

**VILLAGE OF MONROE**  
**ZONING BOARD OF APPEALS**  
**PUBLIC HEARING**  
**April 12, 2022**  
**Via Zoom**

**PRESENT:** Chairman Baum, Members Gilstrap, Zuckerman, Czerwinski (late), Margotta, Alternate Member Doherty, Board Attorney Golden and Assistant Building Inspector Proulx.

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

The Chairman asked Alternate Member Doherty if she had read all the minutes and was familiar with the application. Alternate Member Doherty stated yes. Chairman Baum then gave Alternate Member Doherty voting rights for this meeting.

The Chairman also asked Member Margotta if he was up to speed on the minutes and the application as he had missed the last meeting. Member Margotta stated yes.

Chairman Baum made a statement about the second item on the agenda. The application submitted by Gwen Moore and Steve Loots for their property at 17 McElroy Place could not be heard tonight as the legal notice for this matter was not published in the newspaper. Chairman Baum stated notices were mailed to the required property owners, and if anyone from the public was here to discuss the item, please re-join the Board when this application will be heard at the May 10, 2022 meeting.

Chairman Baum went back to the first item on the agenda, 251 High Street LLC. Chairman Baum stated there were a couple of prior hearings for this item and the public hearing has been closed. At the March meeting, the Board declared a negative declaration for SEQRA, which meant that this application would not have a significant environmental impact under SEQRA.

At the hearing in March a letter from Rebecca Black, a member of the public, was read. Stephanie Tunic, Attorney for the applicant, submitted a response letter dated April 5, 2022 which had been distributed to the Board members.

The Board was prepared for discussion of the five-factor balancing test.

Member Czerwinski then arrived and there was now a full Board. Chairman Baum stated he had given Alternate Member Doherty voting rights, he was now withdrawing that right as the full Board was present.

After Member Czerwinski joined the Zoom meeting, Chairman Baum proceeded with the discussion of the 251 High Street application.

Member Zuckerman asked if the Board could comment on the April 5, 2022 letter from the applicant's Attorney. Chairman Baum stated yes, comments could be heard.

Member Zuckerman stated that in the letter Attorney Tunic cites the case of Shaughessy v. Roth 204A.D.2d 333, 611N.Y.S.2d 281 (2d Dep't 1994). Attorney Tunic writes in the letter dated April 5, 2022: "The opposition to the area variance application for lot width in Shaughessy v. Roth also cited precedent as a reason to deny the area variances. However, the Second Department held that a denial of a variance from minimal lot size requirements as found by the ZBA was not supported where the evidence showed numerous other sub-standard lots in the immediate vicinity". Member Zuckerman quoted from the case. The case of Shaughessy v. Roth starts off by stating: "The petitioner sought a use variance denied by the ZBA of the Town of Babylon. The record indicates the petitioner sought the variance on the grounds of practical difficulties in the use and development of their property. The ZBA denied the request on several grounds: 1) The property was not held in single and separate ownership 2) This failed to demonstrate economic hardship 3) The adverse impact on the community's health, safety and welfare outweighed the benefit to the petitioners in developing the property". The ZBA decision was reversed when the court found not substantial evidence to support these three findings and granted the use variance. Member Zuckerman stated the Board members understand the difference between a use variance and an area variance and that the standards and factors for granting a use variance are different from an area variance. Member Zuckerman stated at the end of Attorney Tunic's letter she stated "This is precisely the case here". This is not the case here as this is for an area variance not a use variance.

Attorney Tunic stated if she misstated the type of variance she apologized as it was not intentional as a way to mislead the Board. The main take away that Attorney Tunic was trying to present when referring to that case was that the reason of precedent is not enough of a reason to deny the variance. While she misstated the type of variance she stated she feels this does apply as Ms. Black's letter stated precedent and that alone is not a reason to deny a variance. Member Zuckerman stated except that the purpose of the court going through negative precedent had to do with a memorandum from the Town of Babylon DEC recommending denial of the application because approval might set a precedential standard and that the development of these sub-standard parcels would unduly tax the community resources. Attorney Golden stated that the case was a very odd case and it was talking about the house being built on a sub-standard lot as far as size, and yet the court classified it as a use variance which he does not understand. This case is of little value to use or area variance standards because it was addressing the common law standards prior to the codification of those laws. The decision was made under the old common law where impact to the neighborhood was an element in both area and use variances. As the Board knows any item will only set a precedent if it is applied to a situation with similar facts and he believes this was all that case was saying. The Board is concerned about precedence only when the decision will open the door to other large-scale applications. But what you are dealing with here is a very narrow issue that is fairly unique; a factual situation involving an as of right four lot sub-division as opposed to the three narrower lot widths. There are conversations that the Board will have about the impact on the neighborhood. Attorney Golden feels the case is more a distraction in deciding the case before the Board. Attorney Golden feels the area of focus should be on the five factors balancing test for deciding an area variance for this application.

Member Zuckerman wanted also to point out that on the enclosed tax map, more than twenty-six lots running northwest and southeast on High Street have a lot width of less than 100 feet and those were built before the SR-10 zoning district with its lot width of 100 feet was established. High Street is approximately 6,391 feet long in the Village of Monroe. Attorney Tunic stated High Street runs northwest according to the county tax map. Attorney Tunic stated she was counting the houses at the top of High Street.

Chairman Baum started the discussion of the factors. The first factor: Whether an undesirable change will be produced in the character of the neighborhood by granting the area variance? Member Czerwinski stated on the surface this seems a simple case but for whatever reason the Village Trustees changed the zoning to an SR-10 in that area, which increased the size of the lot width. The area the Board is being asked to compare with were lots that were previously conforming and were made non-conforming after the zoning change. Member Czerwinski feels the ZBA should not be adding to the amount of non-conforming lots.

Member Zuckerman stated if we are citing cases, in 2002 the New York Court of Appeals decided in the matter of Ifrac v. Utschig (98 N.Y.2d 304). The High Court reversed the Appellate Division, Second Department's decision which reversed the ZBA's denial of multiple area variances. The High Court noted that the reversal by the Appellate Division was based solely on the fact that thirty-three of the thirty-nine lots within 500 feet of the petitioner's parcel were sub-standard. The High Court found that lot size was not the only relevant factor when considering impacts on the character of the neighborhood. Here, there was evidence of the distinctive Neo-Tutor architectural style popular sixty years ago when those houses were built. This played a part as those homes could be disturbed by an addition of modern architecture on the subdivision. Based on the entire record before it and balancing all the factors established, the Board could rationally conclude that the detriment of the proposed sub-division in the neighborhood outweighed the benefit sought by the petitioners. The court further recognized that even denying the variances requested the applicant would not be denied the productive use of his property.

Member Zuckerman went on citing a case from the Appellate Division Second Department which cited Ifrah in 2010, Petikas v. Baranello (78AD 3rd 7 13) which affirmed the decision of the Town of Oyster Bay ZBA denying certain area variances. The Court stated the petitioner needed certain area variances in order to sub-divide the property to construct three single family dwellings one on each of the three lots. Each lot would have a 50-foot lot width but the relevant code required each lot to be 70 feet in width. Here the Board rationally determined the variances were substantial and would have a negative impact on the character of the neighborhood as the majority of the properties in the area conformed to the zoning requirements. In addition, the Board rationally determined the petitioner could still make a profit by building two houses on the property, thereby obviating the need for the variances to build three homes on three substandard lots.

Member Zuckerman went on to state the tax maps shown by Assistant Building Inspector Proulx, and the applicant's Attorney show all of the surrounding lots in the immediate vicinity of 251 High Street with all of the eleven lots that fit this category having over the 100-foot minimum lot width with more than half having lot widths over 200 feet. 251 High Street has a lot width of 232 feet. According to Dr. Kemnitz this is a special area developed to be the elegant section of

the Village of Monroe. Dr. Kemnitz testified the option with the three lots does not follow the character of the neighborhood but it is still his preferred option over the four lots with a cul-de-sac and that either option will cause major damage to the neighborhood for generations and that the three lot option had fewer negatives. The four-lot option with the cul-de-sac can be built by the applicant as of right, as it is their legal right to do it without any variances under the Zoning Code. Of importance to be considered is to grant these three variances, it would be the first to develop non-conforming lots with sub-standard lot widths in the immediate area: an area that is a unique and a special enclave that even contains a property on the National and State Historic Registry. Member Zuckerman stated his recommendation to the Board is that these variances will have an undesirable change to the character of the neighborhood and will be a detriment to nearby properties.

Member Margotta agreed with Member Zuckerman. Member Margotta talked about the tax map highlighted in yellow, presented by Attorney Tunic, which showed under sized lots but had two errors. On the tax map enclosed with Attorney Tunic's April 5, 2022 letter, the undersized lots were highlighted in yellow. Some are paper lots; they are not building lots. For example, the number 17 lot is a driveway. There are really only three undersized lots. Member Margotta stated there are also houses that span two lots number 12 and 13 and are combined lots with one house. There are only three houses between Sweezy and Knight Streets but the tax map shows four building lots. The houses are built on the corner lot, the middle lot and the lot on the end. Lot number 17 that is on the north of Sweezy Place, there is no building on that lot it is just an entrance to the large property behind it. Assistant Building Inspector Proulx confirmed it was just a driveway. This means there are only four undersized lots and the one next to 236 High Street is only 10 feet less than the 100 feet now required. The three houses that are non-conforming are really houses that were built as bungalows a very long time ago well before the Zoning Code change to a SR-10 Zoning District.

Member Gilstrap agreed with Member Zuckerman and believes the proposed change would be injurious to the neighborhood. He stated that he agrees with Dr. Kemnitz in that this is a unique enclave with a special character but he disagrees that the three-house option is the better option. He believes three lots with smaller lots widths would be detrimental to the neighborhood, where as the four lots with the cul-de-sac could be built in such a way as two houses could be in front and two houses could be behind those houses. This would be more consistent with the neighborhood and the two houses in the back could be placed in a way that they would not be seen from the street. Member Gilstrap is still not clear as to why it would not be profitable with two very large houses. Comparing the options of three lots against the four lots with a cul-de-sac, the four lots if done well could be a better option and would be consistent with the character for the neighborhood. Member Gilstrap does not feel the Board should go through with the variances for this application. Member Margotta stated he feels there is a difference between more profitable and no profit. He stated that six lots would be more profitable but is not what we are talking about. Member Gilstrap agreed. Chairman Baum stated he was looking at this from a different point of view. He stated this is not a situation where the applicant is looking to squeeze as many lots as they can out of the property, they are asking to reduce the number of lots by making smaller lot widths. But, he does agree this would be a detriment to the neighborhood and the 4 lots with a cul-de-sac where two houses are behind the other two houses could be a

good option. Notwithstanding that while there could be some benefit to the community, the three lots with a narrower lot width would be undesirable and a detriment to the area.

Chairman Baum went on to the next factor: Whether the benefit sought by the applicant could be achieved by another feasible option. Chairman Baum stated yes, we all know there is another feasible option, the alternative option is to build on four lots with a cul-de-sac which would not require any variances. What we would prefer is not up or for this Board to decide. This Board has to go by what the code dictates. Member Gilstrap stated he feels it is clear that there is a feasible alternative and does not feel the size of the cul-de-sac is really this Board's concern but he does think there may be options on the size that are more consistent and appealing to the area and he hopes that does come to pass. Member Czerwinski stated there could be other options for the size of the cul-de-sac and there are other options to explore that do not require a variance. Member Margotta stated he agrees there are other options and the size of the cul-de-sac is not up to this Board. Member Zuckerman stated that under New York State law the ZBA is not bound by what the Planning Board prefers and can only look at this application using the five-factor balancing test required by New York State Village Law 7-712B, of which this is one of the factors. In the referral letter from the Planning Board to the ZBA, the Chairman of the Planning Board wrote: Before the Planning Board can further process the application, we require the ZBA to determine if the three narrower lots are preferred and more appropriate for the community than a four lot sub-division with a cul-de-sac. Member Zuckerman stated that under New York State Village Law section 7-712B this is not within the purview of the ZBA and is not the sixth factor for the Board to consider. What is more appropriate is not to add three more non-conforming lots within the Village when its code is trying to get rid of non-conforming lots.

Chairman Baum read the third factor: Are the area variances substantial?

Chairman Baum stated we are talking about a variance from 100 feet to 73 feet which is a 23% deficiency but when looking at the tax map and the community it is substantial. Member Gilstrap agrees it is substantial both numerically and it is substantial for a single lot but also the fact that there are three of them side by side. Member Zuckerman agreed. One of the difficulties with this particular factor is what is substantial? There is no easy answer to that. While Boards consider large numerical deviations from the zoning ordinances to be substantial, what size or number is substantial is not just fact driven, but also dependent on the impact that deviation will have on the community. The word substantial is defined as impacting, significant and large as in having substance. These variance requests are large, and having substance and not trivial and are impacting because these variances create sub-standard lots and will negatively impact the surrounding properties. These variances are also significant since they will be a future precedent for anyone who would want to sub-divide a large lot not as a matter of right under the code. Member Czerwinski stated this is a substantial ask. Member Margotta agrees as it is not just one lot but three lots so it is substantial.

Chairman Baum read the fourth factor: Whether the proposed variances will have an adverse effect on the physical or environmental conditions of the neighborhood. Member Margotta does not disagree with this. Member Czerwinski believes the negative SEQRA declaration speaks for itself. Member Zuckerman stated he is not sure there are sufficient facts to determine this item. He is unable to determine safety and site distances on three small driveways, clustered together

in the relation to the proximity to the intersection at the corner of High Street and Gilbert Street and the safety impact to the other existing driveways, instead of one exit and entrance from the cul-de-sac. The question is: Is there a safety problem? He does not think there is enough evidence in the record to sustain that. Member Gilstrap feels Member Zuckerman has a point but there is not enough information to make a judgment. Member Margotta felt Member Zuckerman brought up a good point when you have three driveways entering and exiting versus one single entrance and exit. Chairman Baum does not feel the application will have an adverse effect on the environment, but there is a potential for it to have an effect on the physical layout of the area with three road cut outs versus one road cut out that might have an adverse effect on the safety conditions of the neighborhood.

Chairman Baum read factor number five: Whether the alleged difficulty was self-created. Member Zuckerman stated the applicant had available to them a four-lot sub-division with a cul-de-sac as a legal matter of right. That option did not require any variances but the applicant chose to proceed with the three lot sub-division plan which requires three lot width variances. They were admittedly aware of the Zoning Code yet decided to follow the non-binding recommendation of the Planning Board. Chairman Baum finds this is self-created. Member Czerwinski does not feel it was self-created by the applicant but by the Planning Board but it was self-created. Member Gilstrap finds joint responsibility between the Planning Board and the applicant but it is self-created. Members Czerwinski, Gilstrap and Margotta agreed that the applicant did the right thing by coming to the Board and trying to work this out. Chairman Baum stated he agrees with all the comments and commends the applicant for bringing this to the ZBA as recommended by the Planning Board and for trying to work with both Boards and the Village to get this resolved. Chairman Baum stated it is not up to the ZBA to determine if one plan is better or not. It is up to this Board to determine whether the code is met and if we are asked to grant a variance there would be proper reasons for it.

On a motion by Member Czerwinski and seconded by Member Zuckerman it was: **Resolved that the application for 251 High Street for three lot width variances be denied.**

**Ayes – 5**

**Nays – 0**

Attorney Tunic thanked the Board for their time and consideration and stated they always want to work with the Village Boards. She respects the decision and will go back to the Planning Board with the original design.

### **The Pets I Love Veterinary Hospital**

Chairman Baum stated the final decision for The Pets I Love Veterinary Hospital was ready and asked if all had time to review it. He stated there was no reference to the approval of the first application which was approved and that the addition was just replacing the shed that was approved in the first application. Since this approval is to replace the shed with an addition and it should state that the same foot print is being used and this does not add any square footage. Chairman Baum asked if the Board wanted to vote on this now with the modifications or wait till

the modifications are complete. Members Gilstrap and Zuckerman stated they were fine moving forward and the modifications can be done after.

On a motion by Chairman Baum and seconded by Member Gilstrap it was: **Resolved to adopt the decision for The Pets I Love Veterinary Hospital set-back variance subject to the modifications stated.**

- 1) **A reference to the first application being approved and adopted.**
- 2) **A reference stating the new addition does not change the foot print of what was approved in the first application.**

**Ayes – 3**

**Nays – 0**

**Abstaining – Members Margotta, Czerwinski**

#### **Adoption of Minutes:**

On a motion by Chairman Baum and seconded by Member Gilstrap it was: **Resolved that the minutes for March 8, 2022 be approved with minor modifications.**

**Ayes – 4**

**Nays – 0**

**Abstaining – Member Margotta**

Chairman Baum congratulated Member Gilstrap on being re-appointed to another five-year term.

#### **New Applications:**

The application for 125 Elm Street is in the DropBox and copies will be mailed to some members. Member Zuckerman stated that 125 Elm Street is owned by the same person as 123 Elm Street and that 123 Elm Street had been before the Board in the past. Member Zuckerman felt these documents would be helpful and asked if that file could be made available. The 123 Elm Street files will be added to the folder for 125 Elm Street on DropBox.

Board Attorney Golden stated he was leaving his law firm at the end of April to become the Orange County Attorney. He told the Board he enjoyed working with them and wished them the best. Chairman Baum stated it was always a pleasure to work with Attorney Golden.

On a motion by Chairman Baum and seconded by Member Margotta it was resolved to:  
**Adjourn the meeting at 9:25 pm.**

**Ayes – 5**

**Nays – 0**