney Golden felt it would answer the concerns of the Board members if the applicant would say that nothing changes on the site plan. If it does, then the applicant will have to come back.

Mr. Haspel responded noting that if an entranceway has to move one foot that's a change.

Attorney Golden agreed. He said the applicant would go back and the Planning Board would presumably say this doesn't change their analysis and they would stand by their decision. Attorney Golden reiterated that there was some concern by a couple of members that any problems with that would temporarily be avoided by saying that either the applicant will stick with this therefore the Board can go ahead and analyze the impacts or agree to put this on hold and wait until it is finalized and then come back. Otherwise what's before the Board is an application that may change and therefore there has been some concern raised that it might change the factor four analysis. Attorney Golden said that they did not have to make a decision right now. They have 60 days to make the decision. They can wait until the next meeting.

Mr. Haspel said that would be his preference.

Chairman Baum asked if there were any objections? Nobody expressed any objections.

On a motion made by Chairman Baum and seconded by Member Gilstrap, it was: **Resolved to adjourn the vote on this application to March 10, 2020.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member Margotta (absent)

2. ADOPTION OF DECISION FOR 208 BUSINESS CENTER, LLC (INTERPRETATION)

On a motion made by Member Gilstrap and seconded by Member Zuckerman, it was unanimously: **Resolved to adopt the decision for 208 Business Center, LLC.**

Ayes – 3

Nays – 0

Absent/Abstaining – Member McCarthy (Abstaining) and Alternate Member Czerwinski (Absent)

3. ADOPTION OF MINUTES

On a motion made by Member Zuckerman and seconded by Member Gilstrap, it was unanimously: **Resolved to adopt with one minor change the minutes from the January 14, 2020 meeting.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member Margotta (absent)

4. **NEW BUSINESS: NEW APPLICATIONS**

- a. Secretary Doherty noted for the record the application of 208 Business Center, LLC for a review of the Building Inspector's interpretation.
- b. The application of Edwin Morales for an area variance was also received but was distributed after the close of the meeting.

5. **ADJOURNMENT**

On a motion by Chairman Baum, seconded by Member McCarthy, with all in favor: **there being no further business, the meeting was adjourned at 9:13pm.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member Margotta (absent)

Respectfully submitted,



Elizabeth Doherty
ZBA Secretary