

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
MEETING
SEPTEMBER 4, 2018
MINUTES**

PRESENT: Chairman Baum, Member Margotta, Member Martuscelli and Member Zuckerman; Building Inspector Cocks and Kelly M. Naughton, Esq.

ABSENT: Member McCarthy

Chairman Baum called the meeting to order at 8:21pm with the Pledge of Allegiance to the flag. The meeting was delayed due to the unexpected absence of two Board members. Both Board members were contacted and one, Member McCarthy, informed Secretary Doherty that he was unwell and unable to attend the meeting. Upon hearing this Chairman Baum announced that only four Board members would be present at tonight's meeting and that applicants had the option to adjourn to the next month. The representatives of Hatov Springs, LLC, the only applicants present, chose to continue with the meeting.

1. The application of BMG Monroe I, LLC, for an interpretation of the Building Inspector's denial of building permit applications to construct duplex homes.

No one representing the applicant was in attendance.

The property, which is the subject of said action by the Board, is located in a URM Zoning District and is identified as Section 203-6-45 on the tax map of the Village of Monroe and is also known as the address 1 Van Arsdale Road and Section 203-6-46 on the tax map of the Village of Monroe and is also known as the address 3 Van Arsdale Road.

Chairman Baum read for the record a letter received from Mr. Rosborough, attorney for the applicant, dated August 31, 2018:

Dear Chairman Baum and Members of the Village of Monroe Zoning Board of Appeals,

My firm represents BMG Monroe I, LLC, the owner of the Smith Farm subdivision in the Village and Town of Monroe. Please be advised that I have a conflict for the September 4, 2018 meeting of the ZBA and will be unable to attend. In addition, due to other engagements, my client's building consultant has been yet unable to provide copies of the plans requested by the Board. Accordingly, I would respectfully request that the Board grant a one-month adjournment of my client's application to the October meeting. At this time, I

don t anticipate needing any further adjournments of my client's application. Thank you for your consideration.

*Very truly yours,
Robert S Rosborough IV*

Member Zuckerman commented that we received two letters requesting adjournments from the applicant's attorney, each one after the final date of submission of additional information requested by the Board. To date we have not received the additional information requested by the Board during the June 12th hearing.

Member Zuckerman continued, saying the Smith Farm subdivision is both a Town and a Village project. Since only the Village has a stop work order on the project the applicant is continuing to build the 137 homes located on the Town's property. If there is a negative determination by this Board then this determination might negatively affect, by example, the houses that are already built, and the houses to be built, on Town property. Of course, after the Board finally receives the additional information, the applicant could be ultimately successful before the Board.

Member Zuckerman said that since the applicant's attorney does not anticipate needing any further adjournments, it is recommended that he be advised that no further adjournments will be granted without a personal appearance by him or his client to explain why this additional adjournment is necessary.

On a motion by Chairman Baum, seconded by Member Margotta, with all in favor, it was:
Resolved that the public hearing be adjourned to October 9, 2018 and that the applicant pay the mandatory \$50 adjournment fee and re-notice the hearing and that the applicant must appear in person if he wishes to adjourn the October hearing.

Ayes – 4

Nays – 0

Abstaining – Member McCarthy

2. Hatov Springs, LLC – Determination – 207-4-15

Present: John C. Cappello, Esq., Michael J. Sandor, Engineer, Schlomie Neustadt, Sole Member of Hatov Springs, LLC

A determination pursuant to the requirements of Section 200-62(C) "Change", to permit the nonconforming use of a building to be changed to another nonconforming use which is of the same or of a more restrictive nature in the URM zoning district. The previous nonconforming use of the property was a laundry service. The proposed use is a retail food store.

The property is located in a URM Zoning District and is Section 207, Block 4, Lot 15 on the tax map.

This is a continuation of the public hearing on August 14, 2018 which the applicant's attorney adjourned upon being notified that two Board members would be absent.

Mr. Cappello, attorney for the applicant, began by saying that in New York State zoning regulations are in derogation of the common law, must be construed against the municipality in which they're enacted, and any ambiguity in the language used must be resolved in favor of the property owner. He said that Village of Monroe zoning code §200-62 (c) provides that a non-confirming use of buildings and open land shall not be changed to another non-confirming use without the approval by the Zoning Board of Appeals and then only to a use which is in the opinion of the Zoning Board of Appeals to be the same or a more restricted nature. Mr. Cappello said that his client is not seeking a variance, they are seeking a determination that in the opinion of the Board the use is of a more restricted nature and that it can continue as a pre-existing non-confirming use.

Mr. Cappello discussed the word, "nature." It doesn't say more restricted in that particular *use* but it talks about a more restricted *nature*. What is the nature of the use that was entitled to continue as a pre-existing non-confirming use? The Code Enforcement Officer determined that the prior use was a commercial laundry facility. A commercial laundry facility would use more water and sewer services just by the nature of its use than a retail grocery store that would have a couple of employees and vans loading and making deliveries of food items stored at the facility.

Mr. Cappello provided copies of zoning codes from the Town of Blooming Grove and the Town of Montgomery that show retail uses are permitted closer to residential areas or in quasi-residential zoning districts near residential districts. A grocery store in a neighborhood is not a unique use. Mr. Cappello said that many villages in the area are starving for grocery stores. In the Village of Goshen and the Village of Warwick they are making efforts to induce a grocery store to go in the downtown areas just for that reason so that people wouldn't have to go out to shop. Here we have a place where people can go to if they like and that also would deliver.

Village of Monroe zoning code permits both the laundry service use and retail store shops use where the floor area per establishment is no less than 1,000 sq ft. Both are permitted uses in the CB district. Village of Monroe zoning code recognizes that they're at least the same if not more restricted in nature. The bulk requirements for both of them are the same. Bulk uses are the same, therefore also indicating that they are at least the same if not more

restricted in nature. Mr. Cappello said that in general if someone was asked do you want to live next to a grocery store or next to a commercial laundry facility with trucks going in and out early in the morning and heavy water and sewer uses, they would prefer being next to a retail use.

Mr. Cappello discussed a case in the Third Department in a 1994 Appellate Court decision where a retail store attempted to be changed to a laundry facility. In that case the laundry facility argued that it was the same use as the retail but the court did not agree. The court held that it was different and a more intensive use. If that is a reasonable and rational decision it goes to say that the opposite is true, that a retail use is more conforming than a laundry facility would be. Mr. Cappello stated that the particulars regarding traffic, site distance and parking would be reviewed by the Planning Board.

Member Zuckerman said that Mr. Cappello mentioned about the re-establishment clause in the code in his supplement, and said it was for two years but it's actually for one year. I'm not arguing that not it's timely. And secondarily out of curiosity the case that you cited was for the city of White Plains? How did it wind up in the Third Department? Mr. Cappello said that he was not sure. Chairman Baum said that it was transferred by the Second Department.

Member Zuckerman asked if the standard was "more appropriate" in White Plains, not our standard of more restricted? Mr. Cappello said that more restricted is ambiguous. If you're talking about a nuclear power plant that needs Federal and State approvals, that would be more restrictive in nature because it would be harder to do. Member Zuckerman said we could find the use to be more appropriate but not more restricted but then we would not be following our code but rather the case that Mr. Cappello cited. Mr. Cappello responded that the Board could follow their interpretation that it was intended to mean that it was more consistent and appropriate. He said he didn't know how to define a use that would be more restricted in nature.

Chairman Baum said that it is something that might have less of an impact and is consistent with the orderly development of the zone and more consistent with the other types of uses. Mr. Cappello said that the only other argument he would make is that if it is a use that is only permitted in one district, in an industrial district, then it is more restrictive than a commercial laundry facility or warehouse that may be permitted in two districts. It's more restrictive than the more intensive, less appropriate use. I trust that in your deliberations you would find and construe the code in a manner that makes sense in the neighborhood.

Mr. Sandor, engineer for the applicant, spoke to the Board. He began by referring to his letter to the Board dated July 30, 2018. Mr. Sandor called the Village of Monroe Water Department to try to get the records of the previous user. The Water Department was unable

to get those records for him. So, the only affidavit Mr. Sandor could provide is from the previous owner. The previous owner had been part of the organization since October 1, 2002. Regarding the question of the previous use as a laundry service versus a warehouse, Mr. Sandor received documentation from the Building Inspector that said in fact it is a laundry service. I provided the Board with a plot plan that shows the intersection. Mr. Sandor said that curbs and sidewalks would have to go to the Planning Board. Chairman Baum noted for the record that the applicant submitted a conceptual plan, labeled Exhibit C-1 dated September 7, 2017, last revised 5/31/2018. This accompanied a letter from Mr. Sandor dated July 31, 2018.

Mr. Sandor said one of the questions that came up at the previous meeting was what if the applicant were to develop both of these parcels under URM zoning. They could construct a building with 26 efficiency apartments, 20 one-bedroom apartments, 17 two-bedroom apartments or 15 three-bedroom apartments. Chairman Baum asked if that's if the lots were combined? Mr. Sandor said it's in total. Member Zuckerman said they're only interested in lot 15. Parcel 1/tax lot 15 would be 10 efficiency, eight one-bedroom, seven two-bedroom, or six three-bedroom apartments.

Chairman Baum asked how he calculated those numbers? Mr. Sandor responded that it's based upon ten dwelling units per acre for efficiency and eight dwelling units per acre for one-bedroom. Chairman Baum asked if this comes from the Village's code? Mr. Sandor said yes.

Mr. Sandor said there was also a question Mr. Zuckerman had on weight limits of traffic on North Main Street. Under 43-4 (d) and (e) of the code it states:

North Main Street: No commercial motor vehicles as defined in NYS vehicle and traffic law which shall have a gross vehicle weight rating of 11 tons or more shall be allowed to use North Main Street from Route 208 to Freeland Street... The provision contained in this instant section shall not apply to commercial motor vehicles making local deliveries on said street.

Member Margotta said that would preclude Schlomie's delivery vehicles. Member Zuckerman said that would preclude Spring Street. Right now the Village is working on that particular section of the code. Mr. Sandor said the weight limit of all the vehicles used by the oil delivery company Carpenter and Smith are over that, including the delivery trucks and the tractor trailers that bring oil to the facility. Mr. Sandor said that Schlomie's wants to move forward and get their approval for one tractor trailer a week, the rest would be box trailers that would deliver. Member Zuckerman said assuming that the Zoning Board of Appeals grants approval, you will need to go before the Planning Board. Hopefully by that time this

section is changed in some way and at that point take a look at it and see if it's right for your business. Mr. Sandor said that he only brought it up because he was asked to look into it. Member Zuckerman continued, as of now if you read it literally you can only go up to Carpenter & Smith. You can only go on North Main Street. There's no allowance for Spring Street.

Mr. Cappello said that there has to be a route for businesses and for local deliveries. The Village can't change that because there is a State law provision that exempts vehicles for local deliveries. If there is another way for those vehicles to get there and avoid streets that is certainly permissible. So, what we would have to show to the Planning Board is the route that those trucks would have to avoid, to the most extent that we can, those streets that have the limits. We may not have to use all the streets but there has to be a route provided and agreed upon. We would work with the Planning Board. I don't know if they would be under or over the weight but they would be permitted as local deliveries, as they would now if they were coming from Shop Rite.

Member Margotta said on the topic of delivery traffic with respect to the impact that the previous establishment had compared to what was proposed, their deliveries were not local deliveries.

Mr. Sandor summarized some of the things that have been discussed over the last two meetings. The previous use ceased operation in June 2008. The previous use had 40 employees seven days a week. The building size is 10,200 sq. ft. 50% would be used for retail and 50% would be used for storage. The gas usage according to the affidavit of the previous user was 23,500 cubic feet of gas which was used for heating water. 50,000 gallons of water was used a day. Obviously this use would be much lower than that by orders of magnitude. The previous use had business hours 7:30 to 5:30 and they were open seven days a week. This use would be 6am to 7pm six days a week with Saturday being the day off. The laundry facility used four trucks making two runs a day, seven days a week, which comes to 56 trucks a week (double that for the number entering and leaving). Schломie's would have four to five box trucks and a tractor trailer three days a week and they would have two box trailers the remaining three days a week, a total of 22 trucks per week. They have six vans that do deliveries with making four trips a day (24 van deliveries a day). Steve Gottlieb the CFO started working with the previous organization on October 1, 2002.

Chairman Baum asked about the use of gas and water. Mr. Sandor said that he had submitted a water bill showing roughly 200 gallons per day. And that makes sense if you think about it because an employee basically uses 15 gallon per day per employee (according to the DEC). The laundry service had huge washing machines that were filled with water.

Member Zuckerman asked about the Land Use Form that was filed by the applicant. It states that the size of the building is 11,250 sq. ft. Is that more accurate than 10,200 sq. ft.? Mr. Sandor agreed. Member Zuckerman asked about the retail/storage ratio. It's going to be 50/50? Mr. Sandor said yes, it will be 50% devoted to retail (stocked shelves) and the rest is more like a Sam's Club. Member Zuckerman asked if the public would have access to that area? Mr. Sandor said no, that would only be accessed by employees. Member Zuckerman continued saying that according to the Land Use Form 20% would be walk-ins and the rest would be by delivery. Is that correct? Mr. Schlomie Neustadt, the owner and operator of Schlomie's, who was sitting with the public, said there would be 10% walk-ins. Member Zuckerman asked if that was like the other store? Mr. Neustadt said that's what it is now. Member Zuckerman asked do they need that much space for so few walk-ins? He asked for a concept of what it will look like.

Mr. Neustadt said that the store he currently operates has workers who take orders, pack them up and then deliver them. People can also come in and buy things if they want. The employees pick items from the shelves for deliveries because it's easier to pick things from the shelves.

Member Margotta asked for clarification if the back 50% of the store is only for storage and if the front part of the store is where the employees pack the orders for delivery? Mr. Neustadt said yes. So, the 50% area in the front is not just for retail it's where everybody's also going to pack orders and for customers.

Member Zuckerman said that the other store that Mr. Neustadt has on Prag Boulevard in Kiryas Joel is under another Schlomie, Inc. and this is under Hatov Springs, LLC. Is there going to be any business relationship between the two? Is Hatov Springs, LLC going to be leasing to Schlomie's? Mr. Neustadt said that Hatov Springs, LLC will be leasing to Schlomie's. Member Zuckerman said, so there will be a business relationship between the two. Mr. Cappello interjected that it is typical to have a separate entity owning the land and a separate entity operating the business.

Member Zuckerman said that as far as this facility is concerned there will only be that one business broken up between the front part and the storage area in the back. There will be no other businesses there? Mr. Neustadt said no.

Member Margotta said so those deliveries you send out to the people, you only do four deliveries per day? Mr. Neustadt said there were six vans. Each hour they go out for a delivery.

Chairman Baum asked how many employees would be working in the store in total? Mr. Neustadt said about 20 or 25. Chairman Baum asked if they all come at the same time in the

morning? Mr. Neustadt said most of the people in the morning when there isn't so much business there wouldn't be as many people, maybe by 9 o'clock there would be more employees.

Member Zuckerman asked about the size of the other store. Is it the same size as this location or is it smaller? Mr. Neustadt said it is a little bit smaller but has almost the same number of employees but they are squeezed in. Member Margotta asked what the size of the other location is? Mr. Neustadt said it was about 4,000 sq. ft but has no storage. It has separate storage which is about 3,000 sq. ft. Mr. Neustadt said that what he wants to do is combine the storage of the other location with this location.

Chairman Baum asked if it's fair to say that maximum peak time during the day there will be 20-25 employees, some will come later in the day some will come after 6am some will leave before 7pm? Mr. Neustadt said yes. You cannot calculate the van drivers, we have only about 19 drivers.

Member Zuckerman asked Mr. Sandor regarding the letter from July 30, 2018 in which the previous owner Mr. Gottlieb stated that the water use was 50,000 gallons per day. One of the problems we had with his affidavit and why we were hoping that we would get a representative here, we don't know when that much water was used. This laundry has changed. It hasn't been in existence for the past ten years. It was a lot larger when it opened in 1971. It got smaller. When was the 50,000 utilized? In the early days? In the mid -days?

Mr. Sandor said that that's what he was told. He said we're talking roughly 200 a day versus a laundry. Even if it's off, we're talking a 2,000 versus 200 or 20,000 versus 200. We're talking about a tremendous difference in use. Mr. Cappello pointed out that if they were still operating today, maybe they'd get the casinos or Legoland or a hospital. Or they might have more water efficient machines that would bring their use down. Member Zuckerman said that he saw something in an advertisement which says that new washers use half the water of those made 20 years ago. Mr. Sandor said employees in an office building used 15 gallons of water per day. If you have a single-family house that number is roughly 110 gallons per day per bedroom. Roughly 200 gallons per day per one-bedroom house whereas a commercial laundry is probably ten times that at least, 2,000 gallons per day. There's no comparison. We were given the number of 50,000. I tried to corroborate that but the Water Department could not get the old data out of the machine. Even if we take 2,000 versus 200 it's a factor of ten, it's way less.

Member Zuckerman said he had more questions for Mr. Sandor. You were talking about the previous use as a laundry service. You mention the fact that Code Enforcement Officer Cocks provided a copy of a letter dated April 23, 2018 with copies of building permits and a certificate of compliance which specified that it was a laundry service and more importantly

it was never approved or used as a warehouse. But there is no certificate of occupancy for the actual building because it was constructed prior to the issuance of certificates. But the two building permits that you're relying on which are attached to his letter of April 23, 2018 were for work that was done in 1971 and 1982. I concede that it was a laundry those two years. I realize that the certificate of compliance was done in 2017 and that was done because these were open permits that meant closing without clear title. So, I assume you had to get these certificates of compliance at that point, but the certificate of compliance is for these two permits which were issued (the only two permits that were issued) appear to be for 1971 and 1982. I will agree with you that according to Code Enforcement Officer Cocks and according to the Building Department records the use of a warehouse was never approved. However, the plans that were submitted refer to the facility as a laundry/warehouse facility and more importantly from the affidavit of Mr. Gottlieb in which he refers to the facility as a "warehouse/laundry facility" and it says that the facility was also used for storage of supplies, records, and equipment up until the time it was sold to Hatov Springs, LLC.

Mr. Sandor responded he was asked if this was considered a warehouse and so he went to the Building Department to get their definition of the use of that building. According to their record it was a laundry not a warehouse. Now, a laundry/warehouse might store some of the stuff as they put it together and ship it out but it's a laundry! Member Zuckerman said that he agreed about that but he wanted to clarify that just because it was never approved for use as a warehouse doesn't mean it wasn't used as a warehouse. It may have been used as a warehouse without anyone knowing. All Member Zuckerman has is the CFO's sworn affidavit that the facility was also used for storage of equipment, supplies and records. Attorney Naughton interjected that the Board should rely on what the Building Inspector said, that the prior use was as a laundry service. Chairman Baum suggested that it was never a sanctioned use as a warehouse. They could have used it as a warehouse without a permit. Mr. Cappello added that the nature of the use, part of this was used as a laundry and stuff was stored there. He pointed to Village of Monroe code, asking are retail stores generally considered more appropriate near residential than solely warehouses? We're talking about the nature of the use of this building, converting it to retail with six deliveries is more appropriate and more conducive to a residential neighborhood than the uses of that building in the past. If in the past it was partially used for storage that would be similar to what it would be used for here because a portion of it would still be used for storage and a portion would be used for retail. The impacts of it will likely be less significant.

Going back to the deliveries, Member Margotta said there would be about 22 deliveries every week between the box trucks and the delivery trucks. He asked Mr. Neustadt is it his intention to abandon the warehouse that he is currently using to service both stores? Mr. Neustadt said yes. Member Margotta asked if this traffic takes into account moving goods from this warehouse to the store in the other location? Mr. Cappello interjected and said yes. All the goods will come to the Monroe facility and there will be trips from this facility to the

other facility. Mr. Margotta asked how many trips there would be per day? Mr. Neustadt said between four and six vans a day but then after questioning from Chairman Baum he said about two to three trips a day to re-stock the other store.

Member Martuscelli said that Mapes Street and Spring Street are kind of tight, especially going under the underpass. And between 8 to 9 o'clock you've got buses going to North Main Street. Is that going to cause a problem for the buses to deliver those children in a timely fashion? Mr. Sandor said that during the last public hearing they stated that most of the deliveries are made between 10 and 12 o'clock, so there won't be a conflict in the morning. Member Martuscelli asked what about the afternoon? Mr. Sandor replied the same is true. The buses come through 2:30 to 3:30. Member Martuscelli said no, North Main Street is about 3:15. Member Zuckerman said that Mr. Sandor's letter states 10 to 2pm. Member Martuscelli asked if that would be honored? Is that a guarantee? If the buses start having problems delivering the kids in a timely fashion then it's going to become a problem. The fact of the matter is sometimes they're going to have issues delivering or picking up. So, it might cause a conflict. There's got to be some kind of guarantee that these hours are specifically set and that there will not be any delays for the kids to go to school and go home. Chairman Baum said they wouldn't be able to guarantee that. Attorney Naughton said that would be a Planning Board issue.

Chairman Baum opened the hearing up to the public. Bonnie Patrikis of 39 Franklin Avenue spoke to the Board. She said that she has a lot of concerns about Franklin Avenue and the school. She said that the children on North Main are walkers. The traffic from Smith's Clove Park during certain times of the year is a concern because there are a lot of kids who walk there. The traffic is an issue. It's always jammed up just past the light near Smith's Clove Park. Also depending upon what's going on at the park. It's just a nightmare right there. It also gets backed up in the morning when she's going on Route 17M at the light by the Mobil station. Sometimes she goes out by the backroads because it's backed up to North Main. Her main concern is Franklin Avenue. She doesn't want to be a truck route. She doesn't want to see Schlomie's vans going back and forth making deliveries. She said that she was as a home owner since 1990 and the laundry was open when she moved there. She said that it did not affect them at all. You saw vans there, 14-passenger vans brought employees at the beginning of the day and then they left at the end of the day. Occasionally you would see a truck but it did not affect the traffic there. This was before there was a traffic light there. The area itself is getting very sloppy and this is not going to enhance it at all. She is concerned about the cemetery there. Right now vans are parked right over it. It's not even a grassy area. Some of it is dirt. She felt it was very disrespectful. She is concerned about the weight limit on Franklin Avenue. We talked about some of the other roads. The trucks are not going to get under the underpass over by the funeral parlor. So, Franklin is it! What other route is there to go in and out? The foot traffic is going to increase, people who are using the grocery are going to be going there, van deliveries, there's

going to be a lot of action there and she doesn't think the area is set up for it. One other point two Sundays ago she was coming home from church. She saw Schlomie's vans there and the door was open to the laundry but she was wondering if it was being used right now as a warehouse. Member Zuckerman said before we were discussing 43.4 of the code and we were discussing North Main Street. That code also includes the prohibition against large trucks on Franklin Avenue. It's not only North Main Street. And secondarily the cemetery is on the lot next to this lot, we're only concentrating on lot 15.

Steve Kushner of 128 Carpenter Place spoke to the Board. He has lived there since 1984 and lived in the area since the 1950's. Mr. Kushner had submitted a letter to the Board at the last Board meeting. There are a couple of points he wished to make. He said that the attorney talked a lot about the nature of this business and the nature of the use and he was saying that it's much better to have a retail store as opposed to a laundry next to your house. Mr. Kushner said he would agree if it were retail, but it isn't. The nature of this business is an order fulfillment center because they have delivery vans. That's first and foremost. How do we know that? Because they only have 14 parking spaces plus one handicap but they have 25 employees. So where are they going to park? The site plan only shows 14/15 parking spaces. Where are the other people going to park? They have tractor trailers. You cannot put a tractor trailer into that space the way it's configured today without in some fashion obstructing the traffic patterns that exist on Spring Street and North Main Street. You can't have a driveway because you can't have a driveway opening up into an intersection without variances. Coming back to the nature of the business: it's a distribution center, it's a warehouse that has some space for retail. Well it can't be much retail because there are only 14 parking spaces. So, that means that people have to drive to it to get there. Mr. Kushner pointed out that without sidewalks it would be difficult for walkers to get there. This is a distribution center plain and simple. It has a retail portion in it. They compare this to ShopRite, Stop and Shop and to BJ's but all of those facilities are designed specifically for deliveries, for handling the retail trade, for fire equipment moving safely into and out of the property. None of those things is accounted for here. The water usage numbers are fictitious. You cannot be using for 20-25 employees, six vans, and miscellaneous number of other trucks, maintenance, sanitation and flushing the toilet and retail at 200 gallons a day. It's not possible. In the document that I submitted I showed you that just hand washing and toilet flushing based on the numbers in that document equals 94 gallons. That's before you put a mop in a bucket and before you hose out that truck, because there has to be a level of sanitation to keep them nice and clean for their deliveries. It keeps coming back to it being distribution. There's some retail but it's mostly a delivery service. Just like ShopRite wants a delivery service, or Stop and Shop or BJ's. This proposal showing this different usage, and it's a new usage, the nature of it is distribution so go look at Montgomery, go look at Yellow Freight, go look at where Wakefern foods used to be. Go look at those places and you'll see the problems that you have with a distribution center on where the trucks go. You cannot control when a truck is going to deliver your produce. You can ask them but it doesn't

happen that way. I worked in those facilities as a manager. I've worked in distribution a good chunk of my life when I was younger, in small and large firms. It doesn't work that way. You can ask them to make a delivery at a certain time. But if this business grows, and I hope it does grow because it sounds like it's a good business, you cannot use that facility. You only focus on that lot but you've got this empty large lot. There's no division and the blueprints don't show any way of stopping the use of that land. Currently that empty land which is not part of this, is used by the business that's across the street for excess parking and overnight parking. You see it all the time. Just drive by there and you'll see spillover. There's nothing to prevent that lot from being used and it will be used.

Chairman Baum asked, for the business? For the expansion of the business? Mr. Kushner answered because the lot is there and it's available. They call it an attractive nuisance. Chairman Baum said you're talking about parking vehicles? Mr. Kushner said parking vehicles, trucks or whatever. It's available to be used for whatever you would like. The nature of this business is distribution, it's going to be vehicular, and that's a warehouse. It's an order fulfillment center that has some retail. The inside of the store whether 50% is for storage and 50% is for retail or whatever division you want to make, they have order pickers and receivers that receive orders they load the trucks and off they go. If this business grows, and hopefully it will grow, that business will increase. Comparing it to a laundry is almost a specious argument because it's not a laundry. It uses less water and it uses less sewer. But this isn't 10 years ago it's not Monroe of 20 years ago. Check the population statistics. We are not the same people that we were. We should not blindly consider just this one little small point as this business looks today with no potential for growth. He wouldn't be moving and consolidating unless he felt there were the need for his business to grow. It has grown and it's getting stronger. That's wonderful and that's what should be reflected in this application, not this small, little narrow perspective. What is the true nature of this business? Wakefern Foods opened up a 450,000 sq. ft. warehouse distribution center. Several years later they opened up a 150,000 sq. ft. refrigeration center. All of the farms around them started complaining about the waste that was coming from the garbage from their compactors. They had to do something about that. Nowhere in the documentation the applicant provided does it show how they will handle the garbage. Just showing where the dumpsters will go doesn't make it. We have dumpsters that sit out in the street here in the Village of Monroe right near the Police Station filled with mattresses all the time. Here I'm going to have a cement pad, I'm going to throw in the boxes full of rotten foods that have gone past the sell-by date, where does that go? Where's that on the site plan? Laundry doesn't have that issue.

Chairman Baum said that would be a site plan issue. He said that's not something the Zoning Board of Appeals deals with.

Mr. Kushner said that he understood but the point is that it's a different use. He reiterated that the nature of the business is not a laundry it's a food distribution center. It's going to be taking in fruits and vegetables as well as canned goods and everything else. A laundry dumps stuff into a sewer. There's traffic from the trucks coming in. They're going to replenish other stores. So how do you do this? You're looking at the site plan. It's a new use, non-conforming, granted a new use. If you have apartments it's a whole different discussion. But that's not this discussion. It's about the nature of this distribution center and order fulfillment center that will have a retail heart.

Donna Kushner of 128 Carpenter Place spoke. She has lived here since she was four years old and she has seen everything. We're grandparents now. Just getting out of our driveway is very difficult now. And the ambulance used to be across the street. It used to be a very quiet corner. Even though we have the funeral home and two churches and now we have the Erie Station stores, and coming around the corner, if you're coming off Spring Street under the trestle onto Mapes you have the stop sign. You can't see it coming around the corner because there are cars parked under the Erie Station. She said that she is just thinking of the traffic. She sees traffic building up on her street coming up around the corner coming around Maple Avenue and right in front of Carpenter Place and underneath the trestle and then right there is the Monroe laundry, this facility. There's a light there and you can't make a turn because there's no right on red. With the traffic that's there right now, because there's no left signal or anything like that, with all the buses, with all the people commuting to work and all the traffic that's on North Main Street it took her 20 minutes to get from the Mobil station to her house at around 5 o'clock in the evening. 20 Minutes! That's a long trip that should take 30 seconds. 20 minutes because the traffic is so jammed up. She said that she is all for people having businesses. She said that she works for herself and it's a wonderful thing to have a business. She said that she applauds anyone for doing that. But this particular intersection will cause so much grief. Just the traffic alone, everybody is at that corner right now. And there are no trucks there, there's nothing going on there, no business and yet it's so crowded. She said that she just can imagine with this business booming they're going to have to put three more lights in somewhere. You're going to have to have a light right on Carpenter Place because you can't make a turn, and then there's going to be a light right underneath the trestle and there's going to be another light half-way down. That's the only way to control the traffic.

Bonnie Patrikis also said that her husband is a volunteer fireman. She said it is a concern just getting from Franklin Avenue to Mombasha fire station. Technically you can't get through them, he has to wait and it does affect all the firemen in that area.

Mr. Cappello said that he understands and appreciates the comments that were made. These people have a great investment in their home. His client would like to develop in a manner that would not be unduly burdensome to them. I do reiterate that the majority of the

comments that were made are comments that we would have to address with the Planning Board as a part of a site plan to make sure that the traffic can be handled and that if there are certain improvements to allow access to this building. But when we talk about the nature of the use, Mr. Kushner's comments were very relevant when he talked about the retail uses in the area. A component of this is retail. What the laundromat did was they washed and they distributed it, whether it was towels or diapers and sheets, to where it needed to go. This building is 11,000 sq. ft. on that parcel of land. This building will never be expanded. There will never be more than 11,250 square feet of distribution and Mr. Cappello argued that there was no comparison to make with a 100,000+ Wakefern facility or refrigeration facility. This building as a nonconforming use is permitted to go at 11,000 sq. ft. It will continue to be 11,000 sq. ft. It will be fixed, the lot will be cleaned, there will be vegetation there. We want the trucks to be able to go in and the business to operate. Those are site plan issues. But going to the core of the nature of the use, Mr. Kushner made my point that this is consistent. It's food instead of towels, its more retail, which is more conforming in what the neighborhood has been because there are several retail areas around there. The nature of the use is similar and that's what we're asking this Board to determine. We can to go the Planning Board to work with us to determine and address their issues and concerns. But we did advise you of what we did we gave you numbers of what the trips and the facility and frankly there can't be that many more trips because of the size of the facility just won't accommodate it. There's only so much you can put in 11,000 sq. ft. Mr. Cappello said that he believed based upon that the nature of the use it is similar or more restrictive in nature and he was asking the Board to find it so they can go to the Planning Board and hopefully address these concerns to satisfy or at least address the best as we can their concerns.

Mr. Kushner said it's still the continuation of a use that stopped 10 years ago. Whether that's relevant or not is up to the Board to determine. The nature of what they're distributing and given the circumstances of the time, is not the same conditions as exist today. And as the attorney pointed out it's more desirable to have your house next to a grocery store than a distribution center. Well he's right it is. But this is not a grocery store so let's call it what it really is. And then have a more forthright discussion about the property. I'd have the same argument if it were a laundry service that wanted to start up again. Chairman Baum said they would be allowed to do that.

Member Zuckerman said we are four residents who sit on the zoning board of the Village of Monroe with many of the concerns that you have but we're the Zoning Board of Appeals and we have to go with what the law says and what certain definitions are. And when you talk about a warehouse the law excludes it being a warehouse if the public comes in. The definition of a warehouse is a particular storage facility for which the public does not come in. Mr. Kushner said so BJ's warehouse is not really a warehouse? Member Zuckerman said it's not, it's an anchor store under our code. We have to interpret according to the law. That is what we're bound to do.

On a motion made by Member Margotta and seconded by Member Zuckerman it was:
Resolved to close the public hearing:

Ayes – 4

Nays – 0

Absent – Member McCarthy

Chairman Baum said that he felt that this is a non-conforming use and the whole aim of zoning is to get rid of non-conforming uses. Non-conforming uses should eventually go away, they should disappear, and the property should only be used for a conforming use. We're dealing with a situation where we're allowed to change a use from one non-conforming use to another non-conforming use that's the same or less restrictive in nature. And when we talk about what's less restrictive in nature, to me it's the impact on the community. When I look at this I'm looking at a retail store that Mr. Cappello may feel is more in keeping than a laundry but I see it as a much more intense use of the property than it being used as a laundry. The traffic impacts alone are more than double but if you look at just at the delivery vans alone we're talking about 144 trips, another 22 deliveries into the store, so we're up to 166, then another 12 to 18 deliveries to his other location to restock it, plus customers. The traffic impact is double or triple from what it was as a laundry. Chairman Baum said that to him that's a significant impact even though you may be saying it's retail and a retail use is more consistent with the neighborhood than a laundry, he sees the impact from this use being much more intensive than a laundry use. And he didn't think it was appropriate to the area. If we have to live with a non-conforming use, so be it, but he didn't think we ought to allow another non-conforming use which may have a much longer lifetime that's going to pose a greater impact on the community than the commercial laundry did.

Member Margotta agreed. He interpreted "more restricted" as it having a greater impact as well. He said regardless of what reasoning is being used he looks at traffic as the main impact that is going to affect the area. And even considering if there were equal traffic it would have been always coming through Spring Street. That's where the deliveries came and that's the way they'd go to the highway because they couldn't go down North Main Street. They were going via Nininger Road. Member Margotta said that he was surprised when they gave that number of how many trips a week they made. It seemed less to him based upon his experience. The impact of the traffic isn't just how many trips and how many vehicles but the routes that they are taking, so it's going to affect more the local roads, as well there's going to be a lot of traffic all over the place. As opposed to if they were confined to one particular route when they go back onto the highway to get to where they were back at West Point or the major facilities.

Member Martuscelli agreed. He added that he is concerned about the impact that it is going to have. He shares the same concerns as Mr. Kushner.

Chairman Baum felt the impact would be significant. Do we need to send this to the Planning Board so that they have to deal with the situation that we've created just to allow a use that's going to impose greater impact on the community than what was there before. The idea of the non-conforming uses is that they should ultimately be eliminated and he felt that the comprehensive plan shows that this property is more appropriate as a residential use. They re-zoned it for residential use and we'd be changing the policy of the comprehensive plan by allowing this use to be established and to put such a significant impact on the traffic and if they grow and hopefully they will grow there will be even more of an impact.

Member Margotta said that the funny thing is it hasn't been a laundry for 10 years or more and we didn't have a stop light there when they closed and there's way more traffic now than there used to be. But even if you had the low amount of traffic if that came back that would impact adversely that area because it's a bad traffic area. Member Margotta said that he is shocked by how often he gets stuck there. He wants to make a right but he can't.

Chairman Baum said that he didn't think this use was any more appropriate than the prior use. If anything he felt that it would be more of a negative.

Member Margotta added that he is not against this as a business. He said that he loves the concept of this business he just doesn't think it is suitable for this location. He wishes this could go someplace else. Chairman Baum agreed, saying it's a great business and there's a demand for it but not in this spot. Member Margotta said that this is the worst location for it.

Member Zuckerman asked the Board members how they feel about the water and gas usage and the sewer? He said it is so much greater in a commercial laundry. Member Margotta said that for him it isn't even an issue. Regardless of what the number is he didn't think it should be under consideration. In his mind the issue is what would have a greater impact and he felt the impact to the surrounding areas was the traffic.

Member Zuckerman said that what makes this really difficult for him is the fact that there has not been a laundry for 10 years. We don't know what the laundry would have been if it had continued these 10 years. Traffic might be worse or better, we just don't know. We're looking at an imaginary laundry.

Member Margotta said they didn't often use them but if you look at that building there are some loading docks against that parcel. He said that he has seen the trucks drive out on the grass just to be able to go to the intersection at Franklin Street because the traffic there was

less. They used to do that often. So even when it was a laundry there was a lot of traffic there. They had to drive through the lot to get out at a more safe intersection.

Member Martuscelli said that even with the laundry being closed the last ten years, he has lived here 32 years, he has seen the impact. Because you've got more people living here. So you still have problems at certain times of the day when you have to wait because you can't make a right.

Member Zuckerman said that the general problem is that 10 years later all of the traffic in the Village of Monroe, not just traffic emanating out of this location, is going to be much higher. So how much do we say is caused by this business coming in and how much do we say is based upon the growth of the Village of Monroe over the past 10 years.

Chairman Baum said it's obviously there's the growth in the community. But can the road system right there in this date and time handle the kind of traffic impacts that we have heard could potentially be here. It's tripling the traffic impacts of the laundry. We don't know what the laundry would be doing right now we can only assume. But we do know what's been said before us about how it's going to be used now.

Member Margotta added that it's not just about the traffic impacts. He's not just thinking about Spring Street and Mapes Place he's thinking about the local deliveries. There wasn't a local laundry delivery service. There's going to be a lot of local deliveries and restocking. They're going to be using Franklin Avenue a lot to get between places and to get around the Village. So, it's not just this particular intersection it's going to impact the area around it as well.

Chairman Baum said he felt that they would use Franklin Avenue. Chairman Baum said he didn't think there was any restriction on that. He added that he didn't think this was a more appropriate use. To him what we're looking for in our zoning code is whether or not this is any more appropriate of a use than a commercial laundry and he didn't see it. He didn't see it as being more appropriate for the area.

Attorney Naughton said that "more appropriate" was in the cited law case.

Chairman Baum said he understood that but he is thinking more restrictive use, is it greater impact, is it more appropriate, is it more in conformity with the area than a laundry? He didn't really see it as being more in conformity.

Member Margotta agreed with that.

Member Zuckerman said that he sees the difficulty and he also sees the difficulty in the fact that this is a CB district until June of 2017 and if it was a CB district both businesses could come in.

Chairman Baum said but it's not.

Member Zuckerman said your point is well taken that we've got to follow what the Board has done by converting it. They were looking for a URM and that's what they felt this area should have. It's just that it's difficult because he can't get his hands around this laundry concept. When we don't know what the laundry would be like after being closed for 10 years. Obviously right now a vacant building, even if it's just getting some shipments to warehouse supplies, is going to be a lot less of an impact.

Chairman Baum said that we have to go by the facts that we have before us. If you accept Mr. Gottlieb's affidavit they have 56 vehicles a week. Now we're talking 166++.

Attorney Naughton said whether that's the same or a more restrictive nature.

Member Zuckerman said that was his one problem with the affidavit. He wished Mr. Gottlieb was here. Chairman Baum said he wished Mr. Gottlieb were here too because they could have asked him a lot more questions.

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

Resolved to deny the application of Hatov Springs, LLC for a change of use from the pre-existing commercial laundry facility to the retail food store as it is not the same or of a more restrictive nature pursuant to Village of Monroe code:

Ayes – 3

Nays – Member Zuckerman

Absent – Member McCarthy

ADOPTION OF MINUTES FROM JULY 10, 2018 MEETING

On a motion by Chairman Baum, seconded by Member Martuscelli, with all in favor, it was:

Resolved to approve the minutes of July 10, 2018 with minor changes.

Ayes – 3

Nays – 0

Abstaining – Member Margotta

Absent – Member McCarthy

ADOPTION OF MINUTES FROM AUGUST 14, 2018 MEETING

On a motion by Member Margotta, seconded by Member Zuckerman, with all in favor, it was: **Resolved to approve the minutes of August 14, 2018.**

Ayes – 3

Nays – 0

Abstaining – Member Martuscelli

Absent – Member McCarthy

OLD BUSINESS

There was no old business before the Board.

NEW BUSINESS: ZONING BOARD APPLICATIONS

1. The Board was advised that no new applications were received.
2. The Orange County Municipal Planning Federation's annual dinner will be held at Delancey's Bar & Restaurant in Goshen, NY on September 27, 2018. Member Margotta and Secretary Doherty will attend. Secretary Doherty will contact Member McCarthy to find out if he will be attending as well.

On a motion by Member Margotta, seconded by Member Zuckerman, with all in favor, it was: **Resolved to approve the attendance of Member McCarthy, Member Margotta and Secretary Doherty at the OCMPF annual dinner on September 27, 2018.**

Ayes – 4

Nays – 0

Abstaining/Absent – Member McCarthy

3. Adoption of the 2019 Meeting Schedule (Attachment to these Minutes)

Chairman Baum inquired about the February meeting which coincided with Lincoln's Birthday. He said if it is a holiday recognized by Village Hall it should be rescheduled.

On a motion by Chairman Baum, seconded by Member Martuscelli, it was: **Resolved to approve the attached 2019 meeting schedule unless the February meeting date conflict's with Lincoln's Birthday.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member McCarthy

ADJOURNMENT:

On a motion by Member Margotta, seconded by Member Zuckerman, with all in favor, **there being no further business, the meeting was adjourned at 10:21pm.**

Ayes – 4

Nays – 0

Absent/Abstaining –Member McCarthy

Respectfully submitted,



Elizabeth Doherty
ZBA Secretary

ATTACHMENT

VILLAGE OF MONROE
ZONING BOARD OF APPEALS

2019 Meeting Schedule

<u>Meeting Date</u>	<u>Submission Deadline</u>
January 8, 2019	December 4, 2019
February 12, 2019	January 8, 2019
March 12, 2019	February 5, 2019
April 9, 2019	March 5, 2019
May 14, 2019	April 9 2019
June 11, 2019	May 7, 2019
July 9, 2019	June 4, 2019
August 13, 2019	July 9, 2019
September 10, 2019	August 6, 2019
October 15, 2019	September 3, 2019
November 12, 2019	October 8, 2019
December 10, 2019	November 5, 2019