

**Village of Brewster
Planning Board
September 28, 2010**

Regular Meeting

Board Members in Attendance:

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

Also in Attendance:

Greg Folchetti-Village Attorney
Uday Jinabhai-J. Robert Folchetti & Associates, Village
Engineer
John J. Hogan-Hogan & Rossi, Esqs.
Sal Alonge

Agenda

The **Pledge of Allegiance** was recited.

Call to Order

Mr. Kulo-This is the regular meeting of the Village of Brewster Planning Board. In attendance are David Kulo, Rick Stockburger, Mark Anderson and Renee Diaz. I make a motion to open.

Mr. Stockburger-I second.

[Whereupon a vote was taken]

Ayes-All

Nays-None

[Whereupon the meeting was called to order at 7:33 p.m.]

New Business –Application for a Special Use Permit at 571 North Main Street

Chairman Kulo-The first item of business tonight is 571 North Main Street. The Village Trustees earlier this month referred this matter to the Planning Board as a special use for our consideration.

Mr. Hogan-John J. Hogan of Hogan & Rossi. Mr. Liguori of our office has provided a written submission detailing what we are looking to do. We are in compliance with the enforcement proceeding against the Boardwalk Café building. We are seeking a special use permit, which requires us to get Village Board approval. The Village Board of Trustees has referred us to the Planning Board for the Planning Board’s recommendation on our application for a special use permit. We are cognizant of a memo from the town engineer which requests that we add some things to our plans to satisfy some issues that he has, none of them terribly significant. At present the property’s use is not very intensive. There’s a church that services about 30 families-they have a couple of meetings at night and they have church Saturday night and Sunday morning.

Mr. Anderson-This building was built as is when the zoning was different, and was changed subsequent to the building going up?

Mr. Hogan-Yes.

Mr. Anderson-The owner got into this noncompliance issue. I wanted to understand from the owner’s perspective the need to follow procedure.

Mr. Hogan-He knows that. We’re here doing that now.

Mr. Anderson-The building is what it is. You said that the congregation has been in this building for some time.

Mr. Hogan-Yes.

Mr. Anderson-For years now?

Mr. Hogan-Offhand I would say a year.

Mr. Anderson-Is there any known trouble with this congregation?

Mr. Folchetti-That I'm aware of, no.

Chairman Kulo-There was some question as to whether or not the building was up to Code. Has the condition in the interior of the building been resolved?

Mr. Hogan-To my knowledge it's up to Code. The biggest issue is its use. It's not a permitted use. The only way it can be a permitted use is to come in and get a special use permit.

Mr. Folchetti-The only enforcement proceeding that I'm aware of has to do with its use.

Mr. Anderson-The engineer's report doesn't say it's not in compliance, but it asks to clear it up. I don't know if this is something we should ask Mr. Serino to talk about. It's not clear from the information provided if the building satisfies all New York State and local building code requirements for a public assembly space including ADA and accessibility requirements. This is one thing to be looking for.

Chairman Kulo-I think that might be for Mr. Serino.

Mr. Anderson-Right. It doesn't say it's not in compliance, it just basically says it doesn't know. If you look at the floor plans there are dual forms of egress. The things you would think about are safety and crowd. There are exterior and grade level exits out the back, and the big suite has two exterior exits as well as a common area exit it looks like.

Mr. Hogan-Like I said, we will address the issues that you have raised in our next submission.

Mr. Stockburger-When we did the rezoning stuff we reviewed all the uses, the institutional uses in a light manufacturing zone. It's not appropriate to put an institutional use down in that district. It was intentionally not put

down under the special exception uses in that area. It was decided not to have a church in a manufacturing zone with fuel oil storage and all the rest of that stuff. When the Zoning Code came up it was decided it was not appropriate for that area. I haven't seen anything to change that.

Mr. Anderson-We are simply reviewing a request from the Village Board for this special use. It's pretty clear that they've gone about it all wrong. It's also clear to me that the oil depot and freight yard long predated when this building went up. What I'm thinking is that sadly this guy was trapped when zoning changed and this building was not decked out as a manufacturing plant. We have dance studios here, karate studios here, gyms, and someone thought it was suitable for "performing arts." What I'm saying is that zoning of a broad area did not take into account the way the town developed haphazardly early on and it's hard sometimes, as you can see with the movie theater downtown, to adapt a building that had specialty in mind when it began and gets trapped in a different time or era. So I agree with what your intent is if they were doing this at the LMA Depot next door I'd say much more valid. But if you look at this room what could we do here-could you have an assembly plant?

Mr. Stockburger- I don't have with me tonight the 92 Code to see what the prior zoning was. It could be a retail use.

Ms. Diaz-There's already a karate place there, so there could be other sports-the Brewster Athletic Arena or the Brewster Sports Pavilion.

Mr. Anderson-I understand that you're reading it from the technical point of view. But I say as a guy whose background includes having to readapt buildings from time to time when the user leaves, that some things are very easily feasible and some things are not. I don't know if we can find out when this building was built but it was certainly before this change came into play.

Mr. Stockburger-We're not dealing with a use variance for that building. We're dealing with a recommendation on whether the use is appropriate for that space. A use variance is different. We're just making a recommendation to the Board whether the use is appropriate for that space in that zone.

Mr. Hogan-It's got the parking. It's mixed out there. There is Kobacker's across the street, Southeast Mechanical behind there, you've got so many different uses out there. This is a low activity, a low intensive use.

Mr. Stockburger- They're all allowed uses in that zone, a manufacturing zone. They're all doing things that are appropriate to do there. From 92 they made that light manufacturing. It was appropriate down there and that was where it was put in.

Mr. Hogan-Granted. But there is a procedure that you allow under your Code that permits us to come in and seek a special permitted use for that area.

Mr. Stockburger-That's what we're trying to do, to make a recommendation to the Board. The Village Board has the final approving authority. You guys take our report and the engineer's report and plead your case before the Village Board.

Chairman Kulo-We need to come up with reasons why we recommend it or not.

Mr. Hogan-We would rely on the Memorandum In Support that we have submitted.

Chairman Kulo-Do they have services once a week on Sundays?

Mr. Hogan-Yes. Thirty families. On occasion they have meetings there during the week at night. And they have mass on Saturday night and Sunday morning. There is more than enough parking there for that use especially during the times it's being used. It's not a very intensive use.

Mr. Anderson-Maybe we should review what we're supposed to be looking at in this case. The law is Section 263.20 of the Code of the Village of Brewster-Standards for All Special Exception Use Purposes. The following standards shall apply for all permitted special exception uses-the impact on the District, location and size of the use, nature and intensity of the operations involved, size of the site, and location of the site with respect to streets giving access to it shall be such that it shall be in harmony with the appropriate and orderly development of the District. This implies that the District is changing-somebody could come along and erect a light

manufacturing facility there some day. But think about this-is there going to be a significant impact on the storage tanks across the street? Is Kobacker's going to be upset that there are people parking across the street?

Ms. Diaz-Does this set a precedent though?

Mr. Anderson-No. It says that each case needs to be looked at uniquely. So I want to look at this case uniquely and specifically. It says we have to look at the impact on the District. Look who the neighbors are-a pile of rubble on one side of it, the railroad freight yard on one side of it, Main Street on one side of it, and the oil depot. And a supermarket, a place where a lot of people are in and out. Adjacent property, location and nature of building, walls, fences and the nature of the landscaping on the site shall be such that the use shall not hinder or discourage the appropriate development or use of adjacent land or buildings. The adjacent land has been zoned for among other things manufacturing so somehow I would say a more intense use is allowed. Are the churchgoers a nuisance? I asked earlier if there were problems with this congregation-do they have frontal nudity as part of their services? Is this Verona II coming at us through the back door? Are the neighbors going to lose property value? Is Kobacker's or the oil depot going to be worth less if this congregation operates? So there is what we have to look at from our standpoint. I agree with Rick, looking at the law and the intent. But also there is this special exception use permit. That's also in the Code that we're looking at. So I think we have to balance this.

Mr. Hogan-If you look at the seven criteria you can't find one that this doesn't fit into. It's what Mr. Anderson just went through. As to the adjacent property, is it a nuisance, is there noise, fumes, vibrations, flashing lights-no. Is it in some way going to hamper the value of property-I can't see that that's even possible. The use shall not cause undue traffic congestion or create traffic hazards

Mr. Anderson-We lost the Prospect Hill Bridge as a route through there. Does this add more cars than Prospect Hill shortcut took away? I don't know.

Mr. Hogan-The parking area shall be of adequate size for the use.

Mr. Anderson-Do you know your parking relative to Code there?

Mr. Hogan-We have a lot of parking.

Mr. Anderson-I understand. One of the things I noted on the engineer's report is how many would you be required...

Mr. Hogan-We'll delineate that and let you know. As to services, the special use shall be appropriate with respect to transportation facilities, water supply, fire, police protection, and waste disposal. I'm not seeing that there's any one element in here that can't be satisfied.

Chairman Kulo-Personally, I would make a recommendation to approve the special use permit. One of the reasons is that compared to other applications we have, we know that this church has been operating for two years, correct?

Mr. Hogan-Just under two years.

Chairman Kulo-I haven't heard any complaints from neighbors about traffic or adverse impact.

Mr. Hogan-If you think back to the Boardwalk Café they had music. All the neighbors up on the hill used to complain-it was a very intense use.

Chairman Kulo-We have gotten complaints from that area about other things, like the lighting, but nothing about the use we're charged with examining here. I would recommend allowing this special use permit to proceed.

Mr. Anderson-I have the exact same reasons.

Ms. Diaz-I don't agree.

Mr. Stockburger-I am against it. It is the whole reason we have zoning requirements. This was a use that was put in knowing it's against the Code. They should have been to see us before it was a *fait accompli*.

Mr. Anderson-The history of the Applicant and the length of the fight last time should have been a clue-I agree with that part.

Mr. Stockburger-There are other uses the Applicant can do in that building that are completely appropriate and would not require a special use permit.

This was specifically reviewed for all those uses. We spent 15 months doing it. We specifically went through each use for each spot and we decided that was not an appropriate place for an institutional use. This is a recommendation. They have to make their case to the Board.

Mr. Anderson-I appreciate your efforts, but we're already about to discuss a new Master Plan because we found that certain aspects of the zoning that was drafted don't work. To this extent, this building, which was erected legally for its purpose, got caught in a zoning change. A broad swath of laymen changing the use around that street. He got trapped.

Mr. Stockburger-I would have to disagree. I would have to see the old zoning code to see if there was ever an institutional use in that zone, and if it was in that zone was it removed specifically because it was deemed inappropriate. If it was not in there it was never a use and if it was in there it was intentionally removed. Public hearings were held and people voted, the Board voted, to remove it.

Mr. Hogan-Was there an institutional use in that zone at one point in time?

Mr. Stockburger-I have no knowledge of that.

Mr. Hogan-What's conceivable is that it was never added or taken out of that zone. We don't know that.

Mr. Stockburger-But it was specifically reviewed and not put in it under this Code.

Mr. Anderson-Could it be that the planners at that time didn't conceive of this building as a church?

Mr. Hogan-There was a library there.

Mr. Stockburger-It's a light manufacturing area, which is an allowable use down there.

Mr. Anderson-I was inclined to agree with Mr. Kulo because the building was up before the zone happened. It was designed for a purpose and has been continually used for that purpose. Nobody objected to large congregations of people in karate outfits or dance gear. Thinking about Club

Verona, we have two extremes of the barbell here. This is the antithesis, at least in terms of use, from the Applicant's last appearance here. Like I said, I don't like that it comes in after the fact but it seems like it is congruent to the way the building is set up as long as you don't conceive of a church looking like your classic steeple design.

Mr. Stockburger- By the same token it's set up for anything. It may be that the building is set up for a church or an assembly, but any open store-20 Main Street-could do that.

Mr. Anderson-No offense, but they could call themselves a weaving club and go in under a different idea and then pray.

Chairman Kulo-Can we make it for the record that the recommendation is split?

Mr. Folchetti-If the vote is split 2-2 then you cannot make a recommendation because you can't approve it if it's split. If the vote goes the way I anticipate then there is no recommendation if the majority if the Board can't agree upon a course of action with respect to a recommendation. I don't know if you wanted to vote tonight or want them to come back before you did that.

Mr. Hogan-We're going to have to do that before the Village Board anyway.

Chairman Kulo-We're really just focusing on a recommendation that the Trustees asked us to do.

Mr. Folchetti-And you're bound under the Code to do it one way or the other.

Mr. Hogan-It's so hard to keep and get tenants. The economy is horrible. When you get tenants in your building you try and keep them there. It's a shame to not agree with us when the criteria are satisfied.

Chairman Kulo-There are two who agree and two who disagree.

Mr. Anderson-I think the dissenters need to understand that the Code, like all gray things, says you have the right to be flexible.

Mr. Stockburger-We do not have the right to be flexible. We have to interpret the Code. The ZBA can be flexible.

Chairman Kulo-I don't think that's entirely true.

Mr. Anderson-We're being asked to make a recommendation. We're not being asked to draft the law. Like many things that come before us, we're being asked to look at something that isn't exactly perfect. If you read the Code, if you were building something from scratch tomorrow you wouldn't be building a church on this block, you'd be building a small factory or a strip mall or something like that. I have to sympathize with the counselor only because I represent people in this position. This building sat here on Main Street for more than a decade empty because its use wasn't able to wonderfully transition. When it was office space believe me there was no demand for it. Landlords tried to fill this space a lot. We had to change things to accommodate an existing building whose time hadn't come to be torn down. Maybe they'll get lucky and find someone who exactly conforms but they have to survive too. I'm looking at an industrial building across the street from my driveway in the wrong area on Oak Street-the guy has lost the building-he has been foreclosed. Have sympathy or not, the parishioners of this Church are going to be forced into the street if your recommendation comes to pass.

Mr. Stockburger-My recommendation would be to get approval before something gets done. You've heard me say this over and over.

Mr. Anderson-I agree with you one hundred per cent.

Mr. Stockburger-Not that I hold it against these guys.

Mr. Anderson-People should learn the protocol. I think this gentleman got a Ph.D. in the protocol. Again, I'm seeing that side of it too but overall you're not going to end up with a light manufacturing operation here. Look at what he can do-you're not busting out storefronts here.

Chairman Kulo-I agree with Mark. I would like to add as well that it's not a perfect situation here. We do not have an applicant who did it properly from the start. But I do think we need to be somewhat flexible with the kind of activities we allow. We don't want to be too bogged down with whether we

agree with it or not but rather whether it is reasonable. I do not see an adverse impact here.

Mr. Folchetti-The Village Board is looking to you for guidance.

Mr. Stockburger-My guidance is there are other uses they can do there.

Mr. Anderson-Take those seven points of law. They are the standards for all special use permits. You can't give me a negative for any one.

Mr. Stockburger-By the same token they should have no trouble going before the Village Board and getting approval.

Chairman Kulo-We have had discussion and I think somebody should make a motion.

Mr. Anderson-I'll make the motion that the Board grant a positive recommendation for the project at 571 North Main Street for the reasons that have been cited, that it is a candidate, based on the special circumstances cited, that it complies with the seven things that need to be complied with, that we recommend that the Village Board allow this special exception permitted use.

Chairman Kulo-I will second that motion.

[Whereupon a roll call vote of the Members of the Planning Board of the Village of Brewster was had upon the aforesaid motion]

Chairman Kulo-Yes

Mr. Anderson-Yes

Mr. Stockburger-No

Ms. Diaz-No

Ayes-Two

Nays-Two

[Whereupon the aforesaid motion failed]

Mr. Stockburger-We should generate a letter to the Village Board saying we have no recommendation. We have a split vote and no recommendation to the Board and send them that memo.

Mr. Hogan-Thank you so much for your time tonight.

Accept Outstanding Draft Minutes

Ms. Diaz-I make a motion to accept the Minutes of the August 24, 2010 Meeting of the Village of Brewster Planning Board.

Mr. Stockburger-I second.

Ayes-All Nays-None

Close of Meeting

Chairman Kulo-I make a motion that we close the meeting.

Mr. Stockburger-Seconded.

Ayes-All Nays-None

[Whereupon the Meeting concluded at 8:15 p.m.]