VILLAGE OF HARRIMAN
ZONING BOARD OF APPEALS

1 Church Street, Harriman, New York 10926
(845) 783-4421, Ext 103

WEDNESDAY, SEPTEMBER 3, 2025
MEETING BEGINS AT 7:30PM

1. ATTORNEY/CLIENT
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. ACCEPTANCE OF PREVIOUS MINUTES – AUGUST 6, 2025
5. CONTINUED PUBLIC HEARINGS – NONE
6. RESOLUTION(S):
    a. 106-5-10 & 106-5-15, GARFIELD PLUMBING
    b. 101-2-1.12 MYL INVESTORS LLC
7. NEW BUSINESS:
    a. 103-4-1.1, 13 CHURCH STREET – TACONIC ART CENTER
8. ACTION ON DECISION(S)

NEXT ZONING BOARD OF APPEALS MEETING
IS SCHEDULED FOR
WEDNESDAY OCTOBER 1, 2025 @ 7:30PM

DEADLINE FOR COMPLETED SUBMISSION
FOR REVIEW IS DUE
BY 12:00PM ON SEPTEMBER 16, 2025

Chairperson Pettiford opened the Village of Harriman's Zoning Board of Appeals regular meeting at 7:32pm on September 3, 2025. He welcomed everyone followed by the Pledge of Allegiance and roll call.

Present: Chairperson Pettiford, Member LaMarch, Member Torres, Attorney McKay, Secretary Hunter
Absent: Member Santiago

Chairperson Pettiford made a Motion to go into an Attorney Client session at 7:40PM.
Second by Member LaMarch, ALL IN FAVOR.

Chairperson Pettiford made a Motion to return to the regular meeting from the Attorney Client session at 8:33PM.
Second by Member Torres, ALL IN FAVOR.

Member LaMarch made a MOTION to accept the minutes from August 6, 2025.
Second by Member Torres, ALL IN FAVOR.

DECISIONS:

101-2-1.12, 200 Route 17M – MYL Investors, LLC
Chairperson Pettiford asked the ZBA Members if they had an opportunity to read the draft decision. He then asked for a motion to accept the draft decision and authorize him to sign it.

Member LaMarch made a MOTION to accept the draft decision and to authorize the Chairperson to sign it.
Second by Member Torres, ALL IN FAVOR.

106-5-10 & 106-5-15, 34 & 36 Route 17M – Garfield Plumbing
Chairperson Pettiford asked the ZBA Members if they had an opportunity to read the draft decision. He then asked for a motion to accept the draft decision and authorize him to sign it.

Member LaMarch made a MOTION to accept the draft decision and to authorize the Chairperson to sign it.
Second by Member Torres, ALL IN FAVOR.

NEW BUSINESS:

Chairperson Pettiford acknowledged the ZBA Board received a letter yesterday morning from 200 Route 17M, MYL Investors, LLC. (Letter dated September 2, 2025, is attached to the minutes) Attorney McKay acknowledged a letter was received from MYL Investors, LLC explained the owner was looking for a revote under Village Code for their application. This case had a 2 – 2 vote, has a unique set of circumstances of the statue that allows the applicant to revote. The Board's option tonight is to move forward and revote or take some appropriate action.

Member LaMarch noted the letter dated September 2nd, was received on September 3rd by the Village does not give the members ample time to review. Submissions are to be sent 15 days prior, why submit the letter 48 hours before the meeting?

Chairperson Pettiford made a MOTION to place the request for a revote on the October calendar meeting for a revote.
Second by Member Torres, ALL IN FAVOR.

PUBLIC HEARING:

103-4-1.1, 13 Church Street– Taconic Art Center

Public Hearing notice was read and is attached to the minutes.

Member LaMarch made a MOTION to open the public hearing.
Second by Member Torres, ALL IN FAVOR.

Dr. Maria Fernanda Ramirez, representative for the applicant, submitted the certified mailings that were sent out for the public hearing this evening.

Attorney McKay noted that the applicant is looking for a sideline area variance and interpretation for the R-50 Zone to allow an Artistic residence space. The proposal per Village code is not on the approved list. If this Board finds it appropriate, then this would be considered a Use Variance. Need to demonstrate this cannot be put to a profitable use.

Dr. Ramirez stated the integrity of the existing building with the front entrance will remain. The side entrance is being proposed to allow ADA accessibility. The structure will integrate Modern and Old. Accessory use for the small apartments for Artist Residence place to stay with bedroom, bath, and partial kitchen adjacent to their office and workspace. The Artist can be 2 to 3 weeks or 1 to 3 months.

Public comments:

Andrew Siedenburg supports this project and noted it is important for the Artist to stay. This proposal is an incredible addition to enrich our Village.

Chairperson Pettiford mentioned he had concerns about the Apartment verbiage in our code. Not familiar what an Artist community is and asked if this could be used as a Musical Artist. Dr. Ramirez answered Visual Artist only, videos not prepared in gallery. Attorney McKay asked if the intention to rent month to month. Dr. Ramirez answered no, only Artist would have access to the apartments.

JoAnn Shuart asked if only art would be exhibited, which was confirmed yes. Attorney McKay noted that this application was before the Village Planning Board and was referred to the ZBA.

Attorney McKay noted the sideline issue must be 8 feet from property line. Dr. Ramirez will speak with the architect to confirm the exact numbers and revise the plans as needed.

Chairperson Pettiford made a Motion to go into an Attorney Client session at 9:16PM.
Second by Member Torres, ALL IN FAVOR.

Chairperson Pettiford made a Motion to return to the regular meeting from the Attorney Client session at 9:32PM.
Second by Member Torres, ALL IN FAVOR.

Dr. Ramirez stated that the current edge of the building will be updated with the exact measurement. Attorney McKay noted that the furthest point of the structure is closest to the sideline. The permitted accessory uses for R-50 refer to the R-100 zone, which is the Single-Family Zone (SFR) show for permit. There is a gap in the code and does not acknowledge uses other than for the SFR Zone. We need you to submit and demonstrate how these artists in residence get funded, approval for the project, and how you will attract visitors as part of your mission. Statue allows this as permitted use. For the Use Variance is based on financial criteria, and we need to prove you need the gallery with the kitchenette and sleeping area. For October's meeting more information is needed, showing this is a Not-for-Profit property.

Chairperson Pettiford made a Motion to adjourn tonight's public hearing to the October 1st meeting., Second by Member Torres, ALL IN FAVOR.

Attorney McKay read the Resolution designating this Board as Lead Agency.

Member LaMarch made a MOTION to accept the Resolution as read by Attorney McKay and declared this Unlisted Action.
Second by Chairperson Pettiford, ALL IN FAVOR.

Chairperson Pettiford made a MOTION to close the regular meeting of September 3, 2025, at 9:45PM Second by Member Torres, ALL IN FAVOR.

Respectively submitted,

Maria C. Hunter
ZBA Secretary

ZARIN & STEINMETZ LLP

Daniel M. Richmond
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September 2, 2025

Michael Pettiford, Chairperson
Village of Harriman Zoning Board of Appeals
Village Hall
1 Church Street
Harriman, New York 10926

Re: 200 Route 17M;
Tax Map Designation: 101-2-1.12

Dear Chairperson Pettiford and Members of the ZBA:

As you will recall, this Firm represents MYL Investors, LLC ("Applicant"), in connection with its request for a third-story variance from the Village of Harriman's B-2 General Commercial Zoning District for the Applicant's Project located at 200 Route 17M. As you will also recall, at your Board's August 6, 2025 meeting, an affirmative vote of a majority of all members was not attained, which resulted, by operation of law, in the denial of the Applicant's application. *See* N.Y. Village L. § 7-712-a(13)(b).

First, while the Applicant understands that a resolution on this vote will be presented to your Board tomorrow night for consideration, respectfully, the adoption of such a resolution would be in error. As the Court of Appeals holds, "where, as here, an application is rejected by a tie vote, 'there exists and can exist no formal statement of reasons for the rejection.'" *Tall Trees Const. Corp. v Z.B.A. of Huntington*, 97 N.Y.2d 86, 93 (2001) (citation omitted). To the extent that your Board would adopt a written decision in support of its action here, respectfully, such action would simply be further evidence of the Board's improper action here.

The Applicant also notes that, by State law, where, as here, a Zoning Board fails to secure an affirmative vote of a majority on a matter, the Board can vote on amended resolution without undertaking a rehearing. *See* N.Y. Village L. § 7-712-a(13)(b). While the Applicant is prepared to file an Article 78 challenge to the Board's action, it respectfully submits that both it and the Village would be well-served by avoiding the time and expense of litigation by having your Board vote in favor of the third-story variance.

Respectfully, a vote in favor of the third-story variance is the only result that can be rationally supported by the administrative record adduced before your Board. Conversely, the reasons stated for voting against the third-story variance are not supported by the record. While one member, for example, opined that granting the variance "might create a precedent for anyone else in the community or that could come along and just kind of build whatever they want." in reality, the facts underlying this case and the law do not support this. In fact, in February, in granting a variance for the Project's minor height exceedance earlier this year, your Board repeatedly recognized that the Project was "built according to plans reviewed and approved by the

prior Building Inspector." (ZBA Decision on Application for Variances, dated February 27, 2025, at 5; *see also id.* at 3 (finding that "the Applicant completed construction according to plans regularly submitted to, reviewed by, and permits issued by the Village Building Inspector").

The law is clear that where, as here, a variance is the result of varying interpretations of a municipal code by different officials, it is irrational to hold, regarding the fifth factor of self-imposed hardship, that the hardship is entirely self-imposed. (*See* Z&S February Letter to your Board, dated Feb. 20, 2025, *discussing Marotta v. Scheyer*, 40 A.D.3d 645, 646-647 (2d Dep't 2007)). We urge your Board to speak to the Building Inspector should you have any questions on this point.

Moreover, the reality is that, by law, your Board is bound by the precedent created for this particular project in your February vote , when your Board granted the height variance finding, inter alia, that:

- It "will not cause an undesirable change in the characteristics of the neighborhood or have a detrimental impact on nearby properties;"

- That "there is no feasible alternative for the Applicant to achieve the benefit sought, namely because the building is complete and has been built according to plans reviewed and approved by the prior Building Inspector;"

- That "the only realistic and economically feasible way for the Applicant to achieve the benefit sought, given the de minimis nature of the non-conformity, is by seeking the height variance," and;

- That the variance "is not substantial," that it "will not have an adverse effect on the physical or environmental conditions of the neighborhood or district."

(*See* February 2025 Decision at 4-6). Again, New York Courts consistently hold that Zoning Boards that neither follow their own prior precedent nor indicate a reason for reaching a different result on essentially the same facts are acting arbitrarily and capriciously. *See, e.g., Tall Trees Constr. Corp.*, 97 N.Y.2d at 93 (citation omitted).

The other reasons relied upon to vote against granting the third-story variance, such as traffic and square footage, are also improper. The square footage of the building is not at issue because the Building is in compliance with the Village Code and does not require a variance for square footage. Furthermore, the Applicant provided your Board, in May, with a traffic study showing that the Project, including the third floor, would not result in any significant increase in traffic, and this analysis was never contradicted.

For these and other reasons, we urge your Board to take the corrective action allowed by State law. *See* N.Y. Village L. § 7-712-a(13)(b).

Please let us know if you have any questions or would like to discuss anything.

Respectfully submitted,

ZARIN & STEINMETZ LLP

By: _____
Daniel M. Richmond, Esq.
Aaron N. Warner, Esq.

cc: Yoel Leifer
John Loch, P.E.

VILLAGE OF HARRIMAN
ZONING BOARD OF APPEALS

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN, that a public hearing will be held by the Zoning Board of Appeals of the Village of Harriman, New York on Wednesday September 3, 2025 at 7:30 p.m., or as soon thereafter as may heard, at Village Hall, located at 1 Church Street, Harriman, New York, 10926, regarding an application submitted by Taconic Art Center for an area variance from the Village Code's Schedule of District Regulations (Part 2) for the R-50 Zone to allow for the expansion of an existing building, with a side yard setback of less than 8 ft., when the Code requires a minimum of 8 ft. In addition, the Applicant is seeking an interpretation as to whether a proposed live-work space for visiting artists within the existing building is a permitted accessory use within the meaning of Section 140-4 of the Code. In the alternative, the Applicant is seeking a use variance for the proposed live-work space. The parcel is designated on the Orange County tax maps as Section 103, Block 4, Lot 1.1 with an address of 13 Church Street.

The Zoning Board of Appeals will hear all persons interested in the application at the above time and place. Copies of said application, and any other information submitted in support of the application are available for review at Village Hall at the address stated above.

The Village of Harriman will make every effort to ensure that the hearing is accessible to persons with disabilities. Anyone requiring special assistance and/or reasonable accommodations should contact the Village Clerk.

BY ORDER OF
THE ZONING BOARD OF APPEALS
VILLAGE OF HARRIMAN
MICHAEL PETTIFORD, CHAIRMAN