



# *Village of Harriman*

1 Church Street  
Harriman, New York 10926  
Phone (845) 783-4421

## **ZONING BOARD OF APPEALS**

**JANUARY 8, 2025**

### **MEETING AGENDA**

**1. PLEDGE OF ALLEGIANCE**

**2. ROLL CALL**

**3. ACCEPTANCE OF MINUTES**

**a. NOVEMBER 6, 2024**

**4. 101-2-1.12 – PUBLIC HEARING:**

**MYL INVESTORS/ aka RIGHT CHOICE BUILDERS**

**NEXT ZONING BOARD OF APPEALS MEETING**

**IS SCHEDULED FOR**

**WEDNESDAY FEBRUARY 5, 2025 @ 7:30PM**

**DEADLINE FOR COMPLETED PAPERWORK SUBMISSION**

**FOR THE NEXT ZBA MEETING IS DUE**

**BY 12:00PM ON JANUARY 21, 2025**

## VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

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Chairman Pettiford opened the Village of Harriman's January 8, 2025, Zoning Board of Appeals regular meeting at 7:48pm. He welcomed everyone followed by the Pledge of Allegiance and roll call.

**Present:** Chairman Pettiford, Member Paez, Member Torres, Member LaMarch, Attorney McKay, and Secretary Hunter.

**Absent:** none

**Member Paez made a MOTION** to accept the minutes from November 6, 2024.

**Second** by Member Torres, ALL IN FAVOR.

Chairman Pettiford asked Secretary Hunter to read the public hearing notice which is attached to the minutes.

**Motion by Chairman Pettiford** to open the public hearing this evening at 7:53PM.

**Second** by Member Paez, ALL IN FAVOR.

**101-2-1.12 – Right Choice Builders, variances requested:** Attorney Aaron Warner from Zarin & Steinmetz along with my partner Attorney Daniel Richmond, and Engineer John Loch with AFR Engineering & Land Surveying, present for the applicant this evening.

Attorney Warner they represent the applicant MYL Investors in connection of 2 story mixed use office and storage space project, located at 200 Route 17M in the Village's B-2 Zoning District. Construction is complete; and we're here to deal with minor discrepancies that came up after construction was complete. Specifically, we are here to seek a minimal 1.52-foot height variance, including if necessary, a variance for a third story and a 7 space parking variance. Before discussing the zoning code interpretation and variances it has become apparent the need to address the previously denied variances. The completed project is drastically different than what was originally before the Zoning Board and denied. The project followed plans that were submitted and approved by the Building Department Inspector.

Attorney Warner gave copies of January 10<sup>th</sup> through to January 12<sup>th</sup>, 2024, email correspondence between David Niemotko, Architect and Building Inspector Giacco to Secretary Hunter for the ZBA Members. Copy attached to minutes. He referred to the bottom of page 1 with Mr. Giacco's response to the board members. It was also clear that the Building Inspector didn't believe the mezzanine was a third story. The mezzanine level is not a story and fits within the shell of the building. They are here due to the minor non-conforming building height and parking issues.

Accordingly, the applicant seeks relief and requests variances for the 1.52-foot height variance based on the five factors. John Loch will present at this time. Plans were shown to the board showing the building. Village code has somewhat of an unusual definition of how height is determined, it basically goes with working of an average peak, the eave which would be the mid-point. This building has six corners. Essentially there is a lot of leeway on how you can calculate and interpret this. Discussed this with the prior Building Inspector, how they viewed, John Lanc provided his calculations as 36.52. Per Village code(s) we can discount the loading dock areas, depressed ground that doesn't get included in the height calculation. He looked at the site plan and couldn't track this to Village code due to the height variance. I know the plans were supplied to the Building Inspector. There is no reasonable or feasible way to economically reduce the height by a foot and a half. Normally you would look at options, the cost of trying to redo the structure would be completely onerous. There is no reasonable way to alter the ground elevations because of the heights needed.

Attorney McKay noted that Village code determines how the height is calculated. He asked Mr. Loch to explain to the board members how he calculated the height since he was relying on the Building Inspector's calculation. Mr. Loch referred to the map (will be attached to the minutes) shown to the board members. "The vertical distance measured from the average finished grade at all foundation corners of the building or structure to the higher point of the roof for flat or mansard roofs, or to the mean height between eave and the ridge for other types of roofs;

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chimneys, elevator penthouses, tanks and similar projections shall not be included in such measurements, provided that such projection does not occupy more than 10% of the roof area.” Mr. Loch showed additional pictures of the retaining wall and noted that they used an average of the top and bottom which seemed to be reasonable accommodation.

Attorney Warner proceeded to discuss the height variance of the 5 factors:

Question #1 Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?

Due to the unique site topography the natural and manmade screening that is on the site and due to the site lines. The building is topographically located almost at the center of a bowl surrounded by other large commercial ventures or natural screening or vegetation and trees towards the back of the site. Front of the site is screened from Frankie’s Car Wash which blocks the view from Route 17M.

Question #2 Can the benefit you seek be achieved by some feasible method area variance?

The applicant relied upon the Building Inspector approving the construction plans through each step of the process and as well as the construction. Now the applicant is left with a building that is slightly not conforming as height. There isn’t a feasible method to achieve this, this is why they are here.

Question #3 How substantial is the variance that you are requesting?

In 2017 when before the ZBA the applicant was asking for a 9-foot height variance, it is much less now. The applicant is only requesting a 1.52-foot height variance.

Question #4 Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Same answer as given in #3.

Question #5 Is the alleged difficulty self-created?

The applicant reasonably relied on the Building Inspector who approved the plans along the way. Now the applicant is left with a minor non-conforming building as to height. Even if self-created does not preclude granting the variance.

Attorney McKay asked the ZBA members if anyone had any questions pertaining to the height of the building. Member Torres asked a question about the email the Building Inspector remarked about the “...Mezzanine Level, Offices 1-11...”. He was referring to “As Built” plans. Attorney McKay, as to his understanding, how could the Building Inspector have approved the as built plans. Isn’t this why the Building Inspector referred you to this board because the C of O couldn’t be approved.

Mr. Loch noted the plans date of October 21, 2024. Member Torres stated email was sent January 2024. Mr. Loch acknowledged there were two different as built plans (Architect and Engineer). Architect plans dated 1/22/2020, pages A1.2, A1.3 and A1.4, were submitted to the Secretary to be stamped and distributed to the members.

Attorney McKay, need to resolve the height issue. This is a reliance argument, by submitting the as built plans. Does A1.4 plan that references the mezzanine, does the email you submitted support the height variance issue or in the support of the story variance? Attorney Warner yes, Attorney Richmond talking about a foot and a half variance, with very little impact to the community. Chairman Pettiford asked to have the definition explained of the height of the building.

Mr. Loch reread “The vertical distance measured from the average finished grade at all foundation corners of the building or structure to the higher point of the roof for flat or mansard roofs, or to the mean height between eave and the ridge for other types of roofs; chimneys, elevator penthouses, tanks and similar projections shall not be included in such measurements, provided that such projection does not occupy more than 10% of the roof area.”

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He mentioned the average middle grade of the retaining wall was used for the three corners. Member Torres asked if an addendum, email, or memo sent to the Village. Mr. Loch noted this was sent to the Building Inspector and Mr. Lanc, even though the site work wasn't completed, labeled draft. Mr. Loch stated he had a meeting with the Building Inspector on how to address the definition. He didn't get a hard or fast opinion from the prior Building Inspector. Mr. Richmond noted the law is clear, when there is ambiguity in the code it goes to the applicant's favor. Their client has tried to work in good faith and comply with the Building Inspector. Other aspects of the code are conforming.

Chairman Pettiford mentioned the Village code talks about the of the average finished grade at the corners and it does not say the average of the heights of the building corners. Discussion between Mr. Loch and the board about the height that they indicated. The map being referred to is dated October 21, 2024, and was submitted by Engineer John Loch with AFR Engineering & Land Surveying.

Attorney Warner proceeded with the second potential type variance for a third story. The applicant is seeking a zoning code interpretation to determine whether the mezzanine constitutes a third story. In the event the board determines that the mezzanine level is a third story. The applicant will then seek a variance for the two-story height requirement in the zoning code.

Mr. Loch showed the board members a diagram that was not too scale that was provided at the last meeting. The lowest level of the building is full-height storage and office spaces. With wasted space above the office spaces. The second-floor level, essentially to the middle of the building, mostly full height for storage and office. Above at mezzanine level additional offices, including a hallway for egress/ingress. The mezzanine level sits completely within the envelope needed for full height storage level. No where in the Village code does it mention a mezzanine. The New York State code makes very clear references to mezzanine and not a story. As long as it is contained within the other floor level in terms of height. Mezzanine level is still subject to all fire codes. The existing condition currently is essentially a good chunk of the perimeter of the building as offices on all levels. The applicant wanted most of the offices to have windows.

Member LaMarch asked what the client's intention of building the third story. Mr. Loch stated the 2017 plans were for a full third floor which was much greater than allowed with parking. A map was referred to by Mr. Loch. Attorney Warner noted the applicant did not intend to build a third story only a mezzanine level. If the board determines that the applicant did create a mezzanine level, then a variance is not needed.

Attorney Warner proceeded to discuss the Mezzanine as a third floor of the 5 factors:

Question #1 Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?

Due to the unique topography and natural screening. The building appears to look like a two-story building, which causes the first floor to look to be partially underground in the front. The second-story or mezzanine levels to be at ground level from the front. The mezzanine level fits with in the shell of the building envelope. The previous ZBA board decided this was not an undesirable look.

Question #2 Can the benefit you seek be achieved by some feasible method area variance?

The applicant relied upon the Building Inspector approving the plans and the construction through each step of the process. Now the applicant is left with a non-conforming third story.

Question #3 How substantial is the variance that you are requesting?

The variance is not substantial, and the mezzanine fits within the shell of the existing building. The rear of the building looks like a third story building only.

Question #4 Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Prior 2017 decision determined no detrimental environmental or physical impacts of a variance for a third-story.

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Chairman Pettiford noted that members visited the site with Mr. Loch, the example placed on the board with the offices with the original plan. The mezzanine floor is filled with offices already. Not arguing with the applicant, but it feels like a third level.

Member LaMarch asked what the approximate square footage was for the third level. Mr. Loch counted approximately 35 offices, unable to determine the square footage. Mr. Loch referred to a map showing the ZBA members that the offices are along the perimeter of the building. Relatively a small percentage of the large building. Attorney Warner noted the project in 2017 was more substantial.

Question #5 Is the alleged difficulty self-created?

The applicant reasonably relied upon the Building Inspector who regularly approved the plans and construction along the way.

Attorney McKay asked to clarify the submitted plans regularly, built out accordance to the plans. When the as-built plans were submitted the Building Inspector referred the applicant here. To question whether or not there is a mezzanine or third floor or not. The applicant states they are relying on the Building Inspector's review of the plans but when he gets the as-built's he refers you here. Attorney Richmond noted they listened to the Building Inspector and then he sent the project to the ZBA. Mr. Loch stated the height was not an issue with the Building Inspector until he saw the as-built's, definite difference between the NYS and Village code. Mr. Loch stated that both codes differ. The Village code refers that parking under the building should not count as a story. Attorney Richmond stated that there is a certain inequity going on here.

Attorney McKay is just trying to get answers to write up the findings. The plans that were approved were they signed off by the Building Inspector? Construction permit issued based on approved plans showed the mezzanine. Attorney McKay asked about the mezzanine. Attorney Richmond noted they are seeking a variance and if you think it is a third story, then asking the board to grant the variance.

Attorney Warner asked Mr. Loch to discuss the need for a 7-parking variance needed per the 5 factors. Mr. Loch noted that the parking was situated in similar to what was originally approved. They were able to add an addition of 5 parking spaces due to reconfiguration, which they are now short 7 spaces. The applicant is looking into acquiring a neighboring property to help with the parking.

Member LaMarch asked how many employees and what is the exact square footage of the building. Mr. Loch noted the architect calculated the necessary parking needed based on the square footage. Attorney McKay noted that on page 6 of the attorney's letter to the board it reflects the building has a total of 14,841 square feet. Exact number of employees are unknown currently since the building is not rented. The applicant believes adequate parking is available with the addition of the 7 parking spaces. It was determined that the first floor had 21 offices, the second floor has 34 and the third floor has 35 for a total of 90 offices. Member LaMarch noted if there is 1 employee for each office which is a total of 90, plus the 16 people needed for the storage the applicant would need 106 spaces for parking. It was explained that calculation was based on the square footage of the building for parking. Currently there is 83 parking spaces on the current as-built plan.

Attorney Warner explained to the board that the applicant is seeking property from an adjacent lot. It will give them an additional 26 spaces. Mr. Loch noted a fill permit was obtained to move the excess soil to the adjacent property. Future subdivision will need to go before the Planning Board, not doing this currently due to a major SWIPP issue that would occur. A copy of the SWIPP was sent to the Secretary via email.

Question #1 Will the granting of this variance produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties?

The applicant is looking for a total of 7 parking spaces.

Question #2 Can the benefit you seek be achieved by some feasible method area variance?

The applicant is looking to obtain property in the future for an additional 26 parking spaces.

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Question #3 How substantial is the variance that you are requesting?

In 2017 when before the ZBA the application was different from this current plan which is far less.

Question #4 Will the granting of the variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Same answer as given in #3.

Question #5 Is the alleged difficulty self-created?

The applicant relied upon the Building Inspector and the approved plan on construction.

Attorney Warner noted your board was previously concerned about its prior decision regarding a harmful precedent by granting these variances. These variances will not create a harmful precedent due to environmental and screening conditions that exist. Requesting the relief sought thru the variances submitted be approved.

Secretary Hunter acknowledged the applicant submitted the certified receipts that was sent out to the property owners.

Public Hearing was opened to the public:

Mr. Michael Hagopian has the adjacent property west in the Village of Monroe at 320 Route 17M. He was asking what the square footage was for the mezzanine. It was stated that 35 offices were located on the mezzanine. It was confirmed that the square footage was 14,841. He asked about the height measured from the final grade or the corners. Mr. Loch responded this was done per Village code. Discussion about the height between Mr. Loch and Mr. Hagopian. Mr. Hagopian asked if a traffic study was done for the additional parking spaces being sought. In his opinion this will create more traffic when including the adjacent property being proposed.

**Chairman Pettiford made a MOTION** to go into an attorney client session.

**Second** by Member LaMarch, ALL IN FAVOR.

Members of the ZBA Board and Attorney McKay left the meeting room at 9:30pm.

Members of the ZBA Board and Attorney McKay returned to the meeting at 9:45pm.

**Chairman Pettiford made a MOTION** to come out of attorney client session and to resume the public hearing.

**Second** by Member LaMarch, ALL IN FAVOR.

Attorney McKay acknowledged the board went into attorney client for a procedural issue that came up, no decision was made.

Chairman Pettiford noted a letter was received from the new Village Building Inspector Stegenga prior to this meeting, a copy was given to Attorney Warner and read. Letter will be attached to tonight's minutes. He proceeded to ask the board members if they wanted to keep the public hearing opened until the review was completed.

Attorney McKay asked the board members to consider in fairness to the applicant to respond to this request. Attorney Richmond stated this was highly irregular, they had a Building Inspector determination that they are appealing. To have the new Building Inspector interject herself into this compounds the issue. This is seriously off track. Mr. Loch noted the building is ready for occupancy. Mr. Richmond noted several times his client was being penalized for a 1.52 variance. Attorney McKay advised the board and himself only saw this letter this evening.

Discussion amongst board members to have the Building Inspector submit a report by January 22<sup>nd</sup>. Both Attorney McKay and Attorney Richmond went back and forth about this new letter.

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**Chairman Pettiford made a MOTION** to continue the public hearing to February 5, 2025.  
**Second** by Member Torres, ALL IN FAVOR.

**Chairman Pettiford made a MOTION** to close the regular meeting of January 6, 2025, at 10:10pm.  
**Second** by Member Torres, ALL IN FAVOR.

**Minutes respectively submitted,**

**Maria C. Hunter, Secretary**

**VILLAGE OF HARRIMAN  
ZONING BOARD OF APPEALS**

**NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN**, that a public hearing will be held by the Zoning Board of Appeals of the Village of Harriman, New York on Wednesday, January 8, 2025 at 7:30 p.m., or as soon thereafter as may be hear, at the Village Hall, located at 1 Church Street, Harriman, New York, 10926 regarding an application submitted by MYL Investors, LLC for area variances from §140-7 of the Zoning Code to legalize an existing structure with a height of 36.52 ft., when the Code limits building height to 35 ft., and to allow for 83 off-street parking spaces when the Code requires a minimum of 90 off-street parking spaces. In addition, the Applicant is seeking an interpretation that a second floor “mezzanine” structure is not a “third story,” within the meaning of the §140-4 of the Code. Alternatively, the Applicant is seeking a variance for a third story in the event that the mezzanine level is determined to be a third story. The property is identified on the Orange County tax map as Section 101, Block 2, Lot 1.12, said lot being known as 200 State Route 17M, in the Village of Harriman.

The Zoning Board of Appeals will hear all persons interested in the proposed area variance application at the above time and place. Copies of said application, and any other information submitted in support of the application are available for review at Village Hall at the address stated above.

The Village of Harriman will make every effort to ensure that the hearing is accessible to persons with disabilities. Anyone requiring special assistance and/or reasonable accommodations should contact the Village Clerk.

BY ORDER OF  
THE ZONING BOARD OF APPEALS  
VILLAGE OF HARRIMAN  
MICHAEL PETTIFORD, CHAIRMAN



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----- Forwarded message -----

**From:** David Niemotko <[david@niemotkoarchitects.com](mailto:david@niemotkoarchitects.com)>  
**Date:** Fri, Jan 12, 2024 at 3:45 PM  
**Subject:** FW: 200 Route 17M - BD Letter 1-9-24  
**To:** Yoel Leifer <[yoel4967@gmail.com](mailto:yoel4967@gmail.com)>  
**Cc:** EZ Develop Inc <[ezdevelopinc@gmail.com](mailto:ezdevelopinc@gmail.com)>

RECEIVED

JAN 08 2025

Village of Harriman

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**From:** Building Dept <[buildingdept@villageofharriman.org](mailto:buildingdept@villageofharriman.org)>  
**Sent:** Friday, January 12, 2024 10:43 AM  
**To:** David Niemotko <[david@niemotkoarchitects.com](mailto:david@niemotkoarchitects.com)>  
**Subject:** RE: 200 Route 17M - BD Letter 1-9-24

Good Morning David, I received the attached information. The following is my response to the received information:

- I am in agreement with the occupant load for the 1<sup>st</sup> floor and the door swing for egress doors.
- I would like to see the calculations for the 2<sup>nd</sup> floor Units 1,2,3 and offices 1-11, in regards to the occupant load and if that will affect the door installation for the stairs located on the front of the building. Page A1.3 (Revised plans)
- I would like the Mezzanine level, Offices 1-11 occupant load Page A1.4 (revised plans)
- Also request a new revision of Page A7.1 for the construction of the elevator shaft with the steel framing.
- The Engineers letter for the structural inspection dated 12-18-23, that was received is acceptable.

Thank you.

Respectfully,

Stephen R Giacco

Building Inspector/ Code Enforcement Officer

Village of Harriman Building Department

1 Church Street, Harriman NY 10926

Ph: (845) 782-6892 Fax: (845) 782-2016

e-mail: [buildingdept@villageofharriman.org](mailto:buildingdept@villageofharriman.org)

**From:** David Niemotko <[david@niemotkoarchitects.com](mailto:david@niemotkoarchitects.com)>

**Sent:** Wednesday, January 10, 2024 3:42 PM

**To:** Building Dept <[buildingdept@villageofharriman.org](mailto:buildingdept@villageofharriman.org)>

**Cc:** 'Yoel Leifer' <[yoel4967@gmail.com](mailto:yoel4967@gmail.com)>

**Subject:** 200 Route 17M - BD Letter 1-9-24

Steve:

Attached (4) is our response to the door swing and elevator construction concerns about this project.

Please review at your earliest convenience.

I understand that there are a few other concerns about the stairs and their foundations. We will address them under a separate letter.

Regards

**David Niemotko, Registered Architect**

**David Niemotko Architect, P.C.**

167 Stage Road

Monroe, NY 10950

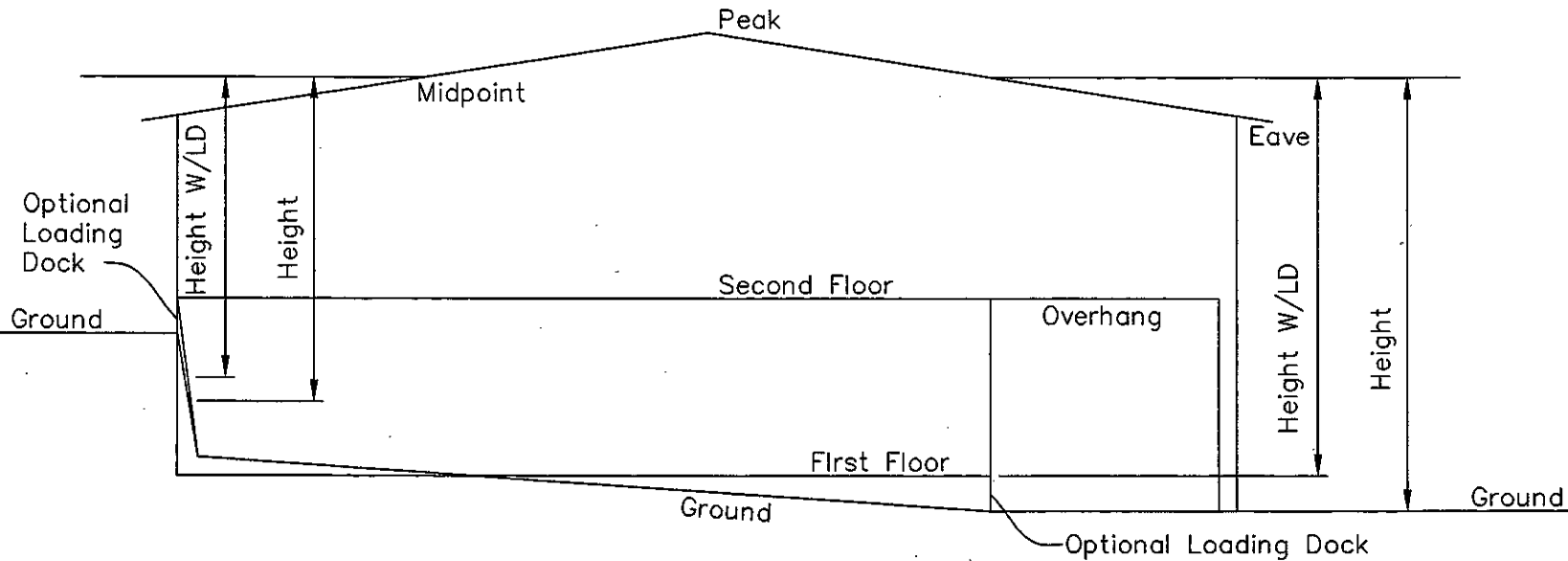
Mobile (845) 401-2891

Office (845) 774-7523



David Niemotko Architects

(except loading dock provisions shall not be included in finished ground level calculations where area around building is ramped down for access to loading dock).



The vertical distance measured from the average finished grade at all foundation corners of the building or structure to the higher point of the roof for flat or mansard roofs, or to the mean height between eave and the ridge for other types of roofs; chimneys, elevator penthouses, tanks and similar projections shall not be included in such measurements, provided that such projection does not occupy more than 10% of the roof area.  
 [Amended 5-10-2005 by L.L. No. 1-2005]

ARF PROJECT 10951  
 200 ROUTE 17M  
 BUILDING HEIGHT  
 DEFINITION DIAGRAM  
 FOR ZBA  
 DATE: 10-31-24  
 NOT TO SCALE

VILLAGE OF HARRIMAN  
BUILDING DEPARTMENT  
1 CHURCH STREET  
HARRIMAN, NY 10926  
Ph. (845) 782-6892

**Date: January 8, 2025**

**Address: 194/ 200 Route 17M      SBL: 101-2-1.12**

**Owner: Rite Choice Builders  
Yoel Leifer MYL Investors**

**Inspector: Kathy A. Stegenga**

**Re: ZBA Variance Request**

**Chairman and Committee Board members,**

**I am writing to you today as the recently hired Building Inspector for the Village of Harriman. I am requesting that the application for 194/200 17M – Right Choice Builders, on the agenda for January 8, 2025, be held open while I finish conducting my review and verification of information and facts regarding this project.**

**The original approved construction plans have now been amended to an “As Built” construction plans, which are currently being brought before your board for multiple variance request considerations.**

**I would like to be able to finish my review of this project and be able to provide the most accurate and up to date information and data. I am confident that the results of my review would be helpful to the board and could provide additional information that would assist with your determination on the application before you.**

**Any questions please contact me. Thank you.**



**Kathy A. Stegenga  
Building Inspector**