

TOWN OF MONROE ZONING BOARD OF APPEALS MINUTES

— 04/25/2023

TOWN OF MONROE ZONING BOARD OF APPEALS (Tuesday, April 25, 2023)

Generated by Norinne McSweeney

Draft

Members present

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. Public Hearing

Action, Discussion: 2.01 **Lebovitz** (Z077-2023) SBL # 43-1-8 34 Irene Drive Monroe, NY

Patrick Hutton MJS Engineering

Mike Shapiro - Blustein, Shapiro, Frank & Barone, LLP

Mr. Shapiro stated that Mr. Hutton just passed out to the board 4 letters from the adjoining neighbors in support of the application

Chairman Postiglione asked for a recap as it has been a little while since last before us.

34 Irene Court existing 4 bedroom house knock down and rebuild 6 bedroom house

lot under an acre, required 43,560 sq feet exists 41,000

meets all other bulk requirements

has septic and well

handed in letters from neighbors

lots adjacent to the property are vacant parcels and heavily wooded

lot coverage of 15% only requesting 13%

area variance for size of parcel

Chairman Postiglione reviewed a couple of things from the prior meeting

there was a mistake on application, that was corrected

needed to be sent to OCDP GML review

Mr. Shapiro withdrawing our request for an interpretation just looking for the area variance

the fact that the application went from rebuilding on existing footprint to expanding the footprint made the board look at the application differently

Mr. Shapiro wanted to make mention that the 2 properties across the street are over 8,000 square feet

Mr. MacCartney if any of the board members have any questions or would like to talk to the applicant about the 5 factors or make any comments you can ask for responses and discuss them before you close the public hearing. If you think you have all the information that you need and nobody from the public wishes to be heard then you can entertain a motion to close the public hearing and once it is closed you can discuss the 5 factors on the record tonight make a decision you have 62 days to render a decision if the public hearing is closed.

Member Daniel one clarifying question specifically what is it that the applicant is requesting are they requesting an additional 6% increase to 23.99

It is the total square footage for the lot size.

Member Scully I am concerned about setting a precedent for giving this kind of variance.

Mr. Shapiro this is a small variance. I don't know about setting precedent but that is what the board is here to do is evaluate each case on its own merits. I hope you take the small size of the variance into the 5 criteria.

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 Chip Postiglione, second by Kevin Scully.

Final Resolution: Motion Carries

Yea: Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau, John Seeley

Mr. MacCartney let me give you your options at this point:

62 days from today to render a decision

you can discuss your feelings about the five factors, step through them one at a time and discuss where everybody stands on them

you don't have to make a decision tonight or vote tonight, you can and you have in the past directed me to prepare the resolution consistent with what has been discussed

you can discuss the five factors and come back next month or the following month and make a decision to vote and authorize me to prepare the resolution

if you discuss it tonight and don't vote you can authorize me to prepare a draft resolution that is consistent with what I am hearing this evening that can be reviewed at the next meeting and be passed or amended

Chairman Postiglione lets start the discussion on the five factors and decide after the next step.

Mr. MacCartney as you know this is a balancing test that you have to apply it's the benefit to the applicant has weighed against any detriment to the health safety and welfare of the community.

5 factors balancing test was discussed by the board members

Chairman Postiglione last meeting we spoke on how when I drove by looking at the property from a different eye, because I was originally thinking same footprint but it was going to be a bigger footprint, Member Thau when you went by again you also had a different feeling once we had the clarification of what was being done.

Member Thau asked if applicant willing to make any concessions to the 6% variance request

Mr. Shapiro we can't change the size of the lot stated it wouldn't make a difference

Member Thau but as far as changing the structure that is requested to be built you want to go from a four bedroom to a six bedroom

Mr. Hutton the problem with changing the structure is as you view it from the road it is only going to be 10 or 12 feet wider than it is now, it's going to be a story and a half split level story and a half. It won't look that much different from the road and behind it is woods. The square footage is well within the limits of the zone and the area.

Member Thau I am not going to give you a number I'm just talking about what concession or what negotiation would the applicant be willing to go forth as far as to discuss.

Mr. Hutton the structure meets all the bulk requirements of the town code, including coverage. Not sure what changing the shape of the size would do.

Mr. MacCartney if there are members of the board who have not gone out to the property and would like to prior to the next meeting, I suggest we reopen the public hearing until that time so any comments from the site visits would be on record.

Mr. Shapiro what is the point of reopening the public hearing. There has been nobody here for the applicant as of yet and any comments the board members will have will be on the record regardless. Mr. Shapiro is against the reopening of the public hearing.

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

Motion by Chip Postiglione, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau, John Seeley

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to continue the public hearing until the May 30, 2023 meeting.

Motion by Chip Postiglione, second by Kevin Scully.

Final Resolution: Motion Carries

Yea: Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau, John Seeley

Action, Discussion: 2.02 **Glenis Reynoso** (Z076-2022) SBL # 29-1-51 701 Lakes Road
Monroe, NY

Jess Shih Niemotko Architects

Mr. Shih reviewed the application the owner is looking to construct an addition that would add approx. 600 square feet of building area to the property
property current lot width 138.9 square feet where required is 150 square feet
lot coverage of 20.5% and maximum lot coverage is 15%
both of these are pre-existing non-conforming
we're proposing to remove around 600 square feet of asphalt to keep the coverage at 20.5%

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 Chip Postiglione, second by Marci Daniel.

Final Resolution: Motion Carries

Yea: Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau, John Seeley

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to include everything the applicant has said up to this point is included in the public hearing.

Motion by Kevin Scully, second by Steven Thau.

Final Resolution: Motion Fails

Yea: Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau, John Seeley

All variances being sought are pre-existing non-conforming impervious coverage not increase cover 600 sq feet of asphalt to keep at 20.5%
variances are minor

Mr. MacCartney changes proposed to the house but removing other lot coverage will remain the same

public hearing has to remain open GML made within the last 30 days nothing back from Chester

Allan Muller 672 Lakes Road paperwork says putting an addition on to the house but removing asphalt.

Member Scully can we do the 5 steps even though we are keeping this open

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to keep the public hearing open until the May 30, 2023 meeting.

Motion by Chip Postiglione, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau, John Seeley

Action, Discussion: 2.03 **Homeland Towers** (Z073-2022) SBL # 3-1-19.2 24-26 Strauss Lane, Monroe NY

David Kenny Snyder & Snyder
Vincent Xavier Homeland Towers

Mr. Snyder

before board since last summer

hired a consulting firm City Scape there is a need for this faciality

went to Planning Board to start the review as far as the site plan

they declared themselves lead agency

we had a public hearing with the Planning Board

we have performed 2 balloon tests

had site visits with the Planning Board and the Conservation Committee

most recently issued Negative Declaration April 18th

referred us back to this board for use variance

the town has specific restrictive zones where wireless towers can be located utility overlay

zone

the need for the facility is far away from the overlay zone

only variance required per Building Inspector is the use variance

building height doesn't apply as we are not a building, there is also an exception for towers, but us being located where we are through the balloon tests and the visual analysis reports we've shown that we've presented an application that's minimally visible to the surrounding public and will still fill the significant gap in service for Verizon network and provide co-location space should any other provider also have the need

we submitted a memo in support of the variance or the use variance. There's a different standard for a public utility wireless facility than the normal 5-point balancing test by case law it's called the Dakar verse the Zoning Board of Appeals it is a 2017 decision it goes back to 1980 case law from Rosenberg.

Chairman Postiglione after last month meeting you went back to the Planning Board and they were going to decide or talk about which type of pole. Was that done?

Mr. Kenny yes part of the reasoning for issuing the Negative Declaration they decided on the monopine design. The final design of the monopine as far as branch length and layout is still going to be finalized with the Planning Board at the final site plan approval.

So as I was stating before it is a different test before this board then the 5-point balancing test for a public utility, When we are seeking a variance like this we need only to show that there is gaps in service that the location of the proposed facility will remedy those gaps and that the facility presents a minimal intrusion on the surrounding community.

Mr. MacCartney reviewed information from Cityscapes to help analyze the first 2 factors and a little on the 3rd factor. The first 2 factors is there a gap in service that could be capacity or service itself. Cityscape agreed that the applicant presented and confirmed that there was in fact a gap in both levels and what is proposed would satisfy those issues. The last factor is the one that is really kind of open now for you and there's sort of concurrent jurisdiction over some of the issues and that is the minimal intrusion or least intrusive means to solve the issue. Cityscapes confirmed that the information provided shows that this is the least intrusive location with the minimal visual impact. The only issue that I can identify at this point is the visual impact and that's the one spot where you sort of overlap with the Planning Board and that is why the applicant has been to the Planning Board as well with balloon test and visual impact analysis.

Chairman Postiglione reminds me of a comment Member Seeley made last month regarding co-locators. What would a full build out look like?

Mr. Kenny there was a copy submitted in the last packet and the most recent photo simulation report. It doesn't show the extension of the pole. A co-locator could still request the additional height with an ineligible facilities request if it meets the height requirements and would have to

continue with the same stealth design of the pole, the same exact branch pattern.

Chairman Postiglione opened the meeting up to the public.

Mr. MacCartney if there is anything else board members want or see if nothing then appropriate to close the public hearing. I would suggest not taking a vote tonight as the provisions of the federal law all decisions must be in written form and they cover certain topics. I would like to get your thoughts and then I could draft the decision for the next meeting and if any changes then you could vote ideally at the next meeting. Need to discuss if you're headed in the direction of granting a use variance and with what if any conditions.

motion

discussion on next steps

Chairman Postiglione what if we don't agree with Planning Board with the monopine

Mr. MacCartney that is a great question and it's a tough one it's the applicant's worst nightmare to have the two boards disagree in that regard then it becomes a question of what is exactly the standard there's some law that talks about this board's decision some case law talks about it being a decision as to whether this what is being proposed is the least intrusive means is it the least intrusive visual impact there's other case law that talks about is it just minimally intrusive either way and you know we could ask Mr. Kenny to talk about that dichotomy or what he sees on this issue.

Mr. MacCartney if the board is acceptable of the visual impact of monopine continued design of facility this could be made as a condition with the follow up of the Planning Board. I think that it pretty much reduces the issues to the conditions I think if everybody's in agreement with that seem accurate. So I don't know how you want to handle that I could give you a quick summary of the conditions from that old one that many of which are not applicable at all, I could do that now, I could come up with what I think are you know applicable here on my own, I think it probably would make sense while we're here to talk about some of the conditions that would apply here.

- 1) it's subject to review and site approval by the Planning Board
- 2) electronic ground equipment shall be located as advised by the Planning Board
- 3) ground equipment shall be surrounded in all visible directions by shrubbery landscaping or other approved concealed methods and shall be properly maintained in a manner and at such time determined by the Planning Board.
- 4) maintain the equipment monopine
- 5) removal and restoration plan

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

Motion by Kevin Scully, second by Marci Daniel.

Final Resolution: Motion Carries

Yea: Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau, John Seeley

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 Chip Postiglione, second by Marci Daniel.

Final Resolution: Motion Carries

Yea: Kevin Scully, Marci Daniel, Chip Postiglione, Steven Thau, John Seeley

3. New Project

Action, Discussion: 3.01 **Wafa Safizadeh** (Z078-2023) SBL # 41-1-8 1218 East Mombashia Road Monroe, NY

Wafa Safizadeh applicant

Mrs. Safizadeh explained her application:

building at 12 East Mombasha Road

there is an issue with the side variance on the left side

asking for a variance left side 3-4 inches to meet the 30 ft setback requirement

Chairman Postiglione when reading the application the error was made when the house was dropped? Is this a modular home?

Mrs. Safizadeh not this is stick built.

Chairman Postiglione how old is the house?

Mrs. Safizadeh it is currently being built. There was a cabin on the property we knocked it down and are building from scratch current house.

Chairman Postiglione you knocked down the cabin did you remove the foundation or you are using the old foundation?

Mrs. Safizadeh we removed foundation. Survey was complete with approved setbacks

whoever placed the markers on the lot, missed the left side by 3 inches. After foundation was finished and new survey was done for the building department that is when the error was discovered.

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to schedule a public hearing for May 30, 2023.

Motion by Chip Postiglione, second by Steven Thau.

Final Resolution: Motion Carries

Yea: Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Not Present at Vote: Marci Daniel

4. Minutes

Action, Discussion: 4.01 March 28, 2023 Minutes

held over

5. Adjournment of Meeting

Action: 5.01 Adjournment of Meeting

BE IT RESOLVED, the Zoning Board of Appeals of the Town of Monroe hereby adjourns the meeting.

Motion by Chip Postiglione, second by Kevin Scully.

Final Resolution: Motion Carries

Yea: Kevin Scully, Chip Postiglione, Steven Thau, John Seeley

Not Present at Vote: Marci Daniel