

# Village of Brewster Planning Board

August 23, 2011

Regular Meeting

Board Members in Attendance:

David Kulo, Chairman  
Rick Stockburger, Assistant Chairman  
Mark Anderson  
Renee Diaz  
Tyler Murello

Also in Attendance:

Greg Folchetti-Planning Board Attorney  
Bruce Martin- JRFA, Village Engineer  
Michael Liguori, Esq., Hogan & Rossi  
Joe Hernandez-Building Inspector  
Keith Greene  
Laura Greene

The **Pledge of Allegiance** was recited.

## **Call to Order**

Chairman Kulo indicated that this was the regular Meeting of the Village of Brewster Planning Board. Chairman Kulo noted that Assistant Chairman Rick Stockburger and Board Members Mark Anderson, Renee Diaz and Tyler Murello were in attendance along with himself. Chairman Kulo made a motion to open the Meeting, which was seconded by Ms. Diaz. The motion passed by a vote of 5-0.

[Whereupon the Meeting was called to order at 7:48 p.m.]

## **New Business-**

### *571 North Main Street-Fountain of Faith Church-Site Development Plan*

Michael Liguori, the attorney representing the Church, indicated that he had received the Memo from Bruce Martin, which contained comments on the proposed project. In reference to these comments, Mr. Liguori stated that he had architectural drawings for the interior with dimensions, which were left off while the uses in the building, especially the Church, were being legitimized; that he would fill in parking on the Proposed Site Plan as needed; that he would provide sanitary services; and that the Applicant's phone number would be provided. Mr. Liguori noted that he had omitted pointing out at the July 26, 2011 Meeting of the Planning Board that in December, 2010 he had met with Joe Hernandez and Anthony Mole concerning the use variance that had been issued relative to the property and the Church as a community center use. The consensus arrived at was that there was no permitted use as such in the local Building Code so then the focus was turned to general use as an assembly. In the State Building Code a community center falls under the larger heading of assembly.

Chairman Kulo asked Mr. Hernandez to address the condition of the building. Mr. Hernandez stated that on August 22, 2011 he had walked through the building with Steve Alonge, the landlord, and that in this tour the existence of violations, many of them caused by the tenants, had been noted. Among the violations found are the following:

- In the Church there are two large dangling speakers with excessive wiring and no known UL certification;
- The furnace has no permit (in response to a query from Mr. Anderson Mr. Hernandez stated that a permit is requisite when a furnace is being replaced);
- The furnace room is cluttered;
- An outlet for a stove in the Church is improperly placed and must be removed;

- There are missing door checks; and
- The wiring in the electrical closet is improper.

Aside from the violations Mr. Hernandez noted that another issue was the occupancy load for the premises. Mr. Stockburger asked if the seats in the Church were fixed, to which Mr. Hernandez replied that they could be moved. Mr. Stockburger pointed out that the Code has different requirements for fixed as opposed to nonfixed seating, to wit: that there be either one spot for every 75 square feet of space the Church has or alternatively that there be one spot for every five fixed seats of capacity. Mr. Stockburger stated that he had driven past the property on Sunday, August 21, 2011 and that both the Church's lot and Kobacker's lot were full and that there were people driving around attempting to find parking. Mr. Stockburger said that he also opposes the concept of nonsimultaneous parking, where otherwise inadequate parking for the totality of the building is nevertheless allowed pursuant to the idea that not all of the tenants would be operating at the same times. Mr. Stockburger stated that it was his position that the parking issue required a variance from the Zoning Board of Appeals, as once a site plan is approved businesses cannot be told when they may operate. Mr. Liguori stated that he would stipulate to a person load of 75, and that any change thereto would require Planning board or Zoning Board of Appeals intervention. Mr. Stockburger stated that he was still not comfortable with shared parking. Mr. Anderson noted that businesses and churches are dynamic-for example, a church has more parishioners on Christmas day than at other times. Mr. Hernandez pointed out that people often violate a Certificate of Occupancy's load and that there was ample exiting on the premises.

Chairman Kulo noted that the situation before the Board was somewhat unique inasmuch as the Church and the other businesses on the premises were already operating, thereby offering an idea of the parking situation. The Chairman asked Mr. Hernandez if any complaints had been received, to which Mr. Hernandez responded no. Mr. Hernandez noted that aside from these usual parking spaces that the Code requires that there be handicapped parking provided and that there be a fire lane in case of an emergency. Mr. Liguori stated that the use variance did not include parking requirements. He also pointed out that Bibo Associates had done a study of the parking

requirements for the other businesses, a dance studio and a karate school, on the premises and that these mostly involved parents dropping off and picking up their children, and that therefore the functional use of the building was not in accord with the zoning requirements. Mr. Hernandez said that the load requirement for everyone in the building's 9,000 square feet would be in excess of 100 parking spots, at one space per every 75 square feet; it was noted that no place in Brewster Village has such a prodigious amount of parking. Mr. Anderson pointed out that no building on Main Street in Brewster could fulfill the parking requirements.

Mr. Stockburger noted that he was not unsympathetic to this problem but the Planning Board is not vested with the authority to interpret or modify the Code. Mr. Anderson said that Brewster would be stuck in the past if buildings were not permitted to adapt to change. Mr. Liguori argued that he did not believe he was asking for an interpretation, as there is no definition of "fixed" [seating] in the Code, and that it would be good if the number of seats allowed in the Church was fixed at 75. Mr. Stockburger stated that if that could be done and Mr. Hernandez was satisfied then it was acceptable to him. Chairman Kulo wondered about the verification problems concerning the number of seats and people. Mr. Anderson pointed out that at the church he goes there are often people standing. Mr. Hernandez noted that a room's permitted occupancy did not necessarily equate with the number of seats, inasmuch as it is required that persons have a five foot radius around them. Mr. Liguori stated that the Church consists of two rooms, one of which is 3,249 square feet while the other is 900 for an aggregate of 4,249, which, when divided by five means that more than 800 people are allowable. Mr. Anderson wondered how the numbers 75 and 800 could be reconciled. Mr. Stockburger stated that such a question is for the Zoning Board of Appeals. Mr. Hernandez opined that this is why the Certificate of Occupancy carries a lot of weight-if a premise has a change of use the Code requires a new site plan and operating permit while a new tenant without a change of use necessitates that a new Certificate of Occupancy be obtained.

Mr. Murello inquired as to whether the area of the Church could be limited, for example by the construction of a wall, to which Mr. Liguori responded that it would be less costly to obtain a

variance. Chairman Kulo asked if there was parking at the back of the building, to which Mr. Hernandez replied that the back could be configured for another 20-30 spaces as the property goes about 175 feet beyond building; however, Mr. Hernandez continued that it does not work functionally to put parking there, and asked if conditional use parking for Church staff could be put there. Mr. Liguori answered that not that many spaces would be gained and added that if the Church's seating was fixed 35 spaces would suffice for the building; the question is how to affix the seating. Mr. Hernandez stated that if the chairs were stuck together they could be a hazard in the event of a fire or other emergency; he also noted that in movie theaters for example the seats are attached to the floor so that they don't move and impede egress.

Chairman Kulo stated that the Board is trying to balance the tenant's need to use the building on one hand with the existence of the aforementioned violations on the other. The Chairman continued that at the last Planning Board Meeting it had been represented that the problems would be resolved by this August 23, 2011 Meeting and the fact that they weren't calls into question the credibility of the Applicant. Mr. Folchetti pointed out that Courts have ruled that it is not within the purview of a Planning Board to consider violations, which inquiry is left to the Building Department. Mr. Hernandez stated that the tenants are occupying the building illegally, to which Mr. Folchetti replied that this could not be considered by the Planning Board either. Mr. Hernandez acknowledged that Mr. Alonge had taken care of many of the problems that had been extant at the building. Mr. Stockburger noted that it had been a year and a half since this matter had first come up so some more time at the Zoning Board of Appeals should not be a big issue. Mr. Folchetti stated that he thought that the Zoning Board of Appeals was the proper recourse to be taken, as the other alternatives, such as the nonsimultaneous parking or the affixing of seats, could lead to issues such as enforcement. Mr. Greene stated that he was likewise of the opinion that the Zoning Board of Appeals was the proper forum for the matter to be considered in.

Mr. Stockburger then made a motion to refer the matter to the Zoning Board of Appeals. This motion was seconded by Mr. Anderson and was passed by a vote of 5-0.

**Pending Projects-***2-4 Allview Avenue-Brewster Honda-Site Plan Approval*

Mr. Liguori inquired as to what the effective date of the Planning board's Order would be on this matter-that is, would it be the date it was approved (March 8, 2011) or the day it was signed by Mr. Stockburger (June 22, 2011). Mr. Stockburger stated that in his view it was beyond cavil that the Order was effective the day it had been approved (March 8, 2011).

Mr. Liguori thanked the Members for their input on this and on 571 North Main Street and departed the Meeting.

**Accept Outstanding Draft Minutes of July 26, 2011**

Chairman Kulo stated that the next item of business was the Minutes of July 26, 2011. He inquired as to whether any Member had any changes he or she sought to have made, to which Mr. Anderson responded that one change was needed, which the Secretary of the Planning Board promised he would do. Subject to this correction being done, Mr. Anderson made a motion to accept the Minutes of July 26, 2011. Mr. Murello seconded the motion, which was passed by a vote of 4-0, Mr. Stockburger abstaining.

**Close Meeting**

The Chairman inquired if anyone had any other issues for discussion, to which query the Members responded in the negative. Chairman Kulo made a motion to close the Meeting. This motion was seconded by Mr. Murello. The motion was passed by a vote of 5-0.

[Whereupon the Meeting was closed at 9:05 p.m.]

