

**Village of Brewster
Planning Board Meeting Minutes
June 19, 2018**

BOARD MEMBERS IN ATTENDANCE:

Rick Lowell, Chairman
Janet Ward
Marti Foster
David Kulo

BOARD MEMBERS NOT IN ATTENDANCE:

Rick Stockburger
Gregory Folchetti, Attorney - Costello & Folchetti

ALSO IN ATTENDANCE:

Mr. Todd Atkinson, PE
Bill Scorca, Building Inspector
Joe Hernandez, Assistant Building Inspector

Chairman Lowell led the Board in the Pledge of Allegiance, whereupon the proceedings were called to order at 7:30pm.

REGULAR MEETING:

Boardmember Kulo made a motion to open the regular meeting. This was seconded by Boardmember Ward and passed unanimously.

Domino's Pizza, 571 North Main Street:

Chairman Lowell said the applicant wanted to know if there was a waiver. Mr. Liguori said we submitted an application to the Board for a Waiver of Site Plan Approval and his understanding from discussions with his client was that they were asked to come to the Planning Board. Although we don't have a technical letter of referral for Site Plan from the Building Inspector, he said, I think the only thing we can come here for is Site Plan or a Waiver of Site Plan. He said the applicant is here for an application for a waiver of Site Plan to permit the Domino's Pizza to occupy approximately half of the first floor of the building. Mr. Liguori said there is no proposed use for the portion that was occupied by the ice cream store. Following discussions with the Board from the last meeting we had a fairly thorough discussion about parking and concerns about parking, he said, and before coming to that meeting had made fairly significant attempts to try to get parking from immediate neighbors; Steve Presti at the auto garage and Gina's Nails and the gas station. He said at Gina's Nails and the gas station we could get a verbal but no one was willing to commit to anything in writing, he said, so I reached out to a client of mine at 151 Soul LLC which owns 151 Main Street. Chairman Lowell said is that the deli down the hill. Mr. Liguori said no, next to the deli; it's the apartment building so it has it's parking in the back and is one of the biggest pieces in the Village being almost 2 acres. He said his client has the ability to share parking and would allow for the Domino's employees to park there and if additional tenant parking was needed they would use that area as well for that. Mr. Liguori said they have not settled on a lease

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form or permanent arrangement but will be able to get that into place pretty quickly as I sent them a short-form parking lease agreement so he is going to have his other attorney look at it before he agrees to sign anything and that would give them 4 parking spaces. He said we have approximately 8 spaces marked out that are lined out on the property and were there when we bought it although not sure what they qualify for as there doesn't appear to have been a Site Plan for the building previously. Mr. Liguori said with the parking requirements that are set forth in the Zoning Code presently and with our proposed Use I prepared...just to take a step back, in anticipation of coming to the Board I prepared a Statement of Use for the Board to have something to rely on in connection with what our Use is and analysis to use in connection with the Zoning Code.

Boardmember Foster said it looks like it is a long building with parking in front; did you say parking was in front or the back? Mr. Liguori said in the back. He said if we went there and our back was to the Domino's and looked across the street you would see the deli that's down the hill and to the left of that is the apartment building, which consists of 2 structures (apartment structure and a long structure that's narrow). He said the parking is not fully utilized and the owner didn't object to sharing parking if we needed it, which is permitted under the Zoning Code to have parking within 500 ft. Mr. Liguori said they were trying to be proactive with regard to the parking and with the analysis that was prepared based on the Use and the Code requirements. Boardmember Foster said the residents of the building would park at 151 and will they need to have their leases changed to do that? Mr. Liguori said I recognized that we would need overflow parking and customers are not going to park at 151 and walk over so that is why the employees would park there. He said our tenants know it's a commercial building and they may have to share parking; it's the reality of renting a space in a building that fronts on Main Street and has commercial on the first floor with residential on the second. Boardmember Foster said so you are not going to require them to park at 151. Mr. Liguori said no, just the option will be available.

Mr. Liguori said with the square footage requirements and the proposed Uses, for the Zoning Code we would need a total of 3 spaces for the residential tenancies on the second floor and for the first floor if we were fully occupied we would need 6 spaces which would put us at a total of 9 for the Use. We don't have an occupant for the ice cream space and my suggestion for my client and the Board in order to move forward with the Domino's is that we would essentially not be able to rent the ice cream shop until such time as we came back for Site Plan Approval and fully resolved parking for a full occupancy of that building. He said without having to go to the Zoning Board and get variances for the parking for a Use that's not even there I think it would be reasonable to come to the Board and propose that we do not use it at this time and if we wanted to use that space in the future we would come back to the Planning Board for either Site Plan Approval or a Waiver but if we used it we would probably need to go to the Zoning Board for a variance. He said I would like to make the argument that it is pre-existing, non-conforming but the reality is that Uses change in the building on the first floor and that's the reality.

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Chairman Lowell said I think the crux of what's before us tonight is what you just said: this is a change of Use and I don't know the history of the Bowl Company but that was a completely different kind of retail than what we're talking about today. Mr. Liguori said it's still retail. Chairman Lowell said it's retail but it's a restaurant where there is cooking and that's different than a place that sells cooking supplies. He said they were mostly mail order and didn't have too many customers coming in. Chairman Lowell said because it is a change in Use in my opinion I think we're looking at a Site Plan at a starting point. He said the parking will have to be settled farther down the road. Mr. Liguori said the objection I have is that the only thing that's out there is parking so I don't see what a full Site Plan Review is going to do. Chairman Lowell said Site Plan Review is not simply for parking, it's for a change of Use of the building and that's very common. Mr. Liguori said I guess I'm curious as to what other aspects you guys are interested in looking at because...

Boardmember Kulo said there are other considerations like the signage. Mr. Liguori said yeah but we have to come back for signage that's why I want to parse this out. Boardmember Kulo said and the parking.

Chairman Lowell said he would like to invite the Building Inspectors to speak and let us know of any other considerations that will come into play down the line. Mr. Scorca said because it is a change of Use although the ice cream shop was there it was an oversight but the Village where Mr. Dupont who owned it decided he was going to put another business in there and it was just an oversight. Normally if there is a change and a dramatic change at this point, because like you said, it was a mail order business mostly. He said the problem now is there is going to be a retail business that will be open to the public I think a Site Plan... and we also ran this by the Village Attorney and it was felt that it should be put before the Planning Board to determine if a Site Plan was required and perhaps there should be. Mr. Liguori said my issue is that the Planning Board doesn't have the authority to determine whether Site Plan Approval is required or not, that's the Building Department's jurisdiction, so the frustration is that if Site Plan Approval was originally going to be required we would have appreciated just being told 'you need to go get Site Plan Approval.' Chairman Lowell said did you go to the Building Department to ask them if you need Site Plan Approval. Mr. Liguori said yes we did. Mr. Scorca said in all fairness to Michael (Liguori), the realtor came in to see me, I told him it sounds like a great thing and it's a great thing for the Village. He said I told him it is a permitted Use but I think you really need to talk to Planning because there may be some issues specifically with parking and we recommend that you talk to the Planning Board.

Boardmember Ward said my thoughts are to resolve the parking. She said I think it would be to deny the Waiver of Site Plan Approval and say we need a Site Plan and say that it needs to go to DOT (Department of Transportation) and have them look at that. She said I think that what we're hearing is that parking has been an oversight at this building and since we are changing the Use we should look at the parking and because

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there is no parking for businesses on Main Street doesn't mean we should continue that at a dangerous intersection. She said I want DOT to sign off on that parking use at that location. She said the Use should meet its needs within its property or by using the lease that you've obtained for getting spaces so that it is providing what it needs for its own business when it moves in.

Mr. Folchetti said DOT will not issue an opinion on it. If there is permitting that's required then they will consider a permit application and either issue or deny it, he said. Boardmember Ward said but I thought because of where it was it needed to go to DOT. Mr. Folchetti said I'm not saying it doesn't; what I'm saying is they will either take a permit application for a Site Plan improvements on the property and grant it or not. He said their blessing is they issue a permit or they will take no position; they will not give a recommendation. Boardmember Ward said I thought that if there was Site Plan then it should go to DOT. Mr. Folchetti said because it fronts on Main Street. Boardmember Ward said right and because the width of their parking is in the DOT Right-of-Way as there is only about 2 ft. of the parking that's actually in their property line. Mr. Liguori said just so you guys know that's actually not an uncommon feature throughout the Village. Boardmember Ward said I understand it's not uncommon but I think that what we're all hearing is that this has been an oversight and if we send it and have it looked at and told yes this is how it goes and the permit issued then we've made it a clean decision and approval. Mr. Folchetti said the Waiver of Site Plan Approval under 182R is when you otherwise need a Site Plan Approval and this Board gets the application and determines that the proposed site improvements are so negligible or insignificant so there is no need to go through the process. He said that's different than not needing Site Plan Approval, OK. Mr. Folchetti said I guess what you have to determine here is what's the use? Is it retail or retail into something else, he said. Mr. Liguori said but hold on; the Planning Board doesn't have the authority to make those determinations. He said those determinations are in the jurisdiction of the Building Department. Mr. Folchetti said on the Use, I agree.

Chairman Lowell said a restaurant is listed separately from a clothing store so it's a change of Use. It's not like it's going from the Bowl Company to a butcher shop or a tannery but it is changing the entire character, he said. Boardmember Ward said it's an approved Use in that Zone and should have Site Plan Approval. Mr. Liguori said the only point I'm making is that those determinations are reserved specially to the Building Department. Chairman Lowell said then you will have to apply to the Building Department and have them tell you that you don't need it. Mr. Liguori said well the point I'm making is we did that and the recommendation was you should go talk to the Planning Board so we're here to talk to the Planning Board because effectively that's what's gone on. He said we've gone and talked to the Planning Board.

Boardmember Foster said so you've talked to the Planning Board and I would like to point out that there are 2 dangerous intersections here: one coming down from Oak Street and the one from Marvin Street coming up the hill so we have major concerns about safety. Mr. Liguori said I'm not trying to be pedantic, I just want to know has your

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engineer said to you guys these are dangerous intersections? Chairman Lowell said yes and I don't think we are even at that point of talking about traffic and parking yet, but you will when you bring up your Site Plan and justify your parking. He said I don't know that you will be able to put 8 parking spaces in front of the building as you need egress from the residential and from the commercial property so that's 2 spaces gone virtually so your space count may be off. He said I don't think you'll learn that until you do your Site Plan and you find out about the encroachment on the DOT Right-of-Way.

Chairman Lowell said I am not caught up on the parking right now but on the change of Use and any change of Use is going to require a Site Plan unless you can really prove it's the same thing, which it's not. He said it's going to be high traffic with people going in and out compared to the previous use, it's going to be food preparation with cooking and activity that wasn't going on in the previous use, so it's a new Use.

Boardmember Ward said we have a Waiver of Site Plan Approval application, what do we have to do with that? Mr. Folchetti said you can leave it open until such time as there is another submission and you can act on it one way or the other. Boardmember Ward said the instruction you were given was to come see us and you gave us this. She said we're giving you an instruction that you need Site Plan Approval but we don't have the authority to say that so do we need to deny this to give you option to go to the Building Department. Mr. Folchetti said you can go apply for a Building Permit right now and the Building Permit can give you the Permit or say no it's a change of Use and send you to the Planning Board.

Mr. Hernandez said did you ever submit an application for a Building Permit. Ms. Buhan said no. Mr. Liguori said I don't want to point to get lost that we're not going to cooperate with the Building Department, that's not it, or the Planning Board. Chairman Lowell said it sounds like miscommunication. Mr. Liguori said I don't think it is, I think what happened was that in an effort to help us through the process... when the Building Inspector says 'hey why don't you go talk to the Planning Board and see what they say.' He said if they knew in advance that it was a change of Use and we want you to go get Site Plan Approval then that should have been the direction. He said they paid me lots of money to come here and argue for some sort of a Waiver when the direction could have been without the loss of time and fees. Chairman Lowell said was a Building Permit Application made. Mr. Liguori said no, it was not made and I totally understand. He said it's not a criticism of Joe and Bill at all, it's just a frustration because it is expensive to do what these guys are doing and we could have been two months into the process.

Boardmember Kulo said we diligently review each application and Mr. Liguori said I don't think you are being arbitrary. Boardmember Foster said we did hold an emergency meeting last month due to weather delays so we are trying to accommodate but I would just ask the Building Department if there is anything else you require from us since you referred it to us. Mr. Hernandez said the process starts when an application is before us. He said we review it and then do a referral to whatever Board it pertains to if needed. We did not get that application, he said, what we got was an overview of the

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building with regard to what it looked like but nothing in detail that showed where parking would be and other items needed for Site Plan and that is why we said maybe you should go to the Planning Board with a Site Plan application and file with them. Mr. Hernandez said we didn't know about the fire separation, mechanicals, layout or anything like that and normally that's how it begins when we get the plans. The applicant said he did deliver a set of plans but Mr. Hernandez said he did not receive them.

530 North Main Street

Peder Scott, Engineer and Architect appeared before the Board representing this application. He said there are two actions taking place: Mike Carusso did file paperwork for Zoning Amendments to the PB Zone to allow multiple family and in our Statement of Use we provide you a summary of what we're proposing for amendments besides allowing multiple dwellings in the PB Zone. He said we looked at setbacks, height, and restrictions to this amendment which limited applicable properties to North Main Street and properties over 20,000 sq. ft. He continued: Zoning sent us to you to get your comments on the Zone change and while we're here we'd like to see what you think about our Site Plan as well. Mr. Scott said this Zone change applies to less than 25 acres which prevents it from being a Type I Action. He said for the rest of the items we are proposing various setbacks as discussed with the Village Board of Trustees. He said they created a Site Plan to meet the Zoning requirements. Mr. Scott said I think the Board of Trustees is looking for a memo from the Planning Board regarding the Zoning. Boardmember Ward said to me it was clear what you were asking.

Chairman Lowell said in discussions with our Engineer and a couple other people we thought some minimal changes needed to be done. He said to do the whole Zone with different setbacks in accordance with the B1 District; not to call it B1 District but to give it those setbacks. This would be 0 setback on the frontage, 15 ft. on the side, 40% coverage as is original, and keep the 20,000 sq. ft. that is requested, he said, and that would give you other opportunities as far as some of the things that were discussed before. Mr. Scott said the 15 ft. side yard setback would be difficult with this particular property as there are 2 frontages. Chairman Lowell said right but you could 0 on both of them. Mr. Scott said then the building would slide more towards Wells but that could be accomplished. Chairman Lowell said if you rolled the whole thing forward to the corner, maybe be a little bit narrower and deeper. Mr. Scott said if we are looking at our particular site, I submitted a plan on June 12 with pictures of the properties adjacent to this which shows buildings with a big yard in the front, everyone set back, and all the lots are similar to this in the vicinity. He said we did something really interesting with access and we did a traffic study for you as well as some plans that give sight distance Site Plan. In this particular Site Plan we showed you a comparative plan, he said,

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looking at a building in the front and one in the back. Mr. Scott said the plan that is their preferred option has the parking in the front because handicap parking access is easy as well as access to the building. If parking is the rear the handicap spaces would have to be moved and access to Main Street would be difficult. Chairman Lowell said not if there was a sidewalk on Wells. Mr. Scott said you can't because Wells exceeds the slope for a handicap ramp which is 8% (1:12). Chairman Lowell said in the drawing you are showing us the grade if the building were located in the middle of the lot but you are not contouring the property on the second drawing and you could make it flat to the first floor instead of the second. Mr. Scott said then I couldn't get the driveway to work. Chairman Lowell said the driveway should come in from North Main and we discussed that last time. He said if it came in on the southern end of the property off North Main. Mr. Scott said I would not have visibility out the back of the building. He said I have this steep slope and when you design parking it is restricted by certain grades, 6% slope, front to back 3% where handicap spaces have to be 2% grade, but a building can step as you go up a hillside. He said whenever you do a designing of buildings a building is much more flexible with grade but the parking is not. Mr. Scott said if he puts the parking in the back he is starting at 16 ft. in the air from the front to the back because the parking cannot be dropped quick enough with the parking in the rear and will lose about 2 ft. Chairman Lowell said but you are contouring backwards. He said I don't see where you're excavating; you could flatten out the front two-thirds of that property, put a retaining wall in the back and keep everything on one level and go in and out of North Main Street. Mr. Scott said but how would you get to the parking then. Chairman Lowell said North Main Street; you come to the side of the building. Mr. Scott said looking at the frontage and everything else the building would be one-third as wide. He said he would need an almost 20 ft. high retaining wall in the back. Chairman Lowell said if you have the 0 frontage on Wells you would have 20 ft. based on the drawings. Mr. Scott said everything here is about the grade and he would be in a 20 ft. deep pit if he did that in order to make parking work. He said we cannot push this grading down in the back and have a driveway from the front. Chairman Lowell said you could have bi-level parking in the back. Boardmember Ward said you are still not going to be able to get a handicap person from the parking to North Main Street because the grade is too steep. Mr. Scott said how would they get to the building, build a bridge. Chairman Lowell said you could make a sidewalk leading from the upper lot to the lower one and then they walk into the building the same as everyone from the lower lot. Mr. Scott said if they did that for example grade would go from 106 to 126 with 18 to 20 ft. high retaining walls.

Mr. Scott said looking at the site if we step the building there would be less grading needed. He said if you put the parking in the front I would have no retaining walls for

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the parking, no ramping, and direct access for the handicap people to the building and to North Main Street. He said in the back I would need a 15 ft. wide width and two walls stepped and with the design of the building the way I have it you don't see the walls when you look out the window, you see a half wall so you are not looking out the window at a huge pit or retaining wall. He said we took the advantages of the grade and applied it to what was easiest to address; parking fully conforming and stormwater management works as well. The building was pushed back, lift it up, and step it so the project would work, he said, and everyone in the building has a beautiful view.

Mr. Scott said there are other properties constrained like this in the Town which is why I gave you some pictures of the neighboring properties and what they clearly say is everyone is in a hillside. Boardmember Ward said those all have retaining walls behind them. Mr. Scott said I agree with the premise that you're coming from and it is somewhat of a trend nationally to put buildings in the front and parking in the rear but sometimes you just get stuck with a project that is difficult to apply so you have to decide if you want to make everything fit in a box so it conforms to Zoning or design something that is usable. Chairman Lowell said well that's what Zoning is about is to make everything conform to a design and we're looking at this property as the prototype for the remainder of that block. He said you're asking for an exception from the plan that we are already changing. Mr. Scott said when you look at a property and are looking to develop it we try to make it work the most efficient way we can and walls are expensive.

Mr. Folchetti said what you're doing tonight is you are going to be making a recommendation to the Board of Trustees. He said if you were to make the recommendation as you were initially recommended to do that may or may not stop Mr. Scott from doing exactly what they wish to do in the Site Plan and gives them the flexibility to move it along, which they may or may not do during the course of the Site Plan so you're taking a lot of information about the building design and obviously you have some grading concerns but... Chairman Lowell said we're getting ahead of ourselves. Mr. Scott said that's why we're trying to work with everyone here tonight as our position is that there is no point for us to get a Zoning change if the Zoning change precludes the use of a site that my client owns. Mr. Folchetti said all it would do is give him the flexibility if he wanted to run it all the way to the Main and Wells lines he could, those are the setback minimums. He said if you convinced the Board it's in the best interest of the Village and the best interest of all the environmental concerns and obviously all the economic concerns of doing the development and doing it right, that it's going to be front parking then so be it. He said all that would do is give you the ability to conceivably consider rear parking but it doesn't mandate you to do it. Mr. Scott said no

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matter how it works normally a Planning Board recommends to a Village Trustee the applicability of a Site Plan. Chairman Lowell said in this case what we're talking about is making a recommendation to let you go ahead for them to consider a Zoning change.

Mr. Scott said I have to come back here again. Mr. Folchetti said you have not submitted a Site Plan application yet. He said theoretically if the Zoning change is granted and you have a permitted Use you have to come before the Board with your Site Plan. Mr. Scott said I was hoping to do one stop shopping and maybe get a feel from you guys of where I'm going so I can go to my client and tell them your feedback. He said there is no point in taking this to a dead end. Chairman Lowell said we are very interested in this even though we are probably getting ahead of the process.

Mr. Scott said I did a traffic study. Boardmember Foster said the Zoning change going before the Board is not about front and back parking. Boardmember Ward said it's about Multi-Use dwelling and the height of the building and didn't mention front or back parking. Mr. Folchetti said it is what is otherwise not a permitted Use on that parcel and setting forth minimum Bulk Zoning requirements for setbacks, building height, and coverage. Boardmember Ward said what I am hearing is 'does it make sense to go forward with asking for this change if the requirement would have to be for rear parking when the site doesn't work for that.' Chairman Lowell said as Mr. Folchetti pointed out they're not there yet. Mr. Folchetti said and that's not what the Zoning change is seeking, it's just seeking the Use and some recommended Bulk Requirements; parking is not part of the equation.

Mr. Scott presented the traffic study to the Board. He said you don't meet sight distances with the parking in the rear because of visibility. He said you have two crowns on the road and unfortunately the second crown, which is right above our parking spot, eliminates any visibility. He said because the slope is flatter at the one entrance you get twice what you need in one area and not enough at another entrance. Sight distances are much superior for entry at the front, he said. We also looked at potential entry off North Main to the parking, he said, and explained what their findings were. He said the cars were queuing to get through the intersection and you take about 25 ft. for each car when they stop and there were about 3 to 4 cars queuing at the same time during peak hours. Boardmember Ward said for the timing of that study you also have Sunday and you have baseball so it's not just rush hour traffic. Boardmember Foster said Sundays you have more traffic with St. Lawrence O'Toole letting a lot of cars out. He said I do concur about the pitch and there is an issue. Mr. Scott said you have a lot of visibility to be able to stop at the bottom. Chairman Lowell said but you are

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right in the middle of a busy intersection down at the bottom. He said there is really only one direction of traffic to be worried about on North Main.

Boardmember Ward said what action are we taking tonight; we're recommending them to go to the Village. Mr. Folchetti said we are going to positively or negatively recommend the proposed Zone change. If it is a positive and you want Conditions then you can state them, he said. Chairman Lowell said the Conditions are as we discussed: 0 setback on the frontages and 15 ft. on the side, 20,000 sq. ft., and 40% coverage so that would be the Zoning goal for that strip. Would that still be PB, said Chairman Lowell. Mr. Folchetti said they would be changing it to Multifamily is my understanding. Boardmember Ward said no it is changing for the PB Zone. Mr. Gaspar said it is just for that block and not the entire PB Zone. Mr. Scott said it is all the PB Zone but to make it apply you have to be on North Main Street so we are applying it to a block within the PB Zone. Mr. Folchetti said he has an application for a Zone change and this Board will be making a recommendation on the application as a whole within its entirety or with any Conditions you think are appropriate.

Mr. Folchetti said so you would make a motion for a Positive Recommendation with the following Conditions and state them. Chairman Lowell made a motion for a Positive Recommendation for the Zoning Amendment with the following Conditions: frontage is changed to 0 ft., the side setbacks to 15 ft., the lot coverage be 40% as a minimum requirement, and a 20,000 sq. ft. lot as a Bulk Requirement as presented with 3 stories or 40 ft., 20,000 sq. ft. lot on the North Main Street block. He said parking spaces to remain the same with 1 space and 1.5 spaces and Open Space 100 sq. ft. per unit. Boardmember Ward seconded and passed all in favor.

The approval of the Minutes from April 17, 2018 and May was deferred.

Chairman Lowell made a motion to adjourn the meeting, seconded by Boardmember Ward and passed all in favor.