

**MINUTES** of the Village of Montgomery Planning Board meeting held in the Conference Room of the Village Hall, Clinton Street, on Wednesday, April 22nd, 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, Michael Lynch of Engineering Properties, Walt Pahucki, Claire Pahucki, Joe and Heather Conley, Maria Beltrametti, Parinaz Mokhtari, Adam Peterson, Marc Devitt, Brian Rivenburgh

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

**OLD BUSINESS:**

**MATHIEU SUBDIVISON 77 WARD STREET 202-2-6**

Mr. Lynch of Engineering Properties said changes have been made since last month. Proposed lot 1 is a home professional office; there is no initial site plan. The business is downstairs. Atty. Dowd asked what the home occupation was. Ms. Beltrametti said advertising. The Atty. asked where the business was located as no more than ½ of the first floor area can be utilized for business. Mr. Lynch does not know what area is business or home. He does know that the whole building is 1700 sq. ft. and there are no employees. Chrm. Conero asked about curbing. Mr. Lynch said they could add some or low landscaping.

The Chrm. asked Ms. Kalisky to review Lanc & Tully's comments. Engineering Properties resubmitted a letter to DOT but did not forward to the Planning Board so Lanc & Tully did. A SEU permit needs to be filed for proposed lot 2. Area use in the home/office is important to help with the parking calculations, but it wasn't followed through with. It is in section 122-2 for home occupation...in the zoning book. The municipal parking lot is too far. Mr. Lynch does not believe the garage/studio is historic. There are four parking spaces for the home and residence above proposed lot 2, 1 handicap space and 8 additional for employees, customers. The Chrm. is still concerned about the 8% slope being too steep. Mr. Lynch said he will look into lowering the handicapped area to at least 2% with a retaining wall. Proposed lot 2 is not ADA accessible-there is too high a step-they will address that. Drainage is still a problem. They are increasing the impervious but not showing it on the plans. Ms. Kalisky is waiting for DOT comments; not from SEQR side. Currently, it is pavement to sidewalk and this is a concern of the Board. If two spaces could be removed, a curb line, swale or wooden guiderail could be added for a typical DOT entrance. The sewer line needs to be 6" for lot 2. Office and Parks hasn't responded in regards to historic significance of the buildings, although they will still need to go before the AHRB.

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

Mr. Devitt wants to amend the original site plan and special exception use permit at the carriage house. They want to increase the number of students from 25 to 45. He states

that the resolution doesn't specify the number of students allowed. He said Ms. Claire's originally had 25 students but when Bruce issued the CO, Mr. Devitt said it was for 45 students. It had been issued in error and he changed it to 45 persons. The Chrm. confirms it is actually 51, to include 6 teachers. Ms. Kalisky stated, the original approval of 8/13 (site plan approval) was for 25 students and 6 teachers. Parking was sufficient at the time, but it needs to be addressed now.

Mr. Devitt said that it should be 53 based on 30 sq. ft. per person but he went with 35 sq. ft. This is just the downstairs of the carriage house. He said that the upstairs has a tenant. Ms. Kalisky reminded him that the upstairs was to be used for the school. Again, parking requirements have changed since there is a residence upstairs. The new site plan does not include the residence, either. Mr. Devitt will have the parking recalculated on the site plan. He feels it is a paperwork issue. Atty. Dowd refers to a copy of the CO that was issued in March. Will they be in violation of the certificate of occupancy? The Board only approved a site plan of 25 students, not 45. The building code is occupancy of space, not number of students. Mbr. Crowley asked if the square footage is the whole downstairs or whole building. Does that exclude the bathroom? Closets? The Chrm. states they are there to do a site plan and special exception use, they are not there to debate whether it is 25 or 35 sq. ft. because that's a building code issue. If the building inspector said there can be 45 persons, it needs to be clarified. Atty. Dowd said a permit was issued for 45 persons, the 6 teachers makes it 51 persons in the space on the 1<sup>st</sup> floor. It's over the occupancy based on persons and Bruce's building code. If it's 20 sq. ft. per student, you might make it. Mr. Devitt said it is 35 sq. ft. per student. The Board wants to know what parameters were used to come up with the square footage. Mr. Devitt claims Bruce took measurements and told Claire she could have 45 students. The Atty. said the resolution didn't state the number of children in it, but the site plan was approved by this Board based on 25 students, including the recreation area. Mr. Devitt said there were no requirements for the recreation area. The Atty. said that was how the recreation area was determined. Chrm. Conero asked if there was a sq. ft. requirement per student for the recreation area. Mr. Devitt said no. The Chrm. said they cannot determine whether they can approve or disapprove of something based on an occupancy of a building they don't know; they don't have paperwork in front of them. It's unclear as far as the Building Inspector's letter to you. He'll have to do another letter and inspection, based on 51 occupants. The Atty. said it is a Historic Property, they are requesting an amendment to the SEU and site plan to change the number of students. A public hearing, as well as a long form EAF, are required, for the Carriage House. The Chrm. said this could probably be remedied by the Building Inspector if he says the building is okay for 51 persons...Ms. Kalisky said there was no occupancy issue with 25 students. Mr. Devitt said he will ask Bruce to verify the number of students and teachers. He will see what the code says. The Chrm. asked if there was any way the upstairs could be finished to increase the sq. ft. to make it better. Mr. Devitt said it would increase the sq. ft. of the school. Ms. Kalisky reminded Mr. Devitt, again, that the initial application from June 2013 stated the residence (upstairs) would be eliminated. Everything needs to be updated on the site plan, including parking calculations for what is actually in the building, including two spaces for tenants. The Chrm. asked about a floor plan. Mr. Devitt said Bruce already measured the space and that's how he derived the original CO; he doesn't

know what forced him to change the CO; that he feels it was unnecessary and provoked. The Chrm. said it was necessary because it wasn't on the plans for 45 and 6 and that was the reason why. Mr. Devitt asked, that's why he changed the CO? The Chrm. said wasn't that why it was given in error? Mr. Devitt asked why Bruce can't issue a CO based on what the code says and what he feels is safe occupancy for the building. The Atty. said a CO cannot be issued in violation of this Board's Special Permit. The Chrm. asked about the Patchett House. Mr. Devitt said he is working that out with the Building Inspector. The Chrm. said that it doesn't have a SEU for a school and yet you have students in it. How do you plan on...you're not going to do a SEU for that building? Mr. Devitt said no. That building has a CO that states instruction is permitted. Chrm. Conero asked him if he has a CO from our building department that says instruction is permitted. Mr. Devitt said he does not intend to submit a SEU for that building, the building department has offered a couple of ways to remedy the violation, which they are moving forward with. The Atty. asked what that was. Mr. Devitt said he was working that out with the building dept., since they handle the code enforcement. The Atty. said Ms. Claire's is a one business operation, you're asking for 45 students in the carriage house but the operation doesn't end in the carriage house, it extends into the WRS. How many students are in the WRS? Mr. Devitt said 26. The Atty. asked, she has a total of 71 students in two buildings? How many teachers in the WRS that are not counted in the 6? After asking Claire, Mr. Devitt says 3. The building code enforcer is not going to be able to issue a CO because the building isn't approved for a school. You should apply for a SEU to get the school legitimately in place. Mr. Devitt feels that Claire is legitimate and it would take too long and cost too much. The building will revert back to its original approved use June 19<sup>th</sup>. The Chrm. doesn't agree and said the Planning Board has no say in this, that this is code violation. There's nothing they can do unless he (Mr. Devitt) applies for a SEU. The Atty. said he would rather talk to them as an attorney-client, what their legal remedies are as far as a Planning Board process is concerned with an applicant before them, who has an operation that has extended itself into more than one building. Mbr. Crowley said that was not approved by this Board. So what happens if something happens in this building? What is the impact? Atty. Dowd has advised the Village Board, the Planning Board and the B/I what the potential consequences are to the Village and taxpayers. Mr. Devitt said the Village issued them a Notice of Violation, the Village has protected itself that way. He is working to remedy the violation, Ms. Claire's has insurance and has insured the Village, Montgomery Group, Devitt Management, and the WRS. He presents an analogy: what's to stop a resident from suing the Village for burning their mouth on a slice of pizza in the Old-Fashioned Deli. It was approved as a deli but they're selling pizza, who cares. They're selling pizza but it's not something they were originally approved for. The Building Inspector has been through there (Ms. Claire's) and has done a safety inspection and a fire inspection. They're number one concern from day one has been the safety of the kids. The Chrm. said if something happens there, the Village will get sued because they (WRS) doesn't have a SEU. If you're working this out with the BI, there's nothing more this Board can do. Mr. Devitt said he offered a remedy but Bruce turned it down and gave him two options that he is trying to work through.

Atty. Dowd asked if the Board wanted to set up a PH for the Special Permit site plan amendments for the Carriage House. They will need a long form EAF from Mr. Devitt.

The Chrm. wants clarification first, on whether the building can hold 51 occupants. There's no sense in having a public hearing if it doesn't.

**RE: PUBLIC HEARING:**

**A MOTION** to schedule a Public Hearing for Ms. Claire's Montessori, on May 27<sup>th</sup> at 7:30pm was made by Chrm. Conero and seconded by Mbr. Weeden, and carried 5 Ayes 0 Nays.

The Chairman asked Ms. Murphy to send a letter to the Building Inspector regarding clarification of Mr. Devitt's letter and square footage of building plan.

\*Mr. Devitt needs to amend the site plan and send additional copies for the County and SHPO. Ms. Kalisky advised Mr. Devitt to make sure the site plans are updated when resubmitting to the Planning Board.

**NEW BUSINESS:**

**ROWELY DEVELOPMENT CORP 40 RAILROAD AVENUE 202-12-9**

Mr. Lynch, of Engineering Properties said they will be manufacturing steel wall panels and need to do a change in use for parking. The use is similar to what was in there previously, except for the accessory office. It will either be light industrial or amending warehouse. There will be a door installed (on the Railroad Avenue side of the building) for access. They will need water/sewer and gas for the office.

Atty. Dowd asked if they would fabricate the panels. Mr. Rivenburgh said they would pre-assemble them until they are shipped to job sites (apartment buildings, office buildings). The Atty. asked about assembly, noise, odors, dust, generators? There are residential properties around there. Mr. Rivenburgh said they proposed a residential use for the property and the neighbors wanted it to remain factory. The Chrm. asked if there would be loading, fork lifts? Mbr. Romano asked if the current access would remain or if they would be putting up a wall. Mr. Lynch said there will still be access through the current gate. Mr. Rivenburgh shows a paint swatch of the proposed colors. It is not in the Historic District. There will be deliveries once a week. The Chrm. asked how many people it would employ. There will be 8. The parking calculations are two spaces per 3 employees. They will stripe and show necessary signage. Ms. Kalisky said it meets code requirements. It is light industrial but it is non-nuisance in the zone. It was already developed and does not affect any endangered species, for SEQR. Minimum bulk requirements are not applicable. The residential apartment is not permitted although a caretaker unit for the facility is allowed. Mr. Lynch will label the office on the site plan, a pedestrian door (exterior door), as well as an interior door. A refuse area is discussed. He will call Ms. Kalisky for the water main configuration. Ms. Kalisky reminded him to watch his details for Dept. of Health requirements. Atty. Dowd said this will require a public hearing due to the change in use.

The Public Hearing formality is discussed with Mr. Rivenburgh.

**RE: PUBLIC HEARING:**

**A MOTION** to schedule a public hearing for May 27<sup>th</sup>, at 7:30pm was made by Mbr. Romano and seconded by Mbr. McLean and carried 5 Ayes 0 Nays.

**A MOTION** to amend Ms. Claire's Public Hearing from 7:30pm to 7:45pm was made by Chrm. Conero and seconded by Mbr. Romano and carried 5 Ayes 0 Nays.

**RE: MINUTES:**

**A MOTION** was made by Mbr. Weeden and seconded by Mbr. McLean to accept the minutes from March 25, 2015, and carried 5 Ayes 0 Nays.

**RE: ADJOURNMENT:**

**A MOTION** was made by Mbr. Weeden and was seconded by Mbr. Crowley, to adjourn the meeting at 9:07 pm, and carried 5 Ayes 0 Nays.

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Tina Murphy  
Deputy Village Clerk