

VILLAGE OF BREWSTER
PLANNING BOARD

REGULAR MEETING
MARCH 28, 2007
MINUTES

Present: Board Members: David Kulo, James Bruen, Mark Anderson
Acting Chairperson: Rick Stockburger
Others Present: Village Engineer Paul Pelusio of Village Engineers
Folchetti & Associates, Village Attorney Gary Kropkowski

Not Present: Chairperson Christine Piccini

The Pledge of Allegiance was said and the meeting was called to order at or about 7:36 pm at Village Hall in Brewster.

Rick Stockburger made a motion to call the meeting to order at 7:36 pm. Mark Anderson seconded, and 4 ayes David Kulo, Jim Bruen, Richard Stockburger, Mark Anderson, with Christine absent. RS abstain

1. Accept minutes

First minutes are for 12/14/06, a regular meeting.
Not immediately available for review/acceptance.

Second set of minutes is Jan. 24th minutes; first correction is the date: Jan. 24.

Second change is the people present-please add Rick Stockburger.

Public hearing on 50 Main Street and regular meeting both on December 14,
approved site plan; those minutes not available.

New and additional changes:
Change spelling of "Outfowl" to outflow.

Motion to accept January 24 minutes;

Rick motions to approve the minutes.
David Kulo seconds.
Ayes: Mark Anderson , James Bruen, David Kulo, Rick Stockburger.

Nays: none

Feb. 28; Rick not present;
Rick: The three of you make any changes required-Jim, Dave, Mark...
Part 3, pg. 2, procedural memorandum

Jim did not have a chance to review procedural memo.

Finish Feb. 28,
David-Looks fine.

Looks fine; just has to be finished;
3 ayes on memorandum?

Mark Anderson motions to accept, David Kulo seconds, and Rick Stockburger abstained; passed with 3 ayes.

2. Item 4 old business

Reviewed: Folchetti revisions (previously marked up)
No change

3. Any other old business

a. Gary Kropkowski memorandum

Under 7-725 of the Village Law, relating to your statutory powers of review for site planning as the planning board, you have a lot of flexibility: you can review a four-year old or a five-year old project for example. You just must show that your review is related to the municipality's health, safety, and welfare determination.

There's another time consideration however. That when you have SEQRA related issues, and they've already been passed upon, either by a board that has declared itself lead agency for the purpose of the SEQRA or a predecessor planning board that's taken action, you have a time constraint that you have to be aware of. If you can tie your de novo, or for lack of better word, brand new review scope within that, and it relates to the environmental issues, you're fine.

What is the time frame, the statute of limitations.

Gary-at least, I think it's going past almost four years, to 2003. So it's long since passed its statutory period of review. If you come in as an applicant and you want to have it, you want to make a challenge to what the planning boards decision making was, you actually get 30 days to do that.

Gary-Now, again the limitation is you have to have it tied back in to the environ concern that would have been raised by the SEQRA review and approval process, but I would say nine out of every ten occasions planning boards should be able to do that.

Gary-Statute 7725 says the planning board can come on back and say this is not what we gave you the approval for.

Jim-just a minute, with that being said now, there were three conditions of the planning board for the last meeting. One of the conditions was the conclusion of the seqra process which was the last village board meeting. The last condition was the receipt of Gary's memo ...And the

condition was that plans were signed by the DEP. I have those plans here, I would like to submit them to the planning board.

Christine wrote up a memo on that, that we haven't signed the plans, the planning board site plan approval.

I think it was actually a prospective resolution.

Gary-At the Feb. 28 meeting, she ran it by me and I said it looks good.

Rick-I make a motion we accept this resolution, with the meeting of all 3 caveats in the memo have been completed. We have a signature, with Gary's concurrence that we can do this, and we have the easement marked on the map. I vote that we approve this. Subdivision. Second?

Rick Stockburger-I make a motion we accept. Mark Anderson seconds. 4 ayes with Christine absent.

All in favor Aye (four ayes)

Amy signed plans 2x as secretary

Gary signed plans 2x as Village attorney

Rick Stockburger signed 2x as planning board acting chairperson.

4. Next order: New Business- 538 N. Main St.

Does he get to declare the property is preexisting nonconforming w/ regard to parking. Or by putting up a new building, is he subjected to all rules about parking that exists today.

I would say that if he built it exactly as was, then it's preexisting non-conforming use to allow other parking w/in 500 feet of the site.

James-I see the 500 ft. rule.

Section 170-14.

James-Pg. 17-040 paragraph D. Joint use of parking space. Two or more separate premises may establish a joint parking area which provides the full number of parking spaces. Such premises shall not be separated by a distance of more than 500 feet.

Regarding the apts. Adjacent to the building the people who were working there lived in the apts. I never remember this being problematic. Of adjacent property to the right of that two family house which also has path for four cars. Never ever had a spillover, so far it's worked.

I guess that's why my lead question was, are you going to maintain some of the existing structure?

James-Actually we'd prefer to level and start over...Because of better construction. We could conceivably refurbish the building as is, make the addition we want in the rear, and add on a second floor.

James- I'll say in that I'd rather do better construction...I and Ray Durkin would rather do better construction, knock down the building and build a new building,

What makes the existing building nonconforming?

James-The lack of parking there--there are not nine spaces.

Rick-If it's nonconforming because he doesn't have the parking, and he has additional space within 500 feet, it would be conforming so the 50 percent rule doesn't apply. If he has ...if he now makes it conforming...by getting an easement from flower garden (Red Fox) on the deed for the two of them...that would be within 500 feet. He would have his required parking spaces, he would no longer be nonconforming.

Gary-Rick, you're going to have in effect a new construction at the site. With that new construction you lose the prior preexisting nonconforming aspect of what had attached to the old structure.

Gary-Your statute says also you can't make something of a preexisting nonconformity even more non-conforming.

I think we have two options. If the damage was less than 50% we can rebuild the same footprint, keep your same preexisting nonconforming absolutely, and then you're fine. If it's more than 50%, then you have to make it conforming as it stands. And then you've got to come up to your nine parking spaces.

Gary-That's what 170.14 (d) says.

James-Then am I correct that if I'm staying with the planning board; that I do not need the zba?

If we're conforming, there's no need for a variance.

Right.

Now getting into that warehouse we haven't even covered that yet.

Again, you are making inferences that that's accessory, and therefore there will never be a separate lease for the upper floor and the lower floor. Oh, I don't have to meet those parking requirements because I'm never going to separate those two things. I'm going to be accessory to the primary business downstairs.

A warehouse use requires 1 parking space for two employees. We infer, that when a storage space accessory to ground floor use will be occupied by employees, no additional use is required.

The way I understood it when at such time you decide to use more than a warehouse use, you've got to come back and plan new parking as well as everything else.

It was sent to the planning board on the 18th of January on the condition that the upstairs remains unoccupied storage only. So if he tries to use that, then Gary hauls him off to court.

The only access to the 2nd floor will be through the 1st floor, correct?

James –Well actually there is an exterior stair because I needed a separate exit. (fire exit)

I have an interior stair at the rear bldg. and an exterior stair on the north side.

And you're looking to build this...

Direct access to the first floor from the second floor.

James, So in the long term, if upstairs, it might be something else. It might be an office tenant. But we understand that would require coming back to the Board and saying we want to change the use.

Any other comments on 538 N. Main?

I hope it works. I'd love to see a new building there. And a 2 story building.

5. Next on the agenda is subdivision for 114 Main St.

It looks like they're curving the entrance where it was square.

An easier way to turn into the street maybe (out not in).

Do you know if that has been inspected?

Can't we as planning board members... Are we in our powers to go there and observe?

Gary-We're well within your powers to do that on an application.

How do we go about notifying Bruce that upon observing the property you saw four mailboxes and three electrical meters.

Gary-Just leave them a note.

What is Bruce's status?

Gary-He's back and in and out.

Are there any police officers that have code enforcement.

Gary –Last Wed. Alex Mancone brought in a Robert Serino, he was building inspector, has done code inspection and building dept. work, up in Poughkeepsie, New York. The board recommended (John Degnan wasn't there at that point in the meeting) but the board recommended strongly that the mayor interview him and appoint him an acting village inspector/code enforcement officer as soon as possible. My last conversation with the Mayor was Friday and he was looking to do that as soon as possible.

My understanding here is with all the setbacks, that the variances were approved.

Yes.

The property lines will be the division between B1 zone and the zone on Oak Street. (Mark)

James-That is what I put forth to the planning board and they agreed with that. I think that is what pushes this towards conformity.

Because there's no way to draw the line to make them both conforming.

Gary-We always have the power of conditional approval. Depending on how many conditions you want to do...

Because the one on Oak Street will be nonconforming because it will not have back road variance, back road setback.

James-I believe the one on Main Street is conforming.

But it's not conforming because they have a residence on the first floor in the b1 zone.

To approve subdivisions is a public hearing required?

Gary-Yes.

And would the public hearing come before the SEQRA review or after?

Rick-It could be a type 2 w/ no review required.

Gary-What do you think Paul?

Paul-I would be leaning towards the type two.

Gary –And we talked about the memorandum, de novo review, when we granted the conditional approval upon everything that was in front of us.

James- The reason the owner wants to subdivide is he can refinance with better rates. Two single building lots, then there's the unusual 2 2 family building on one lot...So that is the owner's goal here is to have legally 2 separate lots even where both w/ this same ownership.

Gary-The flip side of the coin is the municipality is not supposed to impose unreasonable restrictions on the property owner's right to alienate.

Jim-As we follow through with the Macadam, you can follow through with Macadam all the way to Main Street.

Jim- From a planning perspective you don't want a "filacreme" (inaud) going through here, and that's where it is right now.

Separated by a fence?

Jim-We're allowed to approve w/ conditions, so is it our purview that a fence be erected from one property to another...

Gary-I would say try to couch it as generically as possible specifically this is what you need to do. Couch in health welfare and safety and aesthetic issues we need to see this, then, you're ok w/ that.

Gary-This is your approval of a subdivision; You absolutely have the authority to say that.

Subdivision is not a listed type 2 action,

So you're saying that it's unlisted, an unlisted action.

But you come back each agency may adopt its own list of type two actions to supplement the actions of division c of this action all right,

So if we're looking at that or we want to throw it to the village board to do that, there's nothing to prevent this, so what it says under the guidelines, type 2 s in no case will have a significant adverse effect on the environment based on 617.7c

There's no environmental impact.

But if it's a type two, no action required.

Rick-If the SEQRA of lede agency decides it's a type two. The question would be in determining a type 2 that we have the authority...

Gary-Generally yes you do, the statute gives you the authority. They reserve the right to declare themselves the lead agency for seqra purposes.

I've just been back and forth and looking at this and if it were me, I'd meet the criteria for type 2.

Can you do a short EAF type...

If it's a type 2, no EAF long or short required.

Most municipalities use the short form just to get an idea of what the actual action is. And then they'll make the determination unlisted, listed, type 1.

So even though it says unlisted action at the top, it's just a mechanism to provide information about what the action is for all actions. Unless it automatically triggers a type 1 action and then you would do the long form EAF. There's no paperwork specifically for type 2 so everyone uses the short form. Just to describe the action that we're proposing.

I'm just going through this, looking at the seqra, if we were making the determination, which I think Gary is exactly right the mayor said they wanted to do it (the board)
I think it'd probably be a type two even if not specifically called out; The board can make their own list of type 2.

This isn't the type of thing I see significance to the environment in any way, it's a drawing of the line issue.

I think the only thing I'd have to do is when the board gets it for review is to declare it a type 2, and I think the rules...

We've gone through this and I think it meets the type 2.

Jim-This being a two family coming up on Main Street, I want you to understand this is quite narrow and there is no turnaround...I'm just bringing it up.

You've got 25 feet there, is that enough to turn a car; what's the length of an average car, 18 or 19 ...more than a K turn?

David-There could be no fence as part of this and that there would be a minor easement back and forth for cars to do this...

I would leave it for the person selling it to figure out how he's going to handle that and prevent the other guy from putting a fence across it.

Mark-Well the guy who's in the B1 zone, this then becomes a potential redevelopment site.

The main house would have trouble if someone drew put a fence across that line...
If you want to have a perpetual right to do something, to turn a vehicle, you should have an easement...I kind of look at it when the guy sells it, he'd better look to see he has enough space and provisions to get his cars in & out.

You've got a 25 foot line and beyond it a, 7 ft. line to the edge of the house there, you've got 32 feet in total, which should be enough to k turn a car out of a parking space.

Isn't a standard parking space 10 x 20 or is that a garage.

No, the parking spaces are 10 x 20 on 50 Main years ago.

For the 1 in **B1**, what is his requirement for parking spaces.

For a two family house I think it's four, I think it's two per unit,

One and a half per multifamily unit right?

James They didn't think to take it into account that you might have a one two family in the b1 zone...I think in the 1 and 2 family zone it's 2 per unit.

Ok, he's got it listed here.

Two spaces for dwelling unit provided.

I read it 1½ for a multifamily unit.

If it's a multifamily unit, they need 3.

And you're providing four in each case.

Two tandem spaces.

For the four spaces one unit has two tandem spaces, the other unit has two tandem spaces.

If they're parking in 9 foot spaces there's 7 feet left of property,

Between the vehicle furthest away from the building and that property line and you've got a car here and here and here and here, there's 7 feet in between.

No.

And has that 7 feet from the car that's furthest north to the property lines.

Each car occupies 9 feet of width, you've got 9, 18 and if get to 25 you have seven more unused feet,

You have this space for maneuvering...

So if this property was subdivided, think of a fence there...The two family situation would be almost impossible w/ the lack of space...

My only concern is staying w/ single ownership you're taking a lot of his flexibility away if the single owner wants to use it to keep both of them, refinance them and wants to use him...by

telling him gee, in order to get your refinancing why not put a wall across this break ...He'd better take care of himself that he has enough parking and turnaround to do it...

And the property owners, if it does get subdivided, if 2 different owners get to own it...

If I wanted to buy the first thing I would want to do is put up a fence there to keep the other guy from using my driveway

So if I was going to sell that Oak Street part I would want to make sure I put in an easement or something ...

Do we have permission to just walk through this property...

Yes, a planning board has a right to do that but I will talk to the owner tomorrow and tell him that that is the plan...

He (the owner) has a right to refuse but it's not in his best interest.

And on this, if we have no other objections, we decide that this application is complete and we schedule a public hearing.

No, you would have to have a public hearing and you will have to provide, send out registered mails, receipts,...

I will have to get Peter to publish a public hearing notice.

How's the 25th? I can be here. Wednesday the 25th is our next scheduled meeting, and we'd have just enough time to fit him in. Then we have a regular meeting.

Would that be a 7:30 pm start?

Let the record the application is complete, public hearing will be scheduled 7:30pm approximately, Wed., the 25th, Village of Brewster hall.

Is there any other business?

Gary-What do you guys want to do with the SEQRA process? I think we should bring it up at the village board meeting on the 4th ... I think we should bring it up and our recommendation if asked is type 2 action

How would the village board do that. This business of acting as lead agency you're your otherwise not involved...

Gary-They just need to make the appropriate receipt or reference. And statement on the record of the Village board.

Do they need 30 days...If they declare a type two there's no action required. If we don't declare it a type two then we'll have to cancel the 25th meeting, no, we don't have to, but we can't close/take final action...

I happened to find the December 14 minutes, I'll make copies of these now,

12/14

Correction: stockburger

Other business

12/14 minutes to be reviewed at 4/25 mtg.

Will do corrections then.

Motion to close the meeting at 9:41 pm.

Seconded.

All ayes, all are in agreement.