

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
MEETING
JULY 14, 2020
MINUTES**

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

ABSENT: Member McCarthy

Chairman Baum called the meeting to order at 8:08pm with the Pledge of Allegiance to the flag.

Chairman Baum requested that everybody remain standing to remember Stephen Reineke and Steven Milligram, both of whom succumbed to the COVID-19 virus. Steve Reineke was an attorney for the Village of Monroe Planning Board since 2016. His law firm, Levinson, Reineke and Ornstein LLC, has served the Planning Board for over 30 years. Steven Milligram, who served as Monroe Town Justice for eight years until his election in November to the Supreme Court justice seat for the Ninth Judicial District. The Chairman led the Board in observing a moment of silence in their honor to recognize them and think of their families.

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

The application of 208 Business Center, LLC, for 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 explained that the public hearing for this application was closed on February 11, 2020. Deliberation on this application was adjourned pending the outcome of an application submitted by the applicant to the Planning Board.

After this application was filed with the Zoning Board of Appeals the applicant filed another application seeking a review of the Building Inspector's interpretation that this project is considered a "Shopping Center."

Chairman Baum said that the application for the Interpretation will be heard first, since if this Board finds in favor of the applicant there will be no need to proceed with the application for the area variances.

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

The application of 208 Business Center, LLC for a review of the administrative decision of the Building Inspector that this project as a whole is considered a “Shopping Center” which must comply with the specific regulations as outlined in Zoning Code §200-50. The Applicant is seeking proposed front setbacks of 82’, 72’ and 65’ whereas the minimum front setback required is 150’.

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, 4, 7, 8 on the tax map of the Village of Monroe and is also known as the address 401-403 NYS Route 208 and 23-25 Gilbert Street.

Mr. Haspel began by explaining that this project was presented as a mixed-use retail/office and as such it met all the setback requirements. After the site plan had been submitted the Building Inspector determined that the project should be considered a “Shopping Center” which as a result changed the setback requirements.

Mr. Haspel’s discussed two aspects of the application, that the project was considered a “group” and that it included an “anchor store.”

Mr. Haspel began by reading the Village of Monroe’s definition of a Shopping Center in §200-5:

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 sq. ft. or more in gross leasable floor area.

Mr. Haspel said the definition of the word “group” is pivotal to the Building Inspector’s determination that this is a Shopping Center. As written in §200-4:

Unless otherwise listed below the numbers, abbreviations, terms, words used herein shall have the meanings of common usage as set forth in the New York State Building Code, the International Building Code, the New York State Uniform Supplement or the latest edition of Webster’s New Collegiate Dictionary. Terms of law shall have the meanings as set forth in the latest edition of Black’s Law Dictionary.

Mr. Haspel said that he could not find a definition of the word, “group” in the New York State Building Code, the International Building Code, the New York State Uniform Supplement or Black’s Law Dictionary. Mr. Haspel summarized the Webster’s New Collegiate Dictionary of “group” as follows:

Two or more figures forming a complete unit in a composition; a number of individuals assembled together or having some unifying relationship; an assemblage of objects regarded as a unit.

Mr. Haspel said that it is clear that the term “group” requires more than one component and he emphasized that the word “group” is the key word which provides the context for the definition of “Shopping Center.”

Mr. Haspel said that when he approached the Building Inspector to find out what his position was with respect to the word “group” he was informed that the code also has a definition with a provision that effectively equates plurals and singulars. Mr. Rother quoted §200-4, which says in part, “words used in the singular include the plural.”

But Mr. Haspel argued that regardless of whether it is singular or plural, group still has the meaning as set forth above, “two or more figures forming a complete unit.” With respect to the word group, it would seem that since the site plan only has a single building by definition it cannot be a group of buildings, and if it cannot be a group of buildings it cannot meet the definition of Shopping Center. It comes back to what was presented in the first place which was a mixed-used use retail and office building.

Mr. Haspel said that the plan that was submitted for this projected showed that one of the retail establishments may be a supermarket. The Building Inspector determined that a supermarket meets the definition of an anchor store and that, as a result, it tips in favor of the building being a shopping center rather than a mixed-use retail and office building.

Mr. Haspel said to read the definition of an 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.

Mr. Haspel said he didn’t understand what was meant by “major retail store.” Referring to the phrase, “generally part of a retail chain,” Mr. Rother said that there was no indication in this application that the applicant intended to have a supermarket that was to be part of a retail chain, so that doesn’t count. And, finally, Mr. Rother said that the term “shopping mall” is difficult because “shopping mall” and the term “shopping center” are different.

Mr. Haspel said that the applicant has always envisioned this as a mixed-use building as offices and retail. It is not envisioned as a shopping mall as the term is commonly used. The local law requires a group of buildings for a shopping center but there is no such requirement for a shopping mall. In addition, since the proposed site is intended as mixed-

use retail and office, the idea of an anchor retail business driving business to smaller retailers is less an issue because retail is not the exclusive use of the premises.

Mr. Haspel said that at this time the applicant has no potential lessee that is part of a retail chain and at this point in time the applicant's current business intent is to lease its space to local businesses only. Based on the definition of "group" and the definition of "anchor store" Mr. Haspel concluded that that the building as set forth in the site plan does not meet the definition of a Shopping Center.

Chairman Baum said he hadn't seen a floor plan for this building. Did the floor plan show that there was going to be a store in excess of 30,000 square feet? Mr. Rother said that what drove the grocery store use was that it was included in the parking calculations (anticipating that they would have a 34,000 square foot grocery store).

Chairman Baum asked if the applicant discussed with the Building Inspector the specific use of that store, the type of tenant the applicant wanted in there, the type of products that would be sold, or was it just going to be a supermarket/grocery store? Mr. Haspel said there was nothing specific about the tenant or products or what was going to be sold. It's just labeled on the plan as "grocery store."

Member Czerwinski asked if there were any letters of intent from any businesses that might occupy that space? Mr. Haspel said that at this point there is no contemplated tenant, but the applicant has indicated that if it does pursue a grocery store it would pursue a grocery store of a local nature, not one that is part of a chain.

Member Zuckerman asked if all the retail is about 50,000 square feet of leasable space? He asked if the entire first floor is for retail? Mr. Rother said that was correct. Member Zuckerman read the definition of Shopping Center from the code:

A shopping center has a retail/anchor store as a leading tenant and a total of 30,000 square feet or more in gross leasable floor area.

Member Zuckerman concluded that the size of the grocery store doesn't matter as long as all of the leasable floor area is more than 30,000 square feet. He also said that doesn't seem to apply just to the anchor store but applies to all the gross leasable floor area, which is 53,000 square feet.

Mr. Haspel said that he is reading the code differently. While he wouldn't say that Member Zuckerman was wrong, he felt one could interpret the code as indicating that the anchor store had to have 30,000 square feet. Mr. Rother said that he agreed that the 30,000 square foot threshold applies to the whole building; otherwise they could have simply amended the site plan to include a store that was 29,000 sq. ft. He said that the issue is that this is a single building, not a group of buildings, and why does the fact that they have grocery store listed on the parking calculations make it a retail anchor store that's part of a chain?

Member Zuckerman said that the only reason he would go one step further is because if you look at “Neighborhood Shopping Center” it has no retail anchor store and will not exceed a total of 30,000 square feet in gross leasable floor area. Member Zuckerman said that it seems to make the 30,000 sq. ft. the threshold between a neighborhood Shopping Center and a regular Shopping Center and at it states that it’s 30,000 square feet for the Neighborhood Shopping Center which has no retail anchor store. Member Zuckerman did not understand why the anchor store had to be 30,000 square feet or more. He thought it was all the leasable space. Mr. Haspel and Mr. Rother agreed.

Chairman Baum said that they had two qualifiers. Shopping Center has a total of 30,000 square feet or more of gross leasable floor area and it has a retail anchor store as a leading tenant. Anything more than 30,000 square feet has the potential of being a Shopping Center, and it just needs to have a retail anchor store there. Mr. Haspel said it has to have a retail store and have a group of buildings.

Chairman Baum asked if Mr. Haspel and Mr. Rother were saying that the retail space is not defined by 30,000 square feet but rather the entire space is defined as 30,000 square feet? Mr. Haspel felt that it didn’t make a difference whether it was 30,000 square feet for the entire center or not but he said he was willing to yield on that.

Mr. Rother said he had a conversation with Building Inspector Cocks about this. If this were 50,000 square feet with one tenant we wouldn’t be here. It was just the addition of a “grocery store” that triggered the interpretation of it being a shopping center.

Chairman Baum opened the hearing up to the public for comment. No one came forward with any questions or comments. Chairman Baum asked Building Inspector Cocks if he had anything to add? He did not.

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

Ayes – 4

Nays – 0

Absent/Abstaining –Member McCarthy (absent), Member Margotta (absent due to problems with internet access)

Attorney Naughton noted for the record that this was a Type 2 action under SEQRA and not subject to any further review as an Interpretation.

On a motion made by Chairman Baum and seconded by Member Gilstrap, it was: **Resolved to classify this as a Type 2 action under SEQRA.**

Ayes – 4

Nays – 0

Absent/Abstaining –Member McCarthy (absent), Member Margotta (absent due to problems with internet access)

Member Zuckerman asked Attorney Naughton if this is an interpretation or an appeal? Attorney Naughton said it could be classified as both. The applicant is appealing the determination of the Building Inspector that this was a Shopping Center and they are asking that the Board to interpret that provision of the code.

Chairman Baum said that he agreed with Mr. Haspel that the definition of a “Shopping Center” was less than perfect. It refers to a tract of land with a group of buildings; we don’t have a group of buildings. It says you have to have a retail anchor store. A retail anchor store is defined as a major retail store that drives business to small retailers. Who’s to say what a major retail store is? They say it’s generally part of a retail chain. Chairman Baum said if you’ve got a major retail chain, he might buy the argument, but they don’t even know what the use is.

How can we say that the user is a retail chain that’s going to drive business to the smaller retailers, and because we think the use may be a retail chain that it is now a shopping center and has to comply with the greater requirements? Chairman Baum agreed with the applicants that the definition is less than clear. The ambiguity has to go in favor of the property owner. Since the property owner’s definition is plausible and entirely reasonable, he would support the applicant’s position and he would think that they should interpret the code the way it has been proposed by the applicant and overturn the interpretation of the Building Inspector.

Member Zuckerman agreed and he said that this is based on the code of 2017 where that particular definition of Shopping Center and Neighborhood Shopping Center were amended. The Neighborhood Shopping Center definition says that it is either a group of buildings or a building. Member Zuckerman said that he didn’t think they should go against what the Village Board put forward in leaving a Shopping Center as a group of buildings which obviously is more than one building. They wanted to make it distinctive from a Neighborhood Shopping Center which is defined as a building or a group of buildings. If they wanted to, they could have added it to that section when they changed the code in 2017. Because they did add something to the code, they added anchor store. There was no definition of anchor store until 2017.

Member Gilstrap said that he largely agreed that the definition of Shopping Center is deeply problematic. And the inclusion of the word “generally” in that second sentence, that larger stores and grocery stores are “generally” part of a retail chain opens the door to other possibilities. The fact that an anchor store or potential anchor store is not part of a retail chain doesn’t trouble him due to the word “generally” being there. What is a major retail store? That is rather difficult to know from what we have. But on the whole, he would agree with the Building Inspector’s interpretation except that there is no group here. Group is not plural, group is a collective noun. We cannot use the interpretation that this is in some way plural that can be interpreted as singular. What is meant here is a group in the ordinary

sense and there is no group of buildings on this plan. To him that alone means that this cannot meet the definition of Shopping Center.

Member Czerwinski said that he agreed with Member Gilstrap. He said that when this was presented he thought of the ShopRite Plaza and Stop and Shop where there is a large grocery store and there are a whole bunch of smaller businesses right next to them. That said, he agreed with Member Gilstrap that we're not dealing with a group of buildings which means that this cannot be a Shopping Center.

On a motion by Chairman Baum, seconded by Member Gilstrap, with all in favor, it was: **Resolved to overturn the interpretation of the Building Inspector that this is a Shopping Center since it does not consist of a group of buildings when, planned as a whole, and intended for one or more establishments for retail or allied purposes.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member McCarthy (absent), Member Margotta (absent due to problems with internet access)

The application of 208 Business Center, LLC, for an area variance from the requirements of the Table of District Uses and Bulk Regulations was withdrawn by the applicant.

3. ADOPTION OF MINUTES

On a motion made by Member Zuckerman and seconded by Member Gilstrap, it was unanimously: **Resolved to adopt with minor changes the minutes from the March 10, 2020 meeting.**

Ayes – 3

Nays – 0

Absent/Abstaining – Member McCarthy (absent), Member Margotta (absent due to problems with internet access); Member Czerwinski (abstaining)

4. NEW BUSINESS

There was no new business before the Board.

5. ADJOURNMENT

On a motion by Chairman Baum, seconded by Member Gilstrap, with all in favor: **There being no further business, the meeting was adjourned at 8:50pm.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member McCarthy (absent), Member Margotta (absent due to problems with internet access)

Respectfully submitted,

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

Elizabeth A. Doherty
ZBA Secretary