

## VILLAGE OF HARRIMAN ZONING BOARD OF APPEALS

NOVEMBER 6, 2024, 7:30 PM

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Chairman Pettiford opened the Village of Harriman's November 6, 2024, Zoning Board of Appeals regular meeting at 7:30pm. He welcomed everyone followed by the Pledge of Allegiance and roll call.

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

**Absent:** none

**Member LaMarch made a MOTION** to accept the minutes from February 1, 2024.

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

**101-2-1.12 – Right Choice Builders, variances requested:** Attorney Aaron Warner, Attorney Daniel Richmond, and Engineer John Loch present for the applicant this evening.

Attorney Warner stated this is a 2 story with a mezzanine level mixed use office and storage space, located at 200 Route 17M in the Village's B-2 Zone. Construction is essentially complete; however, the applicant appears before this board in connections with a denial from the Building Inspector for a Certificate of Occupancy. (Letter dated October 22, 2024, from the Law Office of Zarin & Steinmetz and denial letter dated October 18, 2024, attached to the minutes).

The applicant is requesting 2 area variances, code interpretation and parking spaces of additional 7 spaces. Height requirement is 35 feet, requesting an additional 1.33 foot which is not a significant difference due to the topography and tree line of the property.

Mr. Loch handed out paperwork with diagrams to the ZBA members, which he will send digitally to the Secretary. The 6 corners of the building were used for the average grade. Per code usually only use 4 corners to determine the height. Stories of the building should be excluded due to the loading dock to determine the height. The site plans don't show any peaks with the slope. Discussion between Mr. Loch and Attorney DeJoy about the height of the building. Agreed to the height of 36.52, excess of 1.52.

Mr. Loch noted the loading docks are at the lower level with storage space in the middle. Office spaces are located at the outer perimeters of the building. The second floor above it is a mezzanine level which is different than a 3-story building. The NYS Building Code states that a mezzanine is not a story. Added a little bit more office space than was anticipated from site plan approval, concerned was this another story. It didn't build any higher for the mezzanine level. The site plan showed an elevator to be installed to the mezzanine level but didn't account for parking.

Attorney DeJoy per the Building Inspector in his referral stated the third floor is considered a floor area of occupancy per the NYS Building Code. Apparently, there is a difference between his and your interpretation. Additional information is needed for explanation of the code for the board members to determine if a variance or interpretation is needed.

Mr. Loch approved parking for the site needs to be addressed. Currently, there are 78 parking spaces on site. After discussions with the Village's representative of Lanc & Tully there is an additional black-topped area to place 5 parking spaces that won't interfere with truck movement. The Building Inspector and Lanc & Tully's office deem that a total of 90 parking spaces is required. We are seeking a variance in the requirement.

Attorney Warner stated that plans were submitted regularly to the Building Inspector for his review.

The following questions on the *AREA Variance* requested are answered on October 22, 2024, Attorney letter and were reviewed this evening by Attorney Warner:

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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?

Height variance will not have undesirable effect. The building is tucked away in a bowl with a dense tree line in the rear of the building which blocks the view from the Heritage Trail. To the west of the site there are more trees and vegetation screening the property from Loyal Auto Tire Center. Front of the site is screened from Frankie's Car Wash with their vivid colors.

Regarding the height variance for a third story, the applicant did not intend to build a third story and does not believe they have built a third story. Applicant believes the mezzanine level is within the 2<sup>nd</sup> floor.

The Planning Board previously approved 78 parking spots. With the mezzanine floor area added, your consultants have indicated 90 parking spaces are required for the site. Furthermore, the applicant is amenable to using the adjacent property to provide for additional 26 parking spaces should that be needed.

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

The building is already constructed, requiring the applicant to reduce the project now would be serious economic hardship. If this board has any other ideas or reasonable changes to mitigate the non-conforming are welcomed to the applicant.

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

These variances are not substantial, negative impact on the neighborhood character.

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?

The parking variance being requested will not have an adverse effect.

Question #5 Is the alleged difficulty self-created?

The applicant relied upon the Building Inspector regularly submitting building plans, which he reviewed. In this case the building is complete, and the applicant was not aware of any deformities. These variances will not create any precedence.

Member Paez asked how many times submissions were given to the Building Inspector, Mr. Loch acknowledged at least 3 times. Member Paez asked if any communications from the Building Inspector were sent. She would like to see the communications between the applicant and the Village.

Attorney Warner noted for the record, when we started originally in 2017 to where we are at now what the original ZBA plan was. Chairman Pettiford read from the 2017 ZBA decision, page 11. ..." The ZBA determines that the alleged difficulty asserted by the Applicant to justify its area variance requests was definitely self-created. Specifically, the Applicant has asserted that the three area variances are needed because of the flagpole shape of the lot and the loss of 33% of usable land due to FEMA demarcation line. The ZBA finds that the Applicant was aware of these limitations on developing the property when it purchased the property. The "need" for the three variances arises solely from the Applicant's desire to maximize its profits by building a structure with the largest possible square footage. The ZBA finds that the Applicant could simply build a smaller structure that is more suitable for the size of the usable portion of the lot and does conflict with the zoning requirement for the B-2 district."

Mr. Loch noted the building was predominantly to be offices, storage was not talked about. The layout was somewhat different, later on they had the wetland reevaluated. It was determined there were not wetlands on this site and this issue disappeared. This site does have some differences from before. Attorney Richmond noted that this request is much less substantial than when requested to the ZBA in 2017.

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Chairman Pettiford pointed out the leniency of the Village ever since the beginning of this application, allowing all of this up to the point we are at C of O being denied again for reasons being stated. We are narrowing the issues down.

Per Mr. Loch the applicant has currently acquired a parcel, his intentions are to subdivide the property. Unable to do this at this time due to the current technical issues with SWPPP. Have looked at a preliminary plan.

Member Paez asked to explain SWPPP. Mr. Loch noted that SWPPP stands for the Storm Water Pollution Prevention Plan. Harriman Community is in what is called MS4, regulations to be followed that are very strict.

Member LaMarch asked if there is any SWPPP documentation available to review. On the site is a mailbox with the SWPPP paperwork. Best practices are to be used to contain water on site.

Attorney DeJoy noted procedurally could schedule a public hearing next month if you feel application is complete and substantially enough information to decide on this matter. You still ask for more information at the next meeting as needed. GML submission needs to be done, needs to wait 30 days to offer a decision.

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

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

Members of the ZBA Board and Attorney DeJoy left the meeting room at 8:32pm.

Members of the ZBA Board and Attorney DeJoy returned to the meeting at 8:43pm.

**Chairman Pettiford made a MOTION** to schedule a public hearing for January 8, 2025.

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

**Member LaMarch made a MOTION** to close the regular meeting of November 6, 2024, at 8:46pm.

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

**Minutes respectively submitted,**

**Maria C. Hunter, Secretary**