

**Village of Brewster
Planning Board**

March 22, 2011

Regular Meeting

Board Members in Attendance:

David Kulo, Chairman
Rick Stockburger, Assistant Chairman
Mark Anderson

Board Members Not in Attendance:

Renee Diaz
Jodi Ellis

Also in Attendance:

Greg Folchetti-Planning Board Attorney
Bruce Martin- J. Robert Folchetti & Associates, Village
Engineer
Nasser Aqeel

Agenda

The **Pledge of Allegiance** was recited.

Call to Order

Chairman Kulo made a motion to open, which was seconded by Mr. Anderson. The motion passed by a vote of 3-0.

[Whereupon the Meeting was called to order at 7:44 p.m.]

New Business

Concepts-851 Rte 22 – Nasser Aqeel

Chairman Kulo stated that he, along with Assistant Chairman Rick Stockburger and Member Mark Anderson were in attendance for this regular Meeting of the Village of Brewster Planning Board. The Chairman then stated that the first item of business would be Nasser Aqeel in connection with 851 Route 22, Brewster, New York.

Mr. Aqeel stated that he is the owner of the property located 851 Route 22, Brewster, New York and that he wants to add a bagel shop of about 1,000 square feet to the premises. He showed the Members a copy of a preliminary floor plan and indicated he was hoping to obtain the approval of the Planning Board for this concept, and that he was present to answer any questions that the Members might have. Mr. Anderson inquired as to whether the bagel shop would be considered a restaurant or a fast food establishment, a question that was also raised by Mr. Stockburger. Mr. Anderson asked whether a variance for parking would be needed. Mr. Stockburger noted that a fast food establishment or restaurant require more parking than an office. Mr. Aqeel stated that there were 16 parking spaces in total extant on the property, and that more would be added because he had a contract with one of the property's neighbors on the right side of the building to use the neighbor's container for refuse disposal; Mr. Aqeel noted that this meant his property would no longer require a container, thus opening up more spaces for parking.

Mr. Stockburger noted that under the Village of Brewster Code a fast food restaurant does not include a restaurant, and while the latter is a permitted use for the property a fast food restaurant is not. Mr. Stockburger read the Code's definition of a fast food restaurant, which is "*a business enterprise primarily engaged in the sale of prepared or quickly prepared food and beverages in disposable containers or wrappers selected by patrons from a line of prepared specialty items such as hamburgers, chicken, pizza, tacos or hot dogs for consumption either on or off premises in a facility where the floor area available for dining is less than one-half*

the gross floor area and the major portion of sales to the public is either drive-in or stand-up at a counter. The term 'fast food' shall not include bakeries or delicatessens operating as retail establishments provided that such sale is not the principal business of such an establishment."

Mr. Anderson noted that in order for Mr. Aqeel's establishment to not be considered a fast food restaurant that at least 50.01% of the premises had to be available for dining. Chairman Kulo stated that it appeared from the plan submitted by Mr. Aqeel that the proposed use of the premises appeared to be about 50/50. Mr. Aqeel stated that he wanted to have an open feel to the premises, which he would like to be open on a daily basis from 6:00 a.m. to 3:00 or 4:00 p.m.

Mr. Aqeel noted that the size of the premises, which would be located on the ground floor of the building, for the proposed bagel shop is about 25X35, which Mr. Anderson calculated to be 875 square feet. Mr. Stockburger advised that in general the Code of the Village of Brewster requires in general one parking spot for every 200 square feet of ground floor space, but that for restaurants the requirement is one spot for every 150 square feet of space. Pursuant to the Code, offices require one spot for every 200 square feet, and the building has two other offices, each totaling 875 square feet. Mr. Stockburger stated that taking all the property at the building in the aggregate that 15 parking spaces would be requisite and that there are 16 there.

Mr. Stockburger stated that a Site Plan Application approval would be needed, as the proposed bagel shop would constitute a change in use. Mr. Aqeel posited that the only change insofar as he was concerned was a change in the tenant. Mr. Anderson thought that that might not be a change in use, inasmuch as that part of the premises had been vacant since the building's construction, thereby obviating the change in use. Mr. Stockburger advised Mr. Aqeel that many of the items on the Site Plan Application could be waived, but that that had to be requested, as the Planning Board could only grant such waiver if it was requested.

Chairman Kulo cautioned Mr. Aqeel that he has to make sure that the parking area was safe, and suggested that a traffic study ought to be conducted. Mr. Aqeel stated that the cost of such a study is about twenty thousand dollars. Mr. Anderson opined that such a study should be unnecessary inasmuch as one had just been conducted by Brewster Honda,

which is just up the road from 851 Route 22, in sight of Mr. Aqeel's driveway, in connection with an Application which Brewster Honda had made, and that traffic had also been heard about when Dunkin Donuts was coming in. Mr. Anderson further stated that he felt it was unfair for someone to put up a whole building and then have to go through all of this when occupancy thereof is desired. Chairman Kulo stated that he did not think it was unfair to require the study. He noted that there had already been a major accident at the busy intersection, and that not requiring such a study could lead to potential Village liability. Chairman Kulo stated that he was not trying to be an impediment but that this issue needed to be put out there. Mr. Anderson stated that Mr. Aqeel has a flow plan and that the parking spaces are angled so as to require that vehicles go with the traffic flow. Mr. Anderson also noted that this was looked at when Mr. Aqeel had *ab initio* appeared before the Board several years ago seeking authorization to renovate the building, that decisions were made then on how to proceed, and that since then the building has been used without incident. The Chairman stated that he was not trying to give Mr. Aqeel a hard time and reiterated his position that potential Village liability had to be considered. Mr. Folchetti stated that there were several things that he wanted to discuss with the Members in executive session. Mr. Stockburger noted that he hoped the safety issues as well as Mr. Aqeel's ability to use the premises could be met. Mr. Aqeel stated he understood the Board's concerns and was willing to work with the Planning Board as long as it was economically feasible but if proceeding with the project was beyond his economic means he would not be able to go forward with it. Mr. Aqeel thanked the Members and departed the Meeting.

Pending Projects

5-7 Putnam Avenue – Subdivision Site Plan Application for Review

Chairman Kulo noted for the record that the Applicant hereon, Mr. Fowler, was not present at the Meeting, and that discussion would occur in his absence. Mr. Martin noted that part of the water line needed work, the issue being that access to a shut-off valve was required by the Village in the event that water bills were not paid. Currently, per Mr. Martin, the shut-off valve is on private property and access to it (that is, not on the property itself) is required via an easement or some other way. Mr. Folchetti stated

that if the property were subdivided a use variance would be required. It was noted that from the papers submitted it was not entirely certain where the boundary line for the property is. Chairman Kulo stated that one of the engineer's recommendations is for clarification for each as to whether it would be single or multi-family. Mr. Folchetti noted that the matter would have to be referred to the Village of Brewster Zoning Board of Appeals. Mr. Anderson stated that it is difficult to obtain a use variance for a self-created hardship. Mr. Anderson also noted that there are more issues present in this than the drawing done by Mr. Fowler had indicated.

Executive Session

Mr. Anderson made a motion to go into executive session. This motion was seconded by Chairman Kulo and passed by a vote of 3-0.

[Whereupon the Planning Board went into executive session.]

Mr. Stockburger made a motion to come out of executive session, which was seconded by Chairman Kulo. The motion passed by a vote of 3-0.

[Whereupon the Planning Board came out of executive session.]

Accept Minutes –March 1, 2011

After discussion, it was agreed to postpone action on this until the next Planning Board Meeting in deference to the fact that there was not a quorum of Members present who had not recused themselves from part of the proceedings at the March 1, 2011 Meeting of the Planning Board.

Close Meeting

Mr. Stockburger made a motion to close the Meeting, which was seconded by Mr. Anderson. The motion passed by a vote of 3-0.

[Whereupon the Meeting of the Planning Board closed at 8:35 p.m.]

