

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
PUBLIC HEARING
January 11, 2022
Via Zoom**

PRESENT: Chairman Baum, Members Margotta, Gilstrap, Zuckerman, Czerwinski, Board Attorney Golden and Assistant Building Inspector Proulx

Chairman Baum called the meeting to order at 8:01 pm with the Pledge of Allegiance.

Chairman Baum made an announcement that the application for 251 High Street will not be heard tonight. The mailings by the applicant were not done even though notice was published in the paper. The matter is being adjourned till next month's meeting which is February 8, 2022. Notice will be republished in The Times Herald Record and all owners of property within 300 feet of 251 High Street will receive a mailing notice.

APPLICATION: 18 North Main Street – Area Variance - Section 200-62A

The application of Steve Aiello for an enlargement of a pre-existing nonconforming use pursuant to Section 200-62A of the Zoning Code and a variance to permit a roofed structure over an existing concrete walkway for an existing four-family dwelling which will have less than the minimum side yard setback of 15' in the SR-10 Zoning District (10.6' proposed). The property which is the subject of action by the Board is located in the SR-10 district and is identified as Section: 207 Block: 3 Lot: 20 on the Tax Map of the Village of Monroe and is known as 18 North Main Street.

David Niemotko, Architect for the applicant, stated there is a pre-existing nonconforming condition at this property. The owner is asking to be able to have an existing roof over a 3-foot x 14-foot concrete porch to remain. As this property is pre-existing nonconforming a variance is needed to do this.

Assistant Building Inspector Proulx stated this roof was built without permits and is a violation on the property. The violation was issued on August 20, 2021 so it was built sometime before that in 2021. Chairman Baum stated this is not something that was done years ago, this is something done recently which you realized was done without permits. Building Inspector Proulx stated that was correct.

Member Zuckerman asked for clarification on the type of variance needed. Isn't this a use variance? Chairman Baum stated he knew that a question on what type of variance this is was raised on this application, and council has advised the Board that this application constitutes a use variance. Chairman Baum stated he thought this was a request to permit the alteration of an existing nonconforming use. Building Inspector Proulx stated this is not an alteration, it is an extension of an existing nonconforming use. Attorney Golden stated this is an expansion of a nonconforming

use. Attorney Golden explained that under the Village Code this is prohibited. Therefore, a use variance is the type of variance needed for this application. Village Code under Section 200-62A states a nonconforming use cannot be expanded. The code is explicit about this. When this discussion came up during the writing of the Village Code the discussion made it very clear that you cannot expand a nonconforming use. This was done so nonconforming uses could no longer continue. Therefore, if you want to expand a nonconforming use, a use variance is needed. Member Margotta stated the code is clear and because of that only a user variance can be used for this project. Attorney Golden stated yes that is correct.

Architect Niemotko explained the applicant was not expanding the foot print of the building and they are not increasing habitable space. This will remain an outdoor un-inhabitable space.

Chairman Baum stated the denial letter from the Building Department was clear about the section of the code that was violated by the expansion of a nonconforming multi-family dwelling. Therefore, the only way to grant relief is with a use variance. A use variance has a higher and different standard than an area variance. For a use variance evidence would need to be presented that the applicant meets the requirements of a use variance, it is very difficult to prove. A dollars and cents analysis would need to be done by the applicant. For a use variance the applicant would have to prove the item they are requesting relief for wasn't self-created. That is hard for this applicant to get past. Architect Niemotko stated this is a right to life situation so people can get in and out safely when there is bad weather. Chairman Baum agreed but the code states no alterations can be made on a nonconforming dwelling. Attorney Golden explained the reason behind this code is to have all the nonconforming uses weaned out so moving forward you would not have nonconforming uses. Member Margotta asked if there were any pictures of this area. There are two pictures one without the roof and one after the roof was added. Architect Niemotko stated the pictures show the metal railing that was there and stated the new railing was an upgrade.

Architect Niemotko stated that if a dollars and cents analysis was needed what is the comparison? What is the cost of someone falling and having to go to the hospital? Or protecting a walkway so this does not happen? It is pretty standard in the Orange County area to have a covered area outside the dwelling due to the weather. He stated he wishes the Board would reconsider as this is the argument they could come back with. Member Margotta asked if this side entrance was a main entrance or a secondary entrance. Architect Niemotko stated it was a main entrance. Member Margotta asked if this was the time to discuss any conditions to granting this application. Chairman Baum stated he wasn't sure the Board could talk about conditions until the board had an application that could be entertained before them. Member Margotta stated that the criteria for the variance changed because the type of variance changed. Member Czerwinski asked if there was a secondary means of egress in and out of the building. Architect Niemotko stated no, the second means of egress is a window. Member Zuckerman asked Assistant Building Inspector Proulx if the railings would have to be removed. Building Assistant Building Inspector Proulx stated no, the railings were fine, it's the roof that would have to be removed because it is an extension of the house itself. There was a railing on the concrete pad and they replaced it so other than needing a permit to do that, it is okay to do that. Member Margotta asked about the criteria for the dollars and cents analysis. Attorney Golden explained that the dollars and cents

analysis is to prove that the owner could not sell the dwelling for any use permitted in the zoning area and realize a reasonable rate of return. This is difficult to prove. The second criteria is if this problem or issue is self-created and, in this case, this is self-created. This problem or issue was created when the owner put the roof on the concrete pad. For a use variance there are four criteria and if any one of them returns a negative result then the use variance must be denied. Member Margotta asked how long ago was this part of the code written? Chairman Baum stated this section of the code was amended in 2017. Assistant Building Inspector Proulx stated that is correct but it was there in the prior code as well. Chairman Baum stated that code section 200-62C gave some leeway to the Board. Attorney Golden stated under Section 200-62C the nonconforming use would have to be something other than a residential use. Member Margotta asked if the Village changed the verbiage of the code then could this be possible? Attorney Rick Golden stated yes that would change what can be done. Member Margotta asked if the Board could make a recommendation to have this item of the code changed for safety reasons. Chairman Baum stated we already have the answer to that as he is sure that was considered and they chose not to write the code that way. Member Margotta stated he is not sure because it does not take safety issues into consideration and the Board should speak to the Board of Trustees about that. Member Gilstrap suggested that the applicant talk to the Board of Trustees. Assistant Building Inspector Proulx stated the owner is in the process of selling this property. Attorney Golden stated that none of those items are before the Board. The new owner may want to convert the dwelling to a single-family use or continue to use it as an investment as a multi-family dwelling so the Board cannot consider that. Attorney Golden went on to explain based on what is before the Board there are several options that can be considered. The Board can deny the application for an area variance, or deny the application and allow the applicant to come back at a later time with the argument for a use variance.

Architect Niemotko asked if he could move forward with an interpretation of the word enlargement. Attorney Golden stated that could not be the case because determinations would go to the Building Department for their interpretation first not the Zoning Board of Appeals. Attorney Golden explained there is a time limit of when an interpretation can be requested and that time limit has passed. Member Gilstrap asked when that time limit starts. Attorney Golden stated that time limit starts when the Building Department sends its letter of denial. Attorney Golden pointed out that the code says more than enlarged it says altered, reconstructed or restored as well. That is how the Building Inspector made the interpretation it is was not just the use of the word enlargement. When the word enlargement is used it is the phrase that includes all the other wording as well.

Chairman Baum opened the hearing to the public. There were no comments from the public.

Close the public hearing:

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

Ayes – 5

Nays – 0

Absent/Abstaining – None

Chairman Baum stated this item was referred to Orange County Planning and it was determined that this matter was for local determination.

SEQRA

On a motion by Chairman Baum and seconded by Member Czerwinski it was: **Resolved that 18 North Main Street be classified as an unlisted SEQRA type action.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

On a motion by Chairman Baum and seconded by Member Margotta it was: **Resolved that the Zoning Board of Appeals assume lead agency for the determination of this application under SEQRA.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

On a motion by Chairman Baum and seconded by Member Margotta it was: **Resolved that this matter has a negative declaration under SEQRA as this item does not have significant impact on the environment.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

Application

On a motion by Member Gilstrap and seconded by Member Margotta it was: **Resolved that this application for an area variance be denied based on the fact that the relief requested in the application is not an area variance. However, the applicant has the right to submit an amended application for a use variance within ninety (90) days.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

3 Angel Place

On a motion by Member Zuckerman seconded by member Czerwinski it was: **Resolved to approve the decision 3 Angel Place as written.**

Ayes – 3

Nays – 0

Absent/Abstaining – Chairman Baum and Member Margotta

6 Miller Lane

On a motion by Member Zuckerman seconded by member Czerwinski it was: **Resolved to approve the decision 6 Miller Lane as written.**

Ayes – 3

Nays – 0

Absent/Abstaining – Chairman Baum and Member Margotta

Adoption of Minutes:

On a motion by Member Czerwinski and seconded by Member Gilstrap it was: **Resolved that the minutes for December 14, 2021 be approved with minor modifications.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member Margotta

Old Business:

None.

New Applications:

For February: 251 High Street.

Adjourned

On a motion by Chairman Baum seconded by Member Gilstrap it was: **Resolved to adjourn the meeting at 8:33 pm.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

Respectfully submitted,

Rhonda Charles
ZBA Secretary