

TOWN OF MONROE ZONING BOARD OF APPEALS MINUTES

— 02/22/2022

TOWN OF MONROE ZONING BOARD OF APPEALS (Tuesday, February 22, 2022)

Generated by Norinne McSweeney

Members present: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Members absent:

Marci Daniel

1. Welcome

Procedural: 1.01 Roll Call

Procedural: 1.02 Pledge of Allegiance

2. New Projects

Action, Discussion: 2.01 James Flood (Z069-2022) SBL # 11-6-4 206 Sunset Terrace

James Flood: Chairman Murphy application before the board department for an extension on an existing house you were sent here be the Building Inspector for 3 variances on a non conforming property: review of site plan. Member Postiglione the variances your seeking are side yard setback, rear yard setback and lot coverage. Chairman Murphy correct plus 4 other non conforming issues: zoned in the SR 15 district minimum lot 15000 sq foot required they have 8367 sq ft lot width required is 85 sq ft existing 40 sq ft minimum front yard required is 40 sq ft existing is 19.4 sq ft minimum side yard required is 40 sq ft provide 32 sq ft lot coverage increase from existing 25% to proposed 37%. Chairman Murphy is there anyway to reduce the proposed lot coverage? Mr. Flood willing to eliminate the garage. Chairman Murphy we are not asking you to eliminate your garage just impervious area. Board members reviewed the actual plans. Mr. Flood will be removing the concrete walk way which will bring down the lot coverage amount. Was asked to have the surveyor show everything that is included in the lot coverage calculation. Anything that you can do to try to reduce the lot coverage would be helpful in the variance that you will be requesting. We are not looking to change the footprint of your proposed building just the amount of lot coverage. **BE IT RESOLVED**, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to schedule this project for a public hearing on March 22, 2022.

Motion by Kevin Scully, second by Chip Postiglione.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

3. Public Hearings

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

Genowefa Czerepak representing the applicants

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to open the public hearing for 13 Lakeview Dr.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

seeking 2 area variances one for the side yard existing non-conforming and rear yard existing non-conforming owner made renovations to the house without getting necessary permits looking to sell the property now unable to get the permits due to the needed variances Chairman Murphy the current house foot print is remaining the same the property is in the SR10 district the lot requirements is 10,000 sq ft existing 12,700 sq ft minimum lot width required is 75 sq ft existing is 100 sq ft front yard set back is 25 sq ft existing is 55 sq ft minimum side yard for one is 15 sq ft existing is 12.3 sq ft, total side yard requirement is 30 sq ft existing is 68.8 sq ft minimum rear yard set back is required 35 sq ft and existing is 19.1 sq ft lot coverage is 30% and existing is 24.3% variances seeking are: minimum side yard required 15 sq ft existing 12.3 minimum rear yard required 35 sq ft existing 19.4 sq ft Chairman Murphy opens the meeting up for public comment

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to close the public hearing.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

The board reviewed the 5 factors BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to grant the variances 10 13 Lakeview Drive.

Motion by Chip Postiglione, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to authorize the board attorney to prepare a resolution/decision and for the Chairman Murphy to sign.

Motion by John Seeley, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

Action, Discussion: 3.02 DG Management (Z052-2020) SBL # 1-1-96 Schunnemunk Road

Dave Higgins Lanc & TullyJay Myrow - Attorney Via Zoom

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to open the public hearing for DG Management.

Motion by John Seeley, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

Mr. Myrow is speaking very hard to hear what is being said (is inaudible) too much background noise going on and the connection is not the best will do my best I can the board has a letter from Ms. Ashley Torre Planning Board Attorney referencing her prior letter that the project was referred to the ZBA for an area variance under Town Code 57-21.7(C)(5)(h). A recent revised subdivision plan proposes to locate the open space entirely on a separate lot and no longer on lot 1. It thus appears that the variance from Town Code 57-21.7 (C)(5)(h) is no longer required, provided the open space lot will be owned by the Town of other acceptable public entity. The Planning Board has no objections and viewed this revision favorably. Chairman Murphy address Mr. Higgins as far as the plans go they are the same lot coverage, same driveway, same number of lots. Mr. Higgins the only thing that has changed is the area of open space, the O&R easement, and the addition of lot 10 and the other lots no longer needing variance with the rear yards 75 sq ft from open space. Only variance needed is for the open space. Open space and easement is now all lot 10 a separate lot with intent to dedicate to the Town of Monroe. Lot 1 is smaller as the other lots are. Chairman Murphy the green space area remains the same as it previous was, all buildings and lot lines remain the same so we are dealing with the same number of setback requirements. Mr. Higgins the

variances that relate to the setbacks are no longer needed the only variance that would be needed is that for the open space being less than 50% that's required. Chairman Murphy how does that happen? Mr. Higgins Mr. Myrow can probably explain it a lot better, but my understanding of the town code it stipulates that the open space within the private lot can't exist within a yard lot if the lot is held in public ownership or by one lot where a house is not proposed there is no yard requirement and a variance is not needed. Mr. Myrow (inaudible) open space needed for lot one all open space in a proposed building it all constitutes a yard and a need for setbacks no longer required if the land is publicly held. Chairman Murphy addressed Mr. MacCartney asking if he reviewed the letter from Ms. Torre as he had not had the opportunity to do so at this point. At this time Chairman Murphy reviewed the mentioned letter from Ms. Torre reading it into the minutes and for the board to hear. The area labeled in green on the newest map is the 150 foot O&R easement Mr. MacCartney explained that the original plan had lot 1 holding all the open space which caused the 75 foot variance from a dwelling. Now they have chopped it off that is no longer going to be a yard we are making it it's own lot to be dedicated to the town or some other public entity so there is no longer a need for that variance. If you recall at the last meeting a letter from there conservationists presented a letter stating the easement does count as it has conservation value and we know that we don't have the ability to get that issue before you for a decision, but it meets the criterium an the code for conservation space even if this board and the planning board disagree, give us the benefit of listening to our argument. open discussion in regards to the open space among board members Mr. MacCartney reviewed the applicant is basically saying procedurally they are withdrawing that part of the application, their not asking you to decide grant or not, if you grant the barriers for open space and not grant the variance for the other and if the applicants isn't successful getting the town to take that space their whole plan that they presented is has to be changed anyway they won't have gotten the variance here will be on the plans submitted conditioned upon adherence to the plan submitted so and you can make it conditional. again let's say you should go that way you would make it conditional upon them following this plan and that being acceptable and the town taking ownership etcetera. Mr. MacCartney address Mr. Myrow what's the origin of the law on that the dedication to the town or another public entity. Is this codified somewhere. Mr. Myrow certainly if it's offered and accepted by an account that satisfies the requirement your goals for a Home Owners Associations to be created. So my conversations basically outlined by the action of the letter basically stated that based on assuming that it's looked at the whole space (very hard to make out Mr. Myrow did the best I could) we are short that area because the position that the board took that this doesn't qualify as open space. Procedurally let me review how we got here a the planning board decided whether to accept the initial conventional subdivision plan or the secondary cluster subdivision plan. In this case the Planning Board chose to pursue the cluster subdivision plan. They decided that they prefer the cluster plan and referred the applicant to the ZBA for variances. We are here for the question of the land covered by a utilities easement characterized as whether it has conservation value. We hired a conservationist and under your code determined it does qualify to be considered to have conservation value.

Letter from Mr. Norwicki was presented to the Planning Board and they said since we were before the ZBA to present it here. We are here tonight for an area variance we are not here for a determination on that particular point. Reviewed his opinion on the 5 factors the board needs to review. Chairman Murphy Mr. Norwicki letter has no bearing on the variances that's being asked as the decision was already made at the planning board level. The easement is an O&R easement and they can build on it any time they want add additional utilities that is why it is not be considered as open space. Mr. MacCartney it is not that the letter has no bearing it is what is the proper interpretation of the code what does the code say and mean does it qualify or does it not. That is not before the board. The Zoning Board does not have the jurisdiction to review a determination of a planning board. It's inaccurate to say that it has no bearing in terms of the quality of what's there. As Mr. Myrow is advocating that it is relevant to two of the 5 factors for the area variance. open discussion regarding the issue with Mr. Norwicki's letter and where the ZBA stands and where the Planning Board has their opinion regarding the conservation value. Mr. Myrow spoke again regarding the conservation value of the open space that is encompassed by utilities. The matter is whether or not it has conservation value. Chairman Murphy agreed to listen to what Mr. Norwicki has to say. Asked for background about Mr. Norwick and his firm. Mr. Norwicki (very hard to understand Mr. Norwicki inaudible) his conclusion is that the easement absolutely has conservation value and should be considered in the open space. Joseph Jacobowitz next to property looking forward to having community near me. Mr. Higgins - originally prepared conventional subdivision, yield plan approved for 15 single family lots, a cluster subdivision was then submitted determined 9 lots with single and multi family was a better way to go, now presented 10 lots with 9 buildable lots 6 with duplex 3 other lots with single family for 15 units total, 10th lot for open space conversation easement, has a cul-de-sac off Schunnemunk, the cluster plan demonstrates significant reduction in total disturbance, reduction in visual disturbance, reduction in trees removed, a reduction in impervious areas, driveways, building areas extra is why the Planning Board went with cluster plan, benefits of open space has all land in back with one ownership in conventional plan 9 lots owned open space lot. Chairman Murphy - conventional yield plan came up with 15 lots under cluster allows you 15 lots but doesn't guarantee you 15 lots. Mr. Higgins under SEQRA the Negative Declaration 15 dwelling on 9 lots in the cluster plan. Mr. Myrow spoke again - again very hard to make out what he is saying (inaudible) if granted the variance would proceed with the cluster plan if denied the variance we're entitled by law to proceed with the conventional plan. Mr. Higgins just one variance needed the way plans are versus what was needed prior to open space on one lot. Chairman Murphy I was going to point that out that in the current plan. Under the previous iteration of the plan where the parcels were part of the open space now you made that one lot offering it to the Town of Monroe so the only thing before us is the open space area. Chairman Murphy total lot area 9.5 acres, easement is 4.2 acres, allowable buildable land 5.34 acres, 50% for open space 2.67 acres, provided buildable 3.7 acres open space areas 1.66 acres difference between from a 50/ 50 split to 69/31. Mr. MacCartney options moving forward procedurally you can do a couple of things: you can proceed with the 5 factors and make a decision tonight and direct me to

prepare a resolutionthere are many legal issues here if you have any questions we can go into attorney/client session62 days from the closing of the hearing to render a decision

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to close the public hearing.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to go into attorney client session.

Motion by Chip Postiglione, second by John Seeley.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

BE IT RESOLVED, that the Zoning Board of the Town of Monroe hereby makes a motion to return from attorney client session.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

Chairman Murphy we are not going to make determination this evening there were several new legal issues that were brought up during the public hearing went over them publicly so we have the relevant facts, we just want to review the code before we finalize our determination. The board will let the applicant know when they are ready for decision we have 62 days to grant decision.

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

David Niemotko representing the applicant

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to open the public hearing for Eagle View Estates.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

Mr. Niemotko review of the project before you requesting variance regarding a use of a septic system to satisfy the Zoning Code determination of a central sewer facility for separate septic system per lot for a 2 lot subdivision on Lakes Road. Project started 9/2018 many changes cluster development proposed for several months that didn't come to fruition, then went to conventional subdivision, approval from Moodna Sewer Basin to connect to sewer, OCDPW for driveway approval off Lakes Road for 2 houses, during the process OCDPW mandated Town of Monroe to no longer connect to Moodna as the Town of Monroe exceed capacity, we wouldn't be here if sewer capacity was governed differently. One solution a septic for each lot but according to zoning code you need 15000 sq ft original to connect to sewer, lot needs to be an acre for a septic system. What we propose to the board installing a fully designed septic system to be used to bridge the gap for the time needed the allow Town of Monroe to get the sewer situation resolved and then allow the residents to hook up everything within the sewer, but not hook up each house to function on the sewer at this time, it would not be a temporary septic it would be a fully operational design, worked through in good faith to hook up to Moodna zoning board to consider this for the 2 houses to be built. We are proposing to have the septic and the sewer laterals done at the same time. Member Scully will they be conventional systems or aerated Mr. Niemotko conventional systems Mr. MacCartney application is still the same with 2 options. Option one was look for an interpretation of the central sewer facility one septic for 2 lots, and if that wasn't acceptable then option 2 is temporary system until the sewer option is available Mr. Niemotko will eventually hook up to Moodna basin. We had investigated central sewer asking for a definition from the Building Inspector did not define central sewer but gave other criteria. We feel the central absorption system satisfies that. Either case central sewer would need to be installed submitted c3 & c5 plan sheets for each design system board reviewed them Chairman Murphy the lots don't meet required area for septic for each lot, provided layout for what it would look like, staying 100 ft away from lake, also in aquifer for Walton lake needs to be considered also, So the only matter that's really before us is the area variance to do a septic system on property less than an acre, the parcels comply with the rest of the building setback limits. the proposed sewer line easement is for the Planning Board to determine Chairman Murphy did the Planning Board review this? Mr. Niemotko they sent us to the Building Inspector for an interpretation Mr. Niemotko we are not asking for a relief of a separate system required what we are proposing meets department of health requirements, this is not only from a technical issue. Chairman Murphy we are not here for the technical issues of the requirement we are here looking at the Zoning requirements that require 43,560 sq ft for a septic system and your properties are 19,000 and 20,000 sq ft . If this was an existing lot with a failing system possibility of working around it, but this is new land for new build and looking to go out of the way necessitating

variances from the code. Mr. Niemotko we are not here by choice this was imposed upon us by your town., they didn't satisfy their requirements to their residents. Chairman Murphy that is between you and the town Mr. Niemotko we are going to the expense to put in both systems so that when the town satisfies its requirements septic would be cut off and then we can hook up to the sewer. Member Postiglione your right it's not a technical issue, but when you look at this as presented we're trying to look at the good, but you don't even have 1/2 the area that you need you need a full acre per lot and you have less than that for each, looking at well proper distance from both systems, looking for something technical aspect to what can be, looking for a little more for educated decision. Chairman Murphy agreed there is a letter from the Commissioner of Department of Public Works that the county of Monroe is currently over its 133,000 gallons of allocation and no additional connections are permitted. How long of a period before this is resolved, what are we looking at for a temporary septic system time frame. Mr. MacCartney there are some legal issues that permeate both parts first issue there is some case law that talks about the ability of the zoning board to issue a temporary balance. I need to do more research regarding this matter. board member open discussion regarding temporary how long does that mean, will the owners actually hook up to sewer when available, who is to monitor that, can that be a condition of approval, will the well have to be relocated at who's expense. Mr. MacCartney suggest public hearing be held open until next month Cynthia Francis 404 Lakes Road want to understand the project Chairman Murphy explained the application to Ms. Francis hold over meeting until March 22 meeting

4. Returning Projects

Action, Discussion: 4.01 Jule Rutledge (Z054-2020) SBL # 11-1-1 228 Sunset Terrace

Rommel Lasso Secretary McSweeney reviewed the last time the applicant was here was in November at their public hearing and they were informed that they needed to provide a current survey with all the bulk table calculations done by the surveyor, that Mr. Maldonado would not issue a permit off the paperwork submitted by Mr. Lasso office it needed to be an official stamped and signed survey. The public hearing was held open until the January 25, 2022 meeting and they did not show up. So the public hearing is currently still open and will need to be closed. Chairman Murphy reviewed the application newest version of map Dec 11 2021 additional information for lot coverage 27.8 proposed 25% max height has been met front yard set back required 40 proposed 18.8 variances needed: lot coverage front yard set back BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to close the public hearing.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

Board members review the 5 factors

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to approve the 2 variances for this project.

Motion by Kevin Scully, second by John Seeley.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to authorize the attorney to draft the resolution for the Chairman to approve and sign.

Motion by John Seeley, second by Kevin Scully.

Final Resolution: Motion Carries

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel

5. Minutes

Action, Discussion: 5.01 September 28, 2021 Minutes

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to approve the September 20, 2021 minutes.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

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

Abstain: John Seeley

Absent: Marci Daniel

Action, Discussion: 5.02 October 26, 2021 Minutes

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to approve the October 26, 2021 minutes.

Motion by Steven Thau, second by Kevin Scully.

Final Resolution: Motion Carries

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

Abstain: John Seeley

Absent: Marci Daniel

Action, Discussion: 5.03 November 23, 2021 Minutes

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to approve the November 23, 2021.

Motion by Steven Thau, second by Kevin Scully.

Final Resolution: Motion Carries

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

Abstain: John Seeley

Absent: Marci Daniel

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.

Motion by Kevin Scully, second by Steven Thau.

Yea: Chairperson - Michael Murphy, Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Absent: Marci Daniel