

**VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS**

**October 18, 2017**

**7:00pm**

**Opened the ZBA Meeting with the Pledge of Allegiance**

**Roll Call**

The following persons were present:

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

The following persons were absent:

- Laurine Miller – Member

Chairman Crover: This Board would like to send their condolences to Laurine and her family to the passing of her husband the week before.

**Motion** was made by Member Schneider to approve the minutes of August 15, 2017 and September 6, 2017

**Second** by Member Sainato.

**Aye:** Member Crover  
Member Schneider  
Member Sainato

**Nay:** -0-

**Right Choice Builders**

**101-2-1.12**

**Discussion**

Present: David Niemotko, Architect

Chairman Crover asks members if there is anything they would like to add or discuss regarding the draft decision presented to them by Mr. McKay. The members reply no.

Chairman Crover: Pursuant to Village Law Section 7-712-b, the ZBA hereby denies the three area variances requested by the Applicant based on its consideration and balancing of the five factors discussed, and it's unanimous of the three members of the Board. This is going to be signed tomorrow and a copy of it will be given to you.

Mr. McKay: It is a 12 page decision; it gives a lot of reasoning.

Chairman Crover: All five factors were considered and in the decision it was explained the opinions of the Board and looking at all three variances together with all five factors no one on the Board could accept and grant the area variances, mostly due to the parking and the size of the structure on the lot even though there's wetland. Basically the hardship was self-created.

**Motion** was made by Member Schneider to accept the draft decision denying the three area variance for Right Choice Builders

**Second** by Member Sainato.

**Aye:** Member Crover  
Member Schneider  
Member Sainato

**Nay:** -0-

Mr. Niemotko: In the decision, it actually states that they considered all three as interacting, inter related?

Mr. McKay: The format of the decision indicates that they went through all of the factors for each variance request and they commented for each one individually, essentially they denied them individually. Because it's a balancing of the factors case law does allow the Board to take an overall or accumulative look at all of the requested variances and consider them together but individually they were denied.

Mr. Niemotko: We didn't come in with a project that was built that encroached upon setbacks; it wasn't self-created in that sense, asking for permission after the fact. It wasn't a self-created.

Mr. McKay: Being self-created was only one of the factors. I'll get the final decision to the Chairman for his signature tomorrow morning and it can be sent to you then.

**J Squared Builders**

**102-1-6.3**

**Use Variance**

Present: Paul Edwards, Applicant; Michael Morgante, Engineer

Chairman Crover recuses himself.

Mr. Morgante: We are here tonight for this lot on Beatty Circle; it was created in the early 70's, part of a four lot subdivision. Three of the four lots have been built upon. The road has been constructed in a semi substandard fashion according to what as presented on the original sub division plans. Paul Edwards, J Squared Builders, was interested in purchasing the last lot, has entered into contract to purchase the lot, and as we were starting to pursue getting a building permit, we started to find out a lot of information on this property. Originally the property was zoned B-2, at that point the property couldn't have been considered for commercial use. The original thought that we had was to propose something to the Village, where we weren't going to propose commercial use that didn't quite fit the character of the neighborhood but during that time period we were talking to the Building Inspector, we realized that the Village was in the process of rezoning this area and during our discussing this, it did rezone to R-50. When the lot was in the B-2 zone we were considering proposing a two family home, that would be a lot more consistent with what the existing homes are in that area. It would still not conform with the zoning uses of B-2 but we felt it was a lot better than what we could have proposed on that lot at that time. So here we are in an R-50 zone and two family homes are not a permitted use. This lot also has other constraints that have been imposed upon it, I guess as a result of the road never being constructed to the standards that were shown on the original sub division map, letters were issued stating that there could be no further building permits issued for any lots that were remaining in this subdivision, this being the last remaining lot, until the roadway is improved. Right now as the lot sits, unless the road is improved, it remains a non-buildable lot. It seems like a lot of the onus has been placed on this last remaining lot to make things whole

again. It's our understanding there have been a lot of other conditions associated with the road over the years due to the substandard condition that it's in such as gravel washing out, towards Main Street there are no covers on the catch basins near Main Street, the road is not currently wide enough for two vehicles to pass at the same time. It's probably substandard for emergency service vehicles. What we have here is this condition, which we've been before the Planning Board with and they've referred us to the Zoning Board because of the proposed non-permitted use and during the time that we were before the Planning Board we also got input from their engineering consultant who suggested what the future road improvements should be associated with the road should the Zoning Board want to consider this application before them and approve the zoning use change. So here we have an applicant who is more than willing to consider trying to make this road whole again or at least trying to improve the situation associated with the road. However to put a single family home on this particular parcel, its cost benefit analysis doesn't make sense. The applicant feels that if we were able to achieve a two family home in this area that over a longer period of time some of those costs could be recouped that were used to spend on the upgrade of the road. What we would be proposing, even though it's not a conforming use, it's not as if it wouldn't fit in the neighborhood because what you would essentially have is what looks like a single family home, just with two entrances. You would only be adding a couple more cars on the street, the traffic situation wouldn't become overbearing. That's a general summary of the project that's before the Board tonight. There's a lot of correspondence that's been going around about this.

Mr. Edwards: I entered into a contract to buy the property, I spoke with the Building Inspector about it, and he explained that the zoning may change, he didn't know for sure. The one thing that I wasn't aware of when I entered into the contract was that there was a letter on file from a prior applicant demanding that the road be done to a town road specification before I could get a building permit. I guess there were previous letters and they were trying to get this done in the 70's and 80's and then someone put their foot down and said this house doesn't get built until the road meets the specifications. I only found this out after I applied for a building permit which is part of the process to get sent to the Zoning Board, he denied me and then realized that this was on file.

Member Sainato: You haven't closed on the property yet?

Mr. Edwards: No, I have a contract to buy the property, I gave them a nonrefundable deposit, I've laid out a lot of money on engineering and legal fees also.

Mr. Morgante: When the property was in the B-2 zone, it seemed prudent to move forward and start collecting a lot more information. In the middle of that process, the zone was changed. We have this rogue lot that unless somebody wants to undertake the burden of upgrading the road; this lot is going to sit vacant. Someone has been paying taxes on this lot for many years, it's a real piece of property and yet it's not a buildable lot, not until somebody brings the road standards up to current specifications. Now if you look at the cost of bringing the road standards up to current specifications versus what the cost of the lot is, it doesn't add up.

Mr. Edwards: The preliminary cost of the road improvements would be approximately \$40,000.00. Some of the feedback that I received from the DPW Superintendent, Mayor, Building Inspector, the culvert pipe needs to be ripped out, it needs to be wider, emergency turnaround at the top, a catch basin going across the whole road because that's one of the complaints that in addition to gravel washing down occasionally, the water washes down and ices the road at the bottom. The town road specifications that Harriman requires is a lot more than what has been done there now.

Member Schneider: The piece of property that you want to buy, who owns the road?

Mr. Edwards: The same owner that's selling me the property. That was some of the feedback that I got from the Planning Board, that they didn't want to have a piece of property that could fall into a tax sale and nobody would be responsible for it. So I the Planning Board told that if I received the approvals from the ZBA, I would take on the responsibility of owning the road too. And creating a written maintenance agreement because right now it's a verbal one, I spoke with the neighbors.

Member Schneider: The trust owns the property?

Mr. Edwards: Correct.

Mr. McKay: Is the vacant lot and the road two separate parcels? And both are owned by the trust?

Mr. Edwards: Yes. I explained to the Planning Board that I was willing to take on the responsibility of ownership of the road. Water and sewer are available for the building lot.

Mr. Morgante: This is a very unique situation. This is not a self-created situation. I don't think this would impact the character of the neighborhood. Constructing a single family home on this lot and incorporating the cost associated with upgrading the road, doesn't make sense. We feel this assist the Village in upgrading the road while allowing the applicant to do business.

Member Schneider: Who would maintain the road after it was done?

Mr. Edwards: I would be willing to create a legally binding road maintenance agreement, right now there's a verbal agreement. And enter this with the deed for the property.

Chairman Crover: Would the other three property owners would have to sign that?

Mr. Edwards: They have a verbal agreement now. It's been my experience that nobody likes to sign on but I know the people up there and it does benefit them to sign on. I also feel that they'll be happy that the road improvement gets done because the substandard condition that it's in now. Ultimately I know that I would be responsible.

Chairman Crover: In these notes that you found, are these upgrades something that has to be done where it could be dedicated to the Village or it doesn't quite meet that standard? Are there any thoughts for that?

Mr. Edwards: There is but what I have found from Village officials is that the grade precludes it from being accepted. They do want it brought up to the standard but it wouldn't be dedicated. It's more that 10% grade. Everything else conforms, except the grade.

Member Schneider: There are two lots now, would they remain two lots or become one?

Mr. Morgante: They would remain as two lots with common ownership.

Member Schneider: What happens if you decide to sell your house, what happens to that road?

Mr. Hager: The Planning Board was suggesting that the two were combined so that scenario couldn't happen. Some future owner couldn't cease making tax payments on the roadway. They've had that situation happen in the Village before and don't want it to happen again. From what I heard at the Planning Board meeting, they were suggesting that the two parcels would be combined and you would be offering right of ways and easements to the other properties.

Member Schneider: So when the lot with the house is ever sold, the road and maintenance agreement go with it?

Mr. Morgante: Correct.

Mr. Hager: The Village is not interested in taking it as a dedicated Village road.

Mr. McKay: The case law generally speaking is very strict on the review of use variance so unlike area variances where we balance different factors, you need to demonstrate each one of the factors individually; the most important one is essentially you can't put the property to any profitable use whatsoever, not just under any potential uses in that zone. That's a really high threshold and my concern, I haven't done the research, is that since you are in contract to purchase the property, and you're not the owner, that this test that we're going to apply is not based on your financial circumstances, but based upon the trust's financial circumstances. In other words, if the trust purchased the property for \$21,000 a number of years ago, so I think you would need to demonstrate that the trust could not build a single family home that would give the trust a reasonable return on their original investment. So if the trust's initial investment is between \$20,000 and \$30,000, I don't know what the market would bare what the potential purchase price might be. My belief is that we need to demonstrate is that the trust will not make a reasonable return on their initial investment if the trust uses it for any of the allowed uses in that district and you would have to be able to demonstrate that in actual dollars and cents proof. I think that the legal inquiry would be what's a reasonable return on the trust's initial investment. This is the language of the criteria. It would be helpful to know the chain of ownership also. It also has to be affected by unique and highly uncommon circumstances and that the variances granted won't alter the essential character and that the hardship is not self-created. You're in contract to purchase this so we would have to determine whether or not it was a self-created hardship for the trust. It's an odd that one of the four lot residential subdivision lots would be a business lot.

Mr. Morgante: There's a letter written in 1995 that essentially says that there can be no building on this lot until this road is improved and this letter only exists in the Village itself. So when you're doing title research to determine what encumbrances or liens are on this property, there's no paper trail that leads you to that particular letter. So you're entering in to a contract for a piece of property where there's no idea of the situation. There are no notes on the map that says that. The map is dated 1972 and the letter 1995.

Mr. Hager: The map references a possible dedication from the original developer's sub division. There's language on the map about a performance bond but later there's more correspondence about the condition of the road and the restriction of any more building permits.

Mr. Morgante: There's nothing to lead anyone to believe that there's no building on this lot. I understand what you're saying in regard to the estate proving this financial difficulty however how would an estate consider building a home on this lot? It's not as if this were an individual but an estate of someone that's passed away.

Mr. McKay: There's a lot that needs to be done. You need to provide a financial assessment on your side, financial assessment of the trust, their investment and their return on investment. You need to present that proof for every potential structure that could be built on the lot in the R-50 and not just the ones that are permitted as of right but also those permitted by special use. I would recommend to the Board that the application is not complete until that financial analysis is presented.

Discussion broke out.

Mr. McKay: What you need to research is the state statute explains the criteria that you need to meet and the case law that's developed under that statute will give you an idea of the kind of specificity and the type of analysis that you need to go through to demonstrate that there is no way to make a reasonable return on the investment if something was built there that was in compliance with the zoning.

Discussion broke out.

Chairman Crover: The seller, or the trust, did that person that passed away buy the property knowing that you could not build on it until the improvement were done or was that the applicant that got the subdivision? That would interfere with their right too, they knew that they were going to have those added expenses and maybe that's why they bought the lot so cheap. That would be an added expense to the property. Is the owner the person that got the subdivision and they just never sold that last lot?

Discussion broke out.

**Motion** was made by Member Schneider that the application that has been submitted is incomplete and needs further documentations such as cost analysis, financial statements from the trust and the applicant will contact the ZBA when they are ready to move forward.

**Second** by Member Sainato.

**Aye:** Member Sainato  
Member Schneider

**Nay:** -0-

**Motion** was made by Member Schneider to close the regular meeting of October 18, 2017 at 8:30pm.

**Second** by Member Sainato.

**Aye:** Member Sainato  
Member Crover  
Member Schneider

**Nay:** -0-

Minutes Respectfully Submitted by:

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Barbara Singer – Secretary