

**MINUTES** of the Village of Montgomery Planning Board meeting held in the Conference Room of the Village Hall, Clinton Street, on Wednesday, January 28th, 2015 at 7:30 pm.

**ATTENDANCE:** Chrm. Conero, Mbr. Romano, Mbr. McLean, Mbr. Weeden, Mbr. Crowley, Atty. Kevin Dowd, Eng. John Queenan of Lanc & Tully, Building Inspector Bruce Yancewicz, Maria Beltrametti, Moriah Higgins, Donna Spampinato, Roseann Poplaski, Jane Kirk, Claire Pahucki, Tina Quinlan, Tory White, Marc Devitt

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

**NEW BUSINESS:**

**MONTGOMERY NURSERY SCHOOL 202-11-1.1 Special Exception Use Permit**

The Nursery School is seeking to use two classrooms at the First Presbyterian Church, Monday through Friday, September to June, when school is in session. They are also asking that a crosswalk be painted on Wallkill Avenue for crossing to and from the Church.

There was confusion as to what the SEU permit application was about with the Engineer; she was not aware of the intent of the application. This was clarified by Atty. Dowd; Ms. Kalisky and the Atty. discussed the following issues involved:

This needs a site plan filed, a short-form EAF and SEU to the church in order to establish classrooms in it for the Montgomery Nursery School to operate in. A site plan and floor plan as to where the classrooms are in the Church facility itself. There should be a letter from the Church authorizing the Montgomery Nursery School to make this application on its behalf, as the owner of the property. Where is the recreation? Is it on-site? Is it outside? Where is it? How big it is? Is it fenced in? Where is the drop-off? This is for the safety of the children. The B/I will need to be involved. It is a Special Permit that requires a Public Hearing. Tory said that she has a lease agreement from the Church; that she will provide. Once everything is filed, a Public Hearing can be scheduled. There is no violation, as per Bruce, because they are being voluntarily compliant.

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

The Atty. said this was a late submission so there is no engineer's report. This is also a SEU permit, no site plan, no EAF. There is additional documentation needed to make the application complete. The B/I is trying to work with the owner and the school itself to avoid violations, and at the same time, get them compliant. The Montessori School was approved for the carriage house and in October, after receiving a grant to take on additional students, moved into the Wallkill River School; neither entity got approval from the Planning Board to expand operations into the Wallkill River School. The Wallkill River School is not approved for a school. The approval was for an art gallery with accessory offices. Again, the owner (Marc Devitt) is here, additional documentation

is needed; it requires a site plan, a Public Hearing and any other additional information that the Board requires of them.

The Chrm. asked if they need an amended site plan. Atty. Dowd said it would need to be for the Wallkill River School. Mr. Devitt asked if the Planning Board could waive the site plan requirements; the site is the site, nothing has changed. The same amount of parking spaces. The parking requirements actually go down with the school there, rather than what was previously approved. There are no added impacts to the site. Chrm. Conero said the issue is that the building was not approved for a school. It's an art gallery. Atty. Dowd said it was not approved for a Montessori school. Mr. Devitt asked if they were concerned about safety in the building. Atty. Dowd said the uses of the site. Chrm. Conero said safety and use of the building; it was not approved for a school. Mr. Devitt said they are permitted to do art classes. He also asked why this wouldn't fall under the 122.61C uses requiring approval, site plan approval by Planning Board. Atty. Dowd said it is a SEU permit. The 122.61C is a waiver of the site plan requirements. But you cannot waive a site plan if it is an SEU permit. By state stature, it triggers an automatic site plan and a public hearing. Mr. Devitt is looking to change the use; have it waived by the B/I. Atty. Dowd said that Bruce is not comfortable granting that waiver based on the fact that this is a school for children of a certain age that was not anticipated in the building. Mr. Devitt said that Bruce did inspect the premises. Atty. Dowd said if the B/I wanted to waive this, they would have discussed it. Chrm. Conero asked Mr. Devitt if it wouldn't be in his best interest to get the building approved for a school for future use. The Wallkill River School is there, they have classrooms there, they have kids there; wouldn't it be in your best interest to get approval? Mr. Devitt doesn't see it that way. He says everyone has to conform to the code. This is part of the code. Chrm. Conero says what he is debating is whether it is SEU. Mr. Devitt says he is not debating that, it is a SEU. But that's clearly in the code. He feels that it falls under the waiver provisions for site plan. The Atty. is checking the code book. The waiver provision says for site plan approval for change in use from one of the enumerated permitted uses to another permitted use. SEU is not a permitted use. Mr. Devitt wants clarification. Atty. Dowd says that a SEU permit is a use that is not permitted as a right; it is permitted if they meet certain criteria which are listed in the Village Code. A permitted use is not a SEU permit; a SEU is only permitted by this Board, it is not a right. There is a legal distinction. If you have two permitted uses, such as retail and office, they are both allowed in the zone, both have the same parking requirements and both have the same requirements under code. If you want to change from retail store to office use, the B/I has a right, if they meet certain criteria, to waive. But a SEU cannot be granted by the B/I because it has to come to the Planning Board. There are certain criteria that are, because of the kind of use that it is, that requires special conditions, special findings of this Board only, that the B/I cannot waive; requirements for SEU permit. Mr. Devitt is still confused with the zoning. Atty. Dowd continues...C1-uses require approval by site plan. Special Permit Use; every special permit use also requires a site plan review. The waiver provision you're talking about is for site plan waiver and it only applies to permitted uses for site plan approval. It does not apply to SEU permits. The Chrm. doesn't understand why Mr. Devitt is resisting doing this and getting this done the right way. Mr. Devitt says he isn't resisting. He thinks this applies to the waiver requirement. \$300 application fee, 3 months, public hearing,

engineering fees, attorney fees, it's not just a simple, "just do the right thing;" there are a lot of fees associated with this. Chrm. Conero asked how it is the Wallkill River School is having kids in classrooms without having a special exception use as a school. Is he missing something? Mr. Devitt said it was granted approval. The Chrm. said for an art gallery not a school. Atty. Dowd said the uses for an art school and nursery school are totally different with totally different requirements under the code. We never approved Wallkill River School as a nursery school or regular school. It was an art gallery. The art gallery is under a permitted use. If Mr. Devitt looks at 122.47 of the Village Code, it defines what a SEU is and what findings have to be made by this Board in order to grant such a special permit and that is the distinction between that and a permitted use as a right. Ms. Pahucki said she is leaving the Wallkill River School as of June 19<sup>th</sup>. She will not hold any classes in there as of then. She will either find another location or downsize. Atty. Dowd said that presently, your school is in violation. She understands and wants to be in compliance and she is leaving in June. Atty. Dowd said but presently you are; you are going to be in violation of the Village Code. Ms. Pahucki said that the process will rectify this by the end of her time there. Atty. Dowd said before-this can be wrapped up in March. Chrm. Conero asked who was in violation. Atty. Dowd said all three parties-the owner and the two tenants. Ms. Pahucki only had approval for the carriage house but has since moved her operations into the Wallkill River School, the Wallkill River School didn't have approval to take Ms. Pahucki in and the owner is ultimately responsible because he is the owner of the property. Ms. Pahucki says it is not her intention to get over on the Village or be in violation, at all. She thought she had a special use permit at that site plan, thought it would be fine and added a classroom in there (Wallkill River School). It was her intention to provide a nice location for these families. It's not her intention to be in violation of the Code, the law, of anything in the Village, and will do whatever needs to be done to move forward properly; she's just asking questions because she is leaving the school in June. Atty. Dowd said no one said that you deliberately did this. I think the ladies from the Nursery School feel the same way. Ms. Pahucki said she can't imagine how they feel; they've been there for 11 years and now they get cited for this. Atty. Dowd said no one has been sited yet. The B/I is trying to work with all of you. Ms. Pahucki says he's been incredibly supportive and cannot understand why he wouldn't feel it's the right thing to do. Atty. Dowd said it's the waiver provision of the site plan. She said he walked through and did her fire inspection, he walked through...Atty. Dowd said there is difference between the zoning law and the fire inspections and the building code. There are two differences here. You're in violation of the zoning code because you moved your operations to a building that was not approved for it. She said she added the building, she did not move, she is currently in the carriage house. Atty. Dowd said, so you expanded. The existing tenants did not have approval to let you expand and you didn't have the right to expand. The problem is you are in violation whether intentionally or unintentionally and we want to bring you into compliance. Mr. Devitt asked about the site plan. Atty. Dowd said to submit the same site plan and ask that the use be changed in that building, what you're changing in the building, how it affects parking or whatever it might affect. Chrm. Conero asked if a summer program is permitted if it has children and no curriculum. The Wallkill River School might be in violation if they have the same situation as Ms. Pahucki has. Their programs are under two hours.

Mbr. McLean asked how many children they have. Ms. Pahucki said they have 24 children in the Wallkill River School. Atty. Dowd said they were approved for 25, Ms. Pahucki said 45. Atty. Dowd said you have additional children in there? She is staying in the carriage house through the summer and investigating plans for the New Year. She is growing. The Wallkill River School can't help them, anyway. Atty. Dowd asked how many children were in the carriage house. She has occupancy for 45. Atty. Dowd is looking at the site plan. They are only allowed 25 children and 6 teachers. July 24<sup>th</sup>, 2013 with a special meeting Aug 7th and the plan is approved for 25 students. Atty. Dowd said that you have to understand what the State allows under the fire and building code, is totally different from the zoning code. When Mr. Devitt came here on behalf of the school in 2013, he submitted all of the plans, all the documentation and we were discussing the number of students because we were concerned about the square footage of the play area, about the safety of the play area, and the approval and the plans stated that you would have 25 students and 6 teachers in that specific location. I don't see anything about you coming back last year to change that. And the Board would have to...to change that because of the requirement of the code, you would have to increase the size of your playground area. You were only approved for 25 students and you have more...inaudible. You didn't have a right to put more than 25 students in there. Ms. Pahucki said they did the square footage; she will bring in the State Ed paperwork based on the square footage, student to teacher ratio, and do what needs to be done. The Engineer clarifies what Atty. Dowd said on the site plan. He tells her to use the existing the site plan, update the parking table and amount of students. Access for the children to Wallkill River School is discussed, as is the children's recreation. Atty. Dowd said that she needs to amend the SEU in the carriage house, as well, as she wasn't approved for more than 25 students. Chrm. Conero asked how many students were permitted. It's based on teachers. Ms. Pahucki said it's based on sq. footage per child. Bruce has nothing to add. Mr. Devitt will update existing site plan for students and parking, amend SEU for carriage house, SEU revision for Wallkill River School and a public hearing is still necessary.

### **109 WARD STREET, LLC 202-9-2 Discussion**

Atty. Dowd said this is for discussion purposes only. Ms. Beltrametti says a resolution passed 15 years ago-tenant left 8 years ago-stipulated two off-street parking spaces for use by the tenant. She doesn't know where they were as there is no site plan. And she is the only tenant. Chrm. Conero said that she was approved residential on top and two businesses on the bottom. Ms. Beltrametti said when Golden Insurance moved in there was only one business downstairs. Atty. Dowd said the approval was for B2, residence above commercial, the approval was for the insurance company downstairs, and the board required, in the approval, that they had to have two on-site parking spaces for that use. That was in 1998. This board approved it with those conditions. Subsequently, Ms. Beltrametti's father built an addition in 1992...there is no CO for that, either. There is an addition. It appears that there has been a modification done, since 1998 that is not in compliance-there might have been a building permit, but no inspection, no CO's, parking spaces don't exist anymore. They had a discussion with Ms. Beltrametti that instead of a

violation, she make an application to the Planning Board to solve this issue. She says there is no issue. She is the tenant downstairs, the tenant in the shop and the tenant upstairs and she only has one car. Chrm. Conero said that what your building is approved for is what Atty. Dowd is talking about. Atty. Dowd said the last approval was for an insurance agency, you're running a retail shop. Alterations and disappearance of these parking spaces, we cannot find any site plans. There are things that have happened over the years that we are trying to rectify. This property is owned by 109 LLC-who is the managing member of the LLC? Ms. Beltrametti said her mother owns it and she is a trustee. She is told to provide documentation of her mother's ownership and her being a trustee and her right to speak on behalf of her mother. Atty. Dowd, again, said they are trying to resolve whatever site plan and zoning issues there are and then the B/I can address the actual building code issues, as well. Since there were no inspections-electrical or plumbing-there is nothing on record. We are trying to work with Ms. Beltrametti to resolve the problems, to clean it up, what she is presently operating in; this retail store with no parking spaces or one parking space, we want to get this resolved. Chrm. Conero asked can't she just apply? Atty. Dowd said absolutely. Chrm. Conero said get your building approved for what you want it approved for. It allows for mixed residential. Atty. Dowd said that wasn't the issue, the issue is the type of business that is downstairs and the parking spaces, and other conditions without approval. Chrm. Conero said parking spaces can be found on that land. Parking requirements now, compared to 1998 are a lot more; turnaround radiuses have increased, so...Atty. Dowd said the question is whether or not that addition was there before or after the approval. Ms. Beltrametti said it was definitely there before the approval. The other thing on this approval that makes no sense to her is that there was a common driveway between the premises and the Montgomery Mart property, the pharmacy. To her knowledge, there was never any common driveway. There is her driveway and a carport. She says in the winter she parks in the carport and in the summer, the driveway. Chrm. Conero said if you have the property, use it to park. The municipal parking lot is small. It's really not...we encourage on-site parking. Atty. Dowd said it's also for the patrons of her business. She said they have two spots approved by the DOT, back then. Chrm. Conero said that it's still not part of the site plan; it's not part of your property. Atty. Dowd said there were two for the upstairs apartment and whatever the clients were. Mbr. Romano asked how many businesses were allowed then. Mbr. Crowley said it was originally approved for two businesses. Atty. Dowd said it was approved for two but it's a different type of business now. She has to file an application for site plan amendment, for the business she is running now. Bruce, is asked if he knows when the addition was put on? Bruce said the permit he had on it was 1994 and the renovations were in 1996 and 98. Ms. Beltrametti disagreed but Bruce said he had paperwork downstairs. Ms. Beltrametti said the addition was there when she came back from living in Europe for four years in 1992. It was there. Atty. Dowd said the addition was never issued a CO; the B/I will be able to if everything proves out correctly from fire and safety inspections and electrical inspections. Bruce said there was work done over numerous years, all they way through; the records were not properly checked. He's just trying to get it all in order. Atty. Dowd agreed. Chrm. Conero said that way, your building is approved for a permitted use. So, if you ever sold your building or...Mbr. McLean said they should take a look at what she does have and see if it can't get approved that way. Inaudible...everyone is talking at once. Tina handed

out a copy of the minutes from 1998 for the approval of Golden Insurance and the parking requirements. Atty. Dowd said she needs an amended site plan, drawings, what changes, so they can be approved. There is an issue of a fence on someone else's property. Ms. Beltrametti shows the Chrm a picture of her property. The original survey was amended-this is the original property, this is Montgomery Tire property. Back in the day, her father did a trade. This section of property was traded with Montgomery Tire for this section of property. She's ordered a new survey and it should show a revised site plan, a less exaggerated L. The addition covers this spot...done under the B/I at the time. Chrm. Conero has been reading the minutes, says there is no place to park a car on the property unless it's on the street or in the driveway. Mbr. McLean, also reading, says that parking wasn't an issue back then, but her business is retail with people coming and going to buy things. Chrm. Conero said it's a different use/type of business with a higher volume of people coming and going. Ms. Beltrametti is told to submit a site plan application, they have previous minutes and Tina will provide the resolution for Golden Insurance. Atty. Dowd said she has to demonstrate that she is a trustee of a living trust, which is the owner of the property/member of the owner of the property; that will be sufficient for her to have authority. Otherwise, she has to show who the member of the LLC is, if it's a living trust, then her mother will have to designate for her to speak on her behalf. But the application can be filed on behalf of the owner. The site plan has to be submitted 14 days before the scheduled meeting.

#### **BORLAND HOUSE 130 CLINTON STREET 202-9-4 *Discussion***

Moriah Higgins, the niece and business partner of the owner of the Borland House, are requesting to open the Borland House for brunch, beginning in May. They will be open from 8:30am until 1:00pm, everyday.

Atty. Dowd said the Borland House was approved as an Inn back in 1985; the Village adopted a SEU permit to allow an Inn with certain conditions. This Board approved the Inn and if you look at your code (126.47), it talks about what you can do in an Inn, which he reads. There is no provision in the code as it is right now, for the Inn to be used for a restaurant, or serving meals, to anyone other than guests. This Board cannot modify a SEU permit to allow such an additional use.

The Atty. asked if the owners live on the premises. How many rooms do they have? Ms. Higgins said there are seven; they just added one downstairs. The shop is still there, but not being used. They thought of having cooking classes. Atty. Dowd when the property was purchased, the retail space was downstairs and it was converted to a bedroom? Ms. Higgins said no, the retail is still there. The Atty. asked what was converted to a bedroom. Ms. Higgins said another room behind the laundry room. It was just another room downstairs. Bruce was asked if he approved the owners to add a bedroom downstairs. He said he didn't know anything about it. He only knows of a floor being tiled, and that can be done without a building permit. Ms. Higgins doesn't know about this. Atty. Dowd said if there are additional rooms, additional parking has to be added in the parking lot. Ms. Higgins said it's not for guests, it's for her; it's a room for her. There are empty garage spaces that the previous owners had, so she is using one. And there are

three additional parking spaces on the premises. Atty. Dowd reiterated that they cannot open to the public. That is not allowed. It is already a SEU permit and the conditions are only controlled by the Village Board of Trustees. So they would have to adopt a new local law that would add to the conditions of the Inn, to add a restaurant or whatever they deem appropriate. The problem with that would be parking. You said you could seat twelve tables? 24 people can come in and where are they going to park; the municipal parking lot and onsite as much as possible. This Inn was tailored to that specific property. There are six bedrooms and should be nine off-street parking spaces, with three on street. Inaudible...everyone is talking at once about the parking. There are five rentable rooms and they need parking for eight. Tina is asked to see if there were any approvals for the Inn. There is discussion of the previous owners. Everyone is talking. They need to get Bruce inside to inspect the electrical and plumbing. She will have her aunt call and schedule when he can get in.

**RE: MINUTES:**

**A MOTION** was made by Mbr. Weeden and seconded by Mbr. Crowley to accept the minutes from December 17th, 2014 and carried 4 Ayes 0 Nays.

**RE: ADJOURNMENT:**

**A MOTION** was made by Mbr. Romano and was seconded by Mbr. McLean, to adjourn the meeting at 8:47 pm, and carried 5 Ayes 0 Nays.

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Tina Murphy  
Deputy Village Clerk