

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
REGULAR MEETING
October 10, 2023**

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

Chairman Baum called the meeting to order at 8:00 pm with the pledge of allegiance.

Chairman Baum stated he would be recusing himself from the application of 50 Wharton LLC/3 Holland Road as it is in his neighborhood. Chairman Baum explained that there were only three voting members of the Board present and if the vote was not unanimous the application would be denied as a matter of procedure. Chairman Baum stated that the applicant has the option to adjourn the matter until it can be heard by a full Board. The Mr. Eyener, the contractor representing the applicant conferred with the applicant and wanted to proceed.

Deputy Chairman Zuckerman was Chair for the hearing for the application for 3 Holland Road.

Application:

3 Holland Road:

Present: Shaya Eyener, friend of the applicant and a contractor

The application of 50 Wharton Dr. LLC for an area variance from the Table of District Use and Bulk Regulations, SR-20 Zoning District, to permit three floors for a single-family residence currently under construction, where the bulk table allows only two floors. This is being requested to avoid excessive grading and installation of retaining walls. The property which is the subject of action by the Board is located in SR-20 district and is identified as Section: 229 Block: 3 Lot: 5 on the Tax Map of the Village of Monroe and is known as 3 Holland Road.

Deputy Chairman Zuckerman stated this is a continuation of the public hearing that was held on August 8, 2023, which was adjourned to September 12, 2023 and at that time we received a letter from Attorney Jay Myrow that he was not longer the Attorney on record. This matter was adjourned to this meeting. Deputy Chairman Zuckerman asked if that was correct. Mr. Eyener stated he is not familiar with the project and was just asked today to appear before the Board. Mr. Eyener was asked by the owner to attend this meeting as the owner had another Board meeting to attend.

Deputy Chairman Zuckerman stated at the end of the August meeting the Board requested an expert in retaining walls or the engineer working on this project, to come in to speak on this matter. Mr. Eyener stated he has information about the retaining walls and the set-backs for the property. Deputy Chairman Zuckerman asked if Mr. Eyener had any additional information than what was submitted with the application. Mr. Eyener stated that is correct. Deputy Chairman Zuckerman asked if Mr. Eyener could answer engineering questions about the property. Mr. Eyener stated he would try.

Member Gilstrap stated the request from the Board was that an engineer or a landscape architect or somebody who had experience with how to conceal or improve the look of the property and appear to speak to the Board. And to discuss what the alternatives are for installing retaining walls, in such a way

that they would not be injurious to the view of the property. Mr. Eyener stated an engineer can draw a nice picture of how to make it but for the look and how it will impact the neighborhood is really a public question. An engineer can tell a contractor, which I am, how big or deep to make something but when it comes to a neighborhood that only has two-story houses, and here you have a house that has a little bit coming up from the basement. The only reason you would want to put in a retaining wall is to make it flush with the first floor so it's just for the look of it so you can only see two floors. The owner is approved to put in a retaining wall and he will make it look as nice as he can but he is not willing to spend tremendous amounts of money to make it look beautiful, as he is not going to live there. What I am saying is the owner has no problem putting on a retaining wall, however the neighborhood is complaining a little bit. They don't want to see a retaining wall to make it nice. Besides that, there is a set-back of thirty-five feet on the height, even before the retaining walls the height is thirty-three feet. The owner is asking for five-feet above the grading is now to not have the retaining wall. The neighborhood has only two-story house this property would not be. This would mean the owner would not have to spend too much and the neighborhood would look nicer. Mr. Eyener was not sure the Board saw the pictures with the retaining walls on two sides, it's a little odd. If you had to get loads of dirt to fill in that area it would make a big mess. Therefore, the owner is asking for a variance to leave it as is.

Deputy Chairman Zuckerman stated this is a lot more complex then you think. The owner does not need any variance from this Board to put the two retaining walls up on the property. The Board received a request from the owner for variance which asked to allow the owner not to put in the retaining walls which would allow the house to be three stories. There are laws that are in the process of being changed or may be changed. Deputy Chairman Zuckerman was not aware if the Secretary of for the State of New York had approved the law which would redefine what a story is and redefining what a basement is and using the New York Building Code standards. The Board would like to have an expert here so we can ask them questions to find out whether under the new, New York State Law this would is considered a traditional two-story which requires little to no changes that would have to be made to the property itself. But, we need an expert to answer these particular questions to see where this fits.

Deputy Chairman Zuckerman stated he will ask a question which he does not believe Mr. Eyener can answer. Deputy Chairman Zuckerman stated the owner should have someone speak to the Building Department to find out factors. Mr. Eyener asked like what? Deputy Chairman Zuckerman explained it a legal question but the question is will this still be considered a basement and is this a certain distance above the grade plain. Deputy Chairman Zuckerman stated he has six or seven questions himself.

Deputy Chairman Zuckerman started with his first question. The question was the distance between basement floor and the finished floor above is it twelve-feet? Mr. Eyener stated no. It is either eight or nine feet. If you don't like my answer I can go home I am not an engineer. Deputy Chairman Zuckerman stated he was trying to explain it to Mr. Eyener. It is a difficult case. The Board wants to make sure before we grant, or even consider granting, any type of variance whether the property was built according to New York State building code requirements and the house would fit into the current definition of a basement and a story since a measure of determination was, if it was fifty-feet above the level of the grade which is wasn't. That is changing or has changed the Board wants to see if it meets the current standard which would save you the need for what you consider excessive grading. Mr. Eyener stated you want someone with more information. Deputy Chairman Zuckerman stated the Board wants someone who can answer technical questions and these are questions that should be asked by our Building Department because they have more of an expertise for this type of engineering.

Member Gilstrap stated the difficulty he is seeing here is that the Board had requested was someone that could talk to the Board. Maybe an engineer or a Landscape Architect as for these types of questions. The Board would like to know how the specifics of the retaining walls and what types of plantings or other

techniques to make them less obtrusive. If I understand you correctly that is not really your background so we can not go into those lines of inquiry with you. Mr. Eyener stated he has built out over two-hundred feet of retaining wall. I am not an engineer but if it's a question on how to install it and make it look nice with bushes that is not a question for an engineer. I don't think an engineer would be helpful for that. An engineer knows how a computer works. Member Gilstrap said maybe Mr. Eyener could give the Board a few words on what is Mr. Eyener's background is and what are the things that might make you qualified to have those kinds of conversation with the Board.

Member Gilstrap asked if Mr. Eyener was a general contractor. Mr. Eyener stated yes. Mr. Eyener stated he has worked for Joel Mann and Kirk Rother when he was there. He has dealt with the site plan engineers. I left Joel Mann and went out in the field and I have been doing that for the last four years. I am building in Woodbury. Member Gilstrap stated so Mr. Eyener you have a fair amount of general contracting experience. Mr. Eyener stated he would not be able to answer an engineering questions but most of this sounds like a contracting question. Member Gilstrap stated that the Board was looking for more than general contracting testimony.

Mr. Eyener stated that was fine so let's just leave it open. Deputy Chairman Zuckerman stated the Board has an application which is requesting a variance to allow you to have a three-story house. That would be very easy for us to simply make the determination that it is not in the best interest of the Board or the Village. It would set a precedent of allowing a three-story house. We do not want to open up the flood gates to other people. However, there has now been a change in the definition in what is a story and what is a basement which might mean if the Board gets the proper answers to particular questions we might make some sort of determination that this is really in effect a two-story house. Because it would fit into the present definition of a story and the present definition of what a basement is. So, you have everything to gain and nothing to lose if you want to go ahead to asked for a three-story house. But, if we move forward now you have the possibility of being turned down.

Board Attorney Naughton stated the applicant might want to have Kirk Rother reach out to the Building Department to get more information and to catch the issues. Mr. Eyener asked if that is done we come back to the Board. Board Attorney Naughton stated it depends on how it goes with the Building Department. Board Attorney Naughton stated it sounds like you are going to ask the Board to adjourn this item so you can do that and then talk to the Building Department.

Deputy Chairman Zuckerman asked if the Building Department had enough information that they could make a determination or would they need additional information. Assistant Building Inspector Proulx stated she would need additional information.

Member Gilstrap stated should the Board also ask for information to have someone to answer questions about the landscaping around the retaining walls. Deputy Chairman Zuckerman stated that all depends on what the first steps should be. Deputy Chairman Zuckerman stated the best course of action is to have the engineer speak with the Building Department before the November meeting.

Deputy Chairman Zuckerman stated we have already opened it to public comment and we have heard testimony from the public. But, if anyone has public comments please make your comments. There were no comments from the public.

On a motion by Deputy Chairman Zuckerman and seconded by Member Gilstrap it was resolved: **to adjourn the application until the November 14, 2023 meeting.**

Aye – 3

Nay – 0

Absent: Member Margotta

Recused: Chairman Baum

Application:

37 Still Road:

Present:

The application of Shakeema Cheek for an area variance from the Table of District Use and Bulk Regulations, SR-20 Zoning District, to permit construction of a rear and front addition to a single-family residence which was damaged by a fire, as well as area variance for a pool set-back and allowable floor area ratio. The property which is the subject of action by the Board is located in SR-10 district and is identified as Section: 222 Block: 1 Lot: 9 on the Tax Map of the Village of Monroe and is known as 37 Still Road.

Chairman Baum stated the applicant was not present.

Member Zuckerman stated this application is being heard when we are at a cusp of zoning law changes that effect FAR and this application. If we dismiss the application because they are not here, they would have to re-file under the new law. Chairman Baum stated the Board needs to be make its determination under the law that is current. Whatever the law is at the time that we make the decision is the law we apply. Board Attorney Naughton stated the applicant can submit additional arguments but we should not want to get into a situation where the applicant would have to re-file.

Chairman Baum asked if there was anyone from the public in regards to this application. There were not members of the public present.

On a motion by Chairman Baum and seconded by Member Gilstrap it was resolved: **to adjourn the application until the November 14, 2023 meeting.**

Aye – 4

Nay – 0

Absent: Member Margotta

Minutes:

On a motion by Chairman Baum and seconded by Member Gilstrap it was resolved: **to approve the August 8, 2023 meeting minutes with corrections.**

Aye – 4

Nay – 0

Absent: Member Margotta

Old Business:

None.

New Business:

There were a series of new Local laws passed by the Village Trustees. Chairman Baum stated the Board should get familiar with the new laws.

No new applications.

On a motion by Chairman Baum and seconded by Member Doherty it was resolved: **To close the ZBA meeting at 8:38 PM.**

Aye – 5

Nay – 0