

**Village of Millbrook
Zoning Board of Appeals
Meeting Minutes
July 31, 2012**

- Call to Order:** Meeting was called to order at 7:01PM by Chairman Joel Diamond.
- In Attendance:** Chairman Joel Diamond, Andrew Doro, Robert Knapp and Earl Meyers.
Absent: John Hay
- Review of Minutes:** Minutes from the July 9, 2012 Zoning Board of Appeals meeting were reviewed. Motion was made by Mr. Knapp and seconded by Mr. Meyers to accept the minutes as written. All were in favor.
- Old Business:** N/A
- New Business:** **Public Hearing for Pauline and Martin Gyves – Requesting an Area Variance to install an 8KW “Generac” LP Gas Fired Auxiliary Generator on their property located at 88 Maple Avenue.** Chairman Diamond asked for a motion to open the Public Hearing. Mr. Doro moved and Mr. Meyers seconded the motion. All were in favor. Chairman Diamond asked Mr. Gyves why he was requesting this variance. Mr. Gyves explained that he wants to install the Generac slightly more than 5 feet from his side yard and the minimum side yard permitted (by Village Code) in the R-Residential district is 10 feet. A discussion ensued regarding noise levels and visual barriers for this request. Chairman Diamond noted that Village Code requires a maximum of 70dbL between the hours of 7AM and 8PM and 50 dbL from 8PM to 7AM. Mr. Gyves mentioned that a normal household lawn mower is rated at more than 100 dbL. Chairman Diamond noted that Village Code specifies that noise levels cannot exceed 60 dbL at the property line edge – which is very difficult for compliance. Mr. Gyves also stated that they currently have a 6 foot stockade fence in place which provides a visual and modified noise barrier. Mr. Gyves also stated that they plan to install the Generac as close to their existing propane tank as possible. Mr. Tyger (a Gyves abutter) attended the Public Hearing and had no objection to this proposal. Chairman Diamond suggested that the Village Code Enforcement Officer make periodic checks on the noise levels at this location. Chairman Diamond asked if the Board members had any questions.... With none forthcoming he asked for motion to conclude the discussion portion of the Public Hearing. Mr. Meyers moved and Mr. Knapp seconded the motion. All were in favor.
- Chairman Diamond asked for a motion to move to the Village of Millbrook Code - Zoning – Chapter 230.68 – to review the checklist required to approve an Area Variance. Mr. Knapp moved and Mr. Doro seconded the motion. All were in favor.

- (a) Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of an area variance? The Board unanimously said “NO”.
- (b) Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? The Board unanimously said “NO”.
- (c) Is the requested area variance substantial? The Board unanimously said “NO”.
- (d) Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The Board unanimously said “NO” – if the noise and visual barrier conditions are met.
- (e) Was the alleged difficulty self created, which consideration shall be relevant to the decision of the Board of Appeals, but not necessarily preclude the granting of the area variance? The need for a variance was self created but is not substantial and does not impair the Zoning Board of Appeal’s ability to grant the variance.

Mr. Knapp moved and Mr. Meyers seconded a motion to approve the Quinn’s request for a side yard variance. The Board voted unanimously to approve the Gyves request for a side yard area variance.

Public Hearing for Cardinal Hayes Home for Children – Requesting Area Variances to bring a nonconforming lot into compliance to add a covered entry with a handicap accessible ramp on their property located at 12 Exmoore Lane.

Chairman Diemond asked for a motion to open the Public Hearing. Mr. Doro moved and Mr. Meyers seconded the motion. All were in favor. Fred Apers, Warren Frenzel, Architect Ed Loedy and Jason Lichwick from Mr. Loedy’s office represented Cardinal Hayes Home for Children at this meeting. Chairman Diemond, Mr. Apers and Mr. Frenzel reviewed the site plan presented for this proposal. Chairman Diemond quoted the Village Code – Zoning – Chapter 230.44.A. Site Plan Procedure... “The purpose of this section is to ensure that the site plan, architectural plans and the location and dimension of buildings shall be of such character as to harmonize with the neighborhood, to accomplish a transition in character between areas of unlike character, to protect property values and to preserve and enhance the appearance and beauty of the community and to avoid an adverse impact on adjacent land uses.” Chairman Diemond stated that this is the first time an issue like this has come up and would require site plan approval and a special use permit.. New York State law requires that this proposal must first be reviewed the Village Planning Board and an approval letter sent from the Planning Board to the Zoning Board of Appeals before the Zoning Board of Appeals can vote on this request. Mr. Apers suggested that they change their request to one that would not require a change of use. They only want a welcoming building entrance with a new roof. Chairman Diemond mentioned a concern from a non-attending abutter requesting that nothing be done to impair the future use of the building and campus. Mr. Apers and Mr. Frenzel assured the Board that they want the opportunity to move

forward with the continued use of this facility for many years to come. Mr. Frenzel displayed photographs of the existing and proposed building façade. Chairman Diemond explained that if they want to change their variance request, a new Public Hearing would be required – along with a letter from the Planning Board approving the request. Chairman Diemond also mentioned that the existing right-of-way (lane-way) is not shown on their current site plan. The Zoning Board of Appeals cannot grant a variance that touches on an existing right-of-way. Chairman Diemond suggested that they check all surrounding deeds and with their attorney regarding the lane-way in question. There are three abutters that share the existing lane-way. Chairman Diemond also quoted Village Code – Zoning – Chapter 230.11.E..”Lots under Water or Subject to Flooding. Not more than 10% of the minimum area requirement of a lot may be fulfilled by land which is under water, is a designated wetland or is subject to periodic flooding. All minimum front, side and rear yard requirements must be satisfied by measurement on dry land. For purposes of this subsection, land which is in a stream not exceeding 15 feet in width or 150 square feet in area at mean water level shall not be considered as under water.” Architect Loedy said they would research this and show it on an updated site plan. Chairman Diemond said that Cardinal Hayes Home for Children would need a new application with a new purpose – requesting a setback variance for the new entryway. Full site plan approval would not be required for the entryway handicap ramp request. This would not be considered a change of use.

Chairman Diemond outlined the next steps for Cardinal Hayes to pursue an entryway variance and new roof approval:

- Request Building Permit for new roof
- Request Planning Board Approval for new entryway and roof
- Planning Board letter to Zoning Board of Appeals approving request
- Zoning Board – a new Public Hearing to review and vote on new request

Chairman Diemond asked for a motion to conclude this Public Hearing. Mr. Meyers moved and Mr. Doro seconded the motion. All were in favor.

Other Business: N/A

Motion to Adjourn: Motion was made by Mr. Meyers and seconded by Mr. Knapp to adjourn. All were in favor. The meeting was adjourned at 8:07 PM.

Respectfully Submitted:

Suzanne Gould
Secretary
Zoning Board of Appeals

