

ZONING BOARD OF APPEALS

AGENDA

DECEMBER 4, 2019

7:30 p.m.

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**
3. **APPROVAL OF MINUTES – APRIL 3, 2019**
4. **12 NORTH MAIN STREET**
104-1-19.1
COMMERCIAL USE VARIANCE

**THE NEXT ZONING BOARD MEETING IS SCHEDULED FOR
WEDNESDAY JANUARY 8, 2020 AT 7:30PM
SUBMISSION DEADLINE FOR THE ZONING BOARD MEETING IS
WEDNESDAY DECEMBER 18, 2019**

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS
December 4, 2019
7:30pm

Chairperson Schneider to open the Village of Harriman's December 4, 2019 Zoning Board of Appeals regular meeting at 7:30pm.

Opened the ZBA Meeting with the Pledge of Allegiance

Roll Call

The following persons were present:

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

The following persons were absent:

- Laurine Miller - Member

Chairwoman Schneider: Barbara (Singer) are all of the fees up to date?

Ms. Singer: Yes, they are.

Chairperson Schneider: I have not seen the minutes from April 3, 2019, approval will have to be at the next meeting.

Ms. Singer: I will send them to everyone.

12 North Main Street
104-1-19.1
Commercial Use Variance

Present: Khwaja Ahad, owner, applicant; Khwaja S Ahad.

Chairwoman Schneider: Before you begin, I see that your application is not complete. There is no financial information backing up the hardship that you're claiming. At some point, we are going to need to see that.

Mr. K. Ahad gives the Chairwoman financial documents.

Chairwoman Schneider: Barbara (Singer) could you make the Board members copies so we each have a copy when we go through this?

Member Sandoval: Do you have statements to back this up or just written?

Mr. K. Ahad: Just written.

Chairwoman Schneider: Do you have copies of your tax bill, water bill.

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

December 4, 2019

7:30pm

Mr. K. Ahad: I have the tax bill and water bill

Mr. K. Ahad gives this to the Board.

Chairwoman Schneider: This water bill that you provided us, is this for three months? Is it the same every three months?

Mr. K. Ahad: It goes up and down.

Chairwoman Schneider: Is there any reason why we can't have a copy of these documents?

Mr. K. Ahad: That is my only copy, I didn't know that you would need a copy.

Mr. McKay: Sir, what you need to do in order to demonstrate your use variances is, the phrase in the law is "demonstrate by competent financial documentation and evidence" that you have entitlement to the use variance. For instance, on your sheet you have an explanation of your water, sewer, taxes, all the expenses associated with the property. Do you have documentation to support all of these things?

Mr. K. Ahad: I have the checks that I used to pay everything.

Chairwoman Schneider: For example, if you have \$800 in water bills listed, we would like to see \$800 in water bills, supporting that.

Mr. K. Ahad: For how long?

Mr. McKay: For some period of time, I see that you bought the property in 2006. Is that right?

Mr. K. Ahad: Yes.

Chairwoman Schneider: Do you have a copy of the contract from when you purchased the property? To show us how much you purchased the property for.

Mr. K. Ahad: No, I don't have that. In 2006 I paid a high price, \$580,000. I can not sell it for that price now, the price has gone down. When I bought the property at that time, by the time it was paid off, I am retired now, so to get the income and pay my bills monthly. Right now, almost 6 months now, I have listed it with a real estate agent, but nobody is interested. I have a copy of the real estate contract. Right now, I am not working. I have a very hard time to pay my bills monthly and I am retired the last three years. This is my income for retirement.

Mr. McKay: You've made an application to the Board, and as I explained, it is your burden you have to show why you are entitled to the use variance. The law is very specific, and it is restated in the Harriman Village Code. It sets forth all of the criteria that you have to demonstrate in order to prove that you're entitled to the variance. One of the specific ones, is that you have to demonstrate by financial evidence your entitlement to the variance. For example, to me that means, you have to demonstrate what the purchase price was, what your mortgage payments

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

December 4, 2019

7:30pm

are, all the expenses as you started to do here. I know that you started to hand things up to the Board, what other items that you brought with you tonight, show either the income from the property, how much you purchased it for, what the expenses might be.

Mr. K. Ahad: I didn't know that I needed the papers from when I purchased the property. But I can tell you how much I paid for it.

Mr. K.S. Ahad: I think part of the issue here is that there was no knowledge of what was required to be brought. You're asking for things now that he wasn't aware of. I think that if you're saying that at this time there needs to be more information provided in terms of the property, then we would ask if you could give us a list of the things that you would need and the period of time that you are looking for or who we need to talk to get that information.

Mr. McKay: I agree. I am going to give you a brief explanation of what the criteria are. Essentially what the law says is that you have to demonstrate an unnecessary hardship, you need to show that the zoning regulations or the use of the property has caused an unnecessary hardship. In order to prove unnecessary hardship, you are required to demonstrate for each use that the property could be put to the following things: that you can't realize a reasonable return, and it has to be substantial and you need to demonstrate that with competent financial evidence, that's why we were talking about the documentation. You have to explain that the hardship relating to the property is unique and does not apply to other properties in the neighborhood or the area. You also have to demonstrate that the hardship was not self-created, meaning that it was somehow outside your control. Those are the very basic criteria and they are set forth in the Village of Harriman Code.

Mr. K.S. Ahad: Is this code online?

Ms. Singer: Yes, it is. I just want to interrupt, in speaking with Mr. Ahad about filling out the application and the process, that he took money out of his retirement funding to purchase this property, so there is no mortgage. So, you won't see that as an expense. And also, he did have a tenant in the commercial space, but that tenant retired, I believe.

Mr. K. Ahad: Yes, I had a tenant there for ten years, an accountant, but he retired and moved to Arizona. When I bought the building there was a house cleaning company for a few years, but they went out of business. I listed it with a real estate and within a couple of months, the accountant started renting the space. In the last ten years, I have no problems. I have listed this with a realtor since July and nobody has even looked at it. The real estate agent has written a letter for you. If I can rent it tomorrow, I have no problem. As long as I rent it and get some income from that.

Mr. K.S. Ahad: I think part of the issue here is that, although I like Harriman, is that it's not a draw for commercial business to come here at the moment. But people are definitely moving here in the residential situation looking for rentals. He doesn't have any issues renting the residential units, it's just this one space. I think this is an ongoing situation, that's not going to resolve itself.

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

December 4, 2019

7:30pm

Mr. K. Ahad: One other space was commercial before I bought the property and they changed it to residential. I think that was for the same reason, that they were unable to rent it.

Mr. Hager: The building was originally built with two commercial units on the ground level and two residential units on the second floor. The previous owner changed one of the commercial units to a dwelling unit, which still conformed to the Zoning code in the B-1 zone because you're allowed three dwelling units associated with a commercial unit. That was able to be done under a building permit without any variances. Now that the whole building is going to be residential, when he applied to me for a building permit, I had to deny it for several reasons. (1) it has to have site plan review from the Planning Board and (2) now it needs a variance to be considered an apartment building which is a non-conforming use in the B-1. That's all outlined in my denial letter.

Member Sandoval: Is this hardship that you can't pay the bills anymore? Or is it more like keeping up your lifestyle? Without this income are you having a hardship paying your bills?

Mr. K. Ahad: Yes, I can't pay the bills because I'm retired, I don't work anymore. I bought this for my retirement.

Member Sandoval: I think that is what we need to see, that it's causing the hardship that you can't pay your bills and we don't have that financial information.

Member Sainato: The space that's vacant brings in an income of \$1100 per month? That's what you're missing now?

Mr. K. Ahad: No, the last tenant was paying \$1125, then I went to \$1100, now I'm trying to rent it for \$1050. Whatever I can rent it for, I'm not looking for a higher rent.

Member Sainato: One expense says "parking lot" expenses? What is that?

Mr. K. Ahad: that's the expense of clearing the leaves, the grass around it, garbage. I have to pay someone to do this, I can not do this anymore myself. If I was working, I would wait longer, but I'm not working any longer.

Member Sainato: Is the unit listed right now?

Mr. K. Ahad: I have an appointment with a local realtor on Friday. Today? No, the realtor just came and took his sign today. The real estate agent gave up. He said that it's not working.

Motion was made by Chairwoman Schneider to enter into attorney/client session

Second by Member Sandoval

Aye: Member Sainato
Member Schneider
Member Sandoval

Nay: -0-

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

December 4, 2019

7:30pm

Motion was made by Chairwoman Schneider to return from attorney/client session

Second by Member Sainato

Aye: Member Sainato
Member Schneider
Member Sandoval

Nay: -0-

Mr. McKay: Just so that you're aware, that took more time than you expected, it took more time than we expected. I want you to be comfortable that we're not having some kind of secret meeting. The use variance criteria is often difficult to meet and the Board had a lot of legal questions, what kind of information they should ask for you to supply.

Mr. K. Ahad was given a copy of the list of permitted uses in the B-1 zone district and the use variance criteria needed to be met to qualify for a use variance from the Village Code.

Chairwoman Schneider: After having the discussion, we understand. And I believe you were just given some information.

Mr. Ahad: Yes, I was.

Chairwoman Schneider: Now you can familiarize yourself as to what can be used for supporting some of your case. We are going to ask that you come back again. We are asking you for some documentation that will be as follows: the purchase agreement from 2006 when you purchased the property; the expenses for the property for each year; past rental rolls, rental history; monthly mortgage payments; monthly expenses that you have against the property, such as water, sewer, taxes, maintenance costs and the like. We can't accept it in this type of documentation. We would like to see actual bills. You could put together an excel type spreadsheet for each of the years and then clip the supporting documentation to each of the years behind it, so that we have something to see. The hardship isn't against your personal financial it's against the land. Also, in the B-1 zone it's listed the different uses that you can have there, like a barber shop, etc. you have to make a case why none of these uses will work for you. The hardship is against the property, it's not against your personal financial. We want to make sure that you're well prepared if you come back to the Board again. Five months isn't really that long for a commercial property to be empty. I see that you had it listed and then not Currently. I don't know how long you've had it listed. You have to consider other options for yourself too. If the rent is too high that you're asking for, raising the current rental might make your current situation better. Looking at the overall sheet that was provided to us, it basically says that your monthly expenses are \$1700 on the property but you're bringing in about \$3000.

Member Sainato: The building is profitable at this time.

Chairwoman Schneider: This is showing us that it's profitable.

Mr. K.S. Ahad: In light of what you said that I have to be all about the property, the depreciation over the time since he purchased it to now is a factor to that? While you ere in executive session, and we will provide the information at the next meeting, but it has depreciated about

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

December 4, 2019

7:30pm

\$100,000 from the purchase price, 10 years ago, which is a huge drop. I don't have an exact number for you, but I'll look into that.

Mr. McKay: You may want to get a letter from the realtor.

Mr. K.S. Ahad: Yes, that would factor in. That would make an impact of what that income actually is, that there's a loss in the purchase side.

Chairwoman Schneider: The documentation that you bring us should be certified on a letterhead, not handwritten on a piece of paper. Once you get yourself together, stop by the Village Hall and we'll get you back on the agenda. I don't think we're ready to move forward, ready for a Public Hearing, the only thing that we can do is have you come back with data that we may need.

Mr. K. Ahad: The only thing, since 2006, I don't know if I have all of the documents, the expenses, and everything.

Chairwoman Schneider: We understand that. The burden is on you to do the best to your ability.

Mr. K.S. Ahad: If we can show so many years and there's missing something, you can estimate that's what it roughly is?

Chairwoman Schneider: Yes. If there's some kind of public that you need, I'm sure that Barbara (Singer) could tell you where to go to get that.

Mr. McKay: I want to make you aware as well, I know that you might have hesitancy about giving you financial records because you don't want everyone to know your business, right? Whatever you provide to the Board will remain confidential. You are filing those documents with the municipality's, so somebody could make a request for a copy of your application. This is something that we call FOIL (Freedom of information Law) but I've already had a quick discussion with the clerk, if someone makes such a request, I will work on it with her because your financial information doesn't need to be disclosed to anybody. So, if they want a copy of your application, they'll get a copy of your name and some other information but there's no reason the Village needs to provide anyone else with your personal financial information.

Mr. K.S. Ahad: Ok, just to be clear, it's everything that the property, what was paid for, what it is now, expenses and income associated with it, and how that has created the hardship, why we're looking for this variance.

Member Sandoval: And the value with the depreciation each year.

Mr. Hager: Are you comfortable with the drawings that have been provided?

Member Sandoval: Those are the existing drawings of the property?

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

December 4, 2019

7:30pm

Mr. Hager: Yes, there is no change and there are no required physical changes to the site. If they need to get anything drawn up, now's the time to let them know.

Chairwoman Schneider: I'm comfortable with it.

Mr. McKay: I don't think that's an issue, certainly if the variance is granted, he would probably have to do that for the Planning Board but that's not really the issue here.

Mr. K.S. Ahad: There's no deadline to get back to you is there? It's when we're prepared?

Chairwoman Schneider: Correct.

Applicant was given the annual Zoning Board schedule with deadlines.

Member Sandoval: If you happen to rent the property while you're putting your documentation together, you can decide to stop the application or not. If that's what you decide.

Member Sainato: You should list with a local realtor as well. You're suing a Warwick realtor, where a Monroe or Harriman realtor would be better.

Mr. K. Ahad: That's what I'm doing now, I have a appointment with a local realtor on Friday (November 6). Everything's online anyway. If anybody is looking for this space for renting, they'll find it.

Ms. Singer: That paper shows the meeting dates with the submission date. In order to be on the agenda, the submission date is the due date. And whatever information you provide, I would need eight copies of it.

Motion was made by Chairperson Schneider to close the regular meeting of December 4, 2019 at 8:45pm.

Second by Member Sandoval

Aye: Member Sainato
Member Sandoval
Member Schneider

Nay: -0-

Minutes Respectfully Submitted by:

Barbara Singer – Secretary