



Village of Harriman

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Harriman, New York 10926
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ZONING BOARD OF APPEALS **AGENDA**

NOVEMBER 1, 2023 MEETING

- 1. PLEDGE OF ALLEGIANCE**
- 2. ROLL CALL**
- 3. APPROVAL OF MINUTES - SEPTEMBER 6, 2023**
- 4. 106-5-2.1 – 30 SOUTH MAIN STREET, PUBLIC HEARING VARIANCE FOR FRONT, SIDE AND REAR SETBACKS**
- 5. 106-4-6.1 – HARRIMAN PARK ESTATES LLC, REMOVAL OF PRIOR VARIANCES**

**NEXT ZONING BOARD MEETING IS SCHEDULED FOR
WEDNESDAY DECEMBER 6, 2023 @ 7:30PM**

**SUBMISSION DEADLINE FOR THE ZONING BOARD
MEETING IS
WEDNESDAY NOVEMBER 20, 2023**

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

NOVEMBER 1, 2023, 7:30 PM

Page 1

Acting Chairwoman Miller opened the Village of Harriman's November 1, 2023, Zoning Board of Appeals regular meeting at 7:30pm. She welcomed everyone followed by the Pledge of Allegiance and roll call.

Roll Call: the following people were present:

- Christine Paez – Member
 - Golam Sarker- Member
 - Maria Hunter - Secretary
- Laurine Miller – Acting Chairwoman
Joseph McKay - Attorney

Acting Chairwoman Miller stated the September 6th minutes will be carried over to January's meeting.

106-5-2.1 – 30 South Main Street, Public Hearing for variance for front, side, and rear setbacks

Attorney McKay confirmed certified mailing notifications sent to residents were complete.

Member Paez made a motion to open the Public Hearing, Member Sarker second, motion carried.

Mr. Joel Greenberg, Architect; representing Mr. Ruiz, the owners of the property. We are here back in September to discuss the project, based on comments from the board changes were made. The side yard needs a 10.0-foot variance, rear yard variance needs a 4.7-foot variance, and the front yard setback needs a 19.0-foot variance. A map was referenced showing the needed variances. This board was also concerned about the driveway going back to several houses, which is private road. Screening has been shown on the map as well.

Attorney McKay requested to confirm that the same data for the setbacks were the same and it was clear. Map dated September 22, 2023, shows the correct information.

Mr. Greenberg noted for the board members that the house is currently there and adding screening so no undesirable changes in the neighborhood. Second criteria if there was another method of this addition, as you can see the property is odd shaped. With the layout there is no other way to do this with a variance. The third criteria whether or not the variance is substantial, we reduced the front and side variance. The final criteria were not self-created due to the configuration of the property. The addition will be in conformity with materials and windows to match the existing architecture of the house.

Member Paez asked about the private road and the ability of fire truck access. It was confirmed that no issue would impact the movement of trucks.

Member Sarker asked the number of houses behind this application, Mr. Ruiz noted only 1 house. The map was shown to members where the front of the house was in location to the main road.

With Acting Chairwoman Miller and Member Paez asked where the shrubbery was alongside the private road and was it behind the fence. It was confirmed of the location per the map.

At this time the meeting was opened to the public for their comments.

Ms. Irma Escallier asked if the variances are approved and will they stay with the property. Attorney McKay confirmed once approval is given the variances will remain and run with the land.

Ms. Carol Schneider referred to the letter of October 5, 2023, from the Village Building Inspector that the variances are correct that are being requested. Attorney McKay confirmed the variances are correct after confirming at the beginning of the meeting with Mr. Greenberg. Modifications were made after receiving comments from the board

**VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS
NOVEMBER 1, 2023
7:30 PM
Page 2**

members at a prior meeting. Her second question is why the extension can't go to the back. Mr. Ruiz responded there is an inground pool in the rear. Plans were shown to Ms. Schneider with the layout of the proposed addition.

Attorney McKay inquired when the house was constructed. It was built in or about 1969/1970.

Mr. Greenberg showed the layout of the house to the board members. Member Paez asked about the new structure and confirmed that the carport would be underneath the addition. Due to the grade dropping off allows the carport to be under the addition. There is no existing garage, the applicant currently parks their vehicles in the location.

With no further comments from the public, Attorney McKay referred the board members to review the Findings of Fact and Decision starting with page 2.

Question #1 Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the are variance? Board discussion, it was agreed this would improve the character, all concurred.

Question #2 Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than the are variance? After board discussion it was agreed that there was no other way to configure this addition. All 3 members concurred.

Question #3 Whether the requested variance is substantial? The 3 board members concurred that the requested variances were not substantial due to the way the property is configured.

Question #4 Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? Member Sarker asked if there would be a drainage issue for storm water. Mr. Greenberg stated with the grade away from the house there would not be an issue. With additional shrubbery, Member Paez said this would help with water runoff. It was agreed by the 3 board members no impact.

Question #5 Whether the alleged difficulty was self-created? Member Paez was of the opinion it was, with Members Sarker and Acting Chairwoman Miller that this was not self-created. Attorney McKay stated this is a balancing test, this board determines if self-created, no one factor determines a decision. Split decision on this question does not compel a denial.

Member Paez made a motion to grant the requested variances. Second by Member Sarker.

Aye: Acting Chairwoman Miller Member Paez Member Sarker

Acting Chairwoman Miller made a motion to close the public hearing. Second by Member Paez.

Aye: Acting Chairwoman Miller Member Paez Member Sarker

106-4-6.1 – Harriman Park Estates LLC, Removal of prior variances

Mr. Philip Dropkin, Attorney with Fabricant Lipman & Frishberg, representing Harriman Park Estates

Attorney McKay noted this is the first time this application is on and not a public hearing. This is your opportunity to ask questions about the application. At the end, I prepared a draft resolution for you to adopt if you feel that you have sufficient information. This resolution will allow you to authorize to schedule a public hearing at your next meeting.

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

NOVEMBER 1, 2023, 7:30 PM

Page 3

Attorney Dropkin stated this application involves property at 33 Route 17M. He is here tonight to seek 3 conditions of a prior variance to be removed. Conditions #4 and #10 are basically the same regarding building usage as a dialysis & diabetic related service, and Condition #8 should be no retail sales. Zone B2 allows retail sales in the Village code. There are currently 62 parking spots at the site, and no more than 45 lots are used at peak times. We are appearing before you at the recommendation of the Building Inspector and comments of the Village Attorney. Both advise applicant to get the conditions removed in order to rent the building for retail sales. Since the 1997 variance, there has been a tremendous consolidation in the industry that provides diabetic and dialysis services. We went to area dialysis providers to see if any interest in the use of the building. None are interested in that field with renting.

Acting Chairwoman Miller asked Mr. Dropkin if he was the owner, which he is not, he is representing the owners. When the people bought this property, they knew these restrictions were there for dialysis. Mr. Dropkin said the owners should have known. When approved it was only to be for medical facilities, now it has completely changed as to the use of this property. Discussion about the types of uses were discussed. WIC was approved in 2006 to be there because it provided services to diabetic and dialysis operations. Other current uses are as a back office for a construction business (no trucks or sales) and school for disabled children brought in by vans. Currently no retail business exists there. The applicant wants to rent out Unit E for retail sales.

Attorney McKay explained to the board members they are being asked to amend the conditions to what were granted to the variance. Zone B2 allows businesses, yet the conditions placed restricted retail sales. Need to confirm what the zone was like in 1997 and before. This is not a use variance when we look at the criteria with the 5 factors analysis at the public hearing. In 2006 an interpretation was rendered by the ZBA to allow WIC to operate. If the members don't have any further questions or if they need additional information this board needs to decide whether to schedule a public hearing.

Member Paez asked if the applicant is looking to only remove the 3 conditions and had concerns of additional retail sales with traffic. Mr. Dropkin confirmed that the applicant was looking to remove the 3 conditions from the 1997 granted variance. The ingress and egress will remain the same as it is currently.

Member Sarker was concerned about the increase in retail sales and if there were enough parking spots. Mr. Dropkin confirmed to the board members that there are 62 approved parking spots, during peak usage no more than 45 spots are used.

Acting Chairwoman Miller made a motion to adopt resolution as read to schedule the public hearing for January 3, 2024. Second by Member Sarker.

Aye: Acting Chairwoman Miller Member Paez Member Sarker

Acting Chairwoman Miller made a motion to refer this application to Orange County for GML review. Second by Member Sarker.

Aye: Acting Chairwoman Miller Member Paez Member Sarker

Acting Chairwoman Miller made a motion to close the regular meeting of November 1, 2023, at 8:11pm. Second by Member Paez.

Aye: Acting Chairwoman Miller Member Paez Member Sarker

Minutes Respectfully Submitted by:

Maria C. Hunter, ZBA Secretary