

Village of Harriman
Zoning Board of Appeals
December 10, 2014
7:30pm

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Opened the Zoning Board of Appeals with the Pledge of Allegiance

Call to Order

- Chairperson Laurine Miller called to order the Zoning Board of Appeals Regular Meeting at 7:30pm on December 10, 2014 at the Village of Harriman Hall located at 1 Church Street, within the Village of Harriman, New York.

Roll Call

The following persons were present:

- Laurine Miller – Chairperson
- Chuck Crover - Member
- Colleen Farrell – Member
- Carol Schneider - Member
- Ron Walker – Building Inspector
- Jane Leake – Deputy Clerk/Secretary

Also Present

- Joe McKay – ZBA Attorney

Absent

- NONE

Adoption of Minutes

- **Motion** to approve the minutes from November 18, 2014 Public Hearing was made by Member Farrell and seconded by Member Schneider. 4 Ayes.
- **Motion** to approve the minutes from November 18, 2014 Regular Meeting was made by Member Farrell and seconded by Member Schneider. 4 Ayes.

Samuel Kaufman (Best4Best)

102-4-1.222

Decision on Application for Interpretation of Code for Light Processing

None Present

Ms. Farrell stated I read the decision and I think that our attorney touched upon a lot of what the Board as feeling as far as the building that he is operating now is in a warehouse. What he is going to be doing or would have been doing in the

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building he wanted to construct was very similar, is warehousing as the decision outlined it was not adding to the value.

Ms. Schneider replied no value added to the product from the time it was brought in to the time it left.

Ms. Farrell continued stating even after visiting the operation it was basically the same operation he was doing at the site he is at now and in the building he was going to be constructing. The site visit I went on clearly in my opinion was warehousing. I didn't see that constructing a new building and doing what he was going to be doing over at the new site was going to change anything. As far as the decision outline, was when the engineer who was presenting on behalf of the applicant submitted information from the Town of Goshen's Code and what he submitted didn't really pertain to what he was going to be doing at the new site and he really didn't explain where he got that from Goshen's Code. So it really wasn't helpful in defining the light processing or light industry.

Mr. Crover stated I also agree with the decision. It covers everything that we talked about at the last meeting. The only other thing that I had mentioned at that is our Code and our Zoning does allow, we do have Zoning for warehousing and there is property available for warehousing so it is not as if there is no other choices in the Village of Harriman for the applicant to purchase property that would meet his needs if he wanted to remain in the Village of Harriman with his business.

Ms. Schneider replied I think we have to get to the point where we get warehousing defined.

Mr. Crover responded right.

Ms. Farrell stated and light processing. It is something that I think would have to go back to the Village Board to define what actually is light processing. So it either stays in the Code or comes out of the Code, but there needs to be some guidance for us I think moving forward.

Mr. Crover replied we can recommend that they just add the definition that we used from Wikipedia.

Mr. McKay responded we didn't use the definition from Wikipedia. Wikipedia definition was for light industry. It wasn't light processing.

Ms. Schneider stated we did use the warehousing definition from Wikipedia if I'm not mistaking.

Ms. Farrell replied right because that is not Zoned from warehousing, it is Zoned for light processing. We need to know what a definition for light processing is. I think that is what we need for a B-2 Zone.

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Ms. Farrell and Ms. Miller asked does anyone else have any comments?

Mr. McKay asked Chuck do you want to add some specific language that you just mentioned to the decision?

Mr. Crover replied no, because we are interpreting light processing, the definition. They were not asking for a variance.

Ms. Farrell stated I think the decision can stand as it is. I'm fine with the decision. I don't know if anyone else wants to add anything.

Ms. Schneider replied I am fine with it.

Mr. McKay stated this is to the best extent that I could, I took all the Board Member comments and questions from the Public Hearing. So I think everybody seems to be comfortable with the draft. There was one specific point when the decision says taken in context with the terms manufacturing and machine shops, the board determines that a permissible light processing use would be required to manufacture or produce a good or item, or to process items in a way as to add value to the materials or goods used in the process.

Mr. Crover replied that comes from the light industry because the light industry is making clothing and stuff like that. Taking something and making a higher value item.

Mr. McKay responded and that went to the point that Carol was making.

Mr. Crover stated they are not making anything. They are taking items and it is not increasing the value, even when they are so called bundling.

Mr. McKay replied I want to make very sure because this is a specific phrase in the decision. So if you approve this because essentially we are defining a term which is not defined in the Code and I want to make sure that, again, this was taken from bits and pieces of everybody's comments and it makes really a very specific determination as to what this Board would permit as light processing in the future. Essentially that it would be some type of a manufacturing process to use materials or goods to process an item in a way to add value. I think that is really what the Board was saying, but because this one sentence is very specific. This is going to now, unless the Village Board defines the term light processing, you are essentially defining it here. So I want to make sure that everyone is comfortable. That is really the heart of the draft. Again, I just want to make sure that that really properly explains the point the Board was making.

Ms. Farrell stated I just want to go back and read that again.

Mr. Crover replied I agree with the way you are putting that term and defining it because of the other things listed in item 6 under special permitted use. It says

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manufacturing in machine shops. That is exactly what they do. Machine shop takes raw material and makes things.

Ms. Schneider & Ms. Farrell responded with a higher value.

Mr. Crover stated it says light processing, manufacturing and machine shops. It takes raw material and makes something of value. It bundles those three things together under item 6, under special permitted use. That is what was meant by that when the Zoning was created.

Mr. McKay replied I think that is what the Board meant and I want to make sure that I interpreted that correctly.

Mr. Crover & Ms. Schneider replied you did.

Ms. Farrell stated I just want to be careful that he doesn't come back and say, okay part of what we are doing now is that. The majority of the business would have to be light processing if that is what somebody is going to do in that building they construct that would be the majority of their business.

Mr. McKay replied right.

Mr. Crover responded that is something the Planning Board would determine through the special permitted use.

Mr. McKay stated it would have to be the essence of the business, not just a small part.

Ms. Farrell replied right.

Mr. McKay stated there was a discussion where the applicant used the word, not anybody on the Board, where occasionally they would do this bundling. So it is kind of linking together the storage or warehouse part with the bundling, which is what they thought the process would be and even they acknowledge it was only repacking. That was there term. So it has to be the heart of the business, just because that new business would do something occasionally to fit in to this definition that still might not be sufficient for the approval.

Mr. Crover responded we have covered everything. You ladies have made the motion and second last month. If you want to do that again, we can fill in their names.

Mr. McKay replied if nobody feels any changes are necessary you can make a motion.

Ms. Farrell asked do we have to put that in their? That we are defining that now for what the processing is. That we should put in that that would need to be, to use your words, the heart of what the business is. I'm a little fearful that, this is

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for any person wanting to construct a building saying well this is what we are doing some processing. I just want to be clear that if we are using this and we are defining this in this decision that that would have to be the bulk of what that business does since there is no other definition and we are going to rely on this down the road. Where somebody else, if we are not sitting in these seats, if we are off the Board, I just want to be clear of that because I think that this is really going to be the definition for light processing in that Zone.

Mr. Crover replied all we have to do is say what the definition of light processing and then we determine what they are doing is not light processing.

Mr. McKay stated I think you were asking a slightly different question. You are saying what if only part of what they are doing is light processing?

Ms. Farrell replied right.

Mr. McKay stated is that permissible? Luckily for the Board that becomes Mr. Walker's decision to make.

Mr. Crover replied and when they are before the Planning Board.

Mr. McKay responded right. As to whether that is essentially what the business is. To distinguish from occasionally doing something or another it doesn't quite fit the definition.

Mr. Crover stated at least we are giving the Planning Board a possible definition to work with until the Village Board creates one.

Ms. Schneider replied there was also no evidence to support the fact that they do this. You can't go online and order a camera and say I want you to put special lens XYZ on it. There was no evidence to support that they even did that.

Mr. McKay stated they did testify to it.

Ms. Schneider replied yes they did.

Mr. McKay stated there testimony, if you think it is truthful, is evidence. So they did testify to that. They didn't submit any documents or anything to demonstrate it, but they did give their testimony.

Motion was made by Member Farrell to adopt the Best4Best Decision.
Seconded by Member Schneider. 4 Ayes.

Discussion broke out.

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ZBA APPLICATION

Ms. Miller stated the next thing on the Agenda is the ZBA application, do you want to do anything with that tonight?

Discussion broke out

Mr. Crover stated as for that application. I thought that looked pretty good.

Mr. McKay responded I do have some written comments. Overall, between this and the forty four year old form that we are using now, this is pretty substantial. On the first page it provides a person may appeal, a person may file a petition. It includes variances. It does not include, I don't think, an explanation of interpretations. Since, that is one of the things that they can come to the Board for. There should be a paragraph added that explains that people have an opportunity to seek and interpretation of the Code and a two sentence explanation of what that is. On the second page, it has a subsection that says what is required of applicants and it lists that the applicants must pay a non-refundable fee, but in addition to the fee, we now clarified with the Village Board that they need to pay an escrow. So I think it should be clear in the instructions that they pay a fee and are also required to pay an escrow.

Ms. Farrell asked is that for everybody?

Mr. McKay replied I would have to go back and look at exactly the language that the Village Board adopted.

Mr. Crover asked is it a different escrow fee for different applications?

Mr. McKay replied yes.

Mr. Crover responded so maybe where we list the fees we should list what the escrow is with the fees. Do the Fee then / (slash) the escrow fee. You added the fees on that last change so maybe we can put the escrow next to it.

Discussion broke out.

Mr. McKay stated I have some specific comments. There is some unnecessary language, so I will show that to you Jane. There are one or two points that I thought were overly specific, which are one or two minor points. For instance, there is a sentence that says a use variance cannot be granted for certain reasons and when I read it I thought it sounded like the Board was determining things in advance with an application. I think it is better to, if somebody wants to apply for a use variance, take the application and determine the variance rather than try to warn people before they apply that they might not be entitled to something. It just didn't sit right with me to have that language.

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Mr. Crover responded but if there is something that prohibits a certain type of use variance why should somebody pay to be denied.

Mr. McKay replied I agree with that.

Mr. Crover stated I think they should be told up front that that particular type of application is not allowed. They shouldn't be charged \$500.00 to hear it is not allowed.

Mr. McKay replied I agree with you completely. So what I can do is I can review that specific language with Jane for the next version.

Mr. Crover replied I know if I was that applicant I would be a little upset for wasting the money.

Ms. Farrell responded I would be a lot upset.

Mr. McKay continued stating some comments, comments, boxes and things on the form. There is only one thing that I really saw here which was omitted and there is a conflict of interest form that comes from the General Municipal Law and I'm sure it has to be in some of the other samples that you looked at and that would be its own separate page, a separate affidavit and that is required and I will get you that so you can include that in the next draft. Other than that I thought it was a substantial improvement. I thought Jane did a very good job with it.

Ms. Schneider replied good job Jane.

Ms. Miller asked does the Village Board have to approve this change?

Mr. Crover replied yeah.

Mr. McKay responded I would as a courtesy let them review it and make sure they agree with it.

Mr. Crover asked what is the conflict of interest? Who does that protect? The Board?

Mr. McKay replied it is basically a disclosure statement that the applicant doesn't have a relationship with anybody on the Board, personal or financial interest with respect to the Board Members and that is mandatory.

Mr. Crover asked that way that person can recuse himself?

Mr. McKay replied correct and really what it prevents is somebody coming back later on and saying well this person shouldn't have sat in on my decision. They have to tell us if there is a conflict up front. But, that was the only omission that I saw.

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Mr. Crover responded I guess if you can give that form to Jane with those minor changes/recommendations and then forward that to us for review and then maybe we can adopt this at the next meeting and then forward it to the Village Board for their review.

Mr. McKay stated Jane I will fax over my handwritten notes and then we will just speak.

Ms. Leake replied that would be good.

Ms. Miller asked nothing else?

Mr. McKay replied I'm good.

Ms. Farrell responded that's good. You have nothing on the horizon that you know of.

Mr. McKay replied any correspondence.

Ms. Leake replied no. He will probably come tomorrow for the decision. That is all that I know of.

Mr. Crover asked after closing the meeting do you want to do a little bit of training?

Mr. McKay replied you just kind of spring it on me.

Mr. Crover stated I'm asking.

Mr. McKay replied sure, I'm willing to do it any time. I really don't remember. We started and stopped quite a few times.

Mr. Crover stated we haven't done it in quite a while.

Ms. Farrell responded I have a lot of hours already. I didn't miss any of the training.

Mr. Crover stated we are starting a new year now too.

Mr. McKay replied I'm trying to remember how much we covered, what we covered. I know I had put something together.

Discussion broke out.

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Adjournment

- Motion to adjourn the ZBA meeting at 8:00pm was made by Member Crover, seconded by Member Farrell. 4 Ayes.

Minutes Respectfully Submitted by:

Jane Leake – Deputy Clerk/Secretary