

**VILLAGE OF BREWSTER  
ZONING BOARD OF APPEALS  
WORK SESSION  
SEPTEMBER 22, 2008**

**MINUTES**

Board Members Present: Chairman Richard Ruchala, Board Member Todd Gianguzzi, Board Member Keith Greene, Board Member Claire Degan Kropkowski, Esq., and Board Member Jim King

Board Members Absent: None

Others Present: Mayor Jim Schoenig, Village Attorney Gregory Folchetti, Esq., Rick Stockburger, Teri Stockburger, Michael Sirignano, Esq., Steven Abels, Esq. and Nelson Colon

The Pledge of Allegiance was recited.

Chairman Ruchala: Anyone want to make a motion to open the meeting?

Mr. Gianguzzi: I will.

Mr. King: Seconded.

Chairman Ruchala: All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Mr. King: Aye.

Chairman Ruchala: Unanimous. Nelson Colon is the first applicant.

Mr. Sirignano: Good evening. My name is Michael Sirignano. I'm an attorney here with my client Nelson Colon. I'm handing up our return receipts on the public notices that were mailed out. We're here tonight on our application, as reformulated, pursuant to our discussion with the Board last month. I understand that there's a problem that has arisen since then concerning a directive to remedy to the owner of the property. I do not represent the owner, Mr. Doupis, and it concerns his allowing a taxi cab company to store five taxicabs on the property. I have not seen any written Order to remedy or directive to remedy. I understand such was given to him and he has advised Mr. Colon and Mr. Colon has told me he has filed an application with the Planning Board on August 15 to bring that condition into compliance and he scheduled to appear before the Planning Board tomorrow night.

Chairman Ruchala: If I might just interrupt. There is a member of the Planning Board here tonight. I would ask him if there is a Planning Board meeting tomorrow night.

Mr. Stockburger: Yes

Chairman Ruchala: Is his application before the Planning Board?

Mr. Stockburger: I don't see his application in the box. He might be requesting a use variance for a non-allowable use. I don't know why he'd be at the Planning Board. They'll just send him back tomorrow because he's looking for a use variance. It's a non-allowed use: storage.

Mr. Folchetti: For a point of clarity. If there's a use that's undertaken on the property that's not a permitted use for that area the applicant must go to the Zoning Board for a variance. My recollection is that Mr. Doupis was here in July.

Chairman Ruchala: Yes, he was.

Mr. Folchetti: At that point, after considerable back and forth, it was determined that it was a planning issue and an application had to be made to the Planning Board. Up until this point it hasn't been referred back and maybe it's just as well if the Planning Board does send it back here for the relief sought. I don't recall whether it was a use variance. To my recollection it was not.

Chairman Ruchala: Do we have anything reported? Mr. Stockburger has gone and looked to see what was available. Do you have something?

Mr. Stockburger: Yes, I have his application and his check for \$500.00. The application is dated August 15. The check is made out to the Village of Brewster and dated August 13 for \$500.00.

Mr. Sirignano: Whether Mr. Doupis obtains a use variance or a site plan approval is up to him. I'm not representing him. If he doesn't I presume he's going to have to remove his taxicabs from the site. What I'm trying to do is represent my client and let him have his fair hearing as soon as possible. We are prepared to go forward tonight but obviously you'll be guided by your own counsel. I would add just one thing. If we were to succeed in front of this Board tonight we would still have to go to the Planning Board. We're not going to be opening the restaurant tomorrow morning.

Chairman Ruchala: It's totally true, what you say.

Mr. Folchetti: As a discretionary matter the Zoning Board can refuse to hear an application about a piece of property that doesn't have a violation on it. Obviously that doesn't affect this piece of property that has an Order to Correct or Remedy whatever the non-conformity is. This is something that's ancillary to the use that's been cited. Mr. Doupis' use exists without a site plan approval and has nothing to do with Mr. Colon's application. I'll advise Chairman Ruchala and the Board again that it's discretionary. If the Board is inclined to hear it you're certainly not prohibited from hearing it but you're not required to hear it. In my experience the more egregious the outstanding violation is the less inclined a Board is to hear an ancillary application for relief. Now there's a distinguishing characteristic here in that the landlord of the property is the applicant before the Planning Board. That further creates the distinction that if the Board is inclined to hear it there's nothing prohibiting it and if they're not you don't have to.

Chairman Ruchala: Keith Greene has just walked in to the room. The Planning Board does not have it on their records that Mr. Doupis is coming before the Planning Board tomorrow. He says he submitted this on August 15 but there is no time/date stamp. Mr. Stockburger, who is on the Planning Board, says that to the best of his knowledge it has not been received. So you are being polled as to

whether or not you want to hear this tonight and we just wanted to get you up to date on this.

Mr. Folchetti: For the sake of clarity, whatever is done before this Board would not entitle the applicant to go ahead and commence whatever work needs to be done to effect the changes to the structure of the building or whatever the case may be. There's still a building issue and there may be a planning issue. This is only a piece of the approval mechanism and does not by any means authorize the commencement of the work or complete the approval.

Mr. Sirignano: But it is a show stopper. If we don't get a favorable result here then we're going to go find a different location.

Chairman Ruchala: Understood. There is an Order of Remedy. It seems to me that even though I have this here it isn't on the Planning Board yet. Does anybody on the Board have comments?

Mr. Stockburger: To the best of my knowledge. I'm not the Chairman.

Ms. Stockburger: Can you discuss this contingent on?

Mr. Folchetti: We can do it and the Board can hold it over, or there can be an application to hold it over.

Chairman Ruchala: I would say this, if I can speak to this Board. My feeling would be I would probably listen to it. I wouldn't want to vote on it because I'm not sure about the objections to-I don't want to leave that out. That would be my personal feeling.

Mr. Gianguzzi: I concur.

Ms. Kropkowski: I would say the same thing. I would hear it but not vote on it.

Chairman Ruchala: That would be my feeling. So now there are three people who feel that way so I guess-am I allowed to give counsel his options?

Mr. Folchetti: Yes.

Chairman Ruchala: You have a choice of saying what you want to say today and we hold it over for a vote until the next meeting or we can do everything fresh. I don't know how you want to do this.

Mr. Sirignano: May I have one minute with my client?

Mr. Abels: I represent Mr. Ledley.

Chairman Ruchala: For the time being I prefer that you say nothing. You will have your time to talk, I guarantee you.

Mr. Abels: Okay.

[Whereupon a recess was had.]

Mr. Sirignano: Given the Board's indication that it would not be ready or comfortable to vote on our application tonight, I'm going to ask that we continue this matter and not make a presentation tonight.

Chairman Ruchala: Okay.

Ms. Kropkowski: Okay.

Mr. Folchetti: You need a motion to hold it over.

Chairman Ruchala: I want to get to the date first.

Mr. Gianguzzi: I can't make next week.

Chairman Ruchala: We have a notice issue anyway. October 13 is the training in Saratoga. October 20 would be my first real week. Unfortunately I'm committed that day. That doesn't mean we can't have it without me being present.

Mr. Gianguzzi: On the 20<sup>th</sup> I won't be present either.

Chairman Ruchala: You won't be present.

Mr. Gianguzzi: Correct.

Chairman Ruchala: The 13<sup>th</sup>.

Ms. Kropkowski: I won't be here.

Chairman Ruchala: What about the 6<sup>th</sup>?

Ms. Kropkowski: Monday is the 6<sup>th</sup>.

Chairman Ruchala: The 6<sup>th</sup> of October.

Ms. Kropkowski: The 6<sup>th</sup> of October. The 13<sup>th</sup> I won't be here. Is the 6<sup>th</sup> the weekend you're going away?

Chairman Ruchala: The 6<sup>th</sup> and the 7<sup>th</sup> I am in Schnectady with the Empire Zone. I knew those days were no good. We always try to make these on Mondays. The 27<sup>th</sup> is a long time.

Mr. Gianguzzi: I can do any day-Monday is irrelevant to me. Are there any functions in here?

Chairman Ruchala: Never on Mondays. What about the 27<sup>th</sup>?

Ms. Kropkowski: That's a long time for them to wait.

Chairman Ruchala: It is. What about if we switch days?

Mr. King: I can do a different day.

Chairman Ruchala: Somebody pick a date when they can make it and we'll start from there.

Mr. Gianguzzi: I can do Tuesday the 21<sup>st</sup>.

Chairman Ruchala: What about Tuesday the 7<sup>th</sup>? Anybody have something going on on the 7<sup>th</sup>?

Mr. Folchetti: Sundown on the 8<sup>th</sup> will be Yom Kippur.

Ms. Kropkowski: What about the 15<sup>th</sup>?

Chairman Ruchala: First off, if we pick a date the issue with Mr. Doupis has to be satisfied. Have you communicated with him?

Mr. Sirignano: Yes.

Chairman Ruchala: And he assured you that any date I give will be fine and he will have the Order of Remedy satisfied before that date?

Mr. Sirignano: That's my understanding.

Chairman Ruchala: So if I make a date.

Mr. Sirignano: We will have this issue behind us whatever day you give us.

Chairman Ruchala: Thank you.

Ms. Kropkowski: Do you want to do the 21<sup>st</sup>?

Chairman Ruchala: The 21<sup>st</sup> is good by me.

Mr. Folchetti: It works for me.

Ms. Kropkowski: So the 21<sup>st</sup> works? How about for you guys?

Chairman Ruchala: I'm sorry it's so long.

Mr. Sirignano: It doesn't make that much difference.

Chairman Ruchala: I'd like to make a motion to continue the Colon application subject to the Order of Remedy.

Mr. Folchetti: Being at least addressed and/or cured.

Chairman Ruchala: Being addressed and/or cured. And we will continue this meeting on October 21, 7:00 p.m. at 208 Main Street, Village Hall. Any one want to second.

Mr. Gianguzzi: I'll second.

Chairman Ruchala: All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Mr. Greene: Aye.

Mr. King: Aye.

Chairman Ruchala: Unanimous. At this point, for those of you out there, we're going to discontinue for tonight. I know that many of you are looking forward to this. I thank you very much for coming. The other issue we have is the conference we're having, which is on October 12, 13 and 14. Mr. King and Ms. Kropkowski are going. We have checks for the hotel, and anything else you put on the room for things like meals will be paid for by the Village of Brewster. The other thing is that Mr. Gianguzzi and Mr. Greene have to do an on-line thing. Todd had trouble finding it. I didn't bring the information tonight. Do you have all the information? You have to have it done by the end of the year. Is that a good timeline? So no problems with any of that. Does anyone have any other business? We have to approve the Minutes from the meetings of July 28 and August 25, 2008. Did everyone read these Minutes?

Mr. Gianguzzi: Yes.

Ms. Kropkowski: Yes.

Mr. Greene: Yes.

Mr. King: Yes.

Chairman Ruchala: Okay. Does anyone have any issues with the Minutes, where you found them to be inaccurate?

Ms. Kropkowski: No Minute issues.

Mr. Greene: No Minute issues.



Mr. King: No Minute issues.

Mr. Gianguzzi: None here.

Chairman Ruchala: I make a motion that we approve the Minutes from the July 28 meeting and from the August 25 meeting. All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Mr. Greene: Aye.

Mr. King: Aye.

Chairman Ruchala: Unanimous. Any other business someone would like to talk about.

[Whereupon a recess was had.]

Chairman Ruchala: I make a motion to adjourn this meeting and go into executive session.

Mayor Schoenig: Before you do that, something came up at last Wednesday's meeting of the Village Board. What concerns the Village Board is that we are entertaining applicants that have violations on their property. It's a concern that the Village Board is passing on to you guys because we're trying to clean things up in this Village and we take into account the applicant's landlord. We feel that – suppose I own an illegal two-family house and want to put a garage on my property. Why would you entertain me putting a garage on my property when I haven't remedied my house situation? It's a concern that the Village Board has that we want to address with the Zoning Board. We don't know what the policy is.

Ms. Kropkowski: I think that was one of the reasons why we put it over, because the Order of Remedy is not taken care of.

Mayor Schoenig: Rich was at that meeting and I had brought my concerns up with him at that point.

Mr. Folchetti: In an opinion I'm familiar with these were unrelated violations where there was a remedy pending. The Board did not necessarily have to entertain an application for relief while there was still a matter pending.

Chairman Ruchala: What happened was one month we had the meeting about the five taxicabs.

Mayor Schoenig: I was here at that meeting.

Chairman Ruchala: Then we told him to go back to Planning. The following month we were here with the other issue. The way it should be handled, according to what he's saying is, once it's stopped and goes to cure then you go to the next one.

Mr. Folchetti: It's typical to hold off on a zoning determination if there's a pending violation that has nothing to do with the zoning application, or to gain conformity with the use violation, which is not the case here. You have to trust the Planning Board to be able to handle the planning issues. If and when they come before them that's something that has to be addressed there. There is the issue of the existing violations. One way or another he has to put in a site plan application for that or he can remove the vehicles and then it's cured. You're perfectly with your rights to say we can't be doing this when you have this. You got to close this because the guy's a landlord.

Ms. Kropkowski: What standing does this man have to come before us?

Mr. Folchetti: The standing could be a leasehold interest.

Ms. Kropkowski: He claims he put in an application for Alcohol.

Mr. Folchetti: That wouldn't grant him standing.

Ms. Kropkowski: The question I have is what is his basis for standing in the first place. He hasn't done a contingent lease.

Mr. Folchetti: you got to have some interest in the property, whether it's an existing tenant-landlord or some leasehold interest.

Chairman Ruchala: We shouldn't be talking about this unless we go into executive session. This is something that should be handled and I'll make a phone call tomorrow.

Mr. Folchetti: The affirmative steps that you take are steps you take as a courtesy and you're certainly entitled to do. As a matter of practice the first thing an applicant should do when he comes before any Board, whether it be Planning or it be Zoning, is to establish that they have the right to seek whatever relief it is that they're asking for, by a lease or a letter of intent to lease, something that shows there is an interest, be it a springing or contingent interest.

Chairman Ruchala: We haven't received any of that to the best of my knowledge.

Mr. Folchetti: Well maybe you bring that to their attention.

Chairman Ruchala: I will tomorrow.

Mr. Folchetti: Or you don't hear it on the 21<sup>st</sup> if it's not addressed by then. You certainly can't grant them relief. I'm not sure they can't make the application and then you say no.

Ms. Kropkowski: How can you come before us and ask for relief if you don't have any basis?

Mr. Gianguzzi: Are they asking for relief or for an interpretation?

Chairman Ruchala: An interpretation is the relief, a form of relief.

Ms. Kropkowski: They're coming before us asking for a relief.

Chairman Ruchala: I make a motion that we adjourn the meeting at this time.

Mr. Gianguzzi: I second the motion to adjourn the meeting.

Chairman Ruchala: All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Mr. Greene: Aye.

Mr. King: Aye.

Chairman Ruchala: For the purpose of going into executive session. We'll have to revote on that. All in favor of adjourning the meeting and going into executive session. Can I get a second?

Ms. Kropkowski: Second.

Chairman Ruchala: All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Mr. Greene: Aye.

Mr. King: Aye.

Chairman Ruchala: Meeting is adjourned.

[Whereupon the meeting was adjourned at 7:55 p.m.]

