

VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

March 8, 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
- Chuck Crover – Member
- John Hager, Building Inspector
- Barbara Singer – Deputy Clerk/Secretary
- John Furst, Esq

Motion was made by Member Schneider to approve the minutes of February 3, 2016.

Second by Member Crover.

Aye: Member Miller
Member Crover
Member Schneider
Member Sainato

Nay: -0-

Right Choice Builders Inc

101-2-1.12

Discussion

Present: David Niemotko, Architect

Mr. Niemotko: I am representing the client on both the engineering, architecture for the Planning Board and architectures for this project. The site is located just behind the Speedy's Car Wash. It's a flag pole lot, so it's coming off Rte. 17M, it's a long driveway and it opens up in the back area for the portion of the land that we want to build. We are asking for a few variances, one for parking, the other in height and story of the building. What's generating the request for this variance? One major impact of the site is a FEMA restriction. I note that on the plan, that heavy dotted line. Not encroaching on that FEMA line eliminates approximately 33% of the land that we're allowed to use to build on this property. So already there's a deficiency in our construction. That impacts a few things, including parking. What we're proposing is a three storied building; the occupancy is commercial use with storage and warehouse capabilities. On the lowest level there would be storage, warehousing with approximately five loading dock areas with five areas designated for storage and warehousing. On the second level, the level that you would come in on, would be divided into six areas of storage where the trucks would be able to back in, take out their merchandise and store it there. The top floor, the third

floor, is commercial use, and it would be office suites that are associated with each of these areas. So right now we are proposing eleven storage areas, on the lowest and middle floor, and then there would be eleven office suites that would correspond with each of those areas. My client has tried to work with the parking requirements, we fall within the setback requirements. We're spending the money to do an underground drainage system so that we can increase the amount of usable land as opposed to a large detention area. We are even cantilevering, or overhanging the second and third floors over the first floor, which is an added expense to try to help the site maneuver well for trucks. I did two cross sections through the site, one at the proposed drive and one right in line with the Speedy's Car Wash and you'll see how the grade actually lends itself to this configuration. But you can see the second and third level will overhang 30' past the lowest levels. What is interesting is that anyone driving long Rte. 17M, because of the natural contour or the contours that we have to create for the roadway, only 22' of the building would be exposed. Even with you granting us the variances of height and story. It's over 300' back of the road. The front of the building, or the side that faces Rte. 17M we are proposing 36' from grade to the top of the ridge and the back is 56'. In calculating the average height of the building, I took the average of all four points, and the grade elevations at each one. The allowable height is 35' according to you Code, I gave the elevation the difference of elevation 18', and I come up with a 9' variance, if my interpretation of the Code is correct. I would like to have that verified. In addition to that I know that the Code only allows two stories and we are proposing three stories and as you can see from the grade, the third story is, for the most part, submerged on the front part of the building and then it opens up in the back. If I could go back and discuss the access to the building. So as you come in across the drive, here are the proposed loading dock areas on both sides, so access would come around, you could back up in certain spots, others are just for vans, 30' trucks will be able to come around the back, back in and then access out and there's the circulation that we're looking for.

Member Crover: About the plans, asking if trucks are depicted or are they columns.

Mr. Niemotko: They are trucks. When I was before the Planning Board, I wanted to show their engineer how the site would function, he had some initial comments and we addressed that and there were some other comments that we are working on. The larger graphics are 30' trucks and the other are 20' vans because we are not able to fit it in that area.

Member Schneider: That each of these loading docks, storage areas is going to be associated with a suite on the top floor.

Mr. Niemotko: Yes.

Member Crover: I think that the Fire Department is going to have a problem with this radius.

Mr. Niemotko: We are sprinklering the building. We are going to request to the Village Board to accept the water line coming across Rte. 17M as a water main but also in the Code we are able to bring a firetruck in and it calls for a 200' radius and I show that on another plan in front of the Planning Board. I did accommodate for that initially so a firetruck can come to this point (points to far corner) and still

reach the farthest corner, 200' from that. That's what the Code asks for Fire Prevention/Fire Protection.

Member Crover: You're not going for any setback variances.

Mr. Niemotko: No we are not. We have 39' on both side yards and your Code requires 15' and 30'. Right now I feel comfortable or at least addressable with the emergency vehicle access around the building according to what the Code asks of us. One of the points I wanted the Zoning Board to review was the impact on the surrounding area. The surrounding area is commercial, there is parking all around and I did show three pictures which would be the viewpoint if you were standing at the edge of Speedy's property looking out across. That elevation is almost the same of the second floor elevation of the proposed building and these pictures were taken in the winter time so the foliage is not even in bloom. Even in the wintertime you can see there is a great buffer between our project and the nearest project which is according to the Orange County map is over 1000' away in the back. And that's what you would see in the background, these townhouses.

Member Sainato: Those townhouses are behind Target.

Mr. Niemotko: I would like to use the letter as a guide, we are asking for variances for height, we would like to go 55' to the ridge in the back, as I mentioned. Parking, the calculation for that according to your Code is one for every 200 square feet of office space that would require us having 128 spaces. I am sure under traditional use that parking requirement would suffice but yet in our situation we don't need anywhere near that amount of parking. In fact we're asking for a variance of 75 to bring it down to the 53 spaces that we provide. And even with those 53 spaces, even if there's 3-4 employees in each suite we're talking about 44 parking spaces at the most would be needed for us. Not including the truck spaces, those are dedicated.

Member Schneider: Are these parking spaces between the trucks? So you're going to have a truck back in between two parking spaces?

Mr. Niemotko: Yes, we show parking between the trucks and on the side. The truck spaces would be sporadically used. They come, they drop off, and they leave. The hours of operation are normal business hours during the day, 8 to 5. We feel that the number of parking spaces that they are going to need is even less than what they're asking for.

Member Crover: Would it be a distribution center, where trucks are coming in dropping off and shipping stuff out?

Mr. Niemotko: Yes. It won't be for manufacturing, only storing and warehousing. No assembling.

Member Sainato: How do you control the size of the trucks that come and go.

Mr. Niemotko: If you grant it we present it to the Planning Board and they would put it on the documents that the site is restricted to 30' trucks because a larger truck is not going to fit in there. And the radius' that I show there are for a 30' truck.

Member Crover: The B-2 district doesn't allow for warehousing, the I district allows for warehousing. Most of this building is warehousing. Why are they allowing you to put this warehouse in a B-2 district?

Mr. Hager: That did come up at the Planning Board meeting and the applicant has presented this as the office being the primary use. The warehouse being accessory to the office and that was clarified to some extent by the words so far that he wouldn't be able to rent just the office or just the storage. They need to be associated together. The primary business is the administration and the warehousing is secondary.

Mr. Furst: Do you have a percentage of warehousing opposed to office use?

Member Crover: Based on you square footage there is definitely more footage in the warehouse use than the office suite.

Mr. Niemotko: The top floor we are proposing 25,500 square feet of office space divided into 11 suites. The second floor is the same amount, 25,500 square feet, and the lower floor is 17,850 square feet. The second and third floor we were going to have cantilevered out the 30' so we can get all of the radiuses and clearances for the trucks.

Member Crover: So your lower bays the truck height is going to have to be limited. You're accommodating up to a 13 ½' truck, you're 18' high.

Mr. Niemotko: We are 18' floor to floor, so minus the structure that could be 15'. That over hanged structure could probably all of 3'.

Member Crover: Then all of the hazards of having vehicles under an overhand will have to be addressed.

Mr. Furst: You're essentially going for Use #2, Business Professional and Industrial Offices which is a permitted use.

Mr. Niemotko: 4.5 Commercial Storage Building for Materials.

Mr. Furst: Number 5 as far as one of the special uses so you need a special use site plan approval from the Planning Board. The need a special use and site plan approval from the Planning Board because they are calling themselves a commercial storage building. Did the Planning Board figure out the 1/200 square because banks and offices, I saw in the Code the Planning Board gets to choose what the parking calculations are if there's nothing that directly falls under this space.

Mr. Niemotko: I met with John Russo, from Lanc and Tully, the Planning Board engineer; we came up with the calculation and he came up with 128 spaces.

Mr. Furst: The Planning Board was okay with calling this a commercial storage building?

Mr. Hager: So far they seem okay with that use.

Member Crover: By my calculations it's 63% warehouse.

Mr. Hager: It's clear that the square footage of the warehouse exceeds the office space, but the Code's not specific about what constitutes what's accessory.

Member Crover: Parking spaces are 1 per 200 square feet and warehouse one per employee plus one per hundred square feet, so the warehouse would require even more parking spaces. Tonight we're supposed to accept the application, make sure that we have all of the information that we need? We set the Public Hearing date, establish Lead Agency status.

Mr. Furst: First you have to make sure that you're comfortable with the application, if the application is complete then you could schedule a Public Hearing.

Member Schneider: There are only eleven office spaces but the draft notes from the Planning Board states that you were proposing 16.

Mr. Niemotko: Yes that was the initial meeting. Then subsequent to that meeting I had a meeting with John Russo, the engineer for the Village, and it became obvious that we needed to reduce that. For many reasons, one was the turning radiuses for the trucks were getting very tight, so it was reasonable to bring that from sixteen to eleven.

Member Crover: There is no indication that there would be multiple tenants in there? Or is your client hoping for one tenant using all eleven suite and all eleven storage units? Will there be walls? Or can I rent a suite and have more warehouse space and someone else can rent a suite who doesn't need any warehouse space?

Mr. Niemotko: Those are all options, right now it's my understanding from the client with a lot of discussions, one suite would go with one warehouse space.

Member Crover: The warehouse space is going to be all open; they're not going to have dividers? Is that built into the plans? How are they going to have access to their warehouse space without them going outside? Is there going to be staircases? Is there going to be concrete walls or chain link fence dividing everything? I guess I'm looking for assurance that this doesn't turn into something different than what's being proposed. We can grant a variance and we can always put limitations on the plans, just like the Planning Board was talking about the limitations with the sizes of the trucks going in there. Obviously they can't handle tractor trailers in there.

Mr. Niemotko: The warehouse space is all going to have dividing walls. For security. Each bay would be divided off, with a partition, and just the nature of the building, I'm going to have stairs on both sides of the building that would access from the lowest level, to the second floor to the third level suite, without question. I haven't done the architectures yet, but I can see a common hallway, but just speaking as an architect right now, I imagine a main entrance on one side, a secondary entrance on the other side, stairways on both sides, a hallway from each warehouse space connecting to both stairs. You can't have dead-end corridors, even though the building is sprinklered, for life saving purposes, you want everyone to be able to get out. And they would all access to the third floor.

Member Crover: A client rents suite one with a warehouse space, also one? On the first floor, would they have to go outside to get to their warehouse space?

Mr. Niemotko: They would have to go into a common space, down the stairs and into their warehouse.

Member Crover: So there's going to be a corridor inside each warehouse floor, with doors into that warehouse besides the overhead doors. Are you planning on putting man doors into the parking spots?

Mr. Niemotko: That depends on my travel distance. I haven't checked my travel distance on the Building Code, how far you need to travel before you need to exit, I don't know if I need one in the middle, since the building will be sprinklered, that does allow 250' of travel distance. We might do a business use with an accessory storage use, I'm not sure yet how we will classify it in the Building Code.

Member Schneider: How are the truck drivers getting inside the building? To sign bills of lading, or to meet with someone? Do they use this one common corridor?

Mr. Niemotko: If I could be frank, if you could allow me more consideration on the parking spaces, I would love to introduce man doors for each unit but it does take up a space. Because of the FEMA line and not impacting that, which I agree with, we don't want to touch the flood plain, the site is very narrow. If we could talk about your considering an adjustment even further with the parking, I would welcome the opportunity to introduce man doors for each unit. There would be six in the front and five in the back. Maybe we could come to an agreement; maybe I don't need to reduce it by eleven spaces. The end units could access it from the sides, and then I would need a reduction of nine spaces, for a request for a variance, not eleven.

Mr. Hager: You mentioned that's a 30' truck, could you pull those passenger car spaces out? That's a 20' parking space, which gives you an additional 10'. Would that leave enough room for an aisle or walkway?

Mr. Niemotko: That's another great idea, because the Code's going to require a landing for the stair, and with six stairs, I'm going to need 10' of space to be able to come out onto a landing and go to the right or the left.

Mr. Hager: You could probably pull the passenger cars spots out so that you would have room for your stairs.

Mr. Niemotko: Yes, I could do that.

Member Sainato: Is it just one way around the building?

Mr. Niemotko: Yes and it will have directional arrows, signs showing one way. When I met with the Planning Board, they were going by the office space, solely, not by the warehouse space. The office space is 25,500 square feet that already is 128 spaces.

Member Crover: That's for the office space but the warehouse would require more. Even one employee per 100 square feet then you would need a total of 300 parking spaces, which I think is excessive.

Mr. Hager: I thought that John Russo was going by employee count. Is there two sections of Code?

Member Crover: That's warehousing. It has to be decided, it's not being considered a warehouse if it's going to be an accessory use. This is in their favor since warehouse space requires more parking spaces than retail or office space.

Mr. Hager: I think what was discussed at the Planning Board level was that the expectation was that any employees that are working in the warehouse would also be employed in the office area so it's not duplicated with the number of employees.

Mr. Niemotko: And that is definitely the scenario, absolutely.

Chairwoman Miller: Is one of the requirements for having the office space is that you have to have storage space if you're going to rent it to someone? Who controls what goes in the storage? The type of material?

Mr. Niemotko: Yes, so the eleven suites of office space will correspond directly with the eleven warehouse spaces. The Building Code would control what goes in to storage; they're not going to allow anything flammable. They would have to follow the Building Code requirements, it gives you a use, mercantile, commercial, storage and there is a hazard use. This building would have to comply with the requirements of a high hazardous use and it won't. Right now we are going to classify it as either a commercial use or storage use. And within that perimeter, that would disqualify anything flammable or explosive. I can only restrict it on the plans.

Member Crover: That would be up to the Code Enforcer. The way that they're offering this building, the Planning Board should be looking at this as a special permitted use so that it has to be reviewed every year. Unless they give them a three year agreement, which they don't normally start out that way. Some of the other businesses around here for the first five or six years they review it every year to make sure that they don't change the use. I'm not going to speak for them but history has shown

for the first five years. In this case I would hope that they would keep it that way because the tenants could change, which would mean the use could change. I could see this as ten tenants, or one tenant.

Mr. Niemotko: Absolutely. And my client would be very happy with one tenant.

Member Crover: Your client is not in the trucking business then? He just wants to own the building and rent it out? He doesn't have a business himself that he's putting in there?

Mr. Niemotko: Correct.

Member Crover: We had another applicant who wanted to bring merchandise in, repack it and reship it, in the B-2 district, and we said no. I want to make sure it's not the same type of client that we said no to once, how could we say yes now? But now they're adding office space and the Planning Board is saying that the office space the primary use. I think that we have enough information here based on the three variances that they are coming for. It looks like the application is complete.

Mr. Furst: A couple of clarifications. The way that you calculated the parking was just using the office space? Which is 25,500 square feet and divided that by 200, and the other space was not factored in? And could you repeat how you figured the height?

Mr. Niemotko: Yes, that give you 128 spaces and the other was not factored in. For the height, the way that I understand the Code, picked the four corners of the building. A,B, C,D. Corner A is in the upper left hand corner and that elevation is 566, and you're allowed 35', so you add 35' to 566 you come to 601. And our elevation is 619, so that add 18' making one corner +18'. The next corner B is also +18'. The front corners are 584', and there we are going up 36', making these corners +1'. Adding them up and dividing by 4 getting 9.5.

Mr. Hager: It's a peaked roof so it's 32' eave height and 36' for the peak, making an average of 34'. It depends on the roof style; if it's a flat roof or a mansard roof then it goes to the highest corner of the roof. If it's a pitched roof then it goes to the average.

Mr. Furst: The Code states, "Height: 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....."

Mr. Hager: A mansard roof looks like a peaked roof from the sides but it's flatter on the top. This is a peaked roof. So we would use the mean to determine height. I would interpret that as being the difference between the eave and the ridge, getting 34' and the other side is going to be 54'.

Member Crover: So from the front, you don't need a variance on the height.

Mr. Hager: The mean would not be exceeding the 35' in the front of the building. It's only the back of the building. So if you average 34' and 54', getting 44', the way I interpret it they are averaging 44' and the required is 35', asking for a 9' variance. This roof doesn't have a lot of slope, so going to the mean

application doesn't gain you that much, but if you had a much higher pitched roof that would make a pretty big difference for your variance. So that looks correct to me.

Member Crover: Honestly you can almost say that this bottom floor is a basement. That it's a two stories structure.

Mr. Hager: It's probably a basement in the Building Code.

Mr. Niemotko: It's 50% below grade. To be safe, I was going to ask for the three stories.

Mr. Furst: You could certainly take it under consideration when you go through the five factors for the variance. If the State Building Code supports that it could be defined as a basement, you might want to submit that information because the Board can use that when they go through the five factors.

Member Crover: We could use it on the variance for the three stories?

Mr. Furst: Yes. The State Building Code says this may not be an actual story although it's not conclusively preventing the variance; the Board could certainly take it under consideration and use it while doing the five factors.

Member Crover: What are the grades going to be on the end of the building? Is the entrance level fairly consistent with the second level and then slope it when you get to the back of the building? Where it cantilevers down? Are you accessing the building at the second level and then taking stairs to the suites on the top level and also down to the bottom floor?

Mr. Niemotko: Yes, actually the slope occurs on the side. The grades are going down. It flattens out along the FEMA way and then the grades go up. The parking spaces have to be on less the 5% grade. There will be a set of stairs going up to the third floor and another set going down. I still have to work out some details, there's also a retaining wall.

Member Crover: Some of these parking spaces may be at the second floor grade then.

Mr. Niemotko: Yes, there are some at the second story level without question. Right now I'm showing the retaining walls at the corners to get my grades. I'm comfortable with one side but I still need to do some work on the other side of which level that's going to come in at because right now I'm going low and I'm only starting to climb over here to reach the drive. SO this might be able to come in on a lower level or it might have to come up to the second level.

Member Crover: I think that we need that information for our determination because when you're going for the height variance. I think as you come down and see that it could have an impact on our decision. At least on my interpretation on the decision. I'm talking about the building height; the look of the building height will be different depending on where the grades are. If this is your access point, this is going to be a point visible, if that slopes down and you can see all three stories back there it's going to taller than if you have this grade up and the only place that you could see the tallness was

from the back where there is nobody. If you don't see those 56' there's a little less impact if that drops off and you see the 56'.

Mr. Niemotko: Then I would rather go for the variance on the three stories. I'm not changing the building height. And I do agree. This is 300' away from the road and even when you get to this point where the drives have to separate, I don't think you're going to be able to perceive the third story in the back. I show that a section of the driveway, the first section on the second page, gives a pretty good view of what would happen as you're driving down the proposed drive and meet the building

Mr. Hager: There's two commercial buildings next door.

Mr. Niemotko: We're going to have to do a retaining wall.

Member Crover: Any idea how high that retaining wall is going to have to be?

Mr. Niemotko: About 8'.

Member Crover: If it's 8' you have to have a fence. Chain link?

Mr. Hager: Anything over 30" high will need a railing or fence of some sort.

Member Crover: I think that we have enough information to move on to a Public Hearing.

Mr. Furst: A couple of procedural things, this has to be referred to the County because it's right off Rte. 17M which is a state road. Even though you're Planning Board application went to the County these variance applications also need to be referred to the county for the 239m referral. The County is supposed to look at County wide impacts, I'm sure one of the comments that they are going to have is the visual impact it will have on the rail trail. That runs right behind your lot, I'm just giving you a heads up. I saw that there was quite a bit of vegetation, is most of that remaining?

Mr. Niemotko: All of it is. The vegetation that you see is within the FEMA flood plain.

Mr. Furst: You are only building in the area that is already cleared. I am sure that the County will still have comments on that. This has to be referred over to the County and the Board can't act until it receives their comments or 30 days have passed. If you feel that you have a complete application, you can authorize Barbara send it off to the County Planning Dept under 239m. Since you're right on the border of the Village of Monroe and the Town of Monroe, the notice of the Public Hearing has to go the Village and the Town and these application materials also have to go to the Planning Board. Under your Code you're supposed to refer Zoning applications to the Planning Board and the Planning Board has the option to issue comments or not. I think with an application like this I think it would be good to get some feedback from Planning Board. That can help in your decision. The last issue is SEQRA, so was it discussed at the Planning Board whether this was a Type 1 or Unlisted action

Mr. Niemotko: No it wasn't discussed. I think it's an unlisted.

Mr. Furst: What is the total gross floor area of the three stories?

Member Crover: 68,850.

Mr. Furst: I may need to talk to the Planning Board’s engineer and attorney. This could qualify as a Type 1 Action because of the Heritage Trail. Usually the threshold is 100,000 square feet but if you abut County parkland or recreation area the threshold is lowered to 25%

Member Crover: It doesn’t abut it because the Ramapo River is between them.

Mr. Furst: The property abuts it. The Ramapo River runs through their property. And if you look at the map it says “Lands of Orange County”. I don’t know if the Heritage Trail is considered parkland. Since you’re substantially contiguous to the Heritage Trail I think the thresholds re lowered by 25%, so instead of 100,000 square feet being the threshold, now it’s only 25,000 square feet. I would like to talk to the Planning Board’s engineer and attorney because we need to be consistent because if this is a Type 1 Action then you need to do a coordinated review, and I’m assuming that the Planning Board would want to be Lead Agency and you wouldn’t be able to act until they issue a Negative Declaration. So you could schedule the Public Hearing but you may have to keep it open, worst case scenario, until the Planning Board issues a Negative Declaration. I don’t want to hold anything up, we can determine this as we go, but I just wanted to let you know that if this is a Type 1 action, it’s going to require some coordination.

Motion was made by Member Crover to accept the application of Right Choice Builders and schedule a Public Hearing at the next Zoning Board of Appeals meeting on April 5, 2017.

Second by Member Schneider.

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

Motion was made by Member Crover to close the regular meeting of March 8, 2017 at 8:45pm

Second by Member Schneider.

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

Minutes Respectfully Submitted by:

Barbara Singer – Deputy Clerk/Secretary