

MINUTES of the Village of Montgomery Planning Board meeting held in the Conference Room of the Village Hall, Clinton Street, on Wednesday, July 22nd, 2015 at 7:30 pm.

ATTENDANCE: Chrm. Conero, Mbr. Romano (not in attendance), 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, Parinaz Mokhtari, Adam Peterson, Marc Devitt, Tina Quinlan, Stuart Rosenwasser, Maria Beltrametti, Anna Frumes, Michael Sussman

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

OLD BUSINESS:

COMMERCIAL PROPERTY MANAGEMENT 202-9-17 Site Plan Review

No one was present.

BORLAND HOUSE 202-9-4 Special Exception Use

They are before the Planning Board to have the Special Exception Use permit approved to change the use (definition) to a Bed and Breakfast, and to be able to provide brunch to the public.

Atty. Dowd states that this is procedural. The site plan and parking are unchanged. The Orange County Planning Department needs to be informed of the changes and a public hearing date needs to be set.

There are concerns regarding the parking from Chrm. Conero and Mbr. Crowley.

The applicant is advised to bring a copy of the floor plan of the dining area when they appear next month.

A MOTION to schedule a public hearing on Wednesday, August 26th, 2015, at 7:30 pm for Borland House, was made by Mbr. McLean and seconded by Mbr. Weeden and carried 4 Ayes, 0 Nays.

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

Ms. Samuelson states that the only change on the site plan, since last month, is that they included 35 sq. ft.; if 20 sq. ft. is used, there is a maximum of 105 and if the 35 sq. ft. is used, there is a maximum of 60.

Chrm. Conero said that they (the Planning Board) are going with the 35 sq. ft. because the 20 sq. ft. doesn't comply with the building code.

Ms. Samuelson said they are in the process of going to the State for interpretation and until they get that resolution, they are going with the 35.

Chrm. Conero reiterated that the current site plan, tonight, is 35 sq. ft. There are conflicting things going on with the engineer's report and with some of what you're stating.

Ms. Samuelson said that with the interest of time, they need to be open for the first day of school and they're running out of Planning Board meetings to accomplish this. They are going with the minimum and use that until they receive an interpretation from the State.

Chrm. Conero said then, at that point, they will have to do another SEU that allows for 20 sq. ft. The 20 sq. ft. hasn't been taken off the site plan, completely. It has no bearing on anything.

Ms. Samuelson said that the occupancy is determined by the building department; that the Planning Board usually doesn't get into occupancy except for parking...

Chrm. Conero said for SEU.

Ms. Samuelson said you need to know if there's enough parking outside.

Chrm. Conero said parking and we also need to know if the building's compliant with the NYS building code. There's no sense in proving something that's going to be illegal.

Ms. Samuelson said but you're looking at the site plan as far as the zoning is concerned, right? As far as I know, there's nothing in the zoning...

Chrm. Conero said he understands, but this is a situation that they've talked about for two meetings now, and he thought this was cleared up. Whatever our building inspector says, we've got to go by. You can litigate that with him, but we're just the Planning Board and need to look at what our building inspector says-he's the code enforcer so your plans from the architect, which were late and he didn't get a chance to look at those, I don't know if that's ever been...and our engineer couldn't respond to it because they're not included in your packet. So, I don't know you're sq. ft. and how it was determined.

Ms. Samuelson said the sq. ft. is what Bruce determined-the 1273 on the downstairs.

Chrm. Conero said that he didn't do the upstairs.

Ms. Samuelson said that is what is on the sheet from the architect.

Atty. Dowd said the floor plan was received Monday afternoon. The engineer and the building inspector did not have a chance to go through this. In fact, the entire submission was five days late, for this meeting. The Chrm. still allowed this to be on to try to get this done. There are a lot of inconsistencies on the plan, in the correspondence between the architect, the engineers, and the plan itself and he's not too sure where this is going.

Mr. Sussman asked what the inconsistencies were.

Atty. Dowd said he tried to call Mr. Sussman but was left on hold for quite a while. If you look at the site plan itself that was submitted by the applicant, it shows gross floor area, 1600 sq. ft. 1st floor, 2nd floor 1200 with a total of 2800 gross floor area. Gross area reduction, doesn't explain how that would be used, is $2800 - 700 = 2100$ sq. ft. of that floor area. You proceeded to calculate occupancy based upon the 2100 sq. ft.; 20 would be 105, 35 would be 60. If you look at what the architect submitted, he crosses out 1273 sq. ft. at 20 sq. ft. per occupant which is 63.65 for the 1st floor. There's nothing in the architect's report that says anything about the 2nd floor, although his floor plan shows an area on the 2nd floor, that he calls classroom, at 410 sq. ft. If you take the 410 sq. ft., as shown on the floor plan on the 2nd floor, and you add up the 1273 on the 1st

floor, you only get 1600+ sq. ft. but the plan says 2100 sq. ft. Whether you use 20 or 35, the numbers just don't match. This plan came in and there's a scale here but are no dimensions to each of the individual classrooms that are going to be used for the 1st floor and the 2nd floor. As he found out and had recorded last month, first graders must be in a separate classroom from the other children who are younger (kindergarten and preschool). And that the actual net sq. ft. is based upon classroom size, not the net sq. ft. of the entire floor area. That was from someone from the State, Romano, from last month. The latest submittal doesn't help any because it didn't give time for people to review them, but there are too many inconsistencies as to what is available for classroom, what is going to be used for classroom, 1st floor, 2nd floor and then we can get into the whether it's 35 or 20. I explained, they're asking for a permit for 105 occupancy when the BI is saying, and even your architect is saying, there's no way you can have 105. It would be misleading for us to even entertain an application for occupancy that would immediately violate the code. And we're trying to get a grip on whether this lot and building are sufficient for the additional numbers of children that they've been putting into this building and want to put in this building. We've been going around with this for months as far as what exactly they want. They seem to be at odds with the BI, who is, again, under the State building code, the one who determines occupancy levels. After the last meeting, they were going to submit these floor plans in time for the BI to submit it to the State, so they could get their opinion and it comes in two days before the meeting. It's unfortunate but we're stuck in a situation where nothing is getting resolved. The numbers keep changing.

Mr. Sussman said he heard what the Chrm. said earlier about taking the BI's determination in regards to sq. ft., and internalizing that in the plan and figuring that from there. As you know, the appeal for the BI's determinations through the ZBA, so...

Atty. Dowd said on zoning, yes, but not on this...

Mr. Sussman said the building code issues to the State. It's one or the other. In other words, if one assumes 35 is the number, and the applicant doesn't agree with that, the applicants can get an appeal to that. So, the way to deal with the site plan would be to get that appeal resolved and then have a site plan that reflects whatever that resolution is. What you are getting here, is an agreement by the applicant and the site plan to go with whatever that resolution is and deal with the other site plan issues, parking, for example, in that context, which really seems to be an issue for your Planning Board. For instance, on parking they have 8 spots. As he understands the code, that number will suffice the high number and low number.

Atty. Dowd said one of the issues is that this was originally approved for 25 students and 6 teachers/teacher's aides; the number of parking spaces was supposed to be 6. Of course that increased because they were using more students in the carriage house and more students in the Patchett House. If you look at the applicant's website, there are 14 employees of this school, as listed; 8 of them will actually be teaching but there are offices on the 2nd floor. Are they for administration or for what? Each employee would require another parking space. That's one of the concerns-are there enough spaces for this use as well as the Patchett House, which is all the same site.

Mr. Sussman said he thinks there are 30 parking spaces at the site, in gross. 22 of them are allocated to the other property, 8 allocated to this property. With the parking events, in terms of past, this created behavior, I'm assuming incurred (from his perspective), legally it's not really the issue. It may have happened, it may not have, he can't judicate, here. The Board's function, as he understands, is to say, with regard to the uses approved, you have 8 spots; those 8 spots are either inconformate to the numbers required by our code or that number of students. You can't

say 8 spots aren't enough because they are calculated under the code per student. Whether you have 60 students or 105 students, the 8 is sufficient. If she has 14, she's not doing right by you; if she has 14 people parking there and she only has 8 spots.

Atty. Dowd said she is not proposed to have guests here and in June they had an event and cars were parked all over the parking lot, the street and in neighboring parking lots. When she had represented to the Board that she'd have no parents at the school for the 25 and 6 that she was already granted. And a lot of the Board saw this. When you're trying to increase the number of students from 25 to 105, or people from 25 to 105, it causes problems not just on this side but on the street and neighboring sites. That's what we're trying to avoid.

Mr. Sussman said he hears their concerns but that's not the level of inquiry that's required for the permit. If she violated something, and he's not saying she did or didn't, he doesn't know, they saw it, if she did, she did. You go in and do something about it. The point right now is, is the plan is inconsistent. The site plan's problem is you can't even tell what is being asked for, that's what the Chrm. said earlier. And he was trying to explain why that is true because she now has sort of an appeal on the fly. To him, the issue is, regardless of the number of students, outward, is the site plan appropriate in terms of your zoning. If you need more parking, you can't approve the site plan. If your parking is the correct number... What is the Planning Board's role in this, as opposed to other people's role in this? I understand that there are other players and I understand that you are dependent on them and relying on them to some extent, but one issue we've already talked about is occupancy. It's up in the air and we're trying to get a resolution to it.

Ms. Samuelson asked if she could explain the inconsistencies between their plan and the architect's plan. What she is trying to show is, and the way she calculated it was, she took the outside edge of the building, that's the gross floor area, and subtracted what she assumed was the bathrooms, closets, those areas. Based on what Bruce actually calculated downstairs as the usable area. And she was more conservative than he was. He had 1273 for the downstairs net floor area. She's saying for the downstairs is 1600.

Chrm. Conero said Bruce came up with 1273 sq. ft.

Mbr. Crowley said this floor plan's classroom area is 410 sq. ft., so if you take Bruce's 1273 and 410 that comes up with the sq. ft.

Ms. Samuelson said she is saying that the whole building that's used for classroom area, but the upstairs they can take the offices out at some point and do classroom area, but saying that's the maximum probable number of students. She's not saying that's what they're going to have in there; that is a net number they can possibly have in that building.

Chrm. Conero asked if that was based on the 35 sq. ft.

Mbr. Crowley said there is a discrepancy in what our BI has determined sq. ft. and what you have determined sq. ft. You've done a net of 2100 for both 1st and 2nd floor and Bruce came up with 1683.

Mr. Sussman said he didn't measure the 2nd floor.

Mbr. Crowley said on this architectural plan it says 410 as the classroom sq. ft. It doesn't give the office space; it just identifies that area as 410 so that's what she's using to come up with the sq. ft. of the building. He did measure downstairs, he didn't measure upstairs, but apparently the

architect did on the floor plan on the 2nd floor. He didn't label downstairs, and she doesn't know why.

Ms. Samuelson said she thinks it's because it was already existing and it already has a CO for downstairs. This plan is for the upstairs school use. The BI has not seen that before.

Atty. Dowd said the original approval was for both floors. 25 students, 6 teachers for both floors.

Ms. Sussman asked if the approval was for 25 or 45.

Atty. Dowd said 25 students and 6 teachers/teacher's assistants for both floors.

Ms. Kalisky said offices upstairs and teaching area downstairs.

Mbr. Crowley said what happened was the 45 was in occupancy that the BI determined. That was occupancy.

Ms. Samuelson said that was just for the main floor.

Atty. Dowd said that was calculated at 30 sq. ft. per child on a Montessori standard, not the 35 sq. ft. that is required by the State code and/or 20 sq. ft. depending on the makeup of the students whether it's first grade or kindergarten or younger. Our code does say that parking for the school is 1:14 plus 1 for each student in the 12th grade or above or the gymnasium component of the use, whatever is greater. It's basically one per employee. She said 8 teachers and teacher's aides so there would be no administrators in that building, otherwise that would increase the number of parking spaces.

Chrm. Conero asked Ms. Pahucki how many she has.

Ms. Pahucki said they do have 14 staff but they're not all there full-time. They are obtaining a second space and their administrative offices will be there, not on this campus.

Chrm. Conero asked if there would be 8 no matter what.

Ms. Pahucki said yes, or less.

Atty. Dowd asked who would be occupying the offices on the 2nd floor.

Ms. Pahucki said it would be offices for the children to have special services.

Ms. Samuelson said that maybe they shouldn't be labeled offices. That they should be labeled special services.

Ms. Pahucki said the teachers could have lunch. There's not going to be classrooms up there.

Chrm. Conero asked if the students downstairs were going to have to walk upstairs to get their special services and come back downstairs.

Ms. Pahucki said potentially.

Chrm. Conero asked if the teachers would be upstairs. And they would be part of the 8 on campus?

Ms. Pahucki said yes.

Ms. Kalisky said it doesn't matter the number of students-it's only 8 teachers whether it's 25 or 45 or 52 or 101.

Chrm. Conero said we're still at the crossroads about how many students we're talking about.

Ms. Samuelson said that's between Claire and State Ed or not even the State of Ed, it's between Claire and Valley Central how many students she can have with each teacher.

Ms. Kalisky told Ms. Samuelson that they need to know what they propose for the use so the Planning Board can review the proposed use, meaning they can calculate parking based on the number of teachers. I would assume the number of employees does vary. If that varies, the plan you provided says you can have 105. And we're not even talking occupancy, the plan should not talk about occupancy. The original was specific-we're going to have 6 employees, 25 students, it was on plans, we're eliminating the upstairs apartment and be converted to offices upstairs-that's where the administration was going to be, the downstairs was for preK and 1st grade. That was approved by the Board back in 2013. The plan that you provided for us to review, we cannot comment with all these different numbers. It doesn't specifically say we are proposing to have...whether you actually get 52 students, maybe the admissions aren't that many, I don't know, but what we're proposing to have is 52 and 8 staff or 109 students and 5 staff; be specific on the site plan.

Mr. Sussman said, assuming they clear with counsel...is there a requirement that the site plan specify a number of students?

Atty. Dowd says the SEU permit was very specific-it's 25 students and 6 teachers/teacher's aides.

Mr. Sussman asked if it had to specify number of students.

Atty. Dowd said we were looking at whether this site, there was already an existing use on the site, whether this particular building was adequate and sufficient under the code to house a certain number of students and certain number of teachers. The Board determined, made its findings that 25 and 6 was actually what Claire had asked for, they approved that use and number. She now, is asking us to amend that permit and a floating-higher number of students and teachers that we are trying to get a grip on whether they can make a determination to grant that amendment based upon the sufficiency of the site, the building and the ability to house that many students and teachers in that building.

Mr. Sussman said that the site plan should indicate a specific number of students and staff.

Atty. Dowd said so the Board knows what they're asking for as an amendment to the existing SEU permit.

Mbr. Crowley said even if they were looking at just parking, the ratio is 12:1, you wouldn't be able to have more than 96 students there. So you couldn't have 105. If that's all we were looking for we could...

Ms. Kalisky mentioned the recreation area.

Mbr. Crowley said there are other things we are looking at. I'm just bringing that up; 105 wouldn't work just strictly in parking.

Chrm. Conero said there's nothing in the code about visitor parking so if a parent wants to park somewhere. Are there any stipulations to that in the code?

Atty. Dowd said, again, we were originally told that there would be no reason for parents to be visiting the school back in 2013. When we did the calculations we were looking at what is sufficient for site, parking and everything else. Would a parent stop in? Yes, nobody would even know it or care about it. But if she has multiple parents showing up for a classroom event or something else, there'll be no place for them to park.

Mr. Sussman said there would be but it would encroach on the 22 parking spots that are assigned to the other use which are not really being used with the other use. But, he understands what they're saying. What we need is to get a more timely submitted and consistent, in terms of the various references of numbers and a commitment that will last until there's a change in that commitment, based on whatever's going on at the State level with respect to your position as the BI's number of 35, that's what you want to see reflected in whatever is now submitted, and if that changes, then we know why it's changed, it's a State override and we come back and do it again.

Mbr. Crowley clarified that Bruce said it was 35 sq. ft. per child for preK and 20 sq. ft. for 1st grade.

Mr. Sussman said what they will do is put it all together in that form and fashion and come back.

Atty. Dowd asked that since there is a 2nd floor classroom, where is the fire exit on the 2nd floor. It appears to be going through a window. Where do you go? You jump out the window or are you going to have a staircase? There is no staircase on the site plan.

Ms. Samuelson said there is an outside staircase.

Atty. Dowd said there is no second egress in case the first one is blocked.

Ms. Samuelson said it is not required by building code.

Ms. Kalisky asked if there was a fire escape from that window. Access out of the window, yes, but is there a fire escape or jumping from a 2nd floor window. Are you adding a fire escape to comply?

Ms. Samuelson said it wasn't part of the requirement to change on the plan.

Mr. Sussman said they will provide the plan with...inaudible...I have seven children so I understand. Everyone laughing.

Atty. Dowd said since you're submitting the plans, you might want to look at that. He was looking at the plans and wondering where they go-a four year old jumping out a 2nd floor window.

Clarification was given as to when the Planning Board meets and when submissions are due.

Chrm. Conero asked if the recreation area had been reduced from the original plan in 2013.

Atty. Dowd said the size of the area was originally calculated at 40 sq. ft. per child.

Chrm. Conero said the outdoor play area has been reduced and expressed concerns having it so close to the road and the parking. And the picture they saw of the children playing around the non-fenced in area...

Ms. Pahucki said they are not her kids.

Chrm. Conero said he understands but it would be in the property owner's best interest to make sure there is a barrier all the way down that side of the road.

Ms. Pahucki said there is.

Chrm. Conero said no there isn't. The only barrier on the road is blocking the play area. But it doesn't go all the way down... He shows her on the site plan. Chrm. Conero asks if there is any way the play area can be extended or moved to the back of the building where it's not around traffic. Is there any room on the side?

Ms. Pahucki said they would lose parking spots.

Chrm. Conero said on the other side of the parking. He shows her on the site plan.

Ms. Pahucki said in the field? That would be up to the land owner.

Chrm. Conero said the reason he says this is you have a play area and (to Mr. Sussman, you have 7 kids), they are playing under a tree. I never felt comfortable with a play area under a tree-I don't think any school has a play area under trees. At least having this barrier down might give some people more comfort, as far as people hitting a kid. You asked us what the Planning Board role is, a lot of it is the safety feature of this. That's why we had the fire department look into this, as far as, could they combat a fire with parking in front of the play area and they said no. We had to eliminate that part which made it even more constrained, as far as parking. We felt that it was necessary to do that. The same thing with the striping. Dawn said the striping was never done. Signage and striping was not put in; it says proposed, here (on site plan).

Ms. Kalisky said we can only go by what is on the plan. When we look at the plan and it says "proposed sign," that that "proposed sign" if the previous submission indicated that, well "we were supposed to do this back in 2013" and it wasn't really done. That's why some of this stuff is still shown as "proposed." Now we still, on this plan received Friday, is still showing as "proposed." Once again, we have to reiterate our comments to complete the site improvement as "proposed" and required in the 2013 approval.

Mr. Sussman agreed and said it makes sense. So they have to go back and review 2013 and make sure that what's done is not showing as not done.

Ms. Kalisky said that Engineering Properties actually submitted the resolution of approval in the submission last month. She asked Mr. Sussman if he received a copy of their (Lanc & Tully) letter (and hands him one).

Chrm. Conero asked if the traffic pattern still comes in and loops around and where the buses and parents drop off children.

Ms. Pahucki shows the Chrm. and Mbr. Crowley where the drop offs are and confirms there are no buses dropping children off on Rte. 17K.

Mr. Sussman says they have work to do per their (the Board's) message. And confirms that the 14th is the deadline for submittal.

Atty. Dowd asked if the Board wanted the recreation area expanded. They are now talking about more children.

Mr. Sussman says there will be more children but it doesn't dictate that there would be more use at any given moment.

Mbr. Crowley said that because it's a Montessori school and that all the kids are in one classroom.

Ms. Pahucki said a multiage classroom. There are separate classrooms of multiage classrooms. A classroom of 20 students is one multiage class and another one, and our UPK are only 4 year olds in the classroom. There are separate classes. That class of 20 would go out to the playground at their time and then the other classes...

Mbr. Crowley said she just wanted clarification. How would you designate...at any given time there wouldn't be more than 20 kids on the playground.

Ms. Pahucki said no.

Chrm. Conero asked what calculation she was using for the play area. Why was it reduced from the 2013 plan?

Ms. Pahucki said it was reduced because of the tree.

Chrm. Conero asked what the criteria was for the 2013 plan.

Ms. Pahucki said there none.

Chrm. Conero said so there is no criteria about how much recreation space there is?

Atty. Dowd asked how many children were enrolled in the Summer Enrichment Program.

Ms. Pahucki said 20 and asked if he wanted to see her enrollment; that she went by the approved plan.

Chrm. Conero said from the Planning Board's perspective, they are going under SEU 122.47, that's the criteria they need to look at and that's what they go by.

Mr. Sussman said they will provide the modified material.

RE: MINUTES:

A **MOTION** was made by Mbr. Weeden and seconded by Mbr. Crowley to accept the minutes from June 25th, 2015, and carried 4 Ayes 0 Nays.

RE: ADJOURNMENT:

A **MOTION** was made by Mbr. McLean and was seconded by Mbr. Weeden, to adjourn the meeting at 8:27 pm, and carried 4 Ayes 0 Nays.

Tina Murphy
Deputy Village Clerk