

MINUTES of the Village of Montgomery Planning Board meeting held in the Conference Room of the Village Hall, Clinton Street, on Wednesday, May 27th, 2015 at 7:30 pm.

ATTENDANCE: Chrm. Conero, Mbr. Romano, Mbr. McLean, Mbr. Weeden, Mbr. Crowley, Atty. Kevin Dowd, Eng. Dawn Kalisky of Lanc & Tully, Jane Samuelson of Engineering Properties, Walt Pahucki, Claire Pahucki, Joe and Heather Conley, Maria Beltrametti, Parinaz Mokhtari, Adam Peterson, Marc Devitt

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

OLD BUSINESS:

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

The public hearing is rescheduled, as Wallkill Valley Times did not publish the legal ad for it in the newspaper.

The Chairman cannot attend the next regularly scheduled meeting; all committee members are willing to reschedule to Thursday, June 25th, 2015, at 7:30 pm.

A MOTION to change the **REGULAR MEETING** from Wednesday, June 24th, 2015, to Thursday, June 25th, 2015, was made by Mbr. Weeden, seconded by Mbr. Romano, and carried 5 Ayes, 0 Nays.

A MOTION to reschedule the **PUBLIC HEARING** for Rowley Development Corp. for Thursday, June 25th, 2015, was made by Mbr. Weeden, seconded by Mbr. Romano, and carried 5 Ayes, 0 Nays.

Atty. Dowd advises the attendees for the public hearing that if they cannot make it to the meeting, their questions and concerns can be submitted in writing, to the Planning Board, up to the day of the public hearing.

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

Chrm. Conero said that they did not receive a copy of the report from the Building Inspector. Atty. Dowd had a copy, which were copied and handed out. Atty. Dowd said this had been contingent upon the Building Inspector going out to the site and doing a floor plan, measurement, calculation, and that the application...to see if the count was consistent with what the applicant was asking for. Based upon the calculations that the Building Inspector provided...the total occupancy of the Carriage House is 45. They are asking for 45 students and you cannot have 45 students and 6 teachers, administrators, visitors, parents without being in compliance of the occupancy and in violation. He had spoken with the Attorney for the Montessori School (who is not present) and provided the information from the Building Inspector, with the understanding that the applicant apply

for a SEU for the Wallkill River School, which they are using for their operations. Internally, they have to figure out what to do with the excess students they will not be approved for. It's one operation in two different buildings. The applicant has only applied for the Carriage House. The Planning Board cannot approve this as the occupancy limits exceed the number allowed by the State.

Ms. Samuelson stated that they used, for the site plan, the NYS code used for all schools in NY, which is 20 sq. ft. per child.

Atty. Dowd said this is not a traditional school; the Building Inspector used 30 sq. ft. which is from the Montessori school guidelines.

Chrm. Conero states the Planning Board is not the place to be determining the building occupancy. It is a Building Inspector and Attorney issue.

Mr. Devitt says there has been confusion from the beginning, from the building department. No direct code has been officially cited.

Atty. Dowd said this is a building code issue, although they are asking the Planning Board to approve a school for 45 students and 6 teachers and the occupancy of the building, according to the Building Inspector is only 45. He doesn't know how they can legally proceed to process an application that will put them in violation of the NYS building code. The special permit, determinations made originally for the 25 students and 6 teachers, is this adequate space for the number of children they are using. This needs to be re-examined in this application including the rec area. What other concerns are there that (the Planning Board) would have to take under the criteria in their own building code before approval could be granted? Approving more people in a space than legally allowed. The other building isn't even being considered. There is no permitted use for a Montessori school in the Patchett House/Wallkill River School.

Mr. Devitt said they are working that issue out with the Building Inspector.

Chrm. Conero said you have to have a building that is compliant and legal before they can approve it.

Mr. Devitt said they do not agree with where the Building Inspector is deriving his numbers from.

Atty. Dowd said the BI is the only official allowed to make the determination and calculation. He is making it. He issued a certificate of occupancy for 45 students but should have said 45 people. It now says 45 people and has been verified.

Mr. Devitt asks where to go from here; he is more than happy to do what he has to do.

Ms. Samuelson states that SED regulates public school, not private school. The building inspector has no purview in public school; he doesn't issue a building permit. Atty. Dowd

reminded her that this isn't a public school and that the Building Inspector has the purview under the building code to inspect occupancy in every building.

Mbr. Romano asked who should be making the decision if it's not the Building Inspector, about how much the sq. ft. it should be.

Ms. Samuelson said the Building Inspector, but feels he is using the wrong code.

Mr. Devitt said they don't know what he's citing; he isn't telling us anything.

Chrm. Conero asks, if he wants to open a day care/Pre-K program, and goes to Valley Central, wouldn't they ask what size the building is? Square foot per child?

Ms. Pahucki said when she applied for non-public school, she based it on 8.25 feet. Her UPK application says 20 sq. ft. per child, and she was approved to be a UPK provider based on that.

Mbr. Crowley asked her if she had verification.

Ms. Pahucki said yes, from Valley Central. Inaudible-cannot hear what Ms. Pahucki is saying.

Chrm. Conero said that until they get verification from the Building Inspector, they cannot approve a building that is not compliant of the building code.

Atty. Dowd said, as he understands the building code, it's a Pre-K/Montessori-this is not considered an educational classroom where 20 sq. ft. applies. It's considered a day care facility.

Multiple people state: NO ITS NOT!

Atty. Dowd said, but under the code it qualifies as a day care which is 35 sq. ft. per child.

Ms. Samuelson asks if this is the village code.

Atty. Dowd said the state building code.

Ms. Pahucki said she doesn't understand that.

Mr. Devitt asked the Atty. to tell them exactly how that is referenced and show them in the building code where that is.

Atty. Dowd said the Building Inspector has made his determination.

Ms. Samuelson said the engineer for the applicant feels that the Building Inspector has interpreted the building code incorrectly and that they will be bringing in an independent party who is very versed in the building code and have them give an opinion.

Chrm. Conero said that this is out of what our Planning Board gets involved in.

Mbr. Crowley asks what type of school it was approved for.

Ms. Pahucki said they are a non-public school; not a day care, not an early childhood center, not a nursery school, a non-public school.

Mbr. Crowley asked if that was what she applied to be.

Ms. Pahucki said yes, with State Ed.

Mbr. Crowley asked what the ages of the kids that are there are.

Ms. Pahucki said Pre-K through first grade.

Chrm. Conero said that once they get a letter from the Building Inspector-what it is, they'll follow that. The same as the Wallkill River School, whatever you plan on doing with that.

Ms. Samuelson said it's all on the same site plan.

Atty. Dowd said it's not the same site plan. The original use was only approved for the carriage house. The Wallkill River School has nothing to do and has never been approved...there are two different buildings approved for two different uses on the same site. Never, ever, has the Wallkill River School been approved as a use for a Montessori school-in any way, shape or form.

Ms. Samuelson asks Ms. Kalisky, as the engineer, they're on the same site plan so doesn't that address both uses in both buildings?

Ms. Kalisky said yes, it should-we pointed that out when the carriage house came in for the Montessori school. That the Patchett House itself was approved for retail/office space and a 300 sq. ft. gallery. Based on info known, it seems to have warped into something more than that and when it was questioned back in 2013, the property owner verified it was, in fact, retail/office space and 300 sq. ft. gallery. And it is noted, that use, on your site plan, there.

Ms. Samuelson said so it is the same site plan.

Ms. Kalisky said the specific uses, as approved, are as noted, or as noted and as proposed for the carriage house revisions, as noted on your site plan that you provided this for.

Mbr. Crowley asked Ms. Pahucki if she considered herself a Montessori school.

Ms. Pahucki replied, absolutely.

Chrm. Conero said there is nothing the Planning Board can do here. He stated that the Building Inspector and applicant need to figure this out. Bruce may not have cited code, but this is an official letter from him (the letter from the Building Inspector that Atty. Dowd had, with the sq. ft. of carriage house and Wallkill River School).

RE: MINUTES:

A MOTION was made by Mbr. Weeden and seconded by Mbr. Romano to accept the minutes from April 22, 2015, and carried 5 Ayes 0 Nays.

LOCAL LAW DISCUSSION

The Attorney requested the Planning Board discuss a Local Law brought on by the Petition of the owner of Borland House, which is a classified “Inn,” to allow service of food to the public for brunch. They would like to have events on the property; weddings, birthdays, celebrations of the guests and their invitees to the property. The Village Board asked Atty. Dowd to draft a local law that would distinguish between an “Inn” and a “B&B.” “B&B” are smaller in size, in residential zones and owner occupied. “Inns” tend to be larger (at least 15 rooms), not owner occupied-manager run, not necessarily in residential zones. They would like any recommendations from the Planning Board, as it falls under their purview SEU if there are any comments or concerns for the VB before they got to Public Hearing. This is only for B1/B2 zones. Orange County Planning has to reply, as well.

Atty. Dowd explains the difference between an “Inn” and a “B&B” and that this will be newly created for the local law book. Borland House is currently an “Inn.” They are allowed in the existing zoning in the historic district-it may or may not be residential or historic. This local law for “B&B” confines it to the B1/B2 business zones; with a maximum of 5 rooms, maximum 14 day stay and off street parking. The current code is different. Back in 1985 when it was approved, the word “Inn” sounded historic, instead of “B&B”. They were vague regarding the historic district, which is spread into residential zones.

Mbr. Crowley asked what an “Inn” was in Montgomery.

Atty. Dowd said that Borland House is an “Inn.” And, now they want to serve brunch to the public and for special events.

Chrm. Conero asked how this works with a commercial kitchen. Fire suppression? Building Code?

Atty. Dowd said that it's whatever the requirements are under the health code for serving to the public. They may already have to do it.

Chrm. Conero is concerned about parking.

Atty. Dowd said that there is already an issue with downtown parking. The new code doesn't address that. "B&Bs" are slightly less than an Inn, by about 1 space. Parking does not need to be provided onsite for brunch or any special event.

Chrm. Conero said that a lot of historic homes are landlocked and do not have spots for parking. Would that trigger a site plan if they wanted to do brunch? SEU?

Atty. Dowd said, yes, a site plan and SEU.

Chrm. Conero asked if there is a certain sq. ft. for the brunch.

Atty. Dowd said there will be 20 served, including guests at the inn; with seating outside.

Chrm. Conero asked if brunch can be out front in the grass.

Atty. Dowd said that they want to use the porch.

Ms. Kalisky said that the local law is being written for the Village Code, not them (the owners of Borland House).

Atty. Dowd said that the Village Board said no more than 50, no less than 20. So, if they want to have a wedding or special event, it cannot exceed 40 people. On a daily basis, brunch can only serve 20 people at one time. All the codes that he's looked into, within Orange County, there aren't any "B&B's" that serve to the public; only the guests of the inn. And they do not offer special events. It's basically making it a restaurant.

Chrm. Conero said I'm just looking for clarification. What possible negative effects can this have on the area, or positive effects? Our master plan is looking for ways to get people in the downtown area.

Mbr. Crowley said unless it becomes a boarding house; if the wrong person misinterprets it, or takes it and makes it work for them. A single occupancy type of setting for 14 days. So, emergency housing could put somebody in here because it's a single room occupancy and they will feed him breakfast. It's a trend. I'm just giving a negative.

There is discussion of how many historic buildings are in the B1/B2 district; and that are owner occupied.

Mbr. Crowley asked what this would be: "The driveway serving the "B&B" should have a direct physical access to the public street and full vehicle turn-around should be provided unless waived by the planning board. That's a little arbitrary.

Atty. Dowd said he thought he would use discretion. Not all properties will be able to provide a full turn around for vehicles.

Mbr. Crowley asked how is the 14 day stay would be enforced and monitored?

Atty. Dowd said like everything else...by the Building Inspector, in cooperation with the Innkeeper or B&B keeper/proprietor.

Mbr. Crowley's concern is the verbiage of "waived by the planning board" without giving any kind of standard of why you'd waive it.

Mbr. McLean agrees.

Atty. Dowd said that it will depend on the individual site.

RE: ADJOURNMENT:

A MOTION was made by Mbr. McLean and was seconded by Mbr. Weeden, to adjourn the meeting at 8:29 pm, and carried 5 Ayes 0 Nays.

Tina Murphy
Deputy Village Clerk