

TOWN OF MONROE ZONING BOARD OF APPEALS MINUTES

— 03/22/2022

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

Generated by Norinne McSweeney

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

Consultants:

David MacCartney, Esq.

1. Welcome

Procedural: 1.01 Roll Call

Procedural: 1.02 Pledge of Allegiance

2. New Public Hearing

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

James Flood applicant Evan Flood

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

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

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

Abstain: John Seeley

Chairman Murphy reviewed the paperwork submitted by the applicant area variance for side yard, rear yard and lot coverage James Flood 206 Sunset Terrace Chairman Murphy have a copy of your survey map showing the existing building marked in orange, yellow represents the extension and the purplish is a proposed patio. Why don't you explain what you want to do to the board. Mr. Flood this was originally a small 3 bedroom house that we made into a one bedroom and we are looking to add on a bedroom and a garage off the back of the house and make the kitchen a little bigger. We were sent here by the building department for approval. Member Postiglione last month he was here we asked if he could reduce the lot coverage. Chairman Murphy per the current plans he did knock some of as much as he could. Mr. MacCartney what gave rise to the reduction, where did you reduce the coverage. Mr. Flood I took out the right hand sidewalk that wrapped around the house inaudible discussion among the board members Chairman Murphy any members of the audience wish to speak on

this matter. Please come up and state your name and address for the record: Open to the Public: Margaret Jones - 16 Berkley Terrace questioned what was being done had concerns about water run off from the property down to adjacent lot expressed concern about the condition of the road, this is not a town road it is a private road Mr. Flood above garage storage, main house will only be 1 story Ms. Jones trying to understand plans and what is being built Mr. Flood reviewed the plans with her Ms. Jones questioning the well capacity Ms. Jones trying to give suggestions regarding changing the layout of the house would reduce the amount of variances that he would need Chairman Murphy we are not here to redesign his architectural plans, these have already been submitted to the building department and it would change everything, that is not the purpose of this board we are here to make a determination on the side yard setback, the rear yard setbacks and the lot coverage Ms. Jones brought up applicant has 2nd parcel and if he combines them he wouldn't need variances Chairman Murphy that is not what the application is, the other lot is a separate parcel and there is no action for this board regarding that parcel Ms. Jones another question I have is about the drainage it is horrible and not maintained. The water comes over the road and flows down to us. I have dug ditches, put in pipes, added stone but nothing helps Chairman Murphy Sunset Terrace is a private road so there should be a homeowners agreement on the maintenance of that road, that is who you need to speak to this board has no say in that. Ms. Jones the bungalow was built in 1935 and doesn't have the proper drainage like newer homes need to do. They need to put in drainage by using a dry well. Chairman Murphy sometimes that is required depends, but again we can not compel him to do that, that is out of our authority. it is noted on the plans that there will be drainage and a dry well up to the building department at the time of permits to verify inaudible Larry Tracy 5 Berkley Terrace concern with the drainage Neighbor Paul 216 Sunset Terrace dug culverts in the road he needs to add dry well telling the board about things the ZBA wanted from him and other neighbors on their properties approached the dais and showed board members the dry wells that were required then speaking off mic and over board members Chairman Murphy we have already gone over this that the applicant is adding dry wells Mr. Tracy telling the board about things the ZBA wanted from him and other neighbors on their properties approached the dais and showed board members the dry wells that were required then talking on how losing soil will make the drainage worse speaking off mic and over board members Member Postiglione on the plans it is showing drywells and under drains Mr. MacCartney you've got to let the board members speak when they are speaking it is being recorded you can't speak over them. Member Postiglione it is up to the building inspector to enforce this that is not for us to say Mr. MacCartney again you are interrupting you will have your turn to speak into the mic we have to have clear record Mr. Tracy something has to be done in 2007 the ZBA required the drywells I had to amend my plans for that Chairman Murphy that was part of new construction. There is a provision on this plan for dry well and under drainage system it's on the architectural plans. It is not our requirement to review that it is up to the building inspector. Mr. Tracy is also leaving some pictures about the culverts to put in the road. Complaining about the construction is going to damage the road that the neighbor just did up

there. Chairman Murphy we can make it a condition to have pre construction survey of the road and make sure any damage done by the trucks is repaired by Mr. Flood. Chairman also pointed out that garbage trucks also damage the roads. Mr. Tracy we don't allow garbage trucks on Berkley Terrace I alone asphalted that road and don't permit garbage trucks pails go down to Lake Region Blvd. Chairman Murphy again that is not for the board to address these are issues for the homes that live along the private roads. Documents presented to the ZBA by Mr. Tracy added to the record. Mr. Tracy the concern is the water. Mr. Flood spoke regarding the water he has a culvert at the end of his property. Ms. Jones came back up to speak about the culvert and to mention an easement under Berkley Terrace. Again it is a private road and not up to this board to address.

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 Chairperson - Michael Murphy, second by Steven Thau.

Final Resolution: Motion Carries

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

Abstain: John Seeley

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to go into Attorney Client privilege for some legal advice.

Motion by Kevin Scully, second by Chairperson - Michael Murphy.

Final Resolution: Motion Carries

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

Abstain: John Seeley

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to return from Attorney Client privilege.

Motion by Kevin Scully, second by Chairperson - Michael Murphy.

Final Resolution: Motion Carries

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

Abstain: John Seeley

Chairman Murphy we've taken everything that we've heard tonight into consideration the plans that have been submitted and the requests from the Floods to build this project out and some good questions came up that we didn't completely have the answers to. We are generally satisfied with the plans and the layout of the property but the big question is what is

the roof drainage system being connected to there are notes saying refer to the architectural plans, but we don't have those. The total side yard variance and the rear yard variance I am in favor of, the lot coverage I would be in favor of that subject to the review of the site drainage plan by the Town Engineer. Mr. MacCartney normally you would review the 5 factors with the balancing test. As I understand it seems the Chairman is looking at those and thinking about the 5 factors in a way to grant the variances, but subject to and conditioned upon the review and approval of the drainage specifically by the town engineer. I also believe the application also requires variances from other pre-existing non-conformities. Chairman Murphy reviewed the pre-existing non-conforming variances that are required. Board reviewed the 5 factorsinaudible

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion on granting the various variances subject to the review and approval of the Town Engineer on the drainage system.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Carries

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

Abstain: John Seeley

3. Returning Public Hearing

Action, Discussion: 3.01 Eagle View Estates (Z068-2022) SBL # 18-4-60;61 Lakes Road

Applicant reached out to us today and asked to be held over until the April 26, 2022 meeting.

4. Returning Projects

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

Applicant is not present Chairman Murphy last month held a public hearing, we closed the public hearing so there is no further input required from the applicant they are not required to be here tonight and we can continue with our resolution and determinations on this application. Mr. MacCartney said that he heard from the applicants attorney that day and said if the board had any questions or issues that he was available to answer those and that if necessary would grant an extension on the 62 day deadline for the time the public hearing is closed. There was an email sent to Secretary McSweeney and myself at 11:21 am today to that effect. Chairman Murphy we have been hearing this application since the end of 2020 and I've asked them a couple of times to consider coming back to us with a revised plan that needs less in the way of a variance they've held steadfast to their plan that they had from the beginning there have been no changes made to that plan. We have all the dialogue that we've gone through with them over many months same exact plan for the same exact variance. Mr. MacCartney they did make the one change where they eliminated the need for the one variance by changing the proposal on the open space from being part of lot one to being its

own lot to be dedicated. Chairman Murphy in my review of the code I don't see how the ownership of that green space makes it any different to me the property line is the property line and whether separating a private lot from a municipal lot or a private lot to something that is home owned by some non government agencies an open space institute of something like that. It still doesn't change the fact in my eyes that the property line and we are not going to make a determination on that. I am not satisfied that is a real thing, but they asked us not to make a determination on that when we write up our resolution I want it to be perfectly clear that we know by approval or denial of the open area variance that we are not taking any position on the building setbacks either for or against. Just so that is not misrepresented to the town planning board that we've approved that because we have not and I don't even, but it also means we haven't disapproved it right. We have taken no action and I personally disagree with their approach. Member Scully but if we don't act on it won't we be over the 90 days on that item. Mr. MacCartney my memory is that they withdrew that application to no longer require that as a variance. Chairman Murphy so we should remain silent on that topic, I don't want that misconstrued by the planning board that we said yes. Mr. MacCartney if you miss the 62 days it is a default denial board members looked at the most recent map and reviewed what the percent's were reviewed the bulk table, 5 lots short of meeting setbacks. Mr. MacCartney that's the issue we were discussing earlier that the applicant is advocating they don't need those variances if the open space is provided on one lot. Chairman Murphy who makes that determination that their position on that is correct. Mr. MacCartney not you I mean not the ZBA. They've represented that they believe that to be so and you're not making a determination on that because they've withdrawn that issue from your consideration they've said we don't need that variance anymore on this plan your not endorsing that saying yes or no. Chairman Murphy so the matter at hand is the open space and the shortage that's provided by the current plan required is 2.67 and provided is 1.66 review of the 5 factors (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, feasible for the applicant to pursue, other than an area 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 the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. 1)

Chairman Murphy my interpretation is the character of the neighborhood what's adjacent to it are large old country lots that have a lot of area now they are going to be building a cul-de-sac that will be servicing 17 units and these lots that abut it which use to have a neighboring lot will now have a roadway running through there 2 of the lots are being created in the Village. Member Postiglione when you take into consideration that we wouldn't even know what the engineering that's going to be involved with the road to meet the cul-de-sac and grading how much has to be built up or cut down it's not part of the profile maps. Mr. MacCartney let me just jump in here and focus you all on the issue at hand. The issue at hand is not whether do

we like the engineering of the project, what's the traffic the issue is they are asking for a reduction in the open space requirement so what you need to do is look at the balancing test on that open space focus on the open space and what's the quality of the open space, what's the detriment if any, what's the benefit to the applicant on the open space. Chairman Murphy the open space is broken up into 2 parcels and one of them is relatively inaccessible they don't show an easement to that, the other part of the open space easement it does have some frontage on the cul-de-sac so you have some ability to access that area, but if you took out some of these addition, you know what we perceive as to many lots you could expand the open space easement so that you're not have the heavy land development directly adjacent to existing homes so that's one of the impacts of having too many lots.2) Chairman Murphy they have been given multiple opportunities during the course of these meetings to reduce their lot count and meet the open space requirements and they have refused to budge from there Mr. MacCartney if I could add remember when you're examining feasible alternatives one of the things that applicants will argue to say well you have to take into account the benefit that we are seeking and they'll define the benefit that they're seeking as that the number of lots. SO one of the questions and I understand what you're saying is that with fewer lots you can still achieve a benefit not necessarily the benefit that the full benefit that you're looking for you can reduce the variance sought for open space. You might want to address the alternate of the non-cluster development that is an alternative. The applicant was advocating to you that as an alternate and that they would end up building that not as desirable of a plan from the planning board standpoint you might want to discuss or consider that. Member Postiglione it is one thing to take into consideration the other plan but it wasn't our main focus it really wasn't before us. Chairman Murphy the other plan was approved for a maximum lot yield of 15 lots. in the cluster plan it is the maximum number of lots not a guarantee number of lots you can get.3) yes all agree on that4) yes all agree5) yes all agree

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to deny the variance request for open space.

Motion by Kevin Scully, second by Chip Postiglione.

Final Resolution: Motion Carries

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

Abstain: John Seeley

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

Motion by Chairperson - Michael Murphy, second by Kevin Scully.

Final Resolution: Motion Carries

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

Abstain: John Seeley

5. Minutes

Action, Discussion: 5.01 January 25, 2022

held over

Action, Discussion: 5.02 February 22, 2022

held 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.

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