

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

March 14, 2018

7:30pm

Opened the ZBA Meeting with the Pledge of Allegiance

Public Hearing

J Squared Builders Inc.

102-4-6.3

Use Variance

Motion was made by Member Schneider to open the Public Hearing for J Squared Builders.

Second by Member Sainato.

Aye: Member Sainato
Member Medina
Member Schneider
Member Miller

Nay: -0-

Present: Paul Edwards, Applicant

Mr. Edwards: At the last meeting you asked me to provide backup for the financial hardship aspect of the use variance and I provided that information between now and the last meeting and I hope everyone is in receipt of that. There were a couple of things that I didn't get, one being a verbal only for the bond for the road. It changes that number, it's actually \$5000, but I never got that in writing, the DPW Superintendent was trying to get that number in writing from the Village's engineers Lanc & Tully. I think that I estimated it at \$2500, from my past experience doing road bonds, but the DPW Superintendent said it would be more like \$5000 with \$250 application fee. Also the paving and excavation costs with all of the infrastructure improvements that changed slightly. Originally I got verbal estimates, but after you asked I submitted written quotes. The meetings with the Planning Board and the Zoning Board, I hadn't anticipated going for so long so their costs went up also. The legal cost has gone up. I did an estimated cost, trying to be as conservative as possible, with the price per square foot building cost and I did some google searches the actual selling cost is higher but I didn't redo everything, I'm just pointing it out now. I'm comfortable with the numbers that I originally gave; I think it demonstrates the financial hardship aspect of the use variance. There are other costs that I have laid out.

Member Schneider: I open the floor up for the public to speak. I ask that only one person speak at a time, and announce your name and address for the record please.

Eileen Andreassi, 1 Beatty Circle: I'm wondering about the use of the land for the use of a two family home. Mainly because in my life everyone does stuff now but I have learned look three generations out. What happens to these renters? Paul knows these people now, it's his house, he's responsible, but then the house gets sold, they don't know anyone living there. Now you have two unrelated people there, renting. I know that there's a lot of rentals around Harriman, you can tell which ones are rentals. My concern has much more to do with having two instead of one. I'm thrilled with getting the driveway developed, having another house there, having new neighbors, I would be happier with a single family home. Instead of having double families, double cars, that's where my concern is more than anything else. Also the drainage.

Mr. Edwards: You mentioned the long term, and part of the use variance is a financial hardship, and what I explained to the Board prior to the Public Hearing, unbeknownst to me after I entered into the contract, I gave them a deposit, started spending money on surveying stuff like that, the Building Department found a letter on file that no other houses are to be built until the road is brought up to Village Code specification. It's very in-depth. This adds a lot of money to the cost of the project. We did a real estate study on the median prices of the houses on that block and the houses in the area, and based on what a house could sell for a single family new house, versus what it costs to build, it's something like \$85000 loss based on current values of what the real estate professional in the area thought I could sell it for, a 2200 square foot house. So my thought was to build a two family house, and not sell it, hold on to it. Then over time I could recoup my investment. I know that it's a loser and right now I'm stuck because I've spent a lot of money to be able to do this. It wouldn't be wasted money if I could build a two family house; I could utilize the costs that I have spent already. You mentioned the two family houses in the area, that look run down, you have to remember most of them are 75-80 years old. They've gotten worn down over time and haven't been improved. Also what I had proposed to the Board was building a house similar to your house, a raised ranch, same size, footprint and everything, but having it as a side by side two family house with off street parking, which I think the engineering mandates, so it would have a single bay garage on each side, and driveway parking as well. They demanded that I build a cul-de-sac in the top so there would be a lot of additional parking as well as widening the road, and correcting the problem of the water flowing on to the road. They want me to put a drainage in the culvert pipe in the bottom.

Ms. Andreassi: Renters don't usually respect the property, or the neighbors. We researched and that pipe costs \$3000.

Mr. Edwards: There are a lot of things and that's where the \$40,000 comes in to tying into the infrastructure that they asked me to do to make it up to the Village's road specifications. Even though, they already told me the Village will not accept the dedication of it. This road will always be private.

Member Schneider: The road lot will be combined with the house lot if he gets the variance.

Mr. McKay: The \$40,000 was that just on the road and the drainage improvements?

Mr. Edwards: The breakdown includes excavating, which has to be done prior to the road being tied into the sewer main and the water main. They want a sub base, widened greatly so that two cars can pass each other. In my past experience the Boards don't want to infringe on existing neighbors, there's landscaping over there, we could probably come close to that without upsetting any neighbors.

Ms. Andreassi: The driveway when you're coming up the house on the right doesn't own his home, it is pretty wide. When we paved it, Ms. Fitzpatrick didn't want to contribute so we didn't have enough money between the three of us to pave the whole road, that's why it got skinnier. Just for the record, if we are going to widen it, great, but I don't see why we need another 20', it could just stay as it is, we have lived with it for years.

Discussion broke out regarding the width of the road.

Mr. McKay: Just to be clear, that's not decided by this Board. If this Board approves the variance, then those issues will be decided by the Planning Board, the road width, drainage, sewer and water.

Sheila Blais, 47 N Main St: I have lived at this address for close to 30 years. Having gone through the battle of the road for many years, trying to get it improved, adopted by the Village, it's all old history. It's needed this upgrade but it was made clear that it was not going to be taken over by the Village. We eventually got tired of grading it, putting gravel down, the Fitzpatrick's didn't assist too much, they did give once or twice some money towards gravel but when it came to paving it, which was what, I believe was supposed to happen prior to them be able to make sales, I could never understand how they got away with being able to go forth with those sales and leave the road a mess. Harry Beatty did widen it a little bit. The work that I've done on the road, I know that the road was supposed to be widened almost up to my front porch at one point. I'm not going to agree with that after I've put in all of that work. After being there for so many years, seeing different things going on in the neighborhood, finally I got the neighbors to agree to put some money in and we paved as much as we could. We did our best to make sure the water didn't go in the road, and I don't believe it really does because it is graded and I've observed it going to the side in the gulley and washes down to St Anastasia's. I know the previous DPW Superintendent, Mr. Karl, he said if water gets in the road and if there's any ice patches or if anyone gets in an accident, you guys are responsible. We'll be suing you. I think that we tried to be as responsible as possible, and consider all of that. I'm sorry for the amount of expense that you have to bear but I am not going to be in agreement of a multi-family home. I just put in a lot of money fixing up my own home, and I feel that a multi-family home can possibly bring values down in the fact that you have renters and they don't always care. Now it sounds great, and it sounded great when Harry Beatty was telling me what he was going to do and that never happened. I feel like I'm done with that. I'm going to be strong about it because I've put up with it a lot and I've done my best and I'm lucky to have neighbors who all get along, work well together, we plow the road ourselves, we maintain as much as we can. We've been doing that for a long time. I'm not in agreement of a multi-family because I feel you don't know whose really going to be there, you can tell me all you want that's going to be my daughter, son or family but that's today, what's going to happen tomorrow? I feel that he shouldn't have been able to sell the properties until he had finished the road the way that it was supposed to be. I would be in favor to having a single family home but would hope that the family that it's been built for lives there. If you're not living there yourself, you really don't know what's going on with a rental.

Member Schneider: Paul, we asked you to give us some documentation, and you've provided quite a bit. I recall in the August Planning Board meeting that you had spent a lot of finances already between engineering, surveying and the fees to the Village. I don't see any evidence of that, these are estimates from what I can tell. I was looking for receipts, or a contract.

Mr. Edwards: Mike Morgante, the engineer, that's how he bills me. He gave me an up to date billing, based on the survey he did, meetings that he attended.

Mr. McKay: The one that we received, from Arden Engineering, is three pages, from February 16th, it's not signed, it doesn't have an estimate. It does state \$175/hour, maybe a \$3000 retainer? On your cover sheet you wrote \$5800 and now you're saying it's been updated to \$8000?

Mr. Edwards: Yes. On the second page it says \$8000, that's up to this point. That's the total and that exceeds the amount that I originally submitted. I estimated \$1500 for the survey, and now he's updated it to include what he has done. He does the engineering and the surveying.

Member Schneider: When I look at this it comes across as an estimate, I was looking for actual costs that you've spent, invoices. That's why I'm questioning it.

Member Sainato: You must have received invoices from him for services rendered?

Mr. Edwards: I can show you returned checks. If you need invoices, I can provide them.

Mr. Kelly: Would the cost be the same if you built a one family home? Wouldn't the same cost be associated with a one family home if you decided to build a one family home? If you didn't get the variance, you would still have to pay that same fee? You're saying that it's a hardship because you've said a two family house but knowing at the point that you went into this that you would have to get a variance, you've spent a lot of money up front.

Mr. Edwards: Yes, these expenses would be the same either for a one family or two family home.

Member Sainato: You're building essentially a duplex. You're saying that the project isn't financially viable because a single family won't have as large of a return because the cost would be too much. Wouldn't it be significantly more expensive to build a two family than a single family? It's going to have fire wall, double kitchens, bathrooms, everything. If the cost is going to increase, how does that make it more viable for you?

Mr. Edwards: Yes, I'm saying that I can't sell a house that was the whole real estate analysis; I would have a \$40,000 loss. Essentially the house is the same house, but the mechanical costs will be doubled. Over time, I'm not going to sell it. I can't build a single family house and make a profit there because of the onus the Village is putting on me to improve the road that I was unaware of when I entered into contract. I'm not going to sell; I'm going to recoup my investment over time. I have spent all of this money to find out that there is a \$40,000 bill that I was unaware of. The zoning changed after I entered into the contract. That's the hardship. You asked me to demonstrate why it's a hardship to build a single family house, which I showed whether I was building it for Fitzpatrick Family Trust or myself, and then I had a real estate analysis do a comprehensive study of houses of the size in the area, single family. I'm saying that a single family sale is a loss. I'm saying that over a 20 year period I can recoup my investment and not lose money.

Discussion broke out regarding the road.

Member Schneider: Should this project get approved, I know this is not your intent, but if the house were to go into foreclosure or tax default, now the road is attached to the house property, what happens to that road? Who would maintain it?

Mr. Hager: That was one of the concerns that the Planning Board has and also the Village Board. They have asked the applicant to take on the road responsibility as ownership and even combining the lots so the roadway is not on a separate tax parcel, because there have been cases in the past where the road becomes no man's land because whoever had title to the roadway parcel, doesn't pay the real estate taxes on it anymore. Then it's being auctioned off at the County and nobody wants to take responsibility for it. In this case, the Planning Board is telling him this roadway now needs to be on your property so the property maintenance onus would be on that landowner. All of the other property owners in the subdivision have deeded rights for an easement.

Member Miller: Why would someone want to buy a house if they had to be responsible for a road forever?

Mr. Edwards: With the use variance, the onus adds a lot of responsibility in the sale, but in the scenario that I'm requesting I'm willing to take that ownership on of combining the two tax lots. In a single family house, it's almost like a white elephant; nobody is going to buy that.

Ms. Blais: So all this time, the road has been a separate parcel owned by the Fitzpatrick's but they haven't done anything to keep it up.

Mr. McKay: Yes.

Member Sainato: Paul you have the estimate to construct a single family house at \$325,000 and sale price would be \$330,000. Do you have any figures for a two family house construction? And potential sale price? What's the difference in prices for a single family and two family home?

Mr. Edwards: No because I'm not interested in selling the house. I don't have that information, if that's something that interests the Board, what my building costs would be, we could talk about that. You're saying that I'm adding a lot of cost and what would I do it for? That's the whole point; I can't sell a house and make money over there. That's why I'm trying to get a use variance. I understand that there's additional cost for a two family, but over time I feel I could recoup my investment, over a twenty year period or so.

Member Sainato: It seems like a bad investment, either way.

Mr. Edwards: I'm hopeful over time that will turn. Right now I've laid out over \$15,000 that I cannot recoup. It's wasted money.

Member Medina: When you entered into contract was the zoning B-2 or R-50?

Mr. Edwards: It was commercial.

Member Medina: So you would have to come here for a variance whether you were building a single or multi family home. You entered into this contract knowing that you would need some variance. Any lawyer would tell you contingencies would include approvals from all Boards in order to get a c/o.

Mr. Edwards: Yes, I was reasonably confident after sitting with the Building Inspector, we went over everything, and we knew it was commercial. He explained that there was a mistake in the zoning and that it was going to be corrected at some point, so my advice to you is to move quickly, so you're in a better position to get a use variance. Because there's no way anyone wants a commercial business on a residential street. That's why I entered into contract. Shortly after I entered into contract, paying for the surveying and engineering, is when the zoning changed.

Member Medina: The zoning change actually helped you, because then it became residential. Which would be an easier hump to get over. Changing from commercial to now I want to have a two family home on a commercial property is a harder sell.

Mr. Edwards: I would argue that it's less desirable for the neighbors. I don't think that anyone was aware of the zoning. That's why I entered into a contract; I knew that nobody would want it.

Ms. Andreassi: I knew that it was commercial, I was quite aghast about that. I also knew that there wasn't anyone that was going to come in and build a business on that little strip of land any time soon.

Member Medina: And you weren't immediately aware of the road situation?

Mr. Edwards: No, and the Building Inspector wasn't either.

Mr. Hager: That came after I told the applicant that in order for the applicant to get referred to the ZBA he would have to make an application for a two family use that I would have to deny. After he made his application, I discovered in the file letters that had been put in there years ago restricting that lot from being allowed a building permit until the roadway was improved. That was brought to his attention after he had made the application for a building permit.

Mr. McKay: Those in your files didn't go to municipal searches?

Mr. Hager: I'm not aware of any municipal searches. When Paul came in he and I looked at the file but it was an extensive file and these letters didn't jump out. It wasn't until I made a more detailed review of the file that I became aware. If it wasn't in there as a open permit of open violation, it could have been overlooked. I'm not aware of any requests that came in for that. Other than the applicant coming in and saying can I look at the file, here's what I'm considering on this lot, he was shown the file, neither him nor I realized that the letter was in the file until later when the application came in and we looked at it. I looked at it in more detail, and that's when I realized that not only do I have to deny the permit based on the use that's requested but I also mentioned in my letter that the roadway is a concern and required Planning Board review. So he basically got referred to both Boards in my denial letter.

Mr. McKay: For the record were all proof of mailings and return receipts returned.

Ms. Singer: We received proof of all of the mailings and all but two were signed returned.

Mr. McKay: There are two sheets attached to what I think is the title report, it's a copy of the approved subdivision plan. The letters are something separate and apart from what's on the notes of the subdivision plan. To me that means when the applicant did his title search, it appears to me that it's part of the title search, the letters in the file that made changes in the existing subdivision approval and the notes that came about over the years about this parcel not being able to get a c/o or a building permit because the road wasn't rehabilitated up to the Village specifications.

Mr. Edwards: I don't think it was supposed to be on Ms. Andreassi's house either, it just got kicked down the road. I guess they were trying lever the builder.

Mr. McKay: How did you find out about the subsequent notes? Was it after you signed the contract?

Mr. Edwards: Yes, it was when I applied for a building permit, I received a denial letter to go for a variance and that's when that part of the file was found.

Mr. Hager: Correspondence in the file expands on the notations that were on the original subdivision map when it was drawn up in the 70's. It had two notes on it that are hard to read on small copy. One of them was that the builder was supposed to offer an irrevocable dedication

offer of the road and the other basically says they weren't supposed to issue any building permits or c/o's prior to the road being brought up to spec and there was correspondence back and forth in the file and basically the Village backed up and gave him a building permit and then backed up and gave him a c/o but with a letter finally in the file saying no more permits until the road is brought up to standard and there is only one lot left. Some compromise had been done and they got one house in without the road being brought up to Village standards. The conclusion was, and the Village attorney agreed, that you can't issue a building permit until the road improved. There's quite a bit of correspondence in the file back and forth about when are you going to finish the road, excuses that got filed back but at some point they finally just agreed that they were going to issue the c/o for that third house. At that point the house was probably standing. Whoever the officials were at the time must have felt that the last permit will ensure that the road gets built.

Member Schneider: There being no more questions, I would like to close the Public Hearing.

Motion was made by Member Schneider to close the Public Hearing

Second by Member Medina.

Aye: Member Miller
Member Schneider
Member Sainato
Member Medina

Nay: -0-

Roll Call

The following persons were present:

- Laurine Miller - Member
- Darrin Sainato - Member
- Carol Schneider – Acting Chairwoman
- Lou Medina - Member
- John Hager, Building Inspector
- Barbara Singer – Deputy Clerk/Secretary
- Joseph McKay, Esq.

The following persons were absent:

- Charles Crover – Chairman

Motion was made by Member Miller to approve February 14, 2018 minutes.

Second by Member Sainato.

Aye: Member Sainato
Member Medina
Member Schneider
Member Miller

Nay: -0-

Motion was made by Member Medina to enter into Attorney/Client session

Second by Member Schneider.

Aye: Member Sainato
Member Medina
Member Schneider
Member Miller

Nay: -0-

Motion was made by Member Schneider to close the Attorney/Client session
Second by Member Miller.

Aye: Member Sainato
Member Medina
Member Schneider
Member Miller

Nay: -0-

J Squared Builders
102-4-6.3
Use Variance

Present: Paul Edwards, Applicant

Mr. McKay: The applicant has the burden to demonstrate four factors in their favor. The first is that the applicant cannot realize a reasonable return, provide the lack of return is substantial as demonstrated by competent financial evidence.

Member Medina: My vote would be no, it has not been proven substantially enough demonstrated through financial evidence that the construction of a two family home, while rental received on a two family home could and would result in a higher profit. I don't believe that it would necessitate only being a two family home and for that reason, I would vote no.

Member Sainato: I don't believe that it was demonstrated that this is the only way this could be a profitable project. We touched on that tonight with the two family versus single family. I don't think that's the only way to realize a profitable return by building a two family.

Member Schneider: I agree that building a two family home does not necessarily mean that it would be a profitable project over a single family.

Member Miller: I agree.

Mr. McKay: Just for clarification, there are two parts of that. You can take the position that you can make a reasonable return by constructing a single family home. The other part is that you didn't demonstrate it by sufficient financial proof.

Member Median: That's what I was saying; I didn't see it as being substantial based on the financials that we've received here.

Mr. McKay: The second factor would be the alleged hardship related to the property in question is unique and does it apply to a substantial portion of the district or neighborhood.

Member Medina: Yes, it is definitely a unique piece of property. It does have hardship with the way that the road is a separate subdivided lot and it's a private road and the stipulation on the site plan having this last subdivided property take in to consideration the road is definitely unique.

Mr. McKay: Even though it's in the building department's records that's distinct from what's on the filed plat.

Member Medina: Yes.

Member Sainato: It's definitely a unique piece of property. I'll agree with that.

Members Schneider and Miller agree.

Member Schneider: The third factor is the requested use variance if granted will not alter the essential character of the neighborhood. I think that it would alter the character of the neighborhood if they are all single family homes.

Member Sainato: I think that it would alter it and the two residents that live on the road were concerned with it as well.

Member Medina: I agree, the fact that you would be going from single family to two family requires additional people, additional cars, that in itself would alter the character of the neighborhood.

Member Miller agrees.

Member Schneider: The last factor is the alleged hardship has not been self-created. Either way I think that you would have had to come before us, whether because it's commercial or for the two family so it has been self-created because you have the ability to build a single family home there.

Member Sainato: I think that it was self-created, you have the ability to build a single family and everything would go smoothly.

Member Medina: I am of the same opinion that it was self-created. It's not completely self-created because I would hope that it could be undone as far as the contract with whoever currently owns it. It is self-created in the way that it's zoned single family; you could build a single family. The applicant is choosing to build a multi-family home. In that sense it is self-created.

Member Miller agrees.

Member Schneider: Paul, if you have any comments for us.

Mr. Edwards: The first factor regarding the financial hardship, you mentioned a two family home profit that was something that I was never asked to do, so I'm confused as to why that was discussed. It was strictly single family that was part of the variance. You can't earn a profit on a single family house. I was never asked to show financial backup or anything on a two family.

Member Medina: I was just going by what you said to mitigate your losses you were going to have a two family rental. I believe that you will probably make more of a profit, but the factor state substantial and I don't see it as substantial profit between a single family versus your rental income.

Mr. Edwards: That wasn't part of the question; it was only a single family house. To show that I can't earn a profit on a single family, if I understand the use variance correctly.

Mr. McKay: What the Board said was that they felt that if you had complied with the zoning and constructed a single family home, there would be at least some reasonable return, that you didn't meet the threshold. They understand your explanation that you wanted to construct a two family and recoup more profit over time. It's my understanding from the Board's comments is that the two family home is not the only way to make a reasonable return from the property. So not to delay this, the parameters here are narrow, I will get a draft to you for review, I will e-mail everyone. If anyone has any changes, corrections, just let me know, I will prepare it for Member Schneider's signature as acting chair and if everyone lets me know that this correctly reflects their decision, it can be signed and filed with the clerk.

All Board members agree.

Motion was made by Member Miller to close the regular meeting of March 14, 2018 at 9:20pm.

Second by Member Sainato.

Aye: Member Sainato
Member Medina
Member Schneider
Member Miller

Nay: -0-

Minutes Respectfully Submitted by:

Barbara Singer – Secretary