

**Village of Millbrook
Zoning Board of Appeals
Meeting Minutes
July 22, 2013**

- Call to Order:** Meeting was called to order at 7:00PM by Chairman Joel Diemond.
- In Attendance:** Chairman Joel Diemond, Robert Knapp, Earl Meyers, John Hay and Andrew Doro.
- Review of Minutes:** Minutes from the March 5, 2013 Zoning Board of Appeals meeting were reviewed. Motion was made by Mr. Meyers and seconded by Mr. Doro to accept the minutes as written. All were in favor.
- Old Business:** N/A
- New Business:** **Ian Schwandt – 50 Maple Avenue. Building Permit Denial. Request for area variances to add a second story to his home and enclose a front porch. Public Hearing to address request for 3 area variances: 1 front yard area variance and 2 side yard area variances. This request is due to the Village Zoning Code’s Section 230-42B – Expansion of a non conforming building.**
Chairman Diemond asked for a motion to open the Public Hearing portion of the meeting. Mr. Knapp moved and Mr. Hay seconded this motion. All were in favor.
Chairman Diemond reviewed Mr. Schwandt’s variance requests outlining the issue. Mr. Schwandt applied to add a second story to his home and enclose the front porch – without changing the existing home footprint. Chairman Diemond referenced the denial letters sent by Building Inspector/Code Enforcement Officer Ken McLaughlin for this project (copies of these letters are attached to these minutes). Mr. McLaughlin referenced Section 230-42B of the Village Code which states: “Such non-conforming building shall not be structurally expanded, unless such alterations are required by law; provided, however, that such maintenance and repair as required to keep a non-conforming building or structure in sound condition shall be permitted”. Although Mr. Schwandt’s plans lie within the non-conforming use section of the Code, Mr. McLaughlin’s letter states that the intention of this chapter does not permit this Mr. Schwandt’s request. Mr. Schwandt agreed with Mr. McLaughlin’s decision.
Mr. Schwandt explained that the area that will be expanded is the original attic turned into bedrooms by the former owner. He plans to raise a portion of the roof 6’ 2” – and maintain the original pitch. The first 10’ of the house will not change. Only the back bedroom section will be raised. The existing attic window will not change position. He also plans to add a safer interior stairway to the second level. Mr. Meyers explained that they share a driveway – with access rights for the neighboring three houses.
Mrs. Maureen Meyers and Ms. Susan Gagnon attended the Public Hearing.

Mrs. Meyers expressed concern that any additional/future changes might make the existing cottage more imposing on such a small property. Ms. Gagnon expressed privacy concerns since her backyard is so close to Mr. Schwandt's property line. Chairman Diemond explained that the method of issuing variances is very precise and any future actions would have to come before the Zoning Board of Appeals for approval. He also explained that conditions can be added to any granted variance (i.e. privacy screening fences or plantings). Mr. Schwandt explained that visual access will not change from the current situation - just headroom. Mr. Schwandt offered to remove the window in question for privacy, if requested.

Mrs. Meyers asked if the front porch is part of the current footprint. It is. Chairman Diemond stated that Mr. Schwandt would not be able to add an additional porch without requesting another variance – that would change the exiting footprint.

Mrs. Meyers asked about the new front door – would it have a roof over it? Mr. Meyers explained that the plans call for 2'11" posts that would come out from the front door to cover the one step going to the front door. Chairman Diemond stated that the front door overhang will not require an additional variance. The Board will vote on the plans as presented this evening (and the overhang is included in the submitted plans). Mr. Schwandt explained that there is still enough room for parking.

Chairman Diemond asked if the total square footage (of the footprint) meets bulk requirements. The property lot has 4703 square feet and the total footprint (inc garage & porch) is 1448 sq ft. Bulk requirements allow 30% coverage. Mr. Schwandt's footprint covers 31%. A 1% coverage variance will also be required.

Mr. Knapp reviewed Mr. McLaughlin's letters and agreed that although the use appears to be permitted – it is an implied non-permitted use. Mr. Doro expressed concern that there might be some negative neighbor impact with the proposed changes. Mr. Schwandt stated that the changes will improve the property and thus increase surrounding property values. Mr. Schwandt also explained that the former owners did sub-standard work on the home which was not up to Code in many instances. He plans to complete all renovations in a professional manner.

Mrs. Meyers expressed concern that her garden is right across the driveway from the proposed new front door. Mr. Schwandt offered to move the door further down. Mrs. Meyers thanked him but does not want him to move the door.

Chairman Diemond suggested that the addition of a specific height fence can be a condition of the variance if necessary. Chairman Diemond asked about parking...Mr. Schwandt parks in front of the proposed front door and his wife parks in front of the porch. A short fence on the Schwandt property line was suggested. All parties agreed that this would not be practical with the shared driveway. Ms. Gagnon asked about the hedges that border her property with the Schwandt's. Ms. Gagnon was told they are on her side of the property. Mr. Schwandt explained that they started on her property but have grown to border both property lines. Ms. Gagnon would like to remove them. Chairman Diemond said that she can require fencing when/if the hedges are removed. Mr. Knapp asked Ms. Gagnon if privacy in her pool area was an issue. It is not.

Mr. Knapp observed that it appears from the plans that the renovations will greatly enhance the aesthetics of the home and the surrounding area and will improve their property values.

Chairman Diemond asked the Board members if there were any questions or concerns regarding these requests before the Area Variance Checklist was reviewed. There were none.

The Village of Millbrook Zoning Law Section 230.68 (b) (2) Area Variances: In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

- (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”. The request might improve the area and make it more desirable.
- (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 “YES”. The 4 requested variances are considered substantial for this property.
- (d) Will the proposed variances have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? The Board unanimously said “NO”. There is clearly no impact or adverse effect.
- (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? This request was self-created but is considered an improvement to the property.

A motion was made by Mr. Knapp and seconded by Mr. Hay to approve Mr.Schwandt’s request for the following area variances to his property located at 50 Maple Avenue:

- 1. A 20 foot front yard setback
- 2. A 7 ½ foot side yard variance on the east side
- 3. A 5 foot side yard variance on the west side
- 4. A 1% Lot Coverage variance to comply with Bulk Requirements.

These variances are granted with the condition that Ms. Gagnon has the right to take down the hedges bordering her property with Mr. Schwandt’s.

This approval is conditioned on the Dutchess County Department of Planning and Development finding that this is a matter of local concern.

Mr. Meyers recused himself from the vote. All others were in favor.

Mr. Hay moved and Mr. Knapp seconded a motion to close the Public Hearing portion of the meeting at 7:40PM.

Other Business: Chairman Diemond submitted a memorandum for consideration by the Board members regarding the unusual situation relating to the Schwandt variance application request. A copy of the memorandum is attached to these minutes. The memorandum addresses the ambiguous language of the Village Code – Section 230-42B in the hope that the Village Board can and will clarify the intent. After discussion, Mr. Hay moved and Mr. Doro seconded a motion to send this memorandum to the Planning Board and Village Board for their review. All were in favor. Ms. Gould will send the memorandum to both boards.

Motion to Adjourn: Motion was made by Mr. Hay and seconded by Mr. Doro to adjourn. All were in favor. The meeting was adjourned at 7:50PM.

Respectfully Submitted:

Suzanne Gould
Secretary
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.



Village of Millbrook
OFFICE OF THE BUILDING INSPECTOR
35 Merritt Avenue, PO Box 349, Millbrook, New York 12545
Tel 845-677-3939 Fax 845-677-3972

June 17, 2013

To: Ian Schwandt

From: Kenneth McLaughlin,
The office of the Building Inspector

RE: 50 Maple Avenue

Dear Mr. Schwandt,

Please take notice that your application for an addition is denied without prejudice for the following reason:

- The proposed second floor addition constituted an expansion of the non-conforming structure as to area.
- The enclosing of the front porch also constitutes an expansion of a non-conforming structure, as to area.

The building is a legal non-conforming residence as to area specifically that the building is closer to the front and both side yards than are permitted in the R-Residential District.

SECTION 230 Attachment 2
The Schedule of Lot and Bulk Requirements

- The R-Residential District requires a front yard setback of 25'. Your building currently is just under 5'.
- The Bulk Table requires a side yard of 10'. Your building is 3.5' from the line on the east side and approximately 5' from the line on the west side.

As we discussed, you have the right to appeal this decision before the Zoning Board of Appeals. If you have any questions regarding this matter, please feel free to call me at 845-240-2118.

Respectfully,

Kenneth W. McLaughlin
Building Inspector

Village of Millbrook
OFFICE OF THE BUILDING INSPECTOR
35 Merritt Avenue, PO Box 349, Millbrook, New York 12545
Tel 845-677-3939 Fax 845-677-3972

Date: July 11, 2013

To: Zoning Board of Appeals
Joel Diemond, Chairman

From: the Office of the Building Inspector
Ken McLaughlin, Building Inspector

Re: Expansion of a non-conforming Building

This letter is in direct response to Chairman Diemond's request for further clarification on my official determination as to the expansion of a non-conforming building.

SECTION 230-42 B. (2) of the Zoning Code states:

"Such non-conforming building shall not be structurally expanded, unless such alterations are requires by law; provided, however, that such maintenance and repair as required to keep a non-conforming building or structure in sound condition shall be permitted".

While this excerpt lies within the non-conforming uses section of the zoning code, it is important to reference both the intent and purpose sections of the zoning law.

Article 1-Section 230-2 states:

The intent of this chapter is to establish comprehensive controls for the development of land in the Village of Millbrook, based on the Village Master Plan, and enacted in order to promote and protect health, safety, comfort, convenience and the general welfare of the people.

Article 2- Section 230-3 states: Such regulations shall be made in accordance with the Village Comprehensive Plan and shall be designed to:

- A. Guide future growth and development of the Village in accordance with the Village Comprehensive Plan that represents the most beneficial and convenient relationships among the residential, commercial and public areas within the Village, considering the suitability of each area for such uses, as indicated by existing conditions, trends in population and mode of living and having regard for the use of land, building development and economic activity, considering such conditions and trends both within and adjacent to the Village.