

**MINUTES** of the Village of Montgomery Planning Board meeting held in the Conference Room of the Village Hall, Clinton Street, on Thursday, June 25<sup>th</sup>, 2015 at 7:30 pm.

**ATTENDANCE:** Chrm. Conero, Mbr. Romano, Mbr. McLean, Mbr. Weeden, Mbr. Crowley, Atty. Kevin Dowd, (Not in attendance-Eng. Dawn Kalisky of Lanc & Tully), Bruce Yancewicz, Ross Winglovitz of Engineering Properties, Walt Pahucki, Claire Pahucki, Joe and Heather Conley, Parinaz Mokhtari, Adam Peterson, Marc Devitt, Tina Quinlan, Tina Lewis Campbell

**OPEN:** Chrm. Conero opened the meeting with the Pledge of Allegiance.

**OLD BUSINESS:**

**PUBLIC HEARING FOR ROWLEY DEVELOPMENT CORP  
40 RAILROAD AVENUE 202-12-9**

The public hearing is cancelled, as they withdrew their request.

**PLEASE, LLC**

Please, LLC is requesting a six month extension.

Mr. Winglovitz updated the Board: drainage improvements have been made, market conditions are poor, lien issues and the water pressure has been corrected.

**A MOTION** to grant a six month extension to Please, LLC, was made by Mbr. Weeden, seconded by Mbr. Crowley, and carried 5 Ayes, 0 Nays.

**MS. CLAIRE'S MONTESSORI 203-1-12.2 Special Exception Use**

Mr. Winglovitz said the application is to increase what was previously approved. Site improvements have been addressed; signage and striping the parking lot. This is the 3<sup>rd</sup> change. It's a modification of the original site plan; to have up to 105 occupants, which is what they believe the building code will allow. Bruce may have a different opinion so they hired an architectural consultant who has done a lot of schools, to take a look at the building and do a complete evaluation to comment on the occupancy issue. He feels that the space is 20 sq. ft. per occupancy. They feel this is a building code issue and would resolve that prior to getting a CO, so they would ask that the Board process the application knowing that they would get a CO to the agreed occupancy. If they can't get Bruce to agree to what their code consultant says, they will go onto the State to ask for interpretation. As far as the use of the playground area; they would rotate different class groups at different times of the day. The increased occupancy means more people dropping off. As with the playground; they will be set at different times for different age groups over a longer period of time.

Mbr. McLean questioned, you're going from 25 to 105?

Mr. Winglovitz said that that would be both upstairs and downstairs.

Atty. Dowd said that the approval that the Board gave was for 25 students and 6 teachers/teacher's aides. The application was for both floors, however, the second floor was never converted to the use for the school. In practicality, it was for the bottom floor.

Mbr. Crowley asked how many students and teachers will they have.

Ms. Pahucki said that it depends on enrollment. She intends to have 8 teachers and the maximum occupancy students they can have. The ratio is 1:12.

Chrm. Conero said they asked for clarification but didn't know how/where Bruce got that, so they asked him to come in and confirm it.

Atty. Dowd said that Bruce had been in school the day before and had met a man named Joe Romano, from Albany who, the attorney spoke with, and had spoken with Mr. Winglovitz about...

Mr. Yancewicz said he was in charge of Day Care and Child Services of New York State.

Atty. Dowd said it is a non-public school that we approved (a Montessori school). If there are first graders attending the school, then the first graders need a separate and distinct classroom from the rest of the students; the sq. ft. classroom space is 20 sq. ft. per child. Any child who is kindergarten or younger, the state standard is 35 sq. ft. per child classroom space. The section of code requires 20 sq. ft., because it is 1st-12; anything less is 35 sq. ft. He also said that if the school is a Montessori school, that it should be chartered or Montessori certified/accredited. Atty. Dowd spoke with Mr. Winglovitz and Ms. Claire's is not accredited or certified by a Montessori association as a Montessori school. It may be the teaching method but there is no designation or license/accreditation from the Montessori Association that this is a Montessori school. He asked about the state license and was given an email from the NYSED website which states that Ms. Claire's is a religious corporation; and the established date is 7/1/14 (she opened in August 2013). She could operate as long as she filed, as per Mr. Winglovitz. Bruce had been using the American Montessori School standard which is 30 sq. ft. per child and the proper standard is 35 sq. ft. for children under first grade. They want a modification of their permit that was issued in 2013 and an increase in number of people. First of all, (at the Board members) you don't want to authorize it and immediately put them in violation of the standards of the building code occupancy levels, but also, there are other issues that you are required to look at under your code. The SEU requirements, as to whether or not this site is adequate for the numbers of people they are trying to put into this building. That includes things like parking, safety, traffic in and around the area, the number of children in the play areas. Keep that in the back of your mind if you're going to extend this permit and extending the number of occupants.

Ms. Pahucki said that as far as licensing, a new school cannot be accredited until it is 3 years old; before you can even start the process.

Atty. Dowd asked if the Montessori label could be used.

Ms. Pahucki said absolutely, there is nothing on the Montessori...that says you cannot...

Atty. Dowd said, but you're not a Montessori school...

Ms. Pahucki said we are a Montessori school, we have not applied for accreditation with the American Montessori Society. There are several Montessori societies; American, American Montessori International, it's who you decide to follow.

Atty. Dowd asked if she applied to any of those associations.

Ms. Pahucki said, no because they are not 3yrs old.

Atty. Dowd said, but you are still allowed to...

Ms. Pahucki said, yes. And you don't have to, it's your choice to become accredited or not.

Atty. Dowd asked, so if you went 10 years and were never accredited by any of the Montessori associations, you could still call yourself a Montessori school?

Ms. Pahucki said, yes because I have Montessori certified teachers. Joe Romano? He's from the Office of Children and Family Services? He doesn't license us.

Atty. Dowd said they don't but they are called in whenever there's an issue potentially with a daycare/young children situations.

Mr. Winglovitz said they sent a letter. (Tina makes copies to provide to the Board).

Mr. Devitt said they have been there twice already.

Mr. Winglovitz said there are different interpretations. It wouldn't be the first time that a building inspector and applicant haven't agreed. If we need to go to the state to get interpretation...

Atty. Dowd said, I know you submitted a letter from an architect, however, the building inspector is the interpreter in the municipality. Regardless of what your expert says, the person who speaks to us and tells us that code provision, and the occupancy, is the Building Inspector. As a Planning Board (to the Board), you have to heed to that.

Chrm. Conero said we still don't understand what standards we're using.

Mr. Yancewicz said the code professionals that he's spoken with, Tri-County Chapter, Joe Romano and Albany; he's getting Dan Nichols involved now. The interpretation is that he (Bruce) is in charge of the school for fire inspections, fire drills, occupancy. What he's told is first grade and up is 20 sq. ft. per child in the classroom/separate room, 35 sq. ft. for child under that.

Chrm. Conero said NYS Family and Child Services issued a letter that they don't have any jurisdiction over it so how can they use that standard?

Mr. Yancewicz said it states it right in the building code.

Atty. Dowd said Mr. Romano said that Bruce's interpretation was correct. That anything under 1st-12 is 35 sq. ft. by New York State law.

Mbr. McLean asked, that is the classroom itself?

Mr. Yancewicz, again, said that the building code states for education. Education says school grades 1st-12 is 20 sq. ft. And childcare/daycare is 35 sq. ft.

Mr. Devitt said that he and Ross met with Bruce; he referenced the code and they agreed to disagree. They asked to send a letter to the state and ask for an interpretation from them.

Mr. Yancewicz said that he is getting Dan Nichols, from the Department of State involved, as it has to do with children. He may come down or send a letter.

Too many people talking at once.

Mr. Yancewicz said that first grade has to have a separate room.

Mbr. Romano asked if they have a separate room.

Ms. Pahucki said they could but it's not the Montessori philosophy.

Mr. Yancewicz said one is a school entity and the other is a childcare/daycare.

Ms. Pahucki said they're not.

Mbr. Crowley asked what the preschool building code is. They are separate from childcare and preschool.

Mr. Yancewicz said anything under 1<sup>st</sup> grade is 35 sq. ft.. Everyone I talk to...

Mr. Winglovitz and we say the use that she has falls under E, which is education. Bruce's point is he thinks it falls under two different use categories.

Mr. Yancewicz said but it does.

Mbr. Crowley said there is a distinction between daycare and preschool.

Atty. Dowd said but the standards, I believe, are the same.

Chrm. Conero reiterated that this is building code issue.

Mr. Winglovitz said it is confusing; there are a lot different sections of the code and different things that apply. I think we need to have that interpretation.

Chrm. Conero said you do, because we can't vote on something positive. We would make you noncompliant the day we said yes.

Mr. Devitt said not necessarily. Condition the approval that...

Chrm. Conero said we can wait until next month and see how you progress with this interpretation.

Mbr. Crowley asked what the enrollment is right now, do you know what it's going to be in September?

Ms. Pahucki said, I don't know what it's going to be in September...inaudible...we just put it on pause.

Atty. Dowd quotes number 125.1 of the NYS Code, "...school means a non-public nursery school or kindergarten organized for the purpose of educating group or groups of six or more children, less than seven years of age, under the supervision of qualified teachers providing an

adequate program of learning activities and maintaining good standards of...inaudible. Under building facilities, under classrooms, it says it can run either first or second floor, classrooms have a minimum of 35 sq. ft. of floor space per child exclusive of cloakroom, isolation room, closet, toilets and kitchen.”

Everyone speaking at once.

Atty. Dowd said it's the NYS Education Department.

Mr. Devitt said they have a letter from Valley Central.

Mr. Winglovitz said they have a letter from Valley Central. It was submitted last time.

Inaudible-too many speaking at once.

Ms. Pahucki said there won't be enough.

Chrm. Conero asked, you won't have enough space? There's no way to make more improvements to that site, since there's...there's no other reason to use the Wallkill River School, if you went for a SEU?

Ms. Pahucki said they were generous enough to allow us...it's their building.

Chrm. Conero said this situation is unique. He's not comfortable voting on something, or even a public hearing, if it's in violation. You can say “as a conditional final,” but since this is a SEU and it's a school, it's going to be harder to do that, Ross.

Mr. Winglovitz said it's just a matter of changing the use.

Chrm. Conero said yes, changing the use, but again, the occupancy. Where do they go?

Atty. Dowd said the Building Inspector made his decision as to what the proper criteria is for the sq. ft. here. They can question it all they want and get all the experts but the final say is for the Building Inspector.

Ms. Pahucki said we have a right to question.

Atty. Dowd said you have the right to do whatever you want to do, but this Board is governed right now by what the Building Inspector is telling you. The application is to amend the SEU to increase the numbers of students and the numbers of teachers into the entire building. We are not sure how many will occupy the building.

Ms. Pahucki wants the maximum that the code allows.

Mbr. Crowley asked, right now, what if you did your enrollment based on what the Building Inspector is saying is code, that 35 sq. ft. per child for under 1<sup>st</sup> grade, separate classroom at 20 sq. ft. Then, if we appeal and you get something from the State and their interpretation is something different, then you can expand your enrollment.

Ms. Pahucki asked if they have to do another site plan.

Chrm. Conero said, if we deny it tonight, it will send you...do I think this will be resolved next month between the Building Inspector, our attorney, your attorney? I don't think it's going to happen. So another option is have the Planning Board deny the application then you litigate this. This is a building code thing. I don't want to hold you up.

Atty. Dowd said this is not just a building code because you have to approve a permit that allows the expansion of the program, the numbers of children, the numbers of teachers, the number of cars, and all the issues that went with the original site plan, and the original approval-we would be denying the amendment. The school would still be able to operate under the original permit-the 25 and 6. In finding to amend, you have to meet the standards of your Village zoning code and make the findings you made the first time; that this site is still adequate and safe for the increased numbers of people and children and everything else.

Chrm. Conero said, but if the NYS building code has been interpreted to 20 sq. ft. per child, I wouldn't have a problem with anything that met that code. If I had the proper parking calculations and proper recreation and the staggered drop off zones, I would base it on that total building code. You can't fit 105 in the building according to the building code. Like Erin said, amend your application to meet with the current standards and then...

Mr. Winglovitz added that it would be 75.

Mr. Devitt asked if they could proceed that way, knowing that after the interpretation from the State, they come back, if it were in their favor, they look at the site for the maximum number of students, teachers, traffic flows, the play area...

Mr. Romano asked why they haven't already gone to the State.

Inaudible...too many people talking.

Mr. Devitt said they're trying to resolve this without going to the State.

Ms. Pahucki said if they amend to the 20 sq. ft. & 35 sq. ft. and do go to the State, after this is approved, what process has to happen for them to change it to that?

Mbr. Romano asked what department changes the code. Why didn't they get that already?

Mbr. Crowley said Bruce did, they're saying it's a different interpretation.

Chrm. Conero said that if they come back next month with 35 sq. ft. and 20 sq. ft. for the 1<sup>st</sup> graders with that application can they vote on that because that will be a legal situation?

Atty. Dowd said, first of all, the second floor is still an apartment and you intend to let Claire use it (to Mr. Devitt)?

Mr. Devitt said yes.

Atty. Dowd said, in order for those calculations to be made, there has to be some sort of floor plan for not only the first floor but also the second floor, as to how to calculate that.

Chrm. Conero asked if they can send the floor plan to the Building Inspector and have him go over it?

Atty. Dowd said he hopes the Building Inspector sees the floor plan.

Mr. Winglovitz said yes.

Mr. Devitt said the floor plan is not going to change upstairs. It works the way it is.

Mbr. Crowley asked what the upstairs apartment looks like.

Mr. Devitt said it's a three bedroom apartment and one large open space that they'd like to use as the classroom; the bedrooms would be offices. There is a kitchen but the stove would come out.

Mbr. McLean asked about access to the second floor.

Mr. Devitt said it depends what the code says; we would make sure we meet the egress.

Mr. Winglovitz said it would meet egress.

Atty. Dowd said if the applicant is going to amend the application again, based on tonight's conversation, they would have to submit in time for the Board meeting; this is a special permit amendment, and you are intending on having the Public Hearing on the amendment. The question is, we still have to go through that process; we'll have to do SEQR. It's a type 1, you would have to make findings that the site is adequate for whatever number they come up with. If you issue a permit for whatever number it is and they want to increase it to 105, you have to amend the permit again.

Chrm. Conero said we were comfortable with the parking calculations and rec area; we put a lot of time and energy into the entrance and exit based upon 25 students and 6 teachers. We need to look at the details of the plan that has changed.

Atty. Dowd asked if the site is conducive to the intensity of use; if the number of people coming and in and out every day, Monday through Friday, and that the play area is adequate for them to phase it in and parking is sufficient.

Mr. Devitt agreed. We are asking that the Planning Board go through the site plan process at maximum, not saying that you're going to give any approval but look at the site for 105. If it comes back that it's only 60 or 70, whatever it is, and we'll do whatever the maximum will be.

Mbr. Crowley said she would look at it both ways, that way if it went in your favor, now its 105 and you don't meet these other standards. She would rather look at it the way the Building Inspector interprets it but if it comes back different, it could be also be 105. It can't be that many more kids.

Mr. Winglovitz said the rough calculation is 75; 1/3 space for 1<sup>st</sup> graders, the other 2/3 for kindergarten.

Mr. Yancewicz said he'd like to have the plans-1<sup>st</sup>, 2<sup>nd</sup> floor, everything laid out, then he'll send it to the Department of State Planning, as he's not going to review the plans. They will go to Dan Nichols...everything will go through him. He will do a whole review and interpret it.

Mbr. Romano asked how many students were in there.

Ms. Pahucki said 45.

Mbr. Romano said you maxed out at 45? I really want to see the letter from VC. You said you use the play area staggered?

Ms. Pahucki said yes.

Chrm. Conero asked if they were clear.

Atty. Dowd said you asked them to provide you with alternatives. Max verses...full details so that the space can be properly evaluated as to what they're measuring; where the classrooms are...

Mbr. Crowley said, in addition to that, are there a certain number of bathrooms you need to have? Student verses teachers?

Ms. Pahucki said yes.

Inaudible...there is discussion of the Wallkill River School bathroom.

Atty. Dowd asked what was going on at the school last week; the cars parked on Factory Street...

Ms. Pahucki said it was a Father's Day celebration that was broken down into 1 hr. slots, but it didn't work. Next time they'll go to a park or the senior center.

Atty. Dowd asked if they were indoors or outdoors.

Ms. Pahucki said half and half.

Atty. Dowd said when you first applied in 2013, there was a representation that those kind of activities would not take place on the site, because of parking concerns.

Ms. Pahucki said they aren't going to anymore.

Inaudible...too many people talking.

Chrm. Conero asked if they could refer anything to the Zoning Board.

Atty. Dowd said no; it's for zoning only.

Chrm. Conero reiterated that they've never had anyone question what our code enforcer says as far as sq. ft. per anything.

Ms. Pahucki said when they first went in, you'll notice the first CO was received several months later from Mr. Yancewicz, and if you measure it out, it was based on 20 sq. ft. That is where I originally got that number.

Chrm. Conero asked, to 25?

Ms. Pahucki said, no to 45. I went by the Building Inspector initially.

Mbr. McLean asked how you go to 105.

Ms. Pahucki said we don't have 105 at this point, we're looking for maximum occupancy so that we don't have this issue down the road.

Mbr. McLean asked, how did you get that number?

Ms. Pahucki said we're adding another floor.

Mbr. McLean said, but 45 on the first floor?

Ms. Pahucki said it's based on that measurement.

Mbr. McLean said I was looking at 45 and 45 since you've got two floors.

Mr. Winglovitz said the second floor is a little smaller than the first floor.

Mr. Yancewicz said Dan Nichols is very good with plans, he'll figure it out.

Chrm. Conero asked who Dan was.

Mr. Yancewicz said he (Dan) has jurisdiction over him.

Inaudible...everyone talking.

Mr. Devitt said we'll provide what we need to send to Dan, to Bruce.

Chrm. Conero said we'll come back next month and discuss the findings, whether we use 20 sq. ft. or 35 sq. ft., or a combination of both. Define the space.

Mbr. Crowley added that parking would be based on the number of teachers.

**RE: MINUTES:**

**A MOTION** was made by Mbr. McLean and seconded by Mbr. Crowley to accept the minutes from May 27<sup>th</sup>, 2015, and carried 5 Ayes 0 Nays.

**RE: ADJOURNMENT:**

**A MOTION** was made by Mbr. Crowley and was seconded by Mbr. Romano, to adjourn the meeting at 8:19 pm, and carried 5 Ayes 0 Nays.

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Tina Murphy  
Deputy Village Clerk