

MINUTES of the Village of Montgomery Planning Board meeting held in the Conference Room of the Village Hall, Clinton Street, on Wednesday, September 23rd, 2015 at 7:30 pm.

ATTENDANCE: Chrm. Conero, Mbr. Romano, Mbr. McLean (not in attendance), Mbr. Weeden (not in attendance), Mbr. Crowley, Atty. Kevin Dowd, Eng. Dawn Kalisky of Lanc & Tully, Jane Samuelson of Engineering Properties, Walt Pahucki, Claire Pahucki, Adam Peterson, Marc Devitt, Tina Quinlan, Arietta Thorne, Michael Sussman, Maria Beltrametti, Sean Sheridan, Jill Henry, Tina Campbell, Jillian Quill, Danielle Benivegna, Shannon Schienherr, Marissa Smithem, Martin Brown, Joe Catalano

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

A MOTION to open the **PUBLIC HEARING** for **MS. CLAIRE'S MONTESSORI** was made by Chrm. Conero and seconded by Mbr. Romano and carried 3 Ayes 0 Nays.

PUBLIC HEARING for MS. CLAIRE'S MONTESSORI 202-9-4 Special Exception Use

Mr. Sussman: I represent the applicant in this matter. I'd just like to review some of the elements of the time proposal and what's before you. Currently, as you know, the carriage house has an approval for the use which is intended to continue. That use is for a school use. The difference here is for 30 students; as we previously have gone over with your building inspector and this Board extensively. How we arrived at that number, which is consistent with the most conservative and resubmissive use, per students, which is the 35 sq. ft. number which we've all agreed upon, right now. Just so you're clear, we've already decided not to proceed for further interpretation, so this is not contingent on something further. We've also agreed in our conversations with you previously that there would be six adults who would be using that floor and their instructional capacities which concurs with your desire, which, we have again, acknowledged and agreed upon that there would be two spaces, while this is not a part of your code, we understand that we had some discretion and the use of that discretion wants to have spaces for visitors, parents, etc. As you know, the Patchett building does have an associated number, from my observation it would be shared parking use with them. I understand that certain units are devoted to them and you don't want a double count, so to that extent we would have a total of 8; 6 for employees and 2 for visitors. That's been the discussion and that's what's reflected. Now with regards to the second floor, there has been further internal discussion between the landlord and the tenant, which you are not advised of and I'm going to advise you of this tonight and it may alter and effect in some ways, you're thinking, although we believe that the first floor use that we've discussed is independent. What I mean by independent is that, we're going to have that number of parking spaces that we talked about, they're there. We're going to have that number of students that's accommodatable under the number/ratio that we talked about. The difficulty here is that naturally is a difficulty, in this regard, if the second floor could only be used, essentially for offices it's uneconomical for Claire's school to do that. That had been the contemplation but it's not really feasible for them to do. The current use that has been acknowledged in this Board, and when I say current, was the standard use by Mr. Devitt and his family, so that second floor has been a residential use, as you know; it's been pointed out. That use is not consistent with your August 2013 building-wide approval. At that point, your understanding was that it was not going to be so used. But in fact, as I understand the facts, that contemplated use from August 2013 for the second floor was never in fact, implemented. And what's been maintained in this building throughout and until, I understand September 1st, was a rental for residential use. We understand that that rental, if it were to continue, we believe, and I believe Mr. Devitt and his counsel can address this, it's essentially a non-conforming grandfathered use; not to be conformed, I don't believe that it's permissible use where it is. But it

has been a continuous use for many, many years and they can address that and I think the building inspector can address it. So what I think this ends up saying, I want to be entirely forthright with the Board, I don't want there to be any misapprehensions or this is what you were going to do, not doing, I don't want that to occur. I think that everyone needs to be entirely clear, upfront about what is happening. It's my interpretation, and I think Mr. Devitt and his counsel agree, that if that use were to continue as a residential use above the school, in other words, it's not going to be for students, we understand that there is no fire exit and all of that stuff, there should be two additional parking spots on site, even though there may be no technical requirement for that in your code, for a non-conforming residential use, because I think, practically speaking, it's desirable. In other words, you don't want them using the eight spots associated with the school. You want them to have separate, you know. So my understanding is this, Mr. Devitt would commit, because he has now vacated the residential use, there is no extance residential use there, to only restart-he has a year to restart if it's a grandfathered use-he would not restart the residential use until the two parking spaces, which would be needed, would be placed in a mutually agreed and understood part of the parcel. As you know, there's a parcel that does have vacant land that could be so utilized. And the building inspector, they would be in agreement on where those parking spots would be and they would be associated with that unit and so designated, so it would be clear. So, to summarize some of the messy, thorny situation here. The school would be committing to use the first and only the first floor. The number of students will remain as we discussed; we are not suggesting any alteration of that. The number of adults associated will remain, as we suggested, at six. And the parking would remain, as indicated at eight. The second floor would continue as Mr. Devitt has represented as a grandfathered non-conforming residential use but you would know about it. It would be officially indicated, as such, to you. It's not going to be an approval for something else, which, if I didn't tell you this tonight, you could effectively be approving what we've come in with and yet, that would be the conflict which is unfair to the Board and not the way to proceed here.

Now, with that all being said, there are a few other issues I want to address. I've heard you say do this for later, but I think in all fairness to Ms. Kalisky and to the Board we should just speak about a couple of these matters now. Matter #3, which I think is frankly, the most serious relates to the August 13th issue and the use of the building 8 Factory Street, for music lessons. I just want to briefly give you the facts, as we understand. The clientele for the music lessons are mom and me, basically from birth, early children, early infants up to pre-k or k, as I understand. The numbers that are involved there, first of all it's obviously not going on at the same time as the school except for the extent that's represented in the letter; that would not be accurate. It's going on when the school is not in session and that should be clear. As the limitations would be the same being that there would only be one teacher and seven mother or father participants, and that being the case there would be 8 parking spots associated with the school; there would be units for that. But would not be going on co-extensively in time with the school operation, which I think a lot of it is being addressed here. And we take it, again, this may be contrary to the interpretation that's been raised, that that use is a consistent use of the school use; it's an instructional use for pre-k or earlier children. It's not a different, distinct type of use. It's done in a much less intensive way, obviously you don't have 25 students there; you may have at the most, 7 with their mothers or fathers. So that's just so you understand what we would be committing to and that is the proposed use; nothing different from that. It would not be at the same time, obviously, that would make more intensive the school, and we understand...

Atty. Dowd: On the website, Ms. Claire's Music Cupboard, there is a listing of classes being offered for music and it says on Tuesdays, Thursdays and Saturdays; at 9:15 am, 10:15 am on Tuesdays and Thursdays.

Mr. Sussman: That's at the NY School of Music in Walden, not at this site.

Ms. Pahucki: I haven't changed it and...

Atty. Dowd: It's all listed at 8 Factory Street. I think it was last week, I believe, someone went over to the school and took pictures of the parking lot; and the parking lot is filled and cars are actually parked on Factory Street those hours. We were told that the Music School has now transformed itself into the Wallkill River School and was operating at the same time as the Montessori School. Now, we have the Montessori School at 8 Factory, at the Carriage House, but then the Music Cupboard was holding class in the Wallkill River School, at the Patchett Building at the same time.

Ms. Pahucki: That was our initial intent but moved everything to Walden so we didn't have any issues.

Mr. Sussman: You're representing, whether you did that or not, you are not doing it.

Ms. Pahucki: Nope, not at all.

Mr. Sussman: I appreciate...I don't know anything about it other than what was read. And I agree that it wouldn't be done. I'm not arguing that it's proper...based on what you're admitting to, it can't be done. I'm not disputing...

Atty. Dowd: I didn't know if you even knew that.

Mr. Sussman: I did not know it. I did not know it.

Atty. Dowd: Just so it's clear, the Music Cupboard does not have any authority to operate in the Patchett House. The Patchett House has no authority to allow the Music Cupboard to operate within that building. And if she wants to hold it somewhere else, that's fine; in another jurisdiction; another place, another building she would have to come to this Board, in the Village to get an approval to do that.

Mr. Sussman: I agree.

Atty. Dowd: I think it's clear that she wouldn't be operating the Music School at the same time she is doing the Montessori School because of the space. But, we have photographs and that sort of alarmed us because of the fact that this is not the first time the Patchett House has been used improperly by the Montessori School. Okay?

Mr. Sussman: I certainly agree with you, what is agreed upon here, has to govern. And that's why I'm trying to be as level and clear about what is going to happen on the site, so that the Board, the Building Inspector, the attorney, the consultants-we have to be as straight as humanly possible. The applicant has to abide by what is done.

Mbr. Crowley: Can I just ask...when did Ms. Claire's Music Cupboard move?

Ms. Pahucki: We haven't moved. We're offering classes in Walden and Maybrook and what-not. So, honestly, it's really a hub right now. We're running the website from there, at this point.

Mbr. Crowley: But the website does state 8 Factory Street. When did Ms. Claire's stop operating out of that location, out of 8 Factory Street?

Ms. Pahucki: Stop operating in total?

Mbr. Crowley: When did it stop offering classes?

Ms. Pahucki: During the day?

Chrm. Conero: Music classes?

Ms. Pahucki: Last week. We moved everything to the NY School of Music; our Tuesday and Thursday classes.

Mbr. Crowley: Just last week?

Ms. Pahucki: Yes. It just started.

Mbr. Crowley: Look, Ms. Claire's has been in business for quite a while, so it didn't just start.

Several people speaking at once.

Chrm. Conero: Wait a minute-the public hearing public part hasn't started yet.

Mbr. Crowley: I just needed clarification on that. That was my question. Ms. Claire's Music Cupboard has been in existence for a long time and...

Ms. Pahucki: That's one of my questions in this meeting, is that we will not provide any daytime classes during our school operating hours but what about the weekends? What about the evenings?

Atty. Dowd: Again, I think it might depend upon the number of children, parents, cars. Which is again...there are two uses in the same building but in all...

Ms. Pahucki: If we're saying 7 students in a class and 1 teacher and that's what we stick to, can we do evening and weekend music classes?

Atty. Dowd: Let me ask you this, I know some of these classes have very young children and I am assuming that parents have to come with them.

Ms. Pahucki: Yes.

Atty. Dowd: So you have the 7 cars for the parents, you're maxing out at 7 kids, and 1 instructor. That would be 8 and no one else will be able to be on the premises, administrative or otherwise, or secondary teachers.

Ms. Pahucki: Correct. It's just a music class. It's not where we're registering or touring or whatever may be.

Mr. Sussman: This is what I tried to explain earlier, it seems to me that there's a consistency between these uses, it's not particularly inconsistent but the intensity of it has to be the same, both

with regard to the site and the parking. And if that were done, I don't see any incongruity between the two. On the other hand, if it's going to be done, it's going to be done, and the Board should be made aware that it is being done. I agree with that, also. And, as I said earlier, what I was referring to earlier was Ms. Kalisky's letter which says information available on site in this case, the Music Cupboard has classes at 8 Factory on Tuesdays and Thursdays, while the pre-k, grade school is in session, that's all I was responding to. To my knowledge, that's not right. I can understand how you might have understood it or concluded it, but that's not going to be happening. So, in terms of what she is raising now, it's a different issue, it's off hours and essentially it seems to be a complementary use. I'm just suggesting that that might be, in fact, going on in the space.

Atty. Dowd: So would you then be asking us to amend your application to consider this secondary use at the premises?

Mr. Sussman: Sort of an ancillary use.

Chrm. Conero: A mixed use business/school with residential on top?

Mr. Sussman: You understand?

Atty. Dowd: I understand exactly what you're asking.

Mr. Sussman: So, I think that, hopefully, clarifies what's before you and I also respect you may feel that a new site plan with some additional site plan notes that are reflecting what we've discussed, in regard to the second floor may be..., and I certainly appreciate that. What I would request, respectfully after the hearing, it seems you have a discussion which is suitable for this and I know you only have 3 members here, is that she be permitted to, if there is no objection to the 30/6, to proceed with that, okay? And with the understanding that I articulated earlier, that the upstairs use would not proceed. There will be no residential reuse; no renting to anyone else until, and unless, those two parking spaces were added; approved by the Building Inspector in terms of location. I don't know if the Board might need to see that, as well. I see Ms. Kalisky nodding very rigorously. I'm just asking for this.

Ms. Kalisky: There has to be coordination with our office.

Mr. Sussman: Whoever. Whatever office. I'm not trying to limit it. It's up to you who you want to review it. I'm just saying that would be the idea that we would feel confident with.

Chrm. Conero: I appreciate you bringing this up because, I have to tell you, it's very frustrating this whole thing, because every time I come here, every month, something changes.

Mr. Sussman: I agree.

Chrm. Conero: So, Dawn, Lanc & Tully finds out that on September 17th, #3's note, the school of music is there and it's not on the original site plan. Now we're talking about doing a residence on top, so it is frustrating, to say the least, that things change all the time. As we go, as we proceed, I would really like to have things in front for the public. That this is what the plan is. So I can listen to what the public has to say about what is on the map and what's proposed entirely. That's why I asked about starting the public hearing because I would've denied a public hearing. I would still listen to the public comment on it but if I'm right, you have to change the application, yet again.

Atty. Dowd: Yes, it's a discussion, that's what this public hearing is about; to have comments from the public as we discuss more and more details of this.

Mr. Sussman: I am respectfully saying that I agree with you and I'm not trying to make this more difficult.

Atty. Dowd: As of the schoolyear beginning, how many students are presently in the...?

Ms. Pahucki: 25

Too many people speaking at the same time.

Mr. Catalano: May I interject for the owner? Joe Catalano, for the record, representing the owner of the property. This is one of those things where the tenant and the owner, sometimes have divergent interests or similar, in this case. You were talking about the (inaudible) changing. The landlord/owner is trying to accommodate the tenant. It's a great thing that she has a business that is, a school that is popular and not to ask for this increase of a number of students. Our understanding is that she has a waiting list for, how many is that? As we were talking about the financial situation and the space involved and the use of the upstairs offices for additional staff and things, we understand that there is a limitation on the parking issue. That's why we decided to modify, at least make a presentation tonight to modify our present arrangement to try to accommodate both the downstairs tenant and the owners needs to rent out the property. I think that the Board has the authority, to really, based on this presentation, to really just provide us with an approval which specifically states what we can and can't do on the property and the number of spaces for each use and so forth without us having to come back again and do that. And then we will submit a final site plan for you to review and if the site plan conforms to that then really we don't have to prolong the process anymore, and we can have some specificity about how to proceed from here.

Chrm. Conero: The site plan is what dictates whether you get a CO.

Mr. Catalano: Right. Right, so if we come back...

Chrm. Conero: If you don't comply with everything on the site plan then...

Mr. Catalano: Right, so the Board can say you're approved for the additional students, the upstairs apartment can remain as long as there are two additional spots to be approved by the engineer, the Board has authorized that site plan amendment. So you can approve a site plan with modifications. We're just asking you to set forth those modifications so that we know where to go from here; so that we don't have to keep on coming back. And the public notice for tonight said that what was on the agenda for tonight, as far as the public hearing goes, was the addition of the additional students. So the folks here, for tonight, are still able to speak on that. Nothing else has really changed. All the existing uses that have been there since 2013 remain there today.

Mr. Sussman: You're proposing to remain there, that's what you're saying.

Mr. Catalano: Right. Well, still remain there, residential...inaudible. The structure and uses haven't changed we're just trying to coordinate the uses so no further confusion arises.

Atty. Dowd: I'm a little confused. The previous presentation...inaudible...was talking about moving the operations upstairs. I thought Marc had said that basically the space was ready to be used for the school and he was going to dismantle the kitchen, I assumed.

Mr. Devitt: We didn't do any of that because nothing was set in stone. I apologize to the Planning Board for all of the confusion but, you know, I'm relying on numbers based from what the Building Inspector's telling me, then next meeting we come in those numbers changed. They come from a different...

Mbr. Crowley: You're going way back, Marc, we're talking about the last meeting. That goes back two or three meetings and we've hashed that all out, about the different numbers, and that's all been resolved. One of the reasons that there's this back and forth and back and forth is because the school has not been forthcoming with what was going on in the building. Nor, did it comply with their original site plan. So, it's not us. We're confused because what's being told to us is not correct. And we've been misled about what has been going on in this building.

Mr. Devitt: I'm not saying that it's the Planning Board and again, I apologize for all the confusion. It's just that when we're doing the site plan, I'm basing on conversations I'm having with the Building Inspector and asking if these certain numbers...

Mbr. Crowley: That's been resolved, though.

Mr. Devitt: It's now been resolved.

Mbr. Crowley: No, but that was resolved...

Mr. Devitt: Every time you come in, yes. I agree it's been resolved we agreed to move forward.

Mr. Sussman: To address what Mr. Dowd said specifically, the notion of using the second floor for students, or the school, was dispatched upon the basis of concerns about the fire issues and the lack of the proper exits. So, it was determined that since that was (inaudible)...that seems to be a pretty dispositive argument and decided to do away with that. That obviously reduced the number of students in the school and changed the use for the second floor radically.

Atty. Dowd: And, again, I was here last in July but I saw the minutes for August and the conversation was that the upstairs would be used for administrative services, or two adults, perhaps; that might be doing interviews with the children or administrators.

Mr. Sussman: I agree, and what I said earlier at this meeting is that when people looked at the economics of it, it didn't really make sense, given other space available to this school in other communities (inaudible) jurisdiction to do that here. And given the facts, I don't know personally but what I've been told is that until September you've had this residential use upstairs. That the owner's attorney's position, which I am not here about, is that they are grandfathered for that use? We make that conversion...(inaudible). So, putting all of this together...

Atty. Dowd: The site plan that was submitted tonight shows 30 students on the first floor with 6 teachers/teacher's aides/adults, whatever, and it refers to two adults upstairs. Now, if those two adults move downstairs or are downstairs, does that now put you in violation of the occupancy code of the 36?

Mr. Sussman: The most we are having on staff is 6. They are being accommodated downstairs. The issue the Board raised are transient people having parking available.

Atty. Dowd: We also talked about having administrators. Maybe Claire's not teaching but she's running the school or your administrative person is upstairs.

Ms. Pahucki: We moved all of our administrators to Maybrook. So, we're not adding-we would have brought some back over, had we been able to service some children or be able to have more people on that second floor, but it's not necessary. So, all of the administrative offices are not in this jurisdiction.

Atty. Dowd: So then the extra two adults would be a parent stopping in to see a child or...

Ms. Pahucki: Or a service person.

Mr. Sussman: We kind of went over that at the last meeting, how we came to the 8.

Chrm. Conero: So it's 30 students, 6 teachers and then two spots if you decided to have an apartment?

Several people talking at once.

Ms. Pahucki: 30, 6 and 8 spots for the first floor.

Atty. Dowd: So, Ms. Claire's has to designate 8 spots in the parking lot for her operation. There would have to be two additional spots for the apartment upstairs.

Mr. Sussman: As you all know, we are not showing that on the site.

Chrm. Conero: Does that conflict at all or screw the numbers for the Wallkill River School, at all?

Atty. Dowd: They would have to add two spots for the apartment upstairs.

Mr. Catalano: Just so you know, the apartment has been using spots.

Chrm. Conero: It's been there illegal for two years. So what is it exactly that they're changing on the site plan?

Atty. Dowd: The number of students.

Ms. Kalisky: And eliminating the school use and office use on the second floor.

Chrm. Conero: And making it residential? Joe's saying it's grandfathered in?

Atty. Dowd: I believe the only way they can have the apartment upstairs is with a variance and now a special permit from this Board. Because in a B1, they're not allowed to have an apartment above commercial in a non-residential. I think you got a variance to put the apartment upstairs and then a SEU in 2009.

Mr. Catalano: I know it was in 2009.

Ms. Kalisky: You got an SEU approval for residential above.

Mr. Catalano: inaudible

Ms. Kalisky: The SEU was in fact granted, by this Board in 2009.

Atty. Dowd: Ms. Claire's is also asking for consideration to allow off-hours operation of the Music Cupboard, I would assume on Saturdays and Sundays, as long as it stays to the limit of the parking requirement and no more than 8 cars and no more than 30 children. That's what they are asking as an amendment to this application.

Ms. Kalisky: The general notes on the site plan, today, indicated that the school was going to be in operation from 7:30 am to 5:30 pm. I think the Board would want the notes to be specific for the additional use and the specific number and times of that, as well.

Mr. Sussman: Whatever it is, you can discuss it.

Mbr. Crowley: It says here, on the site plan that the Carriage House school is on the 1st and 2nd floor and that needs to be changed. It says carriage house and should probably specify 1st floor is going to be the school and if it's decided that there is going to be residential space upstairs, specify that.

Mr. Sussman: I agree with that.

Mbr. Crowley: And then it needs to show the additional parking spaces.

Ms. Kalisky: And once again, the code is specific as far as access, aisle width, placement, parking space size. We're right up to the property line adjoining the Kalpac piece; you need to tell me where you envision these two spaces to go without creating an additional driveway. Our access aisle meeting code to accommodate those spaces.

Mr. Catalano: This is some type of arrangement that we came to just before this meeting tonight.

Everyone speaking at once.

Mr. Catalano: ... to consider the actual location, let the condition for the residential use upstairs, there would be conditions on appropriate placement of two...

Ms. Kalisky: And the second floor would remain vacant from hereon in?

Mr. Catalano: That's what we're saying.

Mbr. Romano: So that will be reflected on the site plan?

Mr. Catalano: Yes.

Mr. Devitt: Yes.

Chrm. Conero: There a lot of things that you're going to have to redo now that things are changed. The notes have to be changed. The public is here so I would like to hear from people, while they're here and we'll proceed after that.

He asks the other members of the Board how they are with that. Mbr. Crowley and Mbr. Romano respond that they are fine with it.

Chrm. Conero: So at this time, I'd like to allow the public to speak. Depending on how many people are here, probably let you speak for two minutes, possibly a little longer, and then we'll come around again, a second time in case you have something else to say. I'd really like to keep it to the site plan-if you're going to talk about parking or recreation area or capacity of students, those are the type of things we'd like to hear. Not so much Ms. Claire's character, not Mr. Devitt's character; I'd really like to hear about the site plan. So, if we could at this time, if you want to state your name and present to the Board.

Someone asks if only Village residents can speak.

Chrm. Conero: Anybody can speak that wants to.

Jill Henry: I've been a resident of this Village since I was 4 years old. I now have my own 4 year old that I have entrusted to send to Ms. Claire's. I've used Ms. Claire's as a school and also a birthday party for my daughter. I pick her up every single day, my husband and my parents drop her off in the morning. We have never once ran into problems dropping her off, with parking. I have never seen a backup where I can't find a parking spot, I can't safely get my daughter to or from school. I also have to say, as a resident of this Village, that having a place like Ms. Claire's is so important. I know you didn't want to hear character, but it's really important for you to hear what this school has done for my daughter. It has given her so many opportunities and a great place to learn, and a great place for her to learn about community, which is what they foster at this school. Part of the reason that I stayed in the Village as I grew up into adulthood, is that you need; you feel community here. She is exemplifying that at her school for my daughter. I am also a teacher and I would never send my daughter to some place that I did not feel was safe, that I did not feel had enough supervision, and enough people and just basically to run and do what they do. I feel it is really important that you take that into consideration when making your decision.

Chrm. Conero: Thank you, Jill.

Atty. Dowd: You said something about birthday parties?

Ms. Pahucki: We are no longer doing them.

Atty. Dowd: Would you please tell me when?

Ms. Henry: It was a 1 ½ years ago.

Atty. Dowd: Was it associated with the Montessori School?

Ms. Henry: No.

Atty. Dowd: It was just a birthday party?

Ms. Henry: Yes.

Sean Sheridan: 503 Patchett Way. I really don't see how parking has become such an issue with the children and this school. My daughter has gone to Claire's since before it was a Montessori School and there has been a constant rotation. You park your car, drop your kid off, get in your car and you go. There was never any worry of safety. I would say you would be more worried about your kid crossing the street from the High School to go to the Dollar General store, than you would be about parking at her school.

Chrm. Conero: That's the town.

Mr. Sheridan: But, the things they do with these kids is unbelievable and I think you're putting a hindrance on them putting them through this. This is time they could be spending thinking about ideas for children, thinking of ways to improve children's lives and that's what they're in and they're so busy worrying about parking and permits and things that are slowing them down. It's extremely saddening when someone brings greatness to a community and then the community tries to take it back. It's just sad.

Chrm. Conero: Thanks, Sean.

Tina Campbell: I just wanted to clarify one thing. All private schools in the Village of Montgomery are not allowed to have residential tenants in their buildings? Is that...so, just we're not allowed to?

Atty. Dowd: No. Our zoning code allows residential above non-residential properties only in certain districts. So in the B-2, which is downtown, this area, with a special permit from this Board, you can have a residence above. In the B-1, where the carriage house is, it's not permitted, unless you have a variance from the zoning board or some other way of getting that apartment upstairs.

Chrm. Conero: Anyone else? Kevin, can we leave the public comment open or close the public comment?

Atty. Dowd: You always have the right to do that, especially whether you think it's necessary to do so. And if the Board doesn't feel that you're going to get any further comments, even though you're looking at changes to the plan and more engineering issues for the extra parking spaces, changes to the plan to really nail down exactly what the operations are that you're approving, total number of people, both floors, multiple uses that you want on the plan, I don't know if it's up to the Board, but...

Chrm. Conero: I think I'm satisfied with it, I don't think there's going to be any more information. I think its scaled back a lot from what it was before. We could close the public hearing...

Atty. Dowd: You would have 62 days if necessary to make a decision or you could make a decision contingent upon certain things happening, such as the changes to the plans that we were talking about.

Chrm. Conero: There are so many changes, I don't know how you...

Atty. Dowd: Again, that is the Boards discretion.

Mbr. Romano: The residence is not going on at all. We're not approving anything.

Chrm. Conero: But the site plan's not right.

Mbr. Romano: Then, they would have to make another site plan. When they do decide to put a residence on top.

Atty. Dowd: I think what they are asking for you to do is close the public hearing, hopefully, if you want to approve the additional 5 students and make it conditioned upon certain changes to the plan; one of the changes would be that that apartment would remain vacant until such time that the owner came back and show you how he going to provide two additional spaces to put that apartment back into use again.

Mr. Sussman: I don't think the 30/8 parking is really, at this point, controversial with the Board. I think that we went over it last time where, we're not deviating from that in any way. We're trying to regularize the upstairs use and provide parking for that, that doesn't now exist, even though that use is existing. I tried to be candid with you that they would not re-rent until they satisfied the concerns that Ms. Kalisky has raised, obviously valid concerns, where are you putting the parking, how are you going to make that consistent with the code and until and unless those concerns are met, they would not. The only other issue I see is relating to a note on the ancillary use but again, it's really not particularly controversial, I don't think, you're not talking about something that's really having externalities, or effects on anyone that are adverse, or arguably adverse, and I think the approval would allow them to take the 30 students, which is a significant reduction from where we started here in light of the comments by the building inspector, which we did take to heart and tried to internalize in what we presented to you. I am appealing to you to plead so they could move forward and run the school for the children. I'm not trying to excuse all of the chaos, I recognize that it exists and I don't doubt any of your comments. I agree with you. But, we are where we are and we tried to make this as clear as we can, even...(inaudible).

Chrm. Conero: Do you want to close the public hearing portion of this?

A MOTION to close the **PUBLIC HEARING** for **MS. CLAIRE'S MONTESSORI**, was made by Mbr. Romano and seconded by Mbr. Crowley and carried 3 Ayes, 0 Nays.

A MOTION TO DECLARE NEGATIVE DECLARATION UNDER TYPE 1 HISTORIC BUILDING, was made by Chrm. Conero and seconded by Mbr. Romano and carried 3 Ayes, 9 Nays.

Atty. Dowd asked Tina if the County responded, regarding Ms. Claire's. She responded that she mailed it to them when she received the updated site plan on Friday, September 11th. Atty. Dowd is concerned about the 30 days from September 11th, so the Board cannot take action.

Chrm. Conero: Could they take action either positive or negative on the DOT.

Atty. Dowd: In the meantime, they could certainly clarify for the engineer, exactly what the changes on the plan should say, so they all have an understanding of it.

Chrm. Conero: What about to SHPO since it's a type-1 historic building?

Atty. Dowd: It was sent to SHPO already.

Chrm. Conero: When? From 2013? They were okay with it then...

Atty. Dowd: They aren't changing anything.

Mr. Sussman: In terms of County planning there are no structural changes planned.

Atty. Dowd: It's because they are on Route 17K.

Mr. Sussman: But is their jurisdiction obtained when there are no structural changes?

Atty. Dowd: Yes, amended site plan and amended special permit (SEU), because, it's right on a state highway.

Mr. Catalano: So if the Board can't make a decision, why don't we just submit a revised site plan with all of the nature of discussion ahead of time?

Atty. Dowd: So that site plan will say that that apartment will not be used until you supply two more spaces.

Mr. Catalano: We'll provide two more spaces on the site plan and have Dawn look at it beforehand.

Atty. Dowd: Secondly, you're agree upon the fact that it's 30 students and 6 teacher and no more than a total of 8 parking spaces. The Music Cupboard will operate on the off-hours, such as evenings and weekends and when school is not in session. This is all confined to the first floor and also the same restrictions on parking as the school use. Everyone agrees to that?

Everyone says yes.

Mr. Sussman: I appreciate your patience with us and the receptivity to the changes. I apologize for what appears to be a lot of jostling around.

Ms. Kalisky reminds the Board that they have 62 days to make a decision, since they closed the public hearing.

RE: MINUTES:

There is no quorum to approve the minutes of August 26th, 2015.

RE: ADJOURNMENT:

A MOTION was made by Mbr. Crowley and was seconded by Mbr. Romano, to adjourn the meeting at 8:20 pm, and carried 3 Ayes 0 Nays.

Tina Murphy
Deputy Village Clerk