

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

PRESENT: Chairman Baum, Members Gilstrap, Zuckerman, Board Attorney Golden and Assistant Building Inspector Proulx. Member Czerwinski arrived after the meeting began.

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

Chairman Baum stated he received an email from Member Czerwinski that he would be late. Chairman Baum decided to move the agenda along out of order and to discuss the application of The Pets I Love Veterinary Hospital first.

The Pets I Love Veterinary Hospital

Chairman Baum stated that The Pets I Love Veterinary Hospital is looking to add an 8 X 10 addition to the back of the existing building. They are seeking relief for a rear set-back less than 40 feet required in the GB zone and need a 14.6-foot variance. Chairman Baum asked if the mailings and the legal notice were completed. The Board Secretary confirmed that they were both completed. The Board Secretary stated the GML request was mailed to the county on February 2, 2022 and no reply was received. Chairman Baum stated the county has one month to reply and it was now over one month so the Board could proceed.

David Niemotko, Architect for the applicant, stated that the first application which the Board approved included an 8 X 10 shed in the rear of the building. The Planning Board did not like the shed and asked that it be made into an addition. The application that is before the Board tonight is for the approved shed to be replaced by an 8 X 10 addition. The foot print and set back that was approved for the shed will now be an addition and nothing has changed except it will be an addition not a shed. At the meeting for the original request the Board had suggested a walkway from the front of the building to the back should be added. The new site plan includes that walkway. Chairman Baum asked if anyone had any questions. Member Gilstrap stated he is fine as long as the foot print and the set-back are the same.

On a motion by Chairman Baum and seconded by Member Gilstrap it was: **Resolved that The Pets I Love Veterinary Hospital application for the set-back variances be classified as a Type 2 action under SEQRA.**

Ayes – 3

Nays – 0

Absent – Members Margotta, Czerwinski

On a motion by Chairman Baum and seconded by Member Gilstrap it was: **Resolved that The Pets I Love Veterinary Hospital set-back variance application for the addition be granted.**

Ayes – 3

Nays – 0

Absent – Members Margotta, Czerwinski

Assistant Building Inspector Proulx asked if the current shed will be removed or moved to a new location.

David Niemotko, stated they would be getting rid of the shed currently on the property as it is no longer needed.

Chairman Baum proceeded with adopting the February 8, 2022 meeting minutes. Minor typos needed to be corrected.

Adoption of Minutes:

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

Ayes – 3

Nays – 0

Absent – Members Margotta, Czerwinski

Continuation of the application of 251 High Street LLC for 3 area variances.

Attorney Stephanie Tunic, Attorney for the applicant, did a recap on the application for 251 High Street. Attorney Tunic stated she had prepared a letter in regards to the three outstanding items from the last meeting. The Applicant is also now asking for an interpretation. Attorney Tunic again went over the five-factor balancing test for area variances with the Board.

Attorney Tunic stated the first criterium for the five-factor balancing test requires no undesirable change to the character of the neighborhood or community, which she addresses in her letter to the Board dated March 1, 2022. She stated there is case law that states it is common for a Board to look beyond the single street the property is located on when defining a neighborhood. It is common to look at the larger scope of the neighborhood and beyond that. Attorney Tunic stated there is case law that applied 300- feet from the center of the property in question. Therefore, looking at High Street and beyond, there are properties with 50 to 60-foot lot widths, which suggests this is not out of character with the neighborhood.

According to the Village code all properties within 300 feet of the subject property do have a stake in what is being requested because they must be notified of a proposed change to the subject property. For the second criterium for the five-factor balancing test for an area variance states: is there another alternative to the proposed change. The alternate to having three lots with smaller lot widths, is having four lots with a cul-de-sac. The Planning Board had asked the applicant to look into the three smaller lot width option for aesthetics reasons. The applicant wants to work with the Planning Board and the Village which is why they are before the Zoning Board of Appeals. At the last meeting it was asked if it was financially feasible to have 2 lots. Attorney Tunic stated it was not financially feasible for the applicant, as the four lot with a cul-de-sac is an alternative and would not need any variances, the applicant believes the 3 lots with smaller lot widths is already a compromise. The alterative option for the five-factor balancing test criterium for an area variance: it can be determined to be negative and not have an impact on granting the area variances.

Another factor in the five-factor balancing test states: is if this application will have an environmental or physical impact to the neighborhood. The proposed use is for single family homes which is consistent with the neighborhood.

The next factor in the five-factor balancing test states: is if the variances being requested are substantial. Attorney Tunic stated the variances are not substantial as they are only 23% less than the required 100-foot lot width. Attorney Tunic stated that looking at the tax map other lots in the Village are routinely smaller lot widths. While those lots are non-conforming, they still exist and are part of the neighborhood. Attorney Tunic stated those lots must be and should be considered by the Board.

The next factor in the five-factor balancing test for determination states: whether or not this is self-created. Attorney Tunic stated this is only self-created because the applicant is trying to work with the Planning Board. No variances would be needed for the four lot with cul-de-sac plan.

The applicant has a letter from the State Historic Preservation Office (SHPO) and they do not find that this application has an impact on the historic nature of the neighborhood. This property does not have historical significance.

The applicant had a traffic study firm review risk studies and found that the two additional trips that would be added would not have an impact on the traffic in the area.

Chairman Baum stated that if an interpretation is being requested, then the application has to be amended. And, the notification process has to be done again for the amended application which includes a public notification being published in the paper. But, he is not sure the Board has the authority to interpret the building code. Attorney Tunic stated she can have that discussion with the Board's attorney. Attorney Golden stated they have looked into the code covering subdivisions and an interpretation cannot be determined by this Board. Chairman Baum stated the request for an interpretation is off the table. Attorney Tunic stated she understood.

Chairman Baum stated that the Board left off at Part 2 of the EAF form. There were questions on certain proposed impacts, and how they should be categorized. The question is if should they be categorized as no to small impact or moderate to large impact. It was for items number 3, 5 and 8 on the Part 2 of the EAF form. The Board had asked for additional information before determining SEQRA Part 2. Chairman Baum asked the Board members if they had the information needed and had time to review it all. Member Gilstrap stated the feedback for the architectural resources was clear. The data used in the traffic study was substantially old and it didn't address the concern whether the intersection of High Street and Gilbert Street is already at or over capacity. That intersection has gotten dangerous. There were two concerns the Board had about traffic. One was the intersection being at or over capacity and how much will these new homes impact traffic. Member Gilstrap stated he does not feel we have an answer to that. Member Gilstrap stated he did find it rather odd to define a neighborhood by three hundred feet in any direction. Member Gilstrap feels defining a neighborhood is a more subjective thing. Board Attorney Golden stated that the legal case that was used to determine the 300-foot radius in defining a neighborhood did not set the standard in defining a neighborhood and that in the case being cited by Attorney Tunic it was a specific case and in that case that was all that Board had to define the neighborhood. Attorney Tunic stated her reason for citing that case was that the Board may look beyond the 300-foot radius to determine the neighborhood. Attorney Golden stated there is no specific definition in the Village code that defines a neighborhood and there is nothing in case law that has ever defined

what is a neighborhood for purposes of zoning evaluation. Attorney Golden stated it is up to this Board to determine what it thinks or defines a neighborhood to be for the determination of this application. Member Gilstrap feels Dr. Kemnitz has already given the Board a better definition of a neighborhood when he said High Street has traditionally been one of the nicer streets in the Village of Monroe. Member Gilstrap stated High Street has always had larger homes on larger lots and it is true there are smaller homes on smaller lots a few blocks away but he doesn't know if he would say they are in the same neighborhood. The bigger homes on High Street have a charm that the smaller homes built in the 1960's do not have.

Member Zuckerman stated as we are getting into the details of the case he does not think we should proceed with only three members present as the applicant does not want to proceed with only three members. Chairman Baum stated he was not looking to get into the details of the decision he was trying to make a SEQRA determination and what the impact is for those items. If the impact of the items is small, we have enough information to declare a negative SEQRA declaration. If we are going to determine them to be moderate to large we may want additional information. Chairman Baum polled the Board members about how they would classify item 8. The Board members agreed item 8 should be no to small impact.

Chairman Baum spoke about the traffic item in the SEQRA Part 2 form. Chairman Baum read the DEC guidelines: Does the project add substantial traffic to the area? Chairman Baum stated he thinks the Board can agree that substantial traffic is not being added to this area. Next DEC guideline: Does the project add traffic but it is not substantial due to current conditions of the road that have enough capacity to handle it? Chairman Baum stated this is the Board's concern that we do not know if the area can handle the added traffic. Chairman Baum stated a few more cars during peak hours is not going to have a big impact on traffic in that area. The added cars will not over burden this area. Member Gilstrap stated he agrees it does not make it worse but there is still a problem if the roads are already over capacity. If you only add a few cars at a time you never get to the point where you are seeing a problem. Member Gilstrap stated he believes the intersection needs to be evaluated to see if it is at or over capacity. Chairman Baum stated he does not think the Board should look at the traffic but at the impact this project has on the traffic if the variances are granted. If we grant these variances we are shrinking the development by one house. Chairman Baum stated we are not talking about a large amount of traffic, this is certainly much less than what the DEC considers substantial. The DEC guideline states substantial as being 100 cars or more, therefore Chairman Baum does not see the traffic item being elevated to a moderate or large impact. Chairman Baum suggests considering it none to small impact. Attorney Golden stated the EAF is there to measure no matter what the impact is, will the project will have a significant impact on the environment. Member Gilstrap stated if you want to look at it in terms of impact, what is the change? The change is a handful of cars, we are only concerning ourselves with the change and not the over all condition of traffic in the area. Member Gilstrap stated if that is the case and that is how the Board is looking at it, then the impact should be no to small impact. Member Zuckerman stated that if we are looking at using the DEC guidelines, he agrees this would be a none to small impact. Chairman Baum stated in regards to item 5, it is determined and we will mark it as no to small impact.

The last item on the EAF Part 2 form is will the proposed action, change the character or quality of the existing community and whether or not this should be classified as no to small or moderate to large

impact. Chairman Baum stated that we are looking at variances for lot width and the alternative is a four lot sub-division with conforming lots and a standard cul-de-sac. The Board really needs to weigh what is better for the Village and what will have a greater impact on the Village. Chairman Baum does not feel this project would have a big impact on the Village and would mark that as no to small impact. Chairman Baum polled the Board. Member Zuckerman stated he would rather reply when the Board is deciding the five-factor balancing test. Chairman Baum stated this is for SEQRA determination. Attorney Golden stated it's a false comparison between the impact on the five-factor balancing test and the SEQRA determination, it is very different. Even if you give it a no to small determination for SEQRA you are not bound to make the same determination on the five-factor balancing test. Member Gilstrap asked what the differences is. Attorney Golden stated the difference is with how the DEC approaches it. The EAF Part 2 determinations are there to determine if the project has a significant adverse environmental impact. Therefore, if you say it has a no to small impact determination for SEQRA, the five-factor balancing test has different standards for what the Board decides is the neighborhood or community. The Board decides what that neighborhood is and decides whether or not the change is going to have an impact on the quality of the neighborhood. Member Gilstrap stated for clarification is what SEQRA is looking to decide the environmental impacts and the five-factor balancing test is looking at the quality of the neighborhood. Attorney Golden stated yes, the SEQRA is for the environmental quality while the five-factor balancing test is about quality of the community and are not the same. Member Gilstrap stated if we are looking at the community we are looking at a larger than just the neighborhood. As far as the impact to the community, Member Gilstrap feels it is not a small impact. It should be a medium impact and would cause an impairment to the character of the neighborhood but not to the overall community where lot widths like this are not that unusual. Chairman Baum asked if the Board agreed with item 3 in the EAF Part2 being none to small. Member Zuckerman stated yes, only on the advice of counsel. Member Gilstrap does not agree and is content with his view. Attorney Golden stated even if the impact was found to be large it does not have a negative impact as far as SEQRA is concerned. Therefore, you can have a moderate to large impact and still give a negative SEQRA determination. Member Gilstrap stated it can be larger area but not detrimental to the neighborhood. Attorney Golden stated a large determination does not equate to a negative SEQRA determination. Chairman Baum stated that what that means is the Board should take a harder look by means of a SEQRA Part 3 so the Board can get additional information so further analysis can be done. This will assure that there will not be a significant environmental impact that would rise to a positive declaration on SEQRA. Chairman Baum stated that maybe there is still a question of impact. Attorney Golden stated that even if you determine this item to be moderate to large the Board can still end up with the ultimate determination for Part 2 for the EAF as a negative declaration even if you have one of the impacts being moderate to large. Chairman Baum agrees with Attorney Golden but thinks the applicant should provide more information to assist the Board in making that determination. Attorney Golden stated if the Board wants that they have the right to request it. Chairman Baum polled the Board to see if they wanted additional information to assist the determination of this item. Member Zuckerman stated he would be satisfied with the negative declaration. Member Zuckerman is satisfied because the conditions are different between the SEQRA determination and the five-factor balancing test for an area variance. Member Gilstrap stated he agrees with Member Zuckerman on this point. Chairman Baum stated he agrees with the moderate to large determination. Chairman Baum polled the Board. The Board members agreed.

On a motion by Chairman Baum seconded by Member Gilstrap it was: **Resolved to adopt the Part 2 of the EAF impact assessment form with everything having a no to small impact except for item number 3 which is determined have a moderate to large impact.**

Ayes – 3

Nays – 0

Absent – Members Margotta, Czerwinski

On a motion by Chairman Baum and seconded by Member Zuckerman it was: **Resolved to declare a negative SEQRA determination, even with the moderate to large impact to item 3.**

Ayes – 3

Nays – 0

Absent – Members Margotta, Czerwinski

Chairman Baum opened the public meeting and asked if anyone from the public would like to comment. Member Zuckerman stated the Board Secretary received an email and forwarded it Chairman Baum and Member Zuckerman on December 30, 2021. The email is from Rebecca Black.

The email from Rebecca Black, a resident, is as follows:

To the ZBA:

I am writing to request that the ZBA deny the application for a zoning variance for 251 High Street. The current minimum lot width is 100' and with a proposed average of 77' per lot, this variance is an egregious ask. If the current lot is approximately 230', they could divide into two lots with only 15' in excess of the minimum which is minimal. To request to have 3 lots each 25% smaller than the minimum is an audacious and presumptuous request.

I am a Town of Monroe resident and property owner, and moved to Monroe because of the aesthetics of a small town without high density housing. I am concerned about the negative precedent variances such as this would set elsewhere in the Village as well as the Town. Please deny this and all similar variance requests.

Sincerely,

Rebecca Black

95 Hawxhurst Rd

Monroe NY

Attorney Tunic asked for a copy of the email.

Dr. Kemnitz stated his understanding is that the Board found no change in character in the neighborhood for this project. Chairman Baum stated no, that was not the vote. The vote the Board took was in regards to the State of New York Environmental Quality Review Act to determine that a significant environmental impact is not going to occur as a result of the grant of these variances. Whether the grant of the variances will have a detriment to the community or not or have a negative impact on the quality of the community is still opened for debate. The only thing the Board has determined there will not be a

significant environmental impact from this application if granted. Dr. Kemnitz stated either way the project goes this is going to have a huge impact on the character of High Street which is a unique area. Chairman Baum stated the alternative is four houses and a cul-de-sac. Dr. Kemnitz stated that would not be an improvement either.

Member Czerwinski arrived.

On a motion by Chairman Baum and seconded by Member Gilstrap it is: **Resolved to close the public hearing.**

Ayes – 4

Nays – 0

Absent – Members Margotta

Chairman Baum recapped for Member Czerwinski.

Attorney Tunic stated she would like to reserve the discussion and decision on this matter until there are five Board members in attendance. Chairman Baum stated that the option to hold off was given before the start of this process and at this point we need to go through the five-factor balancing test and if we don't have five Board members here you will have to take your chances. Chairman Baum stated he does not know if the next meeting will have the five members either. Chairman Baum polled the Board about waiting for a full Board to hear this matter. Member Gilstrap stated he feels four Board members is sufficient if Member Czerwinski feels he has enough information on this subject to vote. Attorney Tunic stated when Chairman Baum gave her the option of starting this application or not, she felt that was only for the SEQRA determination. Attorney Tunic was not aware this was a one-time offer. She apologized for the misunderstanding. Chairman Baum stated he is more than willing to give her the benefit of the doubt but he needs to see how the other Board members feel about adjourning now or moving forward when there are five Board members. Member Zuckerman felt that as long as we did not start discussing the five-factor balancing test and adjourn at that point he would be fine about waiting to see if we will have five members at the next meeting. Member Zuckerman does not want to start the discussion on the five-factor balancing test and stop at that point. Member Czerwinski stated he was okay with stopping at this point as his concern is what precedence this is setting for future determinations and if we have done something similar in the past for something like this.

Attorney Golden stated there is no legal requirement to move ahead or wait for five members to be present. There has been a practice and only a practice, on this Board, when an applicant is represented by an Attorney, to hold the matter over till there are five members. Attorney Golden feels this is done to give the greatest breath of discussion by the Board. As it is only a practice the Board is not obligated to adjourn at this time. Attorney Golden stated there is no guarantee the Board will have five members at any time, the Board controls the process and can decide at a later time to move forward as long as there is a quorum, which is the only legal requirement for the Board. Member Gilstrap stated he would be inclined to move forward as it is not unusual for this Board to hear matters with only four members present. Chairman Baum stated this Board always gives the applicant the option of waiting for a full five-member Board not just applicants represented by an Attorney. Chairman Baum stated when there is a four-member quorum a two to two vote is a negative vote and is a denial by operation of law of the variance. But, there was some confusion by Attorney Tunic. Chairman Baum stated we can hold this off till next month. Member Gilstrap feels it is a shame to spread the conversation over so many meetings when we have four members. Member Gilstrap feels this is something we should steer clear of in the

future and needs to be discussed. Chairman Baum stated he agrees but, in this case, there was some confusion and the discussion on the merits of the case have not been started. Due to the confusion he is willing to adjourn this till next month. Member Zuckerman stated the applicant's Attorney presented her discussion for the five-factor balancing test in the public hearing portion of the meeting and the same points were made at the first meeting for this item and he hopes those opinions on the factors are not brought up a third time as the public hearing has been closed. Chairman Baum stated the public hearing is closed so no new information will be coming in. The Board will proceed with the information they have. Chairman Baum stated that does not stop the applicant's Attorney from presenting but agrees not new information should come in at this time. Attorney Golden stated there was new information added during this meeting in the form of the email the Board received. The applicant needs to have an opportunity to respond in writing to that email if they feel a response is needed. Attorney Golden stated it needs to be clear what the Board will do if there are not five members at the next meeting. Chairman Baum stated the Board will have to wait till that time to see how we will deal with it. Chairman Baum stated it is not fair to the applicant if they are not heard by the full Board. If there are not five members at the next meeting and if the applicant asked for an extension the Board will deal with it at that time. Chairman Baum stated he feels the applicant should have an opportunity to respond to the email that was read earlier in the meeting from Rebecca Black.

On a motion by Chairman Baum and seconded by Member Czerwinski it was resolved to: **Adjourn this application till the April 12, 2022 meeting.**

Ayes – 4

Nays – 0

Absent – Members Margotta

On a motion by Chairman Baum and seconded by Member Gilstrap it was resolved to: **Adjourn the meeting at 9:29 pm.**

Ayes – 4

Nays – 0

Absent – Members Margotta