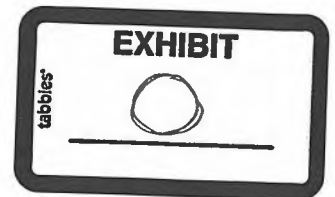




**BUILDING DEPARTMENT
VILLAGE OF MONROE
7 STAGE ROAD, MONROE, N.Y. 10950
www.villageofmonroe.org**



Application #:		Date:	5/16/22	(for office use only - rev 5/16)
Tax Map	211-1-1 lot 58	Fee Amount:		1704D
Zone	sr10	Check	<input type="checkbox"/>	#
Property		Cash	<input type="checkbox"/>	
Address:	sunset hights monroe NY	Credit Card	<input type="checkbox"/>	
Date Approved:		Inspector:		
Disapproved:	5/25/22			

APPLICATION FOR BUILDING PERMIT

Requirements for a Building Permit Application:

- Two plot plan diagrams locating clearly and distinctly all buildings whether existing or proposed, and location of proposed work to be done, including dimensions of proposed work, and all setback dimensions from property lines and existing structures.
- Two sets of Drawings/Plans including specifications describing the nature of the work to be performed, the materials and equipment to be used and installed and details of structural, mechanical, electrical and plumbing installations, Section, Lot and Block numbers and street address of lot where work will be performed.
- Fee (see attached fee schedule for fee details)

APPLICATION IS HEREBY MADE to the Building Department for the issuance of a Building Permit, pursuant to the New York State Building Construction Code for the Construction of Buildings, additions or alterations, or for removal or demolition, as herein described. The applicant agrees to comply with all applicable laws, ordinances and regulations. Upon approval of this application, the Building Department will issue a Building Permit to the applicant together with an approved duplicate set of plans and specifications. Such permit and approved plans and specifications shall be kept on the premises available for inspection throughout the progress of work.

No work covered by this application may be commenced before a Building Permit is issued. No building shall be occupied or used in whole or in part for any purpose whatever until a Certificate of Occupancy shall have been granted by the Building Department.

Applicant Information:

WC LINCOLN CORP
Name (Please print)
WCLINCOLNCORP@GMAIL.COM
Email address

1 JACKSON AVE
Address
914-518-5055
Telephone

Applicant is: Owner ☒ Lessee ☐ Agent ☐ Architect ☐ Engineer ☐ Contractor ☐

If applicant is a corporation, name, title and signature of duly authorized officer:

SIMON JACOBS (SECRITERRY)

If you would like to receive informational emails and updates from the Village of Monroe check here ☐

Property Information:

Location of Property where work will be done: LOT 58 OF THE SUNSET HIGHTS SUBDIVISION

Property Owner (if different from Applicant): Name: _____

Address: _____ Tel. _____

Nature of work (check which applicable):

Addition ☐ Alteration ☐ Deck ☐ Demolition ☐ Fence ☐ Grading/Filling ☐ New Building ☒ Pool/Hot Tub ☐
Pool Deck ☐ Roof ☐ Shed ☐ Siding ☐ Solar Panels ☐ Sign ☐ Other _____

Existing use and occupancy of property VECANT LAND

Intended use and occupancy of property SINGLE FAMILY DWELLING

Detailed Description of Project

FEES: See attached fee schedule. All fees are to be paid at the time of application.

FEE: _____

PROJECT CONTACTS:

Contractor: WEISS EQUITY GROUP LLC

Address: 20 CHEVRON RD UNIT 201 Phone No. 8456376313

NOTE: In order to process any permit, proof of Worker's Compensation must be provided. Acceptable forms include Form 105.2, U26.3 or CE-200 (No Accord Forms Accepted)

Electrician: gershon meandal & sons electric & cons

O. C. License # 214 Exp 12-31-22

Address: 1 satmar drive monroe NY

Phone No. 347-578-3459

All electrical work must be performed by an Orange County licensed electrician.

Applicant Signature: _____

Date: _____

4-14-2022

Consent of Property Owner if Applicant is not Property Owner:

I, _____, am the owner in fee of the premises described in this application and have authorized _____ to make this application on my behalf.

Property Owner: _____

Date: _____

It is the applicant's responsibility to call the Building Department to schedule inspections during construction and for final Certificate of Occupancy upon completion.

(845) 782-8341 x31



James Cock§
<Builaing Inspector

o/illae of 94.onroe
7 Stage <RJ)ad, ::Monroe, :N<Y 10950

Tel: 845-782-8341
•Fa: { 845-782-8607

May 25, 2022

Ref: **Permit Application**
Sunset Heights
S/B/L 211-1-1
SR-10 District

Dear WC Lincoln Corp;

I have reviewed your submitted building permit application to construct a single-family dwelling on an existing lot. This lot is currently a 19.8 acre parcel with an existing single family dwelling located fronting Lakes Road. According to the Table of Uses and Bulk Regulations, SR-10 District you are permitted "One-family detached dwelling".

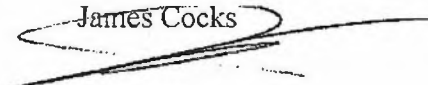
According to your proposal you are referencing a filed subdivision map dated 1909 and labeled as Lot 58. Please note that this proposed lot does not have a section, block, lot or comply with bulk requirements having a lot width of 75' and not the 100' width as required by the SR-10 District you are located in. According to §200-64 **Buildings, structures or lots with nonconforming bulk**. *Adjoining lots. Two or more adjoining nonconforming subdivision lots, regardless of ownership, in a subdivision approved by the Planning Board shall have three years from the date of filing with the office of the County Clerk to obtain a building permit. Any noncomplying lot in a subdivision approved by the Planning Board and filed with the office of the County Clerk more than three years prior to the effective date of this chapter and in the same ownership shall not be eligible to receive a building permit. Said subdivision or part thereof shall be resubmitted to the Planning Board for approval in accordance with the applicable provisions of this chapter. Any lot in a subdivision approved by the Planning Board after the effective date of this chapter, but which is made noncoriforming as to bulk by any future amendments of this chapter, shall have three years from the date of filing to obtain a building permit.*

According to this section you will be required to make application to the Plamling Board for approval in accordance with the applicable provisions of this chapter.

In addition, you are referencing §200-19 Existing Small Lot. A lot owned individually and separately and separated in ownership from any adjoining tracts of land on the effective date of this chapter which has a total lot area or lot width less than as prescribed herein may be used for a one-family dwelling, provided that such lot shall be developed in conformity with all applicable zone regulations, other than the minimum lot area and lot width requirements, and with the minimum side setbacks set forth below:

Due to the fact your entire property is under one ownership and you do not meet the bulk requirements for the SR-10 district, specifically the lot width, I must deny your permit application based on §200-64 and §200-19 of the Code of the Village of Monroe, NY and refer you to the Village of Monroe Planning Board.

If you have any further questions please do not hesitate to contact me at 782-8341 Ext 128

James Cocks

Building Inspector



BUILDING DEPARTMENT
VILLAGE OF MONROE
7 STAGE ROAD, MONROE, N.Y. 10950
www.villageofmonroe.org

Application#:		Date:	5/16/22 (for office use only - rev 5/16)
Tax Map	211-1-1 lot 58	Fee Amount:	1704
Zone	sr10	Check	<input type="checkbox"/> #
Property		Cash	<input type="checkbox"/>
Address:	sunset hights monroe NY	Credit Card	<input type="checkbox"/>
Date Approved:		Inspector:	
Disappro	SPR LETTER		

APPLICATION FOR BUILDING PERMIT

Requirements for a Building Permit Application:

1. **Two plot plan diagrams** locating clearly and distinctly all buildings whether existing or proposed, and location of proposed work to be done, including dimensions of proposed work, and all setback dimensions from property lines and existing structures.
2. **Two sets of Drawings/Plans** including specifications describing the nature of the work to be performed, the materials and equipment to be used and installed and details of structural, mechanical, electrical and plumbing installations, Section, Lot and Block numbers and street address of lot where work will be performed.
3. **Fee** (see attached fee schedule for fee details)

APPLICATION IS HEREBY MADE to the Building Department for the issuance of a Building Permit, pursuant to the New York State Building Construction Code for the Construction of Buildings, additions or alterations, or for removal or demolition, as herein described. The applicant agrees to comply with all applicable laws, ordinances and regulations. Upon approval of this application, the Building Department will issue a Building Permit to the applicant together with an approved duplicate set of plans and specifications. Such permit and approved plans and specifications shall be kept on the premises available for inspection throughout the progress of work.

No work covered by this application may be commenced before a Building Permit is issued. No building shall be occupied or used in whole or in part/or any purpose whatever until a Certificate of Occupancy shall have been granted by the Building Department.

Applicant Information:

WC LINCOLN CORP
Name (Please print)
WCLINCOLNCORP@GMAIL.COM
Email address

1 JACKSON AVE
Address
914-518-5055
Telephone

Applicant is: Owner Lessee D Agent D Architect ☐ Engineer D Contractor D

If applicant is a corporation, name, title and signature of duly authorized officer:

SIMON JACOBS (SECRITERRY)

If you would like to receive informational emails and updates from the Village of Monroe check here ☐

Property Information:

Location of Property where work will be done: LOT 58 OF THE SUNSET HIGHTS SUBDIVISION

Property Owner (if different from Applicant): Name: _____

Address: _____ Tel: _____

Nature of work (check which applicable):

Addition ☐ Alteration ☐ Deck ☐ Demolition ☐ Fence ☐ Grading/Filling ☐ New Building ☐ Pool/Hot Tub ☐
 Pool Deck ☐ Roof ☐ Shed ☐ Siding ☐ Solar Panels ☐ Sign ☐ Other _____

Existing use and occupancy of property VECANTLAND

Intended use and occupancy of property SINGLE FAMILY DWELLING

Detailed Description of Project

FEES: See attached fee schedule. All fees are to be paid at the time of application.

FEE: _____

PROJECT CONTACTS:

contractor: WEISS EQUITY GROUP LLC

Address: 20 CHEVRON RD UNIT 201

Phone No. 8456376313

NOTE: In order to process any permit, proof of Worker's Compensation must be provided. Acceptable forms include Form 105.2, U26.3 or CE-200 (No Accord Forms Accepted)

Electrician: gershon meandal & sons electric & cons

O. C. License # 214 Exp "."

Address: 1 satmar drive monroe NY

Phone No. 347-578-3459

All electrical work must be performed by an Orange County licensed electrician.

Applicant Signature:

Date: 4-14-2022

Consent of Property Owner if Applicant is not Property Owner:

I, _____, am the owner in fee of the premises described in this application and have authorized _____ to make this application on my behalf.

Property Owner: _____

Date: _____

It is the applicant's responsibility to call the Building Department to schedule inspections during construction and for final Certificate of Occupancy upon completion.

(845) 782-8341 x31

Dickover, Donnelly & Donovan, LLP
Attorneys and Counselors at Law

David A. Donovan
Robert J. Dickover

MICHAEL H. DONNELLY, *Retired*

Successor Law Firm To
~~Alexander Appeloant~~, P.C., Florida, N.Y. (1915-1988)
Ludmerer & Vurnio, Esqs., Warwick, N.Y.

28 Bruen Place
P.O. Box 610
Goshen, NY 10924
Phone (845) 294-9447
mail@dddllplaw.com
Fax (845) 294-6553
(Not for Service of Process)

June 14, 2022

Village of Monroe
Zoning Board of Appeals
7 Stage Road
Monroe, New York 10950

RE: APPEAL OF W.C. LINCOLN CORP.

Dear Sirs:

In connection with the above captioned matter, enclosed please find our Application inclusive of the following:

- one original and seven copies of completed Application form;
- Affidavit pursuant to Section 809;
- copy of the letter opinion decision requirement of the Building Inspector being appealed;
- eight copies of subdivision plan;
- letter of Robert J. Dickover, Esq. explaining the Application and the facts and circumstances supporting the relief requested;
- all exhibits as attached to the aforementioned letter of Robert J. Dickover;
- Short Form EAF;
- check payable to Village of Monroe in the sum of \$400.00

Page 2

June 14, 2022

representing the fee for a "interpretation" and one appearance fee.

A digital copy of the foregoing will be submitted by email as instructed to zbasecretary@villageofmonroe.org.

Kindly advise of the scheduled Public Hearing date.

Please also advise the undersigned when the mailing list for all property owners within 300 feet has been completed.

Respectfully submitted,



ROBERT J. DICKOVER

RJD/sj
Encls.

NYSCEF DOC. NO. 9

RECEIVED NYSCEF: 11/10/2022

THIS CHECK IS DELIVERED IN CONNECTION WITH THE FOLLOWING ACCOUNT (S)		W C LINCOLN CORP		1216	
DATE	AMOUNT	1 JACKSON AVE			
		SPRING VALLEY, NY 10977			
				50-5977219	
				Date <u>JUNE -16-2022</u>	
		Pay to the Order of <u>village of Montrose</u>		\$ <u>400.00</u>	
		<u>Four Hundred</u>		Dollars <input type="checkbox"/> Security features included on back	
		USB UNION STATE BANK			
		125 SOUTH MAIN STREET NEW CITY, NY 10958			
				MP	
		For <u>ZBA APPLICATION FEE</u>			
		⑈001216⑈ ⑆021905977⑆ 451 24390⑈0⑈			
				Style 7	

ZONING BOARD OF APPEALS**Village of Monroe 7 Stage Road Monroe, NY 10950 (845) 782-8341****APPLICATION CHECKLIST AND PROCEDURES**

NOTICE TO APPLICANTS: It is the responsibility of the applicant to understand the process of applying to the Zoning Board of Appeals. The Zoning Board of Appeals is governed by standards in deciding whether an appeal should be granted. These standards have been set forth in law and by the courts of the State. The applicant should review the attached "**Guidelines for Applicants to the Zoning Board of Appeals**" and familiarize themselves with the standards and criteria that are applicable to the appeal and present evidence to the Zoning Board of Appeals.

Please furnish the following to the Board:

1. One original and seven (7) copies of the following for a total of eight (8) copies and one digital file.

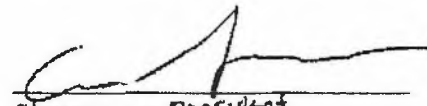
NOTE: The digital copy must contain all materials that were submitted and must be emailed to ZBAscretary@villageofmonroe.org The same day the application is filed with the clerk's office.

- a. Completed Application Form;
 - b. Affidavit Pursuant to Section 809 of the General Municipal Law;
 - c. A copy of the letter, opinion, decision, requirement or ruling being appealed;
 - d. Plot plan or survey showing the size of the subject property, the location of all existing and proposed structures on the property, the distance of the existing and proposed structures to the lot lines;
 - e. Building elevations;
 - f. Narrative summary explaining your application and the facts and circumstances supporting relief requested;
 - g. Any other information or details that will help the Board judge your case (i.e. photos, maps, statements from neighboring property owners, etc.);
 - h. Long or Short Environmental Assessment Form.
2. Filing fee payable to the Village of Monroe as follows:

Appearance Fee:	\$50.00	
Area Variance:	\$150.00	-- For accessory structures under 250 square feet to single family dwellings and above-ground swimming pools
	\$425.00	-- All Others
Use Variance:	\$500.00	
Interpretation:	\$350.00	
All others:	In accordance with the Village's Fee Schedule	

3. The above information and fees must be submitted at least thirty-five (35) days prior to the scheduled meeting of the Zoning Board of Appeals. Upon receipt of the above, a public hearing will be scheduled.
4. It is the applicant's responsibility to mail notice of the public hearing by regular firstclass mail with a certificate of mailing, to all property owners within 300 feet of the subject property at least ten (10) days prior to the hearing. The applicant can pick up the 300 footer report from the Village Hall. The certificates of mailing of the notice shall be submitted to the Clerk of the Zoning Board of Appeals at least five (5) days in advance of the of the hearing.
5. Requests for adjournments of any scheduled public hearing shall be governed by the following:
 - a. After the initial public hearing is scheduled, an applicant is required to pay an appearance fee each time the application is scheduled on an agenda for a continuation of the public hearing as a result of a request for an adjournment by the applicant.
 - b. Any additional information being submitted by the applicant must be submitted within ten (10) days of the next scheduled meeting or the applicant will not be permitted to proceed with the continuation of the public hearing at that meeting.
 - c. If an applicant is not ready to proceed with the continuation of the public hearing on the adjourned date, a request for an adjournment must be made in person on the date of the scheduled meeting. If the applicant cannot appear on the scheduled date, a detailed letter requesting the adjournment and setting forth the explanation for the adjournment shall be submitted to the Board for its consideration.
 - d. Any public hearing which is adjourned more than one month shall be re-noticed by the applicant by mailing a notice of the continuation of the public hearing in the same manner as the mailing required for the scheduling of a hearing.

I have read the above checklist and procedures and am familiar with same.


Signature - President

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

Guidelines for Applicants To the Zoning Board of Appeals

This publication has been written to aid potential applicants in understanding and appreciating the appeals process, and to provide an explanation of the rules and standards under which appeals and variance decisions must be made. Applicants and their representatives should be guided in advance by the standards

in deciding whether an appeal would be appropriate. These standards have been set forth in law and by the courts of the State, and cannot be modified by the Zoning Board of Appeals.

Why might you consider an appeal to the Zoning Board of Appeals?

A person may want to appeal to the Zoning Board of Appeals (ZBA) for two basic reasons. First, he or she may disagree with a decision the enforcement officer has made or an action he or she has taken. Second, the appealing party may believe that an exception (variance) to the zoning laws should be made for his or her property.

How is the appeals process initiated?

Either the applicant or the applicant's representative must file a Notice of Appeal with the ZBA within 60 days after the enforcement officer has filed his or her decision or action. The enforcement officer's decision is filed in his or her office, unless the municipal governing board has authorized it to be filed instead in the municipal clerk's office. A copy of the Notice of Appeal must also be filed with the enforcement officer.

Under what circumstances may an appeal be made to the Zoning Board of Appeals?

Except in certain instances, an applicant must be "aggrieved" by an actual decision or action taken by the enforcement officer. The exceptions occur where an applicant has already submitted an application for subdivision, site plan, or special use permit approval which requires an area variance in connection with that approval. In those instances, no decision of the enforcement officer is necessary. The applicant may simply file a Notice of Appeal directly with the ZBA.

Who may apply to the ZBA for relief?

Anyone who could be "aggrieved" by the decision or action of the enforcement officer, has standing to take an appeal before the ZBA. A person is "aggrieved" if his or her property value is affected negatively by the enforcement officer's action. Commonly, a property owner who either has been refused a permit or has been served with an enforcement action, is the "aggrieved party." Also note, as stated above, that a landowner who has submitted an application for subdivision, site plan, or special use permit approval, may apply to the ZBA for an area variance without a decision of the enforcement officer. A neighboring landowner may also be an "aggrieved party", if he or she believes the enforcement officer's decision in issuing a permit was improper, and will negatively affect their property

value. In addition, any officer, board or commission of the municipality may appeal a decision of the enforcement officer, whether or not that officer, board or commission is aggrieved.

What decisions or actions are appealable?

Any decision or action issued in writing by the enforcement officer, which affects anyone's rights, is appealable. These decisions include: the grant or denial of a permit, the issuance of an appearance ticket or summons, or any order which mandates certain action, such as a cease-and-desist or stop-work order.

I'm a resident who lives near the proposed project. What happens if I find out about the project more than 60 days after the permit is filed?

If you are a "third party", such as a nearby resident, you may still bring an appeal more than 60 days after the permit is filed, *if* you file within 60 days after you've had a reasonable opportunity to find out about the planned project. For example, you would have 60 days from the time a sign is posted on the property announcing the future construction of a new business (whether or not you actually see the sign), if the sign is posted after the permit has been issued.

What types of relief can the ZBA grant?

The ZBA can grant (or deny) two types of relief: interpretive and variance. In either case, the ZBA will either affirm, reverse, or modify the enforcement officer's decision. In so doing, it will either grant or deny the requested relief. If the appeal is for an interpretation, the ZBA's decision will be based on the municipal zoning regulations. On the other hand, if the appeal is for a variance, the ZBA's decision will be based on the standards of proof contained in the following state statutes: §267-b of the New York State Town Law, §7-712-b of the Village Law, or §81-b of the General City Law.

Because of the range of powers the ZBA has, it is essential that the applicant (or the applicant's representative) know what type of relief to request when making application to the ZBA. If the applicant believes the enforcement officer's decision is incorrect, the appropriate request is for an *interpretation* reversing the officer's decision. If the applicant (in this case, the landowner) believes that the officer's decision may be correct, but that he or she can show proof under the statutes that a variance is warranted, then the appropriate request is for a decision granting a *variance*. It is also possible for an applicant to make a request for an interpretation, and, in the same application, ask for a variance if a favorable interpretation is not granted.

After a Notice of Appeal has been filed, what must happen?

After a Notice of Appeal has been filed, the ZBA will take up the matter at a future meeting. The ZBA is required to schedule a hearing on the applicant's appeal within a reasonable time, and give notice of the hearing to the applicant. If a variance is requested, the ZBA may be required to take some preliminary steps before it may hear the case.

First, the ZBA may have to make a determination of significance under the State's Environmental Quality Review Act (SEQRA). Based on this determination, an Environmental Impact Statement (EIS) may or may not be required. If an EIS is required, the case cannot be heard until the EIS has been completed and accepted by the ZBA. Environmental review is not necessary for interpretations of the zoning regulations or for area variances relating to setbacks and lot lines, or for area variances relating to one-, two-, or three-family residences.

Second, depending on the location of the property, the ZBA may be required by State law to refer requests for variances to the county planning agency for a preliminary recommendation. If such a referral is required, the ZBA must give the county 30 days to respond. It is also possible that the county's recommendation could result in an increase in the number of votes needed for the ZBA to approve the variance. Appeals for interpretations need not be referred to the county.

What is the responsibility of the applicant at the hearing?

At the hearing, the applicant may submit written evidence and/or argument to support his or her case. Obviously, the sooner that written testimony or material is received, the more time ZBA members will have to consider the case and reach a proper decision. Therefore, it is a good idea to submit written material with the application, or as soon thereafter as possible, so that it can be sent to ZBA members prior to the hearing. (Please note that the applicant can present written evidence at any time up to the close of the hearing, or even after the hearing if the ZBA allows the record to remain open.)

At the hearing, the ZBA will offer the applicant and/or the applicant's representative the opportunity to present a case for relief. The applicant may personally testify, call witnesses, or submit written evidence, including drawings and graphics. Because an appeal is an adversarial proceeding, the ZBA will offer the municipality an equal opportunity to present its side of the case (the side which supports the enforcement officer's decision). Each side will be given an opportunity to question the other, or the other's witnesses. In addition, ZBA members may ask questions.

After the applicant and the municipality have presented their cases, any other interested persons will be given the opportunity to speak and/or submit written material. If necessary, the hearing may be adjourned and continued at a later date. When all parties and interested persons have been granted the opportunity to be heard, the hearing will be closed.

Will the ZBA make a decision the night of the hearing?

Once the hearing is closed, the ZBA may begin discussing the case and reach a decision, or may postpone discussion and/or its decision until a later meeting. If the ZBA deems it necessary, the hearing may be reopened at any time. Once the hearing has been finally closed, the ZBA must make its decision within 62 days.

What is the basis for the ZBA's decision on an interpretation?

If requesting a reversal on an interpretative basis, the applicant must prove that the enforcement officer's decision was incorrect, according to a proper reading of the municipality's zoning regulations. If the ZBA has heard a case in the past which involved an interpretation of the same provision, the ZBA's decision will be consistent with its prior ruling. If the ZBA has never interpreted the particular provision at issue, it will use its best judgment as to the municipal governing board's original intent in enacting the provision.

Secondarily, the ZBA will try to arrive at the best practical solution for future application by the enforcement officer.

Careful and thorough reference will be given to all definitions and other provisions of the regulations. If necessary, the ZBA will refer to authoritative publications on planning and zoning law. The applicant may, of course, use those resources in presenting his own case as well.

What must be proven in order to be granted a use variance?

If requesting a use variance, that is, permission to establish a use of property not otherwise permitted in the zoning district, the applicant must prove "unnecessary hardship." To prove this, State law requires the applicant to show *all* of the following:

- (1) that the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual "dollars and cents" proof must be submitted);
- (2) that the property is being affected by unique, or at least highly uncommon circumstances;
- (3) that the variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the hardship is not self-created.

If *any one or more* of the above factors is not proven, State law requires that the ZBA must deny the variance.

What must be proven in order to be granted an area variance?

If requesting an area variance, that is, permission to build in an otherwise restricted portion of the property (such as in the required front, side or rear yards, or above the required building height, or in excess of the lot coverage regulations), then State law requires the applicant to show that the benefit the applicant stands to receive from the variance will outweigh any burden to health, safety and welfare that may be suffered by the community. State law requires the ZBA to take the following factors into consideration in making its determination:

- (1) whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance;

- (2) whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance;
- (3) whether the requested area variance is substantial;
- (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (5) whether an alleged difficulty is self-created.

Unlike the use variance test, the ZBA need not find in favor of the applicant on every one of the above questions. Rather, the ZBA must merely take each one of the factors into account. The ZBA may also decide that a lesser variance than the one requested would be appropriate, or may decide that there are alternatives available to the applicant which would not require a variance.

Must the variance, if granted, be exactly what was applied for by the applicant?

Whether the ZBA decides to grant a use or area variance, State law requires the ZBA to grant the minimum variance necessary to provide relief, while at the same time taking care to protect the character of the neighborhood and the health, safety and welfare of the community. For these same reasons, the ZBA may also impose reasonable conditions on the grant of any variance.

If there is no opposition to my variance request, must the ZBA grant the request?

The above rules and standards have been set forth in law and by the courts of the State, and cannot be modified by the Zoning Board of Appeals. If they are not followed, the municipality would be subject to costly lawsuits. The public is entitled to speak in favor of, or against, a proposed project, but opinions in and of themselves are not enough.

Applicants and their representatives should be guided in advance by the appropriate legal standards in deciding whether an appeal would be appropriate. If an appeal is taken, the applicant should present clear, definite facts showing that the standards have been met. The ZBA cannot grant relief where proper legal proof is not adequately presented.

NYS Department of State
One Commerce Plaza
99 Washington Ave
10th Floor, Suite 1015
Albany, New York 12231-0001
(518) 473-3355 or
(800) 367-8488
localgov@dos.state.ny.us
www.dos.state.ny.us



Andrew M. Cuomo,
Governor

Department of State
Division of Local Government

January 2008

ZONING BOARD OF APPEALS Village of Monroe

APPLICATION FORM

DATE: June 8, 2022

GENERAL INFORMATION:

Applicant: WC Lincoln Corp. Email: wclincolncorp@gmail.com
 Address: c/o 17 Frankfort Rd. #101 Phone: 845-637-6313
 City/State/Zip: Monroe, NY 10950 Fax: none

Property Owner: WC Lincoln Corp. Email: wclincolncorp@gmail.com
 Address: c/o 17 Frankfort Rd. #101 Phone: 845-637-6313
 City/State/Zip: Monroe, NY 10950 Fax: none

Engineer/Architect/Surveyor: Brooker Engineering Email: invitray@brookerengineering.com
 Address: 74 Lafayette Ave, Suite 501 Phone: (845) 357- 4411 x 7106
 City/State/Zip: Suffern, NY 10901 Fax: none

Attorney: Robert J. Dickover, Esq. Email: dickover@dddllplaw.com
 Address: PO Box 610 Phone: 845-294-9447
 City/State/Zip: Goshen, NY 10924 Fax: 845-294-6553

PROPERTY INFORMATION:

Address of Subject Property: (No #) Sunset Heights, Monroe, NY 10950
 Tax Map Designation: P / O Section: 211 Block: 1 Lot: 1
 Acreage of Parcel: approx. 14,063 SF or .35 acres approx. Zoning District: SR-10
 Current Use of Property: Vacant Residential
 Proposed Use of Property: Single Family Residential

RELIEF BEING REQUESTED:

Request is hereby submitted for the following relief: (CHECK ALL THAT APPLY)

- ☐ Variance from the requirement(s) of Section(s) _____
☒ Review of an administrative decision or order of the Building Inspector
☐ An order to issue a Certificate of Occupancy
☒ An order to issue a Building Permit
☐ An interpretation of the Zoning Ordinance or Map
☐ Certification of an existing non-conforming structure of use
☐ Other (explain) _____

The decision or order of the Building Inspector of other administrative official being appealed is attached hereto.

PROJECT DESCRIPTION: (ATTACH ADDITIONAL PAGES IF MORE SPACE IS NEEDED)

Single Family residential development

If an area variance is requested, specify the following: NOT APPLICABLE

Type of Variance	Required Bulk Dimension	Proposed Bulk Dimension
Lot Area	<hr/>	<hr/>
Lot Width	<hr/>	<hr/>
Front Setback	<hr/>	<hr/>
Rear Setback	<hr/>	<hr/>
One Side Setback	<hr/>	<hr/>
Both Side Setbacks	<hr/>	<hr/>
Lot Coverage	<hr/>	<hr/>
Building Height	<hr/>	<hr/>
Other	<hr/>	<hr/>
Other	<hr/>	<hr/>

Is this property within 500 feet of: (CHECK ALL THAT APPLY)

<input type="checkbox"/> State or County Road	<input type="checkbox"/> State or County Park
<input type="checkbox"/> Long Path	<input type="checkbox"/> County Stream
<input type="checkbox"/> Municipal Boundary	<input type="checkbox"/> County or State Facility

IF SO, A REVIEW OF THE PLAN MUST BE CONDUCTED BY THE ORANGE COUNTY PLANNING DEPARTMENT UNDER THE STATE GENERAL MUNICIAPL LAW, SECTIONS 239 K, L, M AND/OR N.

APPLICANT'S SIGNATURE AND CERTIFICATION:

I, Simon Jacobowitz* hereby certify that all the above information contained in the application submitted herewith is true.

WC Lincoln Corp

By: 

Signature: Simon Jacobowitz

Title: President


*If applicant is a corporation or other entity, fill in the office held by signatory and attach an entity resolution of authority with the application.

OWNER'S AFFIDAVIT AND CONSENT:

STATE OF NEW YORK }
 } SS.:

COUNTY OF ORANGE }

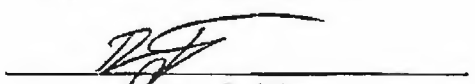
I, Simon Jacobowitz* being duly sworn, hereby depose and say; that I reside at the address indicated herein and that I am the owner of the property that is the subject of the within application to the Zoning Board of Appeals. I hereby authorize the within application on my behalf and verify that the information contained herein is true and accurate. I hereby agree to be bound by the determination of Zoning Board of Appeals. I hereby grant permission to members of the Zoning Board of Appeals to visit the property that is the subject of this application at reasonable times during the day. I further hereby agree that per Article V, §180-21, Levy for Unpaid and Delinquent Fees, that any fee due by a property owner or incurred by the property owner's duly authorized representative in connection with land use applications submitted to the Zoning Board of Appeals which shall remain unpaid for more than 30 days shall be deemed delinquent; and that upon resolution of the Village Board any delinquent fee may be levied together with all accrued late fees and/or interest upon the ensuing Village tax billing. The levy of delinquent charges upon the Village tax billing shall not constitute an election of remedies by the Village.


Signature: Simon Jacobowitz

Title: President, WC Lincoln Corp.

*If owner is a corporation or other entity, fill in the office held by signatory and attach an entity resolution of authority with the application.

Sworn to before this 14th
Day of June, 2022


Notary Public

ROBERT J. DICKOVER
Notary Public, State of New York
No. 4759052
Qualified in Orange County
Commission Expires 10-31-22

AFFIDAVIT PURSUANT TO SECTION 809 OF THE GENERAL MUNICIPAL LAW

STATE OF NEW YORK }

} SS.:

COUNTY OF ORANGE }

I, Simon Jacobowitz residing at 17 Frankfort Rd., Unit 101, Monroe, NY 10950

Being duly sworn, hereby depose and say that all the following statements and the statements contained in the papers submitted herewith are true and the nature and extent of any interests set forth are disclosed to the extent that they are known to the applicant. I certify that I am the owner or agent of all the certain lot, piece or parcel of land and/or building described in this application and, if not the owner, that I have been duly and properly authorized to make this application and to assume responsibility for the owner in connection with this application for the relief below set forth:

1. To the Zoning Board of Appeals of the Village of Monroe, County of Orange, State of New York.

Application, petition or request is hereby submitted for:

- () Variance from the requirement(s) of Section(s) _____
(x) Review of an administrative decision or order of the Building Inspector

- () An order to issue a Certificate of Occupancy
(x) An order to issue a Building Permit
() An interpretation of the Zoning Ordinance or Map
() Certification of an existing non-conforming structure of use
() Other (explain) _____

To permit construction, maintenance and use of a single family residential dwelling

2. Premises affected are in a SR-10 zoning district and designated as the following Section:
P/O 211 Block: 1 Lot: 1 on the ~~Town~~ Village of Monroe Tax Map.
3. There is no state officer or employee, Orange County officer or employee, Town of Monroe officer or employee or Village of Monroe officer or employee, nor his or her spouse, brother, sister, parent, child or grandchild, or a spouse of any of these relatives who is the applicant or who has an interest in the person, partnership or association making this application, petition or request, or is an officer, director, partner or employee of the applicant, or that such officer or employee, if this applicant or that such officer or employee, if the applicant is a corporation, legally or beneficially owns or controls any stock of the applicant in excess of 5% of the total of the corporation if its stock is listed on the New York or American Stock Exchanges; or is a member or partner of the applicant, if the applicant is an association or a partnership; nor that such State, County, Town or Village officer or employee nor any member of his family in any of the foregoing classes is a party to an agreement with the applicant, express or implied, whereby such officer or employee may receive any payment or other benefit, whether or not for service rendered, which is dependent or contingent upon the favorable approval of this application, petition or request.
4. That to the extent that the same is known to your applicant, and to the owner of the subject premises **there is disclosed herewith** the interest of the following officer or employee of the State of New York or the County of Orange or the Town of Monroe or the Village of Monroe in the petition, request or application or in the property or subject matter to which it relates: (if none, so state)

- a. Name and Address of officer or employee:

None

- b. Nature of interest: None

- c. If stockholder, number of shares: N/A

- d. If officer or partner, nature of office and name of partnership:

None

- e. If a spouse of brother, sister, parent, child, grandchild or the spouse of any of these blood relatives of such state, county or town of village officer or employee, state name and address of such relative and nature of relationship of officer and employee and nature and extent of office, interest or

participation or association have an interest in such ownership or in any business entity sharing in such ownership:

- f. In the event of corporate ownership: A list of all directors, officers and stockholders of each corporation owning more than five (5%) percent of any class of stock, must be attached, if any of these are officers or employees of the State of New York, or of the County of Orange, or of the Village of Airmont Monroe.

I, Simon Jacobowitz do hereby depose and say that all the above statements and statements contained in the papers submitted herewith are true, knowing that a person who knowingly and intentionally violates this section is guilty of a misdemeanor.


Signature: Simon Jacobowitz

Sworn to before this 14th

Day of June, 20 22


Notary Public

ROBERT J. DICKOVER
Notary Public, State of New York
No. 4759052
Qualified in Orange County
Commission Expires 10-31-22

I, Simon Jacobowitz, am the President of
PRINT NAME INDICATE POSITION WITH ENTITY (i.e. President, Secretary, Partner, Member, etc.)
WC Lincoln Corp. (the "Entity") a corporation
NAME OF ENTITY TYPE OF ENTITY (i.e., corp., limited liability company, partnership)
 formed pursuant to the laws of the State of New York.

RESOLVED THAT:

Simon Jacobowitz	President
PRINT NAME	TITLE
PRINT NAME	TITLE
PRINT NAME	TITLE

If the Entity is a corporation, the names of the individuals owning more than 5% of the shares of any stock of the corporation are:

Simon Jacobowitz

IN WITNESS WHEREOF, I have hereunto subscribed my signature to this certificate this 17th day of June, 2022.

SIGNATURE: Simon Jacobowitz



Village of Monroe
7 Stage Road, Monroe, NY 10950

James Cocks
Building Inspector

Tel: 845-782-8341
Fax: 845-782-8607

May 25, 2022

Ref: Permit Application
Sunset Heights
S/B/L 211-1-1
SR-10 District

Dear WC Lincoln Corp:

I have reviewed your submitted building permit application to construct a single-family dwelling on an existing lot. This lot is currently a 19.8 acre parcel with an existing single family dwelling located fronting Lakes Road. According to the Table of Uses and Bulk Regulations, SR-10 District you are permitted "One-family detached dwelling".

According to your proposal you are referencing a filed subdivision map dated 1909 and labeled as Lot 58. Please note that this proposed lot does not have a section, block, lot or comply with bulk requirements having a lot width of 75' and not the 100' width as required by the SR-10 District you are located in. According to §200-64 **Buildings, structures or lots with nonconforming bulk.** *Adjoining lots. Two or more adjoining nonconforming subdivision lots, regardless of ownership, in a subdivision approved by the Planning Board shall have three years from the date of filing with the office of the County Clerk to obtain a building permit. Any noncomplying lot in a subdivision approved by the Planning Board and filed with the office of the County Clerk more than three years prior to the effective date of this chapter and in the same ownership shall not be eligible to receive a building permit. Said subdivision or part thereof shall be resubmitted to the Planning Board for approval in accordance with the applicable provisions of this chapter. Any lot in a subdivision approved by the Planning Board after the effective date of this chapter, but which is made nonconforming as to bulk by any future amendments of this chapter, shall have three years from the date of filing to obtain a building permit.*

According to this section you will be required to make application to the Planning Board for approval in accordance with the applicable provisions of this chapter.

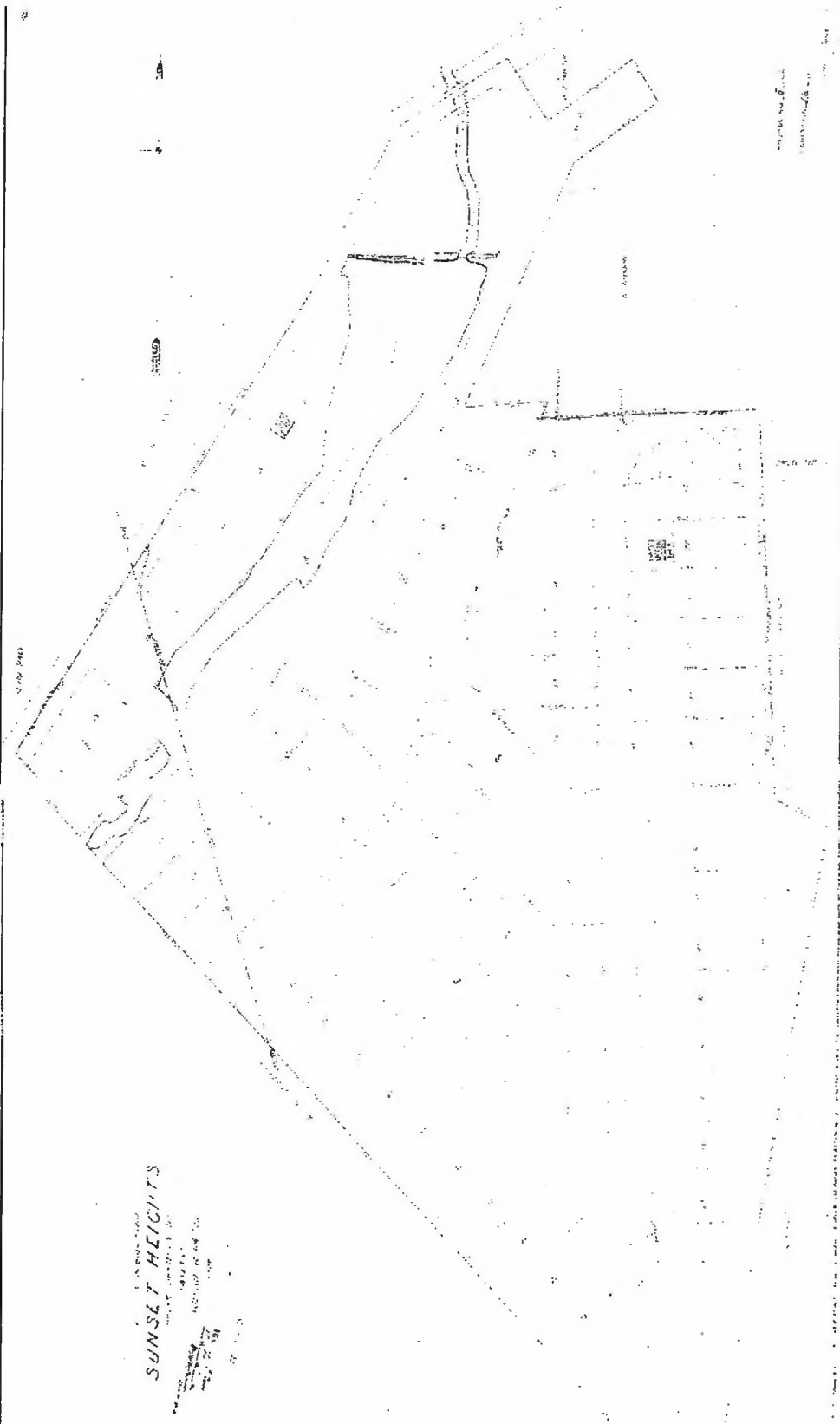
In addition, you are referencing §200-19 Existing Small Lot. A lot owned individually and separately and separated in ownership from any adjoining tracts of land on the effective date of this chapter which has a total lot area or lot width less than as prescribed herein may be used for a one-family dwelling, provided that such lot shall be developed in conformity with all applicable zone regulations, other than the minimum lot area and lot width requirements, and with the minimum side setbacks set forth below:

Due to the fact your entire property is under one ownership and you do not meet the bulk requirements for the SR-10 district, specifically the lot width, I must deny your permit application based on §200-64 and §200-19 of the Code of the Village of Monroe, NY and refer you to the Village of Monroe Planning Board.

If you have any further questions please do not hesitate to contact me at 782-8341 Ext 128

James Cocks

Building Inspector



#800

FILED NOV 15 1909

617.20
Appendix B
Short Environmental Assessment Form

Instructions for Completing

Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

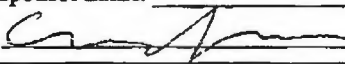
Part 1 - Project and Sponsor Information			
Name of Action or Project: Bridges at Lake Parc			
Project Location (describe, and attach a location map): Address: (no#) Sunset Heights, Monroe, P/O 211-1-1. The particular parcel (Lot No. 58) does not have a 911 address assigned to it.			
Brief Description of Proposed Action: A review by the ZBA of the determination made by James Cocks, Building Inspector, denying Applicant's application for a building permit for property located at (no#) Sunset Heights, Monroe, NY (the "premises"). This appeal (the "action") seeks to have the ZBA reverse the determination of the building inspector and order the issuance of a building permit sought by the applicant.			
Name of Applicant or Sponsor: W.C. Lincoln Corp.		Telephone: 845-637-6313 E-Mail: wclincolncorp@gmail.com	
Address: c/o 17 Frankfort Rd., #101			
City/PO: Monroe		State: NY	Zip Code: 10950
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input checked="" type="checkbox"/> YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			NO <input checked="" type="checkbox"/> YES <input type="checkbox"/>
3.a. Total acreage of the site of the proposed action?		.35 acres	
b. Total acreage to be physically disturbed?		.35 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		19.8 acres	
4. Check all land uses that occur on, adjoining and near the proposed action. <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban) <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____ <input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	N/A <input type="checkbox"/>
b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
b. Are public transportation service(s) available at or near the site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____	NO <input type="checkbox"/>	YES <input checked="" type="checkbox"/>	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
b. Is the proposed action located in an archeological sensitive area?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
16. Is the project site located in the 100 year flood plain?	NO <input checked="" type="checkbox"/>	YES <input type="checkbox"/>	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	NO <input type="checkbox"/>	YES <input type="checkbox"/>	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>

I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: W.C. Lincoln Corp. Date: June 14th, 2022

Signature: 

Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2. Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the proposed action result in a change in the use or intensity of use of land?	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the proposed action impair the character or quality of the existing community?	<input type="checkbox"/>	<input type="checkbox"/>
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?	<input type="checkbox"/>	<input type="checkbox"/>
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?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will the proposed action impact existing: a. public / private water supplies?	<input type="checkbox"/>	<input type="checkbox"/>
b. public / private wastewater treatment utilities?	<input type="checkbox"/>	<input type="checkbox"/>
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?	<input type="checkbox"/>	<input type="checkbox"/>
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?	<input type="checkbox"/>	<input type="checkbox"/>

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?	<input type="checkbox"/>	<input type="checkbox"/>
11. Will the proposed action create a hazard to environmental resources or human health?	<input type="checkbox"/>	<input type="checkbox"/>

Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3. For every question in Part 2 that was answered "moderate to large impact may occur", or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.
<input type="checkbox"/>	Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.
Village of Monroe Zoning Board of Appeals	
_____ Name of Lead Agency	_____ Date
_____ Print or Type Name of Responsible Officer in Lead Agency	_____ Chairman Zoning Board of Appeals
_____ Signature of Responsible Officer in Lead Agency	_____ Title of Responsible Officer
_____ Signature of Responsible Officer in Lead Agency	_____ Signature of Preparer (if different from Responsible Officer)

PRINT

RESET

Dickover, Donnelly & Donovan, LLP
Attorneys and Counselors at Law

David A. Donovan
Robert J. Dickover

MICHAEL H. DONNELLY, *Retired*

Successor Law Firm To:
Alexander Appelbaum, P.C., Florida, N.Y. (1915-1988)
Ludmerer & Vurno, Esqs., Warwick, N.Y.

28 Bruen Place
P.O. Box 610
Goshen, NY 10924
Phone (845) 294-9447
dickover@dddlplaw.com
Fax (845) 294-6553
(Not for Service of Process)

June 14, 2022

Village of Monroe
Zoning Board of Appeals
ATTN: Paul S. Baum, Esq, Chairman
7 Stage Road
Monroe, New York 10950

RE: Applicant: W.C. Lincoln Corp.
Appeal: APPLICATION TO REVIEW DETERMINATION OF BUILDING INSPECTOR
Premises: (no #) Sunset Heights, Monroe, NY
SBL: Portion of (P/O) 211-1-1

Dear Chairman Baum and Members:

This firm is counsel to W.C. Lincoln Corp. owner of the subject premises and therefore, an interested party in this Application. This letter and its exhibits shall supplement the application and the record of the proceedings before the Zoning Board of Appeals ("ZBA" and/or "Board") with the comments and documents contained herein.

INTRODUCTION

The instant Application is for a review by the ZBA of the determination made by James Cocks, Building Inspector, denying our client's (W.C. Lincoln Corp.) application for a building permit for property located at (no #) Sunset Heights, Monroe, NY (the "premises"). A copy of the application for the building permit is enclosed with this letter as Exhibit "A." A copy of the Building Inspector's denial letter is attached to the application for this review and is also attached to this letter as Exhibit "B." This appeal seeks to have the ZBA reverse the determination of the building inspector and order the issuance of the building permit sought by our client.

Pursuant to Village of Monroe Zoning Code section § 200-75 "Powers and duties"

The Board of Appeals shall have all the powers and duties prescribed by statute and by this chapter, which are more particularly specified as follows, provided that none of the following provisions shall be deemed to limit any power of the Board of Appeals that is conferred by law.

Subparagraph "A" then provides that

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June 14, 2022

A. Appeals. The Zoning Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination of the Building Inspector or such other official charged with the enforcement of this chapter. . . .

Further, pursuant to NYS Village Law § 7-712-b "Permitted action by board of appeals" subparagraph "1" provides:

1. Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

Pursuant to the foregoing, the ZBA has jurisdiction to hear this appeal which seeks a review of the Building Inspector's determination which denied our client's application for a building permit at the premises. Coupled with this appeal is the request that the Board direct the issuance of the building permit as applied for or alternatively to issue the building permit itself.

Specifically, not being asked for in this appeal is an area variance(s) and notably no "interpretation" of any code or regulation text is asked for nor required.

The Property:

Address: (no #) Sunset Heights, Monroe, NY. The premises are depicted as Lot No. 58 on that certain plat of subdivision entitled "Plat of Subdivision Sunset Heights, Monroe Orange Co. N.Y. owned by Roscoe W. Smith. 1908" and filed November 15, 1909 in the office of the Clerk of the county of Orange in Pocket 5, Folder No. as Map #800.

SBL: Portion of (P/O) 211-1-1. The particular parcel (Lot No. 58) does not have a 911 address assigned to it.

Zoning District: SR-10

Size: Approximately 14,063 square feet or .35 acres.

SEQRA:

Pursuant to 6 NYCRR § 617.5 (c)(11) and (25) this application is a Type II action and, though not required, a short form Environmental Assessment Form has been submitted with the application on this appeal.

Pursuant to § 617.5 (c)(11) construction or expansion of a single-family, a two-

Page 3

June 14, 2022

family or a three-family residence on an approved lot is a Type II action. The SEQRA Handbook 4th Edition provides the following guidance:

Note that this item is specific to single-, two-, and three-family dwellings on approved lots only. While the size of the project is an important factor in determining applicability of this item, approval of the lot is equally important. This provision does not apply where one or more new lots are being created but are not yet approved. SEQR review is still warranted in those instances. Where a building lot has already been approved, then even when a single-, two-, or three-family residence requires one or more additional approvals, such as site plan approval or zoning variances from a local board, or other permits such as a DEC natural resources permit (freshwater wetlands, tidal wetlands, stream protection, etc.), no further review under SEQR is required. (Underlining added for emphasis).

And,

Pursuant to § 617.5 (c)(25) official acts of a ministerial nature involving no exercise of discretion, including building permits and historic preservation permits where issuance is predicated solely on the applicant's compliance or noncompliance with the relevant local building or preservation code(s) are also Type II actions. The SEQRA Handbook 4th Edition provides this guidance:

A ministerial act is an action performed as prescribed by law or regulation and based on a specific set of facts without the use of judgment or discretion. It is also called a non-discretionary decision. . . . By definition, SEQR applies to discretionary decisions only. For decisions where a permit or license must be issued if a given set of circumstances have been met, SEQR does not apply. In addition to the examples in the regulations, there are many others: dog licenses, resident permits to use a town swimming pool or other town facility, and voter registration. A few municipalities have building permits that include some discretionary approvals. For a discussion of ministerial versus the less commonly occurring discretionary building permit, see *Atlantic Beach v. Gavalas*, 183 AD2d 750 (2d Dept. 1993).

Non-discretionary or "ministerial" decisions are based entirely upon a given set of facts, as prescribed by law or regulation, without use of judgment or individual choice on the part of the person or agency making the decision. For example, the issuance of a building permit to construct a residence in an approved subdivision would be ministerial if the plans show the structure will conform to all local building codes. (Underlining added for emphasis).

As a Type II action, no further environmental review is required on this application.

New York State General Municipal Law (GML) § 239-l, m, n:

Page 4

June 14, 2022

Notwithstanding the provision of Village Code section § 200-76.D "Procedures" and the Monroe Village Application note that "all appeals before the ZBA must be referred to the Orange County Planning Department" if within 500 feet of certain types of properties, it is noted that the provisions of NYS GML Sec. 239-k¹, l, m, and n do NOT apply to this application before the Board.

GML § 239-l, m, and n apply only to actions seeking:

- (i) adoption or amendment of a comprehensive plan pursuant to section two hundred seventy-two-a of the town law, section 7-722 of the village law or section twenty-eight-a of the general city law;
- (ii) adoption or amendment of a zoning ordinance or local law;
- (iii) issuance of special use permits;
- (iv) approval of site plans;
- (v) granting of use or area variances;
- (vi) other authorizations which a referring body may issue under the provisions of any zoning ordinance or local law.

(See, General Municipal Law § 239-m(a))

And, further, only to actions which are within 500 feet of:

- (i) the boundary of any city, village or town; or
- (ii) the boundary of any existing or proposed county or state park or any other recreation area; or
- (iii) the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway; or
- (iv) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines; or
- (v) the existing or proposed boundary of any county or state-owned land on which a public building or institution is situated; or
- (vi) the boundary of a farm operation located in an agricultural district, as defined by article twenty-five-AA of the agriculture and markets law, except this subparagraph shall not apply to the granting of area variances.

(See, General Municipal Law § 239-m(b))

This application is none of the type actions set forth within GML § 239-m(a) nor is the property located within 500 feet of the designated type properties that might trigger a GML 239 referral.

Because this area of law requiring referral to a county planning department is fully set forth within general scheme of State law the provisions of GML § 239 pre-empts the local law provisions and makes those local law provisions inapplicable to this action.

Furthermore, the intent of GML § 239 as expressed § 239-l(2) "Intent" that "The purposes of this section, sections two hundred thirty-nine-m and two hundred thirty-

¹ GML 239-k was repealed by L.1997, c. 451, § 2, eff. July 1, 1998 and is no longer applicable.

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nine-n of this article shall be to bring pertinent inter-community and county-wide planning, zoning, site plan and subdivision considerations to the attention of neighboring municipalities and agencies having jurisdiction." makes clear that because there are no "inter-community and county-wide planning, zoning, site plan and subdivision considerations" on this Board's review of a determination denying a building permt, a review under GML 239-k, l, m, and n has no applicability to this matter and no referral is required.

FACTS/HISTORY

The Applicant, W.C. Lincoln Corp. owns the remaining properties depicted on that certain plat of subdivision entitled "Plat of Subdivision Sunset Heights, Monroe Orange Co. N.Y. owned by Roscoe W. Smith. 1908" and filed November 15, 1909 in the office of the Clerk of the county of Orange in Pocket 5, Folder No. as Map #800 (hereinafter referred to as the "1909 subdivision") A copy of that Plat is made a part of the application to the ZBA and is incorporated as a part hereof as though fully set forth herein.

The 1909 subdivision plat created 65 lots for residential development. Some of those lots have since been sold or otherwise conveyed out of ownership and of those lots the applicant owns the remaining lots numbered 1-11, 14-40 and 54-61.

By resolution of the Village of Monroe Planning Board (the "Planning Board") made and dated September 18, 2008, upon the Applicant's then pending application for amended subdivision approval, the Planning Board granted preliminary subdivision approval with conditions for the premises (the "2008 Resolution"). A copy of that Resolution is annexed as Exhibit "C." In that Resolution the premises are referred to as "The Bridges at Lake Park." That name remains as the current name of the project.

Within the 2008 Resolution at the seventh (7th) "Whereas" provision therein appears the finding of the Planning Board that

"the Planning Board has determined that because of the substantial improvements to the property following the 1909 subdivision and other factors, including the village's prior taking over ownership of the roads on said subdivision map, that the applicant W.C. Lincoln Corp. is vested with regard to the rights accruing under the 1909 subdivision map subject to the modifications of the subdivision as hereinafter set forth"

Further, within the minutes of the meeting of the Planning Board held July 16, 2007 leading up to the 2008 Resolution, David Levinson, Esq., then counsel for the Village Planning Board, stated that "we technically have an approved 65 lot subdivision that goes back to 1909". A copy of the relevant portion of the minutes of said meeting are attached hereto as Exhibit "D."

Following the adoption of the 2008 Resolution a law suit brought by adjoining neighbors to the Bridges at Lake Parc subdivision project was settled. The litigation was settled pursuant to a stipulation of settlement which was "so ordered" by the Hon. John K. McGuirk, Justice of the Supreme Court, and dated July 24, 2009. Within that stipulation

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as "so ordered" was the agreement to modify the amended subdivision plat with respect to certain of the street configurations and otherwise left the conditional preliminary subdivision of the project intact inclusive of the finding by the Planning Board as stated in the 2008 Resolution that "the applicant W.C. Lincoln Corp. is vested with regard to the rights accruing under the 1909 subdivision map subject to the modifications of the subdivision as hereinafter set forth" A copy of the stipulation is annexed hereto as Exhibit "E".

From the foregoing 2008 Resolution and the "So Ordered" stipulation, it is clear that the subdivision and project known as Bridges at Lake Parc have the benefit of vested rights and that W.C. Lincoln Corp. can develop the project in accordance with the 1909 subdivision plat not withstanding the subsequent 2008 Resolution of conditional preliminary subdivision approval.

THE ISSUE

The Applicant has sought a building permit for a single-family residence on lot No. 58 as depicted on the 1909 subdivision plat. The Building Inspector has denied that application citing §200-64 of the Village Zoning Code.

The Building Inspector also makes note that

Due to the fact your entire property is under one ownership and you do not meet the bulk requirements for the SR-10 district, specifically the lot width, I must deny your permit application based on §200-64 and §200-19 of the Code of the Village of Monroe, NY and refer you to the Village of Monroe Planning Board

Notably absent from the Building Inspector's determination either unknowingly or purposely is the fact that the Planning Board and Supreme Court Justice have all previously found that the project has and enjoys the benefit of vested rights.

It is noted that learned counsel's statement to the Planning Board that the project had vested rights as well as the finding of the planning Board so stating, and the stipulated fact so stating, were not founded from thin air. Rather, as the Planning Board noted substantial improvements had been made as well as other "factors" including the Village's taking ownership of the roads all compelled that Board's finding that the project had vested rights.

LAW

The Building Inspector, as stated in his denial letter (Exhibit "B") relies upon three (3) factors in making his determination.

A) that the provisions of the proposed lot [Lot No. 58] does not have a section, block, lot number assigned to it;

B) that the lot does not comply with bulk requirements having a lot width of 75' and not the 100' width as required by the SR-10 zoning district; and

C) that the entire property is under one ownership and does not meet the bulk requirements for the SR-10 district, specifically the lot width,

The Building Inspector then concludes that based on §200-64 and §200-19 of the Code of the Village of Monroe, NY the application for a building permit is denied.

§200-64 of the Village Zoning Code provides that:

Buildings, structures or lots with nonconforming bulk. Adjoining lots. Two or more adjoining nonconforming subdivision lots, regardless of ownership, in a subdivision approved by the Planning Board shall have three years from the date of filing with the office of the County Clerk to obtain a building permit. Any noncomplying lot in a subdivision approved by the Planning Board and filed with the office of the County Clerk more than three years prior to the effective date of this chapter and in the same ownership shall not be eligible to receive a building permit. Said subdivision or part thereof shall be resubmitted to the Planning Board for approval in accordance with the applicable provisions of this chapter. Any lot in a subdivision approved by the Planning Board after the effective date of this chapter, but which is made nonconforming as to bulk by any future amendments of this chapter, shall have three years from the date of filing to obtain a building permit.

§200-19 of the Village Zoning Code "Existing small lots in all residential zones" [Amended 6-13-2017 by L.L. No. 5-2017] provides that:

A lot owned individually and separately and separated in ownership from any adjoining tracts of land on the effective date of this chapter which has a total lot area or lot width less than as prescribed herein may be used for a one-family dwelling, provided that such lot shall be developed in conformity with all applicable zone regulations, other than the minimum lot area and lot width requirements, and with the minimum side setbacks set forth below:

For One-Family Residence In:	For Lots With Width (feet)	Minimum Side Setback (feet)	Total Both Side Setbacks (feet)
SR-20 Zone	50 to 99	6	20
SR-10 Zone	50 to 99	4	15

DISCUSSION

As to the Building Inspector's assertion that lack of an assigned Section, Block and Lot identifier ("tax map number") for Lot No. 58 is a reason to reject the building permit application, there is no basis for denial upon this factor. Tax map numbers are assigned by the County Tax Map department and the Village/Town tax assessor upon application for a map identifier. Whether or not a parcel has a tax identifier assigned to it as a basis for denial of a building permit is simply mistaken. As shown by the record the parcel for which a permit is sought is part of Section 211, Block 1, Lot 1 and upon application a tax map identifier will be assigned the parcel.

As to the parcels failure to comply with bulk requirements and that the property is under one ownership and does not meet the bulk requirements for the SR-10 zoning district, those objections ignore the law with respect to vested rights and further ignores the prior findings of the Planning Board as "so ordered" by the Justice of the Supreme Court, John K. McGuirk, that the 1909 subdivision project has the benefit of vested rights.

The Law of Vested Rights

The principals at hand involve what is referred to as "exemption" from changes made in local zoning ordinances that make residential lots which were, when approved, legal building lots but, as a result of code amendments, make those previously approved lots now non-conforming with respect to bulk area requirements.

Though referred to by the Building Inspector in his denial letter, the zoning code provision at § 200-64 as further codified by the NYS Village Law § 7-709 protects the validly approved subdivision lots from zoning changes for a period of three years (or in some cases two-years) post-subdivision approval. These statutory exemptions would have expired no later than three years after the 1909 subdivision.

Were the statutory exemptions provided by § 200-64 and § 7-709, the only exemptions applicable in this matter, the denial by the Building Inspector would be well-founded. However, the Village Code § 200-64 and NYS Village Law § 7-709 exemptions are not the only exemptions available to the Applicant in this matter.

As referenced by Planning Board counsel David Levinson, Esq. at the meeting of that Board held July 16, 2007 in connection with the Public Hearing conducted that evening wherein he stated, "we technically have an approved 65 lot subdivision that goes back to 1909" this project enjoys the benefit of another type of "exemption. A copy of the relevant portion of the minutes from that meeting are attached as Exhibit "D. This statement by counsel is an explicit recognition that the project (at the time of his statement the "project" was a then pending application for amendment to the 1909 subdivision) and the 1909 subdivision then had and still have vested rights. As noted earlier that statement by counsel as well as the subsequent finding made by the Planning

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Board within its 2008 Resolution of Preliminary Subdivision approval (Exhibit "C") and the subsequent Order of the Supreme Court (Exhibit "E") all find that the 1909 subdivision had the benefit of vested rights and provides another type of exemption from zoning changes in bulk requirements.

This *other* exemption known as *vested rights* is not a statutory exemption but is one based in common law.

New York State common law has long recognized an entirely separate exemption from those provided by statute for approved lots pursuant to the doctrine of "Vested Rights." This body of law is yet another exemption, albeit not statutory, providing protection/exemption for previously approved subdivision lots which have been rendered non-complying by subsequent zoning amendments.

Sections of Town and Village Laws which provide exemption from amendments to zoning ordinance requirements increasing required lot size made within three years after approval and filing of the subdivision plat or first section of plat [NYS Town Law § 265-a] and within three, two, or one years upon filing [NYS Village Law § 7-709] were not intended to abrogate vested rights acquired before or during exemption [the period] by virtue of substantial improvements. See, *Ellington Const. Corp. v. Zoning Bd. of Appeals of Incorporated Village of New Hempstead* (2 Dept. 1989) 152 A.D.2d 365, 549 N.Y.S.2d 405, appeal granted 76 N.Y.2d 705, 560 N.Y.S.2d 128, 559 N.E.2d 1287, affirmed 77 N.Y.2d 114, 564 N.Y.S.2d 1001, 566 N.E.2d 128.

In a most recent case addressing the issue of "vested rights" though the court determined that the applicant in that matter was not entitled to exemption by virtue of acquiring vested rights, the court's decision is instructive.

Quoting from *Matter of Exeter Bldg. Corp. v. Town of Newburgh*, 114 AD3d 774, 778-80 [2d Dept 2014], *affd*, *Matter of*, 26 NY3d 1129 [2016] [Note: Underlining has been added for ease in reference]

The doctrine of vested rights is implicated when a property owner seeks to continue to use property, or to initiate the use of property, in a way that was permissible before enactment or amendment of a zoning ordinance but would not be permitted under a new zoning law (see, *People v. Miller*, 304 N.Y. at 108, 106 N.E.2d 34; see generally Rathkopf, Rathkopf and Ziegler, Rathkopf's The Law of Zoning and Planning, § 70:1 [4th Ed.2011]). In those situations, the right of the property owner is to be balanced against the right of the public to enforce the zoning law (see *Glacial Aggregates LLC v. Town of Yorkshire*, 14 N.Y.3d 127, 135, 897 N.Y.S.2d 677, 924 N.E.2d 785; *People v. Miller*, 304 N.Y. at 108-109, 106 N.E.2d 34; *Matter of Cobleskill Stone Prods., Inc. v. Town of Schoharie*, 95 A.D.3d at 1638, 945 N.Y.S.2d 793; *Matter of Putnam Armonk v. Town of Southeast*, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538).

Generally, "nonconforming uses or structures, in existence when a zoning ordinance is enacted, are . constitutionally protected and will be permitted to continue, notwithstanding the contrary provisions of the ordinance" (*People v. Miller*, 304 N.Y. at

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107, 106 N.E.2d 34; see *Jones v. Town of Carroll*, 15 N.Y.3d 139, 143, 905 N.Y.S.2d 551, 931 N.E.2d 535; *Glacial Aggregates LLC v. Town of Yorkshire*, 14 N.Y.3d 127 at 135, 897 N.Y.S.2d 677, 924 N.E.2d 785; *Matter of Syracuse Aggregate Corp. v. Weise*, 51 N.Y.2d 278, 284, 434 N.Y.S.2d 150, 414 N.E.2d 651). By contrast, rezoning may restrict new uses of the property (see *Matter of Pete Drown, Inc. v. Town Bd. of Town of Ellenburg*, 229 A.D.2d 877, 879, 646 N.Y.S.2d 205; cf. *Rocky Point Drive-In, LP v. Town of Brookhaven*, 21 N.Y.3d 729, 977 N.Y.S.2d 719, 999 N.E.2d 1164). The intermediate situation, in which the use of property is in transition when the new zoning is adopted, is at the heart of most disputes regarding the common-law doctrine of vested rights. The common-law doctrine has been characterized as "one of the most troublesome areas of land use regulation" (Rathkopf, Rathkopf and Ziegler, Rathkopf's The Law of Zoning and Planning, § 70:1 [4th Ed.2011]).

"In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development" (*Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061; see *Matter of RC Enters. v. Town of Patterson*, 42 A.D.3d 542, 544, 840 N.Y.S.2d 116; *Matter of Lefrak Forest Hills Corp. v. Galvin*, 40 A.D.2d 211, 218, 338 N.Y.S.2d 932, affd. 32 N.Y.2d 796, 345 N.Y.S.2d 547, 298 N.E.2d 685, cert. denied 414 U.S. 1004, 94 S.Ct. 360, 38 L.Ed.2d 240; *Matter of Fox Lane Corp. v. Mann*, 216 App.Div. 813, 813, 215 N.Y.S. 334, affd. 243 N.Y. 550, 154 N.E. 600). "Neither the issuance of a permit ... nor the landowner's substantial improvements and expenditures, standing alone, will establish the right. The landowner's actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless" (*Town of Orangetown v. Magee*, 88 N.Y.2d at 47-48, 643 N.Y.S.2d 21, 665 N.E.2d 1061; see *Glacial Aggregates LLC v. Town of Yorkshire*, 14 N.Y.3d at 136, 897 N.Y.S.2d 677, 924 N.E.2d 785; *People v. Miller*, 304 N.Y. at 109, 106 N.E.2d 34; *780 *Matter of RC Enters. v. Town of Patterson*, 42 A.D.3d at 544, 840 N.Y.S.2d 116; *People ex rel. Publicity Leasing Co. v. Ludwig*, 172 App.Div. 71, 73-74, 158 N.Y.S. 208, affd. 218 N.Y. 540, 542, 113 N.E. 532).

"Reliance" is an essential element of the doctrine (*Glacial Aggregates LLC v. Town of Yorkshire*, 14 N.Y.3d at 136-137, 897 N.Y.S.2d 677, 924 N.E.2d 785). Although many cases speak in terms of reliance on permits (see e.g., *Town of Orangetown v. Magee*, 88 N.Y.2d at 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061; *Matter of RC Enters. v. Town of Patterson*, 42 A.D.3d at 544, 840 N.Y.S.2d 116), a right may vest in certain situations when "subdivisions" have been given a "final grant of approval" (*Matter of Ellington Constr. Corp. v. Zoning Bd. of Appeals of Inc. Vil. of New Hempstead*, 152 A.D.2d 365, 373, 549 N.Y.S.2d 405, affd. 77 N.Y.2d 114, 564 N.Y.S.2d 1001, 566 N.E.2d 128). *Matter of Exeter Bldg. Corp. v. Town of Newburgh*, 114 AD3d 774, 778-80 [2d Dept 2014], affd, *Matter of*, 26 NY3d 1129 [2016].

In order to gain the exemption provided by "vested rights," the property owner must demonstrate two elements.

First, that there was a legally issued permit. In this case, with the Bridges at Lake Parc subdivision, the 1909 plat was approved and filed in the County Clerk's office and

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the Planning Board thereafter issued the 2008 Resolution preliminarily amending the subdivision approval for the lots. Those filings and approvals constitute the requisite "permit." (Matter of Ellington, supra.)

Second, the landowner must demonstrate a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development.

In the Bridges at Lake Parc development, the developer has made the dedications for the public improvements, built-out a portion of the required improvements for the residential subdivision, to wit: the street known as Sunset Heights; the Village has taken ownership of certain of the streets; certain lots have been sold or transferred to others inclusive of lots taken by the Village of Monroe itself² and upon which some houses have been built.

From the foregoing, it is clear that the Applicant has incurred unquestionably substantial expenses for the improvements contemplated by and shown by the 1909 subdivision.

It is obvious that all of the foregoing improvements have been installed at significant expense and upon clear reliance by the developer upon the subdivision approval. For had there been no permit/subdivision approval, it is abundantly certain that the improvements would not have been installed.

Notwithstanding all of the improvements made in connection with the original 1909 subdivision, this Board (the ZBA) does not have to reach any factual determinations concerning whether or not they were or were not made because the previous 2008 Resolution of the Planning Board as well its incorporation within the "so ordered" stipulation of settlement found that the "property is vested with regard to the rights accruing under the 1909 subdivision map" and that finding is conclusive with respect to whether the project and its lots can be developed.

CONCLUSION

From all of the foregoing, it is respectfully submitted that the determination made by the Building Inspector which denied the application for a building permit on lot No. 58 must be reversed. Based upon the prior determination of the Planning Board as well as the "so ordered" stipulation that the project enjoys the benefits of the doctrine of "vested rights" to be developed in accordance with the 1909 subdivision approval, the Applicant is entitled to the issuance of a building permit.

Pursuant to the Board's authority found in NYS Village Law § 7-712-b to "make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the

² The Village of Monroe took ownership of lot No. 66 and some of the lands adjoining that lot from two of the adjacent lots (See Minutes of Planning Board meeting dated March 14, 2007 annexed as Exhibit "F").

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enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken" it is further submitted that this Board should order the Building Inspector to issue the building permit as applied for or alternatively issue the permit itself.

Respectfully Submitted,



ROBERT J. DICKOVER

RJD/sj
Encls.

EXHIBIT A

[Application for Building Permit]



**BUILDING DEPARTMENT
VILLAGE OF MONROE
7 STAGEROAD, MONROE, N.Y. 10950
www.villageofmonroe.org**

Application #:		Date:	5/16/22 (for office use only - rev 5/16)
Tax Map	211-1-1 lot 58	Fee Amount:	1700
Zone	sr10	Check	<input type="checkbox"/> #
Property		Cash	<input type="checkbox"/>
Address:	sunset highs monroe NY	Credit Card	<input type="checkbox"/>
Date Approved:		Inspector:	[Signature]
Disapproved:	5/25/22		

SPR LHM

APPLICATION FOR BUILDING PERMIT

Requirements for a Building Permit Application:

1. Two plot plan diagrams locating clearly and distinctly all buildings whether existing or proposed, and location of proposed work to be done, including dimensions of proposed work, and all setback dimensions from property lines and existing structures.
2. Two sets of Drawings/Plans including specifications describing the nature of the work to be performed, the materials and equipment to be used and installed and details of structural, mechanical, electrical and plumbing installations, Section, Lot and Block numbers and street address of lot where work will be performed.
3. Fee (see attached fee schedule for fee details)

APPLICATION IS HEREBY MADE to the Building Department for the issuance of a Building Permit, pursuant to the New York State Building Construction Code for the Construction of Buildings, additions or alterations, or for removal or demolition, as herein described. The applicant agrees to comply with all applicable laws, ordinances and regulations. Upon approval of this application, the Building Department will issue a Building Permit to the applicant together with an approved duplicate set of plans and specifications. Such permit and approved plans and specifications shall be kept on the premises available for inspection throughout the progress of work.

No work covered by this application may be commenced before a Building Permit is issued. No building shall be occupied or used in whole or in part for any purpose whatever until a Certificate of Occupancy shall have been granted by the Building Department.

Applicant Information:

WC LINCOLN CORP
Name (Please print)
WCLINCOLNCORP@GMAIL.COM
Email address

1 JACKSON AVE
Address
914-518-5055
Telephone

Applicant is: Owner ☒ Lessee ☐ Agent ☐ Architect ☐ Engineer ☐ Contractor ☐

If applicant is a corporation, name, title and signature of duly authorized officer:

SIMON JACOBS (SECRITERRY)

If you would like to receive informational emails and updates from the Village of Monroe check here ☐

Property Information:

Location of Property where work will be done: LOT 58 OF THE SUNSET HIGHTS SUBDIVISION

Property Owner (if different from Applicant): Name: _____

Address: _____ Tel. _____

Nature of work (check which applicable):

Addition ☐ Alteration ☐ Deck ☐ Demolition ☐ Fence ☐ Grading/Filling ☐ New Building ☒ Pool/Hot Tub ☐
Pool Deck ☐ Roof ☐ Shed ☐ Siding ☐ Solar Panels ☐ Sign ☐ Other _____

Existing use and occupancy of property VECANT LAND

Intended use and occupancy of property SINGLE FAMILY DWELLING

Detailed Description of Project

FEES: See attached fee schedule. All fees are to be paid at the time of application.

FEE: _____

PROJECT CONTACTS:

Contractor: WEISS EQUITY GROUP LLC

Address: 20 CHEVRON RD UNIT 201 Phone No. 8456376313

NOTE: In order to process any permit, proof of Worker's Compensation must be provided. Acceptable forms include Form 105.2, U26.3 or CE-200 (No Accord Forms Accepted)

Electrician: gershon meandal & sons electric & cons

O. C. License # 214 Exp 2-31-23

Address: 1 satmar drive monroe NY

Phone No. 347-578-3459

All electrical work must be performed by an Orange County licensed electrician.

Applicant Signature: _____

Date: 4-14-2022

Consent of Property Owner if Applicant is not Property Owner:

I, _____, am the owner in fee of the premises described in this application and have authorized _____ to make this application on my behalf.

Property Owner: _____ Date: _____

It is the applicant's responsibility to call the Building Department to schedule inspections during construction and for final Certificate of Occupancy upon completion.

(845) 782-8341 x31

EXHIBIT B

[Denial Letter]



Village of Monroe
7 Stage Road, Monroe, NY 10950

James Cocks
Building Inspector

Tel: 845-782-8341
Fax: 845-782-8607

May 25, 2022

Ref: Permit Application
Sunset Heights
S/B/L 211-1-1
SR-10 District

Dear WC Lincoln Corp;

I have reviewed your submitted building permit application to construct a single-family dwelling on an existing lot. This lot is currently a 19.8 acre parcel with an existing single family dwelling located fronting Lakes Road. According to the Table of Uses and Bulk Regulations, SR-10 District you are permitted "One-family detached dwelling".

According to your proposal you are referencing a filed subdivision map dated 1909 and labeled as Lot 58. Please note that this proposed lot does not have a section, block, lot or comply with bulk requirements having a lot width of 75' and not the 100' width as required by the SR-10 District you are located in. According to §200-64 **Buildings, structures or lots with nonconforming bulk. Adjoining lots. Two or more adjoining nonconforming subdivision lots, regardless of ownership, in a subdivision approved by the Planning Board shall have three years from the date of filing with the office of the County Clerk to obtain a building permit. Any noncomplying lot in a subdivision approved by the Planning Board and filed with the office of the County Clerk more than three years prior to the effective date of this chapter and in the same ownership shall not be eligible to receive a building permit. Said subdivision or part thereof shall be resubmitted to the Planning Board for approval in accordance with the applicable provisions of this chapter. Any lot in a subdivision approved by the Planning Board after the effective date of this chapter, but which is made nonconforming as to bulk by any future amendments of this chapter, shall have three years from the date of filing to obtain a building permit.**

According to this section you will be required to make application to the Planning Board for approval in accordance with the applicable provisions of this chapter.

In addition, you are referencing §200-19 Existing Small Lot. A lot owned individually and separately and separated in ownership from any adjoining tracts of land on the effective date of this chapter which has a total lot area or lot width less than as prescribed herein may be used for a one-family dwelling, provided that such lot shall be developed in conformity with all applicable zone regulations, other than the minimum lot area and lot width requirements, and with the minimum side setbacks set forth below:

Due to the fact your entire property is under one ownership and you do not meet the bulk requirements for the SR-10 district, specifically the lot width, I must deny your permit application based on §200-64 and §200-19 of the Code of the Village of Monroe, NY and refer you to the Village of Monroe Planning Board.

If you have any further questions please do not hesitate to contact me at 782-8341 Ext 128

James Cocks

Building Inspector

EXHIBIT C
[2008 Planning Board Resolution]

ORIGINAL**REVISED**
9/15/08

**RESOLUTION OF PRELIMINARY SUBDIVISION APPROVAL WITH CONDITIONS
FOR W.C. LINCOLN CORP.
VILLAGE OF MONROE PLANNING BOARD**

WHEREAS, the applicant W.C. Lincoln Corp. has made application to this board for approval of a 43 lot subdivision appearing on a map previously filed with the Orange County Clerk in 1909;

WHEREAS, the proposed subdivision has been referred to as "The Bridges at Lake Park";

WHEREAS, the applicant has sought to revise 16 of the lots contained on the plan;

WHEREAS, the property is located in the current SR-10 Zoning District of the Village of Monroe;

WHEREAS, the section, block and lot of the proposed project is Section 211, Block 1, Lot 1 on the Village of Monroe tax rolls;

WHEREAS, the lots in question fail to comply with the current bulk requirements of SR-10 Zoning District;

WHEREAS, the Planning Board has determined that because of the substantial improvements to the property following the 1909 subdivision and other factors, including the village's prior taking over ownership of the roads on said subdivision map, that the applicant W.C. Lincoln Corp. is vested with regard to the rights accruing under the 1909 subdivision map subject to the modifications of the subdivision as hereinafter set forth;

WHEREAS, a public hearing has been held and concluded with regard to the application for preliminary subdivision approval;

RECEIVED
SEP 22 2008
VILLAGE OF MONROE

WHEREAS, the Planning Board of the Village of Monroe shall, by separate findings issue a determination of significance or non-significance under the State Environmental Quality Review Act;

WHEREAS, the Planning Board agrees to grant preliminary subdivision approval subject to the following conditions, all of which are to be resolved, satisfied or concluded prior to the grant of unconditional final subdivision approval to the applicant;

1. The issue of parkland fees required by the Village of Monroe Zoning Law has been referred by the Planning Board to the Village Board for consideration since it is the Village Board's jurisdiction to determine whether parkland fees may be waived and/or a payment schedule authorized with regard to any such parkland fees.

2. The Planning Board has been informed that the Village of Monroe Board of Trustees has elected to waive any requirement for the applicant to contribute to parkland fees in consideration of the substantial properties the applicant is donating or contributing to the Village of Monroe. Formal written confirmation of this waiver of payment of parkland fees shall be required prior to the grant of final approval without conditions.

3. Traffic Study: The applicant has agreed to participate in a traffic study which ^{and initiate will} may be conducted to determine if signalization is required at any point on Lakes Road in close proximity to the instant project. The applicant has agreed to contribute to one-half the cost of any traffic light required as a result of the traffic study to the extent of \$60,000. Prior to the grant of final approval,

the applicant shall deposit said sum with the Village Treasurer to insure payment by the applicant of its share of the signalization cost up to \$60,000. The Village of Monroe Board of Trustees has agreed that said funds shall be held in escrow prior to their reimbursement to the applicant should a traffic study performed not warrant the installation of signalization or a traffic study is not performed. The funds shall be held by the Village Treasurer for a maximum of two years from date of final approval. It should be noted that the Planning Board in considering the impacts of the development of this site by the applicant and the revised subdivision, has taken into consideration concerns involving traffic on Lakes Road which abuts the subject property. This board has determined that the revised subdivision approval requested by the applicant presents significant traffic issues that can only be mitigated by signalization as determined by a traffic study. Although the final signalization may be located off the applicant's site, the applicant has volunteered as an impact mitigation measure to contribute up to \$60,000.00 for the cost of such signalization if recommended. The Planning Board has relied on applicant's representation and offer in its determination of the applicant's mitigation efforts to reduce traffic congestion emanating from applicant's development of the site.

Should the balance of said funds be required to be reimbursed to the applicant, the Village shall nonetheless be entitled to retain any interest accruing on said funds to cover its costs of administering said escrow funds.

4. Smith Pond Dam: The applicant shall make all the improvements, renovations and

repairs as recommended by the applicant's consultant and confirmed by the Village's consultant, Melick-Tully Associates, P.C. dated July 23, 2008 and as approved following the review by the Planning Board's engineering consultants by letter dated July 24, 2008. All repairs, renovations and improvements to the Smith pond dam shall be completed prior to the grant of any Certificates of Occupancy and during the first phase of site improvements.

5. Water Connection Fees: The applicant shall confirm with the Planning Board, applicant's representation that it agreed with the Village Board of Trustees that it shall pay the present per home water hook-up fee for all homes to be constructed by applicant.

6. Smith House Restoration: The applicant has agreed with the Village Board that it shall donate to the Village of Monroe, the sum of \$50,000.00 to be utilized, in whole or in part by the Village of Monroe for restoration of the home known as the Smith Home. This payment shall be made simultaneously with the grant of final approval but prior to the filing of the final map. The applicant has conceded that in the event the sum of \$50,000.00 is not expended in full for the renovation and restoration of the Smith Home, the Village Board may utilize the balance of the funds in its discretion for any other purpose.

7. Stabilization: The site shall be stabilized to prevent run off in accordance with the design standards set forth in the maps previously filed.

8. Certificates of Occupancy: All sidewalks shall be installed at each home site prior to issuance of any Certificates of Occupancy. The Planning Board shall recommend to the Village

Board, subject to the later's approval, to waive the requirement of final road course installation on roads currently designated Hill Street, Sunset Street and the unnamed street.

9. The applicant's final plans shall show the following subject to the review and approval of the Planning Board's engineering and environmental consultants:

- (a) Extension of sidewalks on Lakes Road including design;
- (b) Inclusion of sidewalk detail 2.5-3' grass area between curb and sidewalk;
- (c) The final design for the retention basin including retaining wall and fence;
- (d) Orange County Department of Heath water approval;
- (e) Department of Environmental Conservation sewer approval;
- (f) Orange County Department of Public Works road connection approval;
- (g) Water line extensions and offsite improvements necessary to accommodate same;
- (h) Offsite road improvements as may be necessary;
- (i) Street lightings;
- (j) Road stabilization - further grading to reduce slope;
- (k) The lots to be dedicated to the Village of Monroe in obtaining highway work permits and approval for access to said lots;
- (l) Installation of a new culvert and bridge design;
- (m) Approval after analysis of existing pedestrian bridges and walkways spanning

pond and stream;

- (n) Approval of retaining wall, its appearance and design;
- (o) Landscaping/tree replacement plan to be approved by the board;
- (p) Obtaining sidewalk easement for sidewalks to be installed along Lakes Road;
- (q) Provisions for postal drop-off and temporary school bus stops on the site;
- (r) Confirmation that no issuance of CO's will be granted until a sidewalk's

installed in front of each home;

- (s) Preparation of signage plan including stop, no parking, cross walk, etc.;
- (t) Confirmation that sidewalks and driveways shall be concrete and all other drives

paved for a minimum of 20';

(u) GPS coordinates for all storm water structures and outfalls to be provided and certified by applicant's consultants;

(v) Full metes and bounds descriptions of all drainage easements;

(w) The removal of all existing structures on site prior to final approval with the exemption of those structures being donated to the Village of Monroe and accepted by the Village of Monroe;

(x) Confirmation that due to lot sizes and proposed grading, all homes shall be constructed within the envelope shown for each lot and that any relocation of the house from the areas shown shall require re-submission and approval of the Village of Monroe Planning Board.

(y) Prior to the issuance of a CO for any home, an as-built survey setting forth site topography for each lot shall be simultaneously delivered to the Village of Monroe Building Department and the Village's engineering consultants;

(z) Prior to any site work a pre-construction meeting shall be coordinated with the Village of Monroe, its building department and police department and other emergency services;

(aa) All limits of clearing to be field delineated with orange safety fence prior to pre-construction meeting.

(bb) Storm water observation reports to be provided to the Village of Monroe Building Department and engineer;

(cc) Final design of storm water management facilities;

(dd) Confirmation of wetland delineation of ACOE;

(ee) Modification of field drain inverts to collection system;

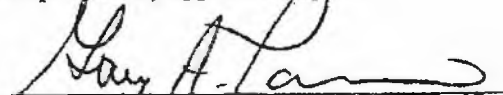
(ff) Satisfaction of all requirements of the Orange County Planning Department as contained in its review dated June 2, 2008 to the extent the recommendations have been adopted by the Planning Board;

(gg) The applicant to resolve road issues relating to "K", valves and geometries;

(hh) Final design and approval of storm management facilities by the Village's engineer;

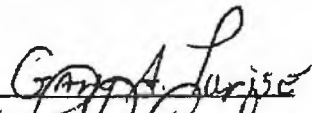
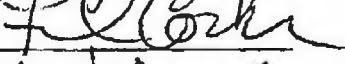
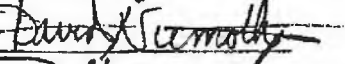

(ii) Full compliance with all notes on preliminary approval map

Dated: September 15^m, 2008



Honorable Gary Parise, Chairman
Village of Monroe Planning Board

Ayes:

NAYS

EXHIBIT D
[Minutes of Planning Board Meeting 7/16/2007]

On a motion made by Member Woods and seconded by Member Niemoitko, it was unanimously, Resolved that a public hearing for The Bridges at Lake Parc Subdivision will be held on July 16, 2007 at 8:00 pm or as soon thereafter.

July 16, 2007

PUBLIC HEARING

THE BRIDGES AT LAKE PARC - AMENDED SUBDIVISION SITE PLAN (211-1-1)

Present: Donald Tirschwell, Esq; David Ziegler, Atzl Scatassa & Ziegler

Chairman Parise opened the public hearing to those in attendance. He stated for the record that the applicant handed the Planning Board Secretary the certified mail receipts from the mailing.

Attorney Tirschwell reviewed the applicant's proposed subdivision in detail for the attendees. Chairman Parise then opened the floor for public comments.

Susan Tamzi of 98 High Street stated that the emergency route is right behind her house. She wanted to know how the applicant was going to control that route so that it isn't used by people who want to take short cuts. Attorney Tirschwell said it is up to the Village to decide what measures would be put in place. She also asked where the public road stops. Attorney Tirschwell pointed out the location on the map.

Emily Convers of 22 Sunset Heights stated that she and her husband will be closing on their house at 22 Sunset Heights on August 15th. She didn't have a question at the moment, but asked for permission to speak later on if she had a question.

Viera Muzithras of 10 Sunset Heights is concerned that the road that currently exists is not adequate for the through traffic that will occur with the connection it will have. She said that people speed excessively on this road. It is very narrow; two cars cannot fit on it at the same time. So how will the public understand the necessity of speed control and prevent its usage as a cutoff to avoid the traffic light on Stage Road and Route 17M. The road is now excessively traveled by speeding teenagers. In the winter the snow and ice causes problems for drivers trying to get up and down the road. Attorney Tirschwell responded that originally the Village Board asked that Hill Street terminate in a cul de sac and that Sunset terminate in a cul de sac with emergency access. The Planning Board requested that the streets be changed to through streets. So at the moment it is not clear whether these streets are through streets or whether they will terminate with cul de sacs.

Ed Hunt of 24 Sunset Heights had the same question as Viera Muzithras. He said currently there are only three ways to get out of the neighborhood. Right now it is all surrounded by property in the back. You have to leave by Bridge Street, High Street, which is a deathtrap; there was an accident there the other day or Hill Street. It's nearly impossible to get out of there now. Connecting to Sunset Heights would be a very bad idea. He also stated that he has lived on Sunset Heights for 24 years and has never had problems with water pressure. Attorney Tirschwell responded that the water pressure problems were brought to their attention by the village water department and that they also had communications from the fire department.

indicating that there were no fire hydrants there. Mr. Hunt said there is one right across the street from him.

Inda Stora of 9 Crescent Place said she had spoken to Attorney Tirschwell a while ago and in turn wrote him a letter after their conversation. Mrs. Stora read the letter she sent Attorney Tirschwell on June 23, 2007 into the record. It read as follows:

Dear Mr. Tirschwell,

Once again I am asking you to make a proposal to the Lincoln Corporation to consider building a fifty-five and over, active adult community on the Smith Estate in Monroe, N. Y. The Lincoln Corp. project will go before the Village of Monroe Planning Board in the near future, and this would be a perfect project to propose. Active adult communities cater to a financially secure demographic, so I am in no way suggesting that Lincoln Corp. consider building a low income or government-funded community. There is an activity adult community in Middletown made up of single family homes, but were designated as condominiums, therefore reducing the tax burden on residents, yet the value in the structure is considerable. I am enclosing newspaper articles that have recently been in our local newspaper, and as one states "construction slows" except for active adult communities. Monroe does not have one such community. This is a perfect way to keep lifelong residents in the community – at no added burden to school systems – because so many have left the area due to the high tax burden. When an active adult community is built, it allows more homes to be built per acre, while also enhancing open space.

My husband and I have resided in Monroe for over 40 years and we love our village. We love our town and wish to stay here, but as we near retirement, we need to downsize. We now reside close to our adult children and grandchildren and would like to continue to live here. A community of single level-one family homes would enable us and many other couples and widowed friends to remain in Monroe.

I urge you to reconsider your position and present this to the members of Lincoln Corp. This investment would be a wise and profitable one for the corporation as well as creating good will within our community.

Thank you for your time on the phone, and for forwarding this letter to the Lincoln Corp. I would appreciate it if you could notify me after you speak to Lincoln Corp. My email is xxxxxxxxxx.

***Sincerely yours,
Inda Stora***

Attorney Levinson asked if she had received a reply. Mrs. Stora said she did not.

Mrs. Stora further added that less traffic during commuter time with an active adult community would be less traffic and usually in an active adult community the residents have two cars. Where she lives now there are homes with two teenagers and four cars. In an active adult community hopefully there wouldn't be teenage speeders on Sunset Heights. There also would be no impact on the school system. She also thanked Lincoln Corp. for their dedication of the front piece of property to the village. She offered to work with them on an adult community.

Bonnie Franson of 20 Bridge Street wanted to know where the project is in the actual review process. She wanted to know if this is a preliminary subdivision plat and how does it specifically relate to the SEQR process. Attorney Tirschwell stated that this is the SEQR proceedings here

tonight. Attorney Levinson gave the history of the property to explain the problems the Planning Board is facing with this project. He said that the subdivision was approved in 1909 for 65 lots. There are no records as to how the subdivision was approved; whether any scrutiny was given and he doubted that anyone back in 1909 considered the impacts of the development. Prior village boards commenced condemnation proceedings against Lincoln Corp. and on three separate occasions they were unsuccessful. There is a claim outstanding for millions of dollars against the village brought by Lincoln Corp. for the latest occasion. The Village Board and Lincoln Corp. sat down and devised a method of settlement to resolve the significant damage claim that they have in connection with the subdivision approval process. This Board was involved tangentially with those discussions but the litigation is against the Village of Monroe Board. When the Planning Board saw this project they realized the impact knowing that things have changed substantially since 1909. The Board sent the project to the county and recently received a letter back from the Orange County Dept. of Planning which outlines the problems they envision, e.g., drainage, topography, water, sewer pipes and the inadequacy of some of the plans for their review. This project is being handled in a different fashion since we technically have an approved 65 lot subdivision that goes back to 1909. We are considering it as a new application keeping in mind that years ago some agency of this village approved 65 lots and it has appeared on the tax rolls since that time.

Ms. Franson continued that assuming this is a new application her concerns are with the environmental review of the project. She went through a list of questions she had with regard to what has been submitted for SEQR. One is has there been any cultural resource said and done of the historic buildings and the site itself. Attorney Tirschwell responded that the only historic building is the Smith house and that the house is being dedicated to the village. Ms. Franson feels there may be other artifacts there are located on the site, so has there been a survey of what is there. Secondly, since the Planning Board is contemplating alternative means of accesses for the road layout, was a traffic study done in terms of what the potential implications are for linking Lakes Road to the neighborhood below. She sees a lot of traffic cut through High Street that doesn't obey the stop sign. It's dangerous. There are substandard roads. She also stated that she doesn't see topography or drainage shown on the plan, but she wanted to know what the clear-cut was going to be on the property. These are small lots. What's the relationship of the buildings to the lots? She stated further that she didn't think anyone would want to see the clearcutting down at the end of High Street done again. There is a vegetative ridge line and she hopes that some of that will be retained. She also wanted to know what the DEC classification for the headwater of the Ramapo River and whether a permit is required if any of the improvements would be within 50 ft. area of the stream. Also, have tree surveys been done. She also said she thought there was gas pipeline that goes through the site and how would that affect the lot layouts. It looks like some of the lots have shared driveway access and she wanted to know what the regulations are for shared driveways in the village or in fact if they are allowed. She then asked that the Planning Board keep the public hearing open so that this information can be gathered.

Inda Stora of 9 Crescent Place asked if this application is for 65 homes. The reply was 46. Attorney Levinson read from the comments in the Orange County Planning Dept. report dated June 28, 2007 written to the Village of Monroe Planning Board. "The project was approved for approximately 65 lots in 1909. Currently the applicant intends to construct 46 single family homes. However, amended plans submitted to this office do not reflect that. Drainage, water and sewage pipes were not indicated. Sidewalks and street trees were absent on submitted drawings. Several new curb cuts appear to be planned for County Route 5 yet are not indicated. Part two of the full Environmental Assessment Form is not completed. This office fully supports the sidewalk through lot 14 so that residents can easily access the village. However the emergency gate located on the same lot that is not repeatedly secure may result in

EXHIBIT E
[Stipulation of Settlement "So Ordered"]

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of:

MARIA FRANSON, EMILY CONVERS and
BARRY FISCHER,

HON. JOHN K. MCGUIRK

Petitioners,

SO-ORDERED STIPULATION
OF SETTLEMENT

-against-

Index No. 10850/08

THE VILLAGE OF MONROE, THE BOARD
OF TRUSTEES OF THE VILLAGE OF MONROE,
THE PLANNING BOARD OF THE VILLAGE OF
MONROE, and W.C. LINCOLN CORP.,

Respondents.

For an Order and Judgment Pursuant To CPLR Article 78
and a Declaratory Judgment Pursuant to CPLR §3001.

-----X
WHEREAS, Respondent, THE VILLAGE OF MONROE (hereinafter the
"VILLAGE"), is a municipal corporation duly constituted and
existing under the laws of the State of New York, and maintains
offices for the transaction of business at 7 Stage Road, Monroe,
New York 10950; and

WHEREAS, Respondents, THE BOARD OF TRUSTEES OF THE VILLAGE
OF MONROE and THE PLANNING BOARD OF THE VILLAGE OF
MONROE, are the duly constituted Village Board and Planning
Board of the VILLAGE; and

WHEREAS, Respondent, W.C. LINCOLN CORP., (hereinafter
"WCL") is a domestic corporation and maintains offices for the

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transaction of business at 1 Jackson Avenue, Spring Valley, New York 10977; and

WHEREAS, Respondent WCL is the owner of approximately 20.9 acres of land located at Lakes Road and High Street in the Village of Monroe which is identified on the tax map as Section 211, Block 1, Lot 1 (hereinafter the "Property"); and

WHEREAS, the Property is part of the historic Roscoe Smith estate, and the grounds include a historic home, a stream, walking bridges, and a pond with a water wheel; and

WHEREAS, WCL and the VILLAGE have reached an agreement or understanding under which WCL is to dedicate to the VILLAGE the portion of the Property improved by the Roscoe Smith home, out-buildings and structures, and was to make certain infrastructure improvements in the area; and

WHEREAS, on or about January 26, 2007, WCL submitted an application to the PLANNING BOARD for a forty-six (46) lot residential subdivision of the Property called "The Bridges at Lake Parc"; and

WHEREAS, on September 15, 2008, the PLANNING BOARD adopted the Resolution granting conditional preliminary subdivision approval on WCL's application; and

WHEREAS, the approved subdivision plans included a "through road" connection of Hillside Road to Sunset Heights Road.

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WHEREAS, the petitioners, who are owners of property located in close proximity to the lands of WCL, have commenced this special proceeding seeking, inter alia, to set aside and annul the preliminary approval granted to WCL by the Planning Board on the grounds that, inter alia, the aforesaid through road connection of Hillside Road to Sunset Heights Road is objectionable and inappropriate; and

WHEREAS, the parties have reached an agreement and understanding under which they wish to resolve and settle this proceeding;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. That the above-captioned action is hereby settled and terminated with prejudice and without costs upon the terms and conditions recited herein.

2. That the through road connection of Hillside Road to Sunset Heights Road shown on WCL's plat shall be modified to include the installation of two (2) cul-de-sacs which shall be connected for emergency vehicle access by a strip of land not more than 44' in width, constructed with a surface of pavers or the equivalent sufficient to support emergency vehicle traffic which connection shall be barred by a security gate, all in

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substantial conformity with the detail attached hereto as Exhibit "A."

3. That without further action of the PLANNING BOARD, the resolution of the PLANNING BOARD granting preliminary approval for WCL's subdivision plat is hereby deemed modified to vacate therefrom the approval of the plat with a through road connection of Hillside Road to Sunset Heights Road and to add thereto a provision stating that as a condition of preliminary approval WCL must submit revised plans depicting two cul-de-sacs in substantial conformity with the detail attached hereto as Exhibit "A," which plans shall meet the approval of the PLANNING BOARD and such approval shall not be unreasonably withheld; and

4. That the approved final subdivision plat shall include the following note:

"The subdivider, its successors and assigns covenant that it will not construct a through road whatsoever connecting Hillside Road to Sunset Heights Road except the emergency access depicted on this subdivision plat."

5. That any finally approved subdivision or site plan approval granted for the Property shall include such revegetation or plantings as may be required by the Planning Board in addition to street trees.

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6. That it is specifically agreed and recognized that the SEQRA review conducted by the PLANNING BOARD on WCL's application considers and adequately provides for the change to the subdivision plat mandated by this Stipulation, and that no further SEQRA review is required; and

7. That it is recognized that petitioners object to the landscaping and tree planting details of WCL's subdivision plans and the lack of architectural review, and that petitioners specifically reserve the right to object to and otherwise challenge the sufficiency thereof in regard to grant of final subdivision approval; and

8. Excepting as provided in paragraph "7" above, all other claims that were or may have been asserted in this proceeding are hereby settled and finally terminated; and



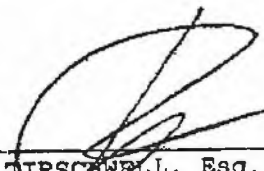

9. This Stipulation may be executed in counterparts with the same force and effect as all signatures appearing on the same page.

IN WITNESS WHEREOF, the parties through their counsel have caused their respective signatures and seals to be hereunto fixed the day and year written below.

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Attorneys for Respondent,
The Village Of Monroe,
11 Abrams Road, P.O. Box 244
Central Valley, New York 10917
Tel. No. (845) 928-9444Dated: July 24, 2009SO ORDERED: s/ John K. McGuirk
HON. JOHN K. MCGUIRK, J.S.C.

Year 20

555 Hudson Valley Avenue
Suite 101

EXHIBIT F

[Minutes of Planning Board Meeting 11/10/2022]

March 14, 2007

BRIDGES AT LAKE PARC – AMENDED SITE PLAN (211-1-1)

Present: David Ziegler, Atzl, Scatassa & Ziegler, Donald Tirschwell, Esq.

Attorney Tirschwell reported that for purposes of the amended site plan only the roads were redesigned. There will be no cul de sacs. Member Parise stated that lots 19 and 20 are very steep and asked how they proposed to build on those lots. Attorney Tirschwell replied that lot 19 will be serviced by the interior road and that lot 20 is not really that steep. Engineer Ziegler will add grade markings to the site plan for those lots and a note will be included stating that they will restrict the type of home to be built on these lots. Engineer Higgins asked for clarification as to what lots the amended site plan includes. Attorney Tirschwell indicated the lots to him and during the discussion it was also noted that lot 66 belongs to the Village. Because it is too small for a home, they took some property from two adjacent lots to make it buildable.

Attorney Tirschwell asked if the Planning Board would declare its intent to be lead agency for this project. Member Parise said the Board will do that at the next meeting on March 19th.

March 19, 2007

BRIDGES AT LAKE PARC (211-1-1) – PRELIMINARY DISCUSSION

Present: Engineer Atzl, Atzl Scatassa & Ziegler, Donald Tirschwell, Esq.

Chairman Woods stated that the reason the applicant is present at the meeting tonight is for the Planning Board to declare itself lead agency.

On a motion made by Member Parise and seconded by Member Cocks, it was unanimously **Resolved that the Planning Board declares itself lead agency for the Bridges of Lake Parc.**

Secretary Marasco will send notice to the Town of Monroe, the Orange County Planning Dept., the County Health Dept., Orange County Sewer District No. 1, and the Orange County Highway Dept.

April 11, 2007

BRIDGES AT LAKE PARC (211-1-1) – PRELIMINARY DISCUSSION

Present: Engineer Atzl, Atzl Scatassa & Ziegler, Donald Tirschwell, Esq.

Attorney Tirschwell explained what changes they made to the site plan. He said that Brooklyn Road will be eliminated so that the village can get a better size lot and also to create a shortcut. This will create two flag lots – 16 and 61, which will have separate driveways. Member Cocks asked about lots 19 and 20. Attorney Tirschwell replied that lots 18 and 19 will face the new road and lot 20 will face towards Lakes Road. Member Cocks asked if the old barn in that area was going to be removed and Attorney Tirschwell replied that it would. There will be no sidewalks on Lakes Road. There will be sidewalks along the emergency exit road and along the south side of Hill Street. Member Cocks asked if they could landscape around the front section of the property around the lake, etc. to delineate it from the subdivision. Attorney Tirschwell said that they would and that the village will maintain it. Member Cocks also asked if the two

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
PUBLIC HEARING
September 13, 2022
Via Zoom**

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

Absent: Chairman Baum

Deputy Chairman Zuckerman called the meeting to order at 8:09 pm with the Pledge of Allegiance.

Deputy Chairman Zuckerman appointed Alternate Member Doherty to be a voting member.

Applications:

Continuation of the application of W.C Lincoln Corp. for review of administration decision or order of the Building Inspector in order to issue a Building Permit. The property, which is the subject of said action by the Board, is located in the SR-10 Zoning District and is identified as Section: 211 Block: 1 Lot: 1 on the tax map of the Village of Monroe and is also known as the address (no#) Sunset Heights.

Deputy Chairman Zuckerman asked who was representing the applicant. Attorney Joseph Haspel stated he was representing the applicant. Attorney Haspel stated it was an appellant not an applicant for the purpose of this matter. Attorney Haspel stated also present was the president of WC Lincoln, Mr. Jacobowitz.

Deputy Chairman Zuckerman stated that while the COVID restriction that allowed for Zoom meetings ended yesterday and was no longer in effect, where there still disaster emergency provisions in effect by the State of New York that would allow Zoom meetings due to Monkey Pox and Polio. These emergencies would impair the ability of the Board to hold an in-person meeting.

Deputy Chairman Zuckerman asked Attorney Haspel if he would like to make a statement. Attorney Haspel stated he is going to assume that everyone on the Board knows more about the prior proceedings, more than he does, as he is filling in for Attorney Dickover who could not make it to the meeting. Attorney Dickover wrote a letter dated August 29, 2022 addressing the issues that Attorney Haspel believes tonight's meeting is to address. Attorney Haspel stated that when Deputy Chairman Zuckerman stated the property he stated the property on the Tax Map designation he found it odd, as the Tax Map designation is for a group of lots. He feels it would be more accurate to state it as Lot 58 which is part of the group of lots. He is not sure if there has ever been an application for Lot 58 within the sub-division. That being said it is Attorney Haspel's understanding that at the last hearing, it was brought up to the appellant, that back twenty years ago there was a similar process for what he believes a different lot. Attorney Haspel was not able to determine the Lot number from the documents he read in regards to the proceedings twenty years ago. He stated that appeal was upheld by the New York State Supreme Court. There were two proceedings: The first was a decision by the Building Inspector not to issue a building permit because at that point in time there was an eminent domain proceeding, because of that it was held to be inappropriate to address this proceeding. Later there was a proceeding that was presented based upon the sole issue of vested rights. My review of the documents was that Attorney Dickover did argue vested rights and it is upon that argument that the Board stated there was vested rights presented on a parcel in this sub-division

that was rejected by this Board back in 2003 and that rejection was affirmed by the New York State Supreme Court and recorded in Orange County New York. After hearing this Attorney Dickover researched the matter, his finding of that research was stated in his August 29, 2022 letter. The letter raises the fact that this property is entitled to a building permit based upon Local Law Section 200-64. Attorney Haspel feels this Local Law needs to be parsed and is applicable to this proceeding. Attorney Haspel stated he would parse out that provision at this time to determine whether a building permit should be authorized under this Local Law. Attorney Haspel does not believe this argument has ever been presented.

Attorney Haspel read the provision. The provision states that a vacant lot in a residential zone, which is what lot 58 is, separated from any other land in the same ownership and non-compliant as an area whether or not the lot is in or part of a sub-division plot. According to Section 200-64D(1) you have a vacant lot which is separated from any other land, which lot 58 is, it is under the same ownership and is non-compliant in area which is what we have. This is a lot that seems to be sub-standard to current standards. SR-10 zoning area calls for 100 feet of frontage and this lot only has a seventy-five feet of frontage for this lot.

Attorney Haspel proceeded to state that when he first reviewed that he was stuck on the word "separated" and whether it applies here. As per the Zoning Code guidelines if in doubt use the Webster Dictionary. According to Webster Dictionary, when "separate" is used as an adjective it is defined as "existing by itself". Lot 58 exists by itself which has been approved and is part of a filed sub-division plat.

What we have here is a lot that is separate, on its own, under the same ownership, non-compliant as it does not meet current standards. The lot is sub-standard because it only has 75-feet of frontage and the current standard is 100-feet of frontage. Whether or not it is part of a sub-division, it is on a plat approved by the Planning Board. This lot was not approved by the Planning Board as there was no Planning Board in 1909 when the sub-division was approved. The Local Law stated this does not matter, as it says whether or not the plat was approved by the Planning Board and filed with the county clerk. This was in fact filed with the county clerk. Continuing with the Local Law it should have a lot width of at least fifty-feet. This lot has a lot width of seventy-five feet and maybe used as a single family detached dwelling. The application is for a single-family dwelling as long as the use complies with 200-19 which the request does compile with 200-19. This request fits the definition on all four criteria in the Zoning Code that indicates we have a right to build on this non-conforming lot, we don't believe that the Building Inspectors rejecting of a building permit was appropriate. That is our argument, does anyone have any questions?

Deputy Chairman Zuckerman stated he would like to get to the letter dated August 29, 2022. The letter states that Attorney Dickover took into consideration the fact that there was res judicata as far as the 2003 decision for vested rights is concerned and if that was the only issue the resolution might be concluded. But, the letter states Local Law 5-2017, amended 6/13/2017, renders the decision from 2003 no longer applicable. Deputy Chairman Zuckerman wanted it noted for the record that the particular Section 200-64D was in the 1999 code under a different number and the only difference between the law in 1999 and the law in 2017 is that it had to be amend because the last line says it has to comply to Section 200-19 and in the re-numbering 200-19 became 200-26 and that is the only change in this section from the 1999 code, which code Section was before the ZBA and the New York State Supreme Court in their decisions in 2003. Attorney Dickover's letter is incorrect in stating that there was a monumental change when in fact the only change was the re-numbering. There is nothing new this is still part of the res judicata. The other issue we face here is the fact that as far back as 1991 the requirement was for lot width in SR-10 to be one-hundred feet. These issues should have been resolved at the initial proceedings. There is nothing new in the letter to change the determination that res judicata is in effect.

Attorney Haspel stated when he reviewed Attorney Dickover's letter, he felt that also, but while you are mostly right that the change to the Local Law in 2017 was not substantial. There are two other things, 1) whether we are dealing the same issues and we are not because we are not dealing with the same parcel of property, and 2) the 2003 proceedings were limited to the question of vested rights. Attorney Haspel does not believe there is res judicata in the ZBA. If this Board choose to use res judicata for its decision, he would assume that it will be a determination for the court. The court would have to decide if res judicata exists and to show that it would have to be the same facts and the same presentation of law and it is not. Here we have a different parcel of land and a different argument. Attorney Haspel stated that he reviewed if 200-64 in any form was addressed by either the ZBA or the New York State Supreme Court, and it was not. Attorney Haspel rejects the position of res judicata on multiple grounds. If the Board wants to advocate its role to determine the meaning of the statutes, which it is, this Board is supposed to determine whether a building inspector has properly determined a Local Law.

Board Attorney Naughton stated there were a couple of things she wanted to address. Res judicata does apply to ZBA's. This has been for a very long time and there are a number of cases that say the doctrine of res judicata applies to quasi-judicial determinations, including to Zoning Boards. Attorney Haspel stated not at this level but in the courts. Board Attorney Naughton stated res judicata applies to this Board and they can make a determination based on res judicata using the court decisions that the courts have said that they could.

Board Attorney Naughton stated the issue before this Board is they are presented with an appeal of the decision of the Building Inspector's determination. That means this Board stands in the shoes of the building inspector and makes the decision they think ought to have been made in that instance. Right now, this Board has not been asked to make a determination of anything less you want to include that as part of this application. This Board is only looking at the facts before it, and the bulk tables, and everything that is applicable to make this determination. Board Attorney Naughton asked Attorney Haspel if they were expanding the application to include an interpretation of the provision of Local Law Section 200-64? Attorney Haspel stated he thinks it is implicit and if we have to the answer it is yes and he would argue it is already there. Board Attorney Naughton stated that in that case the Board can continue with this application as it came into the building inspector in terms of the history of the application, the lot width, and whether or not it would comply with ability the for a building permit to be issued under Local Law section 200-64, whether or not this property is a vacant lot in a residential zone, separated from any other land in the same ownership. Attorney Haspel stated that using the definition of the Webster Dictionary, that is correct.

Attorney Haspel thinks Board Attorney Naughton stated it accurately. Attorney Haspel feels this Board must address Local Law section 200-64 to make a determination and not simply site a similar application twenty years ago, which was not based on the Local Law and may be based on a separate piece of property. Attorney Haspel stated he has seen nothing that indicates we are dealing with the same lot which would support the denial of a building permit.

Deputy Chairman Zuckerman stated it is the Board's position that there is only one lot because there is no section, block, lot (SBL) number associated to lot 58. The SBL is for the under one SBL which is for the whole area not just lot 58. Attorney Haspel stated that is clearly wrong, tax lot numbers are not legal descriptions of property. Legal description is what is set forth on the plat plan on file.

Board Attorney Naughton clarified what Deputy Chairman Zuckerman was saying. The 1909 plat you are referring to is no longer valid. Therefore, there is only one lot which is SBL 211.1.1. Attorney Haspel does not understand as he has never heard of a filed map being invalid. Board Attorney Naughton stated it is a filed map but the appellant does not have any vested rights to those lots. Therefore, those lots do not actually exist which is based on the prior New York State Supreme Court decision. Attorney Haspel stated that is not what the court decision says. Attorney Haspel stated the court decision says that you don't have vested rights and you have to go through a process. Board Attorney Naughton stated she is very familiar with the decision. Attorney Haspel stated he would not get into that argument here.

Attorney Haspel stated at this point in time we do have a filed map and that map sets forth lots. What is odd here and it seems to be indicative is what the Village seems to have wanted to do when it changed it's zoning was to stop lots of a certain size and if a Village wants to do that they create a Local Law that merges sub-standard lots owned by people that are adjacent. In this case that was not done and what was done is have this Local Law which goes back to about the same time they created the zoning. The Local Law did not merge smaller lots by the same owner, in this case the Local Law states a sub-standard lot has rights of its own if it meets the definition in Local Law 200-64. That was not done here. If you are saying there is no sub-division because of a zoning change, I will be gladly litigate that. The Local Law is there to help properties like this one.

Board Attorney Naughton asked if there were any other arguments Attorney Haspel would like to make. Attorney Haspel stated he is hearing that the Board does not care about the law and they do not care about the Local Law, they don't care about the language of the law. Board Attorney Naughton asked Attorney Haspel to stop.

Attorney Haspel stated this argument has never been applied to this issue and this is not the same lot as the last case.

Deputy Chairman Zuckerman polled the Board members for questions. There were no questions from the Board members.

Mr. Jacobowitz, President of W.C. Lincoln, asked if there were any laws indicating filed maps and if a filed map can expire. Attorney Haspel stated not to worry about that. Board Attorney Naughton stated this was a vested rights issue and he should talk to his lawyer off line in regards to that.

Deputy Chairman Zuckerman asked if there was anyone from the public who would like to comment. There were no public comments.

Board Attorney Naughton stated no GML was needed for this item. This item is classified as a SEQRA type 2 action and no further action is required.

On a motion from Deputy Chairman Zuckerman and seconded by Member Margotta it was resolved: **to close the public hearing.**

Aye – 5
Nay – 0
Absent – Chairman Baum

Board deliberation commenced.

Member Gilstrap stated he has a problem with the lot and considers 211.1.1 to be one lot so he is opposed to the idea that lot 58 exists.

Deputy Chairman Zuckerman stated that Local Law section 200-64D cannot be applied here as 211.1.1 is owned by the same owner. Local Law section 200-19 is irrelevant as the property is all under one ownership and the bulk requirements were not met. Deputy Chairman Zuckerman does not feel this action falls under those Local Law sections.

Member Czerwinski stated if we are going to go back to the 1909 map it is a problem for him as the owners have had over one-hundred years to do something with the property and any vested rights that came with the property has long been abandoned. Member Czerwinski stated there is only one lot and res judicata applies.

On a motion from Deputy Chairman Zuckerman and seconded by Member Margotta it was resolved: **that the application of W.C. Lincoln that appealed the interpretation of the Building Inspector be dismissed on the grounds of res judicata.**

Aye – 5
Nay - 0
Absent: Chairman Baum

Attorney Haspel asked if a formal decision will be written. Board Attorney Naughton stated yes, a formal decision will be drafted and adopted at the next meeting which is October 11, 2022.

August 9, 2022 minutes:

On a motion from Deputy Chairman Zuckerman and seconded by Member Cezerwinski it was resolved: **the August 9, 2022 meeting minutes be approved.**

Aye – 3
Nay – 0
Abstain: Members Gilstrap and Margotta
Absent: Chairman Baum

New Business:

There is a new application for 97 Fredrick Drive on the agenda for October. There was a matter for this address before the Board in September 2019. The members would like a copy of those minutes prior to the meeting.

The Board recognized the selection of Kelly M. Naughton as an upstate New York “super-lawyer” in the fields of land use and zoning. Alternate Member Doherty, with the agreement of the other members stated the Board was lucky to have her as it’s Attorney.

On a motion by Member Margotta and seconded by Member Gilstrap it was resolved: **the meeting be adjoined.**

Aye – 5

Nay – 0

Absent: Chairman Baum

VILLAGE OF MONROE, NEW YORK
ZONING BOARD OF APPEALS

-----X
In the Matter of the Application of
W.C. LINCOLN CORP.
Designated as Tax Map Section 211, Block 1, Lot 1

DECISION

Appealing A Determination of the
Village of Monroe Building Inspector.
-----X

THIS APPLICATION of W.C. Lincoln Corp. (hereinafter the "Applicant") comes before the Village of Monroe Zoning Board of Appeals ("Board") as an appeal of a determination of the Building Inspector to deny an application for a building permit.

PRELIMINARY STATEMENT

The Applicant is the owner of property located at 47 Lakes Road in the Village of Monroe, New York. The property is shown on the Village tax maps as Section 211, Block 1, Lot 1, and is located in the Suburban Residential ("SR-10") district. The Property currently contains a single-family dwelling. On May 25, 2022, the Building Inspector denied the Applicant's application for a building permit under the Village's Code.

The application before this Board, dated June 14, 2022, appeals the determination of the Building Inspector.

PUBLIC HEARING AND SEQRA

The public hearing on this Application, upon a notice duly published, was held on August 9, 2022 and September 13, 2022, when it was closed. Action taken by the Board on this Application is classified as a Type II action under the State Environmental Quality Review Act ("SEQRA"), and no further environmental review under SEQRA is therefore necessary.

COUNTY GML § 239 -l, -m or -n REPORT

This application was not required to be referred to the Orange County Planning Department under General Municipal Law § 239-l, -m or -n.

DECISION

In connection with the property located at 47 Lakes Road, Monroe, New York, the Applicant applied for a building permit to construct a single-family dwelling. The Building Inspector issued a letter dated May 25, 2022 stating as follows:

I have reviewed your submitted building permit application to construct a single-family dwelling on an existing lot. This lot is currently a 19.8 acre parcel with an existing single family dwelling located fronting on Lakes Road. According to the Table of Uses and Bulk Regulations, SR-10 District you are permitted "One-family detached dwelling".

According to your proposal you are referencing a filed subdivision map dated 1909 and labeled as Lot 58. Please note that this proposed lot does not have a section, block, lot or comply with the bulk requirements having a lot width of 75' and not the 100' width as required by the SR-10 District you are located in...."

The Building Inspector cited Village Code § 200-64, and informed the Applicant that it needed to apply to the Planning Board under this section, which provides as follows:

Adjoining lots. Two or more adjoining nonconforming subdivision lots, regardless of ownership, in a subdivision approved by the Planning Board shall have three years from the date of filing with the office of the County Clerk to obtain a building permit. Any noncomplying lot in a subdivision approved by the Planning Board and filed with the office of the County Clerk more than three years prior to the effective date of this chapter and in the same ownership shall not be eligible to receive a building permit. Said subdivision or part thereof shall be resubmitted to the Planning Board for approval in accordance with the applicable provisions of this chapter. Any lot in a subdivision approved by the Planning Board after the effective date of this chapter, but which is made nonconforming as to bulk by any future amendments of this chapter, shall have three years from the date of filing to obtain a building permit.

The Building Inspector also informed the Applicant that it did not qualify as an "existing small lot" under § 200-19 of the Village Code because the property is all under one ownership, and the bulk requirements – specifically lot width – are not met.

On June 14, 2022, the Applicant timely appealed the Building Inspector's determination to this Board. *See* Village Law § 7-712-a(5)(b) ("An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official.")

As provided in New York Village Law, a ZBA's appellate powers and discretion are as broad as the Building Inspector's initial scope of review, and it is free to make whatever decision

it believes “ought to have been made” by the Building Inspector. *See* Village Law § 7-712-b(1). The Board was aware of how it is not the role of the Board to ‘negotiate’ the use of the property with the Applicant; its role is to determine whether a building permit should be issued.

Discussion

As set forth in the Applicant’s letter dated June 14, 2022, the Applicant has appealed the Building Inspector’s determination to deny the building permit application claiming “vested rights” – using the prior determination of the Planning Board and the So Ordered Stipulation of the Court.

The Board considered documents concerning this property from prior applications. In 2003, in response to the appeal of a denial of a building permit application, the ZBA issued a decision which stated in part: “[w]e find the facts surrounding this application as follows: . . . The lot does not conform to the requirements of the SR-10 District in that it is seventy-five (75) feet wide instead of the required one hundred (100) feet width. . . . Accordingly, the Board finds that no building permit should be issued.”

The Board considered that the Building Department denied the present application for a building permit on the same grounds, *i.e.*, that the property did not comply with the lot width – it only has 75 feet where 100 feet are required.

Subsequent to the 2003 ZBA decision, the applicant therein challenged the denial and claimed that it had vested rights to the property. The Court found that no vested rights had been demonstrated:

Petitioner now brings this proceeding pursuant to CPLR Article 78 alleging that it has vested rights in the subdivision because one of its predecessors in title, Ina A. Smith, deeded property to the Village of Monroe in 1946 to create village streets on the land of the subdivision.

In order to acquire vested rights in a subdivision approval which would no longer be in compliance with current zoning laws, the owner of the property must have made substantial expenditures and undertaken substantial construction prior to the effective date of the amendment. Petitioner offers no proof of the value of Ms. Smith’s conveyance in 1946 and it is uncontroverted that she never commenced construction. Moreover, where, as here, it appears that the improvements, *i.e.*, the village streets, would be equally useful under new zoning requirements, a vested right may not be claimed. Finally, any vested right Ms. Smith may have acquired in 1946 must be deemed to be abandoned since over fifty years have passed with

no construction pursuant to a subdivision map filed almost one hundred years ago.
(Emphasis added; internal citations omitted.)

The Applicant next argued that it has established common law vested rights based upon (1) the Planning Board's Resolution, (2) a statement by the Planning Board attorney, and (3) a So Ordered Stipulation of Settlement. Specifically, the Applicant has argued:

Notwithstanding all of the improvements made in connection with the original 1909 subdivision, this Board (the ZBA) does not have to reach any factual determinations concerning whether or not they were or were not made because the previous 2008 Resolution of the Planning Board as well [as] its incorporation within the "so ordered" stipulation of settlement found that the 'property is vested with regard to the rights accruing under the 1909 subdivision map' and that finding is conclusive with respect to whether the project and its lots can be developed.

The Board considered this argument and determined the Planning Board does not – and did not – have the ability to legally make the determination as to whether a property has vested rights – that is for a Court to decide, which it did in 2003.¹

Finally, the Applicant's supplemental submission dated August 29, 2022 argued that the Village Code was amended on June 13, 2017, so any prior determination by the ZBA would no longer be valid/applicable. The Applicant posited that Village Code § 200-64 provides that the property can be utilized by the Applicant because it constitutes "a vacant lot in a residential zone separated from any other land in the same ownership...." However, the Board determined that the Applicant's argument that Village Code § 200-64 applies is of no moment.² This property is not "a vacant lot in a residential zone separated from any other land in the same ownership....". Lot 58 does not exist; there is only one lot – Section 211, Block 1, Lot 1. Additionally, while Section 211, Block 1, Lot 1 is in a residential zone, it is not vacant and is entirely owned by the Applicant.

"The doctrine of *res judicata* operates to preclude the reconsideration of claims actually litigated and resolved in a prior proceeding, as well as claims for different relief against the same party which arise out of the same factual grouping or transaction, and which should have or could

¹ Additionally, the So Ordered Stipulation of Settlement did not incorporate (and therefore ratify) the terms of the Resolution by reference or otherwise.

² The Board recognized that this provision was contained in the Village's Code at the time of the original determination as § 200-77.

have been resolved in the prior proceeding.” *Mahler v. Campagna*, 60 A.D.3d 1009, 1011 (2d Dept. 2009); *see also, Vavolizza v. Krieger*, 33 N.Y.2d 351 (1974).³

The Board determined that any vested rights that the Applicant and property may have had have long been abandoned, and any claim that the Applicant may have had has already been adjudicated. Therefore, the Board upheld the determination of the Building Inspector to deny the application for a building permit, and dismissing this application on the grounds of *res judicata*. Furthermore, the Board determined that even if not this application was not denied on *res judicata* grounds, it would be denied because there are no vested rights as per the Court decision.

Upon Motion by Member Zuckerman, seconded by Member Margotta, the Board voted to uphold the Building Inspector’s determination and dismiss the application on the grounds of *res judicata*:

Chairman Paul S. Baum, Esq.	<u>Absent</u>
Member Jason Czerwinski	<u>Aye</u>
Member Elizabeth Doherty	<u>Aye</u>
Member John Gilstrap	<u>Aye</u>
Member Daniel Margotta	<u>Aye</u>
Member Howard Zuckerman	<u>Aye</u>

CONCLUSION

As a consequence of the Board’s discussions, the Zoning Board of Appeals hereby upholds the decision of the Building Inspector to deny the application for a building permit and dismisses the application on the grounds of *res judicata*, as described and discussed above.

Issued by Board: October 11, 2022

Written Decision Signed: 10/19/2022

DocuSigned by:

Howard Zuckerman

693F53C0592641C

Howard Zuckerman, Deputy Chairperson

³ “It is well settled that the doctrine of *res judicata* applies to the quasi-judicial determinations of administrative agencies, including municipal zoning boards.” *Waylonis v. Baum*, 281 A.D.2d 636, 638 (2d Dept. 2001.)

Filed in the Office of the Zoning Board of Appeals on the 25 day of October 2022.

I, KIM ZAHRA, Clerk of the Village of Monroe, do hereby certify that the foregoing Decision was filed in the Office of the Village Clerk on 21, 2022.

Kim Zahra
KIM ZAHRA, CLERK
VILLAGE OF MONROE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of

W.C. LINCOLN CORP.,

Index No.: EF006416-2022

Petitioner-Plaintiff,

For a Judgment Pursuant to New York Civ. Prac. L. & R.
§§ 7803(2) and (3) and Declaratory Judgment,

**AFFIRMATION IN
SUPPORT OF MOTION
TO DISMISS**

-against-

VILLAGE OF MONROE ZONING BOARD OF
APPEALS, JAMES COCKS, as Building Inspector of the
Village of Monroe, ROYCE G. NOBLIN, JR., as Assessor
of the Town of Monroe, and PAUL WILEY, as Director of
the COUNTY OF ORANGE REAL PROPERTY TAX
SERVICES OFFICE,

Respondents-Defendants.
-----X

Alyse D. Terhune, Esq., an attorney duly admitted to practice law before the courts of the
State of New York, affirms the following under penalty of perjury:

1. I am a principal of the Law Firm of Alyse D. Terhune, Esq., attorneys for
Respondent JAMES COCKS, as Building Inspector for the Village of Monroe (hereinafter,
"Building Inspector"), and, as such, am fully familiar with the facts of this case and these
proceedings.

2. I submit this Affirmation in Support of the Building Inspector's Motion to Dismiss
the Verified Amended Petition and Declaratory Judgment commenced by W.C. Lincoln Corp.
(hereinafter, "Petitioner") seeking, among other things, a judicial declaration and/or order and
judgment ruling that, in the absence of Planning Board subdivision approval and contrary to the

Village zoning law, lots shown on a 1909 subdivision plat remain valid and individual building lots and not part of a 19.8-acre parcel conveyed to Petitioner on October 19, 2000, as a single parcel identified on the Town of Monroe Tax Map as Section 211, Block 1, Lot 1. NYSCEF DOC. NO. 44.

PRELIMINARY STATEMENT

3. At issue is the Building Inspector's May 25, 2022, denial of a building permit to construct a single-family dwelling on a particular lot shown on the aforementioned 1908 subdivision plat. NYSCEF DOC. NO. 23.¹ As a preliminary matter, the Building Inspector's denial was appealed to Co-Respondent Zoning Board of Appeals and upheld by that body. The Building Inspector responds herein only to those allegations that are specific to his May 2022 decision. He fully joins the Zoning Board of Appeals' (the "ZBA") motion to dismiss and incorporates herein by reference the ZBA's supporting papers, arguments and exhibits.

4. It must also be noted that Petitioner only sought a building permit for purported Lot 58. Petitioner did not submit a building permit application for Lot 54. The inclusion of Lot 54 in this proceeding is necessarily premature, as no administrative decision related thereto has been issued or appealed. Thus, all demands for relief concerning Lot 54 must be denied for failure to seek or exhaust administrative remedies. "It is hornbook law that one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law." Watergate II Apartments v. Buffalo Sewer Auth., 46 N.Y.2d 52, 57, 385 N.E.2d 560, 563 (1978). See also, 5055 N. Boulevard, LLC v. Inc. Vill. of Old Brookville, 201 A.D.3d 932, 933–34, 157 N.Y.S.3d 744, 745 (2d Dept 2022)(one must exhaust administrative remedies before challenging an administrative decision in a court of law).

¹ All document references included herein are to filings in this proceeding, EF006416-2022, either by the Petitioner or Respondent ZBA.

A. The Building Inspector was prohibited as a matter of law from issuing a building permit that violates the Monroe Zoning Law.

5. Petitioner applied to for a building permit to construct a single-family dwelling on "Lot 58," one of 65 lots shown on a 1908 subdivision. On May 25, 2022, the Building Inspector denied the application because the purported lot did not comply with the Village of Monroe Zoning Law. He could not have done otherwise.

6. The duties of a building inspector for the Village of Monroe are prescribed in § 200-70A of the zoning law: "It shall be the duty of the Building Inspector, who shall be appointed by the Village Board, to enforce the provisions of this chapter and of all rules, conditions and requirements adopted or specified pursuant thereto." Furthermore, § 200-68 prohibits the issuance of a building permit "unless the proposed construction or use is in full conformity with all the provisions of this chapter."²

B. "Lot 58" is not an individual lot, but part of a 19.8-acre single parcel owned by Petitioner and identified on the Village of Monroe Tax Map as Section 211, Block 1, Lot 1.

7. First, the Building Inspector observed that Lot 58 does not have a section, block, and lot number associated with it. Instead, it is wholly subsumed in a single 19.8-acre parcel owned by Petitioner and identified on the Village of Monroe Tax Map as Section 211, Block 1,

² "No building or accessory building in any district shall be erected, reconstructed or restored or structurally altered, nor shall any person, firm, corporation or association do any earth work, such as excavating, filling, blasting, changing the grade of any land or altering the course or bed of any natural water body, or cause the same to be done in any preparation for such erection, construction, enlargement, alteration, improvement or conversion of any building or structure or any accessory use to service such building or structure, such as parking facilities, without first obtaining a building permit from the Building Department; and no principal building shall be re-roofed or re-sided without a building permit duly issued upon application to the Building Inspector and payment of the required fee. No building permit shall be issued unless the proposed construction or use is in full conformity with all the provisions of this chapter. No building permit shall be issued to any property that has an expired permit on file. Any building permit issued in violation of the provisions of this chapter shall be null and void and of no effect, without the necessity for any proceeding or revocations or nullification thereof; and any work undertaken or use established pursuant to any such permit shall be unlawful."

Lot 1 (“SBL 211-1-1”). Indeed, no subdivision of SBL 211-1-1 has been approved by the Village of Monroe Planning Board and filed with the County. That fact is not in dispute. Therefore, the Building Inspector determined, properly, that Lot 58 did not exist as a separate and distinct from SBL 211-1-1.

8. Second, the entire 19.8-acre parcel is located in the SR-10 zoning district, which permits the construction of one single-family detached dwelling per lot. Because the parcel is already improved with a single-family detached dwelling, the construction of a second dwelling on the lot would violate the zoning law.

C. The 1909 subdivision plat is not grandfathered.

9. Third, the Building Inspector cited Village Zoning Code § 200-64, which – on its face – require subdivisions that contain noncomplying lots approved three years prior to the adoption of the zoning chapter to be submitted to the Planning Board for subdivision review in accordance with current bulk regulations. NYSCEF DOC. NO. 50. The 1909 subdivision was not submitted to the Village of Monroe Planning Board for review within three years of the adoption of the zoning law. Again, that fact is not in dispute.

10. Nevertheless, Petitioner attempts to circumvent this requirement by claiming, without support, that § 200-64C does not apply to Lot 58 (or, for that matter, Lot 54) because the 1909 subdivision predates the creation of the Village of Monroe Planning Board. This hypothesis completely ignores New York State Village Law § 7-700, which grants a board of trustees the power to regulate land within its borders through local zoning law.³

³ “For the purpose of promoting the health, safety, morals, or the general welfare of the community, the board of trustees of a village is hereby empowered, by local law, to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes.”

11. Petitioner's theory also ignores Village Law § 7-728, which authorizes the board of trustees, as it did here, to "empower the planning board to approve the development of plats, entirely or partially undeveloped, which were filed in the office of the clerk of the county in which such plat is located prior to the appointment of such planning board and grant to the board the power to approve such plats [emphasis added]." Section 7-728 defines the term "undeveloped" as "those plats where twenty percent or more of the lots within the plat are unimproved unless existing conditions, such as poor drainage, have prevented their development." Here, substantially more than 20% of the 1909 plat remains undeveloped.

12. Even if Village Law § 7-728 did not empower the Village to require review of subdivision plats filed before a planning board, or even zoning, existed, Village Law § 7-709 bars any claim that the 1909 subdivision is grandfathered. Section 7-709(2)[d] provides that if "no zoning ordinance or local law in the village and no planning board vested with authority to approve subdivision plats [existed at the time the plat was filed], then the exemption [from the new or revised zoning law] provided for in subdivision one of this section shall apply for a period of one year after the filing of the subdivision plat or first section thereof." Indeed, the greatest protection offered under § 7-709 is three years, not 111.

13. The plain meaning of § 200-64C, when read in conjunction Village of Monroe Zoning Law § 200-68, NYS Village Law § 7-728 and § 7-709(2)[d], as it must be, required the Building Inspector, as a matter of law, to deny the building permit application. N.Y. Stat. Law § 92 (McKinney)(the doctrine of statutory construction requires statutes to be read as a whole in order to achieve the intent of the legislative body).

14. Likewise, the doctrine of statutory construction requires that § 200-64C be interpreted so as to achieve the legislative intent of the Village of Monroe Zoning Law. Thus, §

200-64, “Buildings, structures or lots with nonconforming bulk,” must be read in the context of Article XIII, which regulates nonconforming uses and nonconforming buildings. The first section of Article XIII, 200-61, titled, “Applicability,” states that the following provisions (including § 200-64) “shall apply to all buildings and uses existing on the effective date of this chapter which do not conform to the requirements set forth in this chapter and to all buildings and uses that become nonconforming by reason of any subsequent amendment to this chapter.” If, as Petitioner opines, subdivision plats filed 114 years ago containing vacant, unimproved, and nonconforming lots are grandfathered forever, the grant of planning and zoning authority to local legislatures would be meaningless.

D. Lot 58 is not exempt from current bulk requirements as a preexisting nonconforming small lot.

15. Notwithstanding Petitioner’s arguments to the contrary, the Building Inspector also correctly determined that the exemption from the 100-foot required lot width contained in § 200-19 did not apply to Lot 58. Section 200-19 only allows single-family dwellings to be constructed on pre-existing small lots that are “*owned individually and separately and separated in ownership from any adjoining tracts of land*” so long as they meet all the applicable zoning regulations as well as enumerated bulk requirements set forth therein. In other words, because the building permit application was for a lot that was part of a larger parcel in common ownership, the exception for pre-existing small lots contained in § 200-19 does not apply. NYSCEF DOC. NO. 51.

16. Finally, Petitioner’s argument to the ZBA that § 200-64D[1]⁴ automatically permits residential development on pre-existing small lots measuring at least 50 feet wide is wrong. Like

⁴ “A vacant lot in a residential zone separated from any other land in the same ownership and noncomplying as to area, whether or not located in and part of a subdivision plat approved by the Planning Board and filed in the office of the County Clerk, and which has a lot width of at least 50 feet may be used for a single-family detached dwelling, provided that such use shall comply with § 200-19 [emphasis added].”

§ 200-64C, subparagraph D requires the nonconforming lot to be “separated from any other land in the same ownership” in order to be developed for residential purposes. Here, Lot 58 and all of the surrounding “lots” are owned by Petitioner and subsumed within SBL 211-1-1.

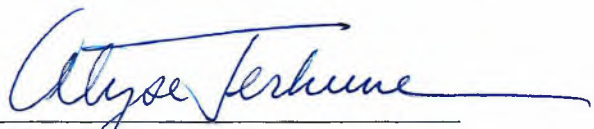
17. As for Petitioner’s “conveyance” of Lot 54 from W.C. Lincoln Corp., to W.C. Lincoln Corp., the action is nothing more than a sham intended to create a legal fiction that lots on the 1909 subdivision are separate from the 19.8-acre parcel, SBL 211-1-1. Such shenanigans should not be countenanced by the Court. NYSCEF DOC. NO. 7.

18. Indeed, as explained by the ZBA in its moving papers, this proceeding is a repeat of the same machinations undertaken by Petitioner in 2003, wherein the Zoning Board of Appeals upheld the Building Inspector’s denial of a building permit on the same grounds as now. NYSCEF DOC. NO. 46. That decision was challenged and upheld by the court. Judge Patsalos determined, among other things, that no vested rights in the 1909 subdivision had accrued to Petitioner. NYSCEF DOC. NO. 47.

19. Now, as then, the Building Inspector’s decision was upheld by the Zoning Board of Appeals. Now, as then, the Zoning Board’s decision should be upheld.

20. **WHEREFORE**, for the reasons set forth herein, Respondent Jim Cocks, as Building Inspector of the Village of Monroe respectfully requests that the Court grant its Motion to Dismiss the Amended Verified Petition and Complaint as a matter of law and such further relief as the Court determines is just and proper.

Dated: Saddle River, New Jersey
January 31, 2023

By: 
Alyse D. Terhune, Esq.
*Attorney for James Cocks, as Building
Inspector of the Village of Monroe*
82 E. Allendale Road, Suite # 6
Saddle River, NJ 07458
(201) 934-9800

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of
W.C. LINCOLN CORP.,

Index No.: EF006416-2022

Petitioner-Plaintiff,

For a Judgment Pursuant to New York Civ. Prac. L. & R.
§§ 7803(2) and (3) and Declaratory Judgment,

**REPLY AFFIRMATION IN
FURTHER SUPPORT OF
MOTION TO DISMISS**

- against-

VILLAGE OF MONROE ZONING BOARD OF
APPEALS, JAMES COCKS, as Building Inspector of the
Village of Monroe, ROYCE G. NOBLIN, JR., as Assessor
of the Town of Monroe, and PAUL WILEY, as Director of
the COUNTY OF ORANGE REAL PROPERTY TAX
SERVICES OFFICE,

Respondents-Defendants.

-----X
Alyse D. Terhune, Esq., an attorney duly admitted to practice law before the courts of the State of
New York, affirms the following under penalty of perjury:

1. I am a principal of the Law Firm of Alyse D. Terhune, Esq., attorneys for
Respondent JAMES COCKS, as Building Inspector for the Village of Monroe (hereinafter,
“Building Inspector”), and, as such, am fully familiar with the facts of this case and these
proceedings.

2. I submit this Reply Affirmation in Further Support of the Building Inspector’s
Motion to Dismiss the Verified Amended Petition and Declaratory Judgment commenced by W.C.
Lincoln Corp. (hereinafter, “Petitioner”).

PRELIMINARY STATEMENT

3. Petitioner opposes the motion to dismiss claiming that a “material intervening”
events occurred, which render *res judicata* inapplicable. Specifically, the 2008 preliminary
subdivision approval wherein, according to Petitioner, the Planning Board “recognized the

validity” of the 1909 subdivision and such recognition nullified the 2003 court decision finding no vested rights and abandonment. The other intervening event, asserted for the first time here, is that a 2017 amendment to the Village subdivision regulations, which prohibits the merger of lots except for commercial development, prevented the 1909 lots from merging throughout the last 114 years. Neither argument is persuasive. Indeed, the “no-merger” argument is not properly before this Court as it was not raised to either the Building Inspector or the ZBA.

4. The Building Inspector respectfully asks that his motion to dismiss is granted for the reasons set forth in his motion papers and the further reasons contained herein.

A. The doctrine of *res judicata* applies here because the 2003 Patsalos decision is binding and bars re-litigation of claims arising out of the same transaction or series of transactions.

5. Petitioner asserts that Respondents’ motions to dismiss are aimed at preventing him from having his day in court. But he has already had his day in court, before Judge Patsalos in 2003. The Patsalos decision answered the same question between the same parties as now: Was W.C. Lincoln entitled to a building permit to build a one family residence on one of the lots shown on a 1909 subdivision plat because a predecessor in interest deeded property to the Village of Monroe in 1946 to create village streets on the land of the subdivision. NYSCEF DOC. NO. 47.

6. Judge Patsalos determined that Petitioner W.C. Lincoln was not entitled to the building permit, did not have vested rights in the 1909 subdivision, and deemed the subdivision abandoned. He also ruled that the property was subject to current zoning law. The Patsalos decision remains binding and bars subsequent litigation on the same issues between the same parties.

7. “Res judicata gives binding effect to the judgment of a court of competent jurisdiction and prevents the parties to an action, and those in privity with them, from subsequently re-litigating any questions that were already decided. The doctrine requires that there be a

judgment on the merits from a prior action between the same parties involving the same subject matter.” B.Z. Chiropractic, P.C. v. Allstate Ins. Co., 197 A.D.3d 144, 152 (N.Y. App. Div. 2021)(citations omitted). See also, Serio v. Town of Islip, 87 A.D.3d 533, 533–34, 927 N.Y.S.2d 793 (2d Dept. 2011)(New York’s transactional approach to res judicata bars all other claims arising out of the same transaction or series of transactions once a claim is brought to a final conclusion, even if based upon different theories or if seeking a different remedy).

8. The doctrine of *res judicata* applies equally to quasi-judicial determinations made by a zoning board, as here. Town of Wallkill v. Lachmann, 27 A.D.3d 724, 725, 813 N.Y.S.2d 157, 157–58 (2d Dept. 2006)(res judicata and collateral estoppel apply to the quasi-judicial determinations of administrative agencies, including municipal zoning boards).

9. Even in the absence of the 2003 decision, the 2022 ZBA would have been bound by its own prior decision. “The issues raised on the variance application that is the subject of this appeal were raised in the petitioner’s initial 2000 application to make alterations to her garage, and the change in circumstances that occurred, to wit, the death of the petitioner’s son, cannot be viewed as unanticipated. Consequently, that branch of ZBA’s motion which was to dismiss the petition on the ground of, in effect, the doctrine of res judicata should have been granted.” Calapai v. Zoning Bd. of Appeals of Vill. of Babylon, 57 A.D.3d 987, 989, 871 N.Y.S.2d 288, 290 (2d Dept. 2008).

10. The ZBA could not have acted otherwise in 2022. The law requires that where the facts and circumstances of the appeal are substantially similar or, as here, exactly the same, the ZBA is governed by *res judicata* as well as the rule of finality and adherence to prior decisions. “The principles underlying the doctrine of res judicata have resulted in the rule that ordinarily a board of appeals or other administrative board has no power to reopen or review its own decision

by vacating, revoking, rescinding, or altering it after it has been made.” § 68:3. Res judicata applied to zoning board decisions—The general rule of finality, 4 Rathkopf’s The Law of Zoning and Planning § 68:3 (4th ed.). See also, Voutsinas v. Schenone, 166 A.D.3d 634, 636, 88 N.Y.S.3d 57, 60–61 (2d Dept. 2018)(zoning board correctly determined that it was bound by its prior decision denying a parking variance notwithstanding revisions to the building plans submitted in support of Petitioner’s second application for a parking variance); and Palm Mgmt. Corp. v. Goldstein, 29 A.D.3d 801, 804, 815 N.Y.S.2d 670, 674 (2006), aff’d on other grounds, 8 N.Y.3d 337, 865 N.E.2d 840 (2d Dept. 2007)(“As the ZBA’s 2001 dismissal of the challenges as untimely constituted a final determination on the merits, those same challenges could not be raised in this proceeding, nor could the ZBA revisit them.”)

11. For these reasons, the Building Inspector could not approve in 2022 substantially the same building permit application that he denied in 2001.

12. Because the doctrine of *res judicata* applies here, Respondents’ motions to dismiss should be granted.

B. A preliminary subdivision granted in 2008 and long-since expired does not constitute an intervening factual circumstance barring the application of *res judicata*.

13. Petitioner also claims that the Planning Board “granted resubdivision approval and expressly recognized the [1909] Subdivision in 2008,” which, together, constitute “material intervening factual circumstances” that render Judge Patsolos’s 2003 decision of no force and effect and the doctrine of *res judicata* wholly inapplicable. Caruso Memorandum of Law in Opposition, pgs. 5, 6 (hereinafter, “Caruso Memo”).

14. First, the approval granted by the Planning Board in 2008 was a “preliminary” subdivision approval, which expired in six months by operation of law unless extended. Village

of Monroe, "Subdivision of Land," § 176-6K.¹ In fact, the only right conferred by a preliminary subdivision approval is the right to then apply (within six months) for final subdivision approval. Subdivision of Land, § 175-7A.²

15. Here, there is no dispute that the preliminary approval expired and that no final subdivision approval was granted or filed with the County. Numerous letters back and forth between Petitioner and the Village Planning Board, beginning as early as November 18, 2013, confirm the expiration. Exhibit A. Indeed, as recounted in a letter from the Planning Board attorney to Petitioner's attorney, dated August 10, 2022, Petitioner "made no appearances or any submissions from January 2011 until November 13, 2013, which prompted the Planning Board Chairman to inform the Petitioner a new application was required. Exhibit B.

16. The expiration of the 2008 preliminary approval is also well documented in post-2008 Planning Board minutes, which were not provided by Petitioner. These minutes prove unequivocally that a new application was submitted on November 12, 2014, which triggered an entirely new review, including a new State Environmental Quality Review Act (SEQRA) environmental analysis. Exhibit C, (Post-2008 Planning Board Minutes).

17. In the absence of a final subdivision approval, neither the expired 2008 preliminary approval nor the new 2014 application constitute an intervening material change in facts or circumstances that obviate the legal effect of *res judicata*.

¹ "Expiration of approval. Planning Board approval of a preliminary layout submission shall expire six months after the date of such formal action. No Planning Board action will be taken after such expiration until a new application and filing fee are submitted." See also, NY Village Law § 7-728(5)(g) and (h).

² "Application for approval and fee. The subdivider shall, within six months after the approval of the preliminary plat, file with the Planning Board an application for approval of the subdivision plat in final form, using the approved application form available from the Secretary of the Planning Board. The filing fee shall be set according to provisions as provided by the Village Board. If the final plat is not submitted within six months after the approval of the preliminary plat, the Planning Board may refuse to approve the final plat and require resubmission of the preliminary plat."

18. Even if the 2008 preliminary subdivision had been granted final approval, and even if it had been filed with the County, Petitioner would only be protected from changes to the zoning law for a period of three years. N.Y. Village Law § 7-709(2)(a).³

19. Finally, there is no “settlement” that conferred any rights whatsoever on Petitioner. There is no signature page to the “settlement” because it was never executed or finalized. NYSCEF DOC. NO 11. No property has been conveyed to the Village as a result of the purported “settlement” and Petitioner offers no proof to the contrary – because there is none.

C. The Village Planning Board has no authority to confer vested rights on Petitioner.

20. Petitioner’s legal theory is this: If the planning board “expressly recognized the [1909] Subdivision in 2008” then, *ipso facto*, vested rights were conferred. Caruso Memo., pg. 2, 6, and 15, referring to NYSCEF DOC. NO. 31.

21. First, Petitioner grounds his theory on two prefatory “whereas” clauses in the long-expired Planning Board resolution. *Id.* But, prefatory language, at best, describes context; it is not determinative, does not have the force of law and does not invoke binding conditions. Tupper v. City of Syracuse, 71 A.D.3d 1460, 897 N.Y.S.2d 573 (4th Dept. 2010)(the “whereas” clause in the resolution adopted by a planning commission does not constitute a negative declaration for the purpose of satisfying SEQR). “Recitals in a contract, such as *whereas*’ clauses, are merely explanations of the circumstances surrounding the execution of the contract, and are not binding obligations unless referred to in the operative provisions of the contract.” PGA Mech.

³ “If at the time of the filing of the subdivision plat or first section thereof referred to in subdivision one of this section there was in the village: (a) both a zoning ordinance or local law and a planning board vested with authority to approve subdivision plats, then the exemption [from changes in the zoning law] provided for in subdivision one of this section shall apply for a period of three years after the filing of the approved subdivision plat or first section thereof.”

Contractors, Inc. v. GPNZ Realty Co., LLC, 37 Misc. 3d 1210(A), 961 N.Y.S.2d 361 (Sup. Ct. 2012).

22. To accept Petitioner's hypothesis, a planning board must be vested with the authority to modify the zoning law in the first instance and the legal jurisdiction to confer vested rights in the second. But, it has neither. A planning board's authority is prescribed by state law and is limited to ministerial functions only.⁴ Neither New York State Village Law nor the Village of Monroe Code authorizes the Planning Board to approve a subdivision that does not conform to the bulk requirements contained in the zoning law; and certainly, has not conferred any authority to modify the zoning law. Only the zoning board of appeals can do that in the form of variances.⁵ Finally, Petitioner does not identify any authority whatsoever that imbues a planning board with the legal authority to confer vested rights to a long-abandoned subdivision where a court of competent jurisdiction has ruled otherwise.

23. Petitioner's contention that the Planning Board somehow conferred vested rights to the nonconforming 1909 subdivision is meritless and contrary to the law.

D. Petitioner's arguments related to the 2017 merger language contained in § 175-2C of the Village's subdivision regulations, submitted for the first time here, must be ignored as *dehors* the record.

24. Petitioner now claims for the first time that § 175-2C, a provision added to the Village subdivision regulations in 2017, operated for the past 114 years to prohibit "merger" of the 1909 lots. Because this argument was not presented to the ZBA it is not properly before the Court now. "Since our function here is to review the discretion of the Zoning Board of Appeals based on the evidence before it, we have not considered subsequently proffered material which is *dehors* the record." Barretto v. Zoning Bd. of Appeals of Inc. Vill. of Bayville, 123 A.D.2d 692,

⁴ Village Law §§ 7-718, 7-725-a, 7-725-B, 7-728, 7-730, 7-732, and 7-738.

⁵ Village Law §§ 7-712, 7-712-a, and 7-712-B.

693, 507 N.Y.S.2d 57 (2d Dept. 1986). See also, Nichols v. New York State Cent. Reg. of Child Abuse & Maltreatment, 137 A.D.3d 790, 791, 26 N.Y.S.3d 331, 333 (2d Dept. 2016)(the court will not consider materials that were not submitted to the board and are dehors the administrative record).

25. Not only did Petitioner fail to make this argument to the ZBA, he made no reference to the 2017 subdivision regulation in his building permit application. Even if he had, neither the Building Inspector nor the ZBA have the authority to vary the subdivision regulations.⁶ Indeed, only the Planning Board has limited authority to modify subdivision provisions as expressly provided by the Village Board by local law; and conferring “vested rights” on a 114-year-old subdivision is not one of them.⁷

26. Moreover, Petitioner’s contention that the 2017 subdivision amendment somehow prevented merger ignores the fact that the remaining 1909 subdivision lots had already merged into one lot, SBL 211-1-1. The metes and bounds description contained in the deed from Smith and Conrad to W.C. Lincoln, recorded in the Orange County Clerks Office on October 27, 2000, describes only one lot, not 46. The recording page, on its face, identifies the property by one SBL number: 211-1-1. NYSCEF DOC. NO. 44.

27. If further proof is needed, it is found in the signed and stamped survey dated December 2, 1998, submitted by a prior owner seeking to modify the use of the building located on lot 211-1-1 from single-family house to bed and breakfast. Exhibit D.

28. The correct question is not whether the 2017 subdivision amendment prevented merger, but whether it could undue lots already merged. No, it could not.

⁶ Village of Monroe Code § 175-24.

⁷ Village of Monroe Code, Article IV.

E. The Building Inspector correctly applied the zoning law to Petitioner's application for a building permit. To conflate § 175-2C of the subdivision regulations with § 200-64D(1) of the zoning law, as Petitioner urges, would have been improper.

29. Petitioner also claims that the Building Inspector erred by not reading § 200-64D(1)⁸ of the zoning law in conjunction with § 175-2C of the subdivision regulations. Again, this argument was not presented to the Building Inspector or the ZBA and must be struck as *dehors* the record. However, should the Court reach this argument, it must be dismissed on the merits.

30. Zoning law and subdivision regulations, while integral to land use planning, are not conjoined. The Court of Appeals has addressed the different purpose of each. “[Z]oning historically has assumed the development of individual plats and has proven characteristically ineffective in treating with the problems attending subdivision and development of larger parcels, involving as it invariably does, the provision of adequate public services and facilities.” Golden v. Plan. Bd. of Town of Ramapo, 30 N.Y.2d 359, 372, 285 N.E.2d 291 (1972). In contrast, “subdivision control purports to guide community development *** while at the same time encouraging the provision of adequate facilities for the housing, distribution, comfort and convenience of local residents.” *Id.*

31. The Building Inspector properly addressed the building permit application before him, the request to construct a single-family house on an alleged individual lot; he was not being asked to issue any permit related to a subdivision.

⁸ Subsection 200-64D(1) allows a single-family home to be constructed on a vacant lot with a minimum width of 50 feet only if the lot is “separated from any other land in the same ownership.” The plain meaning of “separated” in ownership is clear. Because purported lots 54 and 58 are owned by W.C. Lincoln, lot 54 is not a conforming building lot for the purpose of § 200-64D(1). The apparently contrived “convenance” of lot 54 from W.C. Lincoln Corp. to W.C. Lincoln Corp., i.e., from the same owner to the same owner, does not create a separation of lots as contemplated by § 200-64D(1).

32. The Building Inspector only considered the the zoning law contained in section 200-64, "Buildings, structures or lots with nonconforming bulk," to the application for a building permit. It would have been improper on its face to go outside of the zoning law and apply § 175-2C of the subdivision regulations to the 2022 building permit application; indeed, it would have been contrary to the Building Inspector's 2001 denial of essentially the same application, which was upheld by the ZBA and Judge Patsalos.

33. Moreover, provisions contained in the subdivision regulations do not alter the rules governing lots with nonconforming bulk found in § 200-64 of the zoning law. Specifically, § 200-64C states:

Adjoining lots. Two or more adjoining nonconforming subdivision lots, regardless of ownership, in a subdivision approved by the Planning Board shall have three years from the date of filing with the office of the County Clerk to obtain a building permit. Any noncomplying lot in a subdivision approved by the Planning Board and filed with the office of the County Clerk more than three years prior to the effective date of this chapter and in the same ownership shall not be eligible to receive a building permit. Said subdivision or part thereof shall be resubmitted to the Planning Board for approval in accordance with the applicable provisions of this chapter. Any lot in a subdivision approved by the Planning Board after the effective date of this chapter, but which is made nonconforming as to bulk by any future amendments of this chapter, shall have three years from the date of filing to obtain a building permit. [Emphasis added.]

34. The entire new argument related to § 175-2C and proffered for the first time here must be ignored as *dehors* the record. Alternatively, the claim is meritless as established herein.

F. Because Petitioner has failed to seek a building permit for lot 54, the relief requested must be denied for failure to exhaust administrative remedies.

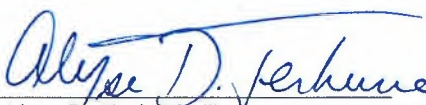
35. Petitioner seeks a declaratory judgment from this Court that purported lot 54 is separate from SBL 211-1-1 and seeks an order to the County of Orange to assign it a separate section, block and lot number.

36. This demand is not properly before the Court. Petitioner has not sought a building permit for purported "lot 54" nor exhausted his administrative remedies should the building permit be denied.

37. The demand for declaratory judgment must be denied for failure to exhaust administrative remedies.

WHEREFORE, for the reasons set forth herein, and upon the papers submitted heretofore, Respondent Jim Cocks as Building Inspector of the Village of Monroe respectfully requests that the Court grant his Motion to Dismiss the Amended Verified Petition and Complaint as a matter of law and such further relief as the Court determines is just and proper.

Dated: March 15, 2023
Saddle River, New Jersey

By: 
Alyse D. Terhune, Esq.
*Attorney for James Cocks, as Building
Inspector of the Village of Monroe*
82 E. Allendale Road, Suite # 6
Saddle River, NJ 07458
(201) 934-9800

At a term of the IAS Part of the Supreme Court of the State of New York,
held in and for the County of Orange, at the 285 Main Street,
Goshen, New York 10924 on the 15th day of August 2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

In the Matter of the Application of

W.C. LINCOLN CORP.

Petitioner-Plaintiff;

For a Judgment pursuant to ARTICLE 78 of the CPLR

-against

VILLAGE OF MONROE ZONING BOARD OF APPEALS,
JAMES COCKS, as Building Inspector of the Village of Monroe,
ROYCE G. NOBLIN, JR., as Assessor of the Town of Monroe and
PAUL WILEY, as Director of the COUNTY OF ORANGE
REAL PROPERTY TAX SERVICES OFFICE,

Defendants-Respondents.

To commence the statutory time for
appeals as of right (CPLR 5513 [a]),
you are advised to serve a copy of this
order, with notice of entry, on all
parties.

AMENDED¹
DECISION & ORDER

INDEX #EF006416/2022

Motion Date: 03/06/2023

Motion Seq. #1, 2 & 3

VAZQUEZ-DOLES, J.S.C.

The following papers were read on: 1) the application of Petitioner-Plaintiff (Seq.#1) for an order a) reversing a decision of the Defendant-Respondent Village of Monroe Zoning Board of Appeals ("ZBA") filed on October 25, 2022 ("the Decision") that denied a permit to build upon land Petitioner describes as Lot 58, b) declaring that an alleged Lot 54 is a separate lot for which the Director of Orange County Real Property Tax Services must enter on the tax map and Town of Monroe Assessor must designate parcel identification, and c) declaring that a 1909 plat

¹ The only change from the original Decision and Order is the replacement of "the Assessor" with "the Director" on the last page in the final decretal paragraph.

and all lots within it are a legal subdivision and exempt from bulk and dimensional provisions of the Village of Monroe Code; 2) the motion by the ZBA (Seq #2) for an order dismissing the Amended Petition and Complaint pursuant to CPLR 3211(a)(1) and (7) and CPLR 7804(f); and 3) the motion of Defendant-Respondent James Cocks, as Building Inspector of the Village of Monroe, ("the Inspector") (Seq #3) for an order dismissing the Amended Petition and Complaint pursuant to CPLR 3211(a)(1) and (7) and CPLR 7804(f):

Amended Notice of Petition #1/Amended Petition and Complaint/Ex. 1-12 ..1-14

Notice of Motion #2/Affirmation/Memo of Law/Ex. A-H15-25

Affirmation Opposition#2/Ex.1-3/Affidavit/Ex. A-D/Memo of Law.....26-35

Reply Affirmation/Memo of Law/Ex. A-H.....36-45

Notice of Motion #3/Affirmation.....46-47

Affirmation Opposition#3/Ex.1-3/Affidavit/Ex. A-D /Memo of Law.....48-57

Reply Affirmation/Ex. A-D.....58-62

SUMMARY OF THE DECISION

Petitioner failed to establish that the Decision as to alleged Lot 58 was arbitrary and capricious, irrational or that it was affected by errors of law. The Decision was based upon the Village of Monroe Code ("the Village Code") provisions that govern the use of Section 211-Lot-1-Block-1 ("the Subject Property"). The Decision held that Petitioner's proposed Lot 58 does not conform to various Code requirements and that Petitioner declined to seek a variance. The ZBA correctly held that the Village Code provisions are applicable to the Subject Property because NY Village Law limits the time for nonconforming use ("grandfathering") of existing property once new zoning laws are passed. Moreover, a ZBA determination in 2003 on the issue of an exemption from zoning requirements (for Lot 57) and lack of a vested interest, which was affirmed in a prior CPLR Article 78 proceeding, acts as res judicata on that same issue in the context of the instant Petition to set aside the Decision. For these reasons, Defendants--

Respondents' motions to dismiss are GRANTED as to the Petitioner's Second and Third Causes of Action to reverse the ZBA's Decision.

With regard to the Petitioner's assertion that it is exempt from zoning laws, in part on the basis of a vested interest, for all lots within the Subject Property other than Lot 58 ("the Other Lots"), Petitioner has not exhausted its remedies. The record lacks evidence on whether those Other Lots conform with all applicable Village Code requirements or if a variance would issue had Petitioner applied. Moreover, the aforementioned 2003 ZBA ruling as affirmed by the Supreme Court, Orange County, acts as res judicata on the claim of an exemption based upon a vested interest. Therefore, the motions to dismiss the Fourth Cause of Action are GRANTED.

The Petitioner also seeks a declaration and judgment that Lot 54 is a "separate existing lot". Petitioner pled a First Cause of Action for a judgment requiring the Director of Orange County Real Property Tax Services, Paul Wiley ("the Director"), to enter Lot 54 on the tax map and to require the Town of Monroe Assessor, Royce G. Noblin, Jr. ("the Assessor"), to designate a parcel identification for Lot 54. For the same reasons as to why the Other Lots do not warrant a blanket exemption from zoning laws, the Petitioner's First Cause of Action regarding Lot 54 is DISMISSED as to the movants ZBA and the Inspector.

Defendant-Respondent the Director did not move to dismiss. Therefore, Petitioner's First Cause of Action as it concerns the Director, as well as the Fourth cause of action to the extent asserted against the Director, remain for trial. The Assessor was dismissed on a stipulation (NYSCEF#41).

FACTS AND PROCEDURAL HISTORY

This case concerns the Subject Property at 47 Lakes Road, Village of Monroe. The Subject Property is identified on the tax map as Section 211, Block 1, Lot 1. The Subject

Property is shown on a subdivision map of 65 lots filed in the office of the Orange County Clerk on November 15, 1909 (NYSCEF#21). That 1909 filing occurred prior to the existence of the Monroe Planning Board. The 65 lots do not have separate tax parcel numbers.

The Subject Property lies within an area that the Village adopted in 1990 as Suburban Residential District 10 ("SR-10"). The SR-10 District has its own restrictions on buildings. Village of Monroe Zoning Map, found at [zone4001.mxd \(villageofmonroe.org\)](#) (last checked June 28, 2023). One such restriction on a lot is that it must be at least 100 feet wide before a home can be constructed.

Petitioner purchased the Subject Property on October 27, 2000. In 2003, Petitioner applied for a building permit for one lot (Lot 57) within the Subject Property. The Village building inspector at the time denied the permit on the basis that Lot 57 was not at least 100 feet wide and no variance was requested. The ZBA affirmed the decision in 2003 (NYSCEF#46). The ZBA held that the Village Code had last been amended in 1999 and the NY Village Law 7-709(2)(d) allowed one year within which Petitioner would be exempt from the 100 foot width requirement. The Petitioner had not applied for a permit within that one year. Therefore, since the lot was not 100 feet wide, the ZBA denied the permit.

Petitioner filed a CPLR Article 78 proceeding in 2003 in the Supreme Court, Orange County on the basis that it had vested rights because a predecessor in title had deeded lots within the Subject Property to the Village in 1946 with a plan for streets on the Subject Property. The court denied the 2003 Article 78 petition (NYSCEF#47), holding that i) no street construction ever commenced, ii) the vested right was abandoned due to more than 50 years of inaction, and iii) the streets would be equally useful under new zoning requirements and therefore do not create a vested interest.

In 2008, Petitioner applied for preliminary subdivision approval for the Subject Property, which the Planning Board granted (NYSCEF#31). The preliminary subdivision approval expired in 2013 because Petitioner took no action (NYSCEF #86).

In 2009, a lawsuit by several residents against Petitioner and the Village of Monroe in relation to one of lots within the Subject Property was settled by stipulation (NYSCEF#80). That settlement provided that one of the lots would be deeded to the Village.

Petitioner began the preliminary subdivision application process again in 2014 (NYSCEF#88 at p. 3). Petitioner does not assert that it received a final approval for the 2014 application. It is not clear from Village Planning Board minutes whether a preliminary approval was ever granted for the 2014 application. *Id.* at pp. 4-11.

In 2017, the Village of Monroe made certain amendments to the Village Code. The ZBA asserts on the instant motion that some amendments were substantive changes and other amendments only renumbered existing Code provisions.

On April 14, 2022, Petitioner applied for a building permit (NYSCEF#27) to build a one-family residence within the same Subject Property as in 2003, on what Petitioner describes as Lot 58. Like all lots within the Subject Property, Lot 58 does not have a section-block-lot number allocated to it on the tax map. The Village Code Section 80-4(D) requires that any Building Permit application include the tax map number. The Petitioner's application referenced the Section 211-Block 1-Lot 1 tax designation for the entire Subject Property.

The Inspector denied the application on May 22, 2022 (NYSCEF#23). The Inspector noted that Lot 58 did not have a section-block-lot number other than 211-1-1 for the entire subdivision. The Inspector stated that the Petitioner was applying to build upon a lot, i.e. the Subject Property, that already had a one family dwelling and that each lot can have only one

single family dwelling structure, regardless of its dimensions. Thus, a second dwelling is not permitted on the same lot.

In order to subdivide the lot, the Inspector stated that Lot 58 needed to be at least 100 feet wide according to the Village Code. Lot 58 is not at least 100 feet wide and therefore the Inspector stated it did not qualify under the SR-10 requirements. The Inspector stated the lot must be vacant but, because the Subject Property is not subdivided into separate section-block-lots and a home exists on the Subject Property, the Inspector denied the application. The Inspector also stated that Lot 58 did not qualify as an "existing small lot" under §200-19 of the Village Code because each adjoining lot must be owned by separate individuals whereas here the adjoining lots were all part of the Subject Property and under one ownership.

Petitioner thereafter timely appealed to the ZBA on June 14, 2022 to reverse the Inspector's denial of a permit. (NYSCEF# 28 and 48). As in 2003, Petitioner again declined to seek a variance. The ZBA affirmed the Inspector's denial in its Decision (NYSCEF#22).

The ZBA held that it considered its own 2003 determination on Petitioner's same Subject Property and that the prior determination applied here, i.e. a home already exists on the Subject Property and the lot is less than 100 feet wide. It also considered Petitioner's vested rights claim and held that the Article 78 affirmance in 2003 denied any vested rights to Petitioner for the Subject Property. The ZBA also considered Petitioner's assertion that a 2017 amendment to the Village Code for building requirements rendered the 2003 determination no longer binding. The ZBA rejected that assertion on the basis that i) the amendment simply renumbered an existing provision (200-77 became 200-64) and ii) the proposed lot was not vacant and the Subject Property is all owned by the same owner.

Petitioner initiated this lawsuit through the filing of a combined Petition and Complaint

as well as a Notice of Petition on November 10, 2022. All defendants were served on November 15, 2022. Petitioner filed an Amended Petition and Complaint on December 7, 2022 and an Amended Notice of Petition on December 15, 2022.

The Amended Petition pleads four causes of action: First, that Lot 54 is a "separate existing lot" for which the Director should enter on the tax map and the Assessor should designate a parcel identification; Second and Third, the ZBA Decision as to Lot 58 is irrational, arbitrary and capricious as well as affected by errors of law and must be reversed; and Fourth, the 1909 plat is a lawful subdivision and the Other Lots are exempt from any bulk or dimensional requirements or other zoning restrictions.

Defendant-Respondent the Director (Paul Wiley) filed an Answer on January 4, 2023. Defendant-Respondent the Assessor (Royce G. Noblin, Jr.) was dismissed by stipulation on January 18, 2023. The ZBA filed the instant motion (Seq. #2) on January 31, 2023 before filing an Answer. The Inspector filed his motion (Seq. #3) on the same day. Petitioner has opposed both motions.

The instant motions of the ZBA and the Inspector raise the same legal issues and seek dismissal of the same causes of action. For that reason, the Court considers the motions of both Defendant-Respondents simultaneously.

LEGAL STANDARD FOR CPLR ARTICLE 78 AND MOTION TO DISMISS

In a proceeding pursuant to CPLR Article 78 to review a zoning board of appeals ruling, the Court is limited to ascertaining whether the ZBA ruling was arbitrary, capricious, illegal or an abuse of discretion. *Havell Revocable Trust v. ZBA of Monroe*, 127 AD3d 1095 (2d Dept 2015). Zoning restrictions are strictly construed and ambiguities are resolved in favor of the property owner. *Id.* The Court provides great deference to the ZBA unless the issue is one

purely of legal interpretation of statutory terms. *Id.*

On a pre-answer motion to dismiss made pursuant to CPLR 3211(a)(7) and 7804(f), all of the factual allegations in a petition are accepted as true, and the petitioner is afforded the benefit of every favorable inference. *Kunik v. New York City Dept. of Educ.*, 142 A.D.3d 616, 617-18 (2d Dept. 2016). The sole criterion in determining such a motion is whether the petition sets forth allegations sufficient to make out a claim, i.e. that the determination sought to be reviewed was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion. *Id.*; CPLR 7803[3]. If the Court considers evidence outside the four corners of the Amended Petition, the question is whether a cause of action will lie, not whether it has been pled. *Id.*

Here, the parties submitted numerous exhibits beyond the Amended Petition. However, no dispute exists as to the authenticity of any of the exhibits. The parties agree upon all the events that occurred leading up to the instant lawsuit, both in 2003 and in 2022. The only dispute that exists for the Court's review is whether applicable law requires i) the ZBA to grant Petitioner an exemption from zoning requirements with regard to Lot 58 and the Other Lots, ii) the ZBA to recognize the 1909 plat as a "legal subdivision" and iii) the Assessor to allocate separate tax status to Lot 54.

THE VILLAGE OF MONROE CODE AND THE NEW YORK VILLAGE LAW

The NY Village Law provides that the board of trustees in a village can promulgate rules that restrict the location and construction of buildings with regard to, *inter alia*, density and lot dimensions. A village board can also authorize a planning board to approve preliminary and final plats of subdivisions and lots within those properties. NY Village Law 7-728, That authority extends to newly created subdivisions as well as ones that predate the creation of the

planning board. Id.

When a village board promulgates zoning laws (or amends existing laws) that create new restrictions on the dimensions and/or setbacks for existing real property, those new rules cannot be applied to the existing property owners for a specified period of time. NY Village Law 7-709(1). The length of time within which the new rules do not govern the property use ("grandfathering") depends upon whether a zoning law and/or planning board existed at the time new laws are enacted. NY Village Law 7-709(2). The longest of the four potential times whereby the existing owners are deemed exempt from a new zoning law is three years. Id.

Pursuant to the aforementioned Village Laws, the Village of Monroe has enacted various zoning laws. Village of Monroe Code, found at Village of Monroe, NY Table of Contents (ecode360.com) (last checked June 28, 2023). Section 200-61 provides that any restriction in Chapter 200 of the Code, which renders a building or use nonconforming, applies to existing property.

Section 200-68 provides the requirements for an application for a building permit. Depending on where a property is located within the Village, different restrictions apply to developing a building and property use. A Village Zoning Map was adopted in 1990 and most recently amended in 2017 ("the Map"). The Map in 1990 created certain designated districts in the Village, one of which is SR-10 in which the Subject Property is located. The SR-10 district has its own restrictions. Village of Monroe, SR-10 Table of District Uses and Bulk Regulations, found at Schedule A (ecode360.com) (last checked June 28, 2023). The SR-10 minimum lot width is 100 feet. Id.

The Village of Monroe has created certain exceptions to the zoning laws that govern the building of new structures. One such exception is found in Village Code Section 200-19.

Section 200-19 allows for a single family dwelling on land that does not meet the minimum lot width and area requirements but only if the lot is i) "owned individually and separately", ii) separated in ownership from any adjoining tracts of land", and iii) developed in conformity with all other zoning laws.

Another exception to Village of Monroe zoning laws is found within Village Code Section 200-64, which provides that a i) vacant lot in a residential zone that is ii) separated from any other land in the same ownership and iii) noncomplying as to area, can be used for a single family dwelling if the lot width is at least 50 feet *and the use otherwise complies with Section 200-19*. Thus, securing approval for a lot pursuant to Section 200-64 still requires compliance with Section 200-19.

SECOND AND THIRD CAUSES OF ACTION: REVIEW OF THE ZBA DECISION

A. The ZBA Decision Was Not Arbitrary and Capricious

Taking all allegations in the Amended Petition as true, the Court does not find that the actions of the ZBA in denying the building permit were arbitrary, capricious or irrational. Here, the ZBA reviewed Monroe Code provisions, including Sections 200-19 and 200-64, that it considers applicable to the Subject Property. Only one tax parcel number exists for the entire Subject Property and a single family dwelling already was built on that tax parcel lot.

Respondent ZBA therefore reviewed the permit application for Lot 58 as concerning a lot where a single family dwelling already exists. While Petitioner seeks to build another dwelling on that same section-block-lot but call it Lot 58, that does not change that the application to build concerned the same section-block-lot number. Petitioner is restricted by the requirements of the Village Code unless it seeks a variance or subdivides the Subject Property into lots at least 100 feet wide pursuant to required procedures, or employs some other creative solution that conforms

to applicable Village Code requirements.

For these reasons, and because the adjoining lots are all owned by the same Petitioner, the ZBA affirmed the Inspector's denial of Petitioner's application for a permit. The ZBA Decision was based upon the Village Code provisions that limit new structures based upon lot width and who owns the adjoining lots. While Petitioners may disagree with the ZBA Decision, the Court does not find the ZBA's conclusion irrational, arbitrary or capricious.

B. The Decision Was Not Affected By an Error of Law

The Court finds that the ZBA Decision was not affected by an error of law. The Decision based the rejection of the permit on Petitioner's inability to comply with the Village Code as referenced above with respect to new structures and subdividing lots. The Village Code at Section 200-10 prohibits more than one dwelling on a single tax plat unless the owner can subdivide the land into buildable lots.

In order to subdivide, the Village Code at Section 200-10 requires that the lots comply with the district requirements for the location of the lots. The SR-10 District rules require that adjoining properties not be owned by the same owner as the proposed lot for building. Here, the Petitioner owns the adjoining lots and therefore could not conform to the SR-10 District requirements and could not qualify for a permit to subdivide and build.

To the extent that Petitioner asserts that the 2017 amendments to the Village Code changed its rights for development of the Subject Property, the continued nonconforming use allowed by the NY Village Law is from one to three years. The ZBA asserts the one year period applies. Village Law 7-702(2)(d) provides for a one year nonconforming use where at the time of the original plat filed for a property, no zoning law or planning board existed. If that were true when the 1909 plat was filed for the Subject Property, then the ZBA would be correct that a one

year nonconforming use was all that was allowed after the 2017 revisions to the Village Code. The record is not clear in this regard.

Assuming arguendo that the maximum three year period for continued nonconforming use applied per Village Law 7-202, Petitioner would have needed to apply for a permit that exempted it from the 2017 amendments no later than 2020. Since Petitioner did not seek a permit until 2022, five years later, it cannot demand that it be allowed to build, etc. pursuant to the pre-2017 Village Code.²

C. The Lack of a Vested Right Was Decided in Petitioner's 2003 Proceedings

With regard to the ZBA's rejection of Petitioner's alleged vested right in the Subject Property, the issue was already litigated by Petitioner in a 2003 appeal to the ZBA and an affirmance of the ZBA in an Article 78 proceeding. A court generally is not bound by a decision issued by a court of equal jurisdiction. However, the doctrine of *res judicata* requires the application of that 2003 decision to the instant dispute. Petitioner's assertion that "material intervening" events since 2003 render *res judicata* inapplicable is without merit, as discussed in detail *infra*.

The doctrine of *res judicata* applies to quasi-judicial determinations of administrative agencies, including municipal zoning tribunals, and precludes relitigating of claims which previously were litigated on the merits or might have been so litigated at the time. *Matter of Palm Mgt. Corp. v Goldstein*, 29 AD3d 801 (2d Dept 2006); *Town of Wallkill v Lachmann*, 27 AD3d 724 (2d Dept 2006). "Under New York's transactional approach to the doctrine of *res*

² Even if any of the Executive Orders published by the Governor of New York during the Covid-19 pandemic were applicable to Petitioner's permit application here, that tolling still would not render the application here timely. See 9 NYCRR 8.202, 8; *Brash v. Richards*, 195 A.D.3d 582 (2d Dept 2021). The total time for the tolling of filing lawsuits was 228 days. Since the 228 days would not affect Petitioner's application for a permit that was two years late, the Court does not reach the issue of whether the Executive Orders would apply to that filing.

judicata, "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy". *Parolisi v Slavin*, 98 AD3d 488 (2d Dept 2012). Thus, the claims need not be identical for res judicata to apply.

Here, Petitioner's 2022 permit application similarly raised what Petitioner had filed in a 2003 application for a building permit, namely its alleged exemption from Village of Monroe zoning laws due to the plat filed in 1909 and its alleged vested interest. The only difference between the 2003 permit and the instant permit is a different lot number. However, that different lot has no bearing on whether the entire Subject Property is exempt from the Village Code and whether Petitioner has a vested interest in the entire Subject Property. *See, e.g., Goldstein, supra*, 29 AD3d at 804 (a zoning decision on use of a barn acted as res judicata on subsequent challenge to the structural improvement to the barn because both challenges were decided on statute of limitations grounds); *Parolisi, supra*, 98 AD3d at 489 (decision on construction impeding neighbor's ingress acted as res judicata on subsequent challenge to movement of materials impeding neighbor's ingress). Both the 2003 lot 57 at issue and Lot 58 at issue, currently are within the same section-block-lot. Thus res judicata applies and Petitioner is bound by the 2003 determination of the ZBA and the Orange County Supreme Court's ruling on this issue.

Petitioner additionally avers that several events intervened between 2003 and 2022 and therefore the res judicata doctrine does not apply. These events include the 2008 preliminary approval of a subdivision, the 2009 settlement of a lawsuit related to one lot on the Subject Property, and 2017 amendments to the Village Code. The Court addresses in turn each alleged basis pursuant to which Petitioner asserts it can avoid res judicata.

Petitioner's reliance on the Planning Board's preliminary subdivision approval in 2008 as a basis to avoid *res judicata* is misplaced. The approval was preliminary and subject to certain conditions (NYSCEF#31). Petitioner does not assert it ever satisfied those conditions or that final approval was issued by the Planning Board. The preliminary subdivision approval gave Petitioner six months to apply for final approval, which Petitioner failed to submit. The Village notified Petitioner of the expiration by two letters and at a meeting of the Planning Board. While Petitioner did file a new application in November 2014, final approval was never granted and the record does not even disclose a preliminary approval by the Village of the 2014 application. Therefore, the 2008 preliminary subdivision approval does not change the character of the Subject Property as it existed in 2003 and thus *res judicata* is applicable.

With regard to the settlement of a 2009 lawsuit, that case involved Petitioner herein and the Village being named as Respondents by several petitioners. The resolution of the case was an agreement to deed a historic lot within the Subject Property to the Village. The settlement agreement did not change the character of the Subject Property in any way that would affect whether Petitioner herein is exempt from zoning laws or has a vested right.

Petitioner cannot avoid *res judicata* based on changes the Village made in 2017 to the merger of lots in the Village Code. First, Petitioner did not present this argument to the ZBA and therefore failed to exhaust its remedies. Second, the lots within the Subject Property were merged long before the 2017 amendments, namely in the deed of the Subject Property to Petitioner of October 27, 2000, which describes only one lot with one SBL number. Thus, the 2017 Code revisions did not alter the legal status of the Subject Property as being one parcel with various lots, all of which had been merged long before 2017. Third, the time to seek a permit under the pre-2017 Code expired before 2022 when Petitioner filed its application for a permit.

For all of these reasons, the instant motions to dismiss the Second and Third Causes of Action in the Amended Petition are GRANTED.

FOURTH CAUSE OF ACTION: EXEMPTION FOR THE OTHER LOTS

The Amended Complaint also seeks a declaration of exemption from all zoning laws with regard to dimensional and bulk use restrictions for the Other Lots. Petitioner declined to seek a building permit or a variance for the Other Lots. Since Petitioner has not exhausted its remedies for the Other Lots, the Amended Petition is not ripe for review. The motions to dismiss those causes of action are GRANTED on that basis, without prejudice.

Additionally, Petitioner fails to submit any evidence as to the size and setbacks of each of those lots. Petitioner does not clarify if it owns the property adjacent to each of the Other Lots. Even if the case were ripe for a declaration as to the Other Lots, which the Court does not conclude, without such data it would be speculative to consider what action the Respondents should take upon receiving an application to build on the Other Lots. Lastly, the aforementioned 2003 appeal to the ZBA and Article 78 review by the Supreme Court render moot Petitioner's arguments with respect to a vested interest as the basis for an exemption. For these additional reasons, the motions are GRANTED as they concern the Fourth Causes of Action for exemption from zoning requirements for the Other Lots.

FIRST CAUSE OF ACTION: LOT 54 TAX MAP AND PARCEL ID

The First Cause of Action appears directed to the Director and Assessor. To the extent that the Petitioner claims that the ZBA or the Inspector should take any action on Lot 54, that claims is not ripe for review on the same basis as the Other Lots. Additionally, the lack of any vested right applies with equal force to Lot 54 based on the result of Petitioner's 2003 appeal to

the ZBA and Article 78 review by the Supreme Court.

For these reasons, the motions to dismiss the First Cause of Action against the Village and Inspector are GRANTED.

Upon the foregoing, it is hereby

ORDERED that the motions to dismiss the Amended Petition and Complaint by Respondents ZBA and the Inspector are GRANTED, and it is further.

ORDERED that the Amended Petition and Complaint are DISMISSED as to Respondents ZBA and the Inspector; and it is further

ORDERED that Petitioner's First Cause of Action as it concerns the Director, as well as the Fourth Cause of Action to the extent asserted against the Director, remain pending and will be addressed at the next status conference set for September 20, 2023 at 2:00 p.m.

The foregoing constitutes the Decision and Order of this Court.

Dated: August 15, 2023
Goshen, New York

ENTER:


HON. MARIA S. YAZQUEZ-DOLES, J.S.C.