

**Village of Harriman  
Zoning Board of Appeals  
October 1, 2014  
7:30pm**

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**Call to Order**

- Chairperson Laurine Miller called to order the Zoning Board of Appeals Regular Meeting at 7:30pm on October 1, 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 – Village Attorney

**Absent**

- NONE

**Adoption of Minutes**

- **Motion** to approve the minutes from July 2, 2014 Regular Meeting was made by Member Farrell and seconded by Member Schneider. 3 Ayes. *Member Crover absent July 2, 2014.*

**Samuel Kaufman (Best4Best)**

**102-4-1.222**

**Interpretation of Code for a Warehouse in the B-2 Zone and Interpretation for Light Processing**

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

Ms. Miller stated originally in June the Building Inspector sent a letter to you stating warehouses are not allowed in the B-2 Zone and then he decided to send the application to the Zoning Board to apply for a variance, in which you did in July. I understand you went to the Planning Board and now they referred it back to the ZBA again.

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Ms. Farrell commented she would like to make everyone aware that she lives in Lexington Hill and I believe that if you have a Public Hearing she is not within the 300 feet.

Ms. Schneider replied as do I, even further away from Mr. Kaufman's property.

Mr. Toro addressed the board stating Mr. Kaufman had given you information the last time he was here on what happens at his facility. Part of what he brought today is something they have added to the line, in which they are calling bundles. Basically they process an order where they put together in what you order. He has photos for you to see. The bundles come with various things. If it is for a camera it could be a five piece bundle which would come with the body, the lens, the case, the stand and you can alter it. What they do is process this and put these orders together and they ship it out. It is something they are just starting with and it is another reason why they are looking to expand the facilities and go into a larger space than they currently have. When talking with the Planning Board, I won't speak for them, they didn't seem like they had a problem with the idea or the type of facility but they didn't feel it was their place to make the call or the interpretation if it falls under that for a special permitted use and that is why they had asked us to come back and ask for an interpretation from the ZBA based upon what the business is about and what he does and how it operates if it falls under that use.

Mr. McKay stated we had scheduled a Public Hearing on the 1<sup>st</sup> request of an interpretation of an appeal based upon the discussion of the applicant we said let us know by a certain date otherwise we won't go forward with the Public Hearing and in fact we didn't go forward with the Public Hearing. Is that application still pending? Is the applicant withdrawing that first appeal and proceeding only on the new application or is the applicant proceeding on both?

Mr. Toro asked he can actually go on both, but he would have to go with one or the other?

Mr. McKay replied no.

Mr. Toro responded I didn't realize that it was two separate applications. I was the understanding that even with the first go around we were just asking for an interpretation of the zoning.

Mr. McKay replied the first one was an interpretation and an appeal because the Building Inspector had issued a letter denying his request to construct a warehouse. We got into a discussion at the meeting that it can potentially be light manufacturing or light processing. So the applicant never returned to hold the Public Hearing. So I just want to be clear that that application right now is pending. I'm just asking if the applicant is withdrawing that or are you proceeding

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both on the appeal and on the new application, which is the referral from the Planning Board?

Mr. Toro replied I think the first one we would withdraw at this point. I don't know what the appeal process would serve for us other than just get an interpretation for the light processing that we are looking for. You want an official answer.

Mr. McKay stated just procedurally I think the Board needs to know so they can know what questions to ask tonight on how you are proceeding.

Mr. Toro replied we're proceeding with the application for the interpretation on the light processing and not the appeal issue.

Mr. McKay stated I think it is important for the Board to know so they know how to frame their questions. Thank you. Before we go any further, you made a site plan application to the Planning Board, correct? Is there an actual application pending?

Mr. Toro replied no, there was one for a discussion. There wasn't an actual site plan submitted.

Mr. McKay stated so there is no actual application pending yet.

Mr. Toro asked for an interpretation does that require a Public Hearing as well?

Mr. McKay stated besides from the Code not being completely clear about light processing and warehousing it is also not exactly clear whether or not a Public Hearing is required. I think that falls within the discretion of the Board but certainly there is going to be a future meeting and if the Board feels it is important, which the Public can attend anyway, so if the Board wishes to put it on for a Public Hearing the only different ramification would be the notice to the property owners.

Mr. Toro responded you heard before and the additional services he is looking to offer at that facility are there any questions from the Board?

Ms. Farrell asked you will still be bringing merchandise in, repacking, packing it and sending it back out, correct, this is through Amazon? You mentioned that you are going to be doing cameras and TV's, what are you actually doing with that?

Mr. Toro replied with cameras typically you sell the body of the camera with no lens, and then somebody may specify a wide angle, zoom lens, etc. so it is not a one size fits all. So they have the lenses come in, the bodies come in and even the batteries. You can go on line and order say Nikon style with the 200 zoom

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lens and that is how they put that package together, maybe you upgrade on the battery and you put that together and then ship that back out to the user who is the customer through Amazon.

Ms. Farrell asked so you bring in the bulk items and you will be storing them on the shelves, orders come in, you fill the order, putting it together some here, some there filling some others and then send them back out?

Mr. Toro replied some orders will come in where it is strictly where they will maybe not putting every order together. But he does receive it in bulk, a pallet, breaks it down and then sends it out to the individual customer.

Ms. Farrell the merchandise that comes in is going to be stored? Some will be sent out right away but I think that Mr. Kaufman had mentioned that if he got a very good deal on bulk items he would order a large quantity so that he would be able to send it out from there. Which would increase the length of things that would be stored at that facility, so when he is bring this new piece of the building that he is adding how much is that going to increase what he is doing?

Mr. Toro replied I don't know that we can determine that at this point because he is just starting up with that. I'm not sure what you are trying to get at – if he is going to have enough space.

Ms. Farrell stated no, it is not that. Originally he was explaining that one delivery truck would come in a week, out it would go. I'm just trying to gage the increase volume of deliveries and then mailing out.

Mr. Toro replied for deliveries I would say at this point from what I understand you get in one tractor trailer per week.

Mr. Kaufman stated no, one 24 footer box truck.

Ms. Farrell asked that comes in with the merchandise. How many boxed or little vans are coming throughout the day?

Mr. Kaufman replied once. UPS one and FedEx one.

Ms. Farrell replied so you are having one FEDEX truck and one UPS daily and you are having one 24 foot box truck a week.

Ms. Schneider asked what are your hours going to be of your business?

Mr. Kaufman replied Saturday and Sunday closed. Monday–Thursday 9- 5pm, Friday 9- 1pm.

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Ms. Schneider stated when Colleen and I came to your facility to see it we were there after 6pm when one UPS truck came in.

Mr. Kaufman asked at 6pm?

Ms. Schneider replied when we were leaving they were pulling in around 6:30 so that is why am asking.

Mr. Kaufman replied normally it is 9-5pm. I don't know what happened. It could have been that UPS was delayed or we got calls the last minute. I can't tell you what happened.

Mr. Scibelli stated I am the broker representing Mr. Kaufman and the owner of the property in this case. In regard to the site visit you two were graciously enough to make that day, you caught the business in its infancy. I think Mr. Kaufman was there maybe three or four weeks in operation so they were still working out the kinks. There were no set up of tables and display for assembly work that they do taking bundle of boxes and reshipping them. They probably still haven't gotten there times worked out with deliveries and pick-ups. So you saw it in its beginning stages. Things have changed since then it is more organized. A system in place that is actually more predictable.

Ms. Schneider asked your son was in business for about three years?

Mr. Kaufman replied no, he was working from home.

Ms. Farrell asked you have only been in this facility for a few weeks?

Mr. Kaufman replied three or four months.

Mr. Walker responded yeah, he hasn't been there that long.

Ms. Miller asked weren't you leasing space from the other people who owned that property back there?

Mr. Kaufman replied no, there is another group.

Ms. Miller stated I must be misinformed than.

Ms. Farrell asked I am trying to visualize the building you want to construct. I'm sure you have a plan in your mind what the building will look like. So you will have a platform to unload trucks and then the doors that go up and down, like garage doors?

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Mr. Toro replied loading docks and under the code the building cannot exceed twenty feet in height.

Mr. Walker stated May 6<sup>th</sup> is when you got your CO.

Mr. Crover asked the building is going to be constructed where it is not going to have a store front. It is just going to be strictly with over-head doors and loading docks?

Mr. Toro replied yeah, there is no retail.

Ms. Schneider stated I am confused because the last time you were here we asked if you were going to be putting stuff together or if it was already together and just boxing. Mr. Haller replied that you are not manufacturing anything. When reading through the minutes I got this strict feeling that you were not doing any of that kind of activity and there were no TV's at the time. Things have sort of changed and I'm trying to figure out what is going on.

Mr. Scibelli replied I don't think we ever indicated we were manufacturing anything.

Mr. Toro stated when you say TV's, my understanding is you just have tablets you don't have wide screen items.

Ms. Schneider asked are you categorizing tablets as computers then?

Mr. Kaufman replied electronics.

Ms. Schneider asked do you have a sample of your bundle with you?

Mr. Toro stated there would be just different components.

Ms. Farrell asked it is similar to what he was doing before then just repackaging stuff.

Mr. Toro replied processing orders and occasionally with cameras there might be a little more involved.

Ms. Scibelli stated basically all these components and pieces come in different boxes/cases. So what happens is he gets an order and the camera might require the memory card, a cover, a tripod, etc. and then they take everything from different shelves, put it on the assembly table and then put it into another box to ship it out to the end user. That is just one example that has to do with cameras. There are other components, there are other types of electronics that require something to be added on, for instance some hi-fi equipment may require

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some speakers, some stylistics, etc. There are different things that come from different places. All of this stuff will be stored on big pallets of shelves and they would be grabbing them as they need them to be putting them together for the order.

Mr. McKay asked you know these codes are not defined in our code. Have you done any research to see if there are any other local jurisdictions that have similar definitions that can inform the board at all?

Mr. Toro replied no.

Mr. McKay asked you haven't found any or you haven't looked?

Mr. Toro replied I haven't looked.

Ms. Schneider asked Ron, when you get a CO for a commercial piece of property like that is it just a CO that you can occupy the property or do you have to understand what they are doing in it before hand?

Mr. Walker replied they have gone to the Planning Board and once they were approved by the Planning Board that is when we issued the CO. I don't know what it was filled out for; I can look it up and see what the CO was issued for if you want me to.

Ms. Schneider stated I'm just curious. I'm just trying to figure out how it works.

Mr. Walker replied it means they have met life safety standards that are needed in there. Sprinklers, fire extinguishers, emergency lighting and stuff like that.

Ms. Schneider asked but the CO doesn't mean for a Certificate of Occupancy for doing manufacturing or light processing orders or whatever it is?

Mr. Scibelli responded if I recall I don't know if there was a site plan submission to the Planning Board for that property.

Mr. Walker replied they may not have had to because it was already existing and less than a year it was empty. That is possible that they didn't go to the Planning Board.

Ms. Schneider asked because according to last month's minutes isn't it currently a warehouse?

Mr. Walker replied that is a warehouse there now, right.

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Mr. Crover stated if it was vacant for over a year then it would probably be kicked back here because the grandfather of the Zoning would be expired.

Mr. Scibelli asked wouldn't the resolution address all of the things that were specific?

Mr. Walker replied warehouse and office. Because it was a warehouse. On line electronic sales and storage is the description of it.

Mr. McKay asked Ron, what was it that you just read from?

Mr. Walker replied Certificate of Occupancy.

Mr. McKay asked at the current location?

Mr. Walker replied yes. It was a paper products warehouse before and then they came in to put this in there and it fell under the same category. A lot of time they go to the Planning Board and they'll say it falls under that category why did you send them here for. I probably could have people before the Zoning Board every month if you wanted.

Ms. Farrell stated previously you were having one truck from UPS daily. Now you are going to have one FEDEX truck and one UPS truck daily. So that is two trucks daily that is going to be going in there and that a separate truck will deliver the product. It is not like one truck just drops it off and leaves.

Mr. Kaufman shook his head yes.

Ms. Farrell asked now with this new business are you going to be increasing the amount of employees you have there or the same amount?

Mr. Kaufman replied probably double the business. Right now we have three employees.

Mr. McKay stated some of the questions people are asking are site plan type questions and I think the issue for this Board is what the building is going to be used for and what the process itself is because that goes to the heart of whether or not they meet the Zoning or not.

Mr. Crover asked has this been set for a Public Hearing yet?

Mr. McKay replied this is the referral from the Planning Board. This is the first time we have discussed this application. The Board is reviewing the minutes of the last meeting for the facts that were brought up there.

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Ms. Farrell stated it is hard because originally the application came before us for a warehouse so now it has changed on paper for light processing so a lot of the questions we are referring back to because they are the questions we were asking originally. I understand now you are looking for an interpretation. We struggle because there is nothing in the Zoning for that.

Mr. Crover responded there is something. Light processing is allowed under special permitted use. It is a matter of whether we consider this light processing.

Mr. McKay stated there is no definition of light processing.

Mr. Crover replied yeah in the Code. We can look it up in Wikipedia.

Mr. McKay responded that is why I asked if the applicant would be making some kind of submission, either to show us how other local codes have been interpreted or to show whether other codes might have certain definitions.

Mr. Crover asked can we move forward without opening a Public Hearing? What is the next step? How do we address this and move forward? We can't give an answer now on what we feel when there is no Public Hearing and no Public input. We haven't accepted the application. We shouldn't be making decisions on what we feel or how we feel on what we were presented.

Mr. McKay stated I think what you are saying is, you either want more questions answered from the applicant or more information from the applicant.

Mr. Crover replied maybe we have enough information but we can't make a decision without accepting their application and scheduling a Public Hearing and maybe coming up with more questions and giving them a chance to present some definitions and I will look up more definitions.

Mr. McKay stated I don't see this process any different from what the Board normally does. There is an application pending. The one thing that is different is there is no SEQRA review. This particular application is not subject to SEQRA so you don't need to have a SEQRA Public Hearing. As I said our own code is not explicit as to whether or not a simple interpretation requires a Public Hearing. There is certainly going to be another meeting. I don't know what the policy has been in the past, whether the Board has always...

Mr. Crover replied we have always held a Public Hearing.

Ms. Farrell stated when we were discussing it originally about the Public Hearing we were saying the same thing. I think you mentioned that as well and I would rather a Public Hearing. I think it would be important.

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Mr. Crover responded I think our application is complete and we need to schedule a Public Hearing.

Mr. Toro asked on previous interpretations of the code you held Public Hearings for an interpretation?

Mr. Crover replied yes.

Mr. McKay responded I have had that in other jurisdictions as well. The last time I was here I gave the opinion that it was within the discretion of the Board and I think there was a consensus that you want to hold a Public Hearing, which is certainly the safest course, so at that point you can get any further information from the applicant, questions answered, etc... As I said there is no SEQRA requirement so if this Board wishes you can certainly act now and schedule a Public Hearing for next meeting. Ask that the applicant can submit any additional information prior to the Public Hearing and then the Board would perhaps be able to make a decision at that meeting or the next one. I don't see this process different from any of the other items that you had before. Actually this one is someone simpler because the way I understand it, it wouldn't require any 239m referrals, SEQRA review. So those types of things are not required here either.

Mr. Crover replied I agree. I think we need to accept the application and schedule a Public Hearing. I do need some time based on what they presented tonight to review some definitions to kind of decide whether it needs a warehouse operation that is not permitted. What they are doing may be permitted under special permitted use and that is the interpretation they are looking for to go to the Planning Board with. It is a grey area they are not manufacturing anything, they are just packaging, they are not assembling. I think this will give the applicant to counter with some proof on how it is light processing. If you look at light processing on some definitions that were presented to me here tonight, it is not really there. It is making clothing, a machine shop, making things. This is not making anything, it is packaging. I can go into a building and ask them to make me something. I can't go into this building and ask them to make me something. So I think we need to look at these definitions and see if this is something that could be considered a special permitted use.

Ms. Schneider stated you said the business wasn't mature when we went to look at it and now it is mature and now you reference that there were no tables there with displays and stuff like that. What would the displays be for if they are just on the internet?

Mr. Scibelli replied what I meant to say is the tables, similar to this (pointing to the Board table), are there to assemble the different parts of the components that need to be repackaged and sent out. Sometimes they keep things on display. I think you saw something on display on the shelves.

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Ms. Schneider stated the things that were on the shelves were still in their blister packs.

Mr. Scibelli responded they will put all of the components in one bundle on the end of the table so the workers will know that is what it has to look like when it goes into the package. That is the display part. There is no guarantee as to what this will evolve into as far as more things that will be assembled or bundled into different products. The electronic world is always changing and so will the business.

Mr. Crover stated I guess you need a motion to accept their application and set a Public Hearing.

MOTION was made by Member Crover to adopt a resolution that brings the application complete and designates the Board as the SEQRA of Lead Agency which determines that the Type II Actions under SEQRA need no further environmental review along with a scheduled Public Hearing for Wednesday, November 19, 2014 at 7:30pm. Seconded by Member Schneider. 4 Ayes.

Discussion broke out.

Mr. McKay stated Mr. Toro we are all having the same difficulty and I asked you before if you can point us in one direction or another concerning light processing so if you have anything that would be helpful to supplement your application and inform the Board that would be useful both for the Board and for your client.

Mr. Kaufman stated it will definitely be nicer than the car shop on the other side, with trucks coming in, disabled cars, vans. It will be beautiful, we will design it the way you want it. We could design that it doesn't even look like a facility or warehouse or anything. We will have a beautiful look, whatever you design. Otherwise, you will have a car shop over there, fixing cars, oil spills and this is what it is going to be because if I fall out someone else will come there is no one else building today office space. I am a license broker and there are tons of offices available so the own wants to sell that property. He will sell it to a car shop, etc... it could be anything. Here you will have a beautiful building you can design it and say this is what I want. It is not going to be a vacant land the owner is going to sell it. He needs the money and he is going to sell that property. You can have a bar over there. It is permitted by law. I have a place to go. I'm not on the street, but I'm saying since you are living there in Lexington Hills do you want to have a car shop over there, pulling in, pulling out, hundreds of tires outside, whatever.... Let's face reality something is going to be built there in the next year or two. You can ask the Building Inspector whatever he asks two hours later he would have it, correct? If he needed the certificate of insurance, I'm very professional. I have a professional license on real-estate, life insurance. I'm an ENT for twenty five years. Everything is one hundred percent I can't even

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go different. There were holes in the pavement outside which you mentioned the last time you were there and everything is already fixed in less than a week you told me about it, correct?

Mr. Walker replied I have not been down there to see if the hole has been fixed, but I will take your word for it.

Discussion broke out.

### **ZBA APPLICATION**

Mr. McKay stated when I came here initially we talked about revising the application so the application would contain more information and because the Board has been busy I just suggested that we recirculate the application so everyone could take a look at it and discuss it and at some point adopt a more thorough application.

Mr. Crover responded this last application you sent I have not had a chance to look at. There was one you sent a few months ago that I thought was pretty complete. It pretty much covered everything and I thought was pretty good. I would like to see what you have to say.

Mr. McKay stated we only had one application on tonight therefore I thought it would have been good to have this on the agenda. So we can start the discussion and people would start to look at it.

Mr. Crover replied I would like to hear your comments on it.

Mr. McKay responded sure.

Mr. Crover stated if you have any tonight or if you want to just send us an email with your comments on it and I will review that when I review the application. Does anyone have anything to discuss on it?

Ms. Farrell replied I did look at the original one and if that is the same thing, it was very thorough. Actually I thought it was very helpful for the members as well.

Mr. Crover stated I like the idea of addressing the SEQRA information, the boundaries. If it is in there then we don't have to look it up at the meeting.

Mr. McKay responded the application you are using is a little antiquated.

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Ms. Farrell asked the application will be moving forward once we adopt it?

Mr. Crover asked doesn't the Village Board have to adopt it?

Mr. McKay replied there is probably nothing that specifically addresses it in the code. In other jurisdictions what I have done is the ZBA or the Planning Board have adopted one thing you may want to consider to is once we have the application done they review the application make some changes and maybe also review their procedures and internally for the Board which to adopt certain procedures, refer that to the Village Board for their review and then ask the Village Board to approve the procedures. The procedures are really internal, but if the form is really a Village form it is something that I think the Village Board should have an opportunity to look at and comment on.

Mr. Crover stated if you have a chance can you send us your comments on what you think about it. If it looks good we can address it and approve it at the next meeting. If it is the same one we looked at I like it better than what we have. We can always address it further in the future and then get it to the Village Board ASAP.

Ms. Farrell responded I think it will be very helpful because most of the time they are self-partitioning anyway and that is the worst part of filling out most of these applications because you don't know what to fill out so I think this will be very helpful.

Mr. Crover replied some of that stuff will probably wind up in here with Ron's help on it or whoever in getting some of those answers filled out anyway and that will make it easier here that night.

Mr. McKay stated one of the things we may want to consider is including in the application is that the Village Board has recently modified the language concerning escrows, when escrows need to be posted or not. That didn't exist or at least it wasn't in the draft. You might want to summarize or refer to or put a paragraph that copies the Village Law/Village Code that says these are the required escrows for application A or B or C. Because someone may come in and then Jane is left to debate the person at the window whether they should file an escrow and why they have to and this will be in the application and they will know what they have to do to file a complete application.

Ms. Farrell replied I think that is a good idea. It is right out there. It seems to be fair across the board.

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**Adjournment**

- Motion to adjourn the ZBA meeting at 8:25pm was made by Member Crover, seconded by Member Farrell. 4 Ayes.

Minutes Respectfully Submitted by:

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Jane Leake – Deputy Clerk/Secretary