

The Town of Fenton Planning Board held a meeting on Tuesday, January 30<sup>th</sup>, 2018, at 7:05 pm, at the Fenton Town Hall, 44 Park Street, Port Crane, New York.

**PRESENT:** Planning Board Members

John Eldred, Chairman  
Richard Armstrong, Board Member  
Jason Aurelio, Board Member  
Brian Randall, Board Member  
Thomas Standard, Board Member  
Tina Fernandez (Hinman, Howard & Kattell)  
Melodie Bowersox

Legal Counsel  
Town Clerk

**OTHERS PRESENT:** approximately 23 members of the General Public which included Conservation Advisory Committee (CAC) Member Karen Goodman, Town Board Member Gary Holcomb, and Zoning Board of Appeals (ZBA) Member Cindy Cook

**CALL MEETING TO ORDER**

Mr. Eldred led in the Pledge of Allegiance.

**MINUTES TO APPROVE**

The Planning Board Members were either mailed or emailed the minutes from the Planning Board Meeting held on December 19<sup>th</sup>, 2017. With no corrections to be made to the minutes from the December 19<sup>th</sup>, 2017 Planning Board Meeting, **Mr. Aurelio made a motion to approve the minutes**, seconded by Mr. Standard. **Motion carried.**

**VOTE:** Ayes 5 Armstrong, Aurelio, Eldred, Randall, Standard  
Nays 0

**OLD BUSINESS – Brandywine Pavers LLC at 170 East Service Road**

**Public Hearing Notice** – Mr. Eldred read the following Public Hearing Notice at 7:06 pm:

**PLEASE TAKE NOTICE** that the Town of Fenton Planning Board will hold a Public Hearing to review and take action on the new development permit application made pursuant to the Aquifer Protection Law, Chapter 57, Section 57-8 of the Town of Fenton Code, in conjunction with a site plan review for an office addition at 170 East Service Road, Binghamton (Town of Fenton), Tax Map ID Nos.: 112.17-1-9.1 and 112.17-1-54, submitted by Brandywine Pavers, LLC, on Tuesday, January 30, 2018 at 7:00 p.m., at the Town Hall located at 44 Park Street, Port Crane, New York.

Dated: January 23, 2018  
PLANNING BOARD  
By John Eldred, Chairman

TOWN OF FENTON

**Introduction of Project** – Mr. Armstrong introduced the project of Brandywine Pavers and explained that they are looking to place an addition on their existing building. Initially there were setback issues which were addressed with the Zoning Board of Appeals on January 5<sup>th</sup>, 2018 who allowed for the reduction in setback for the building per the plan that was provided.

Mark Parker of Keystone Associates further explained the project via a display board with various site plan drawings. Mark reiterated what Mr. Armstrong said in that the small 1700 sq. ft. addition is to the existing offices. There will be a concrete sidewalk around the building for access, parking spots, and a landscape area along the sidewalk.

When reviewing the site plan later in the meeting, one of the items the County addressed was associated with vehicles on the site. Mr. Armstrong reviewed earlier applications, first when Brandywine Pavers acquired property from another construction company that had the facility; second, when there was an addition to this same building. Finally, when there was a maintenance building added. One of the conditions that showed up was that there was not to be any outside storage of vehicles or equipment nor any washing of vehicles inside or outside the facility. Mr. Armstrong noted there has been some vehicles or equipment outside. When the maintenance building was going to be built, there was a 12-18 month grace period that was allowed to have those vehicles outside until the maintenance building was built. There was also the intent that those vehicles would be stored on the parcel by the river. Jay O'Brien of Brandywine Pavers commented that the only time the vehicles are brought over is when they are being serviced. Mr. Armstrong just wanted to be assured that the vehicles and equipment are not being stored outside and Jay said they are not. There was also an application for the Aquifer Protection Permit with those earlier applications (around the year 2000) but Mr. Armstrong did not see resolution to that.

**Aquifer Protection Permit** – Brandywine Pavers has submitted an Aquifer Protection Permit to the Planning Board. They are in Zone I of the Aquifer Protection Zone. Mr. Armstrong read from chapter 57 of the Town Code and listed the land use activities that may not be initiated or carried on in Zone I:

- Excavations that intersect the water table at its seasonal high level and remain open for a period of time exceeding six months, except those excavations intended to sample, test, treat or pump groundwater pursuant to a municipally approved plan to enhance or monitor groundwater quality.
- The disposal or processing of construction and demolition debris.
- The construction of septic systems with a maximum flow rate exceeding 1,000 gallons per day.
- The uncovered outdoor stockpiling of manure.
- The construction of new facilities or reconstruction of existing facilities for the below ground storage of hazardous or toxic materials.
- The landfilling of refuse, radioactive materials, toxic materials or hazardous materials on or below the ground surface.
- The siting of junkyards or metals salvage operations.
- The construction of underground pipelines external to a facility that carry toxic or hazardous materials over distances exceeding 100 feet.
- The uncovered storage of road salt.

None of these activities are occurring on the Brandywine Pavers site.

Mr. Armstrong asked, "In regard to the protection of the Town's three wellheads and looking at Brandywine Pavers service and maintenance, do you have fuel, lubricants, oils, degreasers, and antifreeze? If so, in what quantities and how are they contained?" Jay answered that they are in a container inside the building with a spill proof wall (curb perimeter) around them. It is OSHA inspected and in compliance. Mr. Armstrong said that Ken Ellsworth made mention to a

spill prevention plan and Jay said he has one and has had it in existence since the day they opened the shop; it is under the Hazardous Communication Program. Jay gave Mr. Armstrong a copy of what he had.

**Public Hearing** – Mr. Eldred opened the Public Hearing at 7:15 pm.

The following persons spoke in favor: None

The following persons spoke in opposition: None

Questions posed to the Planning Board and Applicant:

- Val Ford – When talking about the storage of chemicals, you mentioned a curb – what is a curb? Mr. Armstrong explained that the method to store chemicals used by Brandywine Pavers is a sealed curb around the perimeter where the chemicals are stored so if there is any loss of material from a container, it stays within that curb area. Mr. Randall asked if the curb was inside or outside; Jay said it is inside and he also added that there is no fuel on site – just oil and antifreeze.
- Resident Gary Holcomb – Will the spill containment handle 100% of the quantity stored? Jay answered it will actually handle 30% more.
- Resident Jennifer O'Hare – With regard to the Aquifer Protection and the purpose and intent to minimize the potential for containment of the aquifer to protect and maintain ground water quality and to protect the general health and safety, why do we have these laws if we provide ordinances for businesses to get around them through variances? The Zoning Board of Appeals allows variances – isn't that a way to skirt the laws of the Town? Mr. Eldred does not agree that the laws are skirted around and said that often issues will come up in which the Town Zoning Enforcer is sent out to deal with, sometimes causing the issue to be handled in Court.
- Resident Meta Parks – Meta asked (with the map that Mark Parker displayed), where the aquifer is. Mr. Armstrong retrieved a map from the Town Engineer's Office and showed Meta where the Brandywine Pavers property was in reference to the aquifer. The Town's three wells are located across the road from their building. Meta also asked, "If there was a spill, how much time would there be to contain it before it accessed that well?" This led into a discussion about the different types of layers of soil and the impact of the river upon the Town's wells. The aquifer, Gary Holcomb explained, is located down where the Town's wells are (very deep in the ground). The Town's wells are tested on a regular basis for contamination. It was noted that there are also approximately 25 monitoring wells throughout Hillcrest including on the Service Road that are tested by the NYS DEC 3-4 times/year to determine the ground water contamination levels which have gone down significantly since the testing began. During this discussion, Jay O'Brien added that they are not including a basement with their addition; they are only digging a foundation.
- Michelle Miller – With the nine items that you cannot do in Zone I, those are all clear? Mr. Armstrong replied, "Yes." Michelle said that Broome County recommended that the site plan be revised to include some of those items; was that already done? Mr. Armstrong replied that the Planning Board will follow up with the 239 Review as part of the site plan review.
- Val Ford – Are you bringing fill in? Jay said there is no fill required.

- Resident Andrea Mayer – Not singling out Brandywine Pavers, but is there a Code Enforcement Officer who will visit a site to check to see if what was submitted actually exists? Mr. Eldred answered that the Town has a Code Enforcement Officer. Andrea asked if it is a requirement to make an actual site visit after the place is built to actually go out to see if everything has been followed on the site plan. Attorney Tina Fernandez said a Certificate of Occupancy will be issued. Mr. Armstrong further added that the Building Inspector is obligated to review the plans and project for conformance prior to issuing the Certificate of Occupancy. As far as follow up, the Town expects Residents and/or Businesses to seek any additional permits; regular inspections are not required except for larger Businesses who are obligated to have backflow prevention devices in their systems.

Comments were made by Residents John Kopalek, Kurt Mohney, Jennifer O'Hare, and Tom Tiffany not directly relevant to the Public Hearing.

All persons desiring to be heard, having been heard, the Public Hearing was closed at 7:43 pm.

**Continuation of the Aquifer Protection Permit** – Mr. Armstrong referenced the Town Ordinance concerning new development permits:

- Any new construction, development or change of use within Wellhead Protection Zones I and II that exceeds any of the criteria listed below shall be allowed only upon issuance of a new development permit from the Town Planning Board:
  - Any new construction, development or change of use, other than residential, farming, gardening, forestry, harvesting or grazing, that exceeds \$50,000 in cost.
  - Any new construction, development or change of use, that involves the storage of toxic or hazardous materials exceeding 55 gallons or 500 pounds or the use of toxic or hazardous materials exceeding 55 gallons or 500 pounds in a single month.
  - Any new project that requires a permit from the New York State Department of Environmental Conservation.

**Mr. Aurelio made a motion to accept the Aquifer Protection Permit**, seconded by Mr. Randall. **Motion carried.**

**ROLL CALL VOTE:**

PB Member Mr. Armstrong aye  
PB Member Mr. Aurelio aye  
PB Member Mr. Randall aye  
PB Member Mr. Standard aye  
PB Chairman Mr. Eldred aye

**SEQRA Review** – Mr. Armstrong read each question on Part 1 of the "Short Environmental Assessment (EAF) Form" and reviewed the answers that were filled in by the applicant, Brandywine Pavers. This is an Unlisted Action and as such there is not a coordinated review but there is a requirement for a Lead Agency. **Mr. Aurelio made a motion for the Planning Board to assume the role of Lead Agency for the Brandywine Pavers addition on the West Service Road**, seconded by Mr. Standard. **Motion carried.**

At this point, Mr. Eldred asked if there was any further discussion. Mr. Armstrong stated that as the Lead Agency, the Planning Board is obligated to complete Part 2 of the EAF. He read the nine points on Part 2.

**ROLL CALL VOTE:**

PB Member Mr. Armstrong aye  
PB Member Mr. Aurelio aye  
PB Member Mr. Randall aye  
PB Member Mr. Standard aye  
PB Chairman Mr. Eldred aye

**Mr. Armstrong made a motion to declare a Negative Declaration with the belief that the Brandywine Pavers addition will not have a significant adverse impact on the environment, seconded by Mr. Aurelio. Motion carried.**

**ROLL CALL VOTE:**

PB Member Mr. Armstrong aye  
PB Member Mr. Aurelio aye  
PB Member Mr. Randall aye  
PB Member Mr. Standard aye  
PB Chairman Mr. Eldred aye

Mr. Eldred signed the EAF paperwork.

**Site Plan Review** – There were two site plan packages submitted by Brandywine Pavers. The second revised package was dated January 3<sup>rd</sup>, 2018. The 239 Review was submitted to the County on December 21<sup>st</sup>, 2017 and a response was received back from the County on January 18<sup>th</sup>, 2018. The Planning Board addressed the comments within the 239 Review response from the County.

- *"The project tax map is located partially within the Preliminary FEMA Special Flood Hazard Area. The Town Zoning Board of Appeals should exercise caution in approving a project located within the Special Flood Hazard Area. The applicant should be informed of the risks of placing the project within the Special Flood Hazard Area."* A portion of the property is within the 100 year Special Flood Hazard Area but the project is not; the project is within the 500 year flood zone area. Broome County, NYS, US Army Corp of Engineers, and NYS DEC uses FEMA flood maps that were established and approved in 1981 to make determinations. In 2010 a new set of maps were established but not adopted; the Town has caused applicants with new structures they are building within that Special Flood Hazard Area to build the first floor level two feet above that level which exceeds the preliminary requirements.
- *"The Town Planning Board should ensure that the existing and proposed project complies with the Town of Fenton Aquifer Protection Ordinance."* This was discussed earlier in the meeting.
- *"The site plan should be revised to include the following:*
  - *Existing structures and uses, including indoor and outdoor vehicle, equipment, and material storage areas and the separate equipment maintenance building -* Earlier in the meeting it was discussed that there will not be outdoor vehicle or equipment storage on site other than what is coming and going from the maintenance building. There will be parking associated with the employees working in the building.
  - *Any fuel storage and fueling activity -* There will be no fuel on site.

- *Limits of gravel, asphalt, and vegetation* - In earlier permits there was allowance for short term storage of materials that came or were going for the construction projects.
- *Landscaping* - This will be alongside the sidewalk.
- *Signage* - There will be no new signage.
- *"The lack of detail in the site plan about outdoor vehicle, equipment, and material storage areas and the existing equipment maintenance building raises concerns about whether the project complies with the Aquifer Protection District Ordinance. The Town Planning Board should ensure that the existing and proposed project complies with all applicable laws regarding the storage, handling, and disposal of chemicals, fuels, and other hazardous materials as well as the Town of Fenton Aquifer Protection Ordinance."* Mr. Armstrong will review the Spill Prevention Plan and the Spill Response Plan. He will also visit the site to see the curb storage area.
- *"The project should include a spill prevention plan."* This has already been addressed.
- *"The case file was routed to the following agencies for review: Binghamton Metropolitan Transportation Study (BMTS), New York State Department of Transportation (NYSDOT), Broome County Department of Public Works (DPW), and Broome County Health Department (BCHD). Enclosed are comments from NYSDOT that need to be addressed. BMTS, DPW, and BCHD had no comments."*
- From NYSDOT: *"The Committee's only comments are that any heavy vehicles traveling from the site should avoid the Exit 2 area during peak periods, and that the applicant should be mindful of the 5-ton restriction on Village streets in Port Dickinson."*

A letter from Ken Ellsworth, Managing Member of Keystone Associates, was also distributed to Planning Board Members prior to the meeting. Ken addressed each of the County's comments in this letter.

Questions of the Planning Board Members to Brandywine Pavers:

- Mr. Armstrong – Is the hydrant on your property a Town hydrant? Jay said it is a Town hydrant.
- Mr. Armstrong – On the site plan, with regard to erosion and sediment control, what is the reference to a SWPPP? Mark replied that this is just a typical note and that a SWPPP is not required.
- Mr. Armstrong – With regard to earthwork and stockpiling, there is mention about doing some clearing and grubbing. Mr. Armstrong suggested that Brandywine Pavers should surround that area with silt fence and/or cover; Jay said they could do this.
- Mr. Armstrong – Are you doing the pavement, curb, sidewalks, seeding/landscaping, and excavation work? Jay replied that they are doing that work and the only work that is being contracted out is the actual structure itself. There are no utilities.
- Mr. Armstrong – Why is the handicap spot 8'? Mark said this is due to the limited space. And why a height of 5' for the handicap sign? Mark said it can be 5-7'.

**With the site plan being fully reviewed, Mr. Armstrong made a motion to approve the site plan, seconded by Mr. Aurelio. Motion carried.**

**ROLL CALL VOTE:**

PB Member Mr. Armstrong aye

PB Member Mr. Aurelio aye

PB Member Mr. Randall aye

PB Member Mr. Standard aye  
PB Chairman Mr. Eldred aye

Brandywine Pavers will follow up with Building Inspector Matt Banks.

**NEXT PLANNING BOARD MEETING**

The next Planning Board Meeting is scheduled for Tuesday, February 27<sup>th</sup>, 2018, at 7:00 pm.

**ADJOURNMENT**

At 8:15 pm, **Mr. Randall adjourned the meeting into Executive Session to discuss a litigation matter and a personnel matter.**

Melodie A. Bowersox, Town Clerk