

Village of Millerton
Meeting of the Zoning Board of Appeals
May 7, 2024

The Village of Millerton Zoning Board held a meeting on Tuesday, May 7, 2024, at 7:05 PM with Chair Delora Brooks presiding. ZBA members present: Claire Goodman, Suzanne Stevens, and Ed Stillman. Ron Orlando was absent. Also present: Anna Clune (Secretary), Ian McDonald (Attorney), Ray Nelson (Architect), Ron Steed, Joanne Scasso, Rob Cooper, Edie Greenwood, Marie Miller, Clyde Miller, Kelly Kilmer, Eliot Ramos, John Scott, Donna Scott, Catherine Fenn, Andrew Rebillard, Brad Rebillard, and Lance Middlebrook.

Roll was called at 7:06 pm.

Public Hearing on 7-9 Main Street

Motion was made by Ed Stillman at 7:07 pm to open the public hearing on Gvkgne Realty's application for two variances at 7-9 Main Street, seconded by Susanne Stevens, and approved by all members present.

Chair Delora Brooks introduced the project. Stillman summarized the variances requested: one would allow a smaller lot area per dwelling unit than the Zoning Code requires and another would waive the requirement for nine off-street parking spaces within 400 feet of the building. The building's legal nonconforming status for six apartments on the existing lot with no off-street parking was noted.

Presentation by Applicant's Representative

Ray Nelson, representing the applicant, appealed to the Board to consider their role in providing relief from outdated zoning laws that prevented reasonable development. He stated, citing his experience as an architect, that the 1975 Zoning Code frequently placed an undue burden on property owners and needs to be updated.

Nelson's presentation notes are attached to these minutes as an addendum. Some of his main points:

- The role of a Zoning Board of Appeals is to relieve the pressure of too-rigid enforcement of the zoning ordinance and any attendant hardship.
- Current zoning regulations virtually eliminate any further residential development in the Village General Business (GB) District, yet apartments are badly needed here.
- The building has always been a multiple-family dwelling and has been divided into eight to 12 apartments for the last 30 years; thus making it a legal 12-unit building would cause little change in neighborhood character.
- The project is supported by the principles of the Dutchess County Greenway Compact adopted by the Village: walkability, shifting development from outlying areas to dense town centers, provision of centralized housing for an aging population. The project is also in alignment with the County's Housing Needs Assessment.
- Potential alternatives for off-street parking were researched, but no property owners were willing to attach an easement for parking to their parcels.
- The new owner's goal is to make the building fully legal, improve its appearance and make it much safer by installing a sprinkler system.
- The building is already assessed as a 12-unit structure; there will be a loss of tax revenue if it is reduced to six units.

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- Twelve of the 14 multiple dwellings in the GB are Zoning non-conforming in some way, and two thirds of Main Street properties have no off-street parking and are allowed to use street parking. Applying the parking restriction to 7-9 Main Street in particular is unjust.

Board Comments

Stillman said that there is a large difference between the matter at hand – consideration of a variance according to the current codes -- and changing the existing Zoning laws. As an aside, he stated that he was in the process of forming a task force to begin the work of updating the code and that anyone interested in being part of this effort should let him know.

Referring to Nelson’s statements, Brooks said that development in the Village has historically been tied to environmental issues, such as wastewater management, rather than any overarching plan to “keep things the way they are.” She raised the issue of self-created hardship on the part of the applicant, who might not have “done his homework” before buying the 7-9 Main Street property. She mentioned a traffic study done by Dutchess County and existing problems with congestion on Main Street. She said that, after researching the matter, she had discovered no viable alternative for providing off-street parking for 7-9 Main Street.

Public Comments

Stillman asked for comments from the public.

Eliot Ramos, Millerton resident, said that she was concerned about where the people living in the building would go if the project did not go forward. She said that the apartments are not priced affordably but still are some of the few rental housing options in the Village. She stated that many people who live in the building do not have cars and walk to work. She felt that people who need housing in the Village should not be penalized by the lack of parking space, and that there was plenty of parking on Century Boulevard.

Ron Steed, owner of Steed Real Estate, described the lack of parking for properties located at the eastern end of Main Street, such as 7-9 Main Street, which do have easy access to the public parking on Century Boulevard on the western side. He described two potential sites for new parking areas: one near the Gilded Moon Framing shop and another on the parcel just east of the intersection of Routes 22 and 44 recently acquired by the Northeast Community Center (NECC). Steed maintained that it was unfair and unjust to expect the 7-9 Main Street applicant to provide parking that the Village did not have space for and that, given the unequal treatment of the “East End,” a class-action lawsuit by property owners could result.

Cathy Fenn, North East resident, asked if the project had been referred to Dutchess County. Anna Clune replied that it had not. Attorney Ian MacDonald advised that the project be referred under Section 239 to the Dutchess Co. Department of Planning and Development, if required, as soon as possible. Fenn asked if the County Department of Health had given project approval. MacDonald replied that the application in front of the ZBA was for variances for parking and area-per-dwelling unit and that Health Department approval was not a pertinent consideration in their determination. He explained that Health Department issues would be considered by the Planning Board if the project advanced to site plan and special permit review.

Fenn addressed the illegality of the existing 12 units. She asked how the ZBA could make a determination on a building that had never received Village approval for additional apartments. MacDonald stated that six of the building’s 12 units were “legal nonconforming” due to their existence before the enactment of the Zoning Codes, and that the current owner was attempting to

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gain the necessary approvals for the additional six units and thus comply with the law. He added that the issue before the ZBA was whether to issue the two requested variances, and that it was the task of the Planning Board to decide whether to allow the six additional apartments.

Stillman commented that the ZBA was not responsible for code enforcement, but that an enforcement action taken by the Village Building Department had resulted in a reduction of the building's occupancy to legal levels (from 12 to six apartments).

Kelly Kilmer, Village Resident, pointed out that once a variance was in place, it was irrevocable and would be in effect for the remaining life of the building.

Clyde Miller, Village resident, asked whether septic system issues had been resolved. Stillman replied that the ZBA was only considering the necessary variances and that septic issues would be dealt with by the Planning Board.

Joanne Scasso, Village resident, addressed equal treatment, explaining that the Zoning Code's parking requirements had prevented her from creating multiple apartments at a business property she owns on South Center Street, resulting in the construction of a single apartment.

Kilmer asked whether the project would still go before the Planning Board if the variances were denied. Nelson said that the project, as proposed, would not go forward in that case. If the ZBA did not grant the variances, there would be no point in updating the septic system for 12 apartments, as it was already approved for six units. If the variances were granted, the applicant would update the septic system for 12 units as required by the Department of Health.

Steed described his concept that parking for the east side of Main Street might be created on the land recently acquired by NECC. Brooks stated that this wasn't a viable solution as the organization was only beginning to develop their own plans for the property. Rob Cooper, an NECC Board member present at the meeting, confirmed Brooks' statement. Stillman added that the Board was ultimately not responsible for finding parking for 7-9 Main Street.

Fenn thanked Brooks for insisting that the Board "do what the law requires." Nelson stated that the point of a Zoning Board of Appeals was not to follow the letter of the law, but to provide a method of allowing relief from egregiously restrictive zoning laws when the necessary criteria were met. Stillman stated that the Board was considering the variances according to the framework mandated by New York State.

Stillman raised the issues of due diligence and self-created hardship again. Stillman said that it had been established that the property owner was an experienced real estate investor, which implied that due diligence should have occurred before the property was acquired.

Board members and MacDonald discussed the timeline related to referring the application to Dutchess County Department of Planning and Development. Once the project was referred, comments from the County were due within 30 days. Any comments from the County would be a public document.

Kilmer suggested that the public hearing be left open so that other members of the community could have the chance to give input. She said that, if the meeting were left open, any comments from Dutchess County could be shared at the next meeting for the benefit of the public.

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Motion was made by Ed Stillman at 8:24 pm to continue the public hearing at the next meeting, seconded by Suzanne Stevens, approved by all members present, and passed.

Continuation of Regular Meeting

MacDonald discussed the actions necessary before the Board made a final determination: Section 239 referral to the County (if required), closing the public hearing, and conducting SEQRA for what was, in this case, an Unlisted Action. For SEQRA, the Board had the option of carrying out a Coordinated or Uncoordinated Review, each of which had advantages and disadvantages. After consideration, the Board expressed their inclination to conduct an Uncoordinated Review because that would cause the least delay in making the Variance decision.

The Board scheduled the next meeting and continuation of the public hearing on Thursday, June 6, at 7 pm.

Brooks requested that Nelson provide any presentations he intended to make at the next meeting to the Board a week in advance, and Nelson agreed to do so.

Stillman thanked the public for their participation and suggested that the Board adjourn to a brief attorney–client session, then end the meeting without further action or discussion.

Executive Session

Motion was made by Ed Stillman at 8:38 pm to adjourn to an executive session to confer with counsel, seconded by Suzanne Stevens, approved by all members present, and passed.

Motion was made by Ed Stevens at 8:58 pm to approve the minutes from the 8/10/2024 ZBA meeting, seconded by Claire Goodman, approved by all members present, and passed.

Motion was made by Ed Stillman at 8:59 to end the Executive Session and adjourn the meeting, seconded by Claire Goodman, approved by all members present, and passed.

Respectfully submitted,
Anna Clune
Building, Planning and Zoning Secretary

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Addendum: Applicant's Presentation

7-9 Main Street Zoning Board of Appeals Review.

Members of the Zoning Board of Appeals, Members of the Planning Board, and members of the Village of Millerton.

My talk will focus on the following:

1. Review the role of the Zoning Board of Appeals.
2. Expose the extent of the "Zoning Nonconformity."
3. Discuss the character of the neighborhood and detriment to nearby properties in light of the County Greenway Compact.
4. Review alternative methods for achieving the benefit sought by the applicant.
5. Sustainability of variances requested.
6. The effect or impact on physical or environmental conditions in the neighborhood.
7. Discuss the history of the building.
8. Other Considerations.

1. The Role of the Zoning Board of Appeals.

The Fifth Amendment of the Constitution states:

"No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Your role as a member of the Zone Board of Appeals is specifically to protect members of the community from Zoning laws while not destroying them. While Zoning laws are a community's guide to future development, improper zoning could be considered a "taking".

2. Present Zoning regulations and the extent of non-conformity.

I moved to Millerton in 2000. The conversation then was that the Zoning laws needed to be changed. Shamefully 24 years later and they have yet to be corrected. As an Architect in this town, almost every project I work on in the Village requires a visit to the Zoning Board of Appeals. The zoning laws should never have been adopted as they stand let alone allowed to continue uncorrected since 1975. That is 49 years of the brakes on development in the village and an undue burden to the landowners. I want to compliment our mayor, Jenn Nydjek for attempting to address this problem.

Let me start by exposing the extent of the problem. Zoning laws regulate the use of land and the bulk of structures built upon it. They protect neighborhoods from each other as well as guide development to meet the goals of the community. The General Business district is presently divided into two very different areas but shares the same zoning rules. The West end of the district is made up of very small lots where the buildings almost fill the lots. The East end of the district is made up of what were originally single-family homes on relatively small lots. Is the point of zoning to freeze every building in its present configuration, with no plan for development or change in the future. It would seem that was the goal of the original planners. I would hope that what really happened was they simply lifted the zoning from another town and applied it to our town. The bulk of lots in the General Business District are either substantially overbuilt or have no room to expand. This essentially amounts to a taking in my opinion.

Lot Coverage

Let's look at the Zoning restriction of Lot Coverage which in the GB district is only 30%, and Floor Area which is limited to only 30% of the lot. I could easily envision a second story on Westerlind or the antique building. Both historic buildings on those lots and The Brick and Block building prior to fires were three stories tall buildings. I would think that a three-story building in those locations would contextually fit in just fine. The town center is where you would want development. Where would you put development if not

This is another complete development blocker. The entire General Business district depends upon street parking. Limiting one business due to parking while 2/3 of all businesses currently functioning depend upon street parking is inconsistent. According to the American Planning Association there is a movement called the Parking Reform Network to eliminate all parking requirements in cities. There are 1400 cities in the country that have eliminated all parking requirements in some portions of their cities and at least 40 abolished or reduced parking requirements citywide. All to incentivize walking communities and increase density.

3. Character of the neighborhood and detriment to nearby properties

7-9 Main Street was built in 1900 and enlarged at some point to its present bulk. The building to its right, Harney Tea, predates it by 24 years, built in 1876. The building to its left was built in the same year, 1900. The building is non-descript and blends right into its neighboring buildings. This application does not change the bulk of the building, although as part of this application the exterior will be upgraded with a new entrance commensurate with an upscale apartment entrance with a new lobby, new exterior moldings, and a paint job.

The building has always been a multiple dwelling and is one of the 14 multiple dwellings scattered throughout the General Business District. Dutchess County Planning's Greenway Compact, which we as a community have adopted, includes the following goals:

1. Making walkable communities that mix commercial and residential uses.
2. Develop key strategies for compact communities. Prioritizing existing population centers.
3. Shift development from outlying farm properties and important scenic land to existing town centers.

turn some of that into parking spaces for the village. That would serve a lot of people in the village and easily solve our parking problem.

5. Self-creation of difficulty

The tax accessor's earliest record of the building being a 6 family dates back to 1968. The SPDES permit was filed in 1974 for 6 families. The Tax Accessor's best guess is that somewhere between 1985 and 2004 the apartments were increased to 8 and then sometime after 2004 it was increased to 12 apartments. We have clearly been able to establish that work has been done without the benefit of a permit. We have a new owner who has been trying to do the right thing by pulling a permit to fix the problem. In the end the community benefits by an improved façade, a residential asset to the community and probably most of all a safer building, as part of the process to legalize the apartments, the building will be sprinkled.

6. Substantiality of variances(s) requested.

The county web site shows 7-9 Main Street as being a 12-family residential building. The Tax accessor has assessed the building for 12 families. The village water bill is based upon 12 apartments.

There will be a loss of tax revenue for the village and the town if the building is reduced to a 6 family.

The largest impact on the neighborhood would be the parking. Again, this building has been occupied by 8-12 apartments for the last 30 years, suggesting that no perceivable change will take place with the requested variance.

4. Approving this project is in alignment with Dutchess County Planning's Housing Needs Assessment.
5. 12 of the 14 Multiple Dwellings in the GB district are non-conforming. Applying a restriction to this owner in particular, is unjust.

This board's job is to "relieve the pressure of too ridged enforcement of the zoning ordinance", Thank you.