

**Village of Harriman
Zoning Board of Appeals
July 1, 2015
7:30pm**

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Opened the ZBA Meeting with the Pledge of Allegiance

Roll Call

The following persons were present:

- Laurine Miller – Chairperson
- Darrin Sainato - Member
- Chuck Crover - Member
- Carol Schneider – Member
- Sandra Daly - Member
- Ron Walker – Building Inspector
- Barbara Singer – Deputy Clerk/Secretary

Also Present

- Joe McKay

Chairmember Laurine Miller recused herself from the meeting as she is a neighbor of Garfield Plumbing & Heating and felt it was a conflict of interest.

**Public Hearing for Garfield Plumbing & Heating
Parking Variance/ Special Permitted Use
106-5-15**

Present: John Loch, Engineer of AFR Engineering, Bernie Davis, Land Planning Consultant, Mr. Klein, Owner.

John Loch begins stating that he has handed in the mailings to the Clerk to be verified. We have been here before so I will briefly recap the project. Essentially the applicant is taking an existing building and wants to use it for his plumbing business. He has gone to the Planning Board seeking site plan approval for this. There have been some concerns which bring us back to the Zoning Board of Appeals. The first concern was the use of storage within that facility and whether any type of variance was needed for that. We were also asked to seek an opinion if any special permit was needed. We had two other issues come up. There is an easement described in the southerly end of the property, provided ingress and egress to the parcel to the east. We noted that on the plan and there was concern because we are showing two parking spaces in that area.

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The Planning Board suggested that we really didn't need that much parking, that we consider applying for a variance to reduce the amount of parking on the site.

Board member Crover asks, before you go on, can you show us how many parking spots and where they are, with and without those two.

Mr. Loch, with it, we were going to have eight parking spaces, that's the required amount. Also in our previous narrative we don't really feel that we need for that amount. The majority of the employees take the company vehicles home. We don't normally have that many vehicles on site. The office space will be occupied with a couple of people during the day, they'll have vehicles come and go to get supplies. The last concern that came up was outdoor storage, specifically because of the plumbing operations, the applicant would normally keep acetylene tanks, propane tank. In general it's not a good idea to store these inside the building, you want them outside, where things are well ventilated. We have presented the type of cabinet that we would be using. At this time I would like to turn this over to our planning consultant who has researched this in a lot more detail. Why we don't need a variances on these things or why you should grant a variance.

Bernie Davis introduces himself as a forty year friend of the applicant's family. I get a phone call Sunday night from Jacob Dietchstein, father in law, asking for help. I got into this trying and tried to understand it, and I found the easiest way to understand it was to put it all down on paper. (He distributed booklets). Simply, Abe Klein wanted to open a plumbing business, there will be no retail sale, there will be no showroom. He is a plumbing contractor. Your public coming to this site will be very low. He does two types of jobs, the normal service call to a single family house, I have no heat, my toilet is overflowing, or construction jobs. The materials will be delivered; being toilet, sinks, faucets, etc., by small trucks from plumbing wholesalers to the site, there is a loading and unloading dock. Large drops will be delivered directly to the job site. I go through this in the document. There are three questions before the Board. The easiest first, in the back of the booklet, is simply, the schedule of district regulations, under B2, Item 6, I need a special permit for light processing, manufacturing, and machine shops, subject to the following standards A,B,C,D,E,F,G has standards on page 12. Item B is outdoor storage for materials are specifically prohibited. This only applies to an Item 6 light processing, manufacturing, and machine shop use. Since he is not light processing, manufacturing or machine shop, subparagraph D outdoor storage and materials does not apply. Therefore the Board should simply say the outdoor storage is permissible subject to the Building Inspector making sure that the cage where the tanks are kept complies with OSHA requirements. Do you have the Code Book open sir? You can

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see where I'm saying Item 6D that it does not apply. Because we're not an Item 6D. Under the same section, in the Schedule of District Regulations, number 5. I need a special permit for number 5. Commercial storage buildings for materials and motor vehicles wholly within a completely enclosed structure. Am I a commercial storage building? Am I storing materials in motor vehicles?

Mr. McKay replies no.

Mr. Davis continues, the specific language in zoning laws, is materials and motor vehicles. It doesn't say materials comma or motor vehicles. It doesn't say materials such as but not limited to motor vehicles. This Board may want to send a letter to the Planning Board, send a letter to the Village Board to take a look at this section. Because on that side of the table, you should take a look at that section. But you cannot encode this, on me. I'm a paint shop. I'm a painting contractor. Commercial storage would be akin to self-storage but done as a commercial. Materials are not defined in your zoning law; storage is not defined in your zoning law. Commercial is not defined in your zoning law. And motor vehicles are not defined in your zoning law. You can't make up definitions. You may want to say, painting contractors, plumbing contractors, welders, etc. should go for special permit but amend the zoning law to allow that to happen. Don't seek to enforce something the zoning law doesn't allow you to. So no special permit is needed. Now, number three, the infamous six parking spaces, go get a variance. I don't need a variance, I'm 100% legal. The zoning law requires eight parking spaces, they show eight parking spaces. I can understand the Planning Board's worries; they are very common sense worries. I don't want two other property owners, forty years in the future screaming at each other because there's no easement and coming to the Village Board yelling. That's a common sense worry but not a legal position, as far as I know. What the Planning Board is saying is, Mr. Paul has an easement, and in there, the applicant, in my presence had a conversation with Mr. Paul. He said that he was perfectly fine with the arrangement. It is my understanding Mr. Paul had a conversation with you, his neighbor (directing his narrative to Chairman Miller) and let you know that he's not opposed to this. I asked Mr. Paul if he would like to put this in writing and he said no, he's perfectly fine with the way it is.

Mr. McKay asks are you saying the applicants are withdrawing their application for a variance.

Mr. Davis replies no, they are requesting an interpretation. What the Planning Board is basically saying is, if Mr. Paul, or some future property owner, sues Mr. Klein, or some future property owner, claiming there is an easement and claiming this easement goes

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over those two parking spaces, one parking space or half a parking space, and if there's a lawsuit, and if the courts side with Mr. Paul, then there would be a violation of the zoning law for not having eight parking spaces. So what the Planning Board is saying is some potential unknown violation of the zoning law at some potential unknown time could result in the property violating the zoning law. The Planning Board lacks the power to impose a potential zoning violation as a condition. But on the other hand, I understand what they're trying to do. So what the applicant is willing to do is to give an easement on the map. Let the Planning Board turn around and say from an interpretation point of view, no variance is necessary because they have eight parking spaces. The Planning Board cannot impose a potential violation of the zoning law at a unknown time as a condition today. But the applicant will voluntarily and gratuitously, so it is not a demand by any Board give an easement from seventeen to the Paul property that does not cross the parking. Within this package is such a proposed easement design. So if the Zoning Board of Appeals says that no variance is needed, the Planning Board cannot impose this condition, but the applicant is willing to give an easement on the map to benefit the Paul parcel, so that it exists and can be signed on. This way the Paul parcel ever wants it, it is there to take, if he doesn't want it and wants to continue for another 65 years on a handshake, it's there also. This way nobody is pushing the envelope, yet at the same time common sense is being used to solve a potential unknown dispute between neighbors fifty years in the future.

Mr. McKay responds, the concern that I think the Planning Board and I have for this Board is that it is not as if the land locked property owner does not have rights, there are some rights. We can't, you can't, delineate the rights. There's a recorded right in the deed, to a deed that was supposed to be filed later. Apparently it never was, and now no one can find. So even if you gave a gratuitous easement to allow access somewhere else, that easement would stand on its own. But that does not mean that the underlying preexisting right, whatever that might be, would not still be present. So explain to me how we can propose to locate parking spaces in an area which is supposed to be used as an access easement for another property.

Mr. Davis responds, number one you don't have the power to. Zoning goes to land use, not ownership

Mr. McKay states, the Planning Board has the right as a condition of approval of this plan to make sure that there's adequate parking, adequate access to a public road. That's the Planning Board, they have that power.

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Mr. Davis says, yes, but you cannot impose. No one knows where that easement is and it is completely unenforceable. If the Paul parcel ever sued...

Mr. McKay replies that issue is ultimately for the Planning Board, regardless if it is ever a civil matter or not. The Planning Board will either grant or deny your application. So if I recall correctly, you have an application before this Board for a parking variance

Mr. Davis says, Interpretation.

Mr. Loch recaps, The Planning Board said that they weren't comfortable with the parking spaces here, why don't you go to the Zoning Board, seek a variance on the required amount of parking because you don't seem to need that much for your operating site.

Mr. McKay states, and that's why I asked you if you were withdrawing your request for the parking variance. I asked that very specific question.

Mr. Loch states when we came here it was said, can you get something from the planning Board? And basically the Planning Board said no.

Chair member Crover states that the Planning Board asked that it be put in writing that they are asking us to eliminate those two spots.

Mr. McKay states that there was correspondence and that I'm not concerned with that issue. I think that you just said and this is correct that you requested a variance on the number of spaces. And when Mr. Davis was speaking he said that you were here for an interpretation. So if you are here for an interpretation, somebody define for me what that interpretation is that we are supposed to be reviewing. But again, I don't want to be hyper technical about this but there are different standards for the Board to apply. Interpreting something or determining whether or not there's a variance requirement. So if you could address that.

Mr. Loch replies, yes we did come here seeking reduction in parking spaces. I know that Mr. Davis' review has led him to believe that it would be appropriate to seek some sort of interpretation. I certainly wouldn't want to put words in his mouth; since he's here I'll let him address that issue.

Mr. Davis replies, I would like to show you some of our outlook on this easement (Mr. Davis changes pages on the easel to show the Board) I think one of the statements that

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was made with respect to documentation. We're not denying that the adjoining property has rights through this site, what we're pointing out is that delineating exactly where those rights are based on the written documents. The only reference to the physical location is where a driveway was located in either 1955 or 1956. And we don't really have a way to ascertain that. As an example we went looking at aerial photos. We couldn't find anything with sufficient resolution to definitively show where this is. But one of the things that we did do was show aerial photos starting from last year working back into the 1990's, and what it showed in many of those photos there was already parking occurring here. That means the vehicles were placed there and they were accessing the site. We tried to get something in writing from the present owner but he's not willing to do that, he's happy with the way things are now. So what I'm trying to demonstrate with this is, we certainly have the physical means of providing ingress and egress, we're not denying the adjoining property owner of that. We have offered to put this on a map to ensure that if they want to take it later they can certainly have egress and ingress; we provided the dimensions on that, it can certainly be reviewed. The Planning Board was concerned with the language that whatever the court decided it went through here. Courts can decide a lot of things, judges have a lot of power, I don't realistically see that as a realistic decision because we have already uncovered enough things to show that it has been used for years as parking. And if you're parking things there it's not egress and ingress. From my perspective I think we really came here because the Planning Board was uncomfortable with approving parking there, we don't really have a need for eight spaces; we would be very comfortable with six. The reaction from the Board when we here was could you get something from the Planning Board stating that they were uncomfortable with that. To my knowledge they didn't respond to that when it was brought up in the meeting. We go to one meeting and they say we're uncomfortable we suggest you get a variance, to we are getting a variance for something we don't really think we need but if that makes life easier than we would do it. We're not trying to deny the adjoining property owner rights. If necessary and it's determined that we need the parking there, we'll go back to the Planning Board and say that we understand your concerns about the easement but this is what we're doing to address it. We're making the offer, but we can't force the neighbor to take the offer and at the same time we can't prevent the neighbor or future owner from litigating. We don't think it's fair for the Board to sit there and make decision based they could litigate this in the future. This has been a means of ingress and egress for many, many years. You made mention of a deed that couldn't be found, I wasn't aware of a deed that couldn't be found. The deed that I'm aware of provides a very general description.

Mr. McKay replies there's a reference in that documents that you provided us that give a very general description. The deed that you provided us with says there is a right of

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way for ingress and egress from the parties herein conveyed to the public. Goes on to say described in a deed from John A Dean Jr (I think) to Terry Modesto the same person as Salvatore Modesto dated September 23, 1952 to be recorded in the County Clerk's office. So the deed that you provided to us makes reference to another deed which says it's going to be recorded, but I don't know if that was ever done. So when I said there might be a missing deed.

Mr. Loch responds, I have a huge stack of property deeds all with general references regarding the easement, but those names aren't familiar. I can go through them again and see what I can find.

Mr. McKay replies. If you want to go back to the planning Board with that issue, that's fine, that's completely up to you. My question to you tonight, is do you want us to consider the variance request or not? Or if you want the Board to interpret something you need to identify for us what section of the code that you want us to interpret.

Mr. Davis responds, what I put in there is a request for a variance, I took all of the factors that the Zoning law requires, I put them in there and I showed compliance for an area usage. So the grounds to grant an area variance are there. We're seeking an area variance because the Planning Board wants us to seek an area variance, but I'm also pointing out is what the Planning Board wants isn't permissible. Because they cannot encode a future potential violation of the law today.

Mr. McKay states And all I'm saying is you choose.

Mr. Davis states that he's seeking both. He's seeking a variance and an interpretation. They're both in there and let the Board decide. The Board can turn around and say we grant the variance because of x and then no need for interpretation We deny the variance because of y and we make no comment on the interpretation. That's up to the Board to make that decision. The first two issues are rather clear, this is a common sense issue that somehow losing common sense. Our only remedy is to go sue Mr. Paul. There's no other remedy. Then we can go back to the Board and say this is what the courts have decided. The Planning Board can't ask us to do that so therefore we're saying grant us the variance for some unknown potential violation of the zoning law at some unknown potential time. Or you can say the Planning Board cannot impose this condition, they have eight parking spaces, and they're legal. Or you can say in addition the applicant proposing to grant a second easement and put it on the map. We suggest the Planning Board consider that. Thank you.

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Mr. Loch adds, one other item, if I may, in respect to your request that we sent this over to the fire district. I believe the Board did receive a letter from them. The letter states that they really have no real problem with this.

Mr. Davis adds, In the packet I put in a waiver stating that if the Board wants to continue the Public Hearing until next month, it is fine. If the Board thinks that something is missing, and would like additional information we can continue it another month. That's up to the Board.

Mr. McKay replies, I was probably referring to the Planning Board engineer's letter. The Planning Board never actually referred you on a variance issues, correct?

Mr. Loch replies, they suggested we apply for it as a way to avoid their discomfort.

Mr. Davis states I believe the Notice of Appeals asks for a multiple of things including the variance. The problem with the variance, it's for a situation that may never happen. So we get the variance so if the situation ever happens, we're legal. That's what the Planning Board really wants. What it really means, is that there are eight parking spaces built, eight parking spaces used, but as some point in time in the future. If there was ever litigation, one of the parking spaces may disappear, or two, or none.

Chair member Crover asks if there is any public comment.

Mr. McKay replies, Generally speaking in order to get the variance application for the Board on the parking issue, you need to be denied by the Building Inspector or you get a referral from the Planning Board. You don't have either, right?

Chairperson Crover states the he spoke with Mr. Paul and he wishes for everything to remain the same. I have lived here for fifty years, he has been here twenty, thirty years, and it's usually his vehicles that are parked there when you see those aerials. He doesn't want to jockey around to get through that fourteen foot opening. He's asking that we request that. I wish that he came tonight and publicly said that he doesn't want to. I think the concern about asking the Planning Board to refer you here in writing, is to ensure that you're not making anything up. I know that you're not making it up because you could do everything legally and why would you be here before us if there wasn't a concern of theirs about it.

The letter from the Planning Board Chairperson Don Danzeisen is given to Mr. McKay

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Mr. McKay states for the record I don't have any jurisdictional concerns

Mr. Loch shows on the easel with a marker the existing edge of pavement. So the amount of parking that is blocking anything right here is in the range of about three feet. It's not anything that would make it substantially more difficult to get in or out.

Boardmember Crover responds, I was down there tonight and he had four vehicles down there and if there was a vehicle parked in that front parking spot he would have to move one vehicle to get the other one out. He's parking off the pavement on the gravel. I understand there's been an understanding regarding plowing with previous owners, I'm not sure about the current owner. He wants this to continue with the new owner and it might not continue that way if there's parking there. I actually asked Mr. Paul tonight what if we put in a stipulation in granting the variance that we create the easement, and he said the same thing that you said to me, I like it the way that it is, I don't need anything in writing because what if something changes in the future and I need to park some place or they need to park someplace, or I need to redo my water main and it's not where the easement is. Because right now his water main comes in to the left of your yellow line, that you're showing his easement. So personally I don't see a big issue with granting the parking variance. Especially after my conversation with Mr. Paul. The point is as long as you're not withdrawing that application.

Mr. McKay asks about the letter that you just handed out is that the June 22nd letter from the Monroe Fire District? Or is this something else?

Mr. Loch replies that that is the letter.

Mr. McKay states that the letter simply says that they have no opinion on the outdoor storage.

Boardmember Crover explains, he wasn't making an opinion whether it's required or not by Fire Code. He was leaving it to the Building Inspector. But they have no problem with it being outside rather than inside.

Mr. Davis adds, the type of cage will be OSHA compliant.

Boardmember Crover replies you are presenting us with a specific model with size and specs, and it says it meets OSHA. I think that it's an interpretation whether a special permitted use is needed. I don't think it is. If there's no other comment, I would like to

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say that we do have a letter from the Fire Chief regarding the cage. I agree with most of everything that was said, because it is to the benefit of the neighboring property owner.

Not that I want to set a precedence with granting parking variances when they're not needed but in this particular case with this undefined easement I think we would save a lot of trouble for everyone if we grant it. So if there aren't any more questions, and everyone feels that they can make a decision with the information provided I don't see any reason why we can't close the public hearing.

Ron Walker states that outdoor storage is permitted with the approved cabinets up to a certain quantities, and it doesn't look like he's going to be over that amount.

It is decided that since the applicant has stated that they are willing to waive the time period to allow any additional information that may be needed, that the Public Hearing remain open until the next Zoning Board of Appeals meeting. This allows all of the Board member to review all of the information presented to them by the applicant.

Boardmember Daly states, if the applicant is willing to give us another month, I would like to use that time and review all of the information. I still don't know enough information to make a good decision. As you said it seems like everything is okay, but I don't want to rush into anything either. If they're willing to give us another month, then I say let's take that time.

Boardmember Crover explains whether we open or close it we can ask questions.

MOTION was made by Chairperson Schneider to close the Public Hearing and seconded by Chairperson Daly. All in favor.

Public Hearing is closed on Garfield Plumbing and Heating.

Call to Order

Boardmember Crover called to order the Zoning Board of Appeals Regular Meeting at 8:00pm on July 1, 2015, at the Village of Harriman Hall located at 1 Church Street, within the Village of Harriman, New York.

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Roll Call

The following persons were present:

- Laurine Miller – Chairperson
- Darrin Sainato - Member
- Chuck Crover - Member
- Carol Schneider – Member
- Sandra Daly - Member
- Ron Walker – Building Inspector
- Barbara Singer – Deputy Clerk/Secretary

Also Present

- Joe McKay

Absent

NONE

Discussion broke out regarding the mailings of the Public Hearing. After review of the Public Hearing mailings it was determined that everyone that needed to be notified was, there was an error made in the return receipt, which the Post Office remedied with Mr. Klein. With the exception of six, all receipts were returned signed.

Mr. McKay asks that the Public Hearing be reopened to state on the record that all of the proper mailings were performed so there is no need for any re-noticing.

Motion to reopen the Public Hearing was made by Boardmember Schneider and seconded by Boardmember Daly. *All in favor.*

Mr. Loch, engineer and land surveyor with AFR Engineering and Land surveying, earlier this evening I provided proof of mailings to the Zoning Board Of Appeals secretary. Essentially, they have been reviewed and can be verified by your clerk We have receipts for all of the mailings that were made. We have proof that they most of them got them. There were six that we didn't get any returns on. .All of the required mailings were made and the appropriate receipts were provided.

Boardmember Crover confirms that there is a receipt that went out to all of the property owners within the 300 feet. Only nineteen out of the twenty-five property owners signed for them. Which is not necessarily our responsibility.

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Motion to close the Public Hearing was made by Boardmember Schneider and seconded by Boardmember Daly. *All in favor.*

Adoption of Minutes

- **Motion** to approve the minutes from the May 19, 2015 Regular meeting was made by Boardmember Schneider and seconded by Boardmember Daly. Boardmember Sainato abstained because he wasn't a member at that time. *All in favor.*

Garfield Plumbing & Heating

**Garfield Plumbing & Heating
Determination of Special Permitted Use & Parking Issue
106-5-15**

Boardmember Crover explains we can open discussion tonight again we don't have to make a decision tonight. We can make that on the next Board meeting. I would like to clarify with all of the Board members, if anyone would like to discuss any portion of that tonight, we can. If you want to read through the packet that was given to us by the applicant and discuss it more next month, we can do that.

Boardmembers Schneider and Daly state that they would like to review the packet.

Boardmember Crover states that the Board will take thirty days to read the packet and discuss this at the next meeting, which is August 5, 2015 at 7:30pm.

- Motion to adjourn the ZBA meeting at 8:45pm was made by Boardmember Schneider, seconded by Boardmember Daly. *All in favor.*

Minutes Respectfully Submitted by:

Barbara Singer – Deputy Clerk/Secretary