

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 1

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 Public Hearing Meeting at 7:30pm on November 18, 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

Jane Leake, Deputy Clerk read the Public Hearing Notice.

Public Hearing Samuel Kaufman (Best4Best) 102-4-1.222

Ms. Miller asked if all mailings were received?

Ms. Leake replied yes, all 99.

Ms. Farrell stated at the last meeting I mentioned that I live in Lexington Hills but did not think I was going to fall under the 300 feet radius but I do and I did receive a notification.

Mr. McKay asked does the applicant have any objection with the Board Member for her to recuse herself?

Mr. Toro replied I don't see a problem with that.

Mr. McKay stated a board member just indicated that she is within 300 feet of the property she stated that does the applicant have any objection with her being a

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 2

part of the review in this matter and the applicant replied no, is that correct Mr. Toro?

Mr. Toro replied that is correct.

Mr. Toro presented the attendees stating I am the Civil Tech Engineer for the applicant, Best4Best. Some of the questions were where the site was actually located for the residents. This is Route 17M, this is the access off of 17M into Lexington Hills on the North side is a vacant parcel and that is the parcel in question. On the opposite side is where Freeman Auto is. (Point to Map) The application is for interpretation of what light processing is and what Mr. Kaufman's Best4Best business does is, they sell electronic equipment via the internet. They process orders that go out. The material comes in bulk. The orders go out on a daily basis. At the previous meeting with the ZBA they had asked us to research surrounding zoning because Harriman zoning does not have the definition for the term light processing. So we went to the Village/Town of Monroe, Village/Town of Chester, Village/Town of Goshen, Middletown and nobody seems to have the definition of what light processing is and most of them did not have it in their Zoning either or bulk regulations. So the only thing that came possibly close was in the Town of Goshen they had light industry and the definition there was manufacture, assembly, treatment, processing or packaging of products that does not emit objectionable levels of smoke, dust, odor, glare or vibration beyond the property boundaries. In that particular case such things as light industry we feel we would fall into that category. Everything is contained within the building. You have on a daily basis probably two trucks picking up deliveries that are going out and on a weekly basis maybe one or two box trucks bringing material/product in. Further we had looked at the definition for process itself and it is a series of actions or steps taken in order to achieve a particular end. In this particular case I feel this is a light processing facility and operation where he is basically taking a product breaking it down, processing orders and reshipping it. There is nothing questionable regarding sound and odor being emitted from the building; you have a couple of trucks a day coming in dropping off material/product and obviously employees coming in on a daily basis. If you look in the B-2 Zone there is a list of quite a few different such as manufacturing, gas stations, repair shops and I feel those would be a lot more of an impact in this Zone then what this is. The question with this is when the Zoning was done and I'm not quite sure when this was looked at in the Village of Harriman, but the internet has evolved into a lot more than what it was in maybe 10 years ago. It opened up different industries and areas of business and this happens to be one of them where it is not spelled out specifically what light processing is in the Zoning but if we look at what is going to be conducted and happening on site. There is order's being processed. There is nothing questionable about sound, noise, dust or anything like that with a manufacturing facility. I feel that it falls in that where we don't have a definition and we have to come up with something.

Ms. Farrell asked the Town of Goshen definition that you found for light industry, what part of their Zoning was that found?

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 3

Mr. Toro replied that was in their definitions.

Ms. Farrell asked was it in a residential zone, a commercial zone or industrial?

Mr. Toro replied in a Business Zone.

Ms. Schneider asked can you repeat how you are making your orders?

Mr. Toro replied an order comes in via the internet and we sell small electric equipment which could be a mouse for a computer, chips, small hard drives, keyboards and if you would google Best4Best and the site would come up and basically you would put items in your cart. They receive the order. They are kept on shelves, they're broken down and packaged in a box and they reship it. In some cases, like we talked about before, they might have a camera body and put together a lens with it, a memory card, add a battery to it, etc.... So there may be some manufacturing or putting together, but it is nothing being created if you are worrying about dust or sound.

Ms. Schneider asked so the materials you are basically handling are finished good items?

Mr. Toro replied correct.

Ms. Farrell stated so it is going to come in bulk, sit on the shelves, pick the orders and

Mr. Toro replied be shipped out, correct.

Ms. Farrell asked so you couldn't find no other surrounding area that actually had a definition.

Mr. Toro replied if you google the term light processing, it comes up with a more technical term, which would actually be lights. So that is what made me look at processing to come up with a definition.

Ms. Miller asked when you say a Business Zone, is that in a Business Park where they would have a lot of different businesses?

Mr. Toro replied right. It didn't specifically say it had to be in a Park, but in a Business Zone.

Ms. Miller asked and not near residential?

Mr. Toro replied in some cases it might border like we do, but I'm sure they have buffer requirements, etc...

Ms. Schneider asked so the product you have that comes in and is sitting on the shelves say a mouse or a keyboard or whatever. The keyboards are in their own

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 4

individual box, the mouse is in their own blister packet, etc..., is that correct? None of the packaging or blister packs are ever broken apart before they get shipped? You are just taking those items and you are bundling, as you sorter speak, into a carton for shipment, is that correct?

Mr. Toro replied right. Occasionally, there might be a camera body that comes in and a specific lens is ordered and put on it or maybe or maybe a higher end battery than that would come with the camera. That would be put together, but not the speed manufacturing there.

Ms. Farrell asked are there any plans to lease out part of that space to another business?

Mr. Toro replied no. Mr. Kaufman just reminded me which we had discussed at the last meeting that he is presently operating across the street in the other Zone on 17M, yet he is looking to move over here.

Ms. Farrell responded that was the site visit we had at one time.

Mr. Toro replied right.

Mr. Crover replied it is actually the same Zone just grandfathered the building. The applicant is aware that light processing in our Code would be considered a Special Permitted Use, in which you would still have to go before the Planning Board. They would still have to okay it with special conditions for the permitted use. Boundary of residential properties, special buffering so on and so forth that you may have to deal with on a Planning Board issue, it has nothing to do with the ZBA.

Mr. Toro replied that's correct. We had went to the Planning and they were the ones who asked us to come back here for interpretation and once we had that then we would get another shot at the Planning Board level as far as for site plan approval.

Mr. McKay asked in going through your letter you make reference to this light industry zone in the Town of Goshen and there are some terms in that definition which you seem to be lying on and other terms which you do not. For instance, the on light industry definition under the Goshen Town Code is manufacture, assemble, treatment, processing or packaging. But, we can agree this is not manufacturing, correct.

Mr. Toro replied, yes.

Mr. McKay asked you are saying this is assembling?

Mr. Toro replied, yeah. Assembling, processing and packaging a product.

Mr. McKay responded it will not constitute treatment is that what you mean?

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 5

Mr. Toro replied, yes.

Mr. McKay stated so it will be assembly, processing or packaging, right?

Mr. Toro replied, correct.

Ms. Miller stated if anyone in the Public has any questions please state your name and address so we have it for the record, please.

Mr. Robert Vance – 11 Lexington Hill asked it is not Zoned as residential now or is it Zoned as Commercial now?

Mr. Walker replied it is in the B-2 Zone.

Mr. Toro responded B-2 is business.

Mr. Vance asked I don't know if it is too early to ask, but if it is business and it seems to be like right there. Are they going to use the same ramp to go in or are they going to make their own entrance?

Mr. Toro replied they have rights to the road that goes in, the same one Freeman uses.

Discussions broke out.

Mr. Vance asked I don't know what type of truck you think are going up and making that quick turn?

Mr. Toro replied that is an issue that if we get a shot at this and it goes to the Planning Board a site plan approval process is required and if we get to that point we will be notified.

Mr. Vance replied maybe there can be another entrance?

Mr. Walker responded the State won't allow another entrance. The entrance would be off of that road which is owned by the County right now.

Ms. Roxandrea – 23 Lexington Hill stated you mentioned during your presentation that you can google this company because it is established and that their website would come up and I could see what they are selling. That doesn't seem to be the case. I would like to know what their website is?

Mr. Toro replied Best4Best.

Ms. Roxandrea responded I've done that already.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 6

Unknown attendee stated I did that too and you actually had to log on and create an account.

Discussion broke out.

Ms. Roxandrea stated you can't look. It is also not accredited with the Better Business Bureau, either. It wasn't that easy to get on. He was saying to just google it.

Mr. Toro replied I apologize.

Discussion broke out.

Ms. Kathy Greene – 13 Lexington Hill stated some of these questions may not be appropriate for here, but I want to get to the point. There are so many empty buildings around can't they use one that is already empty. There is the old Jamesway, Linen's n' Things. There are existing buildings around that are big and they probably already have access for UPS trucks. There is no residential around them. This is the Village of Harriman, not the City of Harriman. I know we have grown and I see how Rockland County grew and I grew up in Rockland County and I was hoping it wouldn't happen to Orange County. Traffic, I mean UPS trucks are going to be coming in. They are probably going to be coming in three – four times a day. Let's be realistic they are probably going to guarantee next day shipping or next day delivery. Is it going to be opened 24/7, what are the hours? Are there going to be job opportunities for other people other than certain people that we are getting an impression this is for? Are they going to get tax breaks to do this here? What is the environmental impact? I just care about where I live, I love where I live. I have been here twenty years. Again, there are vacant buildings around, why can't you take advantage of those?

Mr. Sanjay – 28 Lexington Hills I would like to express by opposition to this project. What are the hours going to be? Is it going to be 24 hours? Three shifts, two shifts? Is it going to be trucks coming in? You know when trucks back up they make a beeping sound. We have the Lexington Hill nearby so you are going to be disturbing the residents. The shared entrance with Freemans is a nightmare in the process. It is not good for my fellow residents.

Ms. Schneider stated Mr. Kaufman a couple of people asked about the hours, would you like to comment?

Mr. Kaufman responded sure, I am renting right now space right across, 190 Route 17M. I am renting 5,000 square feet. The hours of operation is 9-5pm, not Saturday, not Sunday. The Building Inspector probably went by many, many times and I just want my own building. I don't want to pay rent so that is exactly what I am doing. So I found that B-2 Zoning, which the owner wants to sell. If he doesn't sell it to me, he is going to sell it to other people much, much worse than I am going to be. What is permitted over there is hotels/motels, banks, appliance repair, motor vehicle, retail, bus terminal. That means it could be twenty buses, Short-line, or a station right there. So something is going to happen with that

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 7

land. If I'm not going to come, somebody else is going to come. It will be a beautiful clean operation because the Zoning is permitted for 10,000 square feet, which is an acre (1.1). It is about 40 – 50,000 square feet so it is livable. So if it is I, it will be only one drive- in with two loading docks. Right now we have one UPS truck and that is it. If you passed by today where I am, 190 Route 17M, and you will see that UPS truck parked sitting there coming at 5pm, once a week. No garbage, nothing, zero. No tax break, no nothing. Just the convenience, we are right across the street. If you don't approve it, I'm gone. But, it will be worse, I'm telling you I know the owner and he wants to sell the property. Now the access, this is Lexington Hills access and they have the right. We have an easement and the other party has an easement so if it will be a bus terminal it would be an easement coming in/out.

An unknown attendee stated we just had problems because it is old the road, it just gets abused. It just can't be Lexington Hills just paying the cost of it getting replaced all the time.

Mr. Kaufman replied no, it is the County.

Discussion broke out.

Mr. McKay stated excuse me, we need to have one person to speak at a time if you want to be heard please raise your hand because this is so the Board can hear the question, hear the answer and make the decision they need to make. So I heard someone speaking in the back.

An unknown attendee stated that would be me, I apologize.

Mr. Kaufman continued the road is going to be maybe 100 – 200 feet and then we are going to make a left in, so we will definitely take care of that piece of property we have nothing to do with the upper road.

An unknown attendee replied that is where our road is deteriorating.

Mr. Walker responded it is not your road it is the Counties. Lexington Hills had the opportunity to buy it and they didn't want to.
Discussion broke out.

Mr. Kaufman stated the Planning Board is a tuff Board and they will make sure 100% it will be done the right way. Even the colors, the look it won't look like that. It will look like a beautiful, professional piece. The Planning Board said that at the last meeting it will not be an ugly building or a shed.

Mr. Vance asked the trucks going in are like those box trucks, they're not semi's, they are the same type of trucks like the UPS?

Mr. Kaufman replied 24 footer.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 8

Mr. Vance asked not a semi?

Mr. Kaufman replied no.

Discussion broke out.

Ms. Santiago – Building 30 stated as it is now there is noise that we hear on the road. Now this property, I don't know how big it is going to be, but it is going to knock down all those trees there and the fact that we are going to have a Fire House across from us that we had no input on. Now on top of that we are going to have all these trucks delivering right in front of our building because my building is right over this property. So yes, I have a problem with it because he is talking about it is an internet business and if this business grows it won't be one truck, it would be more than 2 or 3 trucks and I'll have to listen to this all day long and maybe even at night. So that is my concern, how big is this facility and why does this facility have to be built in front of a residential area?

Mr. John Bevacqua – Lexington Hill asked how many years has Best4Best been across the street?

Mr. Walker replied about a year and a half.

Mr. Bevacqua stated the way he was speaking I thought he was there twenty years already.

Mr. Kaufman replied the building is there for twenty years.

Mr. Bevacqua asked how long have you been there?

Mr. Kaufman replied just a year.

Ms. Rita Bevacqua – Lexington Hill Building 22 stated someone asked about him possibly renting out part of the building for something else, how can we guarantee that that won't happen when it is not in operation for Best4Best and if it does happen, how do we put a stop to it once it happens that seems to be a problem?

Mr. Walker replied they would have to go back before the Planning Board.

Ms. Bevacqua stated it seems to be a problem once certain situations happen trying to make them un-happen. That is the thing when it is not in operation as his business if he subleases it what do we do about that? Also, sometimes when I am coming up the hill Freeman Auto's parking lot would be completely full and they have trucks and cars parked on that road and that curve, people coming down out of Lexington Hill could not see you if you are trying to get around the Freeman trucks, so can he guarantee that his trucks will always be in tandem and there won't be more than there should be at one time. He is saying there might be possibly, I can't remember what the Engineer said, two trucks going in

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 9

or two trucks coming out. What if his business expands and you have like several trucks coming in and out and how big is his parking lot going to be and if they can't pull in and out of there are they going to be parked on our access road to get into our community the way Freeman Auto is doing, so that is a concern also?

Ms. Waitlin – Building 30 stated to piggy back on what she just said on the same road, even though we don't own it the school buses go up and down that road. Our children will take the late buses home from activities and things they are walking up and down that road so alongside with us as residents going up and down and also things coming around the curb and Freeman blocking it how can they guarantee the safety of the children in the development also?

Mr. McKay stated I don't want to stop anyone from asking any of the questions they want to ask. The question before the Board tonight, most of the questions you are asking are more appropriate for the Planning Board for site plan approval. I understand that everybody wants to know about the proposal and what might come from it. Most of the questions I heard are probably more appropriately for the Planning Board. The question before this Board is whether or not this constitutes a light processing business. Our Code right now doesn't have a definition for light processing so the Board is going to listen to your comments and questions but just remember that is the issue for this Board tonight.

Mr. Sarajian with Montalbano, Condon & Frank, PC of 67 North Main Street, New City, New York stated and I'm here representing Michael Hagopian Jr. who owns the house that is immediately butting the property on the other side of the property not on the Lexington Hills Road side. He is the property immediately next to this property going down Route 17M. Do you understand where he is? If not, I will get the map and show you.

Ms. Farrell asked can you get the map?

Mr. Sarajian stated on this map (pointing to map) Mr. Hagopian Jr. owns this parcel with the two in it and then I think Loyal owns another parcel in here, but this is Mr. Hagopian's personal property. It has a residence on it that he rents, but it is one single family house that he rents.

Ms. Farrell replied okay.

Mr. Sarajian continued stating I have a couple of questions that is to try to figure out what exactly is going to go on here because of the questions of the interpretation and the 1st question is: Is this business selling goods it owns or are people sending the goods to it and then when they order on Amazon they ship. So the one question is, and it might be a mixture, if it is a mixture, what percentage of it is. But what I think you need to know is are they selling goods that they own or are they a fulfillment center, where they are holding goods and when the orders come in they ship it. 2nd question is, if I understand what I read

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 10

correctly, they already been defined as a warehouse for this use and so to come in and now say maybe we are light processing I think is too late. If they haven't changed their operations and they have already come in as a warehouse, why are they here? What change is going to take place that is going to change what they are doing from the warehouse that they decided they were a year and a half ago or two years ago to what they want to do now. The fact that I'm moving to another building, unless I change what I am doing, should not change the definition of what I am doing. It is that simple. So those are my two major questions. My 3rd is more of a comment or it is a question actually but I got the answer partially. You didn't send this out for a 239m review and I think you should have. You are giving an interpretation which will impact your Code, which affects the entire Village and I think it is almost the same thing as a change in the Zoning Code which the Town would have to send to the County for a comment. I think an interpretation effects almost the entire Town, certainly property along the State Highway. I think that should go to the County for comment and I don't think you should close the Public Hearing until you have done that. When I look at this and Joe is right, many of the comments that the people have made really are closer to site plan issues if you say this use can come in. I disagree with the applicant. All those things that can be built, when he was reading that list off of the Code, well you got set back requirements, you got acres. The fact that something is listed in your Code as being available in a B-2 Zone does not mean that it could be built on this lot because of set-backs, minimal lot areas and all sorts of things like that. A bus garage could not be built on that lot because of your bulk table, so when he read that and said that, that was just not accurate. All of the concerns that they raised and obviously concerns for the Village too, show that this should not be handled as an interpretation. If he wants this use better defined he should either go for a textual change to the Zoning Code to your Village and at that point when they do that textual change they can as part of the textual change, they can consider what bulk requirements they want this use to have because by flipping this use a little or trying to get an invite interpretation. You may be allowing him to get it in without some well thought-out review of what the bulk requirement should be for this use. I still haven't heard enough to tell me that it is not a warehouse and it is light processing. Usually the light processing and I know the Goshen Code used both words, I heard him say that. Usually some sort of light processing isn't I take a box from here and I take a box from here and I ship it to one guy. He gave you an example of the camera. Light processing usually is doing some sort of assemblage before I ship. I'm taking a camera and a lens and putting it together, but if he is only doing that 1% of the time then it is a diminimus use and he doesn't get up to an assemblage or a light processing. He is really a warehouse in my opinion. One of the things I did, is I took his invitation to go onto the website and I couldn't get in either to the actual Best4Best website, but when I went out to the Amazon website there was not a single item that I could view that showed any sort of processing or assemblage and getting a box of 500 and shipping one to this guy and shipping one to that guy is not processing in my opinion. That is some sort of normal warehousing. I'm warehousing the goods and as they are ordered I ship them and that is what he's been doing and that is what Ron has recognized it at and I think that is what it is and if they want this changed, I don't think it should be

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 11

changed to an interpretation. I think it should be changed to a petition to the Village for a tech change. As part of doing that the Village and the Village may want to look at all these internet businesses and say internet businesses are now a different way of doing business lets figure out how to handle them in our Code. That is just what it looks like to me and certainly I would be willing to look for some Zoning Codes if you leave the Public Hearing opened and see if I can find any Zoning Codes that define light processing down in Rockland County or elsewhere. I know of one use, that one of my clients had and actually it would still fit under warehouse and they were doing a little assemblage, but it was a diminimus assemblage and it was still considered in Spring Valley warehousing use and is still permitted a warehousing use. Those are my comments and questions. Again, is he doing this for himself? Does he own these goods that are being shipped or is he doing this as a fulfillment Center?

Mr. McKay asked you said that this applicant has already been defined as a warehouse, what did you mean by that?

Mr. Sarajian replied I read the minutes of a meeting on July 2nd and when Ron was asked, he's got an existing business right now, how that business got in to where it was Ron said he got in as a warehouse, in to the building where he is now.

Mr. McKay & Mr. Sarajian responded a different building in the same zone.

Mr. Sarajian continued I guess what Ron said; it looked like it was grandfathered in.

Mr. Kaufman stated a B-1 Zone.

Mr. McKay asked the building across the street is in a B-1?

Mr. Walker replied no, it is in a B-2. It is an existing warehouse.

Discussion broke out.

Mr. Sarajian stated how I thought warehouse is because I was reading these minutes where Ron said it was a warehouse.

Mr. McKay responded I am not sure exactly what portion of the minutes you read but there was a previous application filed for the Board to determine whether or not it was a warehouse use. That application was withdrawn. There was never a determination, a Public Hearing. That was just a discussion on a prior application.

Mr. Sarajian stated he is doing this business in a building somewhere in the Town; under what item in your Zoning Code is he doing that business at that current location?

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 12

Mr. McKay replied I understand your point. I just want to clarify that they have not been defined by virtue on any application before this Board as a warehouse.

Mr. Sarajian responded I didn't say it was defined before this Board. What I'm saying to this Board was if his use in the current use is a warehouse, he shouldn't be allowed to move to a different building and claim his use is some different use now. Whatever he was doing was a warehouse. Then whatever he is doing is a warehouse. You just don't move to another property, unless he is changing what he is doing, then he is still doing the same thing that he was doing before and if what he was doing before, in this other building by the Army & Navy, is a warehouse, then what he is going to do in this building is a warehouse. Unless he is doing something in these premises that is different than he is currently doing and you shouldn't move in under an interpretation, to allow him to say that the same thing he is doing is now no longer warehouse it is light processing. That was the point that I was trying to make. That is the type of thing you should leave for your Village as a text change and a definition change, in the bulk table, the use table or the Code itself.

Mr. McKay stated Mr. Kaufman the business that Mr. Sarajan is referring to is in a B-1 Zone, correct, is that accurate?

Ms. Schneider replied no, Ron is saying B-2.

Mr. Walker responded B-2.

Mr. Kaufman stated right now I am in a B-1 Zone.

Discussions broke out.

Mr. Walker showed the Board Member a Zoning map.

Ms. Schneider stated you are in a B-2.

Mr. Kaufman asked I am right now in a B-2?

Ms. Farrell replied yes.

Mr. Kaufman asked so why is it permitted for a warehouse?

Mr. Crover replied because it was grandfathered and it has been a warehouse forever.

Mr. Kaufman replied it was just 15 years ago.

Mr. Toro responded it could have been grandfathered.

Mr. Crover stated it probably was a special permitted use that was never renewed.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 13

Mr. McKay asked Mr. Kaufman did you get or did the company get a site plan approval for that current use?

Mr. Kaufman replied I am not sure; we went to the Building Inspector.

Mr. Walker responded the business that was there before was Papers Plus that went to the Planning Board and got approval for bring in plates, dishes in and sending them back out. For that type of use, so when he came in doing the same type of use it just rolled over, he didn't have to go back to the Planning Board.

Mr. Sanjay – 28 Lexington Hill asked does either Board have any plan of the Codes to reflect that processing internet business that he is trying to become?

Ms. Miller replied we can't change a Code or Zone. It would be up to the Village Board to do something like that. It is not up to us. As Mr. McKay said, the reason why Mr. Kaufman is here we are to decide if the interpretation of where his business is going to be a warehouse or light assembly or whatever. That is what we have to decide and it is a pressing matter.

Ms. Bevacqua asked is it a possibility that he can apply and have it changed? Is that a long process to include light processing in the Village of Harriman? Is it something that is possible?

Mr. Crover replied right now light processing is allowed in B-2 with a special permitted use by the Planning Board. It is allowed already. What is to be determined is whether his business is qualified for light processing. Then the Planning Board has to agree that it is light processing and then a special permitted use has to be renewed every year.

Ms. Bevacqua stated I'm sorry I thought he meant that in Harriman we didn't have an actual light processing.

Mr. Crover replied we do, it is listed here under the special permitted uses in the B-2 District. We list it, but we don't list the definition for it.

Ms. Shuart – Building 11 Lexington Hill stated I am a little confused here. It sounds like a warehouse to me. Is that what this is zoned for, this B-2, is that Zoned for warehouse?

Ms. Farrell replied no.

Ms. Shuart continued if their bringing a product in. The product comes in to the loading dock; it is unloaded, put on shelves. Then you pick orders and make an order and send it out. That just sounds like a warehouse to me. So I don't understand the light processing piece of it.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 14

Ms. Farrell responded that is what they are looking for the interpretation of. If it falls under that and that is what we will have to decide.

Ms. Colleen – Building 28 Lexington Hill stated processing orders in a warehouse, does not make it processing Zoning. You are processing it when you take it off the truck. That is processing, putting it on the shelf, taking it off the shelf, looking at a paper for an order. It is processing, but it doesn't make it a processing Zone. It is a warehouse Zone. Or that is a warehouse business.

Mr. Toro asked Mr. Walker you had mentioned where he is presently in, use prior to that was the same operation that he is now and that had a special permitted site plan approval from the Planning Board?

Mr. Walker replied I don't know if it was a special permitted use for that or not. I would have to look that up and see.

Mr. Toro asked how they were able to operate what was in there?

Mr. Walker replied they went before the Planning Board. It was a machine shop in there. They went before the Planning Board to come in to move their operation in down in that back part of the building to just sell paper products and everything. Boxes would come in, they store them and I guess they would repackage them and send them back out. So basically that was what he was doing. You have to remember, a lot of times the definitions that are the listed items in the Zoning you try and fit, will it fall under here, would it fit in here because it would be impossible to list everything.

Ms. Schneider asked would you say in your operation that you are adding any kind of value to any individual and finished good item you are shipping? If you are taking it and just packing it in a box and shipping it, you are not adding any additional value to that item. Normally, if there is a manufacturing or assembly of something you are taking raw material types of some point or sub-assemblies and you are putting them together and at the end you have a higher valued item. I am not hearing that that is happening where you are. That is what I was trying to ask you before when I was talking about single unit items, blister packs, etc...

Mr. Toro replied we are not improving or manufacturing anything.

Ms. Schneider stated you are not increasing the value of any item.

Mr. Toro replied other than the fact that he is buying in bulk, as opposed to the individual cannot do that. You get some benefit on that end. Where he buy's in bulk to get the cheaper rate.

Mr. Crover asked does Best4Best own all the bulk? You buy all that bulk and then reship it?

Mr. Kaufman replied for Amazon and then someone buys it from Amazon.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 15

Mr. Sarajan stated I have a client doing the exact same thing and he is in as a warehouse use in the Town that he is in and I can provide that information if you want, if you were looking at other Codes.

Mr. Kaufman responded? It is a new business.

Mr. Sarajan replied he is doing the exact same thing on the internet. He is buying in bulk, advertising on Amazon. Some of the goods are stored with him. Some of the good are actually in an Amazon fulfillment warehouse, where Amazon ships directly for him, which is something you could do if you wanted. You could make the arrangements with Amazon. Put your product with Amazon and Amazon would fill the orders directly for you. He is doing the exact same thing that this gentleman is doing and he is classified by that Town as a warehouse. It might be that in a couple of years we may not agree that that is really warehousing but as I said the internet is changing the way business is done. But right now everyone is pretty much defining that, what he is doing, as a warehouse. It is only when, if he was selling 50 – 60 - 70 percent of his goods where he was taking the camera, the lens and putting it together and that is the way you bought it. Not that I can buy just the camera. Not that I can buy just the lens and two or three people are asking him to put it together. If he was really assembling, like you said, taking two separate parts and creating a new value by putting those separate parts together, that is where you get the processing and assembling and processing generally I think are the same and that is what you are looking for, you are putting things together. The interesting thing is that type of use might be more burdensome and more offensive but it is what is allowed in your Zone under a special use permit. If somebody else comes in six months from now who is really doing that, it is going to be permitted they don't have to be here and that might be more burdensome on some of these neighbors and hopefully the Planning Board would look at that and protect them.

Mr. Bevacqua asked if this is approved as light processing for one year, every year does it have to be renewed or if you say it is light processing that is it forever?

Mr. Crover replied that is up to the Planning Board.

Mr. Walker responded they usually do it for a year the first year and then they might extend it every three years once they see how everything is going.

Mr. Bevacqua asked that would be based on the Planning Board having meetings?

Mr. Walker replied it would be every so often. There are certain ones in the area that I would have to go in and take a look around and make sure everything is operating correctly and then get a note to the Planning Board and they extend it for another two, three or whatever they do to determine it.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 16

Mr. Crover stated I guess it depends if they have any issues with a particular business. If their business is complying with all the conditions for the special permitted use they usually start extending it so that neither party has to go through the expense of coming back before the Board every year.

Mr. McKay commented a note for the Board, based on Mr. Sarajan's comments I did review again the required referrals under Municipal Law 239m and their adoption on a comprehensive plan, we are not doing that, the Zoning Amendment, we are not doing that, Special Use Permit from a Site Plan approval as a use variance, we are not doing any of those. There is a catch or category which states that other authorizations and I don't think what this Board is doing is an authorization. I guess you can make the argument, but an authorization that this Board might make under the Zoning Code. I don't think it squares into a required 239m referral, at least the way I see it. That is my comment and if the Board has more questions or feels in its discretion that it wishes to get the input from the County you can still leave the Public Hearing opened, make the referral.

Mr. Sarajian stated I could not quite hear you Joe, do you think they should refer it now?

Mr. McKay replied I am just saying it is within the discretion.

Mr. Sarajian responded the reason I said this is I think you always have to look at it in a practical way. If he had gone to the Village Board and said to the Village Board adopt a text change that says light processing is the following. Collecting 500 things and 500 things and then breaking them down and shipping the two or three out to individuals. If he had gone to the Village Board and asked for a text change on that, the Village Board would have been required to send it, in my opinion. Because he is coming to you and asking you to interpret the Code that way, I think you should send it that way. If you want to know my last opinion on it, my last opinion is the County will return it to you and say they don't care. I think as a legal matter because in effect he is asking you to do the same thing as a text change under the guides of interpretation that the Village would have to send, but I think you should send it to and I think they will come back and say they don't care, but the law is the law.

Mr. McKay replied I don't represent the applicant, but not to engage in all argument with Mr. Sarajian, but the Code doesn't have that definition and the applicant is not required to go to the Village Board. The Village Code provides a mechanism which he has chosen appropriately and that is to come to this Board. So the fact that when the Village Fathers adopted the Code they didn't define this it created a problem but certainly there is an option, a safety valve sort of to speak, in the Code that allows someone with this problem as the applicant to come to this Board for interpretation. So I don't want the Board to think he should have gone to the Village Board for a tech change. He has the option to come here.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 17

Mr. Sarajian stated he could use this procedure, I don't disagree. I just think that it is not the wisest one in this case, but certainly it is an available procedure. After hearing all the people that are here and all of the issues that they are talking about; parking, road, this and that, somebody has to look to make sure that if you interpret it this way that the bulk is appropriate and that is what concerned me and that is why I suggested it would be better at the Village. That is my opinion.

Mr. McKay commented those issues would be handled at the Planning Board if it was determined by this Board that the business falls into the light processing definition.

Ms. Miller stated if there are no more questions from the public I would like to close the Public Hearing.

Ms. Kristy – Building 30 Lexington Hill asked if B-2 allows light processing business in that Zone, how do we as residents our rights to approve the plan weigh in the approval of this plan?

Mr. McKay replied if this is found to be within permissible of the Zoning District the applicant would have to go to the Planning Board for site plan approval and questions about traffic, noise, vibrations and all of those types of things would be discussed at the Planning Board and you can give your opinion on those issues there. If you have any comment or question concerning the process on whether or not this is light processing, this mechanism on how they get products in and put them together and ship them out. That is what this Board has to determine tonight. Whether that type of business is light processing. The other environmental traffic noise would be for the Planning Board to determine.

Ms. Greene stated I think what she really was kind of asking was once it is approved and everyone agrees they are light processing and it is good to go, do we have any rights as residents? Because we still don't want it here. Once it goes to the Board and it is approved appropriately, do we as people who live here have any rights? We pay the taxes here, we don't want it here, sorry, but again I go back to the empty buildings around. I think that is what you were asking, do we have any right to say okay you guys approved it but can we go to a voting booth and say no we don't want it in front of us. I guess not, but I think that is what she might have been more asking.

Mr. Crover replied everybody has a right to build on their property. I believe in that within the Zone. You have a right to go to the Planning Board and enforce the Zoning. You have a right to buffering; it is in there under special permitted use. It has to be buffered. You can make sure that buffer happens. You can make sure all of those conditions happen and you can argue that you want better buffering because of the noise. That is where you have to argue and fight. You make a big stink and the Planning Board will give you better buffering for you needs.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 18

Mr. Sarajian stated or they can go to the Village Board and ask them to change the Code.

Mr. Crover responded but if no one shows up it goes through. The Zoning is there and the rules are there, but everybody has a right to build on their property. If you don't want anything built on it then, buy it or keep it forever green in a land trust.

Mr. Sarajian commented this is not whether light processing is permitted on this property. It is under the Code with a special permit.

Discussions broke out.

Mr. Crover stated if we do find this light processing, there is an avenue to stop it.

Ms. Farrell replied we still have to determine if it falls under that. That is what we are charged with.

Ms. Diane – Building 30 Lexington Hill asked is there a guideline as to what light processing is? They are talking about a specific item, an electronic whether things expand and now it is a thousand products verses 50 how does that weight in?

Mr. McKay replied there is no definition.

Mr. Bevacqua asked is that still light processing or is that heavy duty processing?

Ms. Diane asked do you plan to consider expanding? Right now I am talking about one specific product. Business is good I'm going to sell something else and right now we have a thousand pieces of inventory verses 50.

Mr. Toro replied under the Zoning they give a certain restriction that would fall into the size of the building, the height, etc... So business can expand only so far within the compliance of 10,000 square foot.

Ms. Miller asked should we keep the Public Hearing open or close it?

Mr. McKay replied it is completely up to the Board if you want to keep the Public Hearing open. If you want to close it the one thing I think the Board should discuss is if the Board has either a concern that this should go for a 239m result or if the Board feels they would like the Counties Planning Boards comments then I would suggest to the Board to keep the Public Hearing opened if you wanted more from the County.

Mr. Crover stated normally, I would say the County always comes back and says they have nothing to say, but being this is a County road they are accessing from that is my only concern should we do that.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 19

Mr. McKay responded that is why I read off the types of matters that are required referrals. It has to be one of those matters and it also has to be within 500 feet of a State or County road, a park or one of those things.

Mr. Walker commented the only reason the County owns it is because the taxes weren't paid on it. It is not like it is County Route 21 or something.

Mr. Sarajian replied it is not a mapped County Road.

Discussion broke out.

Mr. McKay stated so there is no need to keep the Public Hearing opened for that reason, unless the Board wants to get more information from the applicant that would be the only other question.

Discussion between Board Members.

Ms. Miller responded since there are no more comments we will close the Public Hearing.

Motion was made by Member Crover to close the Public Hearing and Seconded by Member Farrell. 4 Ayes.

Minutes Respectfully Submitted by:

Jane Leake – Deputy Clerk/Secretary

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 1

Call to Order

- Chairperson Laurine Miller called to order the Zoning Board of Appeals Regular Meeting at 8:42pm on November 18, 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 October 1, 2014 Regular Meeting was made by Member Farrell and seconded by Member Schneider. 4 Ayes.

Samuel Kaufman (Best4Best)

102-4-1.222

Interpretation of Code for Light Processing

Present: Mr. Toro – Civil Tech Engineering, Mr. Kaufman proposed property owner & Mr. Chris Schibelli - Better Homes, Rand Realty

Ms. Miller stated I think we have a lot of thing to consider before we decide what our interpretation is going to be, my personal opinion, I don't know about anyone else's.

Mr. McKay commented just to be clear this item should say (referring to Agenda) Interpretation of Code for Light Processing in a B-2 Zone. The applicant withdrew the prior application concerning warehouse approval in the B-2 Zone.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 2

Ms. Miller asked so warehouse should not be there (referring to Agenda). Interpretation for Light Processing. Comments?

Ms. Schneider commented I think light processing has to include a set of different items that are assembled together that create a higher value for an end item and I am not hearing that here.

Ms. Farrell stated the other thing that I am hearing is that merchandise is coming in, it is going on the shelf, it is being picked, it is being repackaged and sent out. It is similar to warehousing. It is when stuff goes up, you get an order, you fill it, you go to the shelves, you pick that, you put it together and then you send it out. That is a function of warehousing. That is how I am seeing it and hearing it. I am not seeing it as a light processing facility. It is being warehoused. The merchandise is coming in and being warehoused. I don't know what the members are feeling on this. We did go down and do a site visit of the current location that is being used and the trucks come in they are being unloaded on a pallet, they are brought in to the facility, they are being put up on the shelves. The way it was explained and I witnessed it was the orders come in, they go and they pick them, they package them and send them back out. It appears to me that that is more of a function of warehousing. The information that was brought up from the applicant regarding the definition of light industry from Goshen, this was taken from a Business Zone. I don't know anything about their Zoning in Goshen. I don't know what part of the Zoning this was given from.

Mr. Toro asked would you like us to provide additional information on it?

Ms. Farrell replied we already closed the meeting on that. We had offered for you to submit stuff and you did not. I did ask about this earlier on.

Ms. Miller stated I have to agree with the other two ladies that I definitely consider it like warehouse and I don't know what Chuck's comments are or will be.

Mr. Crover commented I read everything in front of me and took it all in and basically it is a warehouse operation and what I consider light processing is a manufacturing a product, not warehousing a product. We have warehousing Zoning in our Zone in Industrial and I don't think we need to create warehousing in a different Zoning even though it has happened in the past and I don't want to be a part of continuing that on happening again. There is grandfathering in the B-2 and we don't need to expand on that. There is some concern from the residents that live near there about a warehouse being so close to that residential area. A larger warehouse I don't want to be any part of that allowing a warehouse operation happening in a B-2 Zone adjacent to residential properties. So I do not consider their operation light processing or manufacturing.

Ms. Miller asked Joe, do you want to make any comments?

Mr. McKay replied no.

**Village of Harriman
Zoning Board of Appeals
November 19, 2014
7:30pm**

Page 3

Discussion broke out.

Ms. Miller stated it is pretty obvious the Board considers this warehouse operation and not light processing so according to what we feel it can't be built where you would like to build it. Do you want to take a vote?

Mr. McKay commented the question would be whether you want to have a written decision to vote on the decision. I think, obviously the way the Board is going, I think the applicant is entitled to a written decision. I can take the Boards comments, get the facts from some of the general discussion from the minutes and I can provide the Board with a written resolution or decision interpreting the Code. Then you could review it and make sure it incorporates everybody's comments correctly and then issue your final decision.

Ms. Farrell replied I think that would be the best way.

Ms. Miller asked so we don't vote on this?

Ms. Farrell replied no we are going to wait for a written decision. I think that is the best way to go.

Ms. Miller asked so the next item is the ZBA application.

Discussions regarding the next meeting took place.

Motion was made by Chairman Miller to change the Regular ZBA meeting of December 3, 2014 to December 10, 2014. Seconded by Member Farrell. 4 Ayes.

Motion was made by Chairman Miller to table the discussion of the ZBA application to the December 10, 2014 scheduled ZBA meeting. Seconded by Member Farrell. 4 Ayes.

Adjournment

- Motion to adjourn the ZBA meeting at 8:56pm was made by Member Farrell, seconded by Member Crover. 4 Ayes.

Minutes Respectfully Submitted by:

Jane Leake – Deputy Clerk/Secretary