

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
MEETING
OCTOBER 9, 2018
MINUTES**

PRESENT: Acting Chairman Zuckerman, Member McCarthy, and Member Martuscelli;
Building Inspector Cocks and Richard B. Golden, Esq.

ABSENT: Chairman Baum and Member Margotta

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

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.

Present: John Henry, Esq., Attorney for the applicant; Mr. Joel Mann, who worked on the design of the homes; Robert Rosborough, Esq., was also in attendance along with the owners of BMG Monroe I, LLC

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.

This is a continuation of the public hearing on September 4, 2018 for which the applicant's attorney, Robert Rosborough, Esq., requested an adjournment because he could not attend the hearing that day.

The representatives of BMG Monroe I, LLC were advised that there were only three Board members present. In order for the appeal to be approved by the Board there must be three "yes" votes. With only three Board members all three would have to vote "yes" in order for the appeal to be approved. Acting Chairman Zuckerman said that they had the option to adjourn the hearing to November when there may be a full Board in attendance. Mr. Henry said he wanted to proceed and given the fact that there was a quorum he requested that the Board take action tonight. Attorney Golden informed him

that the Board was not required to take action tonight. Mr. Henry requested that at the conclusion of tonight's Public Hearing that the Public Hearing be closed. Mr. Golden said that the Board's action depends upon what happens at tonight's hearing. The Board would not keep the Public Hearing open simply to continue the discussion.

Mr. Henry said that a number of submissions have been made to the Building Department since they received his initial letter of denial. What remains to be addressed are three issues that come out of the SEQRA findings statement. Mr. Henry listed them as follows: the roofline, the use of vinyl as a siding material and the issue of the rear elevation of the buildings.

Mr. Henry directed the Board to pages 19 and 20 of the SEQRA findings which are the provisions that were invoked in the Building Inspector's denial letter of the building permit applications. He said that the purpose of these findings is to mitigate potential visual impacts. To the extent practical the homes should be consistent with the SEQRA findings statement and the typical elevation drawings that were submitted in connection with the SEQRA process. SEQRA findings are intended to address mitigation of environmental impacts. They don't dictate how a building is constructed. It simply says you have to take a look at the environmental impacts when you're issuing an approval for a land use project like this. It doesn't dictate how something should be constructed. SEQRA doesn't dictate the materials that would be used in construction. He said our plans fully comply with the Village code and with the building code of the State of New York. The issue that's been raised is that they diverge from the SEQRA findings in three respects. The first is the roof line. There's a line in the SEQRA findings that says the buildings can have a 12' x 12' main roof line. There have been some revisions made to the plans and they have been re-submitted. Mr. Henry directed the Board to plans that are pending before the Village.

He said these plans show a 12' x 12' main roof line. The claim that's been raised is that there's a piece of roof, the lower roof, that has a 3' x 12' pitch on it (the steepness of the roof). But the plans that the Village has right now clearly show a 12' x 12' main roof line. The SEQRA findings don't say anything about all the roof lines they just say the main roof line. The main roof line has been redesigned and it is now a 12' x 12' roof line. It is in full compliance with the SEQRA findings statement.

The other issue that has been raised is the use of vinyl as a siding material. The language of the plans of the SEQRA findings statement is that the materials to be used are siding and stone with some brick detailing (that's on page 19 of the SEQRA findings statement which is part of section 5.8). Mr. Henry said there is some brick detailing and stone detailing. There is shiplap-style vinyl siding. And along the roofline there is overlapping

shingle-style of siding. There is stone on the other areas. Clearly that's within the SEQRA findings statement, even if the SEQRA findings statement could somehow be used to dictate the denial of building permit application. As for the issue of vinyl versus wood there is absolutely nothing in SEQRA or the SEQRA findings statement or any environmental law or regulation that dictates how a building is to be constructed or what materials are to be used. The sole purpose of SEQRA in this context is to mitigate the visual impacts of the project. To make it have a certain look that fits in with the community character. That's compliant with the SEQRA finding statement as to the visual impacts. It's clearly within the scope of what was contemplated in the SEQRA findings statement.

The last issue is the issue of the rear elevation of the building that's in front of the Board. The complaint has been made that this is somehow too similar on either side of the rear elevation. It's clearly quite different on the front elevation (no complaints have been raised in that regard). It's not 100% clear what the objection to the rear elevations is. The SEQRA findings statement contemplates that the buildings would have different looks from building to building. Mr. Henry said he was not sure how the building permit could be denied based upon a single building.

Acting Chairman Zuckerman pointed out that the building to which Mr. Henry referred was a duplex, not separate houses. Mr. Henry said one building, duplexes are attached. Acting Chairman Zuckerman continued, saying there is no jog between the two. Mr. Henry said that they're separate lots but the houses are connected. He said that there are different building code provisions for these units in order to ensure fire suppression, fire safety, but it's one structure. So, for purposes of the SEQRA findings, this is one building.

Mr. Henry reminded the Board that the applicant is the land owner and that they are entitled to a presumption that if there's an ambiguity in any of these governing regulations they're to be construed in the applicant's favor as the land owner. Mr. Henry said that he had yet to hear a basis under which they should be denied a building permit for this project. He said that this is a good project for the Village. It has been subject to a lengthy SEQRA process and that the applicant has invested millions of dollars in off-site improvements to the infrastructure of the Village that they can potentially lose value if the applicant is not allowed to go forward. The economics of the project is such that you need a buildout in order to make a return on the investments that have been made here. We're simply looking to build the project that has been approved subject to years of review and is under construction. There are a number of homes that have already been built and initial foundations laid out all within the Town of Monroe. Mr. Henry said that there is nothing onerous constructing these houses that have been subject to years of

review. There are no shocking visual impacts. They are fully code compliant. There is no building code, no Village code issue raised. There's only been this notion that the plans are somehow not in compliance. SEQRA is a tool to look at environmental impacts. It doesn't dictate how to build something. That's determined by the building code, by the Village code. We are in full compliance with those provisions. And we're in compliance with the SEQRA findings. We're asking the board to reverse the determination and that we be given building permits to move forward with this project in the Village in order to bring the benefits of the project and the tax revenues into the Village and to continue making the improvements that his clients have been making all along.

Acting Chairman Zuckerman said that he wanted to mark some documents into evidence. Exhibit A is the application form submitted by BMG Monroe I, LLC dated March 29, 2018 which includes the exhibits that Mr. Henry referred to attached to the application. Acting Chairman Zuckerman labeled as Exhibit B the letter with two exhibits of Mr. Rosborough dated May 18, 2018. Acting Chairman marked as Exhibit C the most recent plans submitted on April 26, 2018 to the Building Department. Acting Chairman Zuckerman marked as Exhibit D the streetscape architectural sketch and the typical rear elevation drawing that was recently submitted by the applicant, last revised on July 28, 2014. Acting Chairman Zuckerman marked as Exhibit E the Building Inspector's report dated May 7, 2018.

Acting Chairman said that looking at Exhibit D both the SEQRA findings and the Planning Board approval state that the building would follow the typical rear elevation drawing which is attached, and they show the duplex that is in the drawing. Acting Chairman Zuckerman asked how were they the same? Mr. Henry said your question is how does the duplex in the SEQRA findings and the one in Exhibit D dated July 28, 2014 look like the one that is being proposed? Acting Chairman Zuckerman said yes.

Mr. Mann, the design professional, addressed that question. Mr. Mann said he worked on the design of the buildings to match them with the SEQRA approval with the streetscape guidelines. He said that he took the footprint of the buildings from the site plan with the proposed streetscapes and he combined it to make it work together and comply with all the Village approvals. Mr. Mann read from the last paragraph of page 19 of the SEQRA findings statement (Exhibit C attached to the application form):

The homes in the community center that will be constructed on site will follow a strict architectural code that will ensure the constructed homes will, to the extent practical, apply the architectural styling of the drawings

presented in the draft environmental impact statement dated June 9, 2005.

Mr. Mann then quoted from the paragraph before it:

Most of the homes will have front porches or a covered entryway. The front porch columns are all within the same style and while the look of the homes may change from house to house the column detailing ties the architecture together.

Mr. Mann concluded by saying that if you look at the streetscapes, on the grading plan it only shows the homes that have “great” access to the first floor. But going from the site plan there are different buildings types with different grading scenarios. Some buildings are exposed in the front, the basements are exposed in the front, they will clearly not comply with any of the streetscapes. Based on that these guidelines are to use the architectural components from the streetscapes and implement that in the plans so that it should look within that family. Actually, in the front we were able on one house to comply 100% or let’s say 90%. Mr. Henry compared streetscape #2 to the look of the house in Exhibit D, “Typical Plan Elevations from SEQRA findings of July 2014.” Mr. Mann added that there is no streetscape for the side elevations. Mr. Mann said that when he first submitted documents to the Building Department he was denied based upon the side elevations. Mr. Mann said that the Building Inspector then agreed that they were in compliance because Mr. Mann implemented the components from the streetscape into the side elevation. Mr. Mann said that he did the same thing with the rear elevation. It doesn’t need to comply 100% with that picture because it is impossible. In fact, the rear elevation shows only two stories because it’s grade access. That’s a typical picture. But it happens to be that this house is a slab but some houses have exposed basements in the back. So, the rear elevation is completely different. It’s clear on the grading plan that some houses have exposed basements in the front. Mr. Mann asked how could he comply with the pictures if they need to be 100%?

Mr. Henry said that you have to bear in mind that these are supposed to be typical drawings. There is no such a legal standard as something should look this. Otherwise we wouldn’t have codes or anything like that. The SEQRA process is intended to give somebody an opportunity to look at the visual impacts of a project and decide if this fits within the community character. SEQRA doesn’t dictate the height of buildings or the width of buildings or the angle of the roof or anything like that. It simply says you should take a look at the visual impacts of the project before you approve it to make sure it is in conformity with the community character. Mr. Henry said that just looking at the

two homes here in the typical drawing between what's being proposed, Mr. Henry was not sure what the objection was.

Mr. Mann said that he used the architectural components, the detailing, from the guidelines and incorporate them into the design. He said that it is very similar to the components of the side elevation, such as the 12' x 12' gables which are same at the front and the side as depicted in the streetscapes.

Acting Chairman Zuckerman read from Exhibit E, which is the denial letter from the Building Inspector:

The rear elevation drawings approved in the SEQRA findings statement show the two duplex units clearly dissimilar in appearance and depicting two separate and distinct units as well as show an off-set between the two units. The rear elevation sheets of the plans you've submitted for both lots are a mirror image of each other, are inherently similar and do not indicate any off-set between the units.

Mr. Mann responded that the footprint of the site plan is a straight line in the back. It was approved and he didn't need to do anything further. Second, there is nothing in the guidelines that says anything about one thing must be dissimilar to the other. You have a picture. We have a list of guidelines and this should have been written in the guidelines. It's not one of the ten things in the list. SEQRA said we need to follow the guidelines of the typical elevations. Mr. Mann said that he would be able to do a dissimilar design in the rear. But he said that regarding the rear elevation he didn't get anything suggesting that he was bound to do that.

Acting Chairman Zuckerman said that since we are the Zoning Board, the Village Planning Board has the lead as far as SEQRA is concerned, we cannot negotiate if you are going to change it to comply more with SEQRA. That you have to take up with the Planning Board or the Building Inspector. The SEQRA findings and the Planning Board approval said that it shall be in full compliance with all the SEQRA findings and one of the SEQRA findings was that the duplex houses were to be similar to the typical rear elevation drawing which shows two dissimilar units with a split in between. That's the problem.

Mr. Henry said that what was reviewed by the Planning Board, which neither the Building Inspector nor the ZBA has the power to reject building permit applications on the basis of a subjective interpretation as to whether something looks like the typical drawing from the SEQRA findings. The idea is that these are examples that might be used in the

construction of a project or might not be. There's no requirement anywhere in the SEQRA findings that every building look like that. In fact they are required to be different. How can they be different and comply with that picture?

Acting Chairman Zuckerman quoted from the findings of the Village Planning Board as SEQRA lead agency:

The homes will follow a strict architectural code, will to the extent practicable reflect the architectural styling in the drawings presented in the draft environmental impact statement dated June 9, 2005 enumerated below: Streetscape drawings 1 to 3, architectural drawing in #4, and typical rear elevation drawing.

And quoting from pages 9 and 10 of the final site plan approval Acting Chairman Zuckerman said, "*Such approval is conditioned on the following: Full compliance with all SEQRA findings and mitigation measures identified therein.*"

If we follow SEQRA you have to follow the rear elevation drawing.

Mr. Henry said my question remains, how can we do that and make the buildings all look different. Some of them have porches some of them do not. What you're saying now is each one has to look exactly like the 2014 set of drawings which wasn't even in the 2005 DEIS.

Member Martuscelli said but that's what you proposed. Why are you all of the sudden changing? I'm a little confused by the whole thing, by your subjective notions as to the legal standards binding you to the guideline's strict architectural code. You proposed all of this and now you're making changes.

Mr. Henry responded that his client has made tons of changes to accommodate every request of the Village and then we come back in and we get another one. Attorney Golden asked to whom Mr. Henry was referring when he said the Village? Mr. Henry said the Building Inspector. Attorney Golden asked, regarding the three issues that are now before the Board, has Mr. Henry made accommodations to the Building Inspector? Mr. Henry said yes. His client has provided different siding materials, provided a different look on the front elevation, they've changed the roof line of the buildings. Initially there was a debate about the size of the buildings, that the buildings couldn't have above a certain square footage. His client showed that was wrong. His client came back and submitted applications and they were told no for a variety of reasons: side elevations, roof lines, everything under the sun. Mr. Henry said that they've been through

a six-month plus process and they've now narrowed down that process to the three being considered by the Board tonight.

Attorney Golden said that there is no sense in talking about prior accommodations but Mr. Henry responded, "Oh, there certainly is." Attorney Golden continued, saying that the only thing before the Board right now is a determination with respect to those three issues. The rest is irrelevant.

Attorney Golden noted for the record that the statement made by counsel, "Any ambiguity must be decided in the applicant's favor" is not a true statement of the law. That principle only deals with statutory construction. It does not deal with provisions of a resolution nor does it deal with renderings or anything else. It only deals with the very narrow issue of whether or not what is in a zoning code, the statute, was sufficiently clear to override common-law rights, real property rights. It has nothing to do with the resolution. Mr. Henry disagreed with that. Attorney Golden continued, saying that with respect to SEQRA, although you stated that SEQRA involves general environmental impacts and the review of those, clearly findings statements are the statement of what mitigations need to be employed. In many, many times, if not almost all times, findings include very specific things. They don't talk generally with respect to visual impacts, they talk about the specific things that would be necessary in order to mitigate the adverse environmental impacts of visual or these other issues. The findings were clearly incorporated directly in the resolution itself.

Acting Chairman Zuckerman said that regarding the building material both the SEQRA findings and the Planning Board approval stated that the siding should consist of shingles, shiplap, stucco, stone or brick siding material. It does not say vinyl. Mr. Henry responded that it doesn't say wood either. Mr. Mann said usually if you're not permitting vinyl it should be prohibited. It should be clear that you're not allowed to use vinyl, that you can only use natural siding material. So, basically the point is that they have required a mix, they don't want to see one building with siding from top to bottom. It should be a mix like the streetscapes show. You cannot see anything saying that this streetscape picture will change if you use vinyl or another type of material. That's probably the typical picture and the typical material that has been used everywhere. I don't think we have any project being restricted by using that vinyl siding material.

Mr. Henry added that in fact if you look at the typical elevations from the SEQRA findings they use siding. There is nothing showing any difference between the siding that's used on the typical drawings and the siding that's used here. Mr. Mann said it's the same thing as on page 19. It says, "The materials to be used are siding and stone and some brick detail." Acting Chairman Zuckerman asked Mr. Mann to clarify what he was

reading. Mr. Mann said it was page 19 of Exhibit C. Acting Chairman Zuckerman said that on page 20 it says, "Building siding shall vary among the units and consist of shingles, shiplap, stucco, stone or brick siding materials." It's talking about materials. It doesn't talk about a vinyl material.

Mr. Henry said if you look at the second paragraph of section 5.8, the findings statement, about half way down it says, "The roof forms have a mixture of gables in the roof mass. The materials to be used are siding and stone with some brick detailing." Acting Chairman Zuckerman said that on the next page it sets forth what the siding is. It says, "The siding consists of shingles, shiplap, stucco, stone or brick siding material." Not vinyl.

Mr. Henry said if you look at the plans here what they have is a vinyl shiplap siding. Acting Chairman Zuckerman said shiplap is wood, it's not vinyl. Mr. Henry said that there is nothing in there that says anything about using wood. Acting Chairman Zuckerman repeated that it says shiplap which is a wood material. Mr. Mann added that shiplap is not a material, shiplap is a design. Acting Zuckerman said that shiplap is a design of wood. Mr. Henry said shiplap is a cut. Mr. Mann said there is also vinyl shiplap.

Acting Chairman Zuckerman said that you would have to show that to our Building Inspector. He read the definition from the computer, "Shiplap is a type of wooden board used commonly as exterior siding in the construction of residences, barns, sheds and other buildings." Mr. Henry responded that in the industry shiplap can also be a cut of siding. Mr. Mann said that years ago shiplap was typically made of wood but in fact when you call the supply companies today shiplap design is vinyl material. We agreed to the design of the shiplap but there is nothing saying that the shiplap needs to be wood. Mr. Henry added that there isn't a wood-sided house built in a project like this anywhere around. What you're saying is you want to build these buildings with wooden siding. Acting Chairman Zuckerman said no you have to build them with shingles, shiplap, stucco, stone or brick siding material. Mr. Henry responded that they have the stucco, they have the shingles, the variety of siding materials just like in the elevation that's shown in the typical drawings. It's no different than what's shown in these typical drawings with respect to the siding. Mr. Mann said this will be a wooden-look siding. The picture and the color of the material in the streetscape will be different. The other point is that you can do a variety of colors but that you cannot do if you are bound by shiplap wooden siding, what comes with a typical wooden color.

Acting Chairman Zuckerman responded that you're asking us to stand in the shoes of the Building Inspector and look at the plans, look at SEQRA and the Planning Board

approval, and it says specifically that it should be strictly followed and that the siding shall consist of shingles, shiplap, stucco, stone or brick siding material. If the Planning Board lead agency will approve vinyl that looks like shiplap you will have to go back to the lead agency and they will have to have a discussion as to whether that fits in. There is no allowance for us for vinyl.

Mr. Henry said the word “wood” doesn’t appear anywhere in there. What you're saying is that it was the Planning Board’s intent that all of these buildings should have wood siding? Acting Chairman Zuckerman said that they should have siding that consists of “shingles, shiplap, stucco, stone or brick.” There is no allowance for vinyl. Mr. Henry said that's not what the SEQRA findings say.

Acting Chairman Zuckerman said you’re talking about siding material. Mr. Henry said we’re talking about style in order to mitigate visual impacts. Mr. Mann interjected that the material is the explanation of the style. The intent of the shiplap is the design and the look of shiplap. Mr. Henry continued saying that SEQRA has no bearing on construction materials, wood versus vinyl. Attorney Golden said it depends upon what the SEQRA findings say. It is a categorically wrong statement to say that SEQRA findings cannot address particular materials. They certainly can. If that’s the mitigations they have arrived at then that is what the SEQRA findings are. Mr. Henry then argued that the SEQRA findings can say lots of things that might not be legal. They could say how many people can live in a house or what can be in a house. Attorney Golden then asked if Mr. Henry was saying that it is illegal for SEQRA findings to dictate the materials of a house to which Mr. Henry answered yes. Attorney Golden then said well that's easy then; that’s wrong. Mr. Henry said that’s determined by the building code.

Member McCarthy said that he’s not an investor or a developer, or a contractor or an architect, but all of these elements come into play in developing a plan and goal. Then you establish that goal when you went to the Planning Board and presented it, and you got an agreement with them to present what your original goal was. And now you come to us with changes and I don’t understand what the compelling reason is for changes once you received approval to do what was originally agreed upon. Mr. Henry said that he doesn’t think there’s a change at all. He said we’re not saying that the Planning Board compelled us to build wood-sided houses. That’s what we’re being told now.

Member Martuscelli asked what is the purpose of making a proposal? Presenting all sorts of evidence and then making changes? Mr. Henry responded that they’re not making changes, they’re submitting exactly what the Planning Board approved.

Attorney Golden then asked if Mr. Henry's position was that they can ignore the provisions in the findings outlined by the Acting Chairman with respect to the materials being limited to a certain group? You can ignore that because SEQRA findings cannot address that?

Mr. Henry said that he's saying two things. One is that's not a SEQRA issue, but even if it is we're in full compliance.

Acting Chairman Zuckerman addressed the issue of the roof line. The SEQRA findings state the main roof lines shall be steeply sloping with a 12' x 12' pitch or greater. The Building Inspector found that the roof pitch of the main roof line submitted on the building plans varied between 12' on 12' to 3' on 12'. Acting Chairman Zuckerman asked if this was incorrect?

Mr. Henry said yes. Mr. Mann pointed out the main roof line in a prepared diagram. He said 80% of the whole roof line is 12' and 12'. All the gables are 12' on 12'. All the ridge lines are 12' on 12'. The only changes happen where it is impossible to make it work and the Building Inspector agreed to that. Our position is that we are compliant. Mr. Henry said that the language of the SEQRA findings is that the main roof line shall be steeply sloping with 12' x 12' pitch. Our position is that the main roof line is the main roof line along the main part of the building. The Building Inspector's position seems to be all the roof lines. That's not the language of the SEQRA findings. There was a reconfiguration over several months in order to achieve the main roof line at 12' x 12'. Mr. Mann said the original was 8' x 12' (*sic* – Exhibit A shows originally 6' x 12'). He also said that the SEQRA findings called for a mixture of roof forms and gables.

Acting Chairman Zuckerman asked when Mr. Mann became involved with this project? Mr. Mann answered in 2016, after this project was already approved. Acting Chairman Zuckerman continued, saying the original SEQRA approval was given to the prior owner but when you purchased it, it was purchased subject to SEQRA findings. Mr. Mann said that was correct. And he also said that he is not the owner he is just the planner, the designer. He said that they researched it subject to all the SEQRA documents and all the approvals and they made the plans based on that but he feels that it complies with the SEQRA.

Acting Chairman Zuckerman asked Building Inspector Cocks, "You stated that the main roof line submitted on the building plans varies between 12' to 12' and 3' on 12' so it's your finding that the 3' on 12' is also part of the main roof line?" Building Inspector Cocks clarified, saying yes, from the ridge to the eave is the main roof line. And it varies, so it's 12' on 12' and it changes to 3' on 12'. It needs to be 12' on 12' from the

top of the roof on down to that eave. Acting Chairman Zuckerman said it's your position that it's the entire roof line including 3' x 12'. Building Inspector Cocks said, that is the main roof line. So, the main roof line defined is from that top ridge to that eave. The whole thing should be 12' x 12'.

Mr. Henry asked if there is a definition of main roof line that the Building Inspector was referring to? The Building Inspector said no. Mr. Mann said there is no secondary roof line. The main roof line is actually very clear cut. The main roof lines are actually the ridge lines. Once we had the ridge lines we covered the mains. In fact we have covered more of the roof lines but we tried to comply and do the most possible with 12' on 12'. After we passed the ridge lines we can change. It's not part of the main roof line, it's not a roof line. It's part of the roof. There is no secondary roof. Building Inspector Cocks said there is a secondary roof on the lower end. That's a whole other part. It's what you call a pitched roof. Mr. Henry said that the language in the SEQRA findings is the main roof line. We've heard that there is no known definition of main roof line. Attorney Golden interjected and said that's not what the Building Inspector said. Mr. Henry said fair enough, he didn't have a particular technical definition.

Mr. Henry said this is the main roof line. I don't know what else it would be. That's an easy one, it's 12' on 12'. Acting Chairman Zuckerman said but the gables are 3' on 12'. Mr. Henry and Mr. Mann corrected him, saying they were 12' on 12'. Acting Chairman Zuckerman asked where is the 3' x 12'? They answered that they were in an area on the streetscape that was not visible. Mr. Henry said it's in the rear. Mr. Henry pointed out the front elevation, that's the 12' x 12' roof line, that's the main roof line. The concern that's been raised is it's dipping down to a 3' x 12' roof line down at the bottom, under the gables. Mr. Mann said we're breaking it down here in one place, in other places it is that. Acting Chairman Zuckerman asked why that isn't part of the main roof line? Mr. Mann answered that if it's in the rear it is part of the roof line but it is not a part of the main roof line. He said that he doesn't see why there is a difference. As for the Building Inspector we are complying in the process. Everything is fine. Then why is the rear different? It depends how far down from the ridge line to break it. He said I don't know. Our definition is that we have the main roof line where all the visible gables are all 12' on 12'. The only places where it changes to 3' on 12' is in invisible areas. You cannot visualize it. And it's much lower down than the main roof line than the ridge line. Building Inspector Cocks said but you will see the impact because the buildings are turned around. You will see that from the lower area of the Village. Mr. Mann said but you won't see where the change is and how it changes. It is impossible to have a visual view even from up close. You see no line and that's the end of it. You just see a dark roof. You see it goes up very high. Mr. Henry said that part is 12' on 12' so that you have that high roof line so it's a steeper roof.

Mr. Henry said that at the end of the day it is our position that we fully comply with the SEQRA findings. And to answer the question, why don't you come in and try to build something that's different? We think we're building exactly what was in the SEQRA findings in a project that is already under construction. We submit that we've invested a lot of time and money in this project. His client has paid millions of dollars in improvements and is anxious to move forward to building homes in the Village. We've made lots of efforts over the last year or so to address any of the issues that have been raised. He said they are prepared to go forward and get building permits and build this project that they believe is in full compliance with the SEQRA finding approvals in both the Town and the Village that were issued here. As we know the Town has issued building permits for this project that is under construction under the same SEQRA findings.

Acting Chairman Zuckerman asked if there are any members of the public that would like to speak.

Mr. Sigmund Brach of Woodbury, NY addressed the Board to say it was told to him many times through the grapevine that the Village will do anything to stop this project, which was tarnished for different reasons, websites, internet, many different reasons. This project is going to be built no matter what. We will go to court, if we lose, we'll fix it. But this project is going to be built and we are going to be liberated and we will build a big liberation center, a holocaust center, that we liberated when the Village was trying to stop everything. There's no secret what's the reason. We know the reason behind it. We were told in court we will bring all the facts out on the table. We'll have the positions we will be able to prove everything that he says is true.

Attorney Golden asked if Mr. Brach if he had any comments with respect to this particular application, on the three issues that are before the Board at this time? Mr. Brach answered that we didn't go to the Planning Board. We were denied. We are in court. He said there is no Planning Board here. He said that he hired legal people. Mr. Mann and the attorney suggested to do everything that's right. He said that's what they followed. He also said that he spent over \$5,000,000 off-site for the Village. Fix thing the whole Gilbert (Street) flooded roads, fix the sidewalks, the retaining walls on the streets, everything else. And after we spent the money the shaft comes in. There is no reason that he should be denied for secondary reasons. I need the legal, not illegal. Because they think no project is going to be built. It *is* going to be built our project, I guarantee you! If we have to do whatever, if we lose in court and if we have to do wood shiplap or if we have to do the whole building 12' x 12', there is going to be a development there. But we're first going to have the law of court to rule what's right.

We're not going to ask the Building Inspector to make a determination or any other board in the Village. If we have to go to court, we'll go to court. It's ok. Deep pockets, it's \$20 million in this project and money's not going to hold it down. If your Village adds taxes on the people, no problem to finding out.

Mr. Steven Reineke of Hamptonburgh, NY addressed the Board. He said that he was retained by the Village Board when there were initially some questions concerning the areas and moving forward on this project. I was involved in pointing out that the size of the homes was not set forth in the resolution of approval and therefore that could not be deemed an objection to the application. I then counseled the Building Inspector, again as in my capacity of having been retained by the Village for this project, that he would be bound in his review to the building code and to the resolution of approval because this project is not a simple subdivision it was a subdivision combined with a site plan approval. I've heard everybody keep talking about the SEQRA findings but if you look at the denials every one of the issues referred to by the Building Department, specifically these three matters that have come before the Board, are conditions that are in the resolution of approval. You do not have to go into and try to interpret SEQRA findings outside the scope of approval. Primarily they are found on pages 16 and 17 of the resolution of approval by the Planning Board. The roof line, which is the first one, is a condition identified as #3 in the bottom portion of page 17 of the resolution of approval that says, "The main roof line shall be steeply sloping with 12' on 12' pitch or greater," not or lesser. Acting Chairman Zuckerman specified that this is page 17 of Exhibit D in Exhibit A. Mr. Reineke said it is the Resolution of Approval adopted August 10, 2015.

Mr. Reineke continued, saying that they have proposed to us before that the main roof line is the ridge line and some portion of the roof proceeding down. When I met with Building Inspector Cocks about the roof line he said the main roof line is the uninterrupted roof running from the ridge to the eave. There were no definitions in the State building code or in the Village building code, so we looked in the required reference to the Webster's Collegiate Second Edition Dictionary, which is required by Village code if there are no definitions. We did not see it specifically defined. In the trade I happen to believe that the main roof line is the line from the ridge to the eave. I have talked to a number of different builders. Some say it's not to the end of the eave it's to the end of the sidewall which is usually about a foot back. But essentially from the ridge to a point at the side wall or the end of the overhang is what everybody told me the main roof line is. The question of shiplap again is on page 17, it's number 4, right below the main roof line. It talks to the building siding shall vary among the units and consist of, and it gives multiple choices for the siding: the shingles, the shiplap, the stucco, stone or brick siding materials. The State building code does not define shiplap. The Village

building code does not define shiplap. But in response to the request made by the applicant's counsel, I referred them in February 2018 that the Village code says if you don't understand a meaning you can look to the State Building Code, the International Building Code, New York State Uniform Supplement, or the latest edition of Webster's New Collegiate Dictionary. I provided them a copy of that definition shown in Webster's and it specifically refers to shiplap as a wood siding material. The word "wood" is clear. They have said since it's not prohibited it's permitted. I would simply say if it's specified as being a restrictive listing, because if you read the resolution of approval section it doesn't say among other things, it gives you a specific listing of materials.

On the question of the rear elevations, I will grant you that is an interpretational thing looking at the elevations that were submitted. The difference between what they have presented and what the Building Inspector has described to me is they are referring to the duplex as a building when in fact the duplex is two buildings that happen to be attached. They have separate tax lot numbers and separate addresses. The intent as far as the Building Inspector was concerned was to have a distinction so that you don't have a warehouse-like finish of the same structure on both sides of the dividing firewall.

But what is most important is this is not the Building Inspector going and digging into SEQRA it is him following the strict provisions of the resolution of approval. The Building Inspector advised the applicant, or the people who were dropping off plans, he is bound by the resolution of approval. He can't change it. He is administrative only. He can only review what is submitted and see if it abides with the code and in this case with the specific nature of the approval. So I just wanted to clarify that. There had been discussions on it back in December. If you want something that's different from what was approved you'd have to ask the Planning Board to modify their approvals because the Building Inspector cannot do it.

Mr. Henry said the only thing I would add is that all the resolution of approval did was incorporate the same things that we just went through in our discussion. It's the incorporation of the SEQRA findings language. As for the reliance on the Village code regarding the reliance on a dictionary, we're not interpreting the Village code here. There is nothing in the Village code that references any of these issues so we're not interpreting any building code provisions.

Acting Chairman Zuckerman stated that I am aware of this particular section and it does state that if the others do not apply you do go to Webster's dictionary. Mr. Henry said if you're interpreting a term in the Village code. But you're not interpreting a term in the Village code. Acting Chairman Zuckerman said I think that's a little restrictive. Mr. Henry said, "That's your opinion."

Attorney Golden said the Board's job now is to interpret it, make a determination. If the threats are true then a court is going to determine whether or not if you don't grant this your determination is arbitrary and capricious. If you believe that relying upon a dictionary, relying upon some other references, is reasonable then you have every right to rely upon them.

Acting Chairman Zuckerman stated for the record that he is not related to anybody at the construction company Verticon (prior construction company of this project) which is owned by the Zuckerman family.

Acting Chairman Zuckerman asked if anybody else wanted to speak? No one came forward.

On a motion by Acting Chairman Zuckerman, seconded by Member McCarthy, it was:
Resolved to close the public hearing.

Ayes – 3

Nays – 0

Absent – Chairman Baum and Member Margotta

On a motion by Acting Chairman Zuckerman, seconded by Member Martuscelli, it was:
Resolved to adjourn discussion of and opinion on this matter to November 13, 2018.

Ayes – 3

Nays – 0

Absent – Chairman Baum and Member Margotta

ADOPTION OF DECISION FOR HATOV SPRINGS, LLC

On a motion by Acting Chairman Zuckerman, seconded by Member Martuscelli, with all in favor, it was: **Resolved to table approval of the decision to November 13, 2018.**

Ayes – 3

Nays – 0

Absent/Abstaining – Chairman Baum, Member Margotta

ADOPTION OF MINUTES SEPTEMBER 4, 2018

On a motion by Acting Chairman Zuckerman, seconded by Member Martuscelli, with all in favor, it was: **Resolved to table approval of the minutes to November 13, 2018.**

Ayes – 3

Nays – 0

Absent/Abstaining – Chairman Baum, Member Margotta

ADOPTION OF 2019 MEETING SCHEDULE

The February 2019 meeting schedule was changed from February 12, 2018 to February 5, 2019 in recognition of Lincoln's Birthday. The submission date will be changed accordingly.

On a motion by Acting Chairman Zuckerman, seconded by Member Martuscelli, with all in favor, it was: **Resolved to approve the 2019 Meeting Schedule with the noted changes.**

Ayes – 3

Nays – 0

Absent/Abstaining – Chairman Baum, Member Margotta

NEW BUSINESS

1. The Board was advised that no new applications were received.
2. Orange County Municipal Planning Federation Fall 2019 classes, attached to these Minutes. Member McCarthy advised Secretary Doherty that he wished to take the two evening classes being offered. Acting Chairman Zuckerman, Member Martuscelli and Secretary Doherty wished to take the evening class on November 1st. Secretary Doherty said she would contact Member Margotta to see if he wanted to take any classes.

OLD BUSINESS

There was no old business before the Board.

ADJOURNMENT:

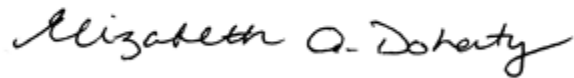
On a motion by Member Martuscelli, seconded by Member McCarthy, with all in favor, **there being no further business, the meeting was adjourned at 9:12pm.**

Ayes – 3

Nays – 0

Absent/Abstaining –Chairman Baum and Member Margotta

Respectfully submitted,

A handwritten signature in cursive script that reads "Elizabeth A. Doherty".

Elizabeth Doherty
ZBA Secretary