

ZONING BOARD OF APPEALS

AGENDA

APRIL 3, 2019

7:30 p.m.

1. **PLEDGE OF ALLEGIANCE**

2. **PUBLIC HEARING**

HARRIMAN PLAZA REALITY

102-4-9.12

VARIANCES

REGULAR MEETING

3. **ROLL CALL**

4. **APPROVAL OF MINUTES – MARCH 6, 2019**

5. **HARRIMAN PLAZA REALITY**

102-4-9.12

VARIANCES

**THE NEXT ZONING BOARD MEETING IS SCHEDULED FOR
WEDNESDAY MAY 1, 2019 AT 7:30PM
SUBMISSION DEADLINE FOR THE ZONING BOARD MEETING IS
WEDNESDAY APRIL 17, 2019**

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS
APRIL 3, 2019
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Opened the ZBA Meeting with the Pledge of Allegiance

Public Hearing
Harriman Plaza Reality
102-4-9.12
Variances

Motion was made by Acting Chairperson Miller to open the Public Hearing

Second by Member Sainato.

Aye: Member Sainato
Member Sandoval
Member Miller

Nay: -0-

Present: Scott Berliner, Owner/Property owner, Bernadette DeMartino, Office Manager

Acting Chairperson Miller: The proof of mailings is complete?

Ms. Singer: Yes.

Mr. McKay: The applicant is here tonight for either two or three variances. One was the sideline variance because the new structure is going to be a little too close to the property line. The second was, potentially, for both sidelines, a total sideline variance. The question for the Board on the total sideline variance is, if you measure from the new sidelines the area that is going to be constructed, that meets the total sidelines as required by the Code. You applied for it because if you measure from the original structure, you would need a variance. It would be within the Board's discretion to determine that the application is really for the new structure and since the new structure applies you could determine that the new structure itself met both sideline requirements and that a variance was not required. It's the 9' sideline, it's the potential both sideline variance or not and the parking variance. Under the Code the parking required would be 44 spots. There's a little history with respect to the application. There's a decision in the record from 1985. At that time, based upon the Code and the proposed building, 29 spots would have been required, there was a variance of 6 spots, which allowed the prior property owner to have 23 spots. The amended plans show 23, it's still short of the 44 that would be required. I think the questions the Board would want to ask and the information that the applicant would want to provide is whether or not the proposed variance for the new structure is going to generate more parking. I think what the applicant had said previously was that they had a storage shed that they were using and under the new federal regulations that is no longer acceptable so that area has to be incorporated into the one structure. I think what the Board would want to know, because numerically this is large, 20+ spaces, about 50%, is there sufficient parking now with the current area bulk requirements and if you add this additional bulk and grant the variance, is that going to generate more parking or more traffic trips. Or if it's simply replacing a shed if it's reasonable to grant a variance. Of course, in the future, if the property were to change hands, the way the property is fitted out, the business may change so you want to be cautious as well, if you were going to grant a variance, how great the variance

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would be. This is for the Board to decide, I'm not trying to tell you what to do, but what questions the Board should keep in mind.

Acting Chairwoman Miller: Is the shed going to stay there?

Mr. Berliner: When I took over the building, right now I am occupying two of the store fronts. It was previously a convenient store that generated a lot more traffic and next door to that was a tanning clinic which also generated a lot of traffic. I have a little office in there that is open once a week, on Wednesdays, other than that it has no traffic, the door is locked. In terms of storage, that storage unit is roughly on the same place I want to put a permanent structure and according to the new USP, that's who governs pharmacies, I need to have that space contiguous. I can't take stuff from the shed, go outside, and then back inside the building, even if it's a foot. That's the main reason for this construction. In addition, it's going to have a very sophisticated heating and air conditioning system because the same code requires that I monitor the humidity as well as heat and air conditioning. There's going to be enough money invested in that space that it is unlikely if the building was sold that the purpose would change. Also, essentially, we would be enclosing the same amount of square footage that we are now, I would probably move some of the storage to the original building because the new spot is going to be built to the new code. It wouldn't change the number of employees and it wouldn't change the amount of traffic.

Member Sainato: Do you ever experience parking issues now?

Mr. Berliner: The front of the building is almost always half empty. The back is almost always full with employees and there are three offices that are occupied upstairs.

Ms. DeMartino: The one office is occupied by a school physiatrist, so he only comes at night for his private practice. During the day, there's only potential of the other two tenants upstairs that may park there. Both of those businesses are construction, so they are usually out. There is never a parking issue. There's other office space that we use as a lunch room and another as a record storage room.

Acting Chairperson Miller: When I asked about the ten full-time employees, are they employees just for your business?

Ms. DeMartino: Yes.

Mr. Berliner: We are open six days a week, so we have two shifts. It's rare that all ten would be there at the same time.

Mr. McKay: You have your business there, and there are office above the business. In the present structure, how many businesses are there?

Ms. DeMartino: Life Science Pharmacy uses two of the storefronts, and Life Science Health and Wellness, which is a wellness clinic that a doctor comes once a week, Wednesdays, that's the three store fronts. Upstairs, there are three occupied offices, but one is only occupied during the nighttime and two have the possibility of being there during the day but they're construction workers, so they come and go.

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Acting Chairwoman Miller: In the minutes it says there is Hudson Valley Construction, two men; an excavating company, two men and a part-time girl. And there's a doctor there also?

Ms. DeMartino: Yes, there's a school physiatrist, Dr. Bartels. At night he has his private practice.

Mr. McKay: Right now, the applicant is asking for two side line variances. One is for the side line setback; the Code requires 15', there's 6' side line so the variance on the side yard is 9'. The requested variance is 9' out of the 15' required.

Member Sandoval: Just to clarify, I think that the initial first point that you made in terms that we're just looking at the new structure which is within the Code versus looking at the old structure which is not within the Code. From my perspective, when I read all of this, I wasn't considering the old structure, I was just considering the new structure and if that's within the Code, I don't think that they need that variance.

Mr. McKay: The total for both side yard setbacks under the Code is 30'. So, under the proposed amendment, they meet the 30'. They don't necessarily meet it on the existing structure but with respect to what's before you now, the proposed extension, they are well over 30', it's 50'. If you frame the question that way, they do not need the total of both side setbacks. If you look at the original structure, and I'm not sure what the Code required at that point, whether they were required to get a variance at that time, but that plan has already been approved in the past. The portion that is before you tonight is the new structure. I think you just need to explain it in whatever decision you make. If you decide it's not needed, explain why and if you decide that it is, we will go through the five factors and you can decide whether to grant the variance or not.

Member Sandoval: From my perspective, I don't think it's required.

Mr. McKay: So on the single side yard setback is 15' under the Code. Under the proposed plan, they would have a 6' side setback. They need a 9' variance.

Mr. Berliner: We discussed the last time, it's not a straight line but on an angle.

Mr. Hager: At last month's meeting, there was discussion about how the site plan had been presented previously. It didn't necessarily reflect all of the survey data and a more current survey was found in the meantime. So, the plan that you have now with the March 8th revision date on it, the designer has now incorporated the more accurate survey information. He's got it designed showing the 6', which is what the proposal is for the new back corner of the building. It's not 6' at the existing part but the corner further back. The survey map is referenced on the site plan indicates that it's 6.3' on the back corner of what is existing. The building is not exactly parallel with the property line.

All Board members, Building Inspector, and attorney examine the map and discuss it.

Mr. McKay: The Code requires 15' and right now when you measure the corner of the proposed new structure at the closest point it is 6'. Which is generally matching the existing structure. It's

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no greater deviation than the existing structure. It's a 9' variance. We talked about the parking a little bit. The total side yards under the Code need to be 30'. The proposed new structure, if you measure from the side of the new structure, to the side lines, that meets 30'. So that means that they wouldn't need that variance. If you measure it from the existing structure, and this is an approved plan, they would need a variance on the two side lines, and that would have been a +/- 3'. Or the Board can decide that the new structure is already within the Code. Now to discuss the parking, the Code requires 44 spaces, the applicant has 23. In 1985, the Code required 29 and they received a variance for 6 spaces. Right now, they have 23 and 44 are required so they would need a variance of 21 spaces.

Board members discuss the total amount of parking spaces presently and projected and where they're located. The County has decided that this is a local determination.

There were no comments from the public.

Motion was made by Acting Chairperson Miller to close the Public Hearing.

Second by Member Sainato.

Aye: Member Sainato
Member Sandoval
Member Miller

Nay: -0-

Roll Call

The following persons were present:

- Laurine Miller - Member
- Darrin Sainato - Member
- Reyna Sandoval - Member
- John Hager, Building Inspector
- Barbara Singer – Deputy Clerk/Secretary
- Joseph McKay, Esq.

The following persons were absent:

- Carol Schneider – Chairperson

Mr. McKay: Since there aren't at least three votes to approve the minutes, I suggest that the approval of March 6, 2019 minutes be voted on at the next meeting.

Harriman Plaza Reality

102-4-9.12

Variances

Present: Scott Berliner, Owner/Property owner, Bernadette DeMartino, Office Manager

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Motion was made by Member Sandoval that the total side yard variance is not required
Second by Member Sainato.

Aye: Member Sainato
Member Sandoval
Member Miller

Nay: -0-

Acting Chairperson Miller: The next variance that we need to discuss is the 21-parking space variance. According to the Code, 44 parking spaces are required, and from what we see now you're only going to have 23. Is 23 parking spaces sufficient for your business?

Ms. DeMartino: Yes.

Mr. Berliner: We have plenty of empty spots every day.

Member Sainato: Do you plan on occupying those two storefronts indefinitely? Do you plan on renting them out at some point?

Mr. Berliner: They're already renovated, they were originally planned on being one store. The prior person put a door in there and sheet rocked it. I took the sheetrock down and opened it back up.

Ms. DeMartino: The two storefronts are opened up and they are Life Science Pharmacy. The third store is a separate entity and that's Life Science Health and Wellness and that's the clinic that is only open one day per week.

Member Sainato: You've always occupied two stores and then you took over the third one for your office?

Mr. Berliner: No, we rent the third one as an office, once a week.

Member Sandoval: So that office has essentially no traffic.

Mr. Berliner: There are rules that state I can't own a medical clinic, but I can be the realtor, which I am. There's one doctor there who's an independent contractor and I rent her the space. She sees one person per hour for five hours. So, there's five people, one employee there one day per week.

Ms. DeMartino: 90% of our business is shipped.

Acting Chairperson Miller: When I drive by, I never see that many cars in the parking lot.

Mr. McKay: One factor that you must consider is whether the granting of the benefit can be achieved by other means feasible other than granting the parking variance.

Acting Chairperson Miller: No.

Member Sainato: No, there doesn't appear there is.

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Member Sandoval: No.

Mr. McKay: The second factor does the variance produce an undesirable change in the neighborhood character or detriment to nearby properties.

Acting Chairperson Miller: No.

Member Sainato: No.

Member Sandoval: No.

Mr. McKay: In regard to the parking, is the variance substantial? There are two ways of looking at this, you can have a variance that's a mathematically great variance and sometimes substantively is not.

Acting Chairperson Miller: Yes, they might not need that much, but it's still a substantial variance.

Member Sainato: Yes.

Member Sandoval: No, I don't think it's substantial. Statistically, yes, but not substantively.

Mr. Berliner: Prior we only needed 29 spots, we already have a variance.

Mr. McKay: I think that you're both saying the same thing. Statistically, it's a large variance. In this particular case, it's not a reason to deny the variance. Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?

Acting Chairperson Miller: No.

Member Sainato: No.

Member Sandoval: No.

Mr. McKay: Is the alleged hardship self-created?

Acting Chairperson Miller: No.

Member Sainato: No.

Member Sandoval: No.

Mr. McKay: Generally speaking, the Code doesn't create the hardship. The hardship would be created by using the property in a way that doesn't comply with the Code. You could say that the applicant has the choice to do this or not do this. By virtue of choosing to do this, it is self-created because they are looking to expand and the act of expanding the structure is what

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creates the need for the variance. Definitely could say that it's self-created. In respect to the parking, you were found to be in favor of the variance. The next variance is the 9' side line

variance. The first factor is whether the benefit be achieved by other means feasible to the applicant.

Mr. Berliner: By placing the addition where it was there is a minimal impact on all of those factors. Because the main building has a 10' pathway for emergency vehicle turnaround there really is no other place to put that addition.

Member Sandoval: And you're trying to keep it consistent with the rest of the building by extending it out. Based on that I would say no.

Acting Chairperson Miller: No.

Member Sainato: No, not without creating other issues.

Mr. McKay: It keeps with the rest of the building and it minimizes the other variances that would have been required.

Mr. Berliner: The way that it was described to me, you needed a certain amount of distance to allow those cars to pull out. So that really means there was no other way to put the building.

Mr. McKay: is the variance substantial?

Acting Chairperson Miller: No.

Member Sainato: No.

Member Sandoval: No.

Mr. McKay: Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood?

Acting Chairperson Miller: No.

Member Sainato: No.

Member Sandoval: No.

Mr. McKay: Is the difficulty, with respect to the side line, self-created?

Acting Chairperson Miller: No.

Member Sainato: No.

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Member Sandoval: No, for the reasons he stated before. There's no other placement of the structure and it stays in line with the rest of the building.

Mr. McKay: Even if you vote no, in particular the self-created hardship factor, even if the hardship is self-created, by deciding it was doesn't necessarily mean that you can't grant the variance. It's accumulative voting in respect to the individual criteria. By my count, the side line variance is granted, the 21-parking space variance is granted, and the board has determined that the total side line variance is not required.

Motion was made by Acting Chairperson Miller to grant the 21-parking space variance

Second by Member Sandoval

Aye: Member Sainato
Member Miller
Member Sandoval

Nay: -0-

Motion was made by Acting Chairperson Miller to grant the 9' side line variance

Second by Member Sainato

Aye: Member Sainato
Member Miller
Member Sandoval

Nay: -0-

Mr. McKay: I suggest that you condition both of the variances on preparation of the written decision by council, it will be distributed to the board members and if everyone agrees, you can review it, I'll make any changes that the Board members want to the decision and once everyone's comfortable with the decision, you can sign it. This way there's no delay.

Motion was made by Acting Chairperson Miller to close the regular meeting of April 3, 2019 at 8:36pm.

Second by Member Sainato

Aye: Member Sainato
Member Miller
Member Sandoval

Nay: -0-

Minutes Respectfully Submitted by:

Barbara Singer – Secretary