

**Village of Harriman
Zoning Board of Appeals
March 5, 2014
7:30pm**

Call to Order

- Chairperson Laurine Miller called to order the Zoning Board of Appeals Public Hearings & Regular Meeting at 7:37pm on March 5, 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
- Edward Ford – Member
- Carol Schneider - Member
- Jane Leake – Deputy Clerk/Secretary

Also Present

- Joe McKay – Village Attorney

Absent

- Ron Walker – Building Inspector

Old Business

**LOYAL TIRE - PUBLIC HEARING - CONTINUATION
102-4-4.2**

Mr. Sarajian addressed the Board stating that the following were open issues: an error in the mail notice, that mailing has been corrected and handed in to the clerk. The second issue was the County GML was a temporary one because they didn't have the SEQRA we filled the SEQRA and more than 30 days has run. They have not filled an updated report so the existing report stands. Which I believe was local determination. The third issue was a legal issue in terms of the law. Your counsel raised the question of the applicability of the fence law provision for a variance and the village law provision for a variance and it was my position that we meet both tests but I have confirmed that the Village law provisions for variances was adopted in 1991 and therefore your fence law condition for a variance was adopted after 1991 and so your fence law provision

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for a variance under the fence law is not precluded by the adoption of the Village law in my opinion and that was your counsel's question.

Mr. McKay asked Richard can you do that it has been a long time.

Mr. Sarajian your question to me was in terms of, if you don't agree with our interpretation? Your fence law has much less stringent provisions for a variance in it and you raised a question as whether or not those less stringent conditions were superseded by the Village law and my position was that they were not because the State Village law, those provision in 77-12B, I believe, was adopted before your fence law and you have the right to adopt a law with less stringent variance conditions and I confirmed that the NY State Village laws were adopted in 1991 which was before your fence law. We believe we met them both. The less stringent conditions of your fence law provide. The last things you asked me to do was if I had anything on the definition of temporary. Temporary that which is to last for a limited time only. As distinguish that which is perpetual or indefinite in it duration opposite of permanent. If you remember one of the issues here your law prohibits a temporary fence and the question was our fence, while it is not permanently affixed was it a temporary fence and it is my position is that a temporary is as to time not as the method of being affixed. I was asked if there was any legal definition of temporary and I brought this to you from Black's law dictionary in which temporary is more referred to as being a limited time not in terms of it construction. I found some case law that talked about temporary structures. I found some case law where they talked about temporary structures and in those cases they were always defining what the structure was. They always used temporary structure. It is in the industrial code. There are temporary structures for green houses and things like that. So it is my position that temporary means in terms of time and should be interpreted in terms of time. As you know Loyal's intent to use this fence is for the indefinite time that it is on the Town of Woodbury tow list. So, that is the end of our presentation except to let you know one other factor that has occurred and that is in January Apple was not renewed on the town of Woodbury tow list. So we have no cars stored there from Woodbury the gate is perpetually opened at this point. We are not withdrawing this at this point because we are still considering whether to sue Woodbury over that denial and therefore I can't withdraw this until we make that decision about whether or not we are going to sue Woodbury over the denial. It is our belief and I just talked with one of the experts who is an attorney down in Tennessee today and he advised me that he thought the section under which they denied us was in violation of the Federal law. So quite frankly if you were willing to adjourn this we wouldn't object to adjourning it but it is my understanding you want to get it off your books. The only other thing would be is to ask the Public if they have any comments.

Member Miller asked I thought at one time we asked you for the regulations from Woodbury where you specifically said that their cars had to be separated from Monroe's cars.

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Mr. Sarajian replied I apologize, I did not bring that I would just say that it was not in writing. It was only communicated to Mr. Hagopian verbally that they will not put him on unless he had this internal fence and what they now done with the decision they made to keep us off is that they decided that this lot that they let us use last year they should have not let us use it last year and they are not going to let us use it this year.

Mr. McKay asked just for the record he was told verbally. Was it the Building Inspector where he was told verbally? No it would have come out of the Police Department. When they approved his application for 2013 they approved it on the condition that he would put this in. And now in 2014 they basically said to us even though you have that in we shouldn't have approved you last year under those conditions.

Mr. McKay stated the provision that he was instructed to comply with was the fact that it had to be within a certain distance of the Town of Woodbury?

Mr. Sarajian replied no, they denied it. That was the question I got clarification on.

Mr. McKay responded I'm not talking about the denial. I am going back to 2013 just to clarify the issue. Back in 2013 you were told verbally by someone in the Town of Woodbury to what? To have a storage facility within a certain mileage of the Town?

Mr. Sarajian replied right, Apples location is not within a half a mile. So the question was could he use a portion of Loyal's lot and he was told verbally yes, if you separate the cars Loyal tows from the cars Apple tows. It wasn't a Harriman – Woodbury thing. It was an Apple – Loyal thing. This year they said we are not letting you use this lot for Apple because Apple doesn't have a license repair shop at this location. So there was no written instruction. It was an oral instruction. That concludes our presentation.

Due to the fact that no one had any further questions a **Motion** was made to close the Public Hearing by Member Crover and seconded by Member Farrell. 5 Ayes.

HARRIMAN BUS TERMINAL
106-2-1 & 2 – PUBLIC HEARING

For the record Ms. Leake read the Public Hearing Notice
Present - Mr. Sweeney, Attorney & Anthony Trochiano, Engineer, Pietrzak & Pfau

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Mr. Sweeney approached the Board by stating the applicant (Mr. Hagopian) is trying to bring some discipline to this corner lot at Ramapo, South Main Street and Route 17M. This is the facility that use to be used by Short line for parking of buses and then as a commuter parking facility and has been used for that purpose for many years. The applicant is trying to obtain a site plan approval from the Planning Board and during that review process two issues came up with the Zoning Law – the 1st is the buffer requirement that seems to be applicable to South Main Street part of the property and there is a buffer screening requirement in the Zoning law that requires a certain amount of vegetation to be in place along a street line such as this that is adjacent to a residential section which is on the other side of South Main Street – on the Easterly side of South Main Street. The other variance that comes into play is the parking set back along Ramapo Avenue it being a front yard by definition. Both of these are front yards. I believe there is a 10 feet set back requirement for parking which if actually put in place would bring the entirety of that bay of cars back an additional 10 feet. If the buffer requirement were in place it would further reduce the viability of the lot quite significantly as the Planning Board indicated in its referral. It would really take away the integrity of the entire project. This is a plan that the Planning Board has looked at with a great deal of favor, so has the NYS DOT and the bus company. All of them have been involved in the dialogue with regard to this proposal which involves an in/out arrangement around an island for buses only. Only buses no cars in/out of that way. The access to the parking facility for vehicles would be off Ramapo Street basically across from Harriman Auto and that was an arrangement that was a raised at by the Planning Board after we looked at trying to come in off of South Main Street and off of Route 17M which the State did not like at all. This is the plan that came about after a lot of dialogue and a lot of work with all of those agencies. The plan looks towards utilizing both tax lots; the original parking facility and also the property next door which is owned by Mr. Hagopian and it would eliminate the lot line here and would incorporate some of the additional property from the adjoining lot which is owned by Mr. Hagopian. The issue before you as I tried to say before is the buffer requirement and the parking set back along Ramapo Avenue. What I am trying to show you in the letter that accompanied the application is that the plan really meets the criteria for an area variance of this type. Something I left out along that line in terms of this impact what is proposed along South Main Street and this came from the Planning Board is a fence. I am referring to a shadow box fence of 4 feet high, in which will block the headlights that would otherwise leak across South Main Street in to the property on the other side – the easterly side. We feel and the Planning Board felt that 4 feet was sufficient to block that headlight leakage that would certainly block an ordinary vehicle and it would block an SUV vehicle of higher nature and that was important in the Planning Boards mind. In terms of Ramapo Street there is virtually 10 feet of the pavement area there so it is not much of a substantial increase in that respect. We are talking about 73 parking spaces within that facility. They are in bays, orderly and are separated by an aisle which is basically 24 feet between the parking aisles and there is a small waiting facility for pedestrians there. It is a

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better arrangement than what has been there for a long, long time and it does protect from that light leakage across South Main Street. We are hopeful that you would look with favor upon this and return to the Planning Board who must then conclude its process for a site plan approval. You are just one part of the approval process. Also, the County Planning Department that has been involved and they already rendered their opinion to the Planning Board. They had to refer to the County Planning and they have rendered it to the Planning Board and it is a fairly lengthy document but essential it says that we should be working something out with DOT, etc. and we have done that. We did it even before the Planning Department got involved.

Mr. Trochiano explained that a shadow box fence is essentially a wooden stockade fence with the exception that every other slab of wood is off set. The idea behind that is that air flow can go through it but it still blocks view, light and things of that nature. In regards to the set-back on South Main Street from the driving lane we are just about 10 feet from the edge of the pavement. At the worst case scenario it is about 9 ½ feet. For Ramapo from edge of pavement and existing white line is approximately 8 feet in the worst spot and then it exceeds 10 feet as you move up toward the intersection of South Main Street. It is about 10 feet or so off the white line. What is being presented does not change the character of the neighborhood. This type of facility undisciplined as it was has been there for a long time, either occupied by buses and/or by vehicles for as long as I can remember. It doesn't jeopardize the neighborhood. The light blocking fence actually enhances the situation by protecting the people across the street from the intrusion and leakage of that light and in general I think it meets the requirements for an area variance.

Member Crover asked where is the edge of pavement from the fence or proposed fence? I'm concerned about snow plowing and if there is room for snow plowing.

Mr. Trochiano replied South Main Street your worst case is 6 feet and then 6 feet plus beyond that. Then on Ramapo Avenue you are looking pretty much at the same situation, about 6 feet at the end of the entrance and then plus after that

Mr. McKay asked we need the 20 foot set back from the property line as a buffer zone. That would run along the side line of Main Street down Ramapo as well and along Route 17M so on clear you need 20 foot buffer zone from the property line.

Mr. Sweeney replied (pointing to the map) this is not residential, these are business owners.

Member Crover responded the only place the buffer is needed is along South Main.

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Mr. McKay asked this is all R-100 here (pointing to map) and this is all B-2 so what is this property here (pointing to map).

Mr. Sweeney replied this is B-2.

Mr. McKay responded so this is B-2 continuous to?

Mr. Sweeney replied there is no vegetation buffer impact here (pointing to map) or her, it is only here to here (pointing to map).

Mr. McKay asked explain to me why not here and not here (pointing to map).

Mr. Sweeney replied because this is a business. That zoning law that we are asking a variance for impacts only properties that is adjacent to residential.

Member Crover stated the only place you are asking for a fence variance is only on South Main.

Mr. Sweeney replied that is correct.

Mr. McKay responded what about the 10 foot provision on parking.

Mr. Sweeney replied that is true and that is along Ramapo and that is a part of the variance application.

Mr. McKay stated for instance you got the buffer along Main Street you would still need a 10 foot variance on the parking provision.

Mr. Sweeney asked do they overlap.

Mr. McKay replied they are two separate requirements. It says essentially a buffer strip is required 140-18 in a side or rear yard in a B-1 or B-2 district. These are the side yards in the B-2 district.

Mr. Sweeney asked where is it adjacent to?

Mr. McKay replied adjacent to a residential district and isn't this also.

Mr. Sweeney responded no, that is not residential.

Mr. McKay asked that is not a residential district or not residential properties?

Mr. Sweeney replied it is B-2.

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Mr. McKay stated so this is all B-2 and the R-100 are continuous so a side yard or a rear yard in a B-2 - that's Ramapo, that is a side yard in a B-2. Adjacent to a residential district, it is adjacent to the R-100.

Mr. Sweeney replied that yard is not adjacent to the residential district.

Mr. McKay responded it is the B-2 district.

Mr. Sweeney replied Joe this is a side yard that is adjacent to another piece of property in the B-2 zone. It is not adjacent to a residential zone.

Mr. McKay responded it is the B-2 zone.

Mr. Sweeney replied that is.

Mr. McKay responded it is a rear yard or side yard in a B-2.

Mr. Sweeney replied correct.

Mr. McKay responded adjacent to a residential district.

Mr. Sweeney replied right.

Mr. McKay responded shall have.

Mr. Sweeney stated you are looking for the modifier. It is the yard that is the modifier and the interceding. It is the yard that is adjacent. It is adjacent to another B-2 zone, another B-2 property.

Member Crover replied it says nearest the residential district so the only place you really need a 20 foot buffer is along South Main. Because it says the nearest residential district.

Mr. McKay replied that is not what my code says. When is yours dated?

Member Crover responded 2005.

Mr. Sweeney stated that has been in the code since 1968.

Member Farrell asked when is yours dated?

Mr. McKay replied 2005.

Member Crover showed Mr. McKay where it says it in his Code Book. What do you think? That he has to have a 20 foot buffer around the whole thing adjacent?

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Mr. McKay replied that is the question.

Mr. Sweeney stated that would eliminate the whole property.

Mr. McKay replied that is why I am asking the question.

Mr. Sweeney stated it only makes sense if it relates to the nearest adjacent residential property. It doesn't make sense otherwise.

Mr. McKay responded so you are saying we only need the 20 foot buffer on South Main Street and need two 10 foot along Ramapo and 17M.

Mr. Sweeney replied no, it is almost 20 feet set-back along 17M.

Member Crover stated it is not a set-back from the property line; it is a set-back from the road.

Mr. McKay stated it has to be set-back 10 feet from the street line so that is more than 10 feet from the street line. So there is no need for any variance along 17M, but you need the 10 foot on Ramapo and 20 foot South Main.

Mr. Sweeney replied right.

Mr. McKay responded okay.

Member Crover I realize you would have to move all those parking spots in 10 feet and you would lose some on the other to maintain that buffer but you couldn't gain those spots up in front of the bus U-turn.

Mr. Sweeney replied it doesn't work.

Member Crover asked is there a way to lay it out where we wouldn't have to grant a variance. You have that whole open area where it is being added to the tax map.

Mr. Sweeney replied from the language standpoint, and I was in on some of the discussions, the circulation area you can't have the cars moving in and out of there otherwise you are going to have conflict and confusion. There is no way to lay a bay out in there that will work well.

Mr. Trochiano stated this right here is fixed (pointing to the map) we can't adjust that because it needs to be there. We have our shelter area, handicap spot, everything complies.

Member Crover asked what is going to be in that area then? Is it going to be grass open area?

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Mr. Sweeney replied it is an open area. It doesn't lend itself to parking because you can't establish another bay without creating what we call conflict.

Mr. Trochiano stated really all you would be doing is moving this over. To move this over to create another row or something like that there is no other way to fit another access drive in here.

Member Crover replied you wouldn't gain enough spots to make it work.

Mr. Sweeney replied you might even lose spots but you would have that conflict.

Mr. Trochiano asked the 10 foot variance is from the travel lane is that considered the white line or edge of pavement?

Mr. Sweeney replied nobody knows.

Mr. Trochiano responded oh okay. So it can be a big difference.

Member Crover asked is this going to be a free park-n-ride or limited to residents of the Village of Harriman?

Mr. Sweeney replied no, it will be the owner who will be charging the fee. This is not a park-n-ride under the State program of park-n-rides or the County which is under the State program.

Member Crover asked there is no going to be a lease with Coach USA?

Mr. Sweeney replied no but there is an agreement with Coach USA that they will stop here under these circumstances.

Member Miller asked if it is a paved parking lot will you be getting money from the State DOT or will Coach be giving you money?

Mr. Sweeney replied no, only encouragement.

Member Miller asked and they are not giving you anything toward the construction of this, it is all on you?

Mr. Hagopian replied no.

Member Miller asked do we have any comments from the Public?

Terrance McGrath asked I'm just curious about the fence line how far is it going to be set back from the pavement on the road?

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Mr. Trochiano replied from the edge of the pavement it will be about, the worst case, 5 or 6 feet.

Mr. McGrath asked will there be concrete curbing along that site?

Mr. Trochiano responded yes. The entire exterior parking lot.

Mr. McGrath asked so the fence will be raised up with the curbing and grass or whatever is going to be placed there?

Mr. Trochiano responded it will be just behind the curbing.

Mr. McGrath asked how much of a buffer zone is going to be behind the fence to the grass, is there any possibility of any planting over there?

Mr. Trochiano replied it will be a grass area, but we wouldn't be able to plant anything tall right there.

Mr. McGrath responded I understand the site limitations there. With snow removal and stuff like that and the wear and tear on the wooden fence are there going to be some type of stipulation set up with the Building Inspector that the fence be maintained. So it is not something that becomes an eyesore in the future.

Mr. Sweeney stated it is not a wooden fence it is made out of vinyl.

Mr. Trochiano replied right now we have it listed as comprised of wood or vinyl.

Mr. Sweeney stated the maintenance of the fence will be the condition of the Planning Board site plan approval so if it is violated we violate the site plan and then we are subject to some kind of enforcement proceeding.

Mr. McKay responded and the statute itself requires that the fence be maintained.

Mr. McGrath stated as a property owner, right across the street, I would like to make a recommendation that we do something out of wood so it blends in to the environment rather than bright white or some type of vinyl like that. It will probably end up being cheaper for the owner to put in the wood and cheaper to maintain. The shadow box is great for that area because it allows for the wind flow. A solid fence will not withstand with the gust of winds. If you guys could make a stipulation that it would be wood.

Mr. Sweeney replied no complaint from the owner.

Mr. McGrath I understand that you guys can't keep the buffer zone because it wouldn't work. Do you have on site snow storage for that lot because with the

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snow storms like the ones we just had you are going to be losing spots trying to store the snow?

Mr. Sweeney replied that is a Planning Board function but it was discussed at the Planning Board. This area becomes (pointing to map) snow storage to some degree. What happens back here (pointing to map) good question, but that is a question the Planning Board will have to take up.

Mr. McGrath asked is this going to be raised pavement in here (pointing to the map)?

Mr. Sweeney replied no.

Mr. McGrath responded striped.

Mr. Sweeney replied marked.

Mr. McKay stated some of the issues that you are raising are really Planning Board issues that this Board isn't going to decide on.

Mr. McGrath replied I am a former Planning Board member I just wanted to see with the curbing - I didn't know if there was going to be curbing there. If the curbing is there, the issue with the snow plow is raised by the owners. If you have the curbing there you have something to deflect and slow the snow down before it hits the fence. I would like to thank the Engineers and property owner because we had an issue with the entrance/exit and I think they did a good job and they actually listened to the homeowners over there. We have a lot of issues over here with speeders and stuff like that as it is. Site limitations are tough. I think they did a good job with the fencing. It is a little bit more of a buffer zone, but I understand and I am willing to give that up because what is there now is hideous. It is just dirt, rocks and it's been like that for a long time so anything that can be done to improve that area would be great. I also like the squareness of the curbs because that is a speeding issue that we addressed and we have a school bus stop right there on South Main Street and that would definitely slow some of that traffic down. There is a telephone pole there to and I was just wondering if that fence is going to block the telephone pole or are they going to have access to that?

Mr. Sweeney replied they will have access to that, even if we have to move that pole.

Mr. McGrath asked will the fence actually travel down further then the telephone pole, correct?

Mr. Trochiano replied yeah

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Mr. McGrath stated so you guys did extend it? This buffer zone is going to get deeper as it goes further south on Main Street, right?

Mr. Trochiano replied yeah. This is the worst case (pointing to the map).

Mr. McGrath asked that is the worst case on that corner?

Mr. Trochiano replied we were able to get to about 15 feet up here.

Mr. McGrath stated that is all I have for now. Thank you.

Mr. Steinman asked can this fence be extended around the corner, to create a little more of the barrier of light and field division that people who will be using this lot would have onto my property over there. As far as the wood/vinyl thing goes, I actually have a difference of opinion. I can't see how wood is less maintenance than vinyl but I also know that they make vinyl products that look like wood. The one thing that I would like to avoid is seeing the fence on the ground or rotting real quick. Another issue I would like to bring up and I know this is another variance in itself, why not another foot on the fence because 4 feet is pretty low. A 5 foot fence or 6 foot fence couldn't be that much more of a cost and what that would do is dampen the view we having looking over there, not to be looking at cars.

Mr. Sweeney replied I don't have a problem with that. The 4 foot came up from the measurement of the headlights of a normal car and an SUV.

Mr. Steinman stated I know when I'm looking out I know another foot or two would make a big difference of my view.

Mr. Sweeney replied two feet might be unsightly.

Mr. Steinman responded less unsightly than a parking lot full of cars.

Mr. Sweeney replied that is up to the Board.

Mr. Steinman responded I would like to see it a little higher, it would be nice and if it could come around this corner, it looks like another 8 foot section there.

Mr. Sweeney replied it might be better because this is a curb.

Mr. Steinman responded yeah, if it could come diagonally across and I bought this up at another meeting and I don't know if this is a different issue with the highway department that when leaving if cars were only permitted to make a left turn only so all the exit traffic doesn't come on to South Main Street.

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Mr. Sweeney replied that would be a Planning Board call and it was talked about at the Planning Board and I am not sure that they made a call on that at this point.

Mr. Steinman stated there are young kids all over the block and at the bus stop and everything and keeping traffic away the left turn only would divert them onto Route 17M. But I am glad to see that there is a fence going up and I would also, if there is enough room, like to see some small planting in front of that fence too.

Mr. Sweeney replied one of the problems with that and this type of a narrow buffer is that the snow is going to just destroy anything you put there.

Mr. Steinman stated we were considering putting a fence in front of our house until I saw the snow plows this winter. So I understand. Thank you.

Member Crover asked I believe the code book says a front yard 4 foot fence has to be opened and this is going to be a close fence. Do we need to include that as part of the variance to avoid any problems?

Mr. McKay stated front yards, no open type fence shall be more than 4 feet high.

Mr. Sweeney asked what about a closed fence?

Member Miller replied solid fences should not exceed 3 feet in height in any front yard.

Member Crover replied when you can't see through it, it is considered closed.

Mr. Sweeney responded if you folks want think a 5 feet fence is more appropriate then there is another variance issue there. To us it makes no difference. Both of those are considered front yards.

Member Crover replied I just want to include it in the variance. It sounds like the neighbors want a fence and they want a closed fence. I just want to cover all of our bases here for this part of the variance.

Mr. Sweeney stated if it is 4 feet it doesn't need the variance, but if it is 5 feet it would.

Member Crover solid fences should not exceed 3 feet so we need to clarify if we should add that into the variance to allow a 4 foot closed type fence. If we are going to grant the variance we should include the 76-6-b2 as part of that variance.

Mr. McKay stated now we have to figure out what the front yard is. My recollection is, is that the front yard is the shortest frontage.

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Member Crover all yards which abut streets, the narrowest yard of a lot which fronts two or more streets shall be deemed the front yard. The side opposite the front shall be the rear. So that designates Ramapo as the front yard. The narrowest is Ramapo.

Mr. Sweeney replied so the fence is in the side yard.

Member Farrell asked do you know how many people parked there in the past?

Mr. Hagopian replied around 100.

Member Farrell asked so right now the people who would be using that lot, there parking now where to take the bus probably into the City and stuff? I know they are probably parking up at the church?

Mr. Sweeney replied at the church.

Member Farrell responded so that is primarily where they are at, at this point.

Member Crover asked do you know if there is any intention of Shortline doing away with the bus stop that they just created on 17M across from the church?

Mr. Sweeney responded this has become the bus stop. That is a temporary arrangement.

Mr. Hagopian replied they don't want the crossing on the road.

Member Crover asked who is they?

Mr. Hagopian replied Coach USA.

Mr. Sweeney stated and the State DOT doesn't want it either.

Member Crover responded I was just curious if they were going to keep it.

Member Ford asked are there going to be certain hours for this parking facility?

Mr. Sweeney replied it is going to be up to the owner. They are going to accommodate the bus schedule.

Member Ford responded I am thinking about a lot of walking at night with dark clothing. Walking up and down Route 17M. Remember you had the incident here in Woodbury with that young man who was run over.

Mr. Sweeney said it has to stay open to accommodate the buses. I think it is somewhere around 11pm, but I am not sure.

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Mr. Hagopian responded I don't think they would walk anywhere; they would walk off the bus and right into the parking lot.

Member Farrell asked so when the buses aren't running and the bulk of the commuting people are gone, is that going to be locked or is it just going to be opened?

Mr. Hagopian replied opened.

Mr. Sweeney responded there will be no bus parking in the parking lot.

Mr. Steinman asked will there be lighting?

Mr. Sweeney replied there is lighting.

Member Miller asked in your review that you gave to the Planning Board you said there would be no additional traffic with this bus terminal.

Mr. Sweeney replied there will actually be less parking, less cars. There were about 100, but now there will be less vehicular movement.

Member Crover asked is there a spot for drop off people for the bus stop?

Mr. Trochiano replied there is a turn around and this is the drop off, right here (pointing to map). So the buses will pull in here.

Member Crover stated no for cars. For people who are dropping their spouses off.

Mr. Trochiano replied it is kind of naturally created here (pointing to map). It is not designated with stripping or anything.

Member Crover stated they are going to stop along Route 17M.

Member Farrell responded that is a good point because there are going to be people going there to pick the bus up without cars.

Mr. Trochiano replied that was the main intention of the DOT on why they wanted these two to be separate facilities like they are shown. We actually had a plan that they were connected. This is the best way we could come up with to mitigate.

Being there were no further comments a **Motion** to close the Public Hearing was made by Member Crover and seconded by Member Farrell. 5 Ayes

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Mr. Sweeney asked is the Board going to take any further action on this tonight?

Mr. McKay responded I don't know if the Board is going to deliberate on one or both of these matters tonight or think about it and do it at the next meeting; it is up to the Board.

Member Crover replied we will discuss that when we get to it.

Call to Order

- Chairperson Laurine Miller called to order the Zoning Board of Appeals Regular Meeting at 8:35pm on March 5, 2014 at the Village of Harriman Hall located at 1 Church Street, within the Village of Harriman, New York.

Adoption of Minutes

- **Motion** to approve the minutes from January 15, 2014 Regular Meeting was made by Member Farrell and seconded by Member Ford. 5 Ayes.

**VINCENT & KAREN KRILL AREA VARIANCE DECISION/RESOLUTION
105-2-45**

- **Motion** was made by Member Farrell to adopt the resolution/decision approval on the pool side variance and seconded by Member Schneider. 5 Ayes.

LOYAL TIRE FENCE VARIANCE

Member Crover stated I am under the opinion that whatever was done in the past a fence is a fence and it needs to go to the Planning Board because it is a commercial lot and I don't think we should grant the variance or interpret.

Member Ford replied I thought this went in front of the Planning Board already.

Mr. McKay stated you are talking about the temporary fence.

Member Crover replied I will make the motion to deny it under legal terms.

Mr. McKay stated why doesn't the Board state what your reasons would be and then the Board can discuss it. If you discuss it and come to a consensus I can draft a resolution stating the Boards reasons and the Board can formally adopt that at the next Board meeting.

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Member Crover responded in our code book the fence says no temporary fences something that is not in there, I believe it is not in a foundation I disagree with the applicant. It is temporary and to allow a variance where you don't have to go to the Planning Board to put up such a fence I don't think is right either. We have been down this road before and it is only right to make commercial properties to go to the Planning Board when they want to erect a fence and for those two reasons I want to deny the applicant.

Member Farrell stated I intend to agree, even in the presentation describing the fence. The fence comes out, the fence goes up. To me it appears that it is a temporary fence and our code does not allow for it.

Mr. McKay stated I don't think the Board is voting yet because there are five factors the Board needs to consider and everyone has to weigh in on whether it is temporary or not and if it is permissible or not and the five factors. I would caution the Board to consider all of those things and to make a record as to all of those items before you take any action to vote on it. The Board of course certainly has to deliberate on the application in public. If the Board wants to take the documentation that the applicant submitted and review the minutes and continue the deliberations at the next meeting that will be acceptable as well, it is completely up to the Board. If the Board is going to make a decision, I would say to consider the five factors, the statutory factors and review the Village Code. The Board must consider the five factors set forth the NY State Village Law whether there will be an undesirable change in the character of the neighborhood, benefits are by the applicant, whether it could be achieved by another feasible method other than the variance, whether the variance is substantial, will it have an adverse effect or impact on the physical environment, whether the difficulties was self-created. In addition the Village Code has factors set-forth in Chapter 140-54.

Member Crover addressed the five items. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance. I don't know if it would be undesirable because it is a fence within a fence but it is a change within the use of the property. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue. Yes, he could go to the Planning Board. Whether the requested area variance is substantial. It is splitting a parking area fenced in area in half. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. I am not sure about that but the biggest impact is that we are always having arguments about fences, and the law of the fences and I think the Board has made adjustments to our Zoning regarding fences and we should stick to it. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board. Yes it was self-created. They tried to get a second business to use in an area to allow a second business to get towing from Woodbury. So that is self-created.

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Mr. McKay stated in my memo to the Board back in August I made reference to section 76-10 of the Village Code. 76-10 authorizes the Board and indicates the fence permits to allow applicants to appeal a denial of a fence permit from the Building Inspector. In such cases the Village Code requires that the Village Board determine; 1) whether there are practical difficulties warranting a variance of the requirements of the Chapter concerning fences. So the question is whether there are practical difficulties, the applicant has practical difficulties which would allow the variance to be granted. 2) whether there is an unnecessary hardship warranting the variance.

Member Crover replied I don't think there are any practical difficulties and unnecessary hardships warranting this variance. Allowing a second business to use a lot is not an unnecessary hardship. I spoke my peace and I think the rest of the Board should speak their peace on it.

Member Farrell stated we went through the five questions and I attend to agree with the way he presented them and then we need to review the two questions you gave us in August to consider which you just read to us.

Mr. McKay replied correct. What I am advising the Board is to make a final with respect to those two items because I don't want to get caught up with if one applies or both applies. I think that would be protective and insulate the Board at least from the claim that they didn't use the correct standard.

Member Farrell replied we addressed the five questions, unless someone else has anything they want to bring out or discuss about those five questions. Is there anything anyone wants to add on those five questions.

Mr. McKay asked does everyone agree.

Member Crover replied I agree that the Building Inspector had the right to deny the permit for the erection of the fence. I don't even know if there was a permit applied for when he issued him a summons. I don't think they ever went to the Planning Board or applied for a fence permit. They just put the fence up and then the Building Inspector issued a summons.

Member Farrell stated so then they came straight here for the variance or interpretation.

Member Crover replied both.

Mr. McKay stated I have to go back into the notes and application.

Mr. Sarajian asked Joe do you want me to give it to you in a clarification?

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Mr. McKay replied yeah.

Mr. Sarajian stated the fence was put up without any application because we took the position that it was not necessary. Ben Ostrer called and asked us to file an application for a fence permit. We picked up the application for the fence permit but Mr. Walker issued the summons I think a day or two before the application for the fence permit was actually filed. We delivered the application for the fence permit and then we appealed that and at the same time delivered the application for the fence permit and he denied the application for the fence permit. You didn't have counsel at that time and that is why I was speaking with Ben, it was after your counsel had resigned and before Joe was appointed so Ben was handling both and Ben agreed to deem the first appeal to also be an appeal from the denial and a request for a variance from the denial. So that is the procedural history.

Mr. McKay stated this Board is making a determination: 1) appeal of the denial of the permit, so we need to review the facts to whether or not the permit denial was correct or incorrect. 2) if we find out it was correct then the issue is whether or not to grant or deny the variances.

Member Crover replied I believe the Building Inspectors denial of the permit is in fact true.

Mr. McKay stated based upon the procedural history as I remember as you just stated there was no application at first then there was a violation then you made the permit application, the permit application was denied, and then you appealed the denial of the permit. That is issue one for this Board to consider.

Mr. Sarajian replied right.

Mr. McKay stated if they decide the permit was properly denied.

Mr. Sarajian stated the reason for the denial was failure to get site plan approval and that is what we asked for the variances under both the State law and the fence law of that requirement. That is correct.

Member Crover replied I believe the Building Inspector was in just in denying the permit because they did not go to the Planning Board and I do not think we should grant the variance to skip the Planning Board process because that has been a law suit to this Village in the past.

Member Farrell stated I agree with you. The Building Inspector was correct requesting they go to the Planning Board.

Mr. McKay suggested to the Board, since there are multiple questions that the Board is answering. Actually there are multiple applications: one is whether or

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not the appeal itself of the denial of the permit and the second part of the variance applications. If the Board wants to continue to deliberate that is fine. I think I see a general consensus as to where the Board is headed. My recommendation to the Board would be if there is some more discussion as to specific factors I could prepare a draft decision for the Board to review, approve and adopt as its final decision. There are a lot of factual prerequisites that go into how this came about. The factual matters both from the application, the building department records and the testimony be included in the draft decision and then I will be able to flush out the opinions you are giving now and then the Board could ultimately adopt that decision. I would think that it is probably prudent in this case since there has been litigation about these fence issues in the past and I think the Board needs to be careful in its analysis and in the language that it uses in its ultimate decision. So rather than have a decision that is verbally placed on the record, I think the Board should speak with one voice. Not that everybody has to agree on every factor. When I say speak with one voice and the Board should agree, at least the majority of the Board should agree as to the full text of the decision in this matter. That is my recommendation.

Member Crover replied so you are saying we should allow you to write something up based on what we just discussed.

Mr. McKay stated that would be a very direct way of saying what I just said. I think that would be prudent because quite frankly this is a procedurally complicated matter. There are a lot of facts that go in to this. What I have done when we had these matters for my other Boards is I can submit the draft decision to you or I can send it by e-mail. Then everyone gets the opportunity to come in at the next Board Meeting discuss it, make changes. We have to approve or deny this within 62 days of tonight. So certainly going to the next meeting is not going to put us up against any kind of a wall. The Board can make its final determination than. If the Board wants to make its final decision tonight it can but I think do to the nature of this it should be flushed out.

Member Crover replied I just assume to let you write up something.

Member Farrell asked 62 days from when?

Mr. McKay replied the close of the Public Meeting. As a reminder all of the deliberations need to take place in public. So if anybody has any more input they should put it on the record tonight. I think it appears to the applicant if I draft a decision they are certainly free to come to the next Board meeting and listen to any further deliberations about the draft decision because all the deliberations due need to be in public.

Member Crover replied I will go along with that. Do you need that in a motion?

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Mr. McKay responded no. If anyone has anything more to say I can include that in the decision.

Member Schneider stated to me it seems like it is just a temporary fence which is clear written in here that we cannot have.

Member Crover stated Mr. McKay is going to draft a decision based on our discussion here and for us to review and will deliberate on it some more at the next meeting.

Mr. McKay responded I will be able to set forth a procedural history and some of the facts that came out on the record and then the Board can use those facts to substantiate some of the general things you talked about and you get an opportunity to review it and at least three of you.

Member Farrell replied then we will vote on that.

Mr. McKay responded of course you are going to vote.

HARRIMAN BUS TERMINAL
106-2-1 & 2

Member Crover stated we can start deliberation on the fence variance because we have to make a decision within 62 days. After hearing from the neighbors they are actually requesting a fence to block the headlights. The Planning Board's letter certainly supports both variances. The area variance whether it is an undesirable change and reduce the character of the neighborhood and detriment to nearby properties, I don't think it is an undesirable change it has been a parking area there for years. I think it will be an improvement to the property and it will actually limit the amount of cars in there. Whether the benefits sort by the applicant can be achieved by some method feasible for the applicant, sure it can be obtained by reducing the parking spots by roughly by 30 – 40% and I don't think that is economically feasible which means the property would stay as a dirt parking lot and there is nothing to stop anybody from parking there again, unless the owner enforces it. Whether the requested area variance is substantial, well they will be about 10 feet off instead of 20 feet off. On the South Main Street that is 50%. One quarter of the property I would consider that somewhat substantial but again it is needed. Whether the proposed variance will have an adverse effect or impact on physical environmental condition of the neighborhood, it won't be an adverse effect. I think it will be an improvement to the neighborhood. Whether the alleged difficulty was self-created which consideration shall be relevant to the decision, I'm not sure if it was self-created? The parking lot was there before he purchased it. He could have purchased it knowing that people would still be

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allowed to park there and that use and he is trying to clean it up and limit the amount of cars parking there. I'm not convinced that it is self-created.

Member Schneider stated I have to agree with Chuck. I think this is going to be a huge improvement to that general area. The homeowners don't seem to oppose to only having the 10 foot as long as that fence is there. I don't think it was self-inflicted. I think it is a positive.

Member Crover replied usually I am one for putting conditions on fences when neighbors request a certain fence here and this was split between the neighbors, so I think we should leave that to the Planning Board. Let the neighbors attend the Planning Board and decide which fence to put there. In the past when we allowed fences we usually stipulated whether it is vinyl or wood and how it is going to be maintained, what type of fence.

Member Farrell responded I'm hoping it is a maintenance free type. They have that material now. I would like a fence that needs very little maintenance.

Member Crover replied it is actually in the code that it has to be maintained.

Mr. McKay stated well the maintenance is up to the property owner and that is stated in the code.

Member Crover asked so would you like to write a decision based on what we discussed for that one too?

Mr. McKay replied sure.

Member Crover stated then we will deliberate on that some more at the next meeting and either approve or deny it. Unless there are any other comments here. Ed, do you agree or disagree.

Member Ford replied I agree.

Member Crover asked Laurine I am asking for Joe because I did most of the speaking there; if everybody agrees with that then Joe has something to work with?

Member Miller replied I agree.

Member Farrell asked with the variance for the buffer, the corners are going to be rounded, that is what they were saying?

Member Crover replied no the curbing is not going to be rounded.

Member Ford stated it was something the homeowner asked for.

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Mr. Sweeney asked you mean here (pointing to the map).

Member Farrell replied yes.

Mr. Sweeney responded its round.

Member Crover replied well the street is rounded. Where is the curbing going?
The curbing is not rounded.

Mr. Sweeney stated this is going to be dedicated to the Village (pointing to the map) I don't know if you heard the dialogue but we are agreeable to running that fence on a diagonal there.

Member Farrell replied which is what the homeowner wanted.

Member Crover stated I think we should limit the variance for the fence to be on South Main Street, part of the property line.

Mr. McKay replied there are two variances.

Member Crover responded I know that, but the fence one I want to just address for the South Main Street. I don't want the Planning Board or owner to say well let's put a fence around the whole property. I don't think that is going to happen but we should limit the fence variance to the South Main Street property line and that includes the 20 foot buffer which only applies to South Main Street. Then the 10 foot set-back variance applies to Ramapo and South Main Street property lines only. So we are all clear on that.

Mr. McKay replied the buffer zone is 20 feet.

Member Crover responded right, we are granting the variance down to 9 1/2 feet at the worst.

Mr. McKay asked is that clear?

Member Crover replied well it is going to have to be clear if that is what we state. They stated 9 1/2 feet at the worst part.

Mr. Sweeney responded whatever it shows on that diagram.

Member Crover stated my map here is not the scale. I am trusting what the Engineer drew. He said it is 9 1/2 feet, they can't go 9 or 8. It's going to be 9 1/2 at the worst end.

Mr. Trochiano responded I think it is less than 9 1/2 feet on Ramapo.

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Member Crover replied we are talking about the 20 foot buffer. He asked about granting the 20 foot buffer down to 9 ½ feet at the corner of South Main and Ramapo.

Mr. Sweeney asked what is the worst case scenario here Anthony.

Mr. Trochiano asked what is it measured from?

Member Crover/Mr. Sweeney responded the street line.

Mr. Trochiano replied if it is the white line then it is 9 ½ feet.

Member Crover responded you are only going to be a couple of inches off the property line.

Mr. Sweeney stated 9 ½ feet at the worst case.

Member Crover replied so we can grant the variance to 9 ½ feet from the street line instead of the required 20 feet buffer but as far as the 10 foot set-back they are only 6" shy. The 10 foot set-back is from the property line so that you are going to be right up to the property line so we are going to need to grant the variance on the 10 foot parking within 10 feet of the road.

Mr. McKay stated you need the full 10 foot variance on the parking prohibition.

Member Crover replied only for the two streets.

Mr. McKay responded for Ramapo and South Main.

Member Crover replied I think we are all in agreement to allow that.

Mr. Trochiano asked do you mind making it 9 instead of 9 ½ just in case my scale is not perfect.

Member Crover replied no, I don't have a problem with that.

Mr. McKay responded so the variance is 9 feet.

Member Crover replied no, the buffer is being changed from 20 feet to 9 feet.

Member Schneider stated from the white line in worst case scenario.

Member Crover replied no, from edge of road and that should give plenty of room for plowing and everything. You are going to plant grass, I am assuming from the edge of the road to the curb.

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Mr. Trochiano responded it will be seeded.

Member Crover replied I am sure the Planning Board will be a part of that and it doesn't make sense to put planting there because the road salt would kill it.

Mr. McKay asked and the buffer is going to be reduced from 20 feet from the property line?

Member Crover replied no, from the edge of road to 9 feet. Is the Planning Board putting drainage and stuff in there?

Mr. Sweeney replied yeah, drainage, lighting.

Member Miller stated Jim I know you gave the secretary the return receipts.

Mr. Sweeney replied yes I did, I forgot to mention that. I actually gave them to Joe and he gave them to the secretary.

Adjournment

- Motion to adjourn the ZBA meeting at 9:20pm was made by Member Farrell, seconded by Member Ford. 5 Ayes.

Minutes Respectfully Submitted by:

Jane Leake – Deputy Clerk/Secretary