

**Village of Harriman
Zoning Board of Appeals
May 19, 2015
7:30pm**

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Opened the ZBA Meeting with the Pledge of Allegiance

Call to Order

- Chairperson Laurine Miller called to order the Zoning Board of Appeals Regular Meeting at 7:35pm on May 19, 2015, 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
- Carol Schneider – Member
- Sandra Daly - Member
- Ron Walker – Building Inspector
- Jane Leake – Deputy Clerk/Secretary

Also Present

- Joe McKay

Absent

- NONE

Adoption of Minutes

- **Motion** to approve the minutes from the April 21, 2015 Regular meeting was made by Member Crover and seconded by Member Schneider. 3 Ayes.

Old Business

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

Present: Jim Feury, AFR Engineering

Mr. Feury stated to the Board that the applicant has particular issues; one which was raised at the Planning Board about whether or not indoor storage requires a

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special permitted use. The applicant stores on his property because of the business pipe, fittings, washers, brackets. Items like that, that fit in with a plumbing business and he is planning to store those in his building. The Planning Board Engineer raised the issue of whether or not if that needs a special permitted use approval and the Planning Board decided to refer that to the Zoning Board for determination so we would ask you to consider that and make a determination one way or another so the Planning Board knows how to proceed.

Mr. McKay replied my understanding is there is a supplemental application seeking two variances.

Mr. Feury responded that is true. The issue was whether or not if it was needed. The application was filed in the event that variances were required and they were asking the Board to make a decision on those so the applicant knows how to proceed.

Mr. McKay stated the applicant is seeking one which is the interpretation of the Code on the indoor storage and the two others are?

Mr. Feury replied one is parking, the Code requires that there be 8 parking spaces. The plan shows 8 parking spaces. The property to the north has an easement across this parking lot. The easement is none specific. It doesn't give any real details other than the fact that it is supposed to follow the driveway from 1954 or 1956, which no one knows at this point what it is. So the Planning Board had a concern that if they approved the two parking spaces at the southerly end here that somehow that might block this persons access. The applicant said he doesn't really need 8 parking spaces for his business. He will be willing to give up these two spaces if both Boards agree and he would like to know whether or not that requires some type of deviation relief to do that.

Mr. McKay stated the information that was submitted wasn't clear, at least to me. Did you just say that the Code requires 8 spaces?

Mr. Feury responded that is correct.

Mr. McKay stated you just said before you are looking for an interpretation.

Mr. Feury replied on the issue of whether or not special permitted use is in order here.

Mr. McKay asked what is the total proposed number of spaces on the current plan before the Planning Board?

Mr. Feury replied 8.

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Mr. McKay stated please clarify the minimum is 8 and your oppose 8.

Mr. Feury replied correct.

Mr. McKay asked are you seeking a variance to 6 or not?

Mr. Feury replied because the Planning Board feels there might be a problem blocking that access they suggested that the applicant consider reducing the number of spaces. The applicant is willing to do that from 8 to 6, just to remove the 2 along the southernly property line and leave the 6 in front of the building.

Mr. McKay stated you said initially you wanted an interpretation on that issue.

Mr. Feury replied as to whether or not if they comply too what the Planning Board has suggested, that can still require deviation relief.

Mr. McKay stated I will tell you what I think your clients issue is and you can tell me if my interpretation is correct. You proposed 8 spaces in accordance with the Code requirements. There is an issue with two because you may impact on this Right-A-Way or easement with two of those spaces. So your suggestion to this Board is if you give us a variance for two spaces then we don't have to have parking allocated in the area, which is subject to this old somewhat unclear sized easement for ingress/egress.

Mr. Feury replied yes.

Mr. McKay stated this is not for an interpretation of parking regulations. This is for a variance from 8 spaces to 6 under the Code.

Mr. Crover asked you want to move forward with that part of the application?

Mr. Feury replied the Planning Board has an issue with those two spaces, even though we think there is plenty of room for the neighbor who lives here (referring to the map) to get across the parking lot.

Mr. Crover commented last time you referred to 10 – 15' across there.

Mr. Feury replied that is the problem with the easement as it is written in the deed it is very unclear it doesn't say 10' or 15' or anything. It just says whatever the driveway was back in the 50s, which nobody can really pinpoint at this point.

Mr. McKay asked did you do a title search on the adjacent parcels?

Mr. Feury replied no, not a title search. We got the deeds but we didn't have the title search.

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Mr. McKay asked a record search to show the adjoining properties, whether or not there may be an easement document recorded against the benefitted parcel and just a reference in the deed. That is my question?

Mr. Feury replied we did not get the deed or any records for Mr. Paul's property we only have the deed for this property which references that easement.

Mr. McKay stated sometimes this happens. It could have happened that this property owner would have wanted a recorded easement in its favor so that it can always get to the public road. At some point this parcel owner may have transferred and made a notation in the deed that this parcel, the subject, to the easement. The easement might be recorded with that parcel because it benefits them so I'm asking did anybody ever do that search.

Mr. Feury replied we did get the deeds for all the properties around. Our surveyor actually looked through those and to the best of my knowledge found nothing on the properties around it.

Mr. McKay stated one is the interpretation on the indoor storage and the second is the parking variance and then there is a third.

Mr. Feury replied the third as part of the business the applicant keeps on site propane/acetylene tanks. Obviously, it is not a good idea to store them inside the building for safety reason. He would like to put them outside in a metal container. There is one at the gas station right down on the corner. It has one right in front with the propane tanks in it. The applicant would like to do the same here. The question was raised at the Planning Board as to whether or not the Code requirement that says no outdoor storage applies here. We seem to think that applies to very large storage like autos, auto-parts, landscaping materials or building materials as oppose to just one particular cabinet with some tanks in. We are looking for the Board to consider that and give their interpretation on it.

Mr. McKay asked this property is in the B-2, correct?

Mr. Feury replied yes.

Mr. McKay asked this variance from the no outside storage, is that just on the B-2 schedule or is that in a different section of the Code?

Mr. Feury replied I don't recall where it was from. It was raised by the Planning Boards Engineer.

Mr. McKay stated I don't recall seeing it in the referral.

Mr. Walker replied it is in the district of uses.

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Mr. Feury stated at this time we are looking for an interpretation of the first item as to whether or not indoor storage is permitted or not permitted and if it is, is it going to be a special permitted use approval. We would like a decision or recommendation on the parking and also interpretation as to whether the outdoor storage is in actual violation of the Code or is allowed for the minuet nature of the storage.

Ms. Miller asked as to the outdoor storage I thought someone was supposed to check with the Fire Department because we don't have a fire inspector?

Mr. McKay stated when your colleague was here at the last Board meeting we had a discussion about the fact that the Board wanted some detail as to the type of gas/gases that might be stored there because this Village doesn't have a separate Fire Inspector. We had asked that the applicant provide the ZBA, for this evening if they could, with some information concerning applicable regulations with respect to the chemical/gases themselves and the storage. While storage is addressed in the Code – storage of these substances is not specifically addressed and the question was whether there was some superceeding regulation. Either from the State that specifically allows or prohibited certain substances in certain locations.

Mr. Feury replied we did notice that at the Mobil Station there is just what the applicant is proposing, an outdoor metal cabinet where you can see the propane tanks inside there. So the applicant felt that if that individual was allowed to do it then I would like to have permission to do it as well.

Mr. McKay asked those tanks at the Mobile Station would you describe them as the propane tanks that you use for your gas grill.

Mr. Feury replied it is hard to tell because although it is opened, there is some type of screening which makes it hard to see.

Mr. McKay asked Ron, is that also in the B-2 as well?

Mr. Walker replied that is not even in the Village of Harriman, but it is common. Down here at A&B Citgo has a 250 or 500 gallon tank that they fill up propane tanks with. I don't think that was ever considered outdoor storage.

Mr. Crover stated the sale of liquefied petroleum gas is actually a special permitted use in the B-2.

Ms. Schneider asked is this propane going to be for retail sale?

Mr. Feury replied no this is strictly for the applicant.

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Mr. Crover stated it is the small canisters they use for the trade. It is what they call materials of trade for trucking it. It is not the large canisters that they are reselling. There are no plans for retail sales of plumbing supplies out of there?

Mr. Klein replied no.

Ms. Schneider asked what would you use these liquefied gases for?

Mr. Klein replied for soldering and welding.

Ms. Schneider asked do you take the tank to the job site?

Mr. Klein replied yes.

Ms. Schneider asked how far off the road would the propane be?

Mr. Feury replied they are proposing to store it behind the building near the garage door.

Mr. Walker stated it would have to be at least 10ft off the property line.

Mr. Feury replied okay. They are proposing to close all of those windows so there won't be an issue with being too close to windows.

Ms. Miller asked you are saying in the back of the building, so you are saying by the person who lives back there?

Mr. Feury replied yes, it does have to be 10ft off the property line, but he does have enough room here to do that.

Mr. Klein stated the maximum will be 6 tanks.

Mr. Walker commented I think as far as the word storage - it is more supplies, like the muffler shop. They have extra mufflers and tail pipes, is it storage or supplies? Cooper tubing and stuff like that I think would be supplies.

Mr. McKay replied that is the indoor storage.

Ms. Schneider asked there won't be trucks going in and out?

Mr. Feury replied no, some of the guys take their trucks home and go right to the job. They don't come in every day, other then maybe to pick up once a week, to load up their trucks with supplies.

Mr. Miller stated you will have to have trucks come in to bring in your supplies?

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Mr. Klein replied usually pick-up trucks. Most of the deliveries are right on the job. The left over stuff comes back to the shop.

Mr. Crover stated I have mixed feelings about giving a variance for the parking without a specific letter from the Planning Board asking, because there is a problem with that driveway. I think that needs to be rectified by the Planning Board. I don't think that should be up to us to eliminate those two parking spots if it is not necessary, if there is adequate access.

Mr. Feury replied we feel there is enough room, but it is the Planning Board that has concerns.

Mr. Crover stated if they have a concern, but if they say there is not enough room then they should put that in writing to us.

Mr. Feury replied okay.

Mr. Walker stated Brian Paul should be here if he had concerns himself.

Mr. Crover replied he still has the option because he is going to get notified to come to this Public Hearing and he can voice his concern over that. Without that I personally feel we shouldn't grant that variance because the plan shows 15ft and most driveways are 10ft. To me there is adequate room without eliminating them, unless the neighbor came and voiced against it then I would reconsider that. I drove by there and his trucks are parked there. Without them telling us that they absolutely need to be eliminated I'm going to have a problem granting the variance, personally.

Mr. McKay asked was there anything in the referral from the Planning Board about the parking?

Mr. Crover replied I don't think so. That came up when they were here.

Mr. McKay stated you correctly pointed out that we need a referral from the Planning Board with respect to the variance for the parking. That is not an interpretation issue.

Mr. Crover commented as we asked last time to get us something from the Fire Chief stating that those cylinders need to be stored in an outside storage cage – that they don't belong inside. I know that they do.

Mr. Klein asked can I move in without the gas?

Mr. Crover replied there are three different things we are addressing here. One may be addressed sooner than the other.

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Mr. McKay stated the inside storage interpretation and the outside storage variance are right for the motion. The question is whether the Board is comfortable on also including in the Public Hearing the parking variance based on the applicants representation that they would have a few weeks to get a formal referral on that issue from the Planning Board.

Mr. Crover responded you can still ask to eliminate the two spots, it doesn't mean we have to grant it.

Mr. McKay stated based on this the Board can make a motion to schedule a Public Hearing on all three issues. Direct the applicant to get a formal referral letter on the parking variance to this Board before July 1st.

Mr. Feury asked does the applicant need three variances?

Mr. McKay stated they requested one parking interpretation and two variances.

Mr. Feury asked for the first on the interpretation do we advertise for a variance?

Mr. McKay stated schedule everything all at once for the one night. Normally, what happens is I will prepare the notices and you will get a copy of it and you will mail the notice we prepared.

Mr. Feury replied so the interpretation is for the indoor storage and the other two are constitute variances.

Mr. Crover stated the interpretation is whether it requires special permitted use.

Mr. Feury replied right.

Mr. McKay stated if the Board in theory would determine that it is a special required use, the Board may not go further to determine the variances.

Mr. Crover replied the special permitted use doesn't come back to us.

Mr. McKay stated we can make it contingent. This is presumably a primary use for their property. They can't store their pipes and their materials. If we send them back to the Planning Board and the Planning Board won't approve it – there is no need for them to go forward with the parking issue or the outside storage issues. At this point the Board will schedule a Public Hearing on the interpretation and the two variances, request that they get that letter from the Planning Board Chairman and schedule that Public Hearing for July 1st. Also, we need a new 239m referral sent to the County with the new information they submitted.

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Discussion broke out.

Mr. McKay asked can you show us the proposed location for the outside storage?

Mr. Feury replied it is going to be along the north side of the building, provided we are 10' away from the property line.

Discussion broke out

WHEREAS, the Zoning Board of Appeals ("ZBA") of the Village of Harriman has received an application from Abraham Klein on request from the Village Planning Board for an interpretation of Section 140-7 of the Village Code and Schedule of District Regulations for the B-2 zoning district as to whether a special use permit is required for a plumbing business known as Garfield Plumbing & Heating, Inc., with accessory storage, in the Village of Harriman, for the parcel of real property situated at Section 106, Block 5, Lot 15, said lot also being known as 36 State Route 17M; and

WHEREAS, said lot is located in a B-2 "General Commercial" zoning district; and

WHEREAS, the Village Planning Board and Applicant seek an official interpretation of the Village Code, pursuant to §140-50(B)(1) of the Village Code and §7-712-a of the N.Y.S. Village Law, whether the Applicant's proposed use may be permitted in a B-2 zoning district as a principal permitted use with permitted accessory use or as one of the Special Permitted Uses enumerated in Part 4 of the Code's Schedule of District Regulations; and

WHEREAS, the applicant seeks a variance of Chapter 140 to the Village Code to reduce the number of required parking spaces from 8 to 6 for the proposed use in the B-2 zone; and

WHEREAS, the applicant seeks a variance from the use requirement set forth in the B-2 Table of the Village Code for variance of those requirements concerning outside storage in the B-2 zone; 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, IT IS HEREBY

RESOLVED, pursuant to, and in accordance with, the provisions of Section 617.6 of the regulations implementing the New York State Environmental

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Quality Review Act ("SEQRA"), the ZBA determines that the proposed action is an action subject to SEQRA; and it is further

RESOLVED, that the ZBA hereby determines that it will be the Lead Agency with respect to the consideration, review and determination of the significance of the aforementioned variance request and interpretation pursuant to SEQRA regulation section 617.6(b)(1)(i), since there are no other agencies that have the authority to approve the request; and it is further

RESOLVED, that pursuant to SEQRA regulation section 617.5(c)(31), the ZBA hereby preliminarily classifies the aforementioned proposed actions as an unlisted action under SEQRA; and it is further

RESOLVED, that the Village Clerk and/or Deputy Village Clerk are hereby authorized and directed to cause public notice of said hearing to be given as provided by law and to refer this action to the Orange County Department of Planning pursuant to GML Section 239m; and it is further

RESOLVED, that a Public Hearing be held by the ZBA on July 1, 2015 at 7:30 p.m. at the Village Hall located at 1 Church Street, Harriman, New York in order to receive comments concerning the aforementioned variance requests and interpretation request and to hear comments concerning the potential adverse environmental impacts associated with the interpretation and variance requests; and it is further

MOTION made by Member Crover to move forward with the above resolution and seconded by Member Daly. *4 Ayes.*

Adjournment

- Motion to adjourn the ZBA meeting at 8:33pm was made by Chairperson Miller, seconded by Member Schneider. *4 Ayes.*

Minutes Respectfully Submitted by:

Jane Leake – Deputy Clerk/Secretary