

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

June 7, 2017

7:30pm

Opened the ZBA Meeting with the Pledge of Allegiance

Roll Call

The following persons were present:

- Laurine Miller – Chairperson
- Darrin Sainato - Member
- Carol Schneider – Member
- Chuck Crover – Member
- John Hager, Building Inspector
- Barbara Singer – Deputy Clerk/Secretary
- Joseph McKay, Esq.

Right Choice Builders Inc.

101-2-1.12

Discussion

Present: David Niemotko, Architect

Mr. Niemotko: Back before the Board, obviously, we have a little bump in the road in regards to commercial storage versus warehouse. A little history on where the crossover came about and how that interpretation needed to be met. In a B-2 Zone, where this property is located, the Zoning Code allows for commercial storage as an accessory use. When I went to do the parking calculations for the project, there were none for commercial storage. So I went to the definitions, in the Zoning Code, I looked for the words, commercial and storage and they both occur under warehouse. Warehouse is defined as a commercial building used primarily for storage of raw materials or finished products for distribution or long term storage that is not open to the public. So in discussions with the Board, and the municipal Engineer, we decided to use the parking calculation for warehouse in this project, to have consistency. The interchange of commercial storage with warehouse came up in all of the discussions. At the last Planning Board meeting it was acknowledged that warehouse is not listed in the B-2 use. I am looking for your approval to allow this interchange of the definition or a definition of commercial storage as it applies to this project. I am asking for other variances, which you are familiar with from the last time I presented to you in regards to the amount of stories, the height and the parking. The first thing that we need to discuss is the commercial storage/warehouse acceptability in the B-2 Zone. The only reason I went to warehouse is because we needed it for parking calculations, something to base the design off so that it was consistent. The definition of warehouse/commercial building and storage both come up within the definition. There is no definition of commercial storage in the Zoning Code. For consistency and for the design we

used the parking calculations for warehouse. It's a commercial building; the main focus of the building is the third floor, commercial use, with eleven office suites. The ground floor and second floor are eleven storage units that are directly corresponding to the eleven suites. The storage is not high hazard, not food processing, it would be dry type of storage, opposed to a hazard use with liquids, with chemicals, that would not be prohibited in this building and that would be consistent with the Building Code. We don't have any tenants but we would be willing to limit the tenants to whatever the Board requires within that definition of commercial storage. Or your acceptance of the definition of warehouse.

Mr. McKay: There are some procedure issues that need to be taken care of. I looked at the Planning Board minutes, and I believe when my associate was here the last time, he sent an e-mail to the Building Inspector and Planning Board attorney, and that issue wasn't really resolved. You can go forward on the interpretation, because that's a Type 2 Action. This Board would be the Lead Agency and you would make that decision completely. We raised an issue for the Planning Board and we don't know actually, factually but my firm questioned because of the proximity to the Heritage Trail, under the SEQRA regulations, where the threshold can be reduced, I think its 100k square foot building would be Type 1. Under a different section of the SEQRA regulations, it can be 25% of that amount. We questioned the Planning Board with this concern. The Planning Board needs to determine if this is a Type 1 Action and if this is determined, you can still proceed but you would have to wait until the Planning Board issued a Negative Declaration on the site plan. And then the applicant would be here for the variances.

Member Crover: I think either way we have to address the interpretation first. They would have to come back for the variances; we can't address that all at once. The Planning Board said in the letter that there may be some building design change; the number of parking spaces isn't set yet.

Mr. McKay: The reason I'm making the point now is before you get too far along, it depends on how many times the applicant wants to come here to this Board. We always try not to have applicants go back and forth. Yes, he can come here for the interpretation, see what he gets, go back to the Planning Board, and come back here again. It's just a matter of how many Public Hearings, how many different steps.

Mr. Niemotko: The letter from the Planning Board does ask for you to make those determinations, not only the definition of commercial storage but if we get a favorable interpretation they're also referring this for an area variance on the building height, number of stories and the parking spaces. We cannot continue with the design without your approval. At the last Planning Board meeting, the Engineer had some questions about the parking spaces and my response was if you grant us the variance, we'll work it out with the design of the site. Right now this project hasn't changed in design since March.

Member Crover: Can we accept the application, set the Public Hearing, and just discuss the first venue of discussion and decision? The interpretation. But keep the Public Hearing open for the other items? If our interpretation is favorable then we would have to address that next step.

Mr. McKay: Yes, you can do that. It's just a question of the final determination, if you're willing to go forward on the interpretation first, the applicant is stuck in this SEQRA loop. Certainly the Board can handle the interpretation, if you want the Board to do more, we could. However you want to structure it, hold two Public Hearings on the same night, close the interpretation and leave the other one open.

Member Crover: That's what I'm saying, to set a Public hearing for both.

Mr. Niemotko: Didn't the Planning Board attorney acknowledge the Type 2 Action?

Mr. McKay: The Planning Board part of it wouldn't be a Type 2; it would be either Type 1 or Unlisted. I looked at the last Planning Board minutes, and there was no discussion of it. The worst that can happen if we do this Public Hearing, this two Public Hearing scenario, is you get an interpretation, you can essentially, have a joint Public Hearing or not, you can close it and we can have one in respect to the interpretation and have another in respect to the variances.

Member Crover: Should the first Public Hearing be favorable, otherwise we can close the second Public Hearing.

Mr. McKay: In regards to your application, I don't think that you applied for a variance, per se. That's just checking off a box. More important matter for the clerk is whether you have to pay a separate fee for the interpretation. I think that the Board can acknowledge that this is an application for both an interpretation and variances. As long as the applicant acknowledges that the Board probably can't take action on the variance portion until sometime in the future and waive any applicable time periods for the Board to make a decision, we'll try as best we can not to send you back and forth. We can schedule a Public Hearing on the interpretation and we can schedule a Public Hearing on the preliminarily classified the other portion of the action as Unlisted. And then if we find out that the Planning Board doesn't consider it a Type 1 then at some future meeting we can designate ourselves as Lead Agency, classify it as Unlisted, and issue an uncoordinated Negative Declaration. The only time in performance of SEQRA review, unless it's Type 1, which by the way it's not clear that it would be a Type 1, it was something that we suggested that the Planning Board review. The Planning Board can determine that it's an Unlisted Action site plan. They can issue their Negative Declaration which would then allow this Board to issue its final determination on the variances.

Member Crover: Once the Planning Board finds out our interpretation, they can start their process and declare Negative Declaration.

Mr. McKay: What we're really doing is holding a joint Public Hearing to determine the variance and to take testimony to determine the interpretation and also to review the variances, to allow public comment on both at the same time and hopefully we'll know from the Planning Board that it's unlisted and then we can notify the appropriate agencies.

Member Crover: In the meantime can we write a letter to the Planning Board asking them or are they going to wait for our interpretation before they decide that?

Mr. McKay: That would determine part of the interest in front of the Planning Board. That's going to determine if they can go forward with the project or not. If it's not a permitted accessory use then I'm not really sure what the applicant would be doing. You don't have to take anything that I said to indicate one way or the other; I'm just trying to play out the procedural string. I did try to reach the Planning Board attorney about this; we did send him an e-mail about two months ago on this. I don't know if the matter has been referred, we need a 239m referral because it's near Route 17M. We can make a record that the Board is acknowledging the application as an interpretation and a variance application and that they will pay any appropriate fees.

All Board members confirm that the site plans are the most recent, with a revision date of 4/3/17.

Mr. Niemotko: My client has been going through the diligence and expense of an overhang the second and third floor so we can increase the amount of footage or clearance in the back. We reduced the depth of the building on the ground floor, the lower level, so there's more distance in the back of the building. That was to allow us to go all the way around, to show that we have adequate area to park trucks back there. You had made a comment at the last meeting, and I incorporated it, the stairs coming outside from the units, along the front and the back. It was a great idea. The second and third floor overhangs that by 30'. It shows where the road would come in and the second and third overhang by 30' to make the project that much more usable. Please keep in mind this is no fault of the client but with the FEMA set back, demarcation, delineation through the property, we are only able to use 33% of this property, the rest is unusable. In order to fit everything in with the parking and the flagpole type of configuration of the lot, it is a little bit of a challenge. The view from the street is blocked by the car wash for the most part. If there was a clear view through you would only see the upper portion of the building. The last page was a repeat of the first page, but more to clarify to the municipal engineer of the clearances for traffic for the trucks. All of the radius lines show that the way we are laying out the property does allow for a 30' truck to come in, go around safely and to be able to dock against the building. They would be limited to 30' trucks. The ground floor that we are asking for is actually created by the site, it is sub terrain and not visible from the street.

Member Sainato: Is it going to be visible from the Monroe Ford side? Because there's a dip in the landscape there, where the parking lot is. Your building is going to be above that, isn't it?

Mr. Niemotko: It is all heavily wooded on the Monroe Ford side. No, because the building will be put in the ground with only two stories up. Part of the heavily wooded area is part of the Heritage Trail property so it could never be developed or clear cut.

Mr. McKay: We had an application here not long ago, and the question was is it a light processing facility opposed to a warehouse. It's not exactly the same. The Planning Board

discussed this at their meeting. We had this discussion of what warehousing might be before with another applicant, we reached a decision that it was a warehouse. Do you intend to make any further submission to the Board?

Mr. Niemotko: I have; my February 13th letter to the Zoning Board and then my April 4th letter to the Planning Board, I went in to detail discussion regarding the interpretation, how we came about the use of commercial storage and how it applies to this project. The April 4th letter is a further detail of the project and what we're requesting. In those letters I did present an argument using the Zoning Code, the International Building Code.

Mr. McKay: In respect to the parking, the Planning Board is going to be the one who sets the parking. We can give a variance, it's a little confusing. The Planning Board was referring it for the interpretation of the commercial storage building, assuming the applicant is granted a favorable interpretation; the Planning Board is also referring for an area variance, building height, stories, and the number of parking spaces. As for the matter of the number of parking spaces, please be advised that the Planning Board engineer does not have the ability of calculating the exact number of viable spaces that would be provided on the plans as the applicant's architect indicated that modifications to the building design may necessitate further loss of parking spaces. It's possible that if your Board grants a parking variance the applicant may have to reappear at our Board again in the future for an additional variance.

Mr. Niemotko: We presented this design; we're asking for a variance of 100 spaces, we're providing 50. What the engineer was bringing to our attention was that we haven't gone further along in the design. Especially in the back, we have this 30' overhang; I haven't designed the overhang yet. I'm not exactly sure how many columns will be needed to support it. I'm going to want to design it to have the greatest span as possible. However, if one of the columns were to interfere with a parking space, then the 50 that you grant us, I may have to come back to you and ask for one more variance. So we came to a halt because do I redesign this. I couldn't go back to the Board with a redesign because they wanted me to come here and so instead of not doing anything at all, I said we'll accept your granting of the variance. If you grant us the 100 parking space variance, to allow us to have the 50 that we have, I'll have to work with that. We were stalemated. I can't go ahead with the design, because I couldn't go back to the Planning Board, so what do I do? Do I start to redesign it, and where do I go with the redesign? So instead of doing that, I'm before you asking for this and if you grant it, I'll work with the design. I'll have to do longer beams, heavy girder; I'll do what I need to make it work, whatever that is. That's the background for that comment, from my standpoint.

Mr. Hager: That's exactly how I remember that conversation. Without the exact detail of where those columns are going to be the engineer for the Planning Board was hesitant to zero in on the exact number of parking spaces.

Mr. McKay: So at the end of the Planning Board meeting, the attorney says to you, it seems that you may need to go the ZBA twice because we don't have the information for the parking spaces for you to request the variance. Then he says we know that you need an interpretation,

height variance and the number of stories but as far as the number of parking spaces, you may have to go back for that variance when we get further into the design. And then there's discussion regarding the columns and their impact on the parking spaces. Mr. Russo then says I think they are looking for an interpretation, variance on the height, number of stories and 100 parking stalls.

Mr. Niemotko: We are looking to be relieved of 100 parking spaces and only provide 50.

Mr. McKay: So it's a variance of 100 parking spaces, reducing the number from 150 to 50.

Member Crover: They're not sure that 150 spaces is the correct number, they're basing that on part of it classified as warehouse, and the Code for parking spaces based on the square footage of a warehouse and the number of office spaces. That's how they came up with the warehouse term instead of commercial storage.

Mr. McKay: Does this Board need anything from the applicant and does it feel comfortable scheduling the Public Hearings?

Members acknowledge that they all feel comfortable with this procedure.

Mr. McKay: The applicant is making a motion to amend their application to include an interpretation and to pay for any fees that may be included in that. The Board is going to set the Public Hearing for the interpretation, classify that as Class 2. We will need to schedule a Public Hearing on the variances, and classify that as unlisted, and note that the applicant acknowledges that if the Planning Board determines that the Action is Type 1 the ZBA will have to coordinate review and stay any determination on the variances until the Planning Board issues a Negative Declaration. I believe since there was no discussion about that at the meeting that they will classify it as unlisted. This gives you options; you can come here, go forward with your meetings, when we have the Public Hearing, whether it's one or two, I'll check the regulations and put that in the resolution. We will schedule the Public Hearing, as SEQRA requires, and then you'll have the option to close the one in respect to the interpretation, and if you get the favorable interpretation, hopefully by the time we have the Public Hearing, we'll know what the Planning Board has designated SEQRA on, and then this Board will go forward to determine the variance requests. Does the Board feel that they want the applicant to provide any more information about the variances?

The Members feel comfortable with the information provided.

Motion was made by Member Crover to accept the amended application of Right Choice Builders, to set a Public Hearing on July 5, 2017 for a Code interpretation, and classify this as a Class 2 Action.

Second by Member Schneider.

Aye: Member Miller
Member Crover
Member Schneider
Member Sainato

Nay: -0-

Motion was made by Member Crover to close the regular meeting of June 7, 2017 at 8:30pm

Second by Member Schneider.

Aye: Member Miller
Member Crover
Member Schneider
Member Sainato

Nay: -0-

Minutes Respectfully Submitted by:

Barbara Singer – Deputy Clerk/Secretary