

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

August 15, 2017

7:00pm

Opened the ZBA Meeting with the Pledge of Allegiance

Roll Call

The following persons were present:

- Charles Crover - Member
- Darrin Sainato - Member
- Carol Schneider – Member
- John Hager, Building Inspector
- Barbara Singer – Deputy Clerk/Secretary
- Joseph McKay, Esq.
- Jennifer McCave, Esq.

The following persons were absent:

- Laurine Miller – Chairperson

Member Crover: I wasn't here for the last meeting, so I don't know where you left off, I was on the phone with you, you had made some comments about the draft decision and you were still working on it as far as the interpretation goes. There's been no decision on the variances yet, is what I've been led to believe.

Mr. McKay: There have been no final decisions on anything. At the last meeting we reopened the portion of the Public Hearing regarding the interpretation to discuss the more recent submission. That was discussed and closed. We have a draft decision to discuss with the Board tonight in respect to the interpretation. At the last meeting, we then moved on to the Hearing about the variances. The Hearing was closed and the Board started its deliberation but did not make any decision.

Member Crover: Were all of the factors addressed?

Mr. McKay: I can't say if every factor on every variance was addressed. Specifically the Board did reserve making any final decision because they did want to have your input as well. It might be prudent to enter into a brief attorney/client session to discuss with the Board some of the issues that we have in respect to the draft decision and we can come out and you can continue your deliberations in respect to the variances.

Motion was made by Member Schneider to enter into Attorney/Client Session

Second by Member Crover.

Aye: Member Crover
Member Schneider
Member Sainato

Nay: -0-

Motion was made by Member Schneider to return from Attorney/Client Session and return to the regular meeting.

Second by Member Crover.

Aye: Member Crover
Member Schneider
Member Sainato

Nay: -0-

Right Choice Builders Inc.

101-2-1.12

Discussion

Present: David Niemotko, Architect

Member Crover: There were some concerns whether the project would be considered a warehouse or was it commercial storage as an accessory use for a principle use for the office space. The decision is being drafted with the stipulations that you have been willing to agree to in keeping it within the terms of commercial storage. Those were some of the legal questions that we were talking about and trying to answer so they could understand what we felt and we could understand the legality of everything and they could finish the decision. The decision won't be made tonight; it will be made at the September 6, 2017 meeting to give the attorney time to put those final recommendations in to the decision.

Mr. McKay: Since those legal issues have been clarified, I can get the Board the decision in advance so you have an opportunity to review the draft so you really can make that decision at the next meeting.

Member Crover: The main concern was the list that you gave to the Board that I asked for, about potential tenants. Fulfillment centers would be considered light processing and wouldn't be allowed in what you're proposing. Each unit of storage needs to go with a specific office and the office needs to be the principle use. Many of your suggestions would fit what we have agreed of what other things that have happened in the Village that have been brought before the Board for review, like the electrician, plumber, party rental. There would be an office taking a phone call, sending a truck to customers and the materials on there. Some of the other things that we were concerned about that may not fall under that, outside of a fulfillment center since that's light processing, would be seasonal warehouse where there's no one in the office. There's going to be stipulations on there that there has to be someone in the office and the office has to be the primary use and whatever is going on in that storage relates to that office.

Member Schneider: One of my concerns was in the minutes you said that you weren't sure if there would be someone in the office, maybe it would be the landlord running the offices. In which case, in my mind, would have turned commercial storage into warehousing.

Member Crover: I do believe some of the stipulations that are going to be in the decision were some of the things that you were willing to put in the lease. There will be things put in the decision in the special permitted use so that when the Building Inspector inspects there will, hopefully, be no question to whether or not they comply.

Mr. Niemotko: So in the stipulation that you will be writing the conditions will be spelled out defining commercial storage and how this project should needs to comply with those.

Member Crover: Yes, basically this means the principle use has to be the office and whatever is going on in that storage unit related to that office has to be related to that use. It can't be a phone bank in the one room, answering phones for somebody else and then another person renting a storage unit. We wanted to come up with a way to put that in writing.

Mr. Niemotko: We agree. I appreciate the clarification.

Member Crover: The fulfillment center is one of the concerns in our opinion that wouldn't be allowed in this building would be packages coming in and sitting in the building as a warehouse, something that you would keep in a self-storage unit, until you get enough to repackage or you break it down and ship it back out. To me that's not primary use for the office space. That's not a plumber bringing in materials for him to go out and work at somebody's house with. Its acting like a distribution center which we feel is a warehouse. And that would be considered light processing.

Mr. McKay: One of the things that we discussed at length was that there were certain examples that were in the submission as you indicate that electricians, plumbers and the Board felt that those clearly fell within the commercial storage as distinguished from an office that would assemble would be light processing.

Member Crover: The things that you wrote for the fulfillment centers, Bed, Bath & Beyond, Walmart, Staples, Target that can provide storage and return. You could have return coming in there and then when they get a pallet full of stuff going to Sony, they're going to ship it out to Sony. That doesn't fit within this perimeter. The seasonal holiday storage I was concerned about, if it's just a Christmas time theme, where there's an office staff just for that holiday with a six month rental, I don't know how we could say no as long as that storage was for that principle office use. Not like Kohls storing holiday goods until the next year's holiday; to me that's warehouse storage.

Ms. McCave: How would you feel about a holiday business that was just focused on Halloween so they only had someone in the office a few months out of the year but they were keeping the Halloween stuff in there all year round? Would you consider that to be an accessory commercial storage use?

Member Crover: I think that depends on what that business is. If they're just storing merchandise for a store, then , no.

Ms. McCave: No, the same example that you just said, somebody calls in and says we need you to come decorate with the stuff that you were storing. But they're only operating during the Halloween season and the rest of the time the office isn't being used but the stuff is still using the storage space. Do you require that the office be used year round?

Member Crover: Yes, the office would need to be active year round. What I'm worried about is the retail establishment storing excess inventory there; that becomes a warehouse then. Another example is someone that repairs furniture and they're storing the furniture there and the fabric there while they're repairing the furniture and it's a business using the office and they need more storage space than office to do the repairs, that's one thing but a big box store, Bassett Furniture, keeps storing their overstock furniture there, that's warehousing as a principle use with an office. That's why I was looking for clarification.

Member Schneider and Member Sainato agree that the office should be used all year round.

Member Schneider: I don't think that particular example would fit in there. The holiday storage, seasonal storage. Unless that business was operational for the whole year, handling many holidays, not just one.

Member Crover: The commercial storage is supposed to be an accessory to the principle use. The principle use that's allowed is the office. That's why we're trying to distinguish that you need

to follow that. The storage is larger than the principle use, the office but what's allowed there is the office. So you can't have a storage unit and not use the office because to me that's not following the Code.

Ms. McCave: To that point, if the business is only there because they want to store stuff there not because they're doing something beyond just managing storage. Then that would not be an accessory. Then it would be more a warehouse; like having an office in a warehouse where you have someone sitting there and their whole job is to keep track of what's in the storage and that's it.

Member Schneider: Correct, that would be warehousing.

Member Crover and Member Sainato agree.

Ms. McCave: It sounded to me like you were saying regarding the furniture storage, if its furniture being stored there because it's related to a furniture repair trade/business, just like a plumbing trade/business, someone who builds fences and things like that. Their sole purpose in being there isn't because they want to store stuff there.

All members agree.

Member Schneider: They would need to be one year leases that need to be reviewed every year by the Planning Board.

Mr. McKay; I think there was a representation that if this Board put language in the decision which indicated certain types of uses would not be permitted. Those certain conditions would be placed in the lease. For instance, if there was a tenant who had materials on hand, there would be a condition in the lease that the tenant could not then take products from one shipment and a different shipment and put them together and send them out so that tenant essentially became a fulfillment center. I think there was a representation that the leases would require only the specifically approved uses.

Member Schneider: The last time that we were here, it was discussed, if a plumber was a tenant and he brought in 8' lengths of pipe, he couldn't be taking out 4' lengths because then he would be cutting and processing them. You can't change the original form of which they came in as.

Mr. Niemotko: The term light processing would cover that. So you would put in a condition that there be no light processing?

Mr. McKay: We would caution you in a decision that while some of these uses are permissible, some could fall in the category of light processing.

Ms. McCave: Both the Planning Board and this Board, on several occasions have already cautioned that if there is going to be anything that might qualify as light processing that you would need to come back.

Mr. Niemotko: Yes, I understand that. I was not questioning the fact whether the building is light processing, I was questioning if it would be put in as a stipulation, to not allow light processing.

Ms. McCave: We would go into more detail than that, explain packaging, provide some of the examples that have been discussed at the meetings and the Hearing.

There were no other comments on the interpretation.

Member Crover: Hopefully we'll have the final decision to vote on at our next meeting, September 6th at 7:30pm.

Ms. McCave: Does the Board feel that it should be noted in the decision that the applicant stated at the last meeting that the space will not be used for retail space, showroom, and the storage units will not be open to the public?

All members would like to have this stated in the decision.

Member Crover: Regarding the area variances, I missed the last meeting; I know that you discussed the five criteria.

Mr. McKay: We have the stories, height and parking variances.

Member Crover: The variances to go for a three storied building over the zoning allows for a two storied building.

Mr. McKay: The first factor that was discussed was whether an undesirable change in the neighborhood would be produced or a detriment would be created to nearby properties by granting the variance from two stories to three stories. Part of the comments from the last meeting were that no members of the public really commented on that issue.

Member Crover: I'm not sure if there would be an undesirable change produced in the character of the neighborhood because of the way this building is going to lower down in the back. I do have concerns about setting precedents. This Board has never allowed three storied building before. I'm not going to be easily persuaded to grant that. I don't think that there will be an undesirable change in the neighborhood because of the topography of that location. I am concerned about fire access, ladders, etc., that we're not allowing something because there are reasons why they say there shouldn't be three storied buildings; for safety and emergency reasons. Whether the benefit sought by the applicant can be achieved by some other method feasible, yes, make the building two stories. You won't have your square footage; you won't have your parking problem. I think that it can be achieved. Whether the area variance is substantial, to me, a third is substantial. You're asking for a third more storage and that third story is actually larger than the first story.

Ms. McCave: Would there ever be a situation where a third story in a B-2 district would not be considered substantial?

Member Crover: Probably not, unless the third story was a small portion of an overall building. You might have a 10,000 square foot building but only 200 square feet was going to be a third story.

Mr. Niemotko: Actually the third story is smaller. It's the submerged story is the smallest of the three.

Member Crover: I'm calling the top story the third story because you have to have a foundation. The cantilevered story.

Mr. Niemotko: You have to have a foundation and that area is all filled, it's been filled for I don't know how many years. It's a substantial amount of fill, about 16' that we have to excavate to get down to subsurface drainage requirements instead of putting them on top of the surface. That does create unique circumstances to this site. If we're going to dig down, allow us to capitalize and use the third story. 33% of this land is not usable because of the FEMA line.

Member Crover: That was like that before the property was purchased so I don't find that a hardship. You bought the property that way, knowing that FEMA has marked that as wetland. That was all in the negotiating price of the land. Whether the proposed variance would have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district; I don't think that it's going to have any adverse effect because of the topography of that particular lot.

Member Schneider: I agree.

Member Crover: The environmental condition is the reason is the wetland, that's the reason you're digging down, not going out. It's not going to be towering over the other buildings around it. Based on the plans of the topography that was given to us and what was brought on the record.

Ms. McCave: The distance from the main road, does that factor into your decision?

Member Crover: Yes, and the topography drops down. Very little of this building is going to be above the building in front of it.

Mr. Niemotko: Correct, that's why we have asked you to consider that third submerged story.

Ms. McCave: Does anyone have any thoughts regarding the need to excavate in order to have three stories? It had been explained at the previous hearing that there would be a large amount of soil excavated in order for them to have a three storied structure.

Member Crover: They're claiming they have to excavate that soil either way for the foundation and for drainage. You have to have certain density material to put a foundation on, you can't put it on fill. There are other ways to address the foundation part of it without necessarily excavating or creating the need for the third story, pilings and stuff like that. That's the way they did some of these buildings over here on Rte. 17M, they put pilings down to get better soil. It would be beneficial to this applicant; it's almost like a basement. Most of that in the front will be backfilled and below grade.

Mr. Niemotko: the Rte. 17M side would be 4' above grade. You wouldn't see the third submerged story at all. Even on the sides, the way the land slopes you would only see the back corner of it. We did reduce the size of it, we are going to the expense of cantilevering the second and third floor to help accommodate. What makes the site unique is the topography and the FEMA line. The FEMA line hinders development and we are nowhere near building out the site that the Code allows. But that's part of the property but we do have these other considerations that would allow us to submerge this floor without any impact to the surrounding neighbors. If the owner is willing to go through the expense and the site is so unique that allows this condition to happen there is a place to approve a variance for it.

Member Crover: Whether the alleged difficulty was self-created which consideration shall be relevant to the decision of the Board but not necessarily preclude us from granting the area

variance. You could build a two storied building so I'm going to say yes it was self-created but you have stated the reasons it was necessary.

Mr. McKay: I think when you made a direct comment on addressing those other factors you said that he purchased the property knowing the limitations that were possible of the property. That would go whether there was a hardship. At the last meeting there was some discussion in the context of the stories variance whether there would be an undesirable change in the neighborhood or whether or not the benefit could be achieved by another method. I want to clarify because Darrin , I think you had some questions in respect to the number of stories and variance and if that would have a undesirable change on the neighborhood or not.

Member Sainato: Yes, I felt that it opens potential for future building of three storied buildings in Harriman.

Mr. McKay: In this context Member Crover indicated before that he didn't believe that the Board had ever granted a variance for the number of stories in the B-2 zone. I'm trying to bring out your comments which I don't know if they are reflected properly in the last minutes.

Member Sainato: I prefer not to see a three storied building in Harriman, they're not here now and I don't want to set precedence to have them in the future. It would change the character of the neighborhood. It's more of a city look than a village look.

Mr., Niemotko: We are in the context of an industrial area there. It's surrounded by commercial industrial-type buildings.

Member Sainato: None of them are three storied though.

Mr. Niemotko: True, but none of them are sloped and have the site characteristics as this one.

Member Sainato: Still opens the precedents of putting a three storied building in Harriman.

Mr. Niemotko: I understand that. I think that as a Board you take each project on its own merits. We're not asking for three stories above grade. I'm not sure how many other properties in Harriman would have these same similar characteristics. So I'm not sure if your decision to allow this would set a precedent because there probably aren't that many properties that have this type of concern or situate such on the land.

Ms. McCave: Would you be comfortable with granting the three story variance if it was limited to only properties that have these exact site characteristics? If you knew that it was only going to be this situation and wouldn't open the door to other properties in the B-2 district having a third story?

Member Sainato: I'm not sure how I would answer that.

Ms. McCave: Because you could issue a decision that is very specific and limits the variance so that if you explain it in detail the reason you granted the number of stories variance is because of these unique site characteristics. That eliminates the possibility that someone would rely on that decision in the future to say that you gave that property owner three stories, so I should get three stories as well. So unless the property is exactly the same you have a basis to say no, you don't get to have a third story. Has everyone expressed all of their thoughts regarding the number of stories?

Member Sainato: Yes.

Member Schneider: I did at the last meeting. For me, you weren't going to see that much of it over the Speedy Car Wash; it wasn't going to be that much higher. I was totally unaware that we had never had a three storied building in Harriman before.

Member Crover: There are three storied buildings but there have been none before this Board for a variance.

Ms. McCave: Are there any currently in the B-2 district?

Member Crover: There's probably a couple where they consider the story underground, they didn't count it as a story. The whole floor was submerged underground, not just submerged in the front. Basically from the front it's going to look like a foundation with a two story building on it.

Mr. Niemotko: A 4' foundation with a two storied building on it.

Ms. McCave: Does the appearance of the outside of the building factor in for any of you? More aesthetics? Would it depend on how the outside of the building was designed? Meaning what materials were used?

Member Crover: The appearance only matters that it doesn't look like a tower out of the ground. Not the materials, what makes this building unique is the topography, it's lower than the building in front of it, for the most part. From the front most of it is below grade except for 4' but still around the back it's going to look like a three storied building.

Member Schneider: I think from the front, I think that the appearance would be important. I would want it to fit more into the characteristics of Harriman are. I wouldn't want to see some extravagant building that's going to wind up if Speedy's Car Wash, for some reason, got knocked down, it's going to be something that just doesn't fit within our Village. If you're familiar with Suffern, it's a quaint little older town, and Avon came in and erects this big, glass building that doesn't even fit in the appearance of the town and I don't want that to happen for Harriman, I want your building to fit in with the characteristics within Harriman.

Ms. McCave: How would you describe the characteristics of Harriman?

Member Schneider: Quaint, I don't think that we have any buildings that stand up very tall. I don't think something modern looking would fit into the characteristics of the neighborhoods. And that would be more of an issue of this building were taller. I thought that it was determined that the applicant would leave the woods on the side of the building, so it wouldn't be very visible on the Monroe Ford side of the property.

Mr. Niemotko: Yes, there's an existing buffer and we would leave a landscaped buffer of trees there on that side of the property. The development in the back is over 1000' away from the project and we gave pictures in the wintertime when the foliage is gone and it's not visible. Evergreens are also a possibility. To get the third story we can make a contextual design and with landscape buffering to provide some visual demarcation to both sides, we would agree. Please consider the uniqueness of the site, the physical characteristics of it, the conditions that we would be willing to agree to allow it. I know that they bought it knowing about the FEMA line

demarcation yet it still eliminates quite a bit of property that could be developed. If you think about the third story as the submerged one, it is the smallest of the three. Those conditions can be stipulated that make it unique to this property as opposed to other properties in Harriman.

Member Crover: If there are no more comments regarding the stories, we'll move on to the height. It's an average height variance of 9' above what's allowable based on the average of the four corners, based on the grade to the middle of the roof? The front is much less but the back's more because of the grade and the third story being down in the back.

Mr. Niemotko: Correct.

Mr. Hager: You have to come to the high point of the roof as well as the mean.

Member Crover: You have the front two corners where it's one foot high but the back corners where it's 19' high. If you weigh in the five factors it's pretty much the same as the stories, if you didn't have the third story, you wouldn't have the height issue. I'm not sure if there would be an undesirable change because in the front it's only 1'. In the back if it were visible, it would be undesirable with a 19' variance. Could it be achieved by some other method? Yes, build a smaller building. Is it substantial? 9' over average over 35', probably not but the 19' in my opinion is a substantial, if it could be seen from the roadway. I have a little bit mixed feelings about that, it's the same thing about the third story. Darrin brought up about setting the precedence. If the Board does see fit to grant, to me, there has to be reasoning why it's specific to the topography and the visibility from the surrounding areas. An adverse effect or impact on the environment? Probably not. Whether the alleged difficulty was self-created, they're just trying to get more square footage on a smaller piece of the lot.

Ms. McCave: Would you say that your concerns and analysis of these factors for the height are exactly the same as your analysis of the number of stories? Or are there differences?

Member Crover: In my opinion the only thing that's different is how significant it is. I think because you're looking at an average and the average is 9' and its 1' in the front and it's not significant, it's not a third where I feel the third story is significant. All of the other factors related I feel are identical.

Mr. McKay: Looking back at the minutes from the last meeting, the discussion about the height variance actually ended. So I don't think the record is clear as to any points that Member Schneider or Member Sainato might have with respect to the height variance. The first factor being whether or not it would be an undesirable change by the 9' variance.

Member Schneider: I didn't think that it would.

Member Sainato: I don't think that it would be that undesirable either. It goes along with the third story precedence type.

Mr. McKay: Member Crover commented on whether or not the benefit could be achieved by some other feasible method. He said yes if the applicant built a smaller building.

Member Schneider agrees.

Member Crover: That was known when the property was purchased so I'm not convinced that it's a hardship. We haven't heard any objections from neighboring property owners at the Public Hearing.

Mr. McKay: You indicated that you thought that it was a substantial variance in respect to the height.

Member Crover: No, not the height. I believe the third story is substantial because it's the entire building.

Member Sainato: I don't think that it's a substantial height issue but I do agree with Member Crover that it could all be eliminated by making a smaller building, only two stories.

Ms. McCave: Why is the third story an undesirable change but the height variance that's required in order for them to have the third story is not an undesirable change. Said differently, an applicant comes in and they are only going to have a two floor building but they want to make the building taller, wouldn't that change the look in the neighborhood just as much as letting them have a third story?

Member Crover: Yes but in that case, the average height would probably be more. This one the visible part is only 1'. I did say that looking at it from the back the 19' is substantial but the way that our Code is written it takes an average of the four corners off the elevation.

Member Schneider: I didn't feel it would be because the Speedy Car Wash is in front of it and you wouldn't see that much of it. The third floor I have the same concept with. You're changing the whole character of the way Harriman has been built. If you're talking about just the height by itself, I didn't have a problem with it because it has Speedy's Car Wash in front of it, you wouldn't see it.

Mr. McKay: If it were two stories with a 9' variance would be less impactful to you.

Member Schneider: Correct.

Member Sainato: I was more concerned with the third story factor than the height. The way that the building is setup, it's not going to be very visible from the road. There is potential in the back where the townhouses are to be less desirable in the rear. I'm not certain if they can see it or not, I haven't viewed the property from the townhouses. It's hard to estimate how high the building is going to be.

Member Schneider: I don't know what it would look like even from across the street from Concord Park or Lexington Hill. They will all be looking down on it. Across the street is a huge residential area, two big condo complexes, there's potential that you're going to be able to see this big flat roof. Right now they're looking at vacant land.

Mr. Niemotko: If you reference the cross section on the plan, Section 2 on plan SP-2, it shows the cross section through the site, through the building, its relationship to the road, to the car wash in front of it, the FEMA line, the townhouses 1000' away, the condos are a pretty long way from the building.

Ms. McCave: The condos would be across the street and how much higher up?

Mr. Niemotko: That I don't know. We're talking about probably 200' from the property line, 300' from the townhouses that you're talking about, if not more. That's quite a distance away. Another consideration, a unique characteristic to this site, it is a flag pole lot. I'm not sure if you have that many others within Harriman. We know its 1000' away from the townhouses and that's across the FEMA line, land that will never be developed. This will always remain vegetated area.

Ms. McCave: Member Schneider, the condos that you were referring to, south of the proposed building, do you know if the people who live in those condos have what could be considered a nice view from their windows and could that be a reason that they chose to live there?

Member Schneider: It's probably one reason, but then Concord Park was built beneath them at that time.

Mr. Niemotko: There's a vegetative buffer along Rte. 17M that separates Concord Park from Rte. 17M.

Member Crover: Parts of Lexington Hill may be looking down at part of it but they're already looking at a car wash.

Member Schneider: To be fair, I live in Lexington Hill; some of the higher condos see right over and across the street and out towards Central Valley, in some spots. This project specific to me and my view, wouldn't matter, I would not see it. Other areas in the complex, based upon their line of site, may. Concord Park, maybe, maybe not, they may be too low.

Mr. McKay: In the context of this, the question would be whether the variance would have any adverse impact on the physical environment or the conditions in the neighborhood or the district.

All members agree that it's not going to be undesirable.

Mr. McKay; And whether it was self-created.

Member Schneider: I think that it's self-created. The property was small with only a small parcel that could be developed on it; you lose some with the FEMA line, they knew this when they bought it, and they're trying to get as much of the square footage out of that building as possible.

Mr., Niemotko: What was uncovered after they purchased the site and we did the subsurface investigation to begin the storm water drainage when we thought we were before the Planning Board is all the fill. We have 16', even more in some areas, of fill that was unknown when they purchased the property. I do want to bring that to your attention. And that was a surprise when we got out there.

Member Crover: You could still put pilings or footings, there are ways around that without excavating it out and in that case you would still be limiting it to a two story building.

Mr. Niemotko: Wouldn't you agree that pilings and timber piles, concrete piles, square footings, isn't that a specialty type construction?

Member Crover: Yes, it is but it's also an alternative way. You could construct a two story building there.

Mr. Niemotko: That is true but it also an additional expense. It is a specialty type construction.

Member Crover: You could do the same exact building that you're doing and eliminate the 12' floor on the top and put offices on the second floor. You would have less square footage, making it nine suites instead of eleven. That middle floor is the one that is going to be at grade with the front. You could walk in the front into the offices without going up any stair. There are alternatives. And they all lead to building a smaller building.

Mr. Niemotko: Not necessarily so. In either case if you don't allow them to dig down to that virgin ground as an alternate use timber or friction piles or any other specialty type foundation, that is an added, burdened cost to my client. If we're able to go down we can build with concrete walls and footings, a retaining wall in the front.

Member Crover: I'm not saying dig down to virgin ground and utilize that space, I'm saying you don't have to necessarily have to go up to the third story. Then you wouldn't need a variance for the third story or a height variance. You would be losing square footage. You're trying to find a balance to make it all feasible for purchasing the property, meet your goals and make it profitable, I understand.

Ms. McCave: Mr. Niemotko didn't you originally propose to the Planning Board in January a larger building that would have 16 offices and 16 commercial storage units?

Mr. Niemotko: Yes, it was a lot larger than this; that was our first submission. Our second submission was this reduced sized building, with the cantilevered second and third floor because we did receive comments from the Village engineer regarding the turning radiuses of the trucks. His comments concerning how the columns of the second and third floor would impact the parking spaces below and that's when I came to you, telling you that we could work it out and do whatever we need to do. Right now the conditions that we're proposing for the building with everything that needs to be done, is a good option for the site. Have we considered going smaller? No, we reduced the length, we reduced the submerged floor to get to a point where we can get the site to work well with emergency vehicles, vehicular traffic, truck traffic, the turning radiuses required, has every detail worked out? No, we look forward to get to that stage. In concept, it's doable.

Ms. McCave: if this Board were to deny your request for a height and number of stories variances, would your client scrap the project? Then you would have to reduce the square footage of the building in order to fall within the requirements for the number of stories and height? How significant would the reduction in the square footage have to be in order for it to have only two stories?

Mr. Niemotko: I can't answer for him but it would be very difficult for him to continue. In order to meet the radiuses we would lose 17,000 – 18,000 square feet total. The whole lower story.

Member Sainato: If your client isn't sure of the actual purpose of the building, how would that be a deal breaker?

Mr. Niemotko: I can't speak for him, but I know that these square footages are. I haven't discussed with him the reduced building, we did reduce it the once and we thought we brought it to a lowest threshold as possible. Any conversations beyond that, the two stories and/or reduced square footage would have a big impact. Coupled with everything else. I understand

your thoughts about the variances yet the reality of the situation is they do have that demarcation of the FEMA line, it is a flag pole lot, we do have 16' of fill, and we do have a sloping lot down to the FEMA line. These are just very unique characteristics to this specific site versus any other site in Harriman. I really believe it would allow you to be site specific in your permitting these variances.

Ms. McCave: You said it would have to be reduced by 17,000 square feet in order to not require the height and story variances? But you could change the layout if you were only able to have two stories?

Mr. Niemotko: Not really, not much because we still have to get the turning radiuses and the drive all the way around, that is a given. The 50' access in the front, that's a given. There are some aspects of the roadways that aren't going to change.

Ms. McCave: So currently the design is 25,500 square feet of office space on the top floor, 43,350 square feet of commercial storage space divided between the bottom and middle floor. So you would have the bottom and middle floor and get rid of the top floor?

Mr. Niemotko: No the lowest level would have to go. In the front it's only a 1' variance, so it would go from 4' to 3' in the front.

Ms. McCave: So you wouldn't excavate in the back to have that partially submerged floor.

Mr. Niemotko: Correct, but we would have to go to a very specialty type construction for the foundation.

Ms. McCave: Would you still have to do the specialty type construction if you just reduced the square footage of the building?

Mr. Niemotko: In the context of this conversation, reducing the square footage of this building is eliminating a floor so we would be eliminating the bottom floor and that would eliminate 17,850 square feet. The footprint of the first and second floor would remain at grade; we would have to eliminate the floor that goes below. The roadway access is governed by the first and second floor footprint, that's not going to change. To reduce the footprint of the first and second floor, I wouldn't even consider an option. Right now we're only covering 12% of the lot, how much more would you want us to reduce the footprint of the building? We are within the required setbacks; we have the distance required by FEMA, we have the road frontage, and we're impacting less than 12% of the lot coverage.

Member Crover: Regarding the parking variance, I think it's going to be premature to make a decision on the parking variance. I have already stated that I think it's substantial; I'm not okay with it. We can go through the five factors, but I really think that we're wasting our time because the Planning Board still has not established, you don't have your plans in effect, where your columns are, what the actual parking number is. Its guess work on possible determination of 150 spots would be required, maybe more, maybe less, and you may only have 50 spots or 61 spots but either way it's looking like 1/3 of the required parking which I believe is substantial, self-created. I believe it would cause an undesirable change in the characteristics in the neighborhood because there's going to be a lack of parking. I think the clients are going to have a problem with that. That's the reason there are codes in the amount of parking. The benefits can be achieved, yes, reduce the square footage of the building, reduces the amount of parking. It is substantial and I do think it will have an adverse effect on the environment and the condition

of the neighborhood when there's not enough parking. The people will be parking on roadways, in other people's lots, they have to park someplace, and the employees have to go to work. And it's definitely self-created. How do we make a decision on granting a variance when we don't know what that exact number is going to be?

Mr. McKay: In looking at the Planning Board minutes from the April 17, 2017 meeting, there's a comment from the Village engineer saying Right now you can send them to the ZBA for an interpretation and if that's favorable the building height variance, but until I know how those columns are going to lay out on the overhang, I can't give a specific number. He went to the ZBA with the request of 100, I didn't see that plan. This is the first time that I've seen this plan since it came back to the Planning Board. I can't evaluate how many parking spaces he would need with these plans; there are columns that need to be added." I'm going to speak for myself, and maybe I misspoke at the last meeting but I think there's been some confusion. First, I have had some confusion as to how definitive the Planning Board has been on with respect to the parking calculations on whether the Planning Board would accept it or not. I know that the Building Inspector had made some comments at the last meeting but I thought there was a representation that the Planning Board essentially had finished their calculations and referred it for the variance. That doesn't seem to be clear in some of the documentation, in the April Planning Board minutes and also in the undated referral letter, that I think came to this Board sometime in March, I believe. The referral letter, as we pull from the record, the comment from the Planning Board chairwoman is "As to the matter of the number of parking spaces, please be advised that our Engineer has not had the ability to calculate the exact number of viable parking spaces that will be provided on the plans as the applicant's architect indicated that modifications to the building design may necessitate the further loss of parking spaces. Thus, it is possible that if your Board grants a parking variance to the applicant, the applicant may have to re-appear at your Board for an additional variance. Please note that the Planning Board attempted to dissuade the applicant from this course but to no avail." I want to make sure that the Board was aware of those items, the minutes and the referral letter, are in the record. I think that was a follow-up to your comment as to whether or not the record was clear enough with respect to what the variance should be or needs to be. It's up to the Board to discuss but one question that I think the Board should think about is there are some constraints on what the Board's jurisdiction is and what permissible actions it can take. If there's not a clear record the Board has a couple of choices, it could grant the variance, but it would have to grant the most minimal variance that it could grant under the circumstances and the Board should consider if there's enough information to decide if it were to grant a parking variance how much it should be. The Board could also take the position that if the records not clear the Board would then have an option to either deny the variance, the applicant could always come back in the future, as I think the Planning Board is suggesting or indicate that if there's no clarity in the record the Board doesn't have the ability to either grant or deny the variance that it would be essentially an advisory opinion.

Member Crover: Personally, I think, based on the plans presented to us and the calculations that were done by the applicant the Code Enforcer/Building Inspector reviewing it, me reviewing it with what's in our Code book based on office space, commercial storage space and how we feel it might be interpreted. I think I have some information to make a decision, but my decision

isn't going to be a favorable one for the applicant. I think it's too substantial, 61 spots versus 150 that would be required. I'm not saying that they can't reapply once everything is settled and saying we only need 90 and we need 68.

Ms. McCave: Bear in mind the amount of parking is also going to be dependent on whether you decide to grant the height variance and the number of stories variance because that will change the building.

Member Crover: That could go the other way around; you don't have to vote in a certain order too. If there's not enough parking and the only way to make this happen is to reduce the square footage then that solves the other two variances. Personally, I think that I need to look at all three variances to make an opinion. The height variance might not be substantial, but when you look at all three variances, I think it is substantial. The parking is going to weigh in on my decision on the height and the stories. Even though it might not be cost effective for the applicant based on what they want to do with the property and make it cost effective for tenants and renting and what the value per square foot is versus the cost of everything, I'm sorry that's not my problem. My problem is trying to establish everything in our zoning and if you don't need the height variance and you don't need the stories variance then you're not going to need the parking variance. And when you put all three together it is substantial. I might be in favor of the interpretation in his favor with the stipulations that the scenarios fit within that model but I am not willing to grant these what I think are excessive area variances. When you look at all three together and I think that all three have to be looked at all together. We need to decide on them individually but that doesn't mean I could be favorable in one and not the other. I'm not in favor of any of them because I'm looking at them all together. I think it's unrealistic for me to say go ahead build three stories, go ahead and be 9' higher but you can't park anybody there, that's my opinion on it all. But we can't make any decision on that until after we make our interpretation decision in a few weeks.

Member Schneider: The parking is significant; I think we all know that.

Member Crover: We received some guidance from the Planning Board; we have some letters on the record that they're concerned about this too. From their engineer, the Board. The comment about reducing the size of the building.

Ms. McCave: Is it your opinion that you're not able to decide on the height and the number of stories variances because you don't know how much parking they'll be able to provide?

Member Crover: I think that I have enough information to realize that they all go together. I don't think the applicant is going to come back to us in a month after designing a building and say I only need 70 spots and I have 68 or I'm only required to have 90 spots and I have 68. I just don't see that happening on this layout. It's been presented to us that everything is tight because of the wetland and the flagpole lot and the topography, the footprint of the roadways. Unless you take that bottom story and make it all parking, like at Gold's Gym then you can say I have enough parking now, I only need the height and the story variances. Now you're losing square footage of usable space in the building and I don't think that's feasible for the applicant.

Ms. McCave: Part of the ambiguity is that it's not even clear how they are supposed to calculate the number of required spaces since there's nothing in the Code specifying what the calculation would be for the storage portion of this building. So the calculation that the applicant made was based on the parking that would be required for a warehouse because that was the most

analogous thing that he could think of and use the office calculations for the office part of the building. There's been some debate.

Member Crover: I think that's a reasonable way to do that. I think that everyone's in agreement on that.

Ms. McCave: It seems the Planning Board isn't totally sure how they are going to handle this. John (Hager) didn't you receive some e-mails regarding there was some debate as to how to go about calculating the number of parking spaces.

Mr. Hager: For the storage area, the warehouse use in the industrial district was used, which is the closest category. Unless the Planning Board disagreed I think that's the appropriate place to look. Based on the number of employees in the storage areas, so what's ambiguous about that is how do you determine how many employees. I think that the applicant has come forward with the assumption of three per unit, making it 33 total and they used 2/3 of that is 22 which was represented on the plans. I don't know how to verify if that's an accurate number.

Ms. McCave: So what has the Village engineer said about it and have you gotten the impression from the Planning Board is definite on that number of required spaces or they don't have enough information yet.

Mr. Hager: I was under the impression that the Planning Board was comfortable with 150 spaces that were represented as what was required and is on those plans. I don't have anything in writing and I don't know if it's in the minutes.

Mr. McKay: that was a comment that was on the record at the last meeting and it doesn't seem that Engineer Russo supports that when he basically said in the April minutes that he really didn't seem to be able to evaluate whether or not the 100 space variance request is sufficient.

Member Crover: I think he was basing that on the fact that columns could change the number of parking spaces. They may need to increase the variance because they can't get 68 spots. I think he's more concerned about reducing the number of physical spots that they can have.

Mr., Niemotko: We're stalemated so I came before you, asking please grant the variance so that I can start designing to get to the details of how these columns would impact. We will have to work around whatever variance you give us.

Ms. McCave: So the general consensus is that the structure would need about 150 parking spaces, there really is no debate about that.

Mr. Hager: That was my understanding from the Planning Board meetings is that the 150 parking spaces, everyone was comfortable with the question was zeroing in on exactly how many the applicant can provide.

Ms. McCave: And that's why there's the question as to the amount of the variance.

Member Crover: If we did the whole thing based on office primary use, you would need 345 spaces. I think the 150 required is more lenient because you're taking commercial storage and applying it into the warehouse district. They are still only showing 50 plus the truck parking, so you're asking for a variance request of 100, which to me is substantial, its 2/3 and I'm not willing to grant that.

Mr. Niemotko: I wasn't before the Planning Board in April.

Mr. Hager: I don't know that you appeared but the subject came up.

Ms. McCave: It's my understanding from the minutes that you appeared before the Planning Board in January. In March you came before the Zoning Board. At the March 20 meeting is when the Planning Board talked about the fact that you had gone to the Zoning Board and then it was decided instead of having the Hearing that the Zoning Board had scheduled for April 5th that you needed to go back to the Planning Board in April.

Mr. McKay: The question that the Board needs to decide is whether or not there is a significantly developed record, whether it's clear or not, do we believe the Planning Board recommendation and referral are clear enough to take action on. If the answer is yes, we've already discussed some of the points. If you feel you have sufficient evidence to make a determination, I'm not telling you to vote tonight, but if you feel that, then you should follow through with the analysis.

Member Crover: I feel that we have enough information. Upon resubmission to the Planning Board the parking variance changes, they can always come back. If we don't make a decision now and make him come back, or make a decision they can always come back, it's the same.

Mr. McKay: The first factor is if there is an undesirable change in the character of the neighborhood.

Member Sainato: I think it is an undesirable change, if there's not ample parking; it's going to spill out and look awful. Double parked, parking on the grass, on Rte. 17M, I think that's undesirable.

Member Schneider: I think it is too.

Mr. McKay: Can the benefit of the parking variance be achieved by some other feasible method?

Member Schneider: Yes, with a smaller building.

Member Crover: A smaller building, lessen the square footage.

Mr. McKay: Is this substantial?

All members agree that it is substantial.

Mr., Niemotko: There are eleven suites, the commercial storage and the office, how many employees do you think there will be?

Member Schneider: Somewhere in these minutes it was stated that for the offices approximately 4 each; that's 44 employees. You're not open to the public but then you have 11 storage areas and you have to have employees down there. You need someone to operate a forklift, move freight on and off trucks and stock it. You'll need 11 spots for the trucks.

Mr. Niemotko: Let's say 2 employees for each storage area, that's 22. We have the 11 truck spots.

Member Schneider: The total number on the property, at minimum, as we just said, has to be 77 spots in total.

Mr. Niemotko: We have the 11 truck spots, so let's reduce that to 66 spots. So in real terms what we're asking for is not, while your Zoning Code requires a certain number of parking based

on warehouse which is a lot of activity and open to the public. The actual use of the building is not requiring that many parking spaces. While we are proposing 53 versus the 66 actual, if the Board would entertain that, those are real numbers, we could revise our request of the variance and add the difference of that and deduct it by the variance amount.

Member Crover: I don't think that we can do that. We have to follow our Code, the number that our Code has established, it was established for a reason. Depending on the type of use, depending on who your tenants are, the employee number can change. I don't want to reduce that on given what we think might only have 2 or 4. A 4,000 square foot office is capable of holding more than 4 people. I think we have to go by the book; which is going to show 150 minimum required. Whether you need it or not is a different story, a use may change in that building that fits within zoning that does require that 150.

Mr. Niemotko: Yes and the 150 spaces do have a negative impact when you're increasing the amount of impervious space for no reason; increasing the amount of storm drainage for no reason.

Member Crover: But you're not decreasing it for those reason, you're decreasing it because you don't have the room.

Mr. Niemotko: Yes that's true but we're not doing three floors of office space.

Member Crover: If you were you would need 345 parking spaces. I think that we're being more lenient by saying that you need 150. I think it's substantial when you say that you only have 66. Will it have an adverse effect on the physical or environmental condition of the neighborhood? Again, if the need arise and there's spillover, I think it's going to have people parking in the grass, parking in the wetland when it's dry, double parking on the roadway that's going to be a fire entrance where you're not going to be allowed to park but they'll park there anyway because there's nowhere else to park. Parking at Speedy's or Loyal and they don't want that, that's going to cause other problems. Trucks can't get in because the cars are parked and they're going to be backed up on Rte. 17M. The roadway is so narrow that trucks aren't going to be able to wait for a spot on the property without blocking another truck from coming in. With your radiuses, you can't have 2 truck on the radiuses. Everything could lead to adverse effect and impact the environment. Any other comments on that?

Member Schneider: Parking is the one thing that I thought was really significant and the only solution that I saw was to make the building smaller otherwise you're going to have traffic backups on Rte. 17M. I'm not convinced that you won't have that already; even if you allow that with the 11 trucks going in and out because one truck is in and another is waiting to go into the dock. I have a concern about that.

Member Sainato: And blocking the flow of the traffic for the building.

Member Crover: And whether the alleged difficulty was self-created? I believe it was self-created because the building footprint of this specific piece of property is limited and you're trying to max it out. I don't think that there's anything there that, at least when it comes to the parking and the roadways, that you didn't know were there when the property was purchased.

Member Schneider: And there's clearly no place else to get parking from.

Ms. McCave: What about a sub-terrain parking garage?

Mr. Niemotko: A fourth story? We would entertain it, would you allow it?

Ms. McCave: Would that count as an additional story?

Member Crover: I don't think that the topography would allow that. But we wouldn't allow a 4th story. I think that we've deliberated on these variances enough tonight, everyone can dwell on it and we can make some decisions on that September 6th. Hopefully our decision is ready.

Mr. McKay: Procedurally, the Board has to make a determination on the interpretation first. That's a Type 2 Action so there's no SEQRA review required. The applicant had submitted an EAF with the variance requests, so the Board can review the EAF for the next meeting. Then we would need to issue a Negative Declaration and the Board can then make their determination. Assuming the interpretation is in the applicant's favor then you issue a Negative Declaration and then we would go on to address the three variances individually. There was a procedural issue which we were never able to resolve, it wasn't clear and it wasn't really reflected in the minutes. For the record I did contact the Planning Board's attorney, there was at least a possibility due to proximity, part of the County's rail trail, there's a possibility at least that the Planning Board had the discretion to classify it as a Type 1 Action under SEQRA. I don't see that reflected in any of the minutes so based upon that we had to assume that if the Planning Board were to take any action as Lead Agency, it had to at least implicitly determine this to be an Unlisted Action. Because it would be an Unlisted Action, this Board is free to make its own SEQRA determination, its own Negative Declaration. If the Planning Board had classified this as Type 1, we would have to stop at the interpretation decision, send it back for environmental findings for the Planning Board and then come back for us to determine the variances. Since my professional opinion is that under the circumstances we have to assume that the Planning Board implicitly classified this as an Unlisted Action then each Board gets to make its own determination with respect to the environmental impacts of its decisions. The Planning Board is the Lead Agency with respect to the site plan application; you would essentially be Lead Agency with respect to the variances and you can make your own, independent determination without any further environmental review from the Planning Board. You can make a decision at the next meeting.

Ms. McCave: Quick question, in regard to the Code interpretation, I have an e-mail from John Hager, Building Inspector, dated March 10, 2017 was sent to the Village engineer, Planning Board attorney, and Barbara Singer, Deputy Clerk, states "Although the square footage of warehouse space exceeds the square footage of office space, the potential number of occupants is much greater in office areas. The question of whether the use is consistent with the code's requirement that warehousing must be accessory to the primary use can either be accepted as presented (perhaps with conditions of approval requiring tenants to occupy respective sized office and warehouse areas), or rejected, or referred to the ZBA for interpretation. From the Building Department's perspective, I am comfortable interpreting the warehouse use is allowed as "accessory" due to the lower number of employees that would be occupying that space". Mr. McKay and I just wanted to know in respect to drafting the decision, is this something that would have any bearing on your decision in regard to whether or not the storage area is accessory use. The fact that there would likely be less employees in the storage area than in the office spaces?

Member Crover: I didn't see that letter but it's not weighing in on my decisions.

Ms. McCave: In general if there would be more employees in an office space than in a storage area would that be something that you would consider in interpreting what's the principle use and what's the accessory use?

Member Crover: I'm sure that could be weighed in.

Mr. McKay: If there are more employees in the office space that tends to indicate that it's the primary use as opposed to the commercial storage.

All members agree.

Mr. McKay: We can include some type language in the draft and the Board can decide if it's determinative or not and if you're comfortable with it.

Ms. McCave: I read this e-mail just to get you thinking about the idea and it ties in with what we were discussing earlier about whether they are really going to be using an office. If you know that they have 4 employees in the office and there's only 1-2 people working in the storage areas, does that matter to you in figuring out if the office use really is the principle use. So Mr. Niemotko, will there be more people working in the office than the storage area?

Mr. Niemotko: Yes.

Ms. McCave: There was some discussion that it might be some of the same people that work in the office who would then go downstairs and work in the storage area. Do we want to have any conditions regarding that? Whether the same people can be working in the office and the storage areas?

Mr. Niemotko: Possibly, I'm not sure.

Member Schneider: We have people at my job who work in the office and also have to work in the warehouse; it depends on what's going on.

Ms. McCave: I just wanted to make sure that I knew everything that you wanted to include as conditions.

Mr. Hager: To repeat what I've said at previous meetings, whatever conditions or restraints that you might place on an approval I would highly recommend that they be presented to the Planning Board so the Planning Board can consider putting them on the site plan so that they're not only on the minutes and resolutions, making it more difficult to enforce. When they're on the site plans it makes it easier to point out if anyone is possibly violating them. I had mentioned if the parking variance is granted, asking the applicant to post the entry roadway "No Parking"

Motion was made by Member Schneider to close the regular meeting of August 15, 2017 at 10:30pm

Second by Member Sainato.

Aye: Member Sainato
Member Crover
Member Schneider

Nay: -0-

Minutes Respectfully Submitted by:

Barbara Singer – Secretary