

TOWN OF MONROE ZONING BOARD OF APPEALS MINUTES

— 10/24/2023

TOWN OF MONROE ZONING BOARD OF APPEALS (Tuesday, October 24, 2023)

Generated by Norinne McSweeney

Members Present:

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

Alternate Present:

Zachary Murphy

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Action, Discussion: 2.01 **Lebowitz** (Z077-2023) SBL # 43-1-8.34 34 Irene Drive Monroe, NY withdrawn

3. New Public Hearing

Action, Discussion: 3.01 **Town of Monroe Planning Board**

Bonnie Franson - Planning Board Chairwoman

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

Ms. Franson Planning Board Chairwoman I am representing the Town of Monroe Planning Board regarding this matter.

- our notice of appeal has to deal with Summer Crest LLC Community which was before our board

- it had been determined a designated historic property which required that they come before the Planning Board for exterior improvements

- during our processing the application for Summer Crest part of our application we went to the Building Inspector what are the uses of the various buildings subject to these improvements
- Building Inspector came back and designated some of them as single family dwellings
- primary issue the Planning Board see this property as a summer bungalow community which stopped to operate for the most part as a summer bungalow community. There are a couple of houses that exist and continue to be occupied but many of them are in range of dilapidation and state of repair and some of them don't even look usable
- was thinking about a kind of analogous situation to compare to - Rosmarin they have seasonal bungalow that are part of the operation that people stay in those bungalows at such time that it stops operation it ends, it ceases that's what a seasonal bungalow community is.
- that has stopped operating essentially at Summer Crest - the buildings now are being renovated for single family year round dwellings or a proposal to renovate them for that. From the Planning Board perspective calling them single family dwellings first of all that is not what they are at this point in time because they were summer bungalows.
- to be able to use it for these purposes may require some variances or review of the code to determine whether they can be used legally for that purpose we find that they really fall under the non-conforming use provisions of the code. Whereas some bungalow communities that are bonafide and continued in existence like Rosmarin from our perspective that would be a continuing situation this is not. So, we are in front of you to appeal that decision of the building inspector and I think it is important to make that determination so that the applicant has the appropriate route to pursue whatever they want.
- the Planning Board has no opinion nor did we express any opinion of whether what is happening there is good bad or indifferent we simply do not believe that it's a conforming use that these can be converted without some oversight in some way because of the fact that it is a discontinued non-conforming use that is our perspective.
- Our Planning Board Attorney Ms. Torre put together our notice of appeal the information's in there we've submitted this for the appeal of that determination and your consideration and decision

Chairman Postiglione - after last months meeting we went through all of this and after speaking with board members it is a layered process and after speaking with our attorney I see why it's before us. Now that it has been designated an historic site it brings in the question of use that needs to be answered and we would also like to hear from the Planning Board attorney to get more clarity.

Mr. MacCartney everybody has read through the information and at the last meeting there was a letter received that came in late from the representatives from Summer Crest they raise a lot of legal points and I think the board would benefit from hearing a response to the legal points raised so they see it in context with what the applicant is saying, applicant being the

Planning Board, squaring up the arguments to help the board understand what are the arguments before it and what you have to say about their points in regard to advisory opinions.

Ms. Franson - are you contemplating a memorandum of law or you just want to have the attorney appear before the board. What can be communicated to her as to what are the ZBA questions.

Mr. MacCartney - as the Chairman stated there are many layers to this application some legal issues, but there's some factual issues as well. There are several issues that the Planning Board has brought to this board with the primary one is it requested this determination of use in connection with its review pursuant to that Chapter 57-32. As the Planning Board was required to do it inquired among other things and applying its criteria to what the use was and what the legal uses were and requested the determination from the Building Inspector, who then made a determination which brought about the appeal. The primary basis of the appeal is that there was an abandonment, that there may have been a pre-existing non-conformity that was specifically allowed by the code if it was in use as of a particular date in 1954. There's a second code or provision and that said yes you can have non-conforming uses but there can be an abandonment of non-conforming uses and you're advocating that they've abandoned in whole or in part some of the various uses. I mean there's so many buildings on there and the property owner among other things is saying that maybe there wasn't an abandonment or there was only a partial abandonment. So they are taking some issues with some of the facts as well as issues with some of the law on terms of which code applies, how do you interpret the code.

Ms. Franson - I recall seeing that because there was some argument from Summer Crest that one of the sections superseded another and I don't believe that's the case I'm familiar with the points that you're raising.

Mr. MacCartney - I think to answer your question directly and I think you know it being a public hearing I don't know if the property owners may have representation here they can speak. I would imagine that there's fact issues as to what was abandoned and where and how and whether it was abandoned you know and what the import of that was and then there's a separate layer of legal issues on code interpretation so the hearing is probably going to have to address both those things.

Ms. Franson - there are some buildings that you can see that are in an incredible state of disrepair and that there is no way they've been occupied and meet the standard for continuance of a non-conforming use, are you asking then for additional information to try and date that.

Chairman Postiglione - I don't think so I think what you just explained is like the hanging fruit right. We can see the state in your package of the property, it's more the legal use or the interpretation going to be really key on how we hear that information that the board might not understand and we'll have to lean on the legal council.

Ms. Franson - can our council speak to your attorney so that there's a kind of common language in terms of what she should be presenting, and if it's something you want her to present here or respond to in a formal letter.

Mr. MacCartney - that is really up to you. As being a Town entity you're the applicant so we can't necessarily tell you what to do. I think the Chairman and I with my assistant we're issue spotting in terms of we're going to have a hearing there's some fact issues that I think are going to come up and there's some legal issues and you know the board would benefit from hearing both.

Ms. Franson - how are we going to receive the information regarding those issues.

Mr. MacCartney - it can be in writing, any hearing is a combination of sworn testimony. If you have people that want to testify about what uses are there, what uses aren't there, you want to make legal presentations could be in person it can be in writing it all comes into the record. As long as it's in the record and there's an opportunity for the public to speak and to be heard so the board can be fully informed and a real depth of understanding of both the legal and factual issues and then they can figure out exactly what they want to do here.

Ms. Franson - I'm hearing that there's some questions you have so I don't know if that's going to play out in this public hearing or if we'll get something or I guess we'll let we'll see how the public hearing proceeds.

Chairman Postiglione - I think it'll probably end up being played out in a public hearing like Council was saying we can't tell you how you want to do that if you want to bring your lawyer here but if they were to come here and there would be an open discussion and then this is where all the layers come into to play then after that there might be some pointed questions derived from that.

Mr. MacCartney - I don't want it to get too complex or obtuse the bottom line is the application it is pretty clear, the the property owner has submitted a three or four page opposition that raises questions and what the board wants is you've got an opportunity to respond and talk about what they have to say and I'm sure they're going to be here and they'll hear what you have to say I'm sure they they're going to expound upon what's in their letter and maybe there's other points that they're going to come forward with okay and the board's going to want to hear both sides on all issues.

Chairman Postiglione - does the board want to hear from the Building Inspector? Does anyone see a value in that?

Member Scully - I don't unless there's something I'm not seeing then there could be a value in it

Mr. MacCartney - there might or might not be we've barely started the public hearing so that would be an open issue.

Ms. Franson - I do want to just mention for the record that we had our public hearing on the exterior improvements and we did render a decision to approve it because that's something separate and apart from this interpretation that we're requesting . It was based on advice of council that there's not linkage when it comes to the exterior shell of the building which was being approved.

Member Scully - it's hard to say how can it be exterior when there's no roof?

Ms. Franson - I know and I don't disagree with you, but we could only act on the application that was in front of us because a Building Inspector had forwarded that part of it to us and we can certainly send you a copy of the decision because I think it was written in a manner that was very clearly limiting in terms of what we were approving. I hear what you're saying and it's something that we considered or discussed and again we went on advice of council that it was specifically the roofing and the siding. We limited ourselves to what we were approving for what it's worth.

Chairman Franson - during your Planning Board meetings is there a clear use of what they want to do. To me that's like the low hanging fruit which I was alluding to before you know when you read the package and knowing that it is historic designated it clearly states what is the use so I see where you're coming from I do understand the value of wanting to know that.

Ms. Franson - we specifically asked that applicant specifically was indicating he was not going to answer that question and that he talked a little about some of the adaptive reuse provisions that's in that historic preservation section of the code that talks about you're able to use buildings for certain purposes if you adaptively reuse a historic building and he talked about maybe having some kind of seasonal Bungalow Community again as a little destination. I'll tell you that there's public information out there that suggests other uses but when it comes to actually nailing down what the applicant wanted to do he said I'm going to figure that out at another time and all I want to do is put a roof on put siding on to protect the structures from the elements. Yet from our perspective when video was submitted it shows that there's a lot more going on with regard to reuse of the property. Then in receiving Mr. Maldonado determination and referring to these buildings as single family dwellings when they were used as seasonal bungalows was very troubling to us. That's why we're here because ultimately we wanted a determination from this board because then that plays into should there be any further review or approvals of the reuse of something that we opine has been abandoned that it was a kind of legal non-conforming use as a summer bungalow colony, but it was abandoned with the exception of a few of those buildings that appear to have been used. We don't know when, we don't know how long, but you could see from their state of existence that they've been around longer than and have been certainly in use at the time that it came before

us. While it's obvious that there are other buildings that simply are not used haven't been used.

Member Scully - there are some inconsistencies because you just brought it up you said single family dwellings which says it in the pack even here but in the letter it states that there's multifamily.

Ms. Franson - there might be a two family in there and that's a Building Inspector determination that wasn't our determination necessarily. I believe there might be in a unit there that may have been based on Public Information that's available that there may be a unit that was actually restored to single family use after the applicant purchased the property. We have not gotten any clear determination from the applicant as to what he wants to use it for and we initially were not getting a clear determination from the Building Inspector what's all this work being done at this at this property for what use, what is happening there and finally our engineer reached out and said you know we need this information it's part of our application process and that's when we got the list and when we saw it we're like we need to question this determination. I just I want to impress upon everybody what the applicant wants to use it for he has a right to apply for things to try and use a property in in whatever manner you know he would like to see but there are regulations zoning otherwise in this town and does he fit within that zoning and within those regulations as has been interpreted by the Building Inspector as well if not then there's a process if it is then he'll continue on.

Member Seeley - the Planning Board approved sealing of the structures roof and siding the exterior. It's clear some total reconstruction.

Member Scully - there is no wall to put siding on and no roof.

Ms. Franson - we approved siding and the roof. It was the type of siding. We specifically identified the buildings that have been requested which ones they could put that siding on but we acknowledge that if he needs building permits to be able to do additional work there's a process that he has to go through either through the Building department or whatever the process will be that plays out but we were just limiting our historic preservation role to the type of roofing and the type of siding. In fact I think we said things like this does not include new windows, there were various elements that we said that this does not include and will get you that

approval decision and that was what a certificate of appropriateness. That's what we issue as the Historic Preservation Commission so as I said it was very limiting.

Ms. Franson reviewed what was approved by the Planning Board at their October 2023 meeting. Allow alterations to the roof, siding and other exterior elements of 13 structures. We included the list of materials, this is a Type II action for SEQRA and we issued a certificate of appropriateness. One of the findings the history use occupancy and ownership of the property and considering the use of the property Planning Board notes that the applicant is not identified a proposed use of the regulated structures and requested to obtain approval for the

proposed alteration separate and apart from any approval of the use of the structures throughout the Planning Board's review process applicant has acknowledged that it is proceeding at its own risk in this regard implying the principle of compatibility the board has considered the prior use of the structures as a summer bungalow community finds that the proposed alterations compatible in this context however the Planning Board notes that such use is non-conforming and may no longer be permitted due to abandonment. The Planning Board thus determines to condition this approval on the applicant obtaining all necessary approvals for the Re-Use of any abandoned structures prior to any further issuance of building permits I.E permits for work other than that which is the subject of this approved certificate of appropriateness or certificate of occupancy for the same unless the ZBA opines that such approvals are not otherwise required. The Planning Board's approval appears to be conditioned on your determinations.

Mr. MacCartney - I ask I think what might be either a very pointed question or a very dumb question or one that maybe we just don't know. Did Ben Maldonado determine what the last legal use was at some point in time or is he making a determination that these uses on this spreadsheet are in fact legal now without requiring any further applications. I'll be honest with you, I can't tell from from reading the request for the review his response or the spreadsheet what his

determination actually is and it seems to me that what your application is a precautionary measure in case it be interpreted that it's legal right now no matter whether it was abandoned or not and it may be that's not a determination that he even made I can't tell, does any can anybody tell me that do you have anything to say about that Ms. Franson.

Ms. Franson - again that's why we're here we don't understand how that can be a determination especially for buildings that are practically nonexistent and falling down.

Chairman Postiglione - as I looked through it that's why I thought it would make sense to have the Building Inspector, I know he gave his thoughts in a letter here, but it's not crystal clear to me.

Ms. Franson - to your point Member Seeley we said it was limited to the installation of the new roof shingles and siding and does not include any structural or other approvals required to install said roofing and siding.

Chairman Postiglione - did your approval earlier this month go to all structures?

Ms. Franson - just 13 structures. We indicated that any additional work that requires historical review by the Planning Board including but not limited to replacement of Windows and or foundations to the extent the Building Inspector determines such work requires historical review by the Planning Board should not be commenced unless and until a new application for certificate of appropriate is submitted. So we get into the colors, we talk about the materials.

Chairman Postiglione - their designation is historic that was brought upon by themselves.

Ms. Franson - correct, so it was not on the national register, it was not national register eligible. The applicant represented that the Town Historian came to the property and made the designation.

Chairman Postiglione - where I'm having a difficult time grasping this with if he brought in the designation on himself and he's reluctant to say what the use is, he brought it upon himself. Like I said it is an onion with many layers.

Member Scully - letter from Summer Crest LLC it states that there's multi family homes in there and this all single family homes.

Ms. Franson - we understand where you are because this is where we were in our in our review and hence why it's very limited in scope, why we asked for the Building Inspector to make some kind of determination and so that once it came we appeared before you to get some direction.

Member Scully - how does the Recreational Hall and barn fall into this? I believe we included that in our determination although I know that the applicant has already done repairs to the casino um you know whether there are any additional that would be down the road and use no idea.

Member Seeley - inaudible asking question regarding use?

Ms. Franson's response to Member Seeley - well not necessarily, but I'm thinking about this adaptive reuse section for example. You may have a historic home let's say you know if you're in the Village of Monroe right and you're on Stage Rd you have those historic buildings over there so they may have been used historically for residential use but they could be repurposed for an office but still keep their character from a historic perspective you know whatever it was that appearance but the use itself it comes down to what the zoning would allow there.

Member Thau - you said there were renovations made on the casino and the barn, do you know if those were made prior to the request of the historic designation or thereafter?

Ms. Franson - they may have been done prior you would have to check with the Building Inspector records to see if anything was issued building permits.

There's public information out there where the applicant had hosted an event there I think at Easter time so I believe that was before they came before us which was in May and you know I'd have to look back to when the historian did the designation but I think some of the work may have preceded that.

Mr. MacCartney - there's a question in my mind like right now and again maybe it's putting my finger too directly on the issue, but you take any one of these spots that in the spreadsheet I'm just going to pick one out. # 51 it's listed in the use column as seasonal summer dwelling let's say it's one of those dilapidated old buildings that we've seen a picture of what would be the process to put that building into use and occupiable and usable as a seasonal summer dwelling. Has the

person been given carte blanche to do that by reason of this spreadsheet or is there still a process by which he's going to have to make an application for building permit and so on with this spreadsheet of the Building Inspector having nothing to do with it or is this the determination that it can be and he's just got to satisfy building code and then he can put it to use. I think that's that's what's unclear to me right now.

Chairman Postiglione - is it like whatever is needed is it per building or is it combine is it an umbrella over it all.

Mr. MacCartney - maybe we can hear from you know the property owner as well and definitely from the Building Inspector and others, at the end of the day the board has to understand what it's deciding you know and what can it decide and what the implications of a decision are.

Mr. Jonathon De Joy attorney for the property owner Summer Crest LLC. -

- sounds like my letter from last month has been read, there is another one I will be giving in this evening

- there are 2 main things in play here one is that the law is very clear that a use if it's abandoned has to be completely abandoned and that's because buildings and structures don't have use as parcels do, that's why on a Zoning map it shows each parcel not buildings or structures. So here the use as a bungalow colony has never been abandoned completely, some of I mean looking at the buildings are not occupied but others have been continuously occupied since 1930s when this property was developed. Now as far as the buildings that the Building Inspector determined were single family uses that's a permitted use in the district so that's really a non-issue. I mean there's no way that the town or anyone could find that these buildings couldn't be used for single family because it's its permitted use in the district now the other thing at play here is section 57-62 of the code which specifically makes an exception for Bungalow colonies that existed prior to 1954 which this did and it exempts it from the other Provisions concerning abandonment it specifically carves out Bungalow colonies. If the Bungalow Colony existed prior to September 1954 the third day of September 1954 it may continue in perpetuity and that's you know clearly what we have here nobody's disputing that this property has been a bungalow Colony since the 1930s and there's been some talk of Summer Bungalow colonies but when you read the code it's not a summer Bungalow Colony there's there's no definition of Summer Bungalow Colony and that term is not even used it's just Bungalow Colony now it's not defined but it it describes here.

Chairman Postiglione - your saying a bungalow colony is not defined.

Mr. De Joy - that is correct and it's not referred to anywhere as a summer bungalow colony, just bungalow colony. We did receive the Certificate of Appropriateness from the Planning Board last week and all of the buildings subject to those certificates will be restored to look as they have always looked so the visual outside appearance is not changing at all whatever they are used for now or in the future they're going to look the way they did in the 1940s.

Mr. MacCartney - I have a legal question you mentioned before you said that the section 57-52 exempts Bungalow colonies from the abandonment provisions of the code. On what basis do you say that?

Mr. De Joy - because if it didn't then this provision would have no meaning. I mean it really just describes in general pre-exist non-conforming uses, but by specifically carving out and enumerating bungalow colonies you have to read it as an exemption to those abandonment rules.

Mr. MacCartney - so you're saying only because it says in the code that a bungalow colony that existed as of September 3, 1954 is essentially a non-conforming use that the next section after that talks about non-conforming uses being abandoned that it does not apply just because it was specifically called out.

Mr. De Joy - yes, it's actually that the section on the The Bungalow colonies the exception comes after which might seem trivial but I think it's important because whoever drafted the code specifically put that after abandonment and like I say if you were to read that as though it was subject to the same abandonment Provisions then that section would have no meaning because it would be just the same as any other use.

Mr. MacCartney - it's different because that section simply identifies the date by which the The Bungalow Colony must be in existence in order to get the benefit of that section of the code.

Mr. De Joy - I don't read it that way I mean I think if it was if it specifically said that the code was changed in such and such a year to prohibit Bungalow colonies then maybe but I don't read it that way and you know zoning to the extent there's any ambiguity in zoning codes it has to be construed in favor of the property owner.

Mr. MacCartney - do you know of the date that's in that section of the code I think it's September 3rd 1954 was that the date of enactment of the code or was that some other date is there a one to one or you don't know.

Mr. De Joy - I don't know.

Member Scully - so are you saying that it's been used as a bungalow Colony or sub rental summer Cottage continuously.

Mr. De Joy - at least some of the buildings have yes.

Mr. MacCartney - so the question I asked the applicant before I wonder if you could give me your view on it give the board your view on it. Is it your understanding that the determination that is at issue here that spreadsheet is that determining what the current actual legal use is so that no further proceedings are required if you put it to that use or is that determining what the last legal use was that was on file at the Town was.

Mr. De Joy - it's a little unclear to me as well, but I think it's referring to the the current legal use that may continue, but again as I said you know the law does not prescribe uses to structures it prescribes uses to properties. So I you know with all due respect to the Building Inspector this spreadsheet doesn't you know totally make sense to me.

Mr. MacCartney - the code does talk about different structures and allows the Building Inspector and allows the Town to regulate what uses can be put to which structures on which

properties right like you can't have two dwellings on a property if that's what the code says, but you can if one of them is an accessory garage those regulations apply to the whole parcel but the code is specifically regulating the use of each of the buildings it doesn't just cast a blanket over it and say you could use it for one use it for all right.

Mr. De Joy - no I don't know that I would totally agree with that because you know the use is defined in the the use table and in the zoning map so to me the Building Inspector could maybe find that the property has two uses but I just don't how you can assign a particular use to a structure. I mean you could use structures for a variety of different uses now maybe if it's like a gas station or something you can't use a gas station as a single family home but here these are just small buildings they could be used for a dwelling, they could be used for an office, they could be used for a lot of the different permitted uses under the code.

Mr. MacCartney - what would be the process, like the question I asked the applicant before, if you take I'm going to make it up building number 51 on Mr. Maldonado's spreadsheet it says seasonal/summer dwelling, I don't know which one's 51, but let's assume that's one of the ones that we've seen pictures of and it's just wiped out. What's the process that you see on behalf of the property owner to put that particular building to use as you know a bungalow or a seasonal summer dwelling or even a single family dwelling.

Mr. De Joy - I would say as for a bungalow colony if we're to treat it as a pre-existing nonconforming use then the Building Inspector would you know that's his call but he would just have to issue a building permit and for single family same thing just a building permit because single family is a permitted use so there's really no question there.

Mr. MacCartney - it's just a matter of you'd have to put in a building permit to do that.

Mr. De Joy - I believe so I mean it would be up to the building inspector he could always deny that permit application.

Mr. MacCartney - would you intend to take the position that Mr. Maldonado's determination here is controlling or are you taking the position that's not controlling. Mr. De Joy - we say it is controlling he's the Building Inspector it's his call to make.

Mr. MacCartney - in your letter you're saying that this is just an advisory opinion but yet here you're saying it's not you're saying it's controlling so it's not advisory Mr. De Joy - so the opinion the Planning Board is also asking the ZBA to determine what the buildings could be used for and whether variances are needed. The Building Inspector never opined on what they could be used for or whether variances would be needed so that's really beyond the scope of his determination the only question is whether they can be used as single family or bungalow colony.

Member Scully - are we being asked that?

Mr. De Joy - that is how I read the Planning Board's appeal. I mean they may argued at length about abandonment that would certainly go to whether we can use those structures for what they've been used for.

Mr. MacCartney - do you have any historical information that would assist the board in determining what you know and I understand that your position you've stated it clearly that the board shouldn't be going unit by unit and determining which was abandoned. Do you have

any historical information to assist the board in determining which buildings have been used and during which time periods.

Mr. De Joy - my client may have some information we submitted a foil request to the town for the records for the property that was denied so we're a little bit limited there. I would be happy to try to answer any specific questions but you know beyond that as you said our position is that because some of the buildings have always been used that you know the rest is really irrelevant.

Mr. MacCartney - is there some proof that you can give the board that some of the buildings were continuously used and there was never a point in time that they were abandoned for more than a year.

Mr. De Joy - I can get an affidavit or have my client come to the hearing.

Mr. MacCartney - I think the board would you know again understanding you made a legal argument I don't mean to say it's valid or not valid I I understand it but in the event you know obviously the applicant is taking a different position. I think the board would benefit from whatever the applicant can provide and whatever you can uh provide in terms of what buildings were used on during what time period and what you know when they were out of use you know proving that they were in use whichever ones were in use whatever you can get to so we can eliminate fact issues we're all operating under the same set of facts then it's just a matter of you know what the legal interpretation is.

Mr. De Joy - of course we do want to eliminate those fact issues but I would also respectfully remind the board that this is the Planning Board's appeal and it's their burden to show that the Building Inspector is wrong.

Chairman Postiglione - what's confusing me is you know even as you speak here tonight about single family bungalow you know as we read the packet here they're refer to multi-family dwellings.

Mr. De Joy - I believe one building has been used as a multi-family dwelling obviously that's not in the Building Inspector's determination so if the property owner wanted to preserve that use that would be up to him.

Chairman Postiglione - so you're saying that building was always a multi-family building.

Mr. De Joy - that's my understanding

Mr. MacCartney - just to try to get to some of the fact issues here I'm looking at the spreadsheet do we know which of those addresses are the ones that we're talking about that might be two family presently.

Mr. De Joy - I don't know off the top of my head unfortunately.

Chairman Postiglione - as Counsel said any information that you could share with the board to help understand this complicated issue would be much appreciated. Member Thau - I'm reading a letter from the engineer that says that the applicant to the Planning Board identified unit 41 A and B as only one two family house.

Chairman Postiglione - is there a way to prove that 41 was always a multi-family dwelling.

Mr. De Joy - I believe we do actually my client has been in contact with someone that lived there back in the 70s who was willing to submit a letter on an affidavit confirming that.

Chairman Postiglione - I understand it now here's a stupid question you knew it was coming you started out by saying that the parcel it's not the buildings it's the parcel right but now as we're talking further we're breaking it down to buildings.

Mr. De Joy - right that's because the the uses manifest themselves in buildings. I mean you can go to the property and look at it and see that it's a bungalow colony just by looking at the buildings that's where that comes from. Now whether you can look at it and say that it's you know year round or season no you can't do that. Chairman Postiglione - to counter that point you you could look at that property and say yes it's a bungalow colony which I agree with. but then how do you look at a bungalow colony and say it's a multi-family dwelling when it's a bungalow.

Mr. De Joy - we'd have to have some evidence. I honestly don't know what it looks like inside at this point but right the multi-family dwellings are not a permitted use so we would have to establish that it's a pre-existing non-conforming use and would have to get some kind of historical information to establish that.

Member Murphy - asked if the applicant would allow the ZBA to tour the property? Waiting for approval for that.

Ms. Franson - so in listening to some of that discussion 1) I don't think there's any relationship between the order of a section within a zoning code. The non-conforming section could have been in existence a long time one could have existed they could have moved around zoning changes there's just no evidence to support that you know. Somehow because of the order of those Provisions regarding seasonal Bungalows non-conforming uses that are abandoned after 12 months is a reasonable argument 2) I would note that the applicant purchased this property December 1st 2021 that's over 12 months ago and we are looking at pictures that were taken recently it's not as if in the last two years while he owned it they went into that kind of state of repair and now suddenly you know it's only you know

less than a year that they haven't been used so from our perspective they've been vacated for over a year for certain and the other thing I would say is buildings do have uses you have new construction where you can have retail on the ground floor and you can have apartments above you can have a planned unit type development that has a retail building and has a residential building and it may all be on the same lot so I think it does matter and I don't think you apply one singular use to all of the entirety of that parcel and then lastly why it's important whether what you call it if Mr. Maldonado is referring to those as summer dwellings the ones that haven't been repaired and they have been vacated they're not allowed anymore and while single family may be allowed our zoning talks about single family on an individual lot it does not talk about multiple single families on a lot so having that number single families on one lot would not be permitted by this

zoning single family yes single family on an individual lot no so that's again our perspective as to why first you'd have to consider whether the density meets the code whether it meets the zoning and whether they need to get potentially variances to be able to reuse those buildings

if they become single family because it wouldn't meet the code and it wouldn't meet that use that specific definition that it be on an individual lot.

The Board and Ms. Franson reviewed the pictures on the different buildings on the parcel. Ms. Franson reviewed the Narrative that was provided by the applicant Summer Crest to the Planning Board.

Chairman Postiglione - Can I ask you to clarify the issue that you were making about single family dwellings multiple single family dwellings on one lot.

Ms. Franson - so when the zoning was written which I happen to write the Town Board at that time wanted the language to reflect that there would be one single family dwelling on an individual lot one dwelling per lot that was because there have been situations where let's say an applicant or developer comes in and they want to put four homes on one lot what happens is those single families they're actually condo because they're not on their own individual properties and from a Planning perspective and a fiscal perspective there are studies that have been done that show that if you had 2 x 2 (2 side by side) houses one on an individual lot and one not one being being condo one being fee simple ownership they have the same exact demands placed on Community Services Etc they may even sell for the same amount from a market value perspective the one is tax less because it's condo wised and so there's a desire not to do that to be able to ensure that these among other reasons that's one of the reasons why you avoid having more than one single family dwelling on an individual lot and so if there are 20 on one lot that doesn't meet the codes definition for that use. So if someone came in and wanted to put two houses on one lot that would require a variance and it's in the definition. I don't know if that would be a use variance or an area variance I think that would be something the ZBA would determine but again by definition all those single families are not allowed if they became single families on one lot so the argument that they can be used for single family doesn't mean that it meets all the other requirements and it doesn't meet the definition for that use in the code.

Spoke about the 2 deeds that were submitted.

Chairman Postiglione - as I stated earlier when we started this public hearing this issue has a lot of layers and it's going to come down to hearing from all parties. Going back to when the gentleman came up for his comments on what's going on and we said that a bungalow colony has no definition right every so if we're dealing with definitions of bungalow colonies summer camp summer bungalow colonies single family home versus bungalow colony like a single family home can be year round can a bungalow Colony be year round. This sounds like a big problem for lawyers.

Any other public comment?

Mr. De Joy - if I could just make one quick point about the Ms. Franson's point about the structures. If they were to be used as single family homes not meeting the lot density requirements so as pre-existing non-conforming structures meaning non-conforming to the bulk requirements they would be exempt from the current bulk requirements. Obviously again it would be up to the Building Inspector to make that call but as I read the code my client would not need any area variances to use each of the buildings as a single family home because those are permitted uses.

Ms. Franson - except that the Building Department determined that those structures were seasonal bungalows not single families so they would be reused for a different use and so it's possible that there would be Zoning and bulk requirements that kick in. You'd have to look specifically at that section of the code.

BE IT RESOLVED that the Zoning Board of Appeals for the Town of Monroe hereby makes a motion to continue the public hearing until November 28 2023.

Motion by Kevin Scully second by Steven Thau.

Final Resolution: Motion Carries

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

Action Discussion: 3.02 **Kolakowski** (Z080-2023) SBL # 24-1-38 428-430 Orchard Hill Road Monroe NY

Applicant Representative:

Richard Croughan Esq.

Monica Kolakowski - applicant

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 Steven Thau.

Final Resolution: Motion Carries

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

Mr. Croughan representing the applicant.

- This application originates from the Building Department issuing a stop work order for a second story edition that was started without permits
- the applicant then applied for the permits which were denied because of compliance with the bulk regulations and the rear yard setback
- we submitted plans to the board for your review so you could have clarification on the work being done
- asking for a variance on the rear yard and lot coverage all pre-existing non-conforming
- there have been no changes to the property at all

Member Scully - all the footprints are staying the same?

Mr. Croughan - yes they are

Chairman Postiglione - the changes being made are to the roof in the foyer and a window in the attic. Pretty substantial change to that building we thought it was a minor porch cover until we saw the plans.

Ms. Kolakowski - just wanted a better entrance to the upstairs for storage not using a ladder but stairs.

open to the public - No comments on the project from public

Mr. MacCartney reviews what the 5 factors are. It is a balancing test. It's a benefit to the applicant compared to and weighed against any detriment to the health safety and Welfare of the community.

- first factor is whether there be an undesirable change produced in the character of the neighborhood or a detriment to nearby properties that would be created by the granting of the variants.

- second factor is whether the benefits sought can be achieved through some other feasible method

- third factor whether the variant sought is substantial

- fourth factor whether there'd be an adverse impact on the physical or environmental conditions in the neighborhood or district

- fifth factor whether it was self created

Mr. MacCartney - it sounds as though you know all the factors are lining up in favor of a grant. Is there anything else that you'd like to ask the applicant or any other information.

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 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 grant the variance.

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 direct counsel to write up the decision for review and signature.

Motion by Chip Postiglione second by Kevin Scully.

Final Resolution: Motion Carries

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

4. New Projects

Action Discussion: 4.01 **Nelson Luciano** (Z079-2023) SBL # 15-4-30 78 Cromwell Hill Road Monroe NY

held over

5. Minutes

Action Discussion: 5.01 July 25 2023

held over

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 Steven Thau.

Final Resolution: Motion Carries

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

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