

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
MEETING
SEPTEMBER 13, 2016
MINUTES**

PRESENT: Chairman Baum, Members Margotta, McCarthy, Vitarelli and Zuckerman; Assistant Building Inspector Cocks; Kelly M. Naughton, Esq.

ABSENT: None

Chairman Baum called the meeting to order at 8:05pm with the Pledge of Allegiance to the flag.

**1. Luke and Friends Child Care Center, Inc. – Area Variances (201-1-9.3)
Present: Jennifer Lenoci, Applicant and David Niemotko of David Niemotko Architects, PC**

The application of Luke and Friends Child Care Center, Inc., pursuant to the Village of Monroe Zoning Law, Section 200-38.1.C for an area variance in connection with the expansion of an existing daycare facility. The Village Code requires an outdoor play area of 100 square feet per child. The existing outdoor play area is 2,500 square feet, which conforms to the requirement of 25 students that they currently have. The proposed increase of 20 children would require an increase in the outdoor play area to 4,500 square feet. The application proposes no expansion to the outdoor play area. The property is located in the GB Zoning District and is identified as Section 201, Block 1, Lot 9.3 on the tax map of the Village of Monroe and is also known as the address 11 Talmadge Court.

Mr. Niemotko began by saying that the applicant, Ms. Lenoci, was asking the Board to relieve her of the requirement of increasing the children's play area. The applicant would like to keep it as it is. He maintained that what is currently in existence is larger than what is needed.

Ms. Lenoci currently occupies the first floor of the building and half of the second floor. She would like to expand into the remaining space on the second floor. She will be using the entire building for her child care center, amounting to 4,500 square feet (about 2,250 square feet per floor). A maximum of twenty-five children currently use the child care facility. After the expansion is complete a maximum of 45 children will occupy the facility. There will be five rooms in all.

One room will be used for administrative purposes and the other four will be used for day care. The square footage of the rooms used for child care is as follows: 1,300 sq. ft., 1,100 sq. ft., 1,100 sq. ft. and 1,000 sq. ft. Mr. Niemotko said that Luke and Friends Child Care Center, Inc. is run in conformity with Village law and the strict guidelines of the New York State Department of Children and Family Services (OCFS) both of which require that there be 100 square feet of playground space per child. However, OCFS law requires that only one group of children use the playground at any one time. Member Zuckerman read OCFS Regulation 414.8(l)(3):

Groups of children may not be mixed together to use outdoor play areas, exercise areas, gym rooms or other common areas of the center unless the space is large enough to accommodate multiple groups which must be kept separate.

Mr. Niemotko further stated that the maximum number of children in the playground at any one time would be 13 (the maximum number in one age group) which would require a minimum square footage of 1,300 square feet, well below the 2,500 square feet that the playground already has.

Mr. Niemotko said that the additional space required poses a substantial burden to the applicant. Ms. Lenoci would have to absorb costs for fencing and playground equipment and ongoing maintenance fees. Member Vitarelli said that in any business you need to grow in order to meet your expenses. Assuming that they're leasing the property and taxes are going up every year there's going to be an increase in costs. They're running a business and they need to cover their costs or leave the property. He suggested that the applicant may need to increase revenues to stay in business. Mr. Niemotko added that the enlarged area of the playground would not even be used. Member Zuckerman said that there is no question about there being plenty of room behind the current playground. There is sufficient property to expand the playground area. Mr. Niemotko agreed but responded that it's not necessary to expand the playground area. Chairman Baum said that the child care facility already owns that space and therefore already incurs a maintenance fee. Whether it is used for a children's playground or not would not change the cost of maintenance.

Member Vitarelli asked how many hours are children in the playground over the course of the day? Ms. Lenoci said that they are allowed nine children in the toddler room, nine children in the pre-school 3 room and 13 children are allowed in the pre-school 4 room. Ms. Lenoci said that they follow a rotating schedule of

every 15 minutes per age group. At nine o'clock in the morning the two-year-olds go out, at 9:20 the three-year-olds go out and at 9:40 the four-year-olds go out. This is repeated in the afternoon from 2:30 on. Ms. Lenoci also said when she first opened the day care center she thought she would offer morning care only but because of the square footage requirement she couldn't take in enough students to do that. The cost was too high.

Chairman Baum asked if 45 students was the maximum this day care center could take in? Ms. Lenoci confirmed that it was. Chairman Baum asked how the day care center was "policed." In other words, how can Ms. Lenoci guarantee that there will never be more than 13 children in the playground area at any one time? Ms. Lenoci responded that day care centers are subject to random spot-checking by OCFS. The consequences of being in violation are harsh. Word of violations is spread very quickly through social media and it would cause her business serious harm. Member Margotta said that according to the state if you keep the groups separate you could have more than one group out on the playground at any one time.

Chairman Baum asked Ms. Lenoci what the costs would be for the extra playground space? How much would it cost for the fencing? Ms. Lenoci responded that it would cost about \$9,000. Right now they have one playset that cost \$6,000. If they expanded they might have to add something else, maybe block it, maybe add another type of playset that would cost the same. So it would probably be about \$15,000 to set it up. In addition, it would be hard to monitor the kids in the larger space.

Chairman Baum asked the Board if they had any other questions. Member McCarthy asked why 100 square feet is required per child. What is the wisdom behind that and are we thwarting that reasoning? The Board had no response to Member McCarthy's question. Member Zuckerman pointed out that the ruling on this is dated 2000 so it is quite recent.

Member Vitarelli concluded by saying the biggest impact is the cost of the fencing and the new playground equipment. He asked if the land needs to be graded?

Chairman Baum opened the public hearing up to the public. Jeremy Schuck, residing at 27 Talmudge Court, asked about having 45 students at the child care facility. How much increased traffic would that cause? Is there adequate parking? Members of the board responded that these are Planning Board issues. Chairman Baum explained that the Zoning Board must address the question about

decreasing the requirement of the playground from 4,500 square feet to 2,500 square feet based upon the assertion that they don't need a 4,500 square foot playground. Member Margotta said that the Zoning Board is only looking at the impact of the playground.

Richard Paupaw, residing at 23 Talmudge Court, said that his property is adjacent to the child care facility. He asked if there will be another meeting where he can express his concerns about traffic and parking? The Chairman said yes, these will be addressed at a Planning Board meeting. Assistant Building Inspector Cocks clarified that Luke and Friends Child Care Facility, Inc. has already been before the Planning Board and is currently operating under a conditional use. While they will be returning to the Planning Board it is discretionary as to whether or not there will be a public hearing. Chairman Baum asked, "So the Planning Board doesn't have to have a public hearing for a new site plan?" Assistant Building Inspector Cocks confirmed that they do not have to have a public hearing for a new site plan. Mr. Paupaw was advised to call the Planning Board secretary to find out when Luke and Friends Child Care Facility, Inc. would be on their agenda.

Chairman Baum asked Mr. Paupaw how he felt about the size of the playground. Would he rather see it enlarged or would he rather see it stay small so that it's not bigger than it needs to be. Mr. Paupaw said he would prefer to see it small.

Chairman Baum asked about the site plan. It looks like the playground is going to be relocated. Member Zuckerman asked how much it would cost to move the playground? Mr. Nietmotko said, "About \$2,000."

Chairman Baum said that the Board has not received the GML 239 recommendation from Orange County Planning and given that 30 days has not passed since the GML review form was sent the Board may not issue a decision. In light of this Chairman Baum opted to keep the public hearing open to the next meeting on Tuesday, October 18th.

Members of the Board requested that at the next public hearing the applicant bring a rudimentary study of everything that is going to impact her business: the costs, including how detrimental it will be to their business if they don't increase the number of children and the incurred cost if they have to meet the zoning code as it stands today. Define all the costs: have a fence company or two provide an estimate, indicate the cost of grading the property, the cost of a larger playground area, the impact on operating expenses and what's going to happen to their

business over the next couple of years without the additional anticipated revenue from the expansion of the business.

Chairman Baum said that the Zoning Board should make a recommendation to the Planning Board that they hold a public hearing on this matter.

On a motion made by Member Vitarelli and seconded by Member Margotta, it was unanimously: **Resolved to keep the Public Hearing open until October 18, 2016.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

ADOPTION OF MINUTES FROM AUGUST 9, 2016 MEETING

On a motion made by Member Vitarelli and seconded by Member Zuckerman, it was: **Resolved that the minutes be adopted.**

Ayes – 4

Nays – 0

Absent/Abstaining – Chairman Baum (Abstaining)

ADOPTION OF DECISION FOR COPY CENTER, INC. – AREA VARIANCE

Several minor changes to the draft decision of the Copy Center, Inc. decision were received without objection.

On a motion made by Member Margotta and seconded by Member Vitarelli, it was unanimously: **Resolved that the decision be adopted.**

Ayes – 4

Nays – 0

Absent/Abstaining – Chairman Baum (Abstaining)

CHANGE IN APPLICATION DEADLINE

The rules and regulations of ZBA provide that a ZBA hearing date be set at least 20 days after the receipt of the ZBA application and proper fees. As this does not allow sufficient time for the required 30 days required by Orange County Department of Planning in preparing their GML 239 review, Chairman Baum suggested that the deadline be moved to 35 days prior to the ZBA hearing date.

On a motion made by Chairman Baum and seconded by Member Vitarelli, it was:
Resolved to amend the procedures to require applications and fees to be submitted at least 35 days prior to the hearing date instead of 20 days, subject to approval of the Village Board.

Ayes – 5

Nays – 0

Absent/Abstaining – None

PAYMENT OF ESCROW FOR PROFESSIONAL FEES

The Village Fee Schedule provides for the Zoning Board of Appeals to collect escrow from ZBA applicants to reimburse the Board for consulting services deemed necessary to review such applications as required by law. The Board discussed their interpretation of this local law (adopted in 1992). They agreed that the ZBA application fee covers the attorney's fees within the normal scope associated with a ZBA application, including the written overview of the application (memorandum) provided by the attorney prior to the hearing, the attorney's time at the hearing, and a written decision drafted by the attorney after the hearing.

The Board further agreed that the ZBA application fee does not cover consulting services from other third parties such as a technical person or engineer. In addition, the application fee does not cover the attorney's time for work beyond the aforesaid general scope of the hearing, including but not limited to legal research required on current case law. In such case the applicant will be notified of the anticipated additional expense and will make the decision as to whether or not to proceed with the application.

If the applicant chooses to proceed with the application a form will be completed and the escrow payment collected. The Board agreed that the "Application and Procedures Checklist" at the beginning of the application should be modified to include a paragraph about escrow fees. Chairman Baum said he would address this issue with the Mayor and the Board of Trustees.

No action was taken by the Board.

NEXT MEETING DATE

Chairman Baum advised the Board that the next hearing date of the Zoning Board of Appeals was Tuesday, October 18th. This is the third Tuesday of the month. The Board will meet upstairs at Village Hall.

**APPROVAL TO ATTEND ORANGE COUNTY MUNICIPAL PLANNING FEDERATION
DINNER**

On a motion made by Chairman Baum and seconded by Member Vitarelli, it was unanimously: **Resolved to request permission from the Board of Trustees to attend the Orange County Municipal Planning Federation Dinner that will be held on September 29, 2016.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

RESIGNATION OF MEMBER VITARELLI

The Board accepted, with regret, the resignation of Member Frank Vitarelli effective, October 1, 2016. Member Vitarelli is in the process of purchasing a house in another municipality. Without Village residency he is ineligible to be on the Zoning Board of Appeals. Member Vitarelli loyally served the community for 26 years. He brought wisdom, principles and compassion to the Board. Member Vitarelli filled in as Acting Chairman on the rare occasions when Chairman Baum was not able to attend. The Board thanks him for his service and wishes him well. Member Vitarelli will be greatly missed!

ADJOURNMENT:

On a motion by Chairman Baum, seconded by Member Vitarelli, with all in favor, **there being no further business, the meeting was adjourned at 9:20pm.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

Respectfully submitted,



Elizabeth Doherty
ZBA Secretary