

**Village of Harriman
Zoning Board of Appeals
March 6, 2019
7:30pm**

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Opened the ZBA Meeting with the Pledge of Allegiance

Call to Order

- Chairperson Carol Schneider called to order the Zoning Board of Appeals Regular Meeting at 7:40pm on March 6, 2019, 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:

- Carol Schneider – Chairperson
- Laurine Miller - Member
- Darrin Sainato – Member
- Lou Medina - Member
- John Hager – Building Inspector
- Jane Leake – Village Clerk (substituting for Deputy Clerk)

Also Present

- Joe McKay – Board Attorney

Absent

- Reyna Sandoval – Member
- Barbara Singer – ZBA Secretary (Deputy Clerk)

Adoption of Minutes

- **Motion** to approve the minutes from the February 6, 2019 Regular meeting was made by Member Medina and seconded by Member Sainato. *4 Ayes.*

Old Business

**Harriman Plaza Realty
Area & Parking Variances
102-4-9.12**

**Present: Scott Berliner, President Harriman Plaza Realty
Liam Byrne, LJB Associates**

Mr. Berliner stated I want to update my pharmacy. We are a Compound Pharmacy therefore we make things from scratch. According to the new FDA Regulations that are going to be implemented in New York shortly that refers to

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USP 797 and USP 800 of the Pharmacopeia which directs what I can and cannot do legally. I need to update my HVAC to include heat, cold and humidity. I have to redo all the ceilings so they can be sealed and in essence I can't do that to the existing space. When I first moved into Harriman in 2004, I had a professional consultant come in and the present layout met all specifications at that time. Right now, one of the big issues is the shed behind the building which is climate controlled. I can't walk and move Pharmaceutical Chemicals from outside one building into another building. It has to remain in the continuous space under control environment. Similar Regulations have to do with the floors, walls, plumbing, where a sink has to be. The only way that I can practically do this is to put up a new building and update all the HVAC and the plan would be to build it. I have another consultant coming in to direct what I have to do to meet all of these Regulations. So, I would have this building, put everything inside and it would essentially remain the same kind of work space I have now. I have a clean room that we make sterile products and a room right next to it. You can't have a room right next to a clean room. It is a different pressure kind of room so you can't block those vents. It is complicated, but the only reasonable way for me to do this is in a new space. My plan was to build this new space which is going to take a while, it is expensive. The equipment alone is probably \$150,000.00 just for this little space and be able to open up one day from one building into the other and be able to continue doing business. Presently we do mostly nutritionals, IV vitamins, a lot of vitamin C for cancer drips. It would really hurt a lot of doctors' practices if I couldn't continue since we service most of the doctors around here. That is the plan the way I envision it.

Ms. Schneider asked the shed you have right now is it controlled in any way?

Mr. Berliner replied it is insulated and is both air conditioned and heated. It is thermostatically controlled.

Mr. Sainato asked so you will kind of start from scratch with a state-of-the-art building? And then you will adjoin them together so it will be one continuous space?

Mr. Berliner replied yes, replacing what is presently the shed.

Mr. Medina stated on the application you don't say it is an area variance you are requesting. It just says it is a referral from the Planning Board.

Mr. McKay stated you are applying for an area variance, side line variance for both sides and then the parking variance.

Mr. Medina continued this property is within 300 feet of – State Road should be checked.

Mr. McKay stated I had asked Barbara in my memo today if she had sent this to the County for a 239 review.

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Clerk replied I don't know if she did or not.

Mr. Hager replied I don't believe she did, or it has been done yet because one of the reasons is at the last Planning Board Meeting there were a few things noted on the plans that needed revisions and that is one of the reasons you got your referral letter. They needed to get somethings done on the plans before coming to you guys.

Mr. Medina stated on the existing plans you have there is an existing sidewalk, but the parking stripping goes right to the building as it exists today. So there really isn't a sidewalk existing today.

Mr. Byrne responded yes.

Mr. Medina continued and, on a site visit I saw you had and not indicated on here that there are parking spaces along the left side.

Mr. Byrne replied yes.

Mr. Medina continued there is stripping, and cars do park there so is that going away?

Mr. Byrne no that will stay because the reason for this sidewalk is, we don't want cars blocking the doors so that is why the sidewalk will go in.

Mr. Medina stated on the proposal the maximum lot coverage, our requirement is 50% and your system shows 40% with a proposal of 80%. You are only adding 800 square feet so that is way high.

Mr. Berliner replied yes that is what Mr. Hager told us, so it is unnecessary essentially.

Mr. McKay stated there was a letter from the Villages Engineer that no lot coverage variance was required, but I think Mr. Fusco followed up with some comments and I think he said they were withdrawing that lot coverage request.

Mr. Medina commented it should also be removed from the plan.

Mr. Byrne replied it should have been removed.

Mr. Medina stated you have a side yard of 4 feet proposed variance. In the application you are saying this structure you are adding to the existing structure is in conjunction with the existing. So, it will be an extension of it. So, are we saying the structure is not running parallel to the lot line and that is why you need 4, otherwise it would still be 5?

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Mr. Berliner responded the existing building is 4 feet and the new addition is going to be exactly behind it. We were told we needed this variance because it is a change.

Mr. Medina stated the existing should say 4 on the Bulk Requirements, where it says 5. I was just wondering why it was different if the building structure is running at the same length.

Mr. Byrne replied the 4 is probably on the proposed.

Mr. Medina replied so that should be 5. If that is supposed to be 5 then the total should be 26.

Mr. Hager commented I found a survey map in the file that is from 2003 and this shows 6.3 feet.

Mr. Medina stated if you look at it it looks like your building is going to be 1 foot wider on that side.

Mr. Byrne responded at the front of the building it is 5.9 and the back is 6.6 so it doesn't run parallel. It is only a slight angle running in towards.

Mr. Medina stated so maybe the 5 and 4 proposal is correct.

Mr. Byrne yes.

DISCUSSION

Mr. Medina stated in regard to the parking variance the existing requirement based on the size of the building as it exists today would be roughly 44 spaces would be required. 43.75. Should the proposed addition be calculated based on office and not on using the 200 spaces for square foot. Your calculating the new proposal based on retail and not office. It should be office because it is not open to the public.

Mr. Byrne replied no, it is work space.

Mr. Medina stated it is work space not retail. It is an advantage to them if they calculate based on office because then they would be dividing by 200 instead of 150. Right now, you are saying you are going to require on your Bulk Table 5.3 spaces because you are dividing by 150. The 150 is because it is retail. You are calculating based on retail. I am saying if you calculate it based on office because it is not opened to the public you will only be required to have 4 spaces. So, it would be to your advantage to calculate it that way if you can.

Mr. Hager stated that kind of theory is – if for some reason the owner of the property decides to change the tenancy then it might not be so much manufacturing so the Planning Board would have to decipher the parking

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standard to apply. Right now, in the B2 I think they only show a few different scenarios. The scenario he actually has doesn't show up in our Zoning Code in the B2 and really it is work areas and work areas are based more on the employee count, but you really need a referral from the Planning Board to say we are going to apply a parking standard out of another section of the Code, which we did with the Right Choice project. Since the Planning Board hasn't given that direction yet, I think you should be conservative and go with 150 square feet. Do you agree Joe?

Mr. McKay replied I do. Calculate it on the greater area and then the Board will determine to grant it or deny it. If it is granted so be it. If it is denied you will have to go back to the Planning Board to kind of give you a calculation on how it should be broken up and then come back. That is all we can do because the Planning Board didn't refer that calculation to this Board.

Mr. Hager responded we are talking about a few spaces not a large number. I think you are at 5.3 now so it may be a one space difference. It is two spaces for every three employees.

Mr. Byrne why waste two or three months for one spot.

Mr. Medina stated I only mention it because if it was a problem to get a higher variance you could bring it down by using that calculation. This is a single-story building, there is no plans on building a second story?

Mr. Byrne no.

Mr. Medina asked how high is the existing building?

Mr. Berliner replied it is two stories part of the way and then there is an extension off the back that is one story.

Mr. Medina responded it is the extension that will continue as one story. Good. The only reason why I ask is because if it was a second story and this is considered manufacturing it is limited to 20 feet.

Mr. Berliner replied I have no intentions.

Mr. Byrne commented an extra story would mean more parking spots and parking spots are an issue right now.

Mr. Medina stated the question I have about the left side parallel parking that you said will remain. The proposal includes now a real sidewalk.

Mr. Byrne replied yes.

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Mr. Medina stated that sidewalk is going to take away the space within the parking spaces.

Mr. Byrne replied yes

Mr. Medina continued the Planning Board is probably going to ask you about the turn-around in that area. Will you be able to provide a turn-around in that area?

Mr. Byrne replied yes

Ms. Miller asked do you have parking in the back of the building also?

Mr. Byrne replied yes.

Mr. Berliner commented those left side parallel spots are not on the plan.

Ms. Miller stated I was wondering about them. Are they for the employees?

Mr. Berliner replied they are illegally parked.

Mr. Medina stated you said they were going to stay.

Mr. Berliner replied no not next to the building in the back, where there is enough turn-around.

Mr. Medina stated it is currently stripped on the side of the building.

Mr. Berliner replied it was blacked out because it wasn't on the plan and then the black out wore off and I am redoing the parking lot at the same time, so I didn't bother to do it again.

Mr. Medina asked along the white fence?

Mr. Berliner replied yeah there is no parking there.

Mr. Medina stated it is stripped.

Mr. Byrne replied there is stripping there now.

Mr. Berliner stated it was blacked out and it wore off.

Mr. Medina commented because it is not calculated in the spaces you currently have.

Ms. Schneider asked are you moving the septic system?

Mr. Berliner replied no plan to move it at this time.

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Mr. Medina stated it is on the existing and now off the proposal.

Ms. Byrne replied that is staying as is and the turn-around space is on the proposed and we are 30 feet away from the back side of the cars from where stripping is.

Mr. Medina stated that is why I ask because you are losing 5 feet at the sidewalk. That is close.

Mr. Byrne replied they have measured from a standard parking spot and it still gives us 30 feet of turn-around.

Ms. Schneider asked how many employees do you have?

Mr. Berliner replied 10 full time. I have a high school kid who gets dropped off.

Ms. Schneider stated so they are not all there at the same time.

Mr. Medina responded you are actually losing one space to what you currently have.

Ms. Schneider asked will you be requiring any new employees with the expansion?

Mr. Berliner replied no. I don't expect to.

Mr. Medina asked the offices aren't currently rented?

Mr. Berliner replied two are not.

Ms. Schneider asked how many are there?

Mr. Berliner replied seven. There is Hudson Valley Construction – 2 guys, Excavating Company – 2 guys and a part-time girl.

Ms. Schneider replied they are taking up four of your spots right there?

Ms. Berliner replied they are hardly ever there.

Mr. Byrne they are in the field in the day.

Ms. DeMartino stated we have a psychologist who is there at night.

Discussion broke out regarding incorrect calculation on an old map.

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Mr. Hager replied it is 2750 bottom floor, 2750 second floor and the extension is 1000. So, 3750 is correct for the bottom and 2750 is correct for the second floor. If your Engineer had that table and the parking calculation based on 3750.

Mr. McKay asked so the first floor is 3750 is that all retail or partly office and retail?

Mr. Berliner replied it is retail and work space.

Mr. Byrne so we have 5 spaces less for the requirement Code.

Mr. Medina replied so for the bulk requirements you have 18.75 for the office space. It should be 13.75 and then the total. You get 25 plus 13.75 plus 5.3 for the proposed addition so that is 44 is what the Code would say you need, and you are proposing 23 is what you are going to use. So, you need a variance for 21. Do you agree John?

Mr. Hager replied yes you reduce the spaces required according to our Codes by 5 spaces, so we are down to 44.05. I would recommend before the Public Hearing that they have the Engineer straighten this whole table and before the 239 review.

Discussion

Mr. McKay stated the sidelines on the proposed plan don't seem to match the survey and the parking calculation is different.

Mr. Hager commented I know at the Planning Board they were working off the old subdivision map so bring this new information to your Engineer so they can revise those plans based on that map instead of the subdivision one. Your Engineer may not know that map exists. I happened to find it in the file today.

Mr. Berliner stated it is probably the survey I had done when I bought the building.

Mr. Hager replied you are welcome to get a copy of that and give it to your Engineer.

Mr. Byrne stated it looks like we have 23 parking spaces is what we require and instead of going for a setback of 5 feet that we were proposing we will go for 6 feet to match the current survey.

Mr. Hager replied you don't want to ask for less then you need.

Mr. Byrne stated so if we are asking for 4 and go for 6.

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Mr. Hager replied I suggest go for the 5 and then you got a foot to play with, but that is up to the Board.

Mr. Medina asked if it goes to 6 from front to back it averages it out to 6 feet. So, he needs 9-foot variance.

Mr. Hager replied he would need a smaller variance if he has 6 instead of 5. One map says you need an 11-foot variance another is saying you need a 9-foot variance. Maybe you want to go with 10.

Mr. Byrne stated we are going in line with the existing building. It is not like we are going and encroaching anymore. We are keeping what is there for almost 200 feet and then some.

Mr. Medina asked is this what happens when the building isn't parallel to the lot line?

Mr. McKay replied if you grant it, we would say not to exceed.

Discussion

Mr. McKay asked do you want to schedule the Public Hearing and let the applicant amend the application to correct the distances in the parking calculation or wait to get the revised map and amended application.

Mr. Byrne replied we can't do anything with the Planning Board until we satisfy this Board first and since we are looking for less parking spaces on one end, we should be able to get that paperwork before the Public Hearing. We are talking a couple of inches on the side setback so that shouldn't be an issue either. We are asking for 5 feet and we need 6 so we are a good foot over from what we actually need, and we aren't encroaching any closer to the property line and the existing building. The back of the building is moving away from the property line which means another 40 feet. We are talking a couple of inches.

Ms. Schneider stated as long as you are going to have the maps because you don't want to go to a Public Hearing without the revisions.

Mr. Byrne replied I will have everything by Monday.

Ms. Schneider stated okay and amend the application as needed and update the maps.

Discussion

Mr. McKay stated if they submit a revised map and amended application and they do it fifteen days before our next meeting we are still not going to have any comments back from the County. The County has at least 30 days to review it.

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The question is is it more expedient rather than to scheduling a Public Hearing for next month. Schedule it for May and have the applicant amend according to the survey new parking calculations, file it here and direct the Clerk to send the revised application to the County.

Mr. Medina asked your saying to schedule the Public Hearing in May?

Mr. McKay replied if we schedule it in April and they get us something in two weeks the County is not going to turn it around in two weeks. I don't want to waste their time and money.

Mr. Medina asked it has to be returned?

Mr. McKay replied we have to get at least 30 days turnaround time from the time we mail it.

Mr. Medina asked we have to have that in hand in order to hold the Public Hearing?

Mr. McKay replied you have to deem the application complete in order to hold the Public Hearing. The other requirement is sending a full complete application to the County and they have a minimum 30-day requirement. If we schedule a

Public Hearing for next month, we will likely have to keep it open until we get the comments from the County.

Mr. Medina stated I am not trying to circumvent the system at all, but could we say at the Public Hearing when it is closed, we can approve it contingent on receiving the 239.

Mr. McKay replied you can close the Public Hearing as of further public comment and leave it open solely for the written comments from the County, but you still have to wait for the County comments at least 30 days. So, if the County takes more than that technically you can act, but you have to give them at least the 30 days.

Mr. Byrne asked now if that 239 goes to the County yet that road is a State Road, should it go right to the State and not the County?

Mr. McKay replied no it goes to the County.

Mr. Byrne responded can't they turn around and say it is not our road. We don't want anything to do with it you have to send it to the State?

Mr. McKay replied it doesn't have to go to the State it has to go to the County for sure.

Mr. Byrne asked they are reviewing it; can't their argument be it is not our Road?

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Mr. McKay responded that is not the type of requirement. Another words when you go to the Planning Board say you had to change the turn in or any of the design off 17M you would have to go to the DOT potentially. That is not the reason for this. This is an Environmental Review. The County will probably say it is a local determination. The statue says we have to wait 30 days.

Mr. Hager asked do you think there is any chance they would have a 239 turned around in that small window. I'm just looking at the construction schedule because this applicant has to return to the Planning Board.

Discussion

Mr. Byrne stated if we can get you this back by Friday, Monday morning the latest, then that should give you everything you need time wise. If possible, we would like to ask you to schedule a Public Hearing. Not only do we have the summer coming in, Planning Board, Building, we also have a Sate Mandated Guideline deadline to pull together too in order to get all this done. So, there is a lot of deadlines approaching quickly.

Ms. Schneider responded will schedule the Public Hearing and if we don't have the 239 back, we will have to hold the Public Hearing open based upon receiving that information.

Mr. McKay replied assuming everything is right, and you don't ask for anything else.

Mr. Byrne stated we are asking for less parking spaces and less on the side set back.

Mr. Medina responded you are not asking for less you are still asking for 23. You are still going to ask for a 11-foot side variance and the total which is 25. Can we motion to call for a Public Hearing with contingents on receiving a complete application and updated maps and direct Barbara to send the 239. At the Public Hearing if we do get the 239 back then it's a normal Public Hearing. If it is not back, then we keep the Public Hearing open for written comment from the County.

Mr. McKay stated the way the written motion is prepared it seeks an 11-foot side variance. Total side yard variance of 3 feet and 23 spaces. So, when the revised maps come in, we will make your decision according to whatever the actual parking calculation is and if it is 5 ½ or 6 feet. You will need to notify the property owners within 300 feet and Barbara will give you a list to send out the mailings. Bring proof that you sent the mailings out when you come in for the Public Hearing.

The Board is designating itself as Lead Agency on the Variances because I didn't see any designation in the Planning Boards minutes so we will do Lead Agency for the Variances only. Uncoordinated Review. It is a Type II Action based upon

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the limits of the new construction area and to schedule a Public Hearing for April 3, 2019 at 7:30pm.

Discussion

**RESOLUTION OF THE ZONING BOARD OF APPEALS
OF THE VILLAGE OF HARRIMAN
SCHEDULING A PUBLIC HEARING
ON THE APPLICATION OF HARRIMAN PLAZA REALTY CORP.**

WHEREAS, the Zoning Board of Appeals (“ZBA”) of the Village of Harriman has received an application from Harriman Plaza Realty Corp. for three (3) proposed area variances regarding real property situated at Section 102, Block 4, Lot 9.12, in the Village of Harriman, said lot also being known as 144 Route 17M; and

WHEREAS, said lot is located in a B-2 zoning district in which the Schedule of District Regulations (Village Code §140-7) requires a minimum side yard setback of 15 feet; total side yard setbacks of 30 feet, and 50 parking spaces for the type of use requested; and

WHEREAS, the proposed expansion of the existing building would result in an encroachment into the side yard setback, requiring an 11-foot variance; a total side yard variance of THREE (3) feet, and a variance of twenty-three (23) parking spaces; and

WHEREAS, The ZBA has reviewed the pending application and deems the same complete for the purpose of scheduling a public hearing thereon;

NOW, THEREFORE, BE IT HEREBY RESOLVED THAT:

1. Pursuant to, and in accordance with, the provisions the regulations implementing the New York State Environmental Quality Review Act (“SEQRA”), the ZBA determines that it is the Lead Agency to conduct uncoordinated review with respect to the Area Variance Application and preliminarily determines that the proposed action is a Type II action exempt from SEQRA review pursuant to Part 617.5(c)(7) of the regulations implementing SEQRA; and
2. The ZBA hereby schedules a public hearing on this proposed action for **April 3, 2019 at 7:30 p.m.**; and
3. The ZBA directs the Village Clerk to publish a notice of the public hearing, in compliance with §140-52 of the Code, to be held on **April 3, 2019 at 7:30 p.m.** at the Village Hall to review the proposed application and to referral a full copy of the application to the Orange County Department of Planning for General Municipal Law 239-m review.

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MOTION was made by Member Medina to move forward with the above Resolution along with the addendum the attorney is going to be adding (contingent on you getting an amended application and revised plan by Friday), a completed application, documentation received by the Zoning Board Secretary by Friday, March 8, 2019 with all of the changes to the Bulk Requirements Table and Calculations and set a Public Hearing for April 3, 2019 at 7:30pm. seconded by Member Schneider. 4 Ayes

Adjournment

- Motion to adjourn the ZBA meeting at 9:10pm was made by Chairperson Schneider, seconded by Member Sainato. 4 Ayes.

Minutes Respectfully Submitted by:

Jane Leake – Village Clerk