

**VILLAGE OF HARRIMAN PLANNING BOARD MEETING**  
**Regular Meeting**  
**March 20, 2017**

*Member Klare opened the Village of Harriman Regular Meeting of March 20, 2017 at 7:45pm.*

**PLEDGE OF ALLEGIANCE**

**ROLL CALL:**

**Present:** Board Members Ron Klare, Juan Quinones, Michael Zwarycz; Kevin Dowd, Attorney, John Russo, Engineer, John Hager, Building Inspector and Barbara Singer, Recording Secretary.

**Absent:** Chairwoman Irma Escallier, Member Martin Stanise.

**MOTION** was made by Member Zwarycz to approve January 23, 2016 Regular Minutes.

**SECOND** was made by Member Quinones.

**AYE:** Member Quinones  
Member Zwarycz  
Member Klare

**NAY:** -0-

**PL Group/Add Storage**

**108-1-11**

**Discussion**

**Present:** Allen Peck, Owner; George Sewitt; Bill Johnson, Engineer.

*Mr. Peck: Originally we were trying to get a building that was four stories and 50' height and along the way we ended up with 35' height and three stories. We did a SEQRA that was for the 50' height, four stories and 100,000+square feet, and that was approved. The reason that I included the structural drawings so you can see that you can't fit everything in that 35', you have to have 11 feet underneath the steel beams to put the mechanicals underneath. That is the catalyst that is driving this, being able to have more height in order to fit all of the mechanicals that need to be fit inside the building. We did an analysis of the four stories and it turned out because of the building's structure had to be twice as heavy as if you had a three storied building, the cost doubled and as a result we couldn't justify the cost per square foot to the customer so we stayed with the three storied building. We still needed more height to get the mechanicals in. What we are asking for is the additional height but its 99,000 square feet, not the 130,000 that we had in the SEQRA. We need the 50' height that was approved in the SEQRA. I put a table together that has the old average heights and the new average heights so you can see one next to the other. These are the average heights from the ground for all ten corners; everything is still under the 50'.*

*Member Klare: John is there any regulation against this?*

*John Russo: There was a question that we had the last time around and that's why Allen was below the 35' but since that time John Hager has spoken with Harriman's attorney and Woodbury's attorney.*

*John Hager: Yes and there was an opinion that was written by the Woodbury Building Inspector's office that they don't have any jurisdiction in their Codes on the lots that are exclusively within Harriman. Some of the old sub division maps indicate that there's a requirement for Woodbury Planning approval but that's not the case for this lot. I wrote an interpretation that the current Village of Harriman 50' height zoning would be in effect for this project. This lot is wholly within the district of the last 50'.*

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*Kevin Dowd: Back in September of last year, you came back and you had an amended plan, at that time, we had a Public Hearing and we gave you an amended site plan approval, unanimously. At that time you had lowered the elevation 2'.*

*Mr. Peck: Yes, the site work dropped in the back. The whole site has to be filled up, that's why we used the permeable pavers so that the fill would be for the detention so when it rains, the water goes through the permeable pavers. We had all of that so that designed for a H25 loading, that's super heavy duty for trucks and the like. That was all designed and approved and then we did a couple of reiterations of the wall and that's designed and approved. Nothing on the site work changes as a result of this.*

*John Russo: Basically he's changing the overall height of the building, just under 10'. The site remains the same; the storm water remains the same.*

*Member Klare: But it's all legal?*

*John Russo: It's below the 50'.*

*Kevin Dowd: Why did you lower it six months ago?*

*Bill Johnson: It was lowered for the fill on the site, there's less fill that needed to be brought into the site.*

*Allen Peck: In order for this project to sustain itself, it's about how much a potential customer would have to pay per square foot. If you have to put in another 100,000 yards of fill, that adds to cost. As it evolved and we got into actually doing the work that we had on the plan, how can we make this as efficient as possible? Because the loading docks in the back are 4' below the finished grade of the building. That's why we lowered that. Inside the building we designed the building; the office was at one elevation (525.5) and the loading dock at 527.5. This created a problem for accessibility for handicap. The architect said that we should make the whole floor 525.5, the same elevation as the office. We were actually creating issues that we have to remove that were impediments to the best interest of the project. That was taking place when we were in the design phase. That's why we lowered that. We lowered the area that was the loading area 2' in order to get the loading height in the back; we had to lower the back 2'. The catalyst there was the handicap accessibility, making the first floor all on one level. We had to eliminate the drive through because we were wasting so much space.*

*George Sewitt: When this particular development was designed there was a restriction of 35' height but wasn't made clear was that really affected any parcel that was entirely in the Town/Village of Woodbury or partially in the Village of Harriman and partially in the Town/Village of Woodbury. Both the Woodbury Building Inspector and your Building Inspector agree that Harriman Code prevails on any parcel that is in that development that was entirely in Harriman which took away the 35' impediment that Allen was trying to work with and now allows the 50' height. Therefore, just to simplify everything, we are now doing everything that we should have done originally had we known that we were able to use a 50' height. The thing that really makes this work and simplifies it is the SEQRA that was approved, was approved for 130,000 and a 50' height. This increase that Allen's asking for is below that threshold. In other words, the impacts are less than those that you have already approved. There's no need to redo SEQRA, maybe just reapprove it or maybe not even do that. We now have an approval to use a 50' height basis instead of a 35'. That's the reason for this.*

*John Russo: The real reason is to get the steel and mechanicals in.*

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*George Sewitt: And now we can do what we should have been able to do originally. That's exactly right. He was trying to tailor make the project to a restriction that turned out to not exist.*

*John Russo: Allen, you have had visual impacts done. Do you still have them?*

*Allen Peck: I don't have them in my possession, but we submitted them and they were approved.*

*John Russo: They never got approved because if they had gotten approved you wouldn't have had to go to the 35'*

*Allen Peck: They were approved for the 50' and that carried over to the SEQRA, Everything was okay with the SEQRA which was the 50' and then a four storied building.*

*John Russo: I think that you should bring those photos back. I think that you only brought one set and had given them to the Planning Board.*

*Allen Peck: We had a table from the sign company that had the distances and from every direction that you can see the sign from. The sign is 180 square feet so the lamination of the square footage from the sign.*

*John Russo: You had a letter visibility chart. You had taken photos from those locations?*

*Allen Peck: Yes. That's where we established what those numbers were. In other words, the distances from where you are going to see the sign, is tested on those points. That was done by the sign company. I was trying to use a 5' high letter that would have that visibility but it's only on one side of the building. The side that faces Route 6, it doesn't face the other residential potential.*

*John Russo: So those are the photos that we don't have, at least I don't have.*

*Kevin Dowd: So now the retaining walls and the height of the retaining walls all remain the same?*

*Bill Johnson: It all remains the same, only the height of the building changes. The only thing that we changed on the site plan was the first page; the bulk table where it says required we put in 50' originally it was required allowed 35'.*

*Kevin Dowd: And the building is still going to be 99,075 square feet.*

*Allen Peck: The footprint is 33,000 square feet and its three stories high.*

*Kevin Dowd: So in September when you dropped the building elevation 2' and you lowered the walls. At that time, based upon the numbers the average height of the building was 34.9' and then you dropped it by 2'.*

*George Sewitt: Correct, and we did that by taking the front portion of the building that we call the office section and making that lower than the rest of the building.*

*Allen Peck: In order to get that average we had to eliminate a floor of the tower to make it 2 stories. It looks nicer with the three stories.*

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*John Russo: So basically you're going to change two sheets in this set. The first sheet and the architect's elevation sheet.*

**MOTION** was made by Member Quinones to waive the Public Hearing on the amended site plan.

**SECOND** was made by Member Zwarycz.

**AYE:** Member Quinones  
Member Klare  
Member Zwarycz

**NAY:** -0-

*Kevin Dowd: This has no impact on the SEQRA determination that was made in February 2016.*

**MOTION** was made by Member Quinones to approve the amended site plan with an extra 10' building height.

**SECOND** was made by Member Zwarycz.

**AYE:** Member Quinones  
Member Klare  
Member Zwarycz

**NAY:** -0-

*Kevin Dowd: There's an issue with Right Choice Builders, the applicant was before you in January. Unfortunately, I missed the meeting. Recent activities, they have been before the ZBA and the ZBA's attorney has contacted John and I with questions about what's exactly before the ZBA and when I went through the minutes, because I missed the meeting, there was no referral from this Board to the ZBA. We know that they're going to need a height variance at the very least, but from what I can gather from the discussion that you had at the meeting was there was a question about the use of the building since they are seeking an accessory warehouse usage in a B2 yet the warehouse use is twice the size of the primary use which is an office. It seems to me that there is some confusion and concern not only with this Board and apparently it's the same with the ZBA. Now my first question is how did they get to the ZBA in the first place? You can't just walk into the ZBA, they have to be appealing something or be referred by you. You did not officially refer them and John Hager said that he did not deny them anything so they probably are not even in front of the ZBA correctly. And they were actually getting ready to set a Public hearing in April for this. The question that I have is, is the Board satisfied with the initial question of the use of this building. The first floor being office space and the next two floors down being warehousing of some sort.*

*Member Zwarycz: There was no guarantee of anything since it's all on specs.*

*Kevin Dowd: I think the way that I read the minutes was that you suggested to the applicant that he was going to come back to you answering all of the many questions that John had in his letter, with revisions to the plan and at that point you were going to decide what you were going to do as far as a referral, an interpretation of the zoning code as to whether this really fits the code for a B2 so you could even proceed. Regardless of the variances. I'm not too sure what we can do tonight since the applicant is not here. I think the initial question is if this is not even a permitted use in the B2 because the warehouse is not deemed to be an accessory to the principle use then this project is dead on arrival. Unless they get an interpretation from the ZBA or a use variance from the ZBA but they're before the ZBA under an authority that I can't figure out what it is. This Board didn't refer them and John Hager didn't deny them anything. My suggestion would be have them come back in April, hopefully explain to you*

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*better, maybe even answer John Russo's questions, and then at that point in time you can decide whether you want to refer them and if so what for. Start with the basic question, is this a permitted use or a special permitted use in the zone, have the ZBA interpret the zoning code that way first and then consider any variances they may need for building height, parking spaces and things like that. Otherwise, it's very possible that they can go to the ZBA and get a height variance, come back and have you say we're not even convinced this is a proper use for a B2. Rather than have them shuffled back and forth, it might be better if we have them come to you in April, make a better presentation, come back with some plans that seem to be a little more in tuned with what they want to do, with better explanations of what they want to do and then you can officially refer them.*

*Member Zwarycz: I think that you hit the nail on the head. It was so premature.*

*Member Quinones: I don't think that they were that certain of what type of use they were going to have.*

*John Russo: They don't know who the tenants are going to be. They're trying to build a building and then put something in it.*

*Kevin Dowd: We have had issues where people bring in bulk and they break the bulk down and ship out the components of that. From what I gather, they are not going to do that or they say that they're not going to do that but that's a different process than warehousing.*

*Member Zwarycz: From my memory, they were proposing to have sixteen tenants; there was no way the parking alone was out the window before the discussion even started. The radiuses of the turns, it was ridiculous.*

*Kevin Dowd: Barbara if you could contact the applicant or the applicant's representative and tell them that whatever they are doing in front of the ZBA they should stop because they're not authorized to be there, by this Board or by John. They should come back to the Planning Board in April for further clarification, further amendments to their plans, further information for this Board what they are going to refer to.*

*John Hager: What they presented to the Zoning Board was not identical to what they presented to you. They tried to react to some of the review that they had gotten, they've indicated now that they have eleven office spaces. There's still a need for a parking variance, still a need for a height variance. The use is still being presented as it was here. The applicant's opinion is that the office is the primary use and the warehouse use is accessory. If that can't be agreed upon by the Planning Board and that opinion offered to the Zoning Board, I think the Zoning Board wants to know if you're on board with that use. They asked me at the meeting and I told them that it could be argued one way or the other, I'm comfortable with it being called accessory based on what I see in the State Building Code and the occupancy levels on the two different uses.*

*Kevin Dowd: Which is not zoning though.*

*John Hager: No that's not zoning but if you back those numbers in you could make an argument that there would be much fewer occupants in a warehouse area than there would be in an office. So that's one way to justify the use. That's something that you need to determine if you're comfortable with that or if you want to have the Zoning Board rule on it.*

*John Russo: You could also look at it from the other side, square footage-wise. The square footage of the warehouse to the square footage of office.*

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*Kevin Dowd: the warehouse is two times the office space and that's supposed to be accessory. How is an accessory use twice the space of the building for the primary use?*

*John Hager: Also the way I read the Code, since use isn't specific in the B2 district, the parking requirement for that is not listed. The language of the zoning code regarding parking, basically says the Planning Board can interpret other sections of the Code if they feel it's appropriate but you haven't ruled on that.*

*Kevin Dowd: Correct.*

*John Hager: And maybe that's something that you would rather have them rule on, I'm not sure. One way or the other, somebody needs to determine what number of parking spaces variance they are seeking is. And the Zoning Board, I think also wanted to know that the Planning Board was in agreement with how these parking numbers were being calculated.*

*Kevin Dowd: There's also the issue of whose going to be Lead Agent for the SEQRA, they want the Planning Board to be Lead Agency. Sometimes when we refer these things the ZBA will do a separate SEQRA figuring you're going to do a more comprehensive review if they get past the ZBA.*

*Member Klare: If they don't get past the ZBA, they can't come back here.*

*John Russo: The attorney for the ZBA was kind of concerned if it was a Type 1 because of the Heritage Trail being adjacent to it. I said it wasn't adjacent to it; it's on the other side of the Ramapo. It's not adjacent so it could be segmented. The Planning Board could do their own thing; the Zoning Board could do their own thing. Instead of having everyone run under one umbrella.*

*Kevin Dowd: I think that if you take care of the applicant and I'll talk to the attorney and tell them that the ZBA should not be putting this on for any kind of Public Hearing in April until they come back to us and we determine what we're going to refer them to as. One of it is going to be the use, I think. From the minutes and what you're saying tonight, you're not really sure what this use is. Whether it complies with the zoning or not.*

*Member Klare: They didn't know themselves.*

*John Russo: And there's the concern, they say that there's nothing going to be broken down. As far as the parking requirements I think that they need to address some of the comments with regards with how the site was being developed. The entire site and even the building are going to modify a little bit. I had met with the architect after the meeting, he came to my office and had looked at some alternative ways and he actually talked about a drive through which would eliminate some of the conflicts with the trucks with the backing and turning movements. The next thing I see is the plan, they don't have a drive through, and they still have trucks. Some of the trucks were turning into retaining walls. It still just didn't work. After that I haven't seen anything.*

*Member Zwarycz: A question that I would have is, if it's proposed to be sixteen originally and down to eleven, and ultimately, it's down to one, how legal is it.*

*Kevin Dowd: I think that you're looking at the overall use of the building opposed to whose actually going to occupy the building in the sense of the number of tenants. If the use is going to be strictly office and warehousing, does it make any difference if it's sixteen tenants or one, in the same confined space? The size of the building isn't changing.*

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*Member Zwarycz: Sure if you have six separate business then you have to figure, two employees per business at the very minimum.*

*Kevin Dowd: But on the other hand if you have one business that's going to occupy six times the space, you may have six times the employees. We're not supposed to get in to the actual operations of the businesses. I think that's what we have to clarify, if you're not comfortable with the use, and I understand why you wouldn't be, the ratio of the accessory to the primary so that's where you start by getting an interpretation from the Zoning Board. They are the ones that interpret the Zoning Code. Whether the size of the space makes a difference or doesn't and if they interpret that it fits the Code and they get their variances then you have a comfort factor that the Board whose job is it to interpret, did their job. The Village Board can change the Code again if they're not happy with the interpretation of the ZBA. If you're not clear on issues, if it fits in to the zoning, you refer issues to the Board that's delegated to that responsibility to issue the interpretation of the zoning code.*

*Member Klare: We'll see them again in April and we may have to send them back to the Zoning Board.*

*Kevin Dowd: Correct, the question that they may ask John, he would deny them to get them to the Zoning Board, isn't necessarily your concern, he's looking at more the building construction. He looks at the zoning but ultimately, it's you that has to take the zoning and apply it to these particular plans. We don't want to run applicants back and forth for no reason, let them go for what they need. It saves you time, the ZBA time; it saves the applicant time and money.*

*John Hager: It's most sufficient for them to get that referral from this Board. If he can come back to you with his now amended plan I think that you're much better prepared to give him a list and say you need these variances rather than me just rejecting it and saying you need a site plan approval so I can't approve your permit and you need variances for parking, height. Now he goes to the ZBA, then back to the Planning Board, and you look at it in depth some more and tell them they need a few more things that I didn't find. Now he's going to have to go back to the ZBA and have another Public Hearing. So even though this sounds like it's going to cost him an extra month, it's probably going to save him a month or two in the long run.*

*John Russo: The first thing that that ZBA should be looking at is the interpretation. They can look at that interpretation, building height, parking, all at the same time. If the ZBA says this doesn't conform then there's no reason to worry about building height, parking, the project is dead at that point.*

*Member Quinones left the meeting and the meeting ended, 8:25pm.*

Respectfully Submitted:

  
Barbara Singer, Recording Secretary