Chairperson Don Danzeisen opened the Village of Harriman Planning Board Regular Meeting of May 18, 2015 at 7:30pm.

ROLL CALL:

Present:

Board Members: Chairperson, Don Danzeisen; Members, Irma Escallier, Ron Klare and John Russo, Engineer, Kevin Dowd, Attorney, Ron Walker, Building Inspector and Barbara Singer Recording Secretary

APPROVAL OF MINUTES:

Motion was made by Ron Klare to approve the May 18, 2015 Regular Minutes with corrections. Seconded by Irma Escallier. All in favor.

Village View Estates
101-1-14
Board Decision of Extension of Preliminary Approval

Present: Nobody was representing.

Kevin Dowd states, I did have a conversation with Mr. Sweeney last month and also today. He’s asking for an extension of the preliminary approval which I would certainly think you would grant. He unfortunately has not come to an encumbering agreement with the Town of Monroe Highway Superintendent; the word is that he is a beginning contempt case against the Highway Superintendent over the issue of the access to the town highway. So if he has to go to court, obviously a court’s ruling would be pretty determinant on whether or not he has access to the road and therefore we would take it up when that was decided. There is no harm in extending it, it has been going on for many, many years as we both know this is a changeover in plans. I would suggest that you would extend the preliminary approval for six months and hopefully we would have a decision well before that. Unfortunately it looks like this is going to court to try to compel the Highway Superintendent of the Town of Monroe to reissue the permit that he revoked.

Chairman Danzeisen states that until the court decision are reached the Board may need to extend this again.

Motion was made by Ron Klare to extend the preliminary approval for six months. Seconded by Irma Escallier. All in favor.

PL Group LLC
108-1-11
Revised Site Plan

Present: Alan Peck, Applicant, George Stewart and Bill Johnson, Engineer for Sparaco & Youngblood, PLLC

Mr. Johnson states, we have been before you before, maybe four occasions, I am with the PL Group Plan. We have revised it several times, the most recent revision we had to add a wetland mitigation plan under the advice of Brian Orzel from the Army Corps of Engineers. It could mitigate with a two to one ratio if we fill in 100 square feet then we have to mitigate by creating 200 square feet, by doing that we have slightly more than doubled what we are planning to fill in. Brian Orzel, I don’t think he’s gotten there yet, was supposed to come to the site again to review the wetlands flags, as marked, from previous times. Our
survey crew went out and refreshed them so you can see where they are. The request has been put in to extend the jurisdictional wetlands approval that was there before and we feel sure that we are probably going to get that approval. John (the Village Engineer) had given us comments just late this afternoon, I have just gotten to review them in the car on my phone, but we don't see anything difficult there that can't be answered. We don't feel that there is anything there that should hold us up or preclude us from going ahead. I don't recall if you had been designated as lead agency yet.

Chairman Danzeisen replies that they did that a long time ago.

Board Member Escallier agrees.

Mr. Johnson continues, what I am requesting tonight is, if you could declare yourself lead agency and set a date for public hearing and make that for the next meeting. That's what we are requesting here tonight. Ultimately we are looking for a final approval but we have to take it step by step.

John Russo, responds, there were some errors with the SEQR document, which I spoke to Bill about earlier. Their consultant, B Thayer & Associates, have submitted to Brian Orzel asking for the reinstatement of the Jurisdictional determination permit that was preciously there, and I believe that the letter also stated that they submitted the mitigation plans along with that.

Mr. Johnson says yes.

John Russo states that the note on the plans that the sewer easement in the rear of the property is going to be abandoned. We will need documentation on that.

Mr. Johnson replies, the issue with that is the property that the easement was in favor of was the property that the Kohls shopping center is on and the hotel that's there. My client is going to get in touch with both of those properties and request a formal relinquishment of the easement. We have spoken to the Orange County Sewer District, Brian Titsworth, and he tells me that they will never, ever, ever use that easement for anything to do with sewer. They have no need for it. Kohls is already serviced and the hotel is already serviced by the Orange County Sewer District. They don't have to go through our property at all. However, John is correct; we have to get it relinquished so that it is no longer on the plans. That takes a little bit of time. But there is no pipe existing there, Orange County Sewer District actually went out and looked in all of the manholes in the area to make sure that no pipe went in the direction of our property and they assured me that there is none. I asked Brian Titsworth, from the Orange County Sewer District, if he could give us a letter stating that the easement would never be used and there's no reason for the easement. But he feels because it's a private easement, it has nothing to do with them, their name is not on the easement, they couldn't give me a letter stating that. But as a matter of fact that they will never use it, nor will any property on Commerce Drive use it, but it's still on the books. So formal relinquishment is in the process.

Chairman Danzeisen states that the formal relinquishment would have a significant impact on the final approval. Because if they don't relinquish it, what then?

Mr. Johnson replies, it isn’t used for anything, it doesn’t matter.

John Russo, states, the agreements in regard to that easement may have restrictions as to what's allowed within that easement.

Kevin Dowd states, usually you can’t construct across an easement.

Mr. Johnson states, the easement was specifically written to support Site C. It says that in the deed. And that's the only way they can use it. It can't be used for anything else.

Chairman Danzeisen asks, on your two to one mitigation, is there any of your mitigation in the easement?
Mr. Johnson responds, No it has nothing to do with that. The mitigation runs behind that.

John Russo states, the easement actually runs in the parking lot, the back parking lot. So you are actually going to have retaining walls across it, parking lot across it. You’re going to have your pervious paver, underground system. It doesn’t preclude anyone from running a sewer through there if they had to in the future, even though the parking lot is there. Just like running a sewer down the road, you just have to dig up the road.

Kevin Dowd asks, your client’s property is encumbered by this easement, correct? In favor of who?

Mr. Johnson replies, Yes, in favor of Parcel C, which is now the Kohls shopping center and the hotel. The easement was for a private sewer treatment plant built on the adjacent site, which will never happen, and will now fall to the rear of the property, not through us, but the neighbor. The package plant was supposed to be on the neighbor’s property. The pipe was supposed to go through our property and a number of others to get to the neighbor’s property to get where the stand alone package plant, which Sewer District No 1 disallowed. They didn’t want anything like that in the sewer district. So they weren’t able to use it, but there was still the easement on that. You’re not able to build anything on it. It’s different if you have a path, but there you would have to build on top of where you have the package plant.

Kevin Dowd asks, did you own your property at the time when the easement was put across it? So you bought it encumbered by this easement? So you were subject to the restrictions of the easement on your property when you took title to it? So the question is, I’m assuming most utilities do not allow you to put parking lots and other things over them, retaining walls, potentially fences. If you could get it released that would solve that problem. If you don’t get it released, that is going to be very interesting to see. I haven’t seen the easement, so I don’t know.

Mr. Johnson says that is correct. The thing that is interesting is that both of the properties that have the right to that easement are in Sewer District No 1 and they are never going to want to go back to a private system. We all know that it is never going to be used, but technically it still exists.

Kevin Dowd responds, if the property that benefits by it wants to relinquish it, extinguish it, then that’s fine.

Mr. Johnson, responds, the easement, as I am reading it, gives them the right to make and maintain a sewer line. But that doesn’t prelude my client from building a parking lot over it. I did not see any restrictions.

Chairman Danzeisen responds, you just said the under drain system is going to go across this easement.

Mr. Johnson states, I said that it doesn’t preclude us from building anything on top of where the easement is. It’s like if I give somebody an easement to run an electric line over my property, I can still put a driveway on the property, possibly an above ground pool, maybe not an in ground pool. It doesn’t preclude you from using your property.

Kevin Dowd responds, it depends on the specific language of the easement. I haven’t seen it. But if you could provide it to me, I would like to read it.

John Russo states, just to make it noted, a floodplain development permit was submitted to the Village.

Ron Walker states, that a check was submitted, but there’s no forms or anything.
John Russo replies, the Village has no formal permit. There’s a section on it, but not a formal permit. The plans show proposed light poles, and portions of guiderail on top of the proposed retaining walls. Those details have to be worked out before. We would not be approving something where things may change that may impact parking or anything else.

Mr. Johnson states, my client will hire a structural engineer to do that.

Mr. Johnson shows John Russo that the plans have the 82 parking spaces as were required. He also shows Mr. Russo a note on the plans that satisfies his question regarding a retaining wall, item #19.

John Russo asks that the details for the retaining wall be more in more clarity, so they can’t be missed by the contractors. A lot of times contractor shop things out and they miss the details. And then just some minor modifications to the SWPPP. Another question that I have is regarding the wetland mitigation, there’s a good amount of grading involved, you’re going to be ripping into the roots of these trees, are the trees going to be able to survive?

Mr. Johnson replies, that there is grading probably closer to the drip line of the trees, and we are going to have to have Ken Kulcay, from B. Thayer Associates, answer the question, who did the mitigation.

Discussion broke out regarding the amount of grading, the stress on the trees. Some of the trees would be graded around completely. Additional information may be added to the plans in regard to the possibility of the trees dying, what will be planted back.

John Russo adds, another item I wanted to add was on the letter from Unilock, the last paragraph on the letter, they give recommendation. In regards to compacting the insidious soil subgrade at least ten perpendicular passes, if it exhibits instability, that information should be provided on the plan also.

Kevin Dowd asks, so although there is a section of the code that refers to that, and I copied it and have a copy of it with me, you’re saying that there is no permit application in existence? Have you ever done that in the past? So how do we deal with that?

John Russo responds, it’s probably just writing a general letter in regards to that; I’ll have a look at that. We had another consultant, Leonard Jackson, and we were fine with that.

Motion was made by Board member Escallier to make the Village of Harriman lead agency. Board member Klare seconded it. All in favor.

Discussion broke out regarding a public hearing to be held for PL Group at the Zoning Board of Appeals meeting, July 20, 2015 at 7:30, while the other issues they discussed were being taken care of.

Board member Escallier asks that the name on the site plan be called PL Group LLC / Add-Storage for clarity in filing on the final plans.

Motion was made by Board member Escallier for a Public Hearing on July 20, 2015 at 7:30. Board member Klare seconded it. All in favor.

Garfield Plumbing & Heating
106-5-15
Update on Site Plan

Present: Jim Feury from AFR Engineering, Mr. Klein, Owner

Mr. Feury states, we have been before you several time before. The Board discussed several issues that they thought should go to the Zoning Board of Appeals. We have been to the Zoning Board of Appeals
and they have scheduled a Public Hearing for July 1. Nothing has really changed. The Zoning Board of Appeals is requesting that the Planning Board send them a letter indicating their position on the issue of parking. If you remember the applicant had put in eight parking spaces, which was required, but the Board had a concern about access to the property to the North. There’s an easement across the southerly end of this parcel and the Zoning Board would like to know the feelings of the Planning Board before they hear the issue of the possibility of leaving two parking spaces.

John Russo states, that it is up to the business whether or not they will need these two spaces. Not the Board.

Kevin Dowd replies, this stems out of the easement on the property that you can’t quite locate.

Chairman Danzeisen states that if the two extra spaces are put on top of the easement, can a firetruck get through?

John Russo explains, the question is that we don’t even know where the easement lies. There’s nothing that defines where the access through the property even lies, so you don’t even know if you’re putting them on the easement.

Mr. Feury explains that the property owner who benefits from this doesn’t know either. He is only happy that he is able to park his trucks there right now.

Kevin Dowd asks can you redo the easement so that it’s clarified; you can put it where it benefits everybody?

Mr. Feury asks if that’s legal.

John Russo explains that it is legal because it’s your property. You can put in however wide an easement is needed and redefine it through the property. As long as the homeowner behind is alright.

Chairman Danzeisen explains that the easement is something that needs to be worked out between the two property owners.

Mr. Feury explains that there are eight parking spaces now. The company assures the Board that they don’t require that many. During the day they would require two to three parking spots. An agreement between the two property owners has been established in which they park on Garfield Plumbing & Heating’s property in exchange for snow removal.

On an easel Mr. Feury shows the easement up to the other property owner’s driveway. He also shows where the other property owner parks his vehicles, and explains how other passenger vehicles can pass by easily. He wasn’t sure if a firetruck could pass by.

John Russo suggests that the easement be redefined. As long as the neighbor is willing to work with you, then the easement is set in stone, where it lies, so in the future there would be no confusion. If an agreement can’t be reached, then at that point it has to go before the Zoning Board.

Kevin Dowd explains if they don’t get the variance and they don’t have enough parking, technically we couldn’t issue the site plan because they haven’t fulfilled all of the criteria.

Mr. Feury states, that it was the Board that had concerns regarding the parking and that’s why they went to the Zoning Board looking for a variance.

John Russo says another issue was the close proximity to the existing driveway, making sure that they could maneuver in and out of that driveway easily and clearly.
Mr. Feury shows on the map that the painter's truck from the other property parks on Garfield's property.

Mr. Klein explains that there will be two maybe three cars parked on his property during regular business hours. During the night, these cars will be replaced by work trucks.

Chairman Danzeisen suggests that the Planning Board write a letter to the Zoning Board of Appeals stating that they plan on working it out by trying to redefine the easement between the two property owners. And at this time, they may need an extension of time. That way we stay neutral and they can still conduct their hearing on the other matters. And you can try to work it out and you can still get your hearing conducted in a time frame. Kevin, can you take care of this for us please?

Kevin Dowd replies yes

Chairman Danzeisen explains that the Board is going to be requesting a variance for that. I don't believe that the code really means that.

Mr. Feury responds, If you look at the 1 District it specifically says that outdoor storage of fuels is allowed as a special permit in the 1 District and also in the PAD, but it doesn't say the same thing in the B1 and B2 which means if it's not listed, it's prohibited.

Board member Escallier states I understand that you're not going to have any signage, but I would like to clarify whether or not the name of the entity is Garfield Plumbing and Heating, and if so we should change that on the final site plan because this is showing 36 State Route 17M prepared for Abraham Klein, and if anyone is going to look it up again, for recording purposes this will not work. If anyone was to look this up the name Garfield Plumbing and Heating, we would not be able to associate it.

Mr. Feury assured the Board that would be taken care of.

Kevin Dowd states Good luck at the ZBA, hoping that you get a favorable interpretation that you don't need a special permit from this Board, get a variance for the outdoor storage, and parking will be worked out by a mutual agreement between the property owners. Then we can process your application.

Old Business

Board member Escallier asks about the status of Superior Pack.

Kevin Dowd explains that they had proposed a maintenance agreement that involved the Village Board. After many months of no contact between the applicant and the Village attorney, I have been told by the Village attorney's office that the Village refused the maintenance agreement. I have not heard from the applicant as to what the next step would be. It still is an open case. Everyone thought it would be approved by the Village, but the Village turned it down. So now I don't know what the applicant is proposing to do. We gave them conditional approval over a year ago, pending Village approval.

Chairman Danzeisen asks if that conditional approval has expired.

Kevin Dowd responds, let me contact the attorney and see what other ideas, and then they would have to come back here to either change or extend the conditional approval. They have to change something since they don't have the cooperation of the Village.

Discussion broke out.

Board member Escallier states that the Board should also review Tri Star.
Ron Walker explains, Tri Star had a grading permit which expired. They have taken out a new one. So they have six months. I understand he's building another building by the Rental place.

Discussion broke out.

There being no further business, MOTION was made by Ron Klare to adjourn the Regular Planning Board meeting at 8:15pm. Seconded by Irma Escallier. All in favor.

Respectfully Submitted: Barbara Singer, Recording Secretary