

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
PUBLIC HEARING
February 8, 2022
Via Zoom**

PRESENT: Chairman Baum, Members Margotta, Gilstrap, Zuckerman, Czerwinski, Alternate Member Doherty, Board Attorney Naughton and Assistant Building Inspector Proulx

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

Chairman Baum explained that two Board members were on their way but running late. Chairman Baum asked the lawyer for the applicant if they wanted to proceed or wait for the Board members to arrive so there would be a full Board. Chairman Baum explained there were four Board members present and if the applicant wanted to proceed we could, but, if the Board is split on a decision, the application is deemed denied. The other options include: adjourning till there is a full Board present or waiting for the late Board members to arrive. Chairman Baum stated the applicants can proceed however they choose. The Attorney for the applicant, Stephanie Tunic, thanked the Chairman for the options and stated she would wait and the Board could proceed with any other items in front of them.

Chairman Baum stated we would proceed with the second item on the agenda, approving the January 11, 2022 meeting minutes. Minor typos needed to be corrected.

Adoption of Minutes:

On a motion by Chairman Baum and seconded by Member Gilstrap it was: **Resolved that the minutes for January 11, 2022 be approved with minor modifications.**

Ayes – 3

Nays – 0

Abstaining – Alternate Member Doherty

Absent – Members Margotta, Czerwinski

18 North Main Street

On a motion by Member Gilstrap seconded by member Zuckerman it was: **Resolved to approve the decision for 18 North Main Street as written.**

Ayes – 3

Nays – 0

Abstaining: Alternate Member Doherty

Absent – Members Margotta, Czerwinski

New Applications:

For March: The Pets I Love Veterinary Hospital – part2

APPLICATION: 251 High Street – Area Variances - Section 200-12(A)

The application of 251 High Street LLC for area variances from the Table of District Use and Bulk Regulations, SR-10 Zoning District, to permit a three-lot subdivision which will have less than the required minimum lot width of 100' (approximately 77' proposed for each lot). The property which is the subject of action by the Board is located in SR-10 district and is identified as Section: 206 Block: 1 Lot: 2 on the Tax Map of the Village of Monroe and is known as 251 High Street.

Attorney Tunic, representing the applicant, introduced herself, the Engineer for the project Larry Torro and owners of the property. This application was referred to the ZBA from the Planning Board of the Village of Monroe. The application that was submitted to the Planning Board for review was a four-lot subdivision on a 2-acre parcel which included a cul-de-sac. The original 4 lot site plan was included in the ZBA submission. The Planning Board asked the applicant if they could consider a plan where the lots would have access straight off High Street. The site plan that is before the ZBA has 3 lots with access onto High Street. This site plan does not have a cul-de-sac and creates three lots instead of four. Zoning for SR-10 requires 100-foot lot width. The new lots would have two lots at 77.12 lot width and the third lot with 77.05 lot width. The three lots are longer and would need an area variance for the lot width.

Chairman Baum reminded the applicants that there were only four members of the Board present and if there is a two – two vote split the application would be deemed denied. Attorney Tunic stated she was aware but would like to hear concerns/questions from the Board. Attorney Tunic stated if the Board members are still missing the applicant would not mind coming to the next Board meeting.

Chairman Baum stated before we proceed he would like to clear up some issues. There were mailing issues for this application and he wanted to know the status of that. Chairman Baum confirmed legal notice was published in the Times Herald Record newspaper on January 25, 2022. The Board had received receipts from the USPS that the mailings were done and verified the mailings were sent to all addresses within 300 feet.

Chairman Baum confirmed with the Board Attorney that the ZBA could proceed with this application. The Planning Board had declared themselves Lead Agency for SEQRA and to do a coordinated review. Attorney Naughton confirmed that she received an email from the Planning Board Attorney that the Planning Board had a resolution to rescind Lead Agency for SEQRA which is dated December 13, 2021. This give the ZBA the ability to proceed with this application as an uncoordinated SEQRA review. The applicant did submit a short EAF form for the Board to review which was sent to the Board members prior to this meeting. This allows each Board to do their own SEQRA review.

Chairman Baum opened this item to the Board for discussion. Member Zuckerman stated he would like to know what the problem was with the design presented to the Planning Board with the four lots and the cul-de-sac, as cul-de-sacs are legal.

Larry Torro, Engineer for the applicant, stated the cul-de-sac wasn't necessarily a problem as it did create four legal lots. The cul-de-sac creates over one half acre of paved surface. While the cul-de-sac did conform and created four conforming lots it was the size of the cul-de-sac in the neighborhood that concerned the Planning Board. The Planning Board felt there were no provisions to consider an

alternative. The Planning Board asked the applicant to look at another alternative. The applicant did revise the plan which lowers the amount of lots and eliminates the cul-de-sac but creates smaller lot widths than the code allows which is why the applicant is presenting this application to the Board. Alternate Member Doherty asked if the Planning Board thought the cul-de-sac was too big, Larry Torro confirmed yes. Attorney Tunic stated that the cul-de-sac did conform to the zoning standards but the Planning Board was concerned about the size of the cul-de-sac.

Member Zuckerman asked if the Planning Board considered modification to the cul-de-sac based on section 175-21A in the subdivision of land section of the Village of Monroe code? Engineer Torro stated he was not familiar with that section of the code, and stated that at the Planning Board meeting alternatives were discussed but no solution was found. Attorney Naughton stated there are no modifications in the streets section of the code but there may be modifications that could be done in the subdivision code that could be looked at. Attorney Naughton stated that one section of the code may allow exceptions to the code, but the other section of the code may not allow the exception.

Chairman Baum asked if other layouts were looked at such as shared driveways. Assistant Building Inspector Proulx stated only two lots can have a shared driveway meaning a need for illegal flag lots. Chairman Baum stated the cul-de-sac is a big area with a 30-foot right of way and a 75-foot radius of paved area. Member Zuckerman stated the State Code allows a 96-foot diameter cul-de-sac while the Village code is 150-feet.

Member Zuckerman asked Chairman Baum if he could ask a witness, who was present, some questions. Member Zuckerman stated the questions he had for the witness pertained to the first test criteria for the Board to consider for granting an area variance. Which is will this application have an impact on the character of the neighborhood. Member Zuckerman stated the witness is Assistant Building Inspector Proulx. Attorney Tunic asked what the witness's title was and received the answer that the witness is Assistant Building Inspector Proulx. Attorney Tunic agreed that the witness could reply to Member Zuckerman's questions. Member Zuckerman asked Assistant Building Inspector Proulx if she was requested by him to look at the lot sizes in the immediate area of 251 High Street and how did she perform that? Assistant Building Inspector Proulx stated she got this information from the tax map. Member Zuckerman asked Building Inspector Proulx if she sent a reply to his request via email which included the tax map. Building Inspector Proulx stated she had. Assistant Building Inspector Proulx shared the tax map with the Board. Assistant Building Inspector Proulx explained the slide she was sharing with the Board. She stated she wrote in the addresses and lot sizes on the surrounding homes. She wrote the information in so it could be seen as the print on the tax map was extremely small. Assistant Building Inspector Proulx pointed out that 251 High Street has a lot width of 132 feet and that all the surrounding lots as well as the lots across the street have over the 100-foot minimum width requirement. Stephanie Tunic, Attorney for the applicant, stated that if you look out a few blocks from that area on the tax map you will see the lot width is tighter and are similar to what is being requested and the large lots surrounding 251 High Street are the unusual ones. Member Zuckerman stated that when we speak of surrounding it means encircling and all the lots encircling 251 High Street and the three properties on Gilbert Street have fairly large lots as far as the widths are concerned many well over the 100-foot requirement. Member Zuckerman reads this as surrounding area and in the immediate area the properties are large lots. Chairman Baum stated this was one way of looking at it but to him that seems a

little small. If you look at the overall neighborhood, Sweeze Place, Knight Street and Summit and that area has smaller width lots. Assistant Building Inspector Proulx stated that those lots are between 75 and 100 feet in width. But, that when those neighborhoods were built the small lots met the width requirements. In the 1960's, when those houses were built, that was an R-75 zoning district which means they only needed 75 feet for the width and 35 years ago the width requirement was changed a to 100-foot requirement. That area is now an SR10 which is 100-foot width requirement. Chairman Baum stated yes, but they still define the neighborhood. Assistant Building Inspector Proulx stated yes, but now the lots are considered non-conforming lots. Member Zuckerman asked if the Board wanted to add three more non-conforming lots?

Chairman Baum asked if anyone on the Board had any further questions or comments. The Board did not. Members Czerwinski and Margotta had arrived. Stephanie Tunic, Attorney for the applicants, recapped the application for them. Both members were there for the Boards discussion.

Chairman Baum stated this matter was referred to the County under the General Municipal Law and the County remitted the matter for local determination.

Chairman Baum opened this item to the public. Dr. Thomas Kemnitz spoke. Dr. Kemnitz is the owner of 247 and 217 High Street. 251 High Street was split off of 247 High Street. High Street was developed to be the elegant section of the Village of Monroe. This has always been considered the nice section of the Village. Dr. Kemnitz feels this change will devastate the neighborhood which he is very sad about. Dr. Kemnitz stated once you do this you never get it back, and it is a loss of what was envisioned and what was lived. Dr. Kemnitz stated they are sad to see the splitting up of this property but understands some of this is unavoidable. Dr. Kemnitz asked if these three lots would all face onto High Street. Chairman Baum asked Larry Torro, engineer for the applicant to share his screen to show the proposed three lot sub-division. Chairman Baum explained these lots are deficient by 22 to 23 percent of the requirement. Larry Torro, Engineer for the applicant then showed the four lot sub-division which requires the installation of the cul-de-sac which would not require a variance. Chairman Baum stated these are the two options the Board has before them. Member Gilstrap stated it is not clear if the size of the cul-de-sac can be modified. Member Czerwinski asked Assistant Building Inspector Proulx if the road was private could it be modified. Assistant Building Inspector Proulx stated the Village of Monroe road code is the same for public and private roads. Chairman Baum asked Dr. Kemnitz if he had any other questions or concerns. Dr. Kemnitz stated he did not but he did believe the option for three lots was preferred over the cul-de-sac option as it has less impervious surface which is always preferred over more impervious surface. Having more impervious surfaces can lead to water run off problems. Dr. Kemnitz stated that the option with the three lots does not follow the character of the neighborhood but it is still his preferred option, and that either options causes major damage to the neighborhood for generations and that the three-lot option has fewer negatives. Chairman Baum stated he could understand why these options were not good options as there are only four large lots left in that section of the Village. Chairman Baum asked if there were any other comments from the public. There were no other comments.

Attorney Naughton recommended to the Board that this application be classified as an Unlisted action for SEQRA. Chairman Baum asked for an explanation of the SEQRA types. Attorney Naughton explained that a type2 SEQRA action is for a single one, two or three family residence which is not what is being asked for. Unlisted SEQRA actions are for multiple residences.

SEQRA

On a motion by Chairman Baum and seconded by Member Gilstrap it was: **Resolved that 251 High Street be classified as an unlisted SEQRA type action and that the Zoning Board of Appeals assume lead agency for an uncoordinated review for the determination of this application under SEQRA.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

Chairman Baum discussed the EAF form. Chairman Baum inquired about the Part 2 section for the EAF. Attorney Naughton explained she normally prepares that but did not have time as the EAF was just received today. Attorney Naughton reviewed Part 2 with the Board.

Attorney Naughton stated there were 11 questions for Part 2 of the EAF.

Question 1: Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? Attorney Naughton suggested the answer would be yes, but a small impact.

Question 2: Will the proposed action result in a change in the use or intensity of use of land? Attorney Naughton suggested the answer would be yes, but a small impact as you would be going from a single-family home to 3 lots each with a single-family home therefore you increase the intensity.

Question 3: Will the proposed action impair the character or quality of the existing community? Attorney Naughton suggested the answer would be yes, but a small impact as the owner has the right to four lots with a cul-de-sac.

Question 4: Will the proposed action have an impact on the environment (characteristic) that caused the establishment of a Critical Environmental Area? Attorney Naughton suggested the answer would be no.

Question 5: Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit or biking or walkway? Attorney Naughton suggested the answer would be no.

Question 6: Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? Attorney Naughton suggested the answer would be no.

Question 7: Will this proposed action impact existing public and private water supplies or public or private waste water treatment utilities? Attorney Naughton suggested the answer would be no.

Question 8: Will the proposed action change the character or quality of any important historic, architectural or astatic resources? For the purposes of the ZBA, Attorney Naughton suggested the answer would be no.

Question 9: Will the proposed action result in an adverse change to the natural resources? For example, wetlands, water bodies, ground water, air quality or flora? For the purposes of the ZBA, Attorney Naughton suggested the answer would be no.

Question 10: Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? Attorney Naughton suggested the answer would be no to small due to the increase of pavement of the driveways.

Question 11: Will the proposed action create a hazard to the environmental resources or human health? Attorney Naughton suggested the answer would be no.

Chairman Baum stated that question 8 about historic land marks stood out to him due to the close proximity of Rest Haven. Member Zuckerman stated that Rest Haven is both a federal and state landmark. Chairman Baum stated he wondered if granting these smaller lots would impair the character of the neighborhood? Maybe the protentional answer to question 8 should be moderate to large for the impact. Chairman Baum also stated if the variance were granted it would allow 3 narrow lot widths in a neighborhood that has large lots or there would be a large cul-de-sac which is also not in keeping with the neighborhood.

Attorney Naughton stated that the Board could request additional information from the applicant in areas of concern to the Board.

Member Zuckerman pointed out if this application is granted it would create 3 non-conforming lots instead of 4 conforming lots. Member Zuckerman stated it is not the business of the Board to add non-conforming lots into this area. And, that the Village is trying to convert non-conforming lots into conforming lots so the Board should not create non-conforming lots if there is a way to avoid that. Chairman Baum stated the only way to avoid that is to have the cul-de-sac. Member Zuckerman stated may be there is a way to avoid this size cul-de-sac if we look into the code.

Member Zuckerman stated there could be some modifications to the plan for this and that the Planning Board should have looked at more possibilities. For example, modifying the plan so it is two lots might be a possibility but Member Zuckerman stated he did not know if that was financially feasible. The Zoning Board will need to answer the five factors questions for an area variance which includes the question could this have been achieved another way without a variance. The answer to that would be yes. Member Gilstrap stated that is part of the difficulty with this application. The law stated the Zoning Board of Appeals should grant the minimum variance. This puts the Zoning Board of Appeals in a difficult position when we know there is a solution that requires no variance. Member Gilstrap stated he would like to know why the alternative solution is not viable. For example, if the run off from the cul-de-sac would be an issue then the current proposal would have an advantage. Member Gilstrap stated he is struggling to see what about the cul-de-sac is inadequate. Chairman Baum stated to him he wonders why you would want to introduce a large cul-de-sac in this part of the Village and build four houses on smaller lots and create more impervious surfaces with a cul-de-sac. The drainage of the cul-de-sac could be engineered to handle it but is that better off for the Village? Or is it better for the Village to have 3 smaller lots with a much less impervious surface? Chairman Baum stated that is what the Board is being asked to decide. Member Zuckerman stated the Zoning Board of Appeals has a New York State law with five criteria test for an area variance and the Planning Board has the right to modify the code while the Zoning Board of Appeals does not. Chairman Baum stated the Zoning Board of Appeals does not have the option to send this back to the Planning Board. The Zoning Board of Appeals has only two options.

Stephanie Tunic, Attorney for the applicant, stated that when the Planning Board reviewed the application maybe there were modifications the Planning Board could have made in the subdivision code section, but the cul-de-sac would be covered by the road specification section of the code and that cannot be modified. Therefore, there is no way around the size of the cul-de-sac size. Assistant Building Inspector Proulx stated the road section of the code states that the Village Trustees have the ability to modify the road

specification section of the code when it is needed to do so. Board Attorney Naughton stated the Zoning Board of Appeals can only look at the application in front of them, they cannot suggest that the applicant go to the Village Trustees.

Chairman Baum stated the Board is looking at the EAF Part 2 section and he asked if the Board was prepared to adopt the EAF Part 2 and declare a negative declaration or are they requesting more information from the applicant?

Member Zuckerman stated that another possible area that needs to be looked at is the traffic. He feels the Board would be more comfortable if they knew what impact this application will have on traffic. Attorney Naughton stated New York State defines what is being asked in Question 5 on Part 2 of the EAF form. There are three reasons and the only one that would apply to this application would be if there would be an impact on traffic and can street handle it. Stephanie Tunic, Attorney for the applicant, stated this is a very small impact on traffic even with two or three cars per house, that would only add four more cars as the one house already exists. Larry Torro, Engineer for the applicant, stated when traffic studies are done driveways are not taken into consideration. Chairman Baum stated the sub-division on the cul-de-sac would have a bigger impact as it includes four houses. Chairman Baum polled the Board on if they think a traffic study was needed, Member Czerwinski stated he did not feel a traffic study was needed as the impact is one or two cars per house which is typical and in character for Monroe. Member Margotta stated he feels that area is dangerous and traffic is creeping up in that area due to the new houses that were put in. Member Gilstrap stated he has sympathy for both sides of the argument but does not feel it is right to burden the applicant with this. Stephanie Tunic, Attorney for the applicant, stated this is a minor impact to traffic by any standard. Member Gilstrap stated the traffic study would evaluate how the street was handling the current traffic which would be something the Board would need to know.

Stephanie Tunic, Attorney for the applicant, stated there is another cul-de-sac in a subdivision in the area, could that study be used here? Chairman Baum stated no. The traffic study for The Village Gateway was built in the 1990's so those numbers are no longer valid.

Chairman Baum stated that members of the Board feel the impact on traffic could be moderate to large so more information is needed.

Chairman Baum asked the Board if there were any other areas that they would like more information on. Member Gilstrap stated he has a concern on the impact to the architectural resources in the area and what impact from this application this would be. Member Gilstrap stated he was not sure how this could be achieved. Attorney Naughton stated that the Office of Parks and Recreation historical division would need to be contacted and they would respond back with a letter if there is an impact in this area or not. Member Gilstrap stated as this is close to a federal and state historic site we should get the letter. Member Margotta stated he would be curious about the house that is being torn down to do this and does not know if it is on any historic registry. Attorney Naughton stated all that would need to be done is to document the way it was before you did anything with the house.

Chairman Baum stated this is the time to request more information. Chairman Baum would like more information on EAF Part two questions 3, 5 and 8. or, to mark those items as having a moderate to large impact so the applicant can respond with an EAF Part 3 with their comments. Chairman Baum is not suggesting a full-blown traffic study needs to be done. Member Margotta stated he would like the intersection of Cromwell, High Street and Gilbert Street looked at. Member Gilstrap agreed as he thinks this is a dangerous intersection and may be past its capacity. Attorney Naughton stated that according to the DEC handbook this may still be a small impact so she suggests that the Board wait before deciding to change the impact from moderate to large and ask for more information before making that determination.

Chairman Baum stated he was comfortable with that and polled the rest of the Board to see if they were also comfortable with that. The Board agreed. This would also give the Board the chance to look at the DEC workbook to see what the DEC suggests for the level of impact in order to consider this a moderate to large impact.

Member Gilstrap stated he would like to know if it was feasible to go from 3 lots to 2 lots as it is more in character with the neighborhood. Stephanie Tunic, Attorney for the applicant, stated she would take that alternative back to her client but stated her client has already had a financial impact taking the plans from 4 lots to 3 lots and her client has been very accommodating. Member Gilstrap stated he understood this but the question for an area variance asks if there is another alternative and this would be an alternative. He is just not sure if it would be a good alternative financially for the applicant so he would like an answer to that question.

Chairman Baum stated the applicant will need to get the Board more information on EAF Part 2 questions 3, 5 and 8 and if the alternative of two lot is feasible. Until then this meeting will be adjourned.

Chairman Baum stated this will be discussed again at the March 8, 2022 meeting and asked if the applicant could have their response in at least a week before the meeting so members can have a chance to review the response. Chairman Baum also stated that as it is a continuation no further public notice will be published.

On a motion by Chairman Baum seconded by Member Margotta it was: **Resolved to adjourn the meeting at 9:52 pm.**

Ayes – 5

Nays – 0

Absent/Abstaining – None