

**Village of Brewster
Planning Board**
December 7, 2010

Regular Meeting

Board Members in Attendance:

David Kulo, Chairman
Rick Stockburger, Assistant Chairman
Mark Anderson
Jodi Ellis
Renee Diaz

Also in Attendance:

Mayor James Schoenig
Bruce Martin-J. Robert Folchetti & Associates, Village
Engineer
Charles Fowler
Nasser Aqeel
Ben Lefebvre
Vinny Patel

Agenda

The **Pledge of Allegiance** was recited.

Call to Order

Mr. Kulo made a motion to open, which was seconded by Mr. Anderson. The motion passed by a vote of 5-0.

[Whereupon the Meeting was called to order at 7:35 p.m.]

New Business

Chairman Kulo stated that this was regular meeting of the Village of Brewster Planning Board, and that this meeting encompassed two meetings, that of November 23 and December 28, 2010. There were two preliminary concepts before the Board. Mr. Fowler was first invited to address his business with the Board.

The Application of Charles Fowler Concerning Property Located at 2608 Carmel Avenue, Brewster, New York. Mr. Fowler stated that he wanted to break out his house from the rest of the property located at 2608 Carmel Avenue. He indicated that there would be no construction, renovation, etc. in connection with his plan. He stated that John Folchetti had advised him to appear before the Planning Board so that he could ascertain what items might be waived on his Site Plan Application. The Members of the Planning Board then discussed *seriatim* the items delineated in the Village of Brewster Planning Board Checklist. Following is a summary of the sense of the Planning Board as to which of these items would be required and which could be waived:

REQUIRED:

The title of the development and the name and address of the record owner;

The existing zoning of the property and adjacent property;

A written statement of use;

The boundaries of the property and lines of existing streets, easements, etc.;

The location of existing buildings on the property and of neighboring structures; and the signing of the Application by Mr. Fowler.

WAIVABLE:

The location of all existing and proposed water mains, drains and culverts on the property and the location of utilities on the adjacent street (except that water and sewer would be **REQUIRED**);

Existing contours and location of existing watercourses, marshes, rock outcrops, etc.;

Existing and proposed fences, landscaping and screening;
The boundaries of any area subject to flooding or storm water overflows;
The proposed stormwater drainage system;
The location and specifics of any exterior lighting;
Information about signs;
Information about parking and loading areas;
Information about cut and fill;
Information about erosion and sedimentation control;
Information about use and location of buildings;
Information about proposed lots, easements and public community areas;
A proposed screening and landscaping plan;
Information required in the Light Industrial and Warehousing District;
The stages of development or construction proposed;
Schematic architectural plans of proposed buildings, structures, etc.;
A statement from Mr. Fowler's architect concerning the estimated cost of construction of streets, sewers, etc.

It was also indicated by the Board that the Members thereof would be responsible for SEQRA compliance. Mr. Fowler was advised that when he puts his Application in to be sure to indicate that he was requesting a waiver. Mr. Fowler thanked the Board and exited the Meeting.

Concerning the Application for a Subway at 851 Route 22, Brewster, New York. Nasser Aqeel is the owner of the subject property. Two years ago he received permission from the Planning Board to build a dental office and a Subway on the property. Due to the economy the Subway did not open and the permit expired but there is a new franchisee. Mr. Aqeel stated he hoped to renew that expired permit. Mr. Aqeel bought a proposed floor plan and indicated that allowing the Subway would not change the building's architecture. The primary concern of the Building Inspector, Joe Hernandez, according to Mr. Aqeel is the flow of traffic into and out of the parking lot and Mr. Aqeel will try to maintain the site plan layout. Parking spots could be reserved for the Subway.

Mr. Stockburger stated that when Mr. Aqeel was last before the Planning Board fast food was an allowable use but the Zoning Code has been changed so that fast food is no longer an allowable use or a special exception use so a use variance before the ZBA would have to be requested. The new Code defines a fast food restaurant as " 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.” Mr. Stockburger advised Mr. Aqeel that if the seating area is less than half the gross floor area then it would be a fast food restaurant. 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.” So the first question relates to the gross floor area as compared to the seating area. A redesign of the plans might have to be done to qualify as a restaurant, which is defined in the Code as “a business enterprise engaged in preparing and serving food and beverages as permitted by the Alcoholic Beverage Control Board selected from a full menu by patrons seated at a table or counter served by a waiter or waitress and consumed on premises.”

Mr. Aqeel inquired how a deli would be characterized. This definition was read: "A fast food restaurant shall not include bakeries or delicatessens operating as retail establishments provided that such sale is not the principal business of such an establishment." Guadalapena Bakery, which sells stuff but primarily does catering, is an example of this. A mini-mart could be considered a deli because it sells cigarettes, newspapers, etc.- the deli sale is incidental. An example would be Savino's. Subway would fall under the fast food category and a variance would have to be sought at the Zoning Board of Appeals. Mr. Stockburger wondered whether Mr. Hernandez (the Building Inspector) classified the proposed establishment as a restaurant or fast food. A special exception use doesn't apply because in a B-2 area the only special exception uses are retail restaurants, taverns, personal services, offices, single family dwellings and art galleries. Mr. Anderson indicated he would view Subway as a fast food restaurant, the epitome of which is to McDonald's. Chairman Kulo stated that the definition is subjective and that Subway classifies itself as healthy fast food. Ms. Ellis stated that she agreed with this. Mr. Stockburger stated that he believed Red Rooster is also fast food. Mr. Lefebvre stated that there are Subways that offer waiter/waitress service and that Subway does cater.

Chairman Kulo inquired as to what type of room there was for a Subway franchisee to make changes to the proposed plans, to which Mr. Lebebvre replied that changes could be made. Mr. Stockburger stated that the definition was in two parts. The first part is that the floor area would have to be changed so that more than half of it was for sales to the public;

the second part is the sale of prepared or quickly prepared food and beverages in disposable wrappers selected by patrons. Chairman Kulo inquired whether Mr. Hernandez had concerns about the traffic pattern and whether the DOT was comfortable with the layout concerning parking. Mr. Aqeel stated there was ample parking. Mr. Anderson inquired about the number of exits from the premises because the plans showed only one. Chairman Kulo indicated there was a size limit where two exits would be required. Mr. Anderson stated that the Applicant should speak to Mr. Hernandez to see if a second exit was required. Mr. Patel stated that Mr. Hernandez said only one door was needed. Chairman Kulo suggested that that should be confirmed with the Fire Chief to be safe. Mr. Anderson indicated that he thought egress would be possible at the end of the building.

Mr. Stockburger indicated that he believed the matter would have to end up at the Zoning Board of Appeals because 15 parking spots are needed and there are only 13. Mr. Stockburger stated that the Code for a business office or dental clinic requires one parking spot for every 200 square feet; the office premises are 1750 square feet so nine parking spots are needed; for a restaurant it's one parking spot for every 150 square feet. The Subway has about 900 square feet so six parking spots are needed for the total of 15. The parking would be one variance that would have to be obtained from the Zoning Board of Appeals.

Mr. Anderson thought it might be necessary to get clarity as to whether the Subway would be a restaurant or a fast food facility. Mr. Stockburger thought that input from Mr. Hernandez should be sought as to whether he disagrees with the Planning Board calling it a fast food restaurant. Mr. Stockburger suggested that Mr. Hernandez could refer it to the Zoning Board of Appeals for clarification on this issue as well as the parking one. Restaurants require more parking spots than offices. Mr. Stockburger stated that Mr. Hernandez might have a different interpretation regarding the parking spaces. Even if Mr. Hernandez says it's a restaurant and not fast food it still has to go to the Zoning Board because of the parking space shortage. The binding decision rests with the Zoning Board of Appeals-Mr. Anderson advised that if they give a variance it's the same as compliance and the Planning board can't further consider it. Mr. Stockburger opined that if Mr. Hernandez thinks it's a restaurant and not fast food and that no additional parking is needed he should send a memo to the Planning Board and stated that Mr. Hernandez should either refer it back to the Planning Board or give a referral to the Zoning Board of Appeals. The next meeting would be a site plan application and as Mr. Fowler did ask

what can be waived. There would have to be notifications, SEQRA and a public hearing, which will take at least four months.

Mr. Aqeel inquired as to what if the premises were a bagel shop. Mr. Stockburger indicated that an appearance before the Planning Board was always requisite because there is a change in use. Mr. Anderson indicated that personal opinions don't matter-rather, it is the charge of the Planning board to apply the rules. Mr. Stockburger indicated that because of the property's location Putnam County must have 30 days to respond but that silence after those 30 days is deemed an acquiescence. Chairman Kulo indicated he would call Mr. Hernandez the next morning so that his input on the issues might be garnered. Mr. Stockburger advised that the Board would change its meeting date so that an applicant wouldn't have to wait another month if the 30 day period expired a day or two after the otherwise regularly scheduled meeting date. The next regular meeting is January 25th. If Mr. Hernandez gives approval to submit a site plan the Planning Board needs ten copies at least 15 days in advance. Site plan applications can be obtained on-line. Mr. Stockburger advised that if Mr. Hernandez thinks there is not enough parking that only the Zoning Board of Appeals can waive parking space requirements. Messrs. Aqeel, Lefebvre and Patel thanked the Board and left the Meeting.

Mr. Anderson stated that it is important to get businesses to come into the community. Standards are needed but Mr. Patel has done a good job of maintaining the building and it is a lot better than what was there before. Ms. Diaz thought another professional office would be best. Mr. Anderson proffered that Mr. Patel had probably sought one but that there are not a lot of professionals in Brewster Village. Chairman Kulo stated the Planning Board had to do more than rubberstamp a project like this and that the Applicant was given good advice. Mr. Anderson indicated that the property got a new building that has been nicely maintained and that will pay taxes for a protracted period. Chairman Kulo stated that no project that comes before the Planning Board will take less than four months. Mr. Anderson said that things need to be thought about when projects get bogged down beyond the point of reasonableness. Mayor Schoenig said that the State Department of Transportation will get involved and may have objections. Mr. Anderson indicated that a third question for Mr. Hernandez would be what has to be done since there is a state and federal highway there. Mayor Schoenig said there is no guarantee that the Department of Transportation would approve the project.

Adopting of Minutes from Meeting of October 26, 2010

Mr. Anderson moved to accept the Minutes as written, seconded by Mr. Stockburger. The motion passed by a vote of 4-0, Ms. Diaz abstaining.

Close of Meeting

Ms. Ellis moved to close the meeting, which was seconded by Ms. Diaz. The motion passed by a vote of 4-0, Mr. Stockburger abstaining.

[Whereupon the Meeting was closed at 8:42 p.m.]