

**Village of Millbrook
Planning Board Meeting
Minutes
August 20, 2013**

Call to Order: Meeting was called to order at 7:33PM by Chairwoman Linda Roberts.

In Attendance: Chairwoman Linda Roberts, Charles Colomello, Joseph Still and David Clouser (David Clouser & Associates). Excused: Joseph Forte and Stanley Morse.

Review of Minutes: Minutes from the July 16, 2013 Planning Board meeting were reviewed. Motion was made by Mr. Colomello and seconded by Mr. Still to accept the minutes as written. All were in favor.

Old Business:

Public Hearing for R.A. Nilsen Construction Corp –Robert A. Nilsen – purchase and renovation of existing building located at 5 Merritt Avenue. Referral from Building Inspector McLaughlin. Follow-up from June 18, 2013 and July 16, 2013 Planning Board meetings.

Robert and ilana Nilsen attended the meeting. They completed the purchase of this property in July. Chairwoman Roberts asked for a motion to open the Public Hearing portion of the meeting. The motion was made by Mr. Still and seconded by Mr. Colomello – all were in favor.

Secretary Gould noted that the Dutchess County Department of Planning and Development reviewed the Nilsen’s documents for the required GML 239m required referral and determined that this is a matter of local concern only.

Chairwoman Roberts gave a brief history of this property and the process to date. She asked the Nilsen’s to describe their project and proposed renovations to the abutters and attendees at this evening’s meeting. The Nilsen’s explained that they have starting installing a new roof, parking in front of the building has been eliminated and landscaping is planned for the front. Mr. Still – an abutter – noted that he thinks their planned renovations will be an asset to the area. With no other comments or questions forthcoming, Chairwoman Roberts asked for a motion to close the Public Hearing portion of the meeting. Mr. Colomello moved and Mr. Still seconded the motion. All were in favor.

Mr. Clouser then addressed some outstanding issues that need to be completed (referral from his 7/17/13 Memorandum):

- The Site Plan (SP-1) needs to be professionally completed detailed. Hand drawn notations are not acceptable.
- Parking site distance measurements at driveway entrance must be clearly noted.
- Front parking spaces must be eliminated from the Plan.
- Provide a description of the topography and drainage on the property.
- Describe the condition of the parking area pavement.
- Show the driveway design (base gravel and pavement thickness) and width.
- Specify the size of all landscaping.

Mr. Nilsen explained that he wants to remove a tree that is currently in the planned driveway and replace it (at his expense) with one outside the sidewalk in line with the other trees. He met with an arborist

who recommended removing rather than re-planting the existing tree. After much discussion regarding the proposed radius, Mr. Clouser and the Board recommended that Mr. Nilsen meet with Mr. Ken McLaughlin (Village Code Enforcement Officer and Building Inspector) before doing anything about the tree(s). Mr. Nilsen also stated that he met with Central Hudson who will move the existing pole. Discussion about the width of the planned driveway ensued. Mr. Still stated that as long as two cars can pass in the driveway, it will be acceptable.

Chairwoman Roberts asked the Nilsen's to address the remaining issues, submit 3 professionally prepared copies of their detailed Site Plan and return to September 17, 2013 Planning Board meeting for final approval.

Rose Randolph Cookies – Barbara Demosthenes owner - 3306 Franklin Avenue – Application for retail use – selling retail and wholesale baked goods, ice cream, beverages and baking products.

Referral from 7/16/13 Planning Board meeting.

Ms. Demosthenes submitted two proposed outdoor hanging sign designs for the Board's review. After discussion, the Board recommended that the round 4.9 square foot sign would be their choice. It will be a ½" thick, white pvc with applied vinyl graphics (red/rose design) – logo to be digitally printed. It will hang from the existing traditional scroll bracket. Mr. Still moved and Mr. Colomello seconded a motion to approve the round outdoor hanging sign. All were in favor.

Ms. Demosthenes submitted a hand-drawn floor plan. Her proposed indoor seating area will be 111 sq ft – suitable for 8 people. Ms. Demosthenes is undecided about outdoor seating. The Board noted that there would be space for 2 small tables, suitable for no more than 4 people, in front of the shop if desired.

Ms. Demosthenes stated that she does not plan any structural changes to the building – just new flooring (linoleum in the kitchen area and laminate in the seating and merchandise areas). Ms. Demosthenes has a signed lease for this property effective 9/1/13.

New Business:

Joshua Mackey for Manchester Road Company, LLC. – 3208 Franklin Avenue. Proposed purchase and renovation of this property to install his law firm in the office and rent the apartment on this property.

Mr. Mackey, a partner with the law firm of Iseman, Cunningham, Reister & Hyde, LLP, told the Board that he currently rents an office above the Millbrook Café on Franklin Avenue – as well as having offices in Poughkeepsie and Albany, New York and that he resides in the Town of Washington. He proposes to buy the property located at 3208 Franklin Avenue for use as his office – and his law firm will rent from him. He proposes to rent an apartment on the property. He noted that a special medical use permit was granted to Mr. Ernest Ciferri in 1986. That permit will expire in October since the property has been vacant for the past year.

Mr. Mackey proposes to renovate the property – without making any footprint or structural changes. He noted that the existing building is badly in need of repair. He plans to add hardwood flooring and doors; add landscaping; update all windows and bathrooms. He wants the renovated building interior to have an upscale law office appearance. He also noted that the chimney is in need of repair. He plans to replace the exterior siding at a later date. Existing parking would be sufficient for his requirements. After discussion, the Board determined that this property is zoned "RT" (Residential Transitional) –in which offices and apartments are not permitted. The only permitted uses on this property are residential

with the exception of the variance granted for a single doctor medical office. Mr. Clouser suggested that Mr. Mackey meet with the assessor to review the history of the property. Chairwoman Roberts read from old notes (Code Enforcement Officer, Planning Board, Zoning Board of Appeals, Village Board and Dutchess County) regarding the permitted uses and variances granted for this property. Chairwoman Roberts also noted that an owner must live on the property if a rental accessory apartment is permitted in any zone. Discussion ensued regarding the RMF zoning for neighboring properties (i.e. Millbrook Physical Therapy and the condominiums). RMF zoning does not permit accessory apartments. RMF does permit service businesses – but law offices are not currently included in the definition of a service business. Mr. Mackey explained that his firm specializes in professional law – not criminal or family law. The Board declined to support Mr. Mackey’s request to move this parcel to a different zone (i.e. “spot zoning”) and change the usages in that zone if he is able to overcome that hurdle. After discussion, the Board suggested that, if desired, Mr. Mackey go before the Village Board to explain his proposal and petition for a Zone Code change on this property along with a broader definition of “service business” in the RMF zone.

Other Business:

Review the letter and memorandum from the ZBA regarding the unusual situation relating to the Ian Schwandt application for variances (copy of the ZBA letter and memorandum is attached to these minutes).

At their July 22, 2013 meeting, the Zoning Board of Appeals (ZBA) reviewed Chairman Diamond’s memorandum on the Schwandt variance issue. The ZBA agreed with Building Inspector/Code Enforcement Officer Ken McLaughlin’s determination that the language of the Village Code (Section 230-42B.2) is ambiguous. The ZBA asked the Planning Board to write to the Village Board asking for clarification of intent in this section. After the discussion, the Planning Board decided to draft a letter to the Village Board stating that they feel the Code is clear as written and people should not be held to “intent”. If, however, the Village Board decides that more needs to be added or changed in the Code, the Planning Board respectfully recommends that they refer the matter to an attorney before any changes are made.

Motion to Adjourn: Motion was made by Mr. Still and seconded by Mr. Colomello to adjourn the meeting at 9:15 PM. All were in favor.

Office of the Zoning Board of Appeals

VILLAGE OF MILLBROOK
MILLBROOK, DUTCHESS COUNTY, N. Y.

Joel Diamond
Chairperson

Suzanne P. Gould
Secretary



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July 23, 2018

Ms. Linda Roberts
Chairwoman
Village of Millbrook Planning Board
85 Merritt Avenue
Millbrook, NY 12545

RE: Attached memorandum from Chairman Joel Diamond of the Zoning Board of Appeals.

Dear Linda:

The Village of Millbrook Zoning Board of Appeals met on Monday, July 22, 2018 to review Mr. Ian Schwandt's request to add a second story to his home and enclose the front porch on his property located at 50 Maple Avenue in the Village of Millbrook.

After the Public Hearing portion of the meeting was closed, Chairman Diamond distributed copies of the attached memorandum to the Zoning Board members regarding the unusual situation relating to the Schwandt application for variances. He and Building Inspector/Code Enforcement Officer, Ken McLaughlin, agreed that the language of the Village Code (Section 230-42B.2) is ambiguous. He is asking the Planning Board to write to the Village Board to clarify the intent. The Zoning Board voted to send this memo to the Planning Board and Village Board for review and action.

Thank you.

Respectfully,

Suzanne P. Gould
Village of Millbrook
Zoning Board of Appeals

To the ZBA for consideration- July 22, 2013

We have an unusual situation relating to the Schwandt application for a variance.

1. I cannot remember an occasion when the consultant to the Planning Board and the ZEO disagreed to this extent. That is the consultant, Dave Clauser, advised the PB that no variance was required given a strict interpretation of section-230-42B. (2) of the code. Our ZEO did not agree with this narrow interpretation of the code and in his letter to us he explains that a broader interpretation is required which includes an interpretation of the intents and purposes of the code. He suggests that even though the discussion of non conforming buildings lies within the non conforming uses of the code the intent of the section should be read more broadly.
2. In conversation with Ken both he and I agreed that the language of the code can be seen as ambiguous and that both our board and the ZEO should write to the Village Board so that they clarify the intent.
3. The issue should be addressed because there are so many buildings in the Village which are conforming as to use but not as to area or other parts of the bulk regulations. In general if a property owner brings an Article 78 in cases such as the present denial and the code can be seen as ambiguous, the Court usually finds for the property owner and the municipality pays all costs. Therefore, this issue should be addressed sooner rather than later.
4. There are several issues which must be clarified. For example, in the Shwandt case we have a building with a conforming use on a nonconforming lot that does not meet the set back requirements all of which is grandfathered. He wants to add living space without changing the grandfathered footprint. This means that he is increasing the intensity of use of a nonconforming building on a non conforming lot.
 - A. Should we prohibit an increase in intensity of use of any building on a nonconforming lot?
 - B. Should we prohibit an increase in intensity of use of any building on a nonconforming lot unless it meets all of the bulk requirements except the total lot size?
 - C. Should we prohibit any increase in footprint of a building on a nonconforming lot even if the increase would still comply with all bulk regulations except lot size?
 - D. Should we prohibit any increase of footprint or increase of intensity of use of any building with a grandfathered non conforming use?
5. None of these questions are answered clearly in the code and they should be. Keep in mind that prohibitions in the code are not absolute and may be appealed to the ZBA. Clarifications in the code serve to make expectations transparent for residents, the PB, the ZEO and the Village Board. Clarification also reduces the chances of avoidable litigation.

Jul Diamond
For the ZBA