

**VILLAGE OF MONROE  
ZONING BOARD OF APPEALS  
MEETING  
NOVEMBER 13, 2018  
MINUTES**

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

**ABSENT:** Chairman Baum

Acting Chairman Zuckerman called the meeting to order at 8:04pm with the Pledge of Allegiance to the flag.

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

**Present: Ronald S. Kossar, Esq., representative for the applicant and Mr. Joel Mann, who worked on the design of the homes**

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.

Acting Chairman Zuckerman said that the public hearing was closed on October 9, 2018. The Board received a letter dated November 2, 2018 from Robert S. Rosborough IV, Esq., attorney for the applicant. Attached to it was a document with certain pages from a draft Environmental Impact Statement dated July 15, 2004.

On a motion by Acting Chairman Zuckerman, seconded by Member Margotta, it was: **Resolved to open the record in order to admit into evidence the aforementioned letter and attached document.**

**Ayes – 3**

**Nays – Member McCarthy**

**Absent – Chairman Baum**

Acting Chairman Zuckerman marked as Exhibit F the letter and attachment. He also introduced and marked into evidence Exhibit G, a U.S. census document, in reference to information contained in Exhibit F. Acting Chairman Zuckerman called attention to Exhibit G which shows US census figures, specifically the column called, "Vinyl Siding for the Year 2006." It shows that 31% of all houses built in 2006 in the United States were vinyl sided and in the same year 86% of the houses that were built in the Northeast were vinyl sided. This is being entered as a clarification to a statement contained in Exhibit F which states:

*In 2006 the SEQRA findings statement called for brick siding that varied among units and consisted of shingles, shiplap, stucco, stone or brick siding materials. My client has advised that at the time vinyl was not the most popular or widely used exterior on new developments in the construction industry nor in the Village itself and thus was not included on the list.*

Acting Chairman Zuckerman opened the discussion with the first of the three findings of the Building Inspector,

*The rear elevation on building plan does not comply with the final resolution of approval dated 8/10/15, nor with the typical rear elevation drawing listed in the SEQRA findings statement as per Section 5.8, Paragraph 3, Number 7. 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 showing an offset between the two units. The rear elevation sheets of the building plans you [the applicant] have submitted for both lots are a mirror image of each other, are inherently similar and do not indicate any offset between the units.*

Acting Chairman Zuckerman said that the SEQRA lead agency, the Village Planning Board, stated in the SEQRA findings (Section 5.8, pages 19 and 20 of Exhibit C on Exhibit A, the application in evidence):

*The homes will follow a strict architectural code... will to the extent practicable, reflect the architectural styling of the drawings presented in the draft Environmental Impact Statement dated June 9, 2005 enumerated below; streetscape drawings, architectural drawings and typical rear elevation drawing.*

Also, on Exhibit A, Section D, Planning Board approval, pages 9 and 10, states, “Such approval is conditioned on the following: Full compliance with all SEQRA findings and mitigation measures identified therein.” Acting Chairman Zuckerman continued, saying that it is his opinion that a thorough inspection of Exhibit D in evidence which contains the typical rear elevation drawing, when compared with Exhibit C, the plans, including the rear elevation sheets, sustain the Building Inspector's findings. First of all, there was some question at the hearing as to what the duplex units comprise. There was a statement that the duplex unit was a single house. That is absolutely not true. It contains two separate and distinct tax lot numbers and two separate and distinct addresses. We are dealing not with one unit but with two units.

The applicant argues that SEQRA does not limit any minor deviations as long as those deviations don't incur visual impacts that would otherwise violate the SEQRA findings. Acting Chairman Zuckerman said that this deviation is not minor and that SEQRA is not just a guideline, it's what the Planning Board as Lead Agency wanted to mitigate as far as visual impacts were concerned. If only a guide then SEQRA proceedings are meaningless. If you can change the mitigation for the visual impact what else can you change? Acting Chairman Zuckerman called attention to the key words, “strict architectural code” and “critical architectural criteria.” Again, as stated by the Building Inspector, if you take a look at those sheets, as far as the rear elevation is concerned, the two units are mirror images of each other, are similar and have no offset. This was not what was required not only in the SEQRA findings but in the final approval of the Planning Board.

Acting Chairman Zuckerman continued, saying that therefore it was his opinion that the finding of the Building Inspector in reference to the rear elevation should be sustained. Member Margotta agreed. He said that not even considering the offset, it's still majorly deviant from the SEQRA plan. When you look at the drawings, he said, the intent was to not make it obvious that there was a duplex there and that is very obvious from the submitted plans that they're showing you. It's not even close. Member McCarthy and Member Martuscelli also agreed.

Acting Chairman Zuckerman also addressed the issue of the proposed vinyl siding material. He read from Exhibit E, which is the Building Inspector's report of May 7, 2018:

*The proposed vinyl siding material does not comply with the final resolution of approval dated 8/10/15 nor with the SEQRA findings statement as per Section 5.8, Paragraph 3, Number 4. Number 4*

*specifically lists the materials for siding to consist of shingles, shiplap, stucco, stone or brick.*

Member Margotta said it lists those materials specifically, not something that is *like* those materials. He also said the applicant mentioned that it was common practice to use another material, but they should have known during SEQRA what material they were planning on using. Member Martuscelli said that the applicant deviated from SEQRA. Member Margotta continued, saying that he understood the reasons why they didn't in the original SEQRA choose not to go with the composite materials for such a large project. It was never brought up at SEQRA which was the time it should have been brought up. Acting Chairman Zuckerman said again that the key word is material. The two sources he looked at were definitions on the computer and in the dictionary. Shiplap is wood. It's not vinyl that imitates shiplap, it's shiplap because you can't just say it's in the style of shiplap. Member Margotta agreed, saying that otherwise the SEQRA findings would have stated that it was in the style of shiplap. But again, those words were omitted. It was just shiplap, stucco, etc. Acting Chairman Zuckerman referred back again to Exhibit F. There is the admission by Mr. Rosborough, "Vinyl was not the most popular" which we now take some objection to. Also, he states in the end, "and vinyl thus was not included on the list." Member Margotta agreed that by Mr. Rosborough's own admission that was true. He continued saying that he thought it was clear from that admission that it is a deviation from what was accepted. Member Martuscelli agreed, saying that the applicant should have stated what their intention was. Member McCarthy agreed as well saying that if it was vinyl it should have been stated in the resolution of approval.

Acting Chairman Zuckerman said, again, it's in two places. It's both in the SEQRA findings, which was done by the lead agency, the Planning Board, and in the Planning Board's final approval. Member Margotta said that in both cases the applicant had had the chance to bring up the materials that would be used.

Acting Chairman Zuckerman read the final issue before the Board:

*The roof pitch of the main roof line submitted on the building plans varies between 12' on 12' to 3' on 12'. This does not comply with the final resolution of approval dated 8/10/15 along with the SEQRA findings statement as per Section 5.8, Paragraph 3, Number 3, which specifically states the main roof lines shall be steeply sloping with 12'on 12' pitch or greater.*

Member Margotta said that to him this was a clear issue. He recalled that in the past the architects who designed the M&T bank building said that the community preferred the steeper pitches because a larger roof exposure lessens the visual impact of the size of a building. He said that has always been the case and that is probably the same reason why the Planning Board chose this particular scheme for the building. It mitigates the visual impact of the building.

Acting Chairman Zuckerman referred to Exhibit 1 for a review of the history of this, something which is a little bit more complex than the others. Exhibit A, which is the application, contains the original letter from the Building Inspector denying the building permits based on the earlier plan of January 25, 2018. It would appear from what is contained in Exhibit A that originally none of the roof lines was 12' by 12'. They were all 6' by 12'. Apparently, the applicant went back, as Mr. Mann has testified, came up with the plans that we have now, Exhibit C, which shows both 12' by 12' and 3' by 12'. The argument the applicant is making is a little bit different than the other one. In this one they make the argument that what they did complies because 80%, according to a statement made by Mr. Mann, of the whole roof line is now 12' by 12'. Acting Chairman Zuckerman said Mr. Mann also said that it was impossible to make it work any better than that. The argument was also that Mr. Mann considered the areas with the 12' by 12' pitch to constitute the main roof line. The question Acting Chairman Zuckerman raised to the Board is, what is the main roof line? Has the main roof line being 12' by 12' or steeper been satisfied with all of the 3' by 12'? Again, this is a little bit more difficult. The others terms can be checked with the dictionary or the computer, but it was very difficult to find out what the meaning of the main roof line is concerned. But, he continued, what we do have before us is the fact that Building Inspector Cocks stated on the record that the main roof line also contains the part that's 3' by 12' because the main roof line is from the top ridge to the eaves. According to his testimony it needs to be 12' by 12' from the top of the roof down to the eave and the whole thing should be 12' by 12'.

Steven Reineke who also testified at the last hearing basically said that he had been retained by the Village Board when there were initially some questions about the project. He looked for all kinds of definitions of main roof line in the State building code, in the Village building code, and in the Webster's Collegiate Second Edition Dictionary, however he could not find an exact definition of main roof line in them. But he stated in the trade, he happened to believe that the main roof line is the line from the ridge to the eave, and he testified that he spoke to different builders and some said it's even further than being 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 sidewall or the end of the overhang. This is what everyone told him what the main roof line was.

Acting Chairman Zuckerman said that from what the Building Inspector stated and what Steven Reineke stated it seems reasonable to find that this has not been complied with because parts of the main roof line are 3' on 12'. Member Margotta said that the reason they did the roof this way was to maximize floor space on the second floor. But again, the reason they approved that roof pitch was not for the pitch itself, it was for the visual impact that the roof would impose. If you look at the amount of exposed siding from the elevations that was approved and the amount of siding you'll see from the submitted application, it's almost double. And, again, the visual impact has been increased because of that. Going by that alone, besides the fact that it still does it not comply with the definition, it doesn't even comply with the intent.

In reference to Member Margotta's point, Acting Chairman Zuckerman said that Mr. Mann testified that the 3' by 12' was in an area on the streetscape that is not visible since it's in the rear and therefore not part of the main roof line. However, Building Inspector Cocks stated that you can see it from the lower areas of the Village and you will see the impact. Member Margotta agreed. The visual impact will even be seen by the neighbors themselves. He said when we consider projects it's not just the visual impact to people who don't live nearby it's visual impact to the people that live within the community as well. Visual impact is not limited to the people outside the community. Based on those remarks it doesn't meet those definitions nor the intent of the original plan. Acting Chairman Zuckerman stated again the requirements for strict adherence to SEQRA and to the Planning Board final report. Member Margotta said again that those issues should have been brought up at the Planning Board. If the Planning Board knew this was going to be something the applicant was intending on doing, if not at SEQRA then at the Planning Board review, it should have been brought up.

On a motion by Acting Chairman Zuckerman, seconded by Member Margotta, it was:  
**Resolved that upon a thorough inspection of the documents submitted and entered into evidence the Board finds that the applicant's appeal of the Building Inspector's decision should be denied and that the findings of the Building Inspector's report of May 7, 2018 (Exhibit E) are correct.**

**Ayes – 4**

**Nays – None**

**Absent – Chairman Baum**

Attorney Golden explained that under Village law a decision must be approved within 62 days of the close of the public hearing. As the public hearing for the applicant was closed on October 9<sup>th</sup>, the final day to approve the written decision would be December

10, 2018, exactly one day before the December ZBA meeting. Attorney Golden asked Mr. Kossar, representing the applicant, if he would agree to give the Board an additional day to approve the decision. Mr. Kossar agreed.

On a motion by Member Margotta, seconded by Member Martuscelli, it was: **Resolved to waive the 62-day requirement to approve the written decision for BMG Monroe 1, LLC until the next meeting on December 11, 2018.**

**Ayes – 4**

**Nays – None**

**Absent – Chairman Baum**

On a motion by Acting Chairman Zuckerman, seconded by Member Martuscelli, it was: **Resolved to adopt the decision for Hatov Springs, LLC.**

**Ayes – 4**

**Nays – None**

**Absent – Chairman Baum**

On a motion by Member Margotta, seconded by Member Martuscelli, it was: **Resolved to approve the minutes of the September 4, 2018 public hearing.**

**Ayes – 3**

**Nays – None**

**Abstaining – Member McCarthy**

**Absent – Chairman Baum**

On a motion by Acting Chairman Zuckerman, seconded by Member McCarthy, it was: **Resolved to approve the minutes of the October 9, 2018 public hearing.**

**Ayes – 3**

**Nays – None**

**Abstaining – Member Margotta**

**Absent – Chairman Baum**

**NEW BUSINESS:**

1. The Board was advised that no new applications were received.

2. Acting Chairman Zuckerman's reappointment to the Zoning Board of Appeals was approved by the Board of Trustees. His new term will expire on December 31, 2023.

### **OLD BUSINESS**

The final class of the Orange County Municipal Planning Federation's Fall 2018 series will be held on Thursday, November 26<sup>th</sup>. Member Margotta and Member McCarthy will attend.

### **ADJOURNMENT:**

On a motion by Member Margotta, seconded by Member Martuscelli, with all in favor, there being no further business, it was: **Resolved that the meeting be adjourned at 8:45pm.**

**Ayes – 4**

**Nays – 0**

**Absent /Abstaining – Chairman Baum**

Respectfully submitted,



Elizabeth Doherty

ZBA Secretary