

**VILLAGE OF MONROE
ZONING BOARD OF APPEALS
PUBLIC HEARING
via Zoom
APRIL 13, 2021
MINUTES**

PRESENT: Chairman Baum, Member Zuckerman, Member Margotta, Member Gilstrap and Member Czerwinski; Building Inspector Cocks and Assistant Building Inspector Proulx; Kelly Naughton, Esq. and Ashley Torre, Esq.

ABSENT: None

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

**1. APPLICATION: Mark Shahid – Area Variance – 231-2-57
Present: Mark Shahid**

The application of Mark Shahid, for an area variance from the requirements of Section 200-26: Accessory structures are permitted in the rear yard only. This application is for an existing accessory structure that is located in the side yard.

The property, which is the subject of said action by the Board, is located in an SR-20 Zoning District and is identified as Section 231-2-57 on the tax map of the Village of Monroe and is also known as the address 3 Gleneagles Court.

This is a continuation of the public hearing that began on November 10, 2020.

Mr. Shahid began by saying that at the last meeting the Board needed more information about why the shed could not be placed anywhere in the rear yard. Mr. Shahid subsequently provided the Board with pictures and prints of the zoning map that show how the rear yard is sloped. Mr. Shahid also provided letters from his neighbors voicing their support for the shed to stay in its current location.

Mr. Shahid explained that the reason he cannot put the shed in the rear yard is his yard is sloped. It is sloped both going towards the rear of the property and along the side of the property. In order for the shed to be level a retaining wall would have to be built. Mr. Shahid said that the wall would have to start at 3' in height at one end of the shed and go to 6' in height at the opposite end. Mr. Shahid said that if a retaining wall is greater than 4' in

height it would require an engineer in order to be structurally sound and that would be very expensive. Mr. Shahid said that he would need retaining walls for all four sides of his shed.

Mr. Shahid said that the alternative to using a retaining wall would be leveling his yard. The shed is about 12' x 12'. The area to be leveled would have to be about an extra foot wide, so the area to level would be 13' x 13'.

Mr. Shahid said that there is currently a retaining wall at the side of the house where the shed is. That area had already been leveled out. That is why he chose to locate the shed there. It required no extra work or expense. Mr. Shahid reiterated that none of his neighbors had any complaint about the shed. He said that everybody likes it there.

Discussion ensued about the turn-around area of the driveway. Building Inspector Cocks confirmed that the width of the driveway met the turn-around requirement. The area occupied by the shed was not in a turn-around area.

Mr. Shahid said that he built the retaining wall and he blacktopped the area so that it would match the driveway. This way it looks like part of the driveway so that it looks nice.

Chairman Baum noted for the record that six letters were received from the following neighbors, all in support of the shed being in its current location:

1. Alexander Woo – 5 Gleneagles Court
2. Raymond Donovan – 2 Gleneagles Court
3. Rodolfo Mejia – 8 Gleneagles Court
4. Alexander and Evelyn Sosa – 4 Gleneagles Court
5. Salvatore Matera – 1 Callaway Drive
6. John D'Onofrio – 3 Callaway Drive

Chairman Baum also noted for the record that Mr. Shahid submitted a supplemental letter indicating the factors that need to be shown to order to grant an area variance.

Chairman Baum opened the hearing up to the public. No one from the public was in attendance.

On a motion by Chairman Baum, seconded by Member Gilstrap, it was: Resolved to close the public hearing.

Ayes – 5

Nays – 0

Absent/Abstaining – None

Member Margotta confirmed with Mr. Shahid that the retaining wall with the fence on it is right behind the shed? Mr. Shahid said that was correct. Member Margotta asked how high the retaining wall was? Mr. Shahid said it was about 3' high.

On a motion by Chairman Baum and seconded by Member Zuckerman, it was: **Resolved to classify this action as a Type 2 SEQRA and not subject to any further environmental review.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

Chairman Baum noted for the record that this application was referred to the Orange County Department of Planning for GML review. Their recommendation was for local determination.

Members of the Board reviewed the five factors to determine whether or not to grant an area variance.

(1) Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance;

Member Margotta pointed out that if the angle of the house to the road were a little bit different the shed would be in the rear yard. This really doesn't make much of a difference and certainly doesn't affect the character of the neighborhood. Chairman Baum agreed and said that the type of construction has the same look as the properties in the area. The colors and style of the shed are similar to the houses and complement the area. Every single one of his neighbors was in agreement that the shed is not going to detract from the neighborhood, it actually complements it. Member Zuckerman pointed out that one of the letters of support came from Mr. D'Onofrio whose own application for an area variance for a shed was previously denied.

(2) Whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance;

Member Margotta said that he was able to confirm all the slopes that the applicant talked about. He drove by the property to look at it and he came to the conclusion that it was almost impossible to find a good location for that shed. Chairman Baum agreed, saying that the only way the applicant could put this shed in the rear yard would be by incurring a very large expense. He would have to build a very high retaining wall certified by an engineer, filling in the area. This is a lot to do for a 12' x 12' shed. It is not a feasible alternative to the placement of the shed in its current location.

Member Gilstrap asked about the possibility of excavating an area for the shed rather than using a retaining wall? Member Margotta said that would require an excavator to dig out the area and ultimately retaining walls would have to be used. Member Gilstrap suggested it

might be a less expensive alternative to building up the land. Member Margotta did not agree.

(3) Whether the requested area variance is substantial;

Chairman Baum pointed out that if the applicant were able to shift the shed back 11' it would be in the rear yard and it would be in conformity with the 5' side yard setback requirement. The applicant is unable to shift it back because of the slope of his property. Chairman Baum was of the opinion that this was not a substantial variance.

Member Zuckerman said that he felt it was substantial because the shed is being moved from the back yard to the side yard. Member Margotta and Member Gilstrap agreed. Member Gilstrap said this was a difficult measure to evaluate. It's in the back or it's not, but Member Gilstrap said he could appreciate that the applicant placed it as close to the back as he could.

(4) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;

Chairman Baum said the shed would not have any impact on the physical or environmental conditions of the neighborhood or district. Member Margotta agreed.

(5) Whether an alleged difficulty is self-created.

Member Margotta said this is a result of the property. Member Gilstrap said that Mr. Shahid is one of the rare applicants who actually can make an argument that he did not create this problem. Apart from the fact that he needs a shed, he did not do anything to create this problem. Chairman Baum agreed. Member Zuckerman added that although the applicant did not create the problem, he built the shed in the side yard knowing that he was in violation of the code. Member Margotta pointed out that even if the applicant had obtained a permit prior to building his shed he still would have had to apply for a variance. Building Inspector Cocks informed the Board that there is a three times penalty for not applying and paying for a permit prior to building something. Chairman Baum agreed with Member Margotta that the hardship was there whether or not the applicant had properly applied for a permit prior to installing the shed.

Member Zuckerman closed by saying that he wished Mr. Shahid had come to the Board to seek a variance prior to constructing the shed. Instead, first he filed for an interpretation stating that the code allowed him to put the shed there; secondarily he stated that it was for personal reasons, that it was placed there out of convenience. Member Zuckerman said it would have been a lot easier for the Board if Mr. Shahid had originally stated that the reason he could not put the shed in the rear yard was because of the slope.

On a motion by Member Margotta, seconded by Member Czerwinski, it was: **Resolved to allow the shed to remain in its current location in the side yard and to grant the area variance.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

2. APPLICATION: Shahla Gorovoy – Use Variance – 228-1-48.1

Present: David Niemotko, Architect, Representing the Applicant

The application of Shahla Gorovoy for a use variance from the requirements of Section 200-62A. The applicant has an existing non-conforming apartment in the third floor. The applicant would like to alter this space by creating two additional bedrooms and relocating a half-bathroom to create a full bathroom.

The property, which is the subject of said action by the Board, is located in an SR-20 Zoning District and is identified as Section 228-1-48.1 on the tax map of the Village of Monroe and is also known as the address 176 Pine Tree Road, Monroe, NY.

Mr. Niemotko began by saying that Ms. Gorovoy wanted to modify the existing attic to make a larger space and increase the height. Mr. Niemotko submitted architectural plans showing what she wanted to do. This needed to be referred to the Zoning Board because during the previous zoning code this was a legal two-family but since the zoning code was changed two-family residences are no longer allowed within this zone. Any modifications, according to Section 200-62, of non-conforming use would need a Zoning Board variance.

The existing apartment traverses two floors. It's the second floor and attic of the main house. On the second floor is a kitchen, bathroom and foyer which leads to the next portion of the apartment in the attic. In the attic there currently exists a bathroom, a living room and a bedroom. The two total approximately 1,135 square feet. In the new design, she would like to eliminate the kitchen and bathroom that are on the second floor and make them part of the house proper. In the remaining space of the foyer she would like to add a kitchen, and then when you go up to the second floor she would like to add an additional bathroom and bedroom, which means that the attic would have two bedrooms and two bathrooms. That was the purpose of raising the roof and adding the two dormers.

Mr Niemotko said that the square footage remains somewhat the same, approximately 1,150 square feet. If the Board deems it necessary, he said that it can be made equal. There is no major degree of nonconformity because the apartment remains as previously approved. Mr. Niemotko said that there is a basis for the Zoning Board to look at this and grant a variance to go on with this work.

Member Zuckerman noted for the record that the applicant submitted two applications because the first application had some incorrect information. The second application again contained incorrect information, including:

1. An EAF for 178 Pine Tree Road (a different property that was owned by Ms. Gorovoy);
2. It listed the owner as Shahla Gorovoy when the owners were The Shahla Gorovoy Irrevocable Trust and The Charlie Gorovoy Irrevocable Trust; and,
3. The property lot was a 0.57 acre lot, not a 1.31 acre lot.

Attorney Naughton noted for the record that the applicant needed to provide an updated EAF with the information from the revised application. Attorney Naughton said that the Board could proceed with the application but would have to wait until the revised EAF was submitted before voting on whether or not to grant the variance.

In addition, Attorney Naughton said that the Board would need an updated Owner's Endorsement showing that this building is owned by a trust and that the applicant is the trustee and that she has the authorization to bring this application before the Board.

Attorney Naughton then gave a summary of the application. She said that this is different from many other applications seen by the Board because this is for a use variance, not an area variance. Use variances are based on case law. Village law defines use variances as the authorization of the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations. The two-family home is no longer permitted here, only single-family dwellings are, so a use variance is required.

The big difference between a use variance and an area variance is that an area variance is the balancing of the five factors (listed above for the first application heard this evening). There is no balancing with a use variance. You must meet all four criteria in order for the use variance to be granted. For this reason, use variances are not granted very often.

Attorney Naughton explained that there is a precedential effect with use variances, particularly with two-family dwellings. Granting the variance has the potential to essentially negate the prohibition in the code depending upon how it's handled.

Attorney Naughton also said that use variances are very rarely granted because it is difficult to prove by, "dollars and cents" proof, all four criteria. The applicant needs to prove by "dollars and cents" proof that he or she cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. Usually that would involve accounting provided to the Board that shows the applicant cannot get a reasonable return from the property unless the use variance is granted. Attorney Naughton noted that in this case the property is already getting a reasonable return because it is being used as a two-family home.

Attorney Naughton concluded by emphasizing how different the test for a use variance is from the test of an area variance. It can be difficult to prove that the alleged hardship is not self-created, particularly in this instance. The applicant right now has a right to use this

property as a two-family dwelling. The applicant can continue that right; it is provided for in the code. The reason this application is before the Board is that the applicant is trying to alter that use, and it's an alteration that the Building Inspector has determined cannot be done for pre-existing non-conforming uses that have the right to continue. By asking for this change the Board has to decide whether or not the hardship is self-created. It is a difficult test for the applicant to prove.

Member Zuckerman noted for the record that Attorney Naughton had previously noted that more than 60 days have passed between the Building Inspector's determination and the filing of the application with the ZBA. This Board must therefore go by the determination of the Building Inspector that this is an "alteration."

Building Inspector Cocks noted for the record that the applicant is requesting an increase in space (the dormers) and that the bedroom on the third floor was never approved as a bedroom. It was approved as a storage room. Attorney Naughton asked if that represents an increase in habitable or living space? Building Inspector Cocks said yes. Building Inspector Cocks also said that the applicant was aware of this when the room was built, that it did not meet the requirements of the building code for an egress window, and that it could never legally be used as a bedroom.

Chairman Baum said that the applicant is reconfiguring certain space. It doesn't matter what the construction is. If we have a prohibition in our Code against an alteration to a non-conforming use it doesn't matter whether or not it's an enlargement. Member Margotta felt that it did matter whether or not it was an enlargement because it was increasing the non-conformity as opposed to it being a rearrangement of what is already there. Building Inspector Cocks said that the applicant is also adding dormers and raising the roof to put in more headroom. That is increasing the space as well.

Member Zuckerman reiterated that since 60 days had passed the Board needed to follow what was in the Building Inspector's report which stated:

"...the proposed alteration to the third floor of the existing two-family dwelling by creating (2) additional bedrooms by altering and enlarging the roof creating dormers and relocating the half-bathroom to create a full bathroom."

This is an alteration pursuant to Section 200-62-A.

Chairman Baum, Member Margotta and Member Gilstrap all agreed that this was an alteration which was prohibited by the Code.

Attorney Naughton reiterated that this application could have a precedential effect. It could potentially apply to every two-family house in the Village that has been zoned out by the change in the Village's Code thereby undermining the zoning code because a legally pre-existing non-conforming use is being altered which would, if the use variance is approved, then make the two-family a permitted use in that zone. Attorney Naughton suggested that

the Board should ask, if the applicant chooses to proceed, how this hardship is unique to this property and how this hardship doesn't apply to the rest of this district, especially since there are a number of legally pre-existing, non-conforming two-family houses in this zoning district. In addition, the applicant needs to provide the Board with competent financial evidence, "dollars and cents" proof to justify granting the variance.

Member Zuckerman said that the applicant would also have to prove that the variance, if granted, would not alter the essential character of the immediate neighborhood. There are 46 houses on Pine Tree Road, 43 are single-family, one is a single family with an accessory apartment, one is a multi-family and one is a two-family (the one before us in tonight's application). The four streets that come to it, Cunningham Drive, Norwich Lane, Winchester Drive and Seals Drive have 135 single-family houses and one single-family house with an allowance for a business to be performed there. This neighborhood is strictly a neighborhood for single-family dwellings and if we granted this as a use variance it certainly would be a violation of the third criteria because it would alter the essential character of the neighborhood which is a neighborhood of single-family houses.

Member Margotta said that when the zoning is changed, leaving some buildings with pre-existing, non-conforming conditions, the intent is that over time these buildings will come into conformity. Attorney Naughton agreed, saying that eventually the buildings are phased out.

Mr. Niemotko confirmed with Building Inspector Cocks that the bedroom on the second floor was not classified as habitable? Building Inspector Cocks said that was correct.

Member Margotta said that right now the room is not being used as it should be? Building Inspector Cocks said that on the CO it is stated that the room is not a bedroom. Attorney Naughton said that the Board should consider it to be what it was approved as, and as such, this application should be considered an enlargement of the apartment.

On a motion by Chairman Baum and seconded by Member Margotta, it was: **Resolved to classify this action as an unlisted action pursuant to SEQRA and that the Board as Lead Agency conduct an uncoordinated review of the action.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

Chairman Baum noted for the record that no one from the public was in attendance.

On a motion by Chairman Baum, seconded by Member Gilstrap, it was: **Resolved to adjourn the public hearing to May 11, 2021 so that the applicant can submit an updated EAF and any other information.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

3. APPLICATION: Nezir Cosovic (347 North Main Street)

Present: David Niemotko, Architect

The applicant has a pre-existing non-conforming two-family dwelling. The applicant is proposing a renovation to the basement to create additional living space by adding an additional bathroom which the Building Inspector considers to be an alteration under Section 200-62A.

The property, which is the subject of said action by the Board, is located in an SR-10 Zoning District and is identified as Section 201-5-1 on the tax map of the Village of Monroe and is also known as the address 347 North Main Street, Monroe, NY.

Member Zuckerman, who lives next door to this property, recused himself from the application.

Member Gilstrap said that he lives across the street from this property and he offered to recuse himself if the applicant wanted him to. Attorney Naughton asked if he could remain impartial? He responded that he believed he could. Mr. Niemotko, representing the applicant, said it was not necessary for Member Gilstrap to recuse himself.

David Niemotko began by saying this is a legal, pre-existing two-family building. The owner wants to finish his basement which has 930 sq. ft. of usable space. Mr. Niemotko said that finished basements are customary in this area. Attorney Naughton clarified that this application is for an alteration to the existing building.

Chairman Baum said this application is subject to the same use variance standards and it has the same SEQRA issues. He asked Mr. Niemotko if he was prepared to present evidence as to the financial burden and the “dollars and cents” proof that is required to show as part of a use variance application. Mr. Niemotko responded that he was not in a position to do so at this meeting. Mr. Niemotko said, however, that a house with a finished basement was likely to have an increased value. Not allowing the property owners to do this, subjects them to a financial constraint and puts them in jeopardy of financial gain. Mr. Niemotko said if we were to produce comps in the neighborhood, whether of single- or two-family homes that have finished basements versus those that don’t, it is probably self-evident that the value of the house would be different. It would definitely increase the value. Mr. Niemotko said that he would need to talk with the owner further before proceeding.

Attorney Naughton advised Mr. Niemotko that if he provides additional information it should be for all four elements of what must be proven in order to be granted a use variance:

- (1) that the property is incapable of earning a reasonable return on initial investment if used for any of the allowed uses in the district (actual "dollars and cents" proof must be submitted);
- (2) that the property is being affected by unique, or at least highly uncommon circumstances;
- (3) that the variance, if granted, will not alter the essential character of the neighborhood; and,
- (4) that the hardship is not self-created.

Mr. Niemotko acknowledged that proving these items is time-consuming and can be burdensome.

Building Inspector Cocks asked if the owner of the property was living in that house? Mr. Niemotko responded that it was his understanding that the existing tenants were asked to leave and that the owner and his wife would be occupying the first floor apartment.

Chairman Baum opened the public hearing up to the public. No one from the public was in attendance.

Assistant Building Inspector Proulx asked Mr. Niemotko to fix the site plan that was submitted because the encroachment with the next-door neighbor and the driveway on Route 208 had been removed but are still shown on the site plan.

On a motion by Chairman Baum, seconded by Member Margotta, it was: Resolved to adjourn the public hearing to May 11, 2021 so that the applicant can submit an updated site plan and any other information.

Ayes – 5

Nays – 0

Absent/Abstaining – None

On a motion by Chairman Baum and seconded by Member Czerwinski, it was: **Resolved to classify this application as an unlisted action pursuant to SEQRA and that the Zoning Board of Appeals assume Lead Agency for an uncoordinated review of the action.**

Ayes – 4

Nays – 0

Absent/Abstaining – Member Zuckerman (abstaining)

Chairman Baum discussed the draft part 2 of the EAF that Attorney Naughton prepared. All of the impacts identified were defined as small or no impact except the proposed action creating a material conflict with the adopted land use plan or zoning regulations. Attorney

Naughton clarified that she identified that as a small impact, but it was a material conflict with the adopted zoning regulations because this is currently a prohibited use in that zone that is just being continued because it is legally pre-existing non-conforming.

Chairman Baum suggested that the Board hold off on making any further determination on part 2 of the EAF until the applicant presents further evidence because that may help determine whether or not any of these impacts may be elevated to moderate or large. Nobody from the Board had any objection.

4. ADOPTION OF MINUTES:

On a motion by Member Zuckerman and seconded by Member Czerwinski, it was: **Resolved to adopt the minutes from the February 9, 2021 meeting.**

Ayes – 3

Nays – 0

Absent/Abstaining – Chairman Baum and Member Margotta (both abstaining)

On a motion by Member Margotta and seconded by Member Gilstrap, it was: **Resolved to adopt the minutes from the March 9, 2021 meeting.**

Ayes – 3

Nays – 0

Absent/Abstaining – Chairman Baum and Member Czerwinski (both abstaining)

5. OLD BUSINESS: Change in Start Time

Members of the Board had no objection to keeping the start time of 8:00pm. Chairman Baum said that he has a conflict with the second Tuesday of the month which is why he has missed some meetings recently. Chairman Baum asked Secretary Doherty to find out which days of the month the Board members, attorney and Building Inspector could meet.

6. NEW BUSINESS:

a. New ZBA Applications

Secretary Doherty informed the Board that an application for an area variance had been received from Dawn Tomasini for St. Paul Lutheran Church.

b. Request by Planning Board to be Lead Agency

The Zoning Board had received a request from the Planning Board to be Lead Agency for the Threetel Office and Warehouse Development on Route 208. Members of the Board agreed that the Planning Board had the expertise, the knowledge and the consultants to do adequate environmental review. Chairman Baum said he would respond to their request so that they would not have to wait 30 days for no response.

On a motion by Chairman Baum, seconded by Member Margotta, it was: **Resolved to allow the Planning Board to assume Lead Agency for the Threetel Office and Warehouse Development on Route 208.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

7. ADJOURNMENT

On a motion made by Member Gilstrap and seconded by Member Margotta, it was: **Resolved to adjourn the public hearing at 10:01pm.**

Ayes – 5

Nays – 0

Absent/Abstaining – None

Respectfully submitted,



Elizabeth Doherty
ZBA Secretary