

TOWN OF MONROE ZONING BOARD OF APPEALS MINUTES

— 01/25/2022

TOWN OF MONROE ZONING BOARD OF APPEALS (Tuesday, January 25, 2022)

Generated by Norinne McSweeney

Members present Chairperson - Michael Murphy, Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau

Alternate: John Seeley

Consultants:

Davie MacCartney, Esq.

1. Welcome

Procedural: 1.01 Roll Call

Procedural: 1.02 Pledge of Allegiance

2. 2022 Appointments

Action, Discussion: 2.01 Appoint New Acting Chairman

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby appoints Chip Postiglione to be Acting Chairman in the event Chairman Michael Murphy can't perform his duties for the term of January 1, 2022 - December 31, 2022.

Motion by Steven Thau, second by Kevin Scully.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau

Absent From Vote: John Seeley

Action, Discussion: 2.02 Appoint Legal Counsel

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby appoints Feerick, Nugent and MacCartney as legal Counsel with David MacCartney as lead counsel for the term of January 1, 2022 - December 31, 2022.

Motion by Kevin Scully, second by Marci Daniel.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau

Absent from Vote: John Seeley

3. New Projects

Action, Discussion: 3.01 Mieczyslaw Szulc (Z066-2021) SBL # 38-9-12 13 Lakeview Dr

Genowefa Czerepak representing applicant representative explained that the applicant updated the house by making living space in the garage and enclosing the front porch making a non conforming property more non conforming didn't get permits to do any work wants to sell the house and can't without permits needs variances for side yard setback, rear yard setback and shed needs to be moved 5' Shed has already been moved as shown on current survey, so the only thing here for are the 2 variances Mr. MacCartney reviewed what the applicant was here for no outside work was done it was all interior work, but needs variances to get permits for the work

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to schedule this application for a public hearing on February 22, 2022.

Motion by Kevin Scully, second by Marci Daniel.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau

Absent From Vote: John Seeley

Action, Discussion: 3.02 Max Wessels (Z067-2022) SBL # 7-1-24 3 Cromwell Road

David Niemotko - Niemotko Architects Chairman Murphy I am not seeing a denial letter from the building inspector referring you to the ZBA? Mr. Niemotko we filled out a land use determination form and the building inspector made his comments on there referring to the ZBA Chairman Murphy would you like to go over your application as I don't want to get too far into the application until there is a current survey map. Mr. Niemotko I am here before you with the information the applicant allowed me to present. I spoke with them regarding a need for a survey and I will go back and stress to him it is required. the owner is up in years and would like to have direct access from the house to the garage house predated the road RR district front yard setback 50 feet current house 12 feet requesting a 38 feet front yard variance for a pre-existing non-conforming condition triggered by the new entrance Mr. Niemotko the owner would like to put a small 4x7 or 5x7 vestibule/breezeway connecting garage to house has a roof needs a variance exit house into covered area and walk to garage Chairman Murphy survey should include the following: building envelopes existing and proposed offsets and yard requirements bulk tables Member Postiglione needs a current survey right now we are just spinning our wheels Mr. Niemotko the main entrance to house is on the south side of the square labeled existing house, so when he comes out he walks around the front along Cromwell Hill Road to the garage and it has become dangerous for him reason for the connecting walk way, we would need to change the window to a door on the north side Member Postiglione the 5x10 entry would be the only changes Mr. Niemotko we would also need to put 3-4 8foot risers

Action, Discussion: 3.03 Eagle View Estates (Z068-2022) SBL # 18-4-60;61 Lakes Road

David Niemotko - Niemotko Architects Chairman Murphy received approvals for the driveway cut into Lakes Road from OCDPW set of plans were approved for the forced main lines for the Moodna sewer district you were previously before the board for septic systems did not meet the lot area code Mr. Niemotko the Town of Monroe has not satisfied the requirements for OCDPW to allow hookups to sewer district, there is a letter from September 30, 2020 from OCDPW not allowing developments to hook up to the sewer district. Monroe is over capacity for the Moodna Sewer District. As a result, it has impacted this project severely, this project started Sept 2018, we provided a cluster design 2019 denied, went to conventional design which would allow the pre-existing lot on Walton Terrace and the current lot to be divided into 2 lots. We went through the whole process of getting Moodna basin approval of a forced main sewer connection for the conventional design and we also needed OCDPW approval for a shared driveway. Of course, all of this took time the owner is invested tremendously and wants to come to a conclusion. Not sure how long it would take before we would be able to hook up to the sewer Moodna Basin at this point. We are here before you to ask for a variance to allow a septic system in temporarily on each lot to be used until the town satisfied their requirements then the houses would be hooked up to the sewer and the septic's would be abandoned. This would be a temporary situation. site perked well why variance because in this zoning you need 1 acre for septic for sewer 15000 lots are 17000 and 18000 provided 2 plans, can provide full set with driveways, Lanc and Tully forced main, proposed septic and proposed forced main to be approved both systems would be put into place, installed just not hooked up to the sewer maps c3 & 5 revision 6/28 septic design and location plans c3 & 5 dated 4/29/21 shows sewer location and impact on the land Chairman Murphy reviewing C5 which shows the test holes but no layout of the absorption system, which is not an issue for us, our issue is building septic's on lots that are too small within the zoning district and that this is in the aquifer overlay district for Walton Lake. Your asking for a variance for two lots that are approximately half the size of what they need to be in order to install septic's on top of that they are in the aquifer overlay district. Mr. Niemotko we do show the 100 foot separation from the water line, dashed line 100 foot away from the water so that does satisfied the distance requirement from a water body, also DOH requirements regarding separations from surrounding wells and the wells for these 2 houses, meets technical requirements outlined by the state and the county to allow for the two absorption fields to be installed Chairman Murphy but the zoning doesn't allow for that Member Postiglione these temporary systems will have to be build as if they were to be permeant Chairman Murphy yes but the lot area is an issue Mr. Niemotko the absorption filed meets the requirement it's on a flat area relatively flat and it perks worked out very well Member Scully were does the sewer line go, does it go along Lakes Road? Mr. Niemotko they would come out of the back of the house and connect up to Walton Terrace Mr. Niemotko the owner will install both systems in there entirety, per the Moodna basin requirements, but will not be connected sewer main until allowed MM 7 foot wide easement narrower for any service normal 20 ft wide decades of taxed payed into the

businessChairman Murphy you are proposing a 7 foot wide easement that seems narrow for the future services normally a 20 ft easement is used when there is machinery going in and out of the area. This property was before the board in early 2000 other attempts to build this land issues for over a decade. Current owner purchased in 2018 with issues.Mr. Niemotko he bought it not knowing he wouldn't be able to connect to the sewer.Chairman Murphy your argument is with the Moodna sewer and the Town Board not really the ZBA. We are looking at this from a code perspective. If you need an acre of land for a septic system and you have less than half of that, on top of being in the aquifer overlay district, these items go into consideration, the history is good to know but it doesn't change what we are looking at from a Zoning perspective.Mr. MacCartney can you please review what you are asking of this board.Mr. Niemotko we are asking for relief from the board on the requirement that a septic system can only be installed on 1 acre parcels, but in this case allowed to be used as a supplemental sewer connection or sewer facility in conjunction with the conventional sewer main which will be ultimately hooked up to the sewer system.Mr. MacCartney the narrative that was submitted alludes to seeking an interpretation as to whether this would constitute with a combined absorption field whether it would constitute a central sewer facility as opposed to a septic. Is that still part of your application?Mr. Niemotko the Planning Board asked us to get a definition of a central sewer facility because there is nothing in the zoning code.Mr. MacCartney application is for alternate forms of relief. Would like a definition or interpretation of central sewer facility it will have a combined field for 2 lots so you can do it and if not then an area variance to allow these lots without a connection to an actual central sewer facility to be fifteen thousand square feet instead of an acre, and for the latter you would do one septic per lot.inaudibleapplication is complete has all the formsnext step scheduling for public hearingBE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to set a public hearing for February 22, 2022.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau

Absent From Vote: John Seeley

4. Returning Projects

Action, Discussion: 4.01 DG Management (Z052-2020) SBL # 1-1-96 Schunnemunk Road

Jay Myrow attorneyJohn Higgins - Lanc & TullyMichael Nowicki - Ecological Solutionsapplicant requested for the attorney to be able to appear via Zoom LinkMr. Myrow this application was referred to ZBA by the Planning Board for 2 area variances on a cluster subdivision propertyone variance for lot area for open space that includes a utility easement covers 4 acres we presented to the Planning Board that the easement should be part of open space. Open space is examined for conservation value, the Planning Board does not

recognize and conservation value for the easement variance for open space 50% Once I got involved I hired Mr. Nowicki, we cancelled the original public hearing scheduled for December 2021 with the intention of going back to the Planning Board to present Mr. Nowicki's letter to determine and qualify easement of having conservation value and to include it in the open space. Had a technical review meeting with the Planning Board presented the letter the Planning Board didn't want to consider that letter as we are currently before the ZBA for this matter. We resubmitted our ZBA application and included Mr. Nowicki's letter and a color schematic about the property. Inaudible reviewed the new map presented by Land & Tully Mr. Myrow 57-27 c58 any proposed conservation area on a private yards can not be considered as part of the open space with in 75 feet can not be considered private yard lot 1 easement area and open space presented that open space owned privately the Planning board prefers the cluster plan versus the conventional plan at the end of the day this parcel will be subdivided with by the cluster layout or the conventional layout. This is a rare circumstance where there is no detriment to the public in granting these variances there are only benefits. The conventional plan is 15 lots versus the cluster plan. Chairman Murphy the cluster plan is not a good plan either as it does not comply with the code. Mr. Myrow true but the test that you need is whether or not grant these variances will cause a detriment to the community. You can not deny the variances if you do not find that there are determents out weighing the benefits to the applicant. Mr. Higgins reviewed the current map submitted - you are basically taking the open space and expanding 75 feet from that which is the required yard set back and seeing how it impacts the houses that are shown. The main problem is that the Planning Board has determined that the easement does not qualify as open space. The lot is 9.5 acres need to provide 50% open space would be 4.75 acres the easement is just over 4 acres if that gets included with the open space it is 5.6 acres (inaudible issues). Member Postiglione nothing new has been presented here this evening that changes from last time we had discussions Chairman Murphy have you changed the configuration of the cluster plan in any respect before resubmitting to this board the only thing new is the letter from Mr. Nowicki in regards to the easement and it having conservation value Mr. Higgins the only change on the application is the Planning Board has issued a negative declaration last week Mr. MacCartney the only new submission is the color map and the letter from Mr. Nowicki making a case for the easement having conservation value Chairman Murphy our code the easement can not be included in part of the open space. The Planning Board sent it to use with the determination that they were not allowing the easement areas to be used as open space. , Mr. MacCartney at this point the applicant is bringing it before this board , it is a complicated legal issue, but essentially what the applicant is saying and submitting the letter to this board, is we think it does have conservation value, we understand the planning board is not as of yet considering it to have conservation value, we are not asking you to determine that it does as a matter of law, consider our letter as one factor in why you might grant relief. That is the only new advocacy put before you. One way or another I believe this application is ready for a public hearing. Chairman Murphy this letter doesn't change the magnitude of the variance it is or isn't open space and the planning board had made the determination based on the code that

anything that has or already defined easement on it can't be included in the open space because it is not available to or under the control of the development surrounding it. Mr. Myrow there is not finding to that effect the board never concluded that mere fact that it's covered by a utility easement not having conservation value. Chairman Murphy that's the condition they sent it to the ZBA the green area is the open space and it 50% shy of meeting what's required by code add back in more land to get to the 50%. The original yield and the conventional plan was 15 lots, here you have 15 dwellings and they don't comply with the code. Mr. Myrow we have the right to ask for variances when the plan does not comply. Chairman Murphy this is not an acceptable plan in my perspective it's not going forward in the manner in which the town master plan had anticipated land would be developed. We grant variances to a number of projects but not to all projects. Inaudible between Chairman and Mr. Myrow speaking over each other. Mr. MacCartney DM we need to set this for a public hearing instead of going over and over the same information. Let the applicant make their case. Chairman Murphy is Mr. Nowicki letter going to be part of the public hearing record? Mr. MacCartney yes as it is part of the application. Chairman Murphy can we hire someone to give us the same type of opinion letter? Mr. MacCartney you could hire someone, the issue is there's no jurisdiction of this board right now to determine yes it meets the definition and has conservation value and therefore does equal open space or no it does not so that issue is not before the board properly and I don't think the board would have jurisdiction over that here. So, yes the board is authorized to hire someone to help it through issues. I think the applicant would hope to use this information to convince the Planning Board that it does have conservation value. It will be part of the record play into the weighing of the 5 factors. BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe, hereby makes a motion to schedule DG Realty Management for a public hearing on February 22, 2022.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau

Not Present at Vote: John Seeley

Action, Discussion: 4.02 Jule Rutledge (Z054-2020) SBL # 11-1-1 228 Sunset Terrace

no show Public Hearing remains open until the next Zoning Board of Appeals meeting on February 22, 2022.

5. Minutes

Action, Discussion: 5.01 September 28, 2021 Minutes

hold over

6. Adjournment of Meeting

Action: 6.01 Adjournment of Meeting

BE IT RESOLVED, the Zoning Board of Appeals of the Town of Monroe hereby adjourns the meeting at 9:03 pm.

Motion by Kevin Scully, second by Marci Daniel.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau

Abstain: John Seeley