

**Village of Brewster  
Planning Board**

April 26, 2011

Regular Meeting Minutes

Board Members in Attendance:

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

Board Member Not in Attendance:

Jodi Ellis

Also in Attendance:

Bruce Martin- JRFA, Village Engineer  
Charles Fowler  
Michael Liguori, Esq., Hogan & Rossi, Attorneys for Charles  
Fowler

*(NB: There was no formal Agenda for this Meeting)*

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 4-0.

[Whereupon the Meeting was called to order at 7:40 p.m.]

## **Pending Projects**

### *5-7 Putnam Avenue – Charles Fowler*

Chairman Kulo stated that he, along with Assistant Chairman Rick Stockburger and Members Mark Anderson and Renee Diaz 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 in regard to the Site Plan Application of Charles Fowler in connection with 5-7 Putnam Avenue, Brewster, New York.

Mr. Liguori was invited to address the Board as the attorney for Mr. Fowler. Mr. Liguori stated that Mr. Fowler's subdivision is a preexisting nonconforming lot that is partially in the Village of Brewster and partially in the Town of Southeast. He indicated that there were discrepancies concerning the property line boundaries, and that a better way to look at it might be in reference to taxes paid, which are paid to the Town of Southeast and not the Village of Brewster. Chairman Kulo noted that the Village line was in question, and that there was quite a deviation between the various property lines. Mr. Liguori stated that the proposed subdivision is to carve off of the house Mr. Fowler dwells in, which is a one-story ranch abode located near Beecher's Funeral Home. Mr. Liguori noted that it is proposed that the current lot be made into two lots, one of which would have Mr. Fowler's house (lot 2) and the other, with the houses on Putnam Avenue and which Mr. Liguori characterized as the remainder of Lot 1, would consist of consist of the other two units (lot 1). Lot 2, which is Mr. Fowler's house, would be a new lot on Carmel Avenue. Mr. Liguori noted that this is akin to a lot line adjustment, pursuant to which he said he would like to come in under, but it has to be done as a subdivision because of the creation of a new lot. Mr. Liguori stated that he had discussed the matter with Gregory Folchetti, the attorney for the Village of Brewster, and that counsel disagreed concerning the application of Section 263.26 of the Village of Brewster Code. Mr. Liguori said that Mr. Folchetti believes that a variance from the Village of Brewster Zoning Board of Appeals is requisite because there are two new parcels being created while Mr. Liguori opined that there is only one new lot because a portion of an existing lot is being carved out

and that the Planning Board can authorize this and therefore the intervention of the Zoning Board of Appeals is not needed. Section 263.26 was read by Mr. Stockburger; this provision states that *“No lot or land shall be subdivided or transferred so as to make a lot nonconforming or more nonconforming or to make any building, other structure or use nonconforming or more nonconforming.”*

Mr. Liguori stated that lot 1 is already in existence and that it meets the minimum acreage requirements, even with all three houses on it and therefore there are no bulk issues; the only thing nonconforming about it is the number of houses thereon thereon; all of these are primary residential, not accessory, dwellings. Mr. Liguori further noted that the lot is already nonconforming and that Mr. Fowler’s proposal would not make it more nonconforming but would instead serve to make it less nonconforming, thereby obviating the need to go to the Zoning Board of Appeals, a view Mr. Liguori expressed that he hoped the Members of the Planning Board would agree with. Mr. Liguori advised that in an e-mail he had received from Mr. Folchetti the latter felt that whether the proposal made the property more nonconforming or less nonconforming is a factual determination for the Zoning Board of Appeals. Mr. Liguori stated that he disagreed with Mr. Folchetti and thought this is not a complicated matter and the intervention of the Zoning Board of Appeals is not necessary but that he realized that Mr. Folchetti was not at the Meeting to amplify his views, and that whether the Members of the Planning Board agreed or disagreed with him he would request that the matter be set for a public hearing.

Mr. Stockburger inquired as to what would make it more nonconforming if anything, to which Mr. Anderson responded that adding another building would. Mr. Liguori stated that the proposal complies with every setback for every structure on the property. He noted that the framed garage at the corner is five feet, which is the minimum required, that each of the two proposed lots would be more than the required minimum of 7,500 square feet (lot 2 is 14,889 square feet and lot 1 is 1.554 acres, which is about eight times as big as the minimum) and that the 60 foot frontage is good. It was additionally pointed out by Mr. Liguori that one of the houses does not comport with the 20 foot front yard requirement but that the house is not being made more nonconforming, that the side yard of 12 feet is okay, that the rear yard of 20.32 feet is more than the 15 feet mandated, that lot two’s coverage of 40% is okay and that the houses are not higher than the 35 feet proscribed maximum height. It was noted that lot 1 is in a PB Zone,

which Mr. Stockburger stated restricts properties to one dwelling and one business per lot; while Lot 1 would have two dwelling units it is being made less nonconforming. It was pointed out that there is an abundance of parking and that there is more than the required minimum of 100 square feet of open space. Further, it was also noted that the accessory building is not in the front or side yard and that the dwelling unit in lot 2 was being made less nonconforming, not more so. Mr. Martin said that he agrees with that but that there were nevertheless changes being made to a nonconforming lot. Chairman Kulo said that there were no physical changes being made, with which Mr. Martin agreed. Ms. Diaz stated that the houses would remain residential.

Mr. Liguori noted that the lots would have no business thereon and that nothing new was being proposed. He also argued that because Lot 1 is being made less nonconforming Section 263.26 allows it and that although lot 2 is new the aforesaid Section 263.26 permits it as well. Mr. Stockburger opined that because Section 263.26 has an “or” in it and not an “and” its interpretation turns on how lawyers would define it. Ms. Diaz noted that lot 1 is already nonconforming. Mr. Stockburger stated that pursuant to 263.26 there are two things that can’t be done to land-a lot can’t be made nonconforming nor can it be made more nonconforming. Chairman Kulo stated that there is a need to ascertain if the proposed changes would make the lots nonconforming. Mr. Anderson said that lot 1 which already exists and would exist if there was no subdivision, is already nonconforming and opined that the creation of lot 2 would lead to a conforming use while lot 1 would become less nonconforming as it would go from three dwellings to two. Mr. Martin stated that a nonconforming lot was being created because the property boundaries of that lot were being changed; even though it is preexisting it is being changed. Ms. Diaz said that the properties were not being made more nonconforming. Mr. Anderson said that although lot 1 is not being made totally conforming the proposed change is moving it in that direction. Mr. Stockburger stated that if the property was being built from scratch a variance would be needed and that Mr. Folchetti’s position is that a variance from the ZBA is required for the nonconforming lot. Mr. Anderson noted that the only thing being created is the second lot, as lot 1 is a preexisting nonconforming lot, which could live forever in that guise. Mr. Stockburger pointed out that if a variance is obtained then the lot is legal forever. Mr. Liguori posited that the word “or” in the Code is key because the Code says a lot can’t be made nonconforming or more nonconforming, neither of which Mr. Fowler would be doing. Chairman Kulo thought the

word “or” in 263.26 insinuates fairly clearly that the subdivision has to be conforming. Mr. Liguori acknowledged that Mr. Folchetti, who disagrees with his position, thinks the question of whether the lot is more nonconforming is a question for the ZBA to determine. Chairman Kulo stated that there were three potential outcomes: that the lot is conforming, nonconforming or more nonconforming. Chairman Kulo also stated that it would be in the Applicant’s best interests to dot every “I” and cross every “T” so as to make sure that the subdivision is on good legal standing. Mr. Stockburger said that he did not think that the Zoning Board of Appeals would turn the variance down.

Mr. Liguori noted that it appeared that a vote of the Planning Board would result in a 2-2 split, and asked the Board to schedule the matter for a public hearing in the next month so that the process could move forward. Mr. Stockburger read a provision from the Site Plan Application that said *“No Application shall be deemed complete unless it complies with all of the requirements of this Chapter and all necessary variances had been granted by the Zoning Board of Appeals.”* Mr. Stockburger thus noted that a public hearing couldn’t be held until all required variances had been obtained, and inasmuch as two Members of the Planning Board felt a variance was required and the Applicant did not have three votes agreeing with his position that the Application was not complete, thereby making the scheduling of a public hearing untimely. Mr. Liguori opined that the Application was complete, and Mr. Stockburger reiterated his position that a variance was requisite prior to the scheduling of a public hearing. Chairman Kulo noted that many applicants who have appeared before the Planning Board were required to obtain a variance. Mr. Stockburger said that to have a public hearing before the variance was obtained would result in presenting an incomplete Application to the public. Mr. Anderson stated that the word “or” in Section 263.26 gives the Planning Board a choice, and Mr. Stockburger said that the word “or” is what is creating the problem. Mr. Anderson said the word “or” means you have a choice; Mr. Stockburger said the word meant you had to meet both conditions. Mr. Anderson stated that the word “and” would mean both conditions had to be met. Chairman Kulo agreed but said that the implication of 263.26 is that in order to subdivide the property had to be conforming.

Mr. Liguori stated that a nonconforming lot could be subdivided and that the only issue here is the presence of two structures on it. Mr. Liguori further stated that the property is a preexisting nonconforming use and that

the proposal would not make it more nonconforming but rather less so, which the presence of the language after the word “or” in the statute allows Mr. Fowler to do. Chairman Kulo stated that if there were three lots instead of the proposed two that all would be conforming. Mr. Anderson said that if Mr. Fowler were to do nothing there would be a nonconforming lot with three dwellings. Mr. Stockburger said there is nothing wrong with a nonconforming lot but that it has to be granted by the Zoning Board of Appeals. Mr. Martin thought that by creating a second lot that the property lines were being changed and therefore what Lot 1 is is being changed. Mr. Liguori said that the drawing of property lines does not make the property nonconforming. He said that he was still requesting the setting of a public hearing to hear any public comments, as he did not think a use or even an area variance was required here.

(Mr. Folchetti was reached via telephone and the call was placed on speakerphone.) Mr. Folchetti stated that it is his position that a variance from the Zoning Board of Appeals is requisite. Mr. Stockburger communicated to Mr. Folchetti his position that the Application is not complete without a variance from the Zoning Board of Appeals and that Mr. Liguori was requesting a public hearing before the Applicant had obtained a variance from the Zoning Board of Appeals. Mr. Folchetti stated that he thought it would be permissible to have a public hearing before the Zoning Board of Appeals appearance but that more than one public hearing would then be required, one for SEQRA and one for the Site Plan Application. Mr. Stockburger opined that if Mr. Fowler went to the Zoning Board of Appeals first both of the aforementioned public hearings could be done coterminously. (At this juncture the call with Mr. Folchetti was ended.) Mr. Stockburger noted that for the General Municipal Law Section 239m notifications that 30 days was required; it was unknown if these notifications had already been sent out or not. It was discussed that the date for the next regularly scheduled Meeting of the Planning Board on May 24, 2011 might not afford sufficient time for all of the prerequisites to occur and that it might be beneficial to delay this Meeting. The Members stated their willingness to declare the Planning Board the lead agency for SEQRA this evening. It was also agreed that June 7, 2011 would be the most sagacious date for the next Meeting and that it would be for the SEQRA hearing and the Site Plan Application hearing.

Mr. Anderson made a motion to declare the Planning Board the lead agency for SEQRA in the Matter of the Fowler Subdivision. Mr. Stockburger seconded this motion. The motion passed by a vote of 4-0.

Mr. Anderson made a motion to hold a public hearing on SEQRA concerning Mr. Fowler's Application on June 7, 2011 at 50 Main Street, Brewster New York at 7:30 p.m. Mr. Stockburger seconded this motion. The motion passed by a vote of 4-0.

Mr. Stockburger made a motion to hold the public hearing in connection with Mr. Fowler's Site Plan Application on June 7, 2011 at 50 Main Street, Brewster New York at 7:30 p.m. or as soon thereafter as the Meeting could occur upon the conclusion of the aforesaid public hearing in connection with SEQRA. Mr. Anderson seconded this motion. The motion passed by a vote of 4-0.

Mr. Anderson made a motion to cancel the regularly scheduled Planning Board Meeting of May 24, 2011 and to reschedule such Meeting to June 7, 2011 at 50 Main Street, Brewster New York at 7:30 p.m. or as soon thereafter as the Meeting could occur upon the conclusion of the aforesaid public hearings in connection with SEQRA and the Site Plan Application. Mr. Stockburger seconded this motion. The motion passed by a vote of 4-0.

Mr. Fowler thanked the Members of the Planning Board and departed the Meeting. Mr. Liguori asked for the Board's indulgence in allowing him to again address Brewster Honda to which request the Board acceded.

### *Brewster Honda*

Mr. Liguori stated that he foresaw a potential timing issue on the Site Plan Approval for Brewster Honda concerning the conditions of its approval, one of which is to record the conservation easement; Mr. Liguori also said that there was no intent to renege on the conditions. The Town of Southeast is the entity that enforces the easement because its zoning enforcement officer would be who would cite any violation. Mr. Liguori stated that he represents Chip Robertson and his partner Don Leda, the latter of whom sold his interest in Brewster Honda to his cousin Bill Leda, who is not sure of the economic viability of going forward with Brewster Honda's project which had been the subject of earlier hearings before the Planning Board and

Zoning Board of Appeals. Mr. Liguori said he wants to ensure that the driveway easement is recorded and enforceable from the Village aspect and noted that he must discuss the proper enforcement mechanism with Mr. Folchetti, for whom the question would be the right way to make it enforceable by the Village. If Bill Leda decides not to go forward the Town of Southeast would have no Site Plan Application to enforce. If the Site Plan Application is not proceeded upon the right to build would expire after one year while the variance would stay in effect as it runs with the land. Mr. Liguori noted that the same driveway issue as to the best place to put it would exist no matter who owned the property. Mr. Liguori noted he had some potential suggestions but wanted to make sure the Planning Board Members were comfortable with them. Mr. Stockburger said that he wants the gate to be put up as soon as possible, with which Mr. Liguori agreed. Mr. Liguori said he would return to the Planning Board with whatever ideas Mr. Folchetti thinks is proper. Mr. Liguori concluded by thanking the Members of the Planning Board for the amount of time that they had afforded him of the evening and departed the Meeting.

### **New Business**

#### *Nasser Aqeel*

Mr. Stockburger said that Joe Hernandez, the Building Inspector, had told him that if Mr. Aqeel were to sell something other than food at his proposed establishment it might then be considered a retail endeavor and not a restaurant. Were it to be a retail establishment the parking requirement would be one space for every 200 square feet, for which sufficient parking exists at the property, instead of one for every 150 square feet for a restaurant, which would necessitate the addition of one more spot, and Mr. Hernandez might issue a building permit to Mr. Aqeel; the granting of a building permit by Mr. Hernandez would obviate the need for Mr. Aqeel to return to the Planning Board for site plan approval. Mr. Stockburger also noted that Mr. Aqeel received a letter from the Department of Transportation telling him to fix the sidewalk and curb cuts; this was not part of the Planning board's review and is between Mr. Hernandez and Mr. Aqeel. Mr. Stockburger concluded by saying that it was up to Mr. Hernandez as to whether or not a building permit is issued to Mr. Aqeel and accordingly Mr. Aqeel might or might not be back to the Planning Board.



### **Accept Minutes –March 1, 2011**

The Secretary of the Planning Board was advised of several requisite changes which he was directed to make to the Draft of these Minutes. After further discussion, it was agreed to again 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.

### **Accept Minutes –March 22, 2011**

The Secretary of the Planning Board was advised of several requisite changes which he was directed to make to the Draft of these Minutes. Based on these amendments being made, Chairman Kulo moved to accept the March 22, 2011 Minutes of the Planning Board. This motion was seconded by Mr. Stockburger. This motion passed by a vote of 3-0, Ms. Diaz abstaining.

### **Final Business**

It was agreed that Chairman Kulo would ensure that the Village of Brewster Clerk, Peter Hansen, would make sure that the General Municipal Law Section 239m notices were sent out and that the date for the next Planning Board Meeting of June 7, 2011, which is to be a joint public hearing, was properly noticed.

### **Close Meeting**

Ms. Diaz made a motion to close the Meeting, which was seconded by Mr. Anderson. The motion passed by a vote of 4-0.

[Whereupon the Meeting of the Planning Board closed at 9:15 p.m.]

