

TOWN OF MONROE ZONING BOARD OF APPEALS MINUTES

— 09/26/2023

TOWN OF MONROE ZONING BOARD OF APPEALS (Tuesday, September 26, 2023)

Generated by Norinne McSweeney

Members Present:

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

Members Alternate Present:

Zach Murphy

ZBA Board Counsel:

David MacCartney, Esq.

1. Welcome

Procedural: 1.01 Roll Call

Procedural: 1.02 Pledge of Allegiance

2. Continued Public Hearing

Action, Discussion: 2.01 **Lebowitz** (Z077-2023) SBL # 43-1-8.34 34 Irene Drive Monroe, NY held over to October 24, 2023

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 October 24, 2024.

Motion by Chip Postiglione, second by Steven Thau.

Final Resolution: Motion Carries

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

3. New Projects

Action, Discussion: 3.01 Town of Monroe Planning Board

Bonnie Franson Chairwoman for the Planning Board

Good evening everyone my name is Bonnie Franson and I'm the Chairwoman of the Town of Monroe Planning Board and we're here in front of you because our attorney on behalf of our board submitted to you a notice of appeal with regard to a determination that was made by the Building Inspector and so you should have that it's dated September 7th and it sets forth what we're asking an appeal from so I don't know if you had an opportunity to read that or what questions or comments you may have.

Chairman Postiglione - I've been going over it since we got it last week and I started going through it all it's a very lengthy file. I would like you to explain to us or take the board through if you will is what the Building Inspector his determination in the way that he saw it.

Ms. Franson - I was looking through the packet that you received I'm not sure there's one kind of critical piece of information here which maybe puts it all together but this application was referred to us by Mr. Maldonado. The applicant had submitted building permits to the building department under the name of Summer Crest LLC to conduct emergency repair to siding and roofing for all these various structures and the reason it ended up in front of the Planning Board is because the applicant at some point in time had communicated with the town historian and the historian visited the site and together you know communicated about the history and ultimately the historian wrote a letter saying that this is considered a locally historic property as a result section of zoning

Chairman Postiglione - there are 19 buildings total, 13 seasonal, 4 single family, 1 rec and 1 barn

Ms. Franson - that has been part of the question as well. When we received the application, there was a communication with the Building Inspector and what are the uses? Because we act as a Historic Preservation Board, that's why it ended up in front of us, and when we do so part of that consideration is well what are the uses it's code 57-32 so that's our historic review provisions and so part of what we were thinking what is this or how is this used because this was a summer Bungalow seasonal Community right and so ultimately Mr. Arnott, who's our engineer for the Planning Board sent a letter to Mr. Maldonado and he referred the applications and asked if they could confirm the uses for the buildings and so it was Mr. Maldonado in a letter that was sent back to the Planning Board who indicated what the various uses were for each of the buildings and it was either single family, there's a two family and or seasonal dwellings. So based on that determination the building inspector's determination we decided that we should appeal this to the Zoning Board of Appeals because we're questioning whether in that applicable Zoning District those uses are allowed in terms of the seasonal dwellings in particular the summer bungalows. There are kind of two Provisions in play one is if they are considered summer cottages or some seasonal bungalows that property and those particular buildings appear to have been abandoned a while ago and there's some non-conforming use provisions that we believe come into play. There is a section of the code that says if a property had been used as a rental summer development or Bungalow Colony considered lawful non-conforming use may be continued, but then there's another section of the code says but if a use has been abandoned for 12 or more months then you can't continue that non-conforming use and so given statements

made on the record by the applicant who purchased the property and so they had been abandoned for a while and he's restoring them. It's been a little unclear specifically what the applicant would like to restore them to and on the record he's indicated you know look I'm in front of the Planning Board specifically, because all I want to do is put roofing and siding on, but because our application requires that a use be defined part of this was to refer back to Mr. Maldonado and what are you finding this falls under. So we got that determination from Mr. Maldonado, Mr. Arnott indicated and this kind of sums up where we are when he had sent this back to Mr. Maldonado he said the board requested that I refer this application to your office for a determination of use on the property the board was concerned that it's being asked to approve work to buildings that may not have a legal use since some of the buildings have been vacant for some time and appear to have been abandoned or appear to have abandoned any pre-existing non-conforming use the board is asking you to confirm the allowed uses for the buildings. That's when it came back to us and it wasn't indicated as being vacant or non-conforming it came back as either a single family, two family and seasonal dwellings.

Chairman Postiglione - it's inspection report done August 9, 2023 unless I missed something or from what I got out of it the building inspectors determining four single-family year-round dwellings, 13 seasonal summer dwellings, one Recreational Area Community Building and one Barn storage. So where and did I hear you say just a little while ago about two family. Ms. Franson - I believe that one of the buildings is a two family it's been in existence it's occupied at this time I believe there are three or four buildings that are occupied at present and I believe one of them if I'm recalling correctly from the presentations one may be two family one I think a single family and there may be another single family that are currently occupied.

Chairman Postiglione - so right there that goes against the determination that the building inspector because I don't see that he's determining any of those to be two family.

Ms. Franson - we're focused more on those buildings which have come in front of us that especially are identified as seasonal that don't appear to be occupied and appear to have been abandoned. Again can you even consider them to be anything but abandoned, would they ultimately. We're proceeding as if we're allowed to continue our Historic Preservation review of the buildings for the roof and the siding so we were kind of on two separate tracks here.

Chairman Postiglione - the owner is the person that brought in the historic review, but once then that's a whole different set of Standards to follow.

Ms. Franson - correct and that's what then triggered our review, because I think what was happening is there were various improvements and

other things happening on the property had never come in front of our board, but once that historic local designation was made then it was the Building Inspector who then indicated to the applicant that they have to come in front of the Planning Board in terms of our Historic Preservation Authority and so that's why this even came in front of us because it probably wouldn't have if not for that historic, but once it was in front of us it then became a question of what are the uses in part so that we could figure out how do we look at these buildings if we're going to allow them to be sided and roofed what's appropriate compared to if it was a seasonal Bungalow dwelling and that's where we started to get into this well is it even allowed because of the zoning District within which it's located and we just wanted to ensure that we're not going down some path of allowing things that may not be allowed if that makes sense.

Member Scully - what are we referring to them as. There's a bunch of different terms some are Bungalows, some are Cottages, accessory buildings.

Ms. Franson - so this determination is an appeal from the Building Inspector's determination and I would go with whatever he wrote on his spreadsheet.

Member Thau - So some of them are single family year-round dwellings obviously, others are seasonal summer dwelling and then there's two on here that are addressed separately in the letter from the Planning Board Council where it says the Planning Board is also appealing the determination of the legal use of the recreational area Community Building and barn storage.

Ms. Franson - and those are identified on this list right one identified as Recreation Area as you mentioned that's 45 Pinecrest Lane and the other is a barn storage accessory structure which is on an entirely separate lot and that one that is on an entirely separate lot our attorney indicated that from our code perspective normally the use has to be something that's a principal use and that appears to be an accessory use and the recreation area I don't think is allowed. I think she had raise that question whether or not it's allowed as well.

Chairman Postiglione - does anyone on the board see anything different than I do because it's right on on the packet that we have to flip over it's the page number two where the building inspector States his determination identifies the legal use for 19 structures four single-family year-round dwelling, 13 seasonal summer dwelling, one Rec Area Community Building and one Barn storage. As I went through the packet and there's a lot to go through I kept coming back to that so I don't know if I'm missing something because right off the bat I'm having a hard time if we're here to make a determination of what the Building Inspector is determined to be for use we're already talking about a two-family home that's not being accounted for right or am I thinking of that too simply right.

Mr. MacCartney - the Building Inspector was asked to make a determination as to the legal uses, he made a determination on August 10th that's attached as exhibit a to the application and there's a letter that he submits making his determination in regard to the

uses of each of the properties each of the structures and that's on a spreadsheet that's attached and that and the appeal is saying there's 19 different structures that are listed on that spreadsheet with the legal use indicated on the right hand side. So he's determined for each one that you look at you know what the legal use is. What is the legally permissible use and Mr. Maldonado interpreted the code and interpreted the facts as he saw them on the ground to have these legal uses presently. The appeal is straightforward in that regard I think the Planning Board is coming before you saying we disagree for you know the several reasons set forth in the narrative that each of these is in fact the legal use and they're asking you to interpret and apply the code and decide that appeal. In terms of procedurally I know you have the application documents. I know today I think we late in the day I haven't had a chance to read it I read only the first page before I came up here it looks like the property owner hired Council or has Council that submitted something in opposition or stating a position, I didn't read it yet, but procedurally where you are at. This is a typical first meeting even though it's an unusual application it's not an applicant looking for an area variance which is 90 of what you see before you you have an application the same procedures apply are there any documents or is there any information you'd like from the applicant before you deem it complete and you know or is it ready to go and ready for you to schedule it for a public hearing and that's really what's before you. If anybody else has any other questions of the applicant in regard to you know understanding anything more about what the application is that you know that would be appropriate now too.

Chairman Postiglione - as usual counselor you are correct and what you're saying but as we sit here as a board and we listen to the use and what they determined in the reality I always find it hard to not let the two of them cross but as usual you are correct. I know this property pretty well throughout the years. Anyone on the board have any comments or any more questions on what they want to hear.

Member Daniels - do you know how long it's been vacant.

Member Scully - I don't believe it's been vacant so to speak there's been summer cottages that have been abandoned, but people have been living on that property. Chairman Postiglione - Not all the buildings are in use as you can tell by the pictures.

Member Scully - four buildings that have been lived in pretty consistently maybe there was a little time gap in the sale, but they've been lived in the four single-family year-round dwellings they have been lived in.

Member Thau - but aside from those four structures that they've all been occupied, the rest have been pretty much abandoned.

Ms. Franson - I'm not sure that all four were or if one of them was more recently certainly at least two appear to have been if they were seasonal converted a while back it appears.

Member Thau - Has there been any information put forward by the applicant from the Planning Board as far as determining how long they have been occupied or not. Ms. Franson - No not really not something specific. I don't think some of the information we've been looking

at have been from the tax assessment information where you look at a property inventory what's there and some of them look to have been occupied but whether they've been abandoned or not abandoned clearly some of them are in a condition that there's no way they could have been inhabited for some time but how long the ones that appear to be used year-round have been used year-round I don't know that we specifically have that information the building inspector or the tax assessor does but I don't know that we have that or if we did I don't know that it's in this package I mean what is here is there's information on when this particular applicant acquired the property there's a recording deed in here but that won't speak to you know what was vacant and what was occupied at the time. I would say I think that based on the representation and the minutes the applicant has indicated what are not used and what are being used I would say that. They have provided other photos and provided a drone video available on line. The video shows the overview of the structures, you can see the trenching installing new electric meters, utilities, applicant indicated they had gotten 9-1-1 numbers for all the buildings.

Member Scully - how is that possible without use assigned.

Ms. Franson - I believe the applicant indicated it was for health and safety reasons. Not sure how 9-1-1 works so I am not sure how it was set up.

Member Scully - the Building Inspector has listed 13 houses as seasonal/summer dwellings.

Ms/ Franson - yes, as per that table that's part of our package.

Member Scully - according to the code if something's been abandoned for 12 months or more it's nothing.

Ms. Franson - that's our question that's why we have this appeal because he has it as dwelling and that was his determination. We're looking at buildings that appear to have been abandoned if that's the case was it appropriate to make the determination that they are either as the ones that are not being utilized are they really seasonal dwellings or are they really just vacant abandoned buildings that's why we're here in front of you and in terms of the ones that are occupied I think that there's some other questions that we had in our appeal, but I would say the primary interpretations we're looking at is to how the Building Inspector rendered a determination as to those uses for the seasonal dwellings in particular, but again in in terms of everything in all our questions they're set forth in our Planning Board attorneys letter to your board.

Member Scully - are we making any kind of determination on a barn and the casino where the recreation hall.

Ms. Franson - it's page four where in the last paragraph on page four of the Naughton and Torre letter it says related the Planning Board also appeals a determination as to the legal use of the Recreation Area Community Building and barn and storage accessory structure. Ms. Torre is asking on our behalf whether that was an appropriate interpretation. Because it's been vacant and yes there are references to casino because that used to be the old term.

Member Thau - circle back around you said that the primary concern obviously of your application is to the factor of the abandonment, but you said the Planning Board also has I guess it's part of the application as far as the other four structures that are currently occupied.

Ms. Franson - I want to state that she did indicate in addition with respect to structures determined to be single family year-round dwellings it's unclear when such uses were established and it appears one or more variances would be required to have more than one single family dwelling on the same lot. It's not a use that's allowed in that particular Zoning District because single family detached dwellings are allowed, but it's more the fact that there are multiple single families on the same lot. The way we believe the town of Monroe Zoning law was set up that it was expected that there'd be one dwelling on a lot, but again I think those ones would require probably more review from the perspective that I don't know how long they've been occupied as such and did they proceed when would they have been allowed at some point in time when they were converted.

Member Thau - is it in dispute regarding the two family house I see on Mr. Maldonado spreadsheet it doesn't list the two family house but on Mr. Arnott's report the Town Engineer it does list the two family house is that in dispute as far as the category of that house single family versus two family to your knowledge.

Ms. Franson - I don't know if that's not a dispute between the applicant and the Building Inspector I mean we again we have our determinations I believe that's been represented as a two family.

Member Thau - said that's obviously a consideration as well as you said single-family homes on the same plot versus now considering a two-family home in addition to that.

Ms. Franson - which isn't indicated on Mr. Maldonado's table.

Member Scully - are we being asked to interpret the barn and Rec Hall as abandoned or not abandoned the same as the summer Bungalows?

Ms. Franson - yes and then I believe the letter also talks about the use of the barn building because of the fact that you typically don't have or allow an accessory building on a lot unless there's a principle use associated with it on the same lot.

Member Seeley - where's the historic? (inaudible)

Ms Franson - it is not it was something that was done by the town historian it's been designated locally whether Mr. Mitt's pursues something beyond that I'm not aware of but again this was a local designation as per our own code. I'm not sure if the letter that the historian provided is in your packet but if it's not we can provide that to you because that kind of triggered this whole process in front of us.

Me. MacCartney - I think that would be a good idea to submit that.

Ms. Franson - Norinne could you provide it to the ZBA members

BE IT RESOLVED, that the Zoning Board of Appeals for the Town of Monroe hereby makes a motion to set a public hearing for October 24, 2023.

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: 3.02 **Nelson Luciano** (Z079-2023) SBL # 15-4-30 78 Cromwell Hill Road
Monroe, NY

held over

4. Returning Projects

Action, Discussion: 4.01 **Kolakowski** (Z080-2023) SBL # 24-1-38 428-430 Orchard Hill Road
Monroe, NY

Richard Crogran - representative

Monica Kolakowski - applicant

Mr. Crogran last time we were here you requested some drawings that were submitted

Chairman Postiglione - one of the comments I had when looking at the drawings, after picturing what you were describing last time, I felt it was a little more substantial than the way you described it. That is why we ask for drawings.

Member Murphy - agree the last time we talked about it seemed like a smaller job, reason for interest in seeing the plans. So it looks like a set of stairs going up to a sitting room in front of the attic doors with 3 different attic spaces. What is the attic currently being used as?

Ms. Kolakowski - storage

Chairman Postiglione - the reason you are here is you received zoning violations for the rear yard, lot coverage and they are pre-existing conditions. I do agree with Member Murphy that it is more robust than originally thought.

Member Scully - I thought it was just a little like porch roof.

Chairman Postiglione - a glorified awning. With the stairs it seems like it could be additional living space at any time.

BE IT RESOLVED, that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to schedule a public hearing for October 24, 2023.

Motion by Chip Postiglione, second by Kevin Scully.

Final Resolution: Motion Carries

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

5. Minutes

Action, Discussion: 5.01 July 25, 2023

BE IT RESOLVED that the Zoning Board of Appeals of the Town of Monroe hereby makes a motion to approve the July 25, 2023 minutes.

Motion by Chip Postiglione, second by Steven Thau.

Final Resolution: Motion Carries

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

Abstain: Marci Daniel

Action, Discussion: 5.02 August 22, 2023

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 Chip Postiglione, second by Marci Daniel.

Final Resolution: Motion Carries

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