

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
MEETING
OCTOBER 18, 2016
MINUTES**

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

ABSENT: None

Chairman Baum called the meeting to order at 8:00pm with the Pledge of Allegiance to the flag.

1. Luke and Friends Child Care Center, Inc. – Area Variance (201-1-9.3) (Continuation from September 13, 2016)

Present: David Niemotko of David Niemotko Architects, PC

The public hearing had been adjourned in September to allow the applicant, Jennifer Lenoci, time to gather information about the specific costs of moving the playground, the benefits of expanding her business, the incurred costs if she has to meet the zoning code as it stands today, and any detriment to her business if she doesn't increase the number of children at her day care center.

Mr. Niemotko represented the applicant. He began by saying the expansion of the daycare facility is needed to remain in business and to remain profitable. There is a great deal of expense associated with the renovation of the existing building and the added expense of increasing the playground would needlessly burden the applicant. It increases the cost by adding 2,000 square feet of supervised playground area that is not needed to meet state standards. This is a burden that should not be imposed upon the applicant. Mr. Niemotko said that with a maximum of 14 children using the playground at any one time they only need 1,400 square feet to meet state standards. They currently have 2,400 sq. ft., (sic) a surplus of 1,000 square feet if you follow state code. It is not necessary to add 2,000 more square feet on top of that. That is why the applicant is requesting a variance.

Member McCarthy asked if the applicant had considered moving to another location? Mr. Niemotko said that she had.

Member Zuckerman asked if they have a playground of 4,500 square feet and there are only 14 children playing, why would they need the additional playground equipment and swing

set? He felt those items should be removed from the estimate. Member Margotta said that there is nothing in the code saying you have to get more playground equipment.

Mr. Niemotko responded that it begs the argument, why even have the additional square footage? Member Margotta responded, "To run around?" to which Mr. Niemotko said that additional space increases the supervision area. There's a ratio of one to five. For every five children on the playground there has to be one person supervising. Member Margotta responded, "You're worried about the children getting out of the fenced in area?" Mr. Niemotko said no, but they're going to be roaming around 4,500 square feet instead of 2,500 square feet. Is that reasonable?

Member Margotta said that it's not a huge difference. It's not like you're comparing one acre with three acres. You're talking about an open area where there's a direct line of sight that's going to be fenced in. Additional playground equipment would block that line of sight. It's not like the kids can walk away. If you see them scaling the fence you can catch them. Mr. Niemotko said that it still increases the liability without question. If the state asks you to supervise 14 kids within 1,400 square feet and you triple that? There's an inherent liability issue with that. Ms. Lenoci is going to have to increase her supervision. It's a reasonable statement. Member Margotta asked, so the state requires that the added area has to be supervised regardless of what's in the area? Mr. Niemotko responded, "Correct." And Member Margotta further added, so that's a burden, the cost of hiring more employees for that area? Member Zuckerman interjected and said no, the supervision is based on a one-to-five ratio, one teacher for every five children. Square footage has nothing to do with it.

Member Zuckerman said the estimate shows the cost of the fence as being \$6,000. Is that based on a totally new fence or are they utilizing the old fence? Mr. Niemotko said that it utilizes some of the old fence.

Member McCarthy asked how many teachers do they have now and how many more do you think they'll need? Mr. Niemotko said that it is five or six, at varying shifts, and they'll need nine. Mr. Niemotko added that there's also the treatment of the grass. You can't leave it as a grassed area. You have to rubber-mulch it to avoid any mud.

Member Zuckerman asked, "There's no claim that the property isn't large enough. It's a question of not needing that much space? There's enough land in the back." Mr. Niemotko responded, "That's correct. And she'd have to take down trees in the area." The Chairman clarified that on the site plan the new playground would be 2,700 square feet. Mr.

Niemotko responded that they want to maintain the current playground area, which is 60' by 45', relocated to a new position.

The Chairman noted for the record that the review from Orange County Department of Planning pursuant to GML was received and the recommendation was for local determination.

Attorney Naughton said regarding SEQRA this was an unlisted action allowing the ZBA to assume lead agency status for an uncoordinated review and type the action as unlisted. The Chairman said that there will be little to no impact as a result of this project.

On a motion made by Chairman Baum and seconded by Member Zuckerman, it was unanimously: **Resolved to render a negative declaration pursuant to SEQRA.**

Ayes – 4

Nays – 0

Absent/Abstaining – None

Chairman Baum said that he has thought about this application a lot. He understands what the code is trying to ensure, that having a minimum of 100 square feet per child regardless of the number of children is probably a house-keeping issue. Because how do you police the number of children who are outside at any one given time? There's no way we can really check that. That's what zoning boards are for. You have to have a standard somewhere and zoning boards are for varying standards that are arbitrarily set on an ad hoc, case by case basis. The chairman felt that by granting a variance there would not be any impact or detriment to the community. He felt that this was to an extent self-created but he also felt that this is the nature of business, that they want to expand and do better. You can't hold that against the applicant. The chairman concluded by saying the benefit to the applicant far outweighs any detriment to the community.

Member Zuckerman said that he had a lot of problems with this case. The first problem was that if this variance is granted it would be difficult or impossible to turn down future requests because of the nature of the section. In his research Member Zuckerman found the wording for the Federal standard, which is not a law but a recommendation for daycare centers is, "The playground should comprise a minimum of 75 square feet for each child using the playground at any one time."

In New York the only regulation from the NYS OCFS is just for an adequate space. Member Zuckerman said that the lead inspector of NYS OCFS said because the Department of Health

utilizes the Federal standard for other types of playgrounds they utilize the same standard for daycare centers, 75 square feet for each child using the playground at any one time. Member Zuckerman said that he would feel comfortable if that's what our code read, but our code doesn't add the part "for each child using the playground at any one time." Are we in effect changing the code (which should be done by the Village Trustees) by adding this? Member Zuckerman said that he knew for a fact by speaking to them that this particular daycare center has a good reputation and they've never been in violation. When you go down there you generally see just the 13 children in the playground. As far as the state agency is concerned if they see 13 down there and it's 75 square feet per child they're ok with it, but we wouldn't be ok with it because the way our code reads it's based upon the full number in the facility times 100. Member Zuckerman felt that it was a conflict. He said he couldn't in good conscious vote to turn down another daycare after this one because every licensed daycare center generally has only one age group of children using the playground at any one time. He said that even if the applicant had two age groups of children in the playground with five teachers they would still be within the 2,500 sq. feet minimum but they would be in violation of our code because they have an enrollment of 45 children.

Attorney Naughton advised the board to take into account any unique circumstances of this application because any decision made is precedential.

Chairman Baum said just because one daycare center is granted a variance doesn't mean this Board is obliged to grant another daycare center a variance. You have to look at the facts. You have to look at the enrollment, how they operate, all these other issues. If similar factors are there that warrant granting relief then you grant relief but you are not required to. Zoning Boards exist to grant relief because the zoning code cannot possibly be applicable in every situation. You have to engage in line drawing which a lot of times is arbitrary. It's a balancing test.

Chairman Baum addressed the criteria to determine whether an area variance should be granted. What's the benefit to the applicant versus the detriment to the community. The Chairman didn't see how this was going to be a detriment. Were they going to create an undesirable change in the neighborhood? He said that increasing the play area that's not being used has more of an impact than leaving it in its natural state. Could the applicant achieve this by some other feasible method? The only feasible method was to spend the money to create this bigger play area that they didn't need. Was it substantial? To a certain extent it was, 4,500 sq. ft. versus 2,500 sq. ft., but it's just a number. You really look at the number of children using the playground at any one time versus the total enrollment

of the school. To a certain extent it was self-created but that doesn't preclude the granting of a variance.

Member Margotta pointed out that there is little to no hardship in this case.

Chairman Baum opened the hearing up to the public. Richard Paupau of 23 Talmadge Court expressed concern with the people who use the applicant's facilities. They park in the middle of the road, blocking it, even though there are parking spaces at the front and back of the building. Mr. Paupau said that once you increase the number of children using the daycare center this will only get worse. In addition there are lots of potholes in front of the daycare center. Chairman Baum said that Talmadge Court is a private road. Pothole repairs are therefore the responsibility of property owners on that street. Mr. Niemotko responded by saying that the applicant does not own the building.

Chairman Baum expressed sympathy for Mr. Paupau's frustration but he explained that the issue of traffic concerns should be raised with the Planning Board, not the ZBA. The ZBA was only involved with deciding if the applicant needed a variance to keep the playground area the same size.

Milagros Paupau of 23 Talmadge Court said that items belonging to the daycare, such as balls and toys, end up on her property.

Member Zuckerman asked that knowing that originally they would have no more than 13 children in the playground at one time why didn't they bring up the problem when they first started rather than putting a 2,500 square foot playground in if they were only going to utilize 1,300 square feet? It probably would have been better to do it before they got started.

Mr. Niemotko said that when the applicant first opened her business money was a lot more of a concern than it is now. His recommendation to her at that time was to comply with the code and apply for a variance later when it was needed. Also, the applicant needed to get Planning Board approval and they wanted to expedite that process.

On a motion made by Chairman Baum and seconded by Member McCarthy, it was unanimously: **Resolved to close the Public Hearing.**

Ayes – 4

Nays – 0

Absent/Abstaining – None

Chairman Baum proposed to impose a condition and restriction on the variance request.

On a motion made by Chairman Baum and seconded by Member McCarthy, it was:

Resolved to grant the area variance provided they never have any more children outside that exceeds the 100 square foot per child rule.

Ayes – 2 (Chairman Baum and Member McCarthy)

Nays – 1 (Member Zuckerman)

Absent/Abstaining – Member Margotta

The motion failed and the variance was denied by operation of law.

2. **Steve Brown/Hudson Valley Realty – Area Variance (223-1-4)**

Present: Steve Brown of Hudson Valley Realty

The application of Steve Brown, Hudson Valley Realty, pursuant to the Village of Monroe Zoning Law, Table of Bulk Requirements Use Group (r) Front Setback 60' for an area variance in connection with the location of a free-standing sign. The Village Code requires a front setback of 60'; the proposed front setback is 30'.

Secretary Doherty noted for the record that the certificates of mailing were received in a timely fashion.

Mr. Brown began by saying the application is for the plaza known as Dunkin Donuts plaza. The owner built a new building on one side of the property which has two tenants, Dunkin Donuts and Bardonia Physical Therapy. The property also has another building occupied by Monroe Rentals. Mr. Brown said that he is requesting a variance for a pylon sign. If the sign were 60' back it would be in almost the same place as the building and it would be practically invisible to people driving by. The tenants need a sign to increase their business. The standard of Dunkin Donuts is to have a sign that is much closer to the road. Mr. Brown submitted photographs of other signs in the neighborhood that are closer to the road than what Mr. Brown is requesting. These signs have either been granted variances or have been grandfathered in.

Member Margotta asked how tall the sign was going to be? Mr. Brown said 15' feet overall.

Chairman Baum asked if the sign was going to be 30' from the curb? Mr. Brown said yes, it would be 30' from the curb. Chairman Baum asked Assistant Building Inspector Cocks what the minimum distance for a pylon sign is under the new code? Assistant Building Inspector

Cocks said 15' from the curb, depending on the size of the sign. The larger the sign, the further back it goes. Chairman Baum then said that assuming it's the minimum size under the new code it would be twice the setback of the new code. Assistant Building Inspector Cocks said, yes, it would be further back than required under the new code. Chairman Baum said that the ZBA has consistently placed signs 15' from the curb. It has become a standard for Route 17M.

Member Margotta asked Mr. Brown how big the sign was? Mr. Brown said the sign will be 8' x 9'. Member Margotta said he doesn't have any problem with the location of the sign but he does think the sign is too large. Chairman Baum agreed saying that it is a rather large sign and he wondered how it would look where it's proposed. He would like to go back and take a look at what the requirement is under the proposed new zoning code.

Chairman Baum said this application is subject to review by the Orange County Department of Planning pursuant to GML and as of yet we have not received a determination from the county. We cannot act until the county responds or 30 days has passed since we sent it. It was sent to the county on September 28th.

On a motion made by Member Margotta and seconded by Chairman Baum, it was unanimously: **Resolved to open the public hearing.**

Ayes – 4

Nays – 0

Absent/Abstaining – None

No one from the public was in attendance.

On a motion made by Chairman Baum and seconded by Member McCarthy, it was unanimously: **Resolved to adjourn the Public Hearing until November 8, 2016.**

Ayes – 4

Nays – 0

Absent/Abstaining – None

Member Margotta suggested that the applicant submit a more accurate rendering of the sign showing its exact dimensions prior to the next meeting.

ADOPTION OF MINUTES FROM SEPTEMBER 13, 2016 MEETING

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

Ayes – 4

Nays – 0

Absent/Abstaining – None

OLD BUSINESS

Chairman Baum advised the Board that the Village Board of Trustees approved the Board's request to change the application deadline to 35 days prior to the ZBA hearing date.

Chairman Baum is waiting to hear from the Mayor about the Board's discussion last meeting as to whether to collect escrow fees from applicants.

APPROVAL OF THE 2017 MEETING SCHEDULE

On a motion made by Chairman Baum and seconded by Member Zuckerman, it was: **Resolved to approve the 2017 meeting schedule.**

Ayes – 4

Nays – 0

Absent/Abstaining – None

The 2017 meeting schedule appears as an Attachment to these minutes.

NEW BUSINESS

Chairman Baum advised the Board that one resume was received to fill the vacancy created by Member Vitarelli when he left the Board.

ADJOURNMENT:

On a motion by Chairman Baum, seconded by Member Margotta, with all in favor, **there being no further business, the meeting was adjourned at 9:06pm.**

Ayes – 4

Nays – 0

Absent/Abstaining – None

Respectfully submitted,



Elizabeth Doherty
ZBA Secretary

PUBLIC NOTICE VILLAGE OF MONROE ZONING BOARD OF APPEALS

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Village of Monroe will hold its Regular Meetings for the calendar year 2017 on the dates set forth below. All Regular Meetings begin at 8:00 p.m. and are held at the Village Hall, 7 Stage Road, Monroe, NY.

<u>Meeting Date</u>	<u>Submission Deadline</u>
January 10, 2017	December 6, 2016
February 14, 2017	January 20, 2017
March 14, 2017	February 7, 2017
April 18, 2017	March 14, 2017
May 9, 2017	April 4, 2017
June 13, 2017	May 9, 2017
July 11, 2017	June 6, 2017
August 8, 2017	July 5, 2017
September 12, 2017	August 8, 2017
October 10, 2017	September 5, 2017
November 14, 2017	October 10, 2017
December 12, 2017	November 7, 2017

Dated: October 18, 2016

BY ORDER OF THE ZONING BOARD OF APPEALS
VILLAGE OF MONROE

PAUL S. BAUM, ESQ., CHAIRMAN

