

**ZONING BOARD OF ADJUSTMENT
MINUTES OF OCTOBER 17, 2011
APPROVED AT MEETING OF NOVEMBER 21, 2011**

Present: St. Bogert, **Chair**; S. Perley, **Vice Chair**; O. Gibbs, D. Greski, M. Foote

Absent: None

Staff: S. Saunders, **Planning Director**; K. Snow, **Zoning Technician**

Call to Order: S. Bogert called the meeting to order at 7:10 pm and apologized for the late start of the meeting. He welcomed everyone to the October 17 meeting of the ZBA.

Application # 2011-0016

MSL # 260-241-3

RRII Zone

Michael Mills

154 White Oaks Rd

Variance

The applicant is requesting a variance from 235-35 (A), front setback in order to construct a 12' X 30' deck. The deck will be built over an existing patio area and be attached to the rear of the house, approximately 60 feet off of the street.

Applicant: Michael Mills appeared for the application. He let the board know that he wanted to build a deck as shown on the application. It is over an existing structure and is attached to the garage on one side. It is mostly not visible from the road. He wife has a walking disability so she can't use the current structure. He said this doesn't change anything. The house was built in the 40's, and the proposal will be built over an existing structure, and behind the garage.

S. Bogert asked if this will be built on the current pad and M. Mills said over it. It is now multi layers, with steep steps going down to a landing, and then more steps to the ground. He said his wife has fallen many times trying to get from the door to the yard. The proposal will make it a flat, clean shot to get to the yard.

S. Bogert asked if the original patio area is 12 x 30 and was told it is smaller. It was built around a hill, and he is trying to flatten out the area.

D. Greski asked what the existing patio is and was told it is a concrete slab. D. Greski asked if he will add to the slab and was told no, they will build over it. D. Greski said they will have to add to it to get the size. M. Mills said the existing slab is not 12 x 30, maybe 10 x 15. D. Greski asked if he will be changing the concrete slab to 12 x 30 and then build the deck and was told no, they will sink footings on top of the slab and continue into the ground. There will be 2 footings on top of the slab, 2 more on the ground. D. Greski asked if the sono tubes will make up the difference in size and M. Mills replied yes. D. Greski asked if the proposed deck will be wooden and was told yes. He asked if there will be a roof and Mills replied no.

D. Greski said that he drove by and wondered why they wouldn't build the deck off of the area that is within the setbacks instead of this area where it will be located within the setback. He showed the area he meant, looking at the sketch, to the right, the area all falls within the setback. He asked Mills why he wouldn't want to place it there so a variance would not be required. M. Mills said he would have to blow a door through the wall of the house. Also the land slopes down there, so he would have a 20 foot stairway for his wife to navigate if done that way.

S. Bogert asked M. Mills if the deck is currently in place and M. Mills said yes, he had started it. S. Bogert asked if Mills obtained a building permit and he said no, he didn't know he needed one.

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D. Greski asked M. Mills if the deck is built and was told it is about 85% done. Mills said he stopped construction as soon as he received the notice to cease.

S. Bogert asked S. Saunders about the fees in a situation like this, where the application is submitted after the fact and S. Saunders explained that the usual fee is \$125.00 but an after the fact request is either double or \$500.00, whichever is higher. The fee in this case should be \$625.00 and he paid \$125. 00.

D. Greski clarified with M. Mills that he had not applied for the building permit and was told that was correct. He asked him when he applied for the variance and M. Mills said he received the notice to cease, came into the Code office to find out what the issue was, and found out then that he needed the building permit. He applied for it and was then turned down because of the setback. He applied for the variance after that.

D. Greski said the stop order was issued on July 27. M. Foote said the application was made almost 2 months after the stop order. D. Greski pointed out there had not been a September meeting, so this would have occurred around the August time frame, so that sounds right.

D. Greski he feels this application should be tabled until the remaining fees are paid. S. Bogert asked if that is a motion and D. Greski said he doesn't know what other options there are.

Motion: D. Greski made a motion to table application 2011-0016 until the proper fees are paid and then revisit the variance. S. Perley seconded.

M. Foote said this was a case of doing the work first and S. Bogert explained what would happen.

All voted in favor of tabling the application until the remaining fees are paid, 5-0.

This application will be placed first on the November meeting schedule.

**Application 2011-0017
Brock Harriman**

**MSL # 151-357-6
96 Woodvale Dr**

**SFR Zone
Special Exception**

The applicant is requesting a special exception from 235-26, uses permitted by special exception, in order to operate an artist/craftsman studio. He can operate a home based business but cannot have signage associated with that so is requesting the SE in order to allow his business the required signage.

Applicant: Brock Harriman appeared for the application. He brought along a picture of the proposed sign. He said he fits into the home based business criteria but does want to place some sort of signage. He said the proposed sign is not excessive, being about 1/3 of what would be allowed for a normal studio.

He wants to put up a suspended sign, as he wants to be able to remove it when needed since this is his residence. He wants to be able to easily remove the sign.

An artist studio is permitted in the SFR zone. He does custom framing, so feels that he fits into the category.

His business does not have a high volume; he serves 1-3 people a day, and usually one at a time. There would be no additional use of water, drainage, or other systems required. There are no other special provisions to be met. Nothing used is hazardous and the space designated already exists. The business is confined to the interior of the building. He said he feels custom picture framing fits into the artist studio category.

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S. Perley asked on the size of the sign and was told it is 9 ft by 18". She asked where he would be placing it and was told under the eaves. S. Perley said she feels this sign is excessive.

D. Greski asked if there is a garage door here, and was told yes but they will change that. They will eliminate the garage door, place stone on front of building, the façade. There is an entry door on the side already. The siding would go part way, with the stone veneer on the bottom. D. Greski asked about support and was told there is no support when the garage door is open now.

S. Bogert asked why he wanted the suspended sign and S. Saunders read the definition.

S. Saunders read 235-41 (A) regarding home based business. She explained he is asking for the Special Exception to be an artist studio, instead of a home based business, as then he can have an associated sign. The board looked at the table of permitted uses, under service, and found artist/craftsman studio.

D. Greski clarified that, if approve for this use, the applicant can put up a sign.

S. Perley said she doesn't mind the business, but feels the sign is excessive.

S. Bogert mentioned that this approval will ride with the property. This will set a precedent.

D. Greski said if this is a home based business what is difference and was told there could be no sign. S. Perley asked if the applicant could ask for a sign variance instead and S. Saunders said the variance would have to be from 235-41 (A) (2), regarding the advertising for a home based business.

D. Greski asked if a home based business gets a variance for a sign, and moves, does it go away and was told no, it stays with the property. There are no time limits on a Special Exception or a Variance - it goes for the life of property.

D. Greski said he feels the sign is too big as well.

S. Bogert said not to look at the picture of the sign; we should be discussing the use. S. Perley said the sign is a factor in approving the use. S. Bogert said he agrees, but that is not the whole, just a part.

M. Foote asked if it is reasonable to have a home based business here, if it meets the criteria and S. Saunders said yes. M. Foote clarified that the home based business cannot have a sign for advertising and was told that is correct.

D. Greski said the sign is to be able to find his residence and M. Foote pointed out that a person can always be found today through internet, web, GPS, etc. D. Greski said if there was a sign on top of the mailbox that says custom framing, you would see that but feels this sign is in your face.

S. Bogert said to get back to the use. He asked if the board feels that the business is out of the character with the neighborhood. M. Foote said he doesn't feel that is the case. They could do framing there in their studio now and S. Bogert asked the board if they feel that a person can do whatever they want inside their house.

S. Saunders reminded the board that this approval would be permitting truck deliveries, and other things associated with the business use.

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S. Bogert said other things come into play here. Lawyers work at home, surveyors, real estate agents, and many other businesses work from their home and do no advertising.

M. Foote brought up traffic issues again and S. Saunders read 235-41 (A) (1), no more than one person who is not a resident shall be employed and 235-41 (A) (6), no more than 2 people shall be served at any time.

D. Greski said that is for a home based business, not allowing the use with the Special Exception. S. Saunders read the remaining criteria for a home based business and said that he meets them.

S. Perley asked what kind of sign would be allowed. She asked if an individual person can put their name on their property and was told yes.

D. Greski asked if he could ask for a variance for a sign that says custom framing and S. Perley asked if he is doing the home occupation variance, can he ask for a sign? S. Bogert reminded them if doing that then he could put up a 24 sq ft wall sign and that variances ride with the property, too.

S. Saunders said we are not looking at the sign here, just the use first. D. Greski said he wouldn't mind if his neighbor did this but would not want to look at that large sign. S. Bogert said that is why this is in the code, to protect residents of the neighborhood. He said he is not speaking for or against, just saying you are taking a residential neighborhood and changing the character.

S. Saunders said we have discussed this issue with legal counsel, and certain conditions are permitted under a Special Exception. If the board wanted to think about the conditions, maybe they could be specific here and limit this approval; then she can pass it by legal. S. Bogert said if they place conditions, and be specific, they can make the size of a sign a condition of approval.

M. Foote clarified that the applicant is here to allow the use but he can still have a home based business. He was told yes, he is here to allow the artist studio to make it a legal business so he can have the associated signage.

D. Greski asked if the applicant could make a fancy mailbox. He said he has seen them done. S. Saunders said yes, possibly he could build a mail box out of frames or something similar.

Public: Bryan Bailey spoke. He stated that he is not for or against this proposal, he is a land surveyor, but that he had a question for the board. He said he is confused. If they grant the Special Exception in this instance, is it true that he would then be required to go before the Planning Board for site plan approval? He stated that the applicant can have the home based business now. If he is granted the Special Exception, then isn't he on the path to the Planning Board? He said that someone should tell the applicant that, as that is much more involved. He said he has found that a person just has to meet the conditions that could be set.

This is a question of use, and the particulars can be conditioned. He feels this approval would be pointing towards the planning board and asked if that was true. S. Bogert said he is unsure, as this is outside of their purview. The ZBA deals with uses, variances, SE's, etc.

B. Bailey said he is asking the planning director the question. S. Bogert asked if B. Bailey had a question pertaining towards zoning and B. Bailey asked if this person is granted the Special Exception to operate a business in this zone, would he have to go to the planning board for any further approvals.

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S. Saunders said if the project is less than 5000 sq ft he would have to do an administrative approval, which she can do without him going before a board.

No one else spoke for or against the application.

There were no further board questions so S. Bogert closed the hearing to the public.

Board: S. Perley said feels she cannot vote for this as she feels it changes the character of the neighborhood.

D. Greski asked if the applicant went down the path of the home business, by procedure, would that be a variance. He could ask for another sign, then the board can put controls on it to handle the size. He feels we should table this and ask legal counsel. S. Bogert said he doesn't feel we can table the Special Exception to ask for answers for a Variance that is not pending.

He said the applicant can withdraw the application; we can approve the use or approve it with conditions, or we can deny the application.

S. Saunders said the board can draft conditions and she can ask legal if the conditions could be put on the property to protect it in the way we want it protected. She would ask counsel if the property would be protected with the proposed conditions.

S. Bogert said he would rather state the conditions. He doesn't want to put a motion on the table.

S. Perley said her big issue is the signage. The approval is for an artist studio, which she feels does have a low impact. Her issue is the sign, and she stated she is not prepared to approve any conditions without seeing an acceptable sign.

M. Foote asked what sort of permitting there is to be allowed to be a home based business. S. Saunders said none, if they can meet the criteria, but she said we often recommend that people submit a letter to cover themselves, as well as the city.

S. Bogert stated that he feels the character of the neighborhood is what people buy when they move there; he feels if changes are allowed to creep in, it becomes like a crack in a foundation. By allowing the crack in the residential neighborhood to grow, you lose the character - the nice peaceful character is gone. He said there are very few neighborhoods left now. Many are set up now where they are already zoned for business. He feels we shouldn't change the characters of these neighborhoods.

D. Greski asked if this approval passes can this be used only as an artist studio for framing and was told no, it would be an artist studio – period. S. Saunders gave examples of sculpting, beading, painting, etc.

D. Greski asked if this was approved could the entire house be used even if they don't live there and S. Saunders said yes, it would no longer be an accessory use.

D. Greski clarified that if the applicant does a home based business, he would live there, there would be no visible use, then he can he have a sign and was told not for a home based business. S. Saunders said he can have the business now but he just wants to advertise.

S. Bogert questioned traffic issues. The board discussed the service classification on the use chart. S. Saunders explained the chart and said this would then be considered a commercial use. S. Bogert asked if that then

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changes the number of cars that could be there. S. Saunders read the parking calculations, 1 per 500 ft of floor area, and said we would need to find out the size of studio and see what is required that way.

Motion: S. Bogert moved to deny application 2011-0017.

He said the use is permitted by granting of the Special Exception.

He feels there is an issue with traffic and pedestrian safety if this is granted. The parking requirements could change. If it does that could also affect public systems as that could affect run off onto surrounding properties. Requirements would now fall under commercial requirements.

S. Saunders mentioned he could put in a larger parking area if he can meet green space and setbacks.

S. Bogert said he could increase parking to accommodate the business. Green space here is 65%.

S. Bogert said he feels the use will create undue traffic congestion when it becomes commercial use in a residential neighborhood.

He does feel this use will increase storm water run off due to parking changes.

There are no special provisions for the use.

S. Bogert said he feels this increased use would create more demand on trash pickup. He asked S. Saunders if the applicant can install a dumpster or rely on street pickup and S. Saunders said he can use street pickup. S. Bogert said then he feels this will create excessive demand on municipal solid waste.

S. Bogert stated the commercial use will create hazards to the general welfare and be detrimental to the use of the neighborhood, as it was residential, and you would be introducing a commercial use. There could be safety issues to children playing in the area.

The location is not an appropriate location as this is a residential neighborhood.

S. Bogert said he does not feel the use is consistent with the spirit of the ordinance as code indicates that would be a commercial business and not acceptable to be used in a neighborhood.

D. Greski asked if he could make an additional recommendation and S. Bogert said after the motion was seconded.

M. Foote seconded the motion.

D. Greski said he would like to make an addition to one section of the motion. In Section F, not detrimental to the neighborhood: If this is approved, based upon commercial approvals, the homeowner could move out and the home could be fully used as a business; that is detrimental to the neighborhood.

S. Perley called for the vote and all voted in favor of the amended motion. The application was denied, 5-0.

Application 2011-0018

MSL # 180-346-7

RRI Zone

J. Schetzi

174 Birch Haven Rd

Variance

The applicant is requesting a variance from 235-35 (B) and 235-19 (F) (2) (b), side setbacks and SPOD, in order to convert part of an existing screened porch to kitchen area. The structure is currently within the SPOD.

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Applicant: Mark Flanders appeared for the application. He stated he is here this evening representing the property owner. He placed a larger plan on the board for the members to see. He said they would like to reconfigure the kitchen. They are proposing the kitchen be pushed into the porch. The area is less than 38 sq ft. and is already under the roof; there would be no further encroachment, and no additional change to the exterior. This proposal won't affect anyone but the owner.

D. Greski asked about state permits and M. Flanders said that none are required. They can do this without a permit. One would be required only if excavating with a machine, but as the area is hard to access, they will be digging by hand so no permit is required.

S. Perley asked what they are doing outside and was told the porch is currently supported on piers, so they will be putting 8 x 4 feet of foundation wall. This is not creating any new impervious surface, so there is no additional run off. It is already under roof. They checked with Darlene Forest.

S. Bogert asked if there is any change in the roofline and was told no. He showed the board the area on the pictures.

Public: No one spoke for or against the application.

There were no further questions from the board so S. Bogert closed the hearing to the public at 8:30.

Motion: D. Greski moved to approve application # 2011-0018 to allow the conversion of a portion of the existing screened porch to kitchen area.

The proposal won't be contrary to public interest. This won't alter the character or locality or pose a threat to the safety or welfare of the public.

The spirit of the ordinance is observed as this is consistent with other residences in the neighborhood. The applicant has checked with the state so no permit is required from them for the change.

Substantial justice is done as this proposal gives the new owners opportunity to improve the residence, with no change in the footprint.

Values of surrounding properties won't be diminished. The improvements being made should improve those values.

Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship as there is no bumping out to be done, the area already exists.

No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. The current building area is small, so the proposed expansion is minor with no impact to the footprint, and no further encroachment.

The proposed use is a reasonable one.

S. Perley seconded the motion and all voted in favor of approval, 5-0.

Application 2011-0019

MSL # 179-316-8

RRI Zone

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Robert Wood

146 Harglen

Variance

The applicant is requesting a variance from 235-35 (A), front setback, in order to replace an existing deck with living space, and from 235-35 (B), side setback, to replace a garage roof to allow more storage.

Applicant: Bryan Bailey appeared along with the property owner and builder, Bob Wood. He said that they are also here after the fact, after listening to case one.

He said that on September 6, Mr. Wood applied for a building permit. He had a discussion with Code and got verbal authorization.

Then the building permit went to Seth Creighton, who was more thorough in his review. S. Creighton wrote a letter on September 15 saying that the proposed application could not be granted after reviewing the maps. T

So the submission here is an after the fact permit, somewhat. The fees paid do not include the additional \$500.00 fee. However things were done properly and as soon as they received the letter from S. Creighton the building stopped and they hired B. Bailey to look into the matter. He has the answers to any questions with him.

After hearing the first applicant be tabled because of submitting after the fact, he feels this case is different, and feels they do not owe the additional fees.

Board: S. Bogert asked if they started building prior to variances being applied for and was told yes. He asked if, prior to starting, was a building permit obtained and was told no. B. Bailey said that there is none to date but application was made and verbal authorization given. He was told by S. Bogert there is no such thing as verbal authorization.

S. Bogert said feels this is probably going to be tabled and B. Bailey said that is why he brought the question up immediately. S. Bogert said, looking around the room, he feels the members would table this.

D. Greski said he feels it should be tabled to be consistent; table the hearing until the fees are paid, and let him return to be heard.

D. Greski said he would like to see, when returning, information that wasn't on the application. He asked them to include what the actual and proposed setbacks are, both side and front. He said that should be included on the application.

B. Bailey said it is on his plan, but they can make that clearer when they return.

Motion: D. Greski moved to table the application until the proper fees are submitted to the Zoning Department. S. Perley seconded, and all voted in favor of tabling until fees are paid, 5-0.

S. Bogert let the applicant know that they would be second on the agenda at the November 21 ZBA meeting.

NEW BUSINESS: S. Saunders asked the board regarding the home based business, would the board consider a variance from the home based business criteria to allow for a sign. S. Perley said the business is not invasive, as it is confined to within the house. D. Greski said he agrees. S. Bogert said he doesn't think signs belong in residential neighborhoods.

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D. Greski said drive down Daisy Gardner Road; the first home is new, and the person owns a crane business. The barn used to be a little barn, which was appropriate for the area. There is no sign but the cranes and trucks are parked there so this is clear indication there is a business. S. Bogert said that the true use of the barn was not disclosed in that case.

M. Foote asked if a home based business could advertise in local papers and can have an address and was told no.

S. Saunders said she will let the applicant know that it is his choice to come in for a variance, that the board had mixed opinions. She said we had not seen the sign before this evening, and it does seem large.

MINUTES: July 12, 2011: Motion: M. Foote moved to accept the minutes from the meeting of July 12, 2011, as written. S. Perley seconded and all voted in favor of approval, 5-0.

July 19, 2011: Motion: M. Foote moved to accept the minutes from the July 19, 2011 ZBA meeting, as written; S. Perley made the second and the vote was 5-0 in favor of approval.

OTHER BUSINESS: There was no other business before the board.

ADJOURNMENT: S. Perley moved to adjourn the meeting. S. Bogert seconded and all voted in favor of adjourning. The meeting was over at 9 pm.