

# TOWN OF MONROE ZONING BOARD OF APPEALS MINUTES

— 07/22/2025

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## TOWN OF MONROE ZONING BOARD OF APPEALS (Tuesday, July 22, 2025)

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*Draft*

### **Members Present:**

Kevin Scully, Chip Postiglione, John Seeley, Zachary Murphy

### **Members Absent:**

Steve Thau

### **ZBA Consultants:**

David MacCartney, Esq.

### **1. Welcome**

Procedural: 1.01 Roll Call

Procedural: 1.02 Pledge of Allegiance

Procedural: 1.03 Fire Exits

### **2. Public Hearing**

Action, Discussion: 2.01 **Aaron Zimmerman** (Z101-2025) SB: # 25-3-14.22 37 Dry Hill Rd, Monroe, NY

Applicant Representatives:

Dan Richmond - Zarin & Steinmetz LLP

Mike Morgante - Arden Engineers

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 John Seeley.

Final Resolution: Motion Carries

Yea: Kevin Scully, Chip Postiglione, John Seeley, Zachary Murphy

Absent: Steve Thau

Nay: None

Abstain: None

Mr. Richmond reviewed the application:

- he applicant seeks relief from conditions imposed in connection with a variance that your board granted in connection with a three lot subdivision by resolution dated September 13, 2000 from the requirements of New York Town Law Section 280-A. By way of background, the 2000 ZBA resolution granted the variance from Town Law 2 section 280-A and imposed three conditions which are as follows, that the applicant widen the entire length of Dry Hill Lake Road to 22.5 feet, that storm drains that exist along Dry Hill Lake Road be lowered and function as storm drains to allow drainage as required, and to resurface Dry Hill Lake Road from the northwest property line of lot one as shown in the subdivision map through the cul-de-sac terminus at the south end of Dry Hill Lake Road with six inches of compacted item four. These actions have never been undertaken and do not appear to be required for the public health, safety, and welfare. As Mr. Morgante explained previously and can explain again tonight, he met with the Town Fire Chief to preliminarily discuss potential improvements to Dry Hill Lake Road to facilitate fire safety and in some the Chief stated that the fire department has responded to calls on Dry Hill Lake Road with no issues. So from that meeting we believe that we can address any concerns your board and the community may have. I'd like to hand it over to Mike that can walk you through the project in a little more detail and then I can go through the five factor balancing test under state law.

Mr. Morgante -

- outside the 280-A variance it is simply a single family residential site plan
- if you look at the grading and utility plan on sheet 4 and the site plan sheet 3 you'll see the extent of the project
- will be served by municipal water and sewer - both utilities are available at the site
- need to apply to OCDEF for sewer permit
- the wetlands have been located
- showed all kinds of site features on the map
- working with the Planning Board for development of the site
- come to the point we needed to come to the ZBA for relief from 280-A variance
- we would look to extend the pavement at least through the front of the property along with the portion of the residence itself
- visited site again today checking the drainage one of the potholes the fire chief spoke of was actually a sewer manhole
- the sewer manhole will need to be adjusted - raised to grade and patched around it
- another pothole near the intersection of Dry Hill Lake Road and Orchard Lake Drive

Chairman Postiglione - as I was going through the project a couple of weeks ago and again today, the original 3 lot subdivision in 2000 14.1,14.21,14.22 original subdivision the builder and going back to the resolution of 2000 by the ZBA with the three stipulations as reviewed to widen the road, storm drains, and resurface the road suppose to happen during the subdivision, but it never happened. I walked the property and was talking to neighbors none of

the 3 stipulations have been completed. This is a private road that went up for auction and one of the owners now owns the road. The gentleman maintains the roads and sends invoices out to the other residences. How could those conditions not have been taken care of?

Mr. MacCartney - I would suspect, but don't know that it just an enforcement issue, might be something that fell through the cracks and it wasn't enforced unless anybody has any other maybe the applicant knows.

Mr. Morgante - we have done extensive research and don't know why they were not completed

Mr. Richmond - it would be infeasible to do to widen the road at this point, because it would involve using some of the neighbors property. We understand the neighbors are not interested in cooperating with that.

Member Scully - there is no drainage on the road that I saw

Chairman Postiglione - read the 3 conditions from the previous approval again

Mr. Morgante - I would note 1 thing pavement was extended to the beginning of the cul-de-sac from lot 1

Chairman Postiglione from what I've heard the homeowners paved the road at their own expense not by the subdivision owner

Mr. Morgante - in the times I've been to the site, what I've noticed is appears to be on the right hand side there appears to be some swales with some culverts that cross underneath the driveways. That swale is heavily laden with leaves and other deleterious material. On the left hand side there appears to be an asphalt curb, a little small asphalt curb that runs pretty much the length over respective driveways. My guess would be so that storm water doesn't or at least it helps to prevent the runoff of storm water into those particular lots.

Mr. Richmond - I know your board's aware, but I want to be clear the public knows that our client has no relationship to the original developer.

Mr. MacCartney - I just had a quick question on the ownership of the road itself. Is the road considered a separate lot? Do each of the lots own to the center of the road or what is the situation with the current situation with ownership of that road?

Chairman Postiglione - Mr. John See purchased the road in auction for unpaid taxes. Hoping to hear more about that during public comment.

Chairman Postiglione - brings me to another questions, that is truly a private road but the applicant is seeking 280-A and relief of the 3 conditions

Mr. MacCartney - the board back in 2000 granted the 280-A with those conditions. And they're saying, "Okay, we've got the 280-A we'd like that to continue, but we want to remove the three conditions."

Public Speakers:

John See I own the road. There is drainage on left hand side of the road as you are going up. When the lots were build the guy did make improvements on the road. He paved it and

widened it and built those culverts on the side and put drainage down at the bottom. As the years went by we all chipped in and had the road paved and then it went up for auction and I purchased the road to take care of it. I take care of it and pay the taxes on it.

Chairman Postiglione - does anyone recall during or after subdivision not allowing the builder to or not giving him permission to widen the road?

Georgette Coates - Orchard Dr

- trying to understand where Dry Hill Lake Road actually stops?

- I live at the top of Orchard Dr I know it starts down on the bottom it's considered a paper road across from me. Wondering if this gentleman owns all the way up to the top by me?

- across from my house is all woods all the way down to the cul-de-sac

- at one point somebody wanted to build there and they couldn't, they wanted to build a bridge across the lake. I think environmentally they weren't allowed. There is only one way in and out. Also concern for the timber rattlers over in that area.

Mr. Richmond - Mr. Chair, I just want to be clear for the record we're only talking about building one single family home.

Chairman Postiglione - understood, did I say anything different? I think I clarified that to her, I said it's just one home and I specified the lot.

Ms. Coates - so in the future there will be no more other development. Just one home there.

Chairman Postiglione - in the future I don't know. But we're only talking about this one lot right now.

Janice Squires - bottom of Dry Hill Lake Road

- I'm a little confused with this whole thing because this is going back several years before Mr. See bought the road. There was a whole big to do about who owned the road. This is going back many, many, many years. As far as the development went before they moved in, the person that was building it, the developer, he was responsible for those three lots. And from what I understood, nobody could get access to loans on those houses until he met all the specifications of the road. It had to be paved. It had to have the covert. It had to have the proper drainage. That was all part of that development. That's the way I understood it. So, two houses were built. The third house never got built. I don't know whether the contractor, whomever, if they went out of business, but that was never developed. It does butt up against Shea Lake. I don't understand what happens with runoff. Is it going to interfere with that lake? There is a dam there for the runoff. When it's really bad out, that water flows right down to 17M and there's lots of times it's flooded. I

don't understand how any of this is going to benefit us. Mr. See went through he effort of buying the road. He does maintain it by getting it plowed. It was supposed to have been widened back with the original developer. It was supposed to have the proper drainage. It

never did. The drainage on my side of the road, which is the right hand side, the pipes were put in above ground. Those drain pipes were put in above ground which was absurd eventually they came back they were lowered the grates are above ground it makes no sense it's now all grown over none of it works whenever it rains it floods. Somebody needs to check it and I'm not saying Mr. See is wrong. He did everything he could, but apparently this has got to go back to the original developer who was supposed to take care of the road properly and it never got done. The development never went through. And again, what happens with Shea Lake with the runoff? That's my concern.

Chairman Postiglione - Shea lake is a part of this lot

Mr. Morgante - I could also add that as a part of the deed the owner of this particular lot is solely responsible for the maintenance of that dam. So right now there's I mean there is an owner, but there's no house. I don't know who the owner was before this, but at least you'll have somebody now who's an occupant of that particular property that you know by deed has to actually be responsible for the maintenance of that particular dam spillway. Nothing was ever done with that lake because many years ago we had that hurricane that major flood that destroyed part of Monroe. I mean people were being taken out of their houses on rowboats. That lake literally overflowed. Our road was washing away. That was before it was even paved. As far as I know, nothing has ever been done with that lake and that drainage the dam or whatever they want to call it, the runoff. But again, that original builder was the one who was supposed to be responsible for doing the road properly, maintaining that road. That never happened. And like I said, there was a big to-do trying to find out who owned that frontage, that road. And then Mr. See came along fortunately at auction bought and it's considered a lot, it's not a road. So he bought it, maintained it, plowing and so forth, but it should not have ever been his responsibility.

Chairman Postiglione - I don't disagree with you and that's how I open this meeting with those questions. is I I turn to the lawyer and say how was this not done right when it was three conditions that the variance was given now according I don't have a question for you the the original builders is out of it Mr. See is the owner of the road now.

Janice Squires - Mr. See has been responsible, he's been maintaining it. The problem is it should not have fallen on him. It shouldn't have fallen on all the rest of the homeowners. But, it's not clarifying who's going to be responsible, the new developer, and what happens with Shea Lake and how's that going to affect us? I appreciate his taking the effort of buying that parcel and it's listed as a parcel, it was never listed as a road and that was where the tax problems came in because they couldn't figure out who owned it originally and somehow he managed to get in on the auction. So, there's a lot of questions and I'm not faulting any of the owners on the road, just this development coming in. So, that's my comments.

Mr. Richmond - Just very briefly, again, it's one single family house that, would be there to

contribute to road maintenance with the rest of the community and help it out that way. Any environmental issues obviously we'll be we're going to need to go back before the Planning Board. We're going to have to work with DEC on any wetland issues as well as the Planning Board.

Chairman Postiglione - dooly noted you know the DEC like we discussed the first meeting with the that dam and whatnot. That's not what's in front of us here at this meeting. What's in front of us at this meeting is granting the variance of the 280-A and to the three conditions to give a pass for lack of better words.

Mr. Richmond - Just to clarify, as Mr. MacCartney pointed out, the 280-A has already been granted were just asking for the three conditions.

Chairman Postiglione - That was back what in 2000? Is there a time limit on that counselor?

Mr. MacCartney - No. Those conditions don't expire. That's why the applicant is here, And yeah, was there a time period in which those should have been done? I don't remember seeing that in there, but it was e supposed to be conditions to the development of the three lots. I think they were granted in that connection and should have been done prior to or in conjunction with the development and it wasn't. So now in order to develop this one, the applicant has been told I think appropriately by the Building Department that you can't build until those conditions which remain in place are satisfied.

Chairman Postiglione - According to Mr. Maldonado's letter he's asking for three items, right?

Mr. MacCartney - Ben's letter of March 2024 the first one says the required building permit could not be issued for the following reason. The 280-A of Town law requires public road frontage on an improved Town road. Your lot does not front on any improved town road. So what Mr. Maldonado is saying the way I interpret it is your 280-A variance is not effective because you haven't satisfied the three conditions that are attached to it. I think that's how that's read. And so he's saying until you satisfy those three conditions, you don't have your 280-A variance. So I don't know if it's semantics or not, but either way, the applicant right now can't build until he gets through this. Whether we're saying he needs a new 280-A variance without those conditions or he has the 280-A variance and doing away with the conditions, it's effectively the same thing. The bottom line is the applicant is here asking to be able to build without having to satisfy the three conditions previously imposed. Those are one there was a requirement that the developer widen all of Dry Hill to a width of 22.5 ft., the second one was that the applicant had to lower all of the storm drains on Dry Hill. I'm reading from my notes, not verbatim from the item and number three was required to resurface Dry Hill from the northwest corner of lot one up to the cul-de-sac with 6 inch item four. So I guess just to refocus, what is the relief and where does all the testimony that you've heard fit in?

Chairman Postiglione - what about number 3?

Mr. MacCartney - In Mr. Maldonado's letter those don't come before this board, that's for the Planning Board, number 2 says you need Planning Board approval and you need a tree plan.

They are not seeking relief from the requirement of a tree plan. What I think the issue is before this board applying the balancing test as you would any area variance because the area variance standards apply to request for relief from the town law section 280-A those criteria are imported into this issue of a 280-A variance. What I think you need to be focused on is the impact the three conditions and how the absence of those conditions if you were to grant them the relief that they seek, right that's the benefit that they're seeking. You have to weigh the benefit that they're seeking which is to not implement those three conditions against the detriment if any that you find would occur by the contrary.

Chairman Postiglione - But now you throw the curveball in that someone owns the road now, right? So it's not a public road. So you got relief from these three conditions. It's not a public road. Mr. See owns the road and obviously this is not a knock on anyone in the public. Just hear me out the people at the top of Dry Hill Road might not be seeing the poor drainage as the people on the bottom of it as it runs downhill.

Now if we here as a board are trying to weigh those three conditions, how do we do it with a private road or a private lot because obviously there's going to have to be permission given from that owner.

Mr. MacCartney - you've got sort of a confluence of you have these 280-A requirements, you have the standards for a Zoning Board to apply to the granting of an area variances being sought and you have private property rights that may be in conflict with each other. It may not be between the owner of the road where someone a prior board a Zoning Board has required work to be done to a road that is now owned by a private citizen. I've not ever seen this before.

Mr. Richmond - if I could just add Mr. MacCartney as you know for the area variance one of the factors we have to address is feasibility and I think as we've discussed previously the conditions no longer appear feasible to implement that actually goes to the merits of the application before your board. The point that the Chairman is raising, but I would also point out Mr. MacCartney it's the Zoning Board can grant an area variance pursuant to the normal five factor balancing test, and also if the circumstances is completely different standard under town law 280-A an exception if the circumstances of the case do not require the structure to be related to the existing or proposed streets or highways. I think it's either one, but I think the five factor tests

Chairman Postiglione - We know the five factor balancing test. Listen, the five factor test is, I'm talking to you don't look at Mr. MacCartney, right? The five factor test will be something that we'll go over afterwards. We're not even at that point right now. But the comment that you made that it might the conditions don't seem feasible, well, they might not, but they might be, right? There would have to be a little cooperation from people there. So, I'm not ready to say that it doesn't seem feasible or it does seem feasible. I think that has to be explored for the people that are living there, that are on the down end of that drainage part of it. I don't know, but we're not there yet to say it's not feasible or it is feasible in my opinion.

Mr. Morgante - Mr. Chair, could I add to the feasibility part of that? Traveling up the road on

the right hand side you have a fairly large deep drainage ditch which seems to capture most of the runoff from the entire road. If we were to widen the road we'd potentially be paving over that ditch. Not to mention that some of the driveways in that location start at the road level and then have pretty steep slopes going up to their residences.

Chairman Postiglione - don't disagree with whatever you're saying, but what I will say is by some of the comments here and watching some of this road when it is raining, I don't think that drainage is catching it.

That's the only issue I have and so we have a public forum here and this is open to the public to hear their concerns and they're living on the road. So from what I've seen, and I think Member Murphy you've seen the same thing, Mr. Murphy, lives close by where he's able to watch it when the rain's coming or just some of the testimony that we've heard here tonight. I don't know if the drainage is working. Probably can't be widened and condition three, condition three is almost a mute point because condition three says resurface Dry Hill Lake Road from the northwest corner with 6 inches of item number four compacted. That's a mute point because it's blacktop and we have pavement. So what we're talking about is drainage. Mr. Morgante - What I might suggest that is a possibility again that drainage ditch on the right hand side is very overgrown, has a lot of leaves in it, has a lot of vegetation. The culverts seem to be plugged in some cases. I don't think this applicant would probably take any exception to cleaning that out, reshaping that ditch, opening up the culverts to make sure that drainage is flowing properly. That would be a very reasonable and appropriate condition that the board could consider.

Chairman Postiglione - At at this point, we probably have to get permission from the owner of the road. So, this is going back to the complexity of this because if this was I tell you right now, if this was the original builder in front of us talking about developing this third lot, I am pretty sure the board would be I'd be like, "Get the heck out of here. Take care of the three conditions first and then we'll talk. It'd be that simple, but it's not that simple right now. And so the three conditions, that's the only thing that we can look at here unless anyone on this board sees it differently is the drainage because it's paved and maybe part of the condition they can fix up spots on that road with permission from the owner. I don't think widening is going to happen because the owner says he doesn't want it widened. So what we're talking about is drainage and I agree if you can get it cleaned out and we can see what's happening there. But again you would need permission.

Mr. Morgante - and one other note maybe one of the reasons why this work didn't happen as we're keep discussing this matter is because of the difficulty in actually constructing it. It may be one of the reasons why it just never happened. Again, building or widening the road to the right hand side of the road would be very difficult because of the driveways, widening road to the lefthand side would encroach in people's front yards. This might have been something on a piece of paper that made sense back in 2000 and then when we went to try to go and build it, it might not have made any sense.

Chairman Postiglione - I'm not saying it's the builder's fault, it's like Mr. MacCartney said, it's enforcement. Somewhere along the line, the town had to go and check and see if this was

enforced, but that didn't happen. Here we are.

Mr. MacCartney - Have you had any discussions with the Town engineer on any of the drainage, anything like that?

Mr. Morgante - No, the last Planning Board meeting that we were at I had tried to schedule a site visit with Mr. Arnott who was the Planning Board engineer at that time who has since left and that was where that left was left off. So, I took it upon myself to do the site visits, meet with the fire chief, do the investigative work, and figure out what's going on.

Mr. Richmond - I mean, what we are asking the board to do this evening, which I think it could do, so the Planning Board declared its intent to be lead agency and circulated a notice of intent. I know before the Zoning Board could act, the Planning Board would need to conclude the SEQRA process. But if we're referred to the Planning Board for that certainly we could, I don't know who the new town engineer is.

Mr. Morgante - Matt Sickler is the new Planning Board engineer and I have a good relationship with him and I'm sure I could set up a site visit with him and we could go out there and walk the site and further investigate.

Mr. MacCartney - I mean, it seems appropriate. I think Mr. Chairman, you sort of narrowed the issues down really nicely with the three conditions. The main one that is potentially feasible, again, not ruling anything else out, but the main one that seems potentially feasible is the drainage. This board cannot act one way or the other until the SEQRA process is complete and the Planning Board is going to be lead agency and they're going to be looking at those issues. I think it's required to keep the hearing open right now at the very least and then let the applicant get to the next meeting before the Planning Board and have at least some initial discussions with the town engineer on the same topics that we're discussing. And again, we can't force it, sometimes discussions happen between applicants and objecting neighbors as well.

Mr. Richmond - if Mr. See would give us his contact information we'd certainly love to reach out to him coordinate, potential drainage improvements and what elsewhere else, our client who's just building a single family home, could do to become a welcome member of this community.

Mr. MacCartney - So, I think putting this over a month, if the applicant thinks a month is enough or two months to allow some of this stuff to occur and then have the hearing back here again at on some future date seems most appropriate right now.

Mr. Richmond - We would take that serious and I would actually request maybe if they could put over till October because we believe the Planning Board is certainly taking this seriously as well and we want to give them whatever information they need so that everyone's comfortable with what we're doing.

Mr. Morgante - It gives us enough time to tie things up with the Planning Board so that they might feel comfortable looking at a negative declaration so that when we come back to this board I don't want to rush the Planning Board in any decision. So I think that gives us adequate time.

Chairman Postiglione - Mr. See could you come up here a second, please? You see what we've been talking about here and what we're trying to do here as a board. Listen to everyone on your road and watch it. Would it be okay with you if you worked with these gentlemen to look at the drainage would that be something that you would be open to having a discussion or showing them? No promises.

Mr. See - Nothing happens without my approval. Can I clarify something before about the lake back there? That lake never flows down that road. When it goes over 17 on the bottom, the real issue there isn't even the dam. That lake never overflows. I've been there for 32 years. What it is, if you follow the stream that comes out of the lake to 17, that covert is too small. So when there is a lot amount of water coming through that dam and hits that covert, that's where the issue lies. That lake never comes up that high to go down the road.

Chairman Postiglione - I don't disagree. That's not what's in front of us. All I'm asking right now is because it's nothing happens if these gentlemen reach out to you and try to look at the drainage because there's some people on Dry Hill Lake Road that are experiencing terrible drainage down at the end and if it floods, is that something you would be open to.

Mr. See - I'll discuss, but like I said, nothing can be touched without my approval.

Mr. Morgante - we would document corrective measures, put it on a plan. We could even have Mr. See sign off on it and then the town could certainly enforce it during construction. I do find his input on the culvert and the dam useful. So, I'd like to continue that conversation with him because it helps me as an engineer to understand what the issues are with the site so that we can take care of not just the road but the dam possibly at the same time. I would suggest one thing further, when I walk the site with the Planning Board engineer, it would probably be good if we can set up the site visit with Mr. See at the same time. This way, he'll save us a lot of time trying to figure out where things are, we'll get valuable information from him and we can also get somewhat of verbal input from him on the corrective measures we want to make and then we can put that on a piece of paper and make something happen.

Mr. See - Can I ask a question - that's a single family home. This can't be commercial?

Mr. Morgante - We're in the SR15. So, whatever the zoning permits

Mr. MacCartney - I think you should make a motion to adjourn the public hearing to whichever date you choose and that way it's on the record.

Mr. Richmond - I want to thank the community for coming out and we look forward to working with you.

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to move the public hearing carried over the October 28th meeting

Motion by Chip Postiglione, second by Kevin Scully.

Final Resolution: Motion Carries

Yea: Kevin Scully, Chip Postiglione, John Seeley, Zachary Murphy

Absent: Steve Thau

Nay: None

Abstain: None

### **3. Minutes**

### **4. Adjournment of Meeting**

Action: 4.01 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 John Seeley.

Final Resolution: Motion Carries

Yea: Kevin Scully, Chip Postiglione, John Seeley, Zachary Murphy

Absent: Steve Thau

Nay: None

Abstain: None