

**VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS**  
**July 5, 2017**  
**7:30pm**

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

**Roll Call**

The following persons were present:

- Laurine Miller – Chairperson
- Darrin Sainato - Member
- Carol Schneider – Member
- John Hager, Building Inspector
- Barbara Singer – Deputy Clerk/Secretary
- Joseph McKay, Esq.
- Jennifer McCave, Esq.

**Motion** was made by Member Schneider to approve the minutes of March 8, 2017  
**Second** by Member Sainato.

**Aye:** Member Miller  
Member Schneider  
Member Sainato  
**Nay:** -0-

**Motion** was made by Member Schneider to approve the minutes of June 7, 2017  
**Second** by Member Sainato.

**Aye:** Member Miller  
Member Schneider  
Member Sainato  
**Nay:** -0-

**Member Crover arrives.**

**Public Hearing**

**Right Choice Builders**

**101-2-1.12**

**Interpretation & Area Variances**

**Present:** David Niemotko, Architect

Mr. Niemotko: We are here seeking a favorable interpretation of the Village Code regarding commercial storage as it applies to this project. As mentioned in the Public Hearing Notice as a proposed use of the structure for combination of office space and commercial storage constitutes a special permitted accessory use in the B-2 zone. In the last few meetings I think

that we've proved that quite a bit, especially because commercial storage is not specifically defined in your zoning code. Yet in your zoning code a commercial building used primarily for storage of raw materials, finished products for distribution or long term storage that is not open to the public. That definition applies to this project and the title of that definition is warehouse so that's how we've been using the terms interchangeably of warehouse and commercial storage for lack of a better definition. So given that we are asking the Board to look at that interpretation and render a decision regarding this project that it does comply with the zoning code and would be allowed in the B-2 use. In the B-2 use it lists commercial storage and in the Public Hearing Notice it specifically addresses it, it says "as to whether its proposed use of a structure for the combination of office space and "commercial storage" constitutes a special permitted accessory use in the B-2 zone" and we feel that this project does comply with those requirements for the following reasons (1) commercial storage is not specifically defined in your zoning code yet when you read this definition a commercial building used primarily for storage of raw materials or finished projects for distribution or long term storage that is not open to the public, that definition applies to this project. That's under the title of warehouse and that's how we started to use the terms warehouse and commercial storage interchangeably. The intent of the owner is to use this as commercial storage as you define it since there is no better definition we were obliged to use what was in the zoning code and that's the definition that we could find. We are asking the Board to accept this project as a special permitted use within the B-2 zone as a commercial building with commercial storage.

Mr. McKay: I just don't want there to be any confusion. I know that you say you've equated this warehouse term with the commercial storage term, and I don't think that you want this Board to find that it's a warehouse because a warehouse would be prohibited in that section. So I don't know if you misspoke before.

Mr. Niemotko: I said that we started to use the terms interchangeably. We definitely want to comply with the B-2 zone and commercial storage and we are looking forward to you telling us what commercial storage is, the term storage itself in the Building Code refers to storage of different types of items, whether it's high hazard, which this project is not, medium or low hazard, of whether it's dry goods, manufactured goods, foods. This project is of the lowest impact; it's all dry, non-hazard storage of commercial goods, not open to the public. The items would be stored there and redistributed out.

Mr. McKay: I would like to restate what you said; it's my understanding that you're aligning the warehouse definition which says that you can't be open to the public, so this is not a warehouse. You're asking the Board to determine whether or not the use is commercial storage. If it is then the commercial storage would be allowed in the B-2 zone. But it would only be an accessory use to some other permitted use.

Mr. Niemotko: We do propose a business use. We are asking the Board to recognize the commercial aspect of this project, it is office, it is business and we do have commercial storage.

Mr. McKay: I have a suggestion, because the Board is trying, and there really is no place to go, one thing that the Board can do, ordinarily all of your deliberations are made in public. This is a request for an interpretation, so essentially you're taking a quasi-judicial legal action, you're interpreting the Code. So at some point, not to deliberate about the facts, so to speak, you can go into Executive Session to get legal guidance to discuss those issues. Of course, you're deliberations you have to come back out and make your deliberations in public. Always your deliberations have to be in public. This happens to be an interpretation so this Board is sitting almost as judges; you're interpreting what the Village Code says, it would be appropriate in this instance to go into a closed session, or attorney/client session just for legal guidance purposes, maybe to flush out the analysis, really to figure out what you need to decide. That would be appropriate. But then you would need to come back and ask your questions and deliberate. Or you can take any testimony that you want and do that at the end.

Member Crover: I think that we are definitely going to need to go into Executive Session. I think that we should hear any public comments so that if we need to address any of those while we're in Executive Session. Do you have anything more to add? When you first came to us with the plans with eleven suites and eleven storage units, and none of that has changed?

Mr. Niemotko: No, I think that I've said everything that I need to, nothing has changed.

Ms. McCave: What is unclear, you're saying dry, nonhazardous goods would be stored there. Are these goods going to be related to what's going on in the office space?

Mr. Niemotko: Yes, there are eleven suites of offices directly related to eleven storage spaces. So those companies would be governing what goes on in those storage areas, what they take in, take inventory and distribute them back out.

Chairwoman Miller: Are there any comments from the public?

Michael Hagopian Sr: I'm trying to understand what's going on. There will be eleven different tenants with eleven different storage units?

Mr. Niemotko: That's what we're proposing right now. This is the concept that we are asking for now. What we have been proposing for the last few months is a three storied building that we are hoping will be approved. Why three stories is because the site has a lot of fill so to get to virgin ground we have to go down eleven feet and we are doing this so that the storm water can be done underground so this will not impact the upper portion of the land. That's a cost that my client is willing to undertake. What happens with that is most of the first floor is submerged below ground, over 50%, it will not be seen on Route 17M, or even the surrounding properties. I have pictures standing in the back of the car wash looking straight out and at that eye level; you're at the second floor. The first and second floor would be used for storage; right now we are proposing eleven areas, five on one floor, and six on the other. The third floor would be eleven office suites that are directly related to those storage areas. The ground floor is 17850 square feet. My client is trying to accommodate as much parking as he can on the site

in addition to areas for trucks to back in and load and exit, we are cantilevering the second and third floor thirty feet in the back to fit everything, the trucks, loading docks, storage area, stairs coming out and all of the parking. The property is handicapped, for lack of a better word, by FEMA. A FEMA line demarcation exists which we cannot encroach at this present time. The total property is 3.3 acres. The FEMA sequesters away from that 1.1 acres that we cannot use at all. The usable acres are approximately 2 acres. The property is handicapped even further because it's a flag pole lot. So all of the access road to the back area, while it's counted on as being usable space is really only being used to drive in and out of the property. Given the fact that the Code allows 50% of the land to be impacted, lot coverage, we are only impacting the land by 15%. That's 15% of the 2.3, not covering the Flood Plain. We have vehicular parking and eleven spaces for truck parking. Six on one floor, five on the other.

Mr. Niemotko displays the site plan and explains the drawings.

Mr. Hagopian Sr.: The warehouse space is strictly warehouse; down the road they can't convert that to anything? So are they having things come in and repackaging them? Are they bringing truckloads of things in, is this overflow? So would it be tractor trailer load bringing things in and smaller trucks taking it out?

Mr. Niemotko: We are making constraints right now and parameters are as I stated. If there are changes in the future, they would be in violation. There won't be any manufacturing. We are seeking an interpretation of the phrase "commercial storage". There's no definition in the zoning code for commercial storage and we are asking the Board to acknowledge the fact that this project complies with commercial storage as a permitted use. We have commercial space, 25,000' and we have storage space, and it's directly related to the commercial space. It's not segregated out, independent of one another; they will be directly related to each other. As I stated before, I want to be clear, there are no tenants yet, there are no users yet, other than the owner of the property, but that is the proposed use.

Member Crover: The site isn't set up for tractor trailers; they cannot get them in there. There's a 30' truck limit. That will be posted because of the turn and the radius. The max truck in and out will be a 30' truck. There are other variances should our interpretation be in his favor; parking, building height and area variances. We have already established that warehousing isn't permitted in the B-2 zone. This project is trying show that their storage portion and the way that it is directly related to the office suites which makes it a special permitted use in B-2, so they would have to come before the Planning Board every year or two years, whatever they deem necessary, for special permitted use.

Mr. Niemotko: I have explained all of this to the owner, and they are aware of the parameters and constraint.

Mr. Hagopian Sr.: The elevation of that building right now, the dirt is higher than my parking. I will see that building.

Mr. Niemotko: You will see a portion of the back. They have to remove quite a bit of earth. It is eleven feet of fill.

Ms. D'Amico: Where are they going to put it?

Mr. Niemotko: Off site. We can't impact this FEMA line.

Ms. D'Amico: We have the same type of business. They bring in merchandise and ship it out. Are you limited to what kind of merchandise you're going to have?

Mr. Niemotko: The only limit is it will be low hazard. So the Board wants to continue the Public Hearing for all of the variances that we are asking. The next variance that we are asking for is to allow a three storied building opposed to two. Our position with that is that since we have moved all of the fill that was there, the site naturally slopes towards the back and once the earth is removed, meaning most of that first floor will be submerged from Route 17M. Since we are removing all of that dirt we have some other considerations with the overhang, the underground drainage and because of the property, the 1+ acres that can't use, we have asked the Board to allow us three stories, so that we can make the most use of that mostly submerged first floor. The first floor would be approximately 17,850 square feet and the second and third floor would be 25,000 square feet. So coupled with that since we are asking for three stories we are also asking for a height variance. The height variance is given based on the average of the elevation around the building. Our average elevation comes to about 9', so we are asking the Board to grant a variance of 9' in the height of the building. As seen in the pictures, that 9' is not evidence from Route 17M, it would be seen on the back of the property. From Route 17M the 32' to the eave height and 36' from the ridge height comes very to meeting the Code. I'm pretty confident that the 32' meets the Code. So the 9' that we are asking for would be realized from the back of the property. The third variance that we are asking for is parking. Again because of the constraints of usable area, we are limited to parking. We are asking for allowance of 50 parking spaces, along with eleven spaces for trucks. We really don't see these as high impact from Route 17M, definitely realized from the back of the property. The drainage would be in the back. We did the perks, 1-2 minutes. The drainage would be fully treated, storm water only. There is an existing sewer and a sewer easement that we are expecting to hook up to. There are not going to be a lot of plumbing needs. We will be requesting permission to tap into that sewer line. Per Code we will assess how many fixtures are needed by occupant and have one men's and one woman's restroom in a common area. We are looking to lose 1500 square feet of usable space with the common hallway, restrooms on the top floor.

Member Crover: The Planning Board has yet to decide how many parking spaces are going to be required. In a letter we received from them it's explained how it's calculated, warehouse versus office or a combination of the two, one is based on square footage, the other employees. I think whichever way, there is going to be over 100 spots required, so there will be a significant parking variance.

Mr. Hager: Let's just keep in mind, if they get a favorable decision here, they will need to go back to the Planning Board and work out all of these details; the drainage, paving, etc.

Mr. Niemotko: I'm sure that the Planning Board will need to have a Public Hearing as well.

Member Crover: We agreed last month to put the two together, they can't move on without a favorable interpretation but should that happen we didn't want them to have to mail two sets of notices. We don't have to close the Public Hearing on the second part, in fact we won't be able to until we hear from the Planning Board on exactly what they're looking for in parking. And I believe you said there was still work to be done on the building; columns and overhangs.

Mr. Niemotko: The Planning Board is still looking for you to decide on the parking. I have to design around your decision.

Member Crover: We can't give a variance on parking without knowing what the required number of parking spots.

Mr. McKay: The Planning Board has to set the actual parking number. That's when you're really going to know what variance you're seeking. We didn't want to see you stuck in a loop so we decided to allow you to make your presentation about the parking; we are going to hold our decision in advance. If the Planning Board comes with something very different, we may have to reopen the Hearing, or have another on the parking but we wanted to give you the opportunity to give a full presentation but you do have to go back to the Planning Board anyway and that's one of the factors that they determine. You're just a little premature on the parking variance request, that's all.

Member Crover: You can present to us what you think the calculations should be and what you're seeking in a variance but if the Planning Board sees it as something different; you'll probably have to come back. Anyone have any more questions regarding the area variances?

There were no questions.

**Motion** was made by Member Crover to enter into Executive Session.

**Second** by Member Schneider.

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

**Nay:** -0-

**Motion** was made by Member Crover to return from Executive Session

**Second** by Member Schneider.

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

**Nay:** -0-

Member Crover: We are still in the Public Hearing; we have gotten some legal advice from our attorney. We still have some things that we would like to research further and make sure there are no other questions from the public. Or if the public wants to write in any comments if we do close the Public Hearing.

Mr. McKay: The Board has the option to close the Public Hearing but leave it open for written comments, that's on the interpretation.

Member Crover: The Public Hearing regarding the variances will remain open; there will be chances to comment on that in the future. We discussed some of the things that you proposed on how the building is being structured. I would like you to repeat on the eleven suites and the corresponding commercial storage is going to be for each suite. Has your client thought of how they are going to guarantee that each office suite keeps one commercial storage unit and not a renter renting an office and a different renter renting three commercial storages because in my interpretation that wouldn't fit within the zoning. If you could clarify that for the public what your intent of your client is and assured that it will remain that way.

Mr. Niemotko: We proposing a commercial building to have commercial storage. We are proposing to have eleven office suites on the third floor. Each office suite will correspond with a commercial storage space that will be located on either the first or second floor. The two would be dependent on each other, not independent.

Ms. McCave: Could one person rent one office and then get five storage units?

Mr. Niemotko: No, that is not the intent of this proposal.

Member Crover: So if there was a restriction preventing that from happening, your client would be alright with that?

Mr. Niemotko: Yes, they would have to be. The owner has no tenants in line. We don't know who is going to occupy the space. This is a proposal and he would have to abide by it. If that would have changed, we would have to come back before you, the Zoning Board, and ask for relief from that for something else. Right now that is our design intent, eleven suites with eleven commercial storage spaces.

Member Crover: Personally I can understand that there are many businesses that need an office and storage area for the product for their business. As long as it's not for manufacturing or anything because this exceeds that limit, of 10,000' as a whole. I don't want a suite saying that I'm under 10,000' so I would like to do manufacturing here. That wouldn't be allowed. Most of the service-like trades, where I think our zoning is trying to address that with an accessory use, of commercial storage. Our Code did specify commercial storage, not warehouse. I, personally, am not ready to make a decision on that because of the size of the building and I want to review it a little bit more, and want to make sure of the intent is to not separate the office from the storage. Not that someone would come in and say they wanted

10,000' of storage and not an office. That would not fit within the zoning. That would be manufacturing and warehouse and we have a zone for that.

Mr. Niemotko: We feel that this building does comply, to a great extent, to the Zoning Code. The use of commercial business and commercial storage.

Ms. McCave: What is the square footage of each storage unit? Are they all going to be the same size?

Mr. Niemotko: I don't know the square footage of each unit, but they will be the same size. On the lower level, there's 17,000 square feet, my intent is that each commercial storage space on that level will be equal sized, five units, about 3300 square feet each. The second floor is 25,000 square feet, six spaces, about 4,000 square feet each. The office suite would be between 1500 and 1800 square feet each. Each end of the building is going to have to have some means of egress that takes away from the net usable space. I haven't done the architectural yet, but in concept we are definitely going to have a means of egress from the third floor going down.

Member Sainato: The second floor is going to be ground level? Both of the lower floors are going to be ground level?

Mr. Niemotko: Yes, the first floor will be ground level from the back; the second floor will be ground level from the Route 17M side. And the third floor will be 14' above that.

Member Crover: The access to the office is going to be from the upper side, so that you will only be going up one flight of stairs to the offices.

Mr. Niemotko: I haven't designed that yet, but I can say there will have to be stairs from both ends of the building. Just for the Code for the egress. There will have to be some vertical communication between the floors. I thought it was your comment Carol; each commercial storage space has stairs leading to the exterior. Each space will have direct access to the outside for egress, so that will help with the egress requirements but the third floor will definitely have vertical means of communication on both ends.

Member Sainato: Does your client have any idea who would occupy such large spaces?

Mr. Niemotko: I don't have an answer for that, but apparently there is a market out there for it.

Member Crover: Based on how you've presented this to us, I can think of a couple of businesses or trades that could use an office with some storage. From a business sense, I wouldn't build a multi-million dollar building without having an idea who my tenants might be. I would like a list of the types of businesses that you think you're going to attract with this building that you're willing to put all of these restrictions on. You must have an idea what types of businesses you're going to attract, otherwise why would you invest over a million dollars in it? I think that your client has to have an idea what types of businesses he's trying to attract and

I would like to know what those businesses are so that I can make sure that they fit within your concept as I see it, should I feel that it meets our zoning. If you were to come back and say you will have a dentist or doctor in there, it doesn't fit. I think you need to present that to this Board. We're trying to keep past decisions that we've made that we turned down people to put a warehouse type structure without the office in a B-2 zone, stating we have zoning to address that. That business was going to take product in, repackage it and ship it out. You're not attracting that type of business, based on the restrictions you're willing to sign off on. I'm looking for the types of businesses that this million dollar project is going to attract. I don't want a list of tenants, or what businesses are going in there, but who you are looking to attract. Many businesses that meet this criterion is usually one building with one principal use, you're asking for possibly eleven different principal uses. That's what makes this a little unique.

Mr. McKay: One of the things that the Board did discuss, factually, is the Board needs to be consistent with prior decisions. We have had some warehousing issues, light manufacturing, they are different enough that they don't necessarily impact on your proposed use. But they have some similarity when it goes to interpreting the Code so the Board just wants to be consistent with their past decisions.

Member Crover: This is a special permitted use, as well. You'll be going in front of the Planning Board on a regular basis.

Mr. Niemotko: I will talk with the owner, but it does seem like the Board is seeing that this does have a commercial storage kind of application to it.

Member Crover: I can see where you're coming from but I don't want to make an opinion. I do need you to back it up.

Mr. Niemotko: The applicant will submit on letterhead a list of the types of businesses that will be attracted to this type of building. I can talk to the owner; I would imagine that he has some thoughts on different things but like-type industries in the area that I couldn't right now subscribe to. If I do come across something like that I would be more than happy to share that with the Board. I can make it a footnote to the letter to your attention but I can't guarantee that. The other you will have a response to.

Mr. McKay: Someone asked what the process was going to be. You intend to provide that in writing sometime before the next meeting. He doesn't necessarily have to present that at the next meeting or just provide it?

Member Crover: Either in advance or at the meeting is all that I'm asking for.

Mr. Niemotko: I have to submit a ZBA application in continuance ten days before the meeting, so I have to hand in the paperwork anyway. Whatever I have, you'll have 10 days before the meeting.

Member Schneider: Any written comments would be back by then also?

Member Crover: We're not closing the Public Hearing on that, so those comments can come in at any time.

Mr. Hagopian Sr.: It's not an Amazon company that they're bringing in product and re-boxing and sending it out?

Member Crover: That's what we're trying to make clear because no that wouldn't be allowed in a B-2 zone.

Mr. McKay: Based upon prior decisions from the Board.

Member Crover: From our past interpretation that wouldn't fall under the permitted use in the B-2 zone, that's why we were trying to clarify it. Product coming in, being repackaged, product going out, we considered that light manufacturing which is not allowed in the B-2 zone in a building over 10,000 square feet. We denied it.

Mr. Niemotko: Separate parts were coming in, they put those parts together to make something and then it was sent out?

Member Crover: Yes. One example that they gave us was a camera body came in, a camera lens came in, a camera bag came in and they would put them all in one box and send it out as one package. And that was considered light processing in our interpretation. Which is also not allowed that's why I was trying to make that clear to you on the types of businesses you're targeting because if it's the same type of business coming in again, it's not going to be allowed. The size of the building prevents light processing, light manufacturing, the building has to be under 10,000 square feet for that.

Mr. Niemotko: That's a good question, because I would not have thought of that.

Ms. McCave: David, do you have a copy of the Code? That chart with the schedule and it says the different special permitted accessory uses? There are six different things listed there, so you're trying to fall under #5, which is commercial storage accessory use. And #6 is the light processing accessory use and there it says it cannot exceed 10,000 square feet so that's what we're referring to. Are you saying it's commercial storage but really is what you're proposing actually fall under the other one in which case it's too large.

Member Crover: That was one of the reasons that I was asking you what the clientele was, just to make sure you're falling under #5, not #6 of the special permitted uses.

Mr. Niemotko: I don't have the answer to that, but you will have it in the time frame allotted.

**Motion** was made by Member Crover to close the Public Hearing in respect to the interpretation, leaving it open for public written comments in response to the questions that were presented to the applicant.

**Second** by Member Schneider.

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

**Nay:** -0-

**Right Choice Builders Inc.**

**101-2-1.12**

**Discussion**

Present: David Niemotko, Architect

Member Crover: We can't close the Public Hearing on the area variances because we haven't had any public comment on that. I think that we've deliberated enough on this tonight; we are looking for some more information.

Mr. Hager: I want to make some correspondence to the Planning Board to zero in on this parking determination.

Mr. McKay: What is the status of your application with the Planning Board?

Mr. Niemotko: My understanding is that they are waiting for the Zoning Board to do all four items; interpretation, height variance, story variance, and parking variance. I looked through my meeting minute notes and there was nothing that led me to believe that the Planning Board is expecting that you are going to send me back there to get a definition on the parking. They wanted it from you.

Member Crover: Then I would request that we write a letter to the Planning Board stating that should we find a favorable decision on the interpretation and as we start to address the area variances that we need the following questions answered. (1) In their opinion what is the required number of parking spaces for the building as it is designed now. If that changes that they will have to come back before us. We need to address the questions regarding the hardship is substantial; we need to know that number.

Mr. Niemotko: Could you also add this to the letter to the Planning Board? The parking count, in your Zoning Code, there is no parking count for commercial storage. I'm curious what they are going to base the parking count on.

Mr. Hager: There was discussion on the Planning Board level and with the Planning Board's engineer. The Zoning Code Section 140-34d mentions if a use is not listed in Column 9 of

the **Schedule of District Regulations**, then the number of required off-street parking spaces becomes the number of spaces required for the use which most nearly approximates the proposed use as interpreted by the Planning Board.

Member Crover: So based on that they can come up with a number.

Mr. Hager: My recollection is that this was addressed by the Planning Board the last time we met with them and that they had a few concerns about the column locations. They weren't 100% confident with the number that was presented but you had told them that you were going to come to this Board and approach this Board with 50 and you would work around the columns and do whatever was necessary.

Mr. Niemotko: Yes, that is absolutely right.

Member Crover: They didn't address what was required, if it's required 100, required 150. You are proposing a variance for 50 but we need to know substantial that 50 is.

Mr. Niemotko: The variance is to be relieved to 100 parking spaces.

Member Crover: And you're proposing 50, so the required is 150. That's the information that I'm looking for from the Planning Board. What is the required? And then you're proposing, counting the truck spots 61.

Mr. McKay: There's a second issue that should go on that letter to the Planning Board, that we did not know, it wasn't clear in the Planning Board minutes, whether they had designated your proposal as a Type 1 or an Unlisted Action under SEQRA. If they have classified it as Class 1, then they will become the Lead Agency and this Board is only an interested agency so we would need the Planning Board to make a Negative Declaration on the project before we issue the final decision on the variances. If it's an Unlisted Action, then we can perform uncoordinated SEQRA review and this Board can make its own independent SEQRA Negative Declaration on the area variance application. Also the draft resolution needs to be amended. It was basically the Resolution that set this Public Hearing. We'll have that for the next meeting.

Ms. McCave: I believe that you had said that you had some questions that you wanted clarity on, the height, number of stories in regards to the variance applications. What specifically are we looking for?

Member Crover: That's something that he's going to have to present to us if we move forward. On the height I was looking for reassurance on how they came up with the nine feet; if that was the correct way to establish that. That's something that the Planning Board engineer can verify that the height variance is for nine feet.

There were no other comments.

**Motion** was made by Member Crover to close the regular meeting of July 5, 2017 at 10:00pm  
**Second** by Member Schneider.

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

**Nay:** -0-

Minutes Respectfully Submitted by:

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Barbara Singer – Deputy Clerk/Secretary