

**VILLAGE OF BREWSTER
ZONING BOARD OF APPEALS
WORK SESSION
SEPTEMBER 20, 2010**

DRAFT

MINUTES

Board Members Present: Chairman Richard Ruchala, Board Member Claire Degan Kropkowski, Esq., Board Member Todd Gianguzzi and Board Member Dory Burdick

Others Present: Mayor Jim Schoenig, Village Attorney Gregory Folchetti, Esq., Yosh Ito, Rick Stockburger, Renee Diaz, Michael Liguori, Esq. of the Law Firm Hogan & Rossi (Counsel for the Applicant), Keith Greene, Laura Greene, John Gress and David Sackaroff

The Pledge of Allegiance was recited.

Chairman Ruchala: This meeting has been called for Monday September 20, 2010. Would anyone like to make a motion to open this meeting?

Ms. Kropkowski: I would make a motion to open the meeting.

Ms. Burdick: Seconded.

Chairman Ruchala: All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Ms. Burdick: Aye.

Chairman Ruchala: Aye. The vote is 4-0 to open the meeting. Keith Greene is sitting in the audience. He has recused himself. What is the question Jack?

Mr. Gress: Will the public hearing remain open after the hearing for the submission of public comments? I didn't put my name on the list and just wanted to know.

Ms. Kropkowski: That is something we will have to deal with. I think we'll be doing that, yes.

Chairman Ruchala: She is the chairperson on this question. The first item on the agenda is Brewster Honda. Jack Gress (G-R-E-S-S) has made a request that written comment be taken after the meeting. The person in charge stated that it's okay. I am going to recuse myself from this and Claire Kropkowski is now in charge.

Ms. Kropkowski: I would ask Mr. Liguori to begin.

Chairman Ruchala: If I may, I have a piece that shows that the 239(M) has been approved. That is the approval by the County that the site will cause no conflict. I showed it to Mr. Liguori, but due to a problem with the copy machine we can't give everyone copies. I wanted everyone to know that.

Ms. Kropkowski: And just for the record, this is the public hearing. Were you able to serve everyone that needed to be?

Mr. Liguori: I did. I gave the Secretary the list of the property owners that was submitted in connection with the Application, as well as the green and whites indicating the stamps from the post office.

Ms. Kropkowski: And do we have the Public Notice as well?

Chairman Ruchala: Yes. Let me keep that with everything else.

Mr. Liguori: Good evening. We met roughly one month ago concerning the Application for the area variance that has been requested. The existing driveway is in the yellow at 2-4 Allview Avenue. This is the structure that occupies a portion of the parcel. I made some color modifications to the map as compared to last time. There is a provision of the Code, 263-18(e)(6), that says no business, no industrial or office use zone shall have any truck loading space or spaces or access driveways for a truck within 35 feet of any side or rear lot lines which constitutes the boundaries of a residential district. The residential district is immediately adjacent to this particular piece of property and there is an existing driveway. The existing driveway is shown in yellow, which is a commercial access for trucks that serves the current parcel and the parcel that is proposed to be developed in back. That is what is called a preexisting nonconforming structure. The Application consists of a proposal to relocate a portion of the driveway further away from the residential district. What is proposed to be done is to remove the pavement that currently exists in the pink area to delineate a new area that is already paved to be used as driveway but for the addition of pavement that is in the small portion of red over here. The yellow area that I've highlighted is the area where the variance has been requested. If you go out to the property right now you will see that there is a stone planter with a tree that is proposed to be removed. That's within the 35 feet because that has never been used as driveway and is now proposed to be used as driveway. A variance is required for that particular area on the property. Not much has changed since last month's discussion with the Board and I'm happy to have it open to the public to receive their comments.

Ms. Kropkowski: I have a couple of questions for you.

Mr. Liguori: Sure.

Ms. Kropkowski: The top piece of paper with just the yellow?

Mr. Liguori: Yes.

Ms. Kropkowski: That area on the larger map, what is that? The driveway is yellow, was that added for this meeting but not previously? What is that on your larger map?

Mr. Liguori: That is that area, if I took my thumb and ran it across, that is over here. The existing driveway follows the property line.

Ms. Kropkowski: Is it the entire gray area or is it only part of it?

Mr. Liguori: The existing driveway if you look at it as the access, which also includes the area that's already paved. This commercial access that's for this building and the parking, that paved area is all what's single hatched and double hatched.

Ms. Kropkowski: So the only part that's not paved that's shown on your larger map is the area in red and yellow?

Mr. Liguori: The area in yellow over here and the area that's in red right here. This is the corner of the building right here-that is the corner of that structure.

Ms. Kropkowski: And that is the structure that you're taking down?

Mr. Liguori: That is the structure that we're taking down and everything that's in the red is outside the 35 foot setback so it doesn't need a variance, we could take it down, we could pave it. As a matter of fact in theory we could pave this whole area over here because it's outside of the 35 foot setback. It's just this little area over here that isn't.

Ms. Kropkowski: Right. And what you're claiming it to be is prior nonconforming use.

Mr. Liguori: That's right.

Ms. Kropkowski: Now as to prior nonconforming use this was not Brewster Honda's property initially, correct?

Mr. Liguori: That's correct. It was owned by Carl Dill, Dill's Best. That was the prior owner. I forget the record title owner. I just don't recall what the entity was but the three parcels were owned by Dill's Best.

Ms. Kropkowski: And that driveway was the one that they claimed to have used to get access to the back of the property.

Mr. Liguori: That's right

Ms. Kropkowski: How long was the time frame between Brewster Honda buying that property when Dill's no longer used it?

Mr. Liguori: I think approximately 24 months.

Ms. Kropkowski: And in your papers you indicated that this was not a self-imposed hardship.

Mr. Liguori: That's right.

Ms. Kropkowski: Can you explain to me why that is the case.

Mr. Liguori: Sure. It is our position that we can come to the Village without an application to relocate the driveway and use this driveway as it currently exists and as it is currently improved. We've chosen not to do that. We've chosen to come with an Application to remove a certain area of pavement so that we can put a buffer between the driveway and the adjacent residential property. That's one of the reasons. The second reason is that that permits us to lessen the impact of the existing use of the driveway and to benefit the turning radius at the front is the other reason that we don't consider it to be a self-created hardship. Our traffic study we believe indicates you can safely make an exit from that property without making this improvement and because of this we don't feel that we created the hardship that brings us before this Board to ask for a variance. It is definitely going to facilitate the use of the property-it's going to make it safer, there's no question about it. We don't argue that. But as far as creating the actual hardship-because we feel that we can use the driveway as it's currently constructed and as it exists without any improvements whatsoever then the hardship isn't self-created.

Ms. Kropkowski: What this is a piece of property, for lack of a better description, that for the past 24 months was not being used as a commercial entity before it was sold to Brewster Honda, is that correct?

Mr. Liguori: Well, it's still a driveway. It never lost its status as a commercial access. It will always be and has been commercial access to the parcel in the rear regardless of what the use is. It doesn't matter. If there was a sewer treatment plant back there-just by way of example of some other permitted uses in the District-it would still be a commercial access. That characteristic will never change unless some proposal comes in for a residential use in the back comes in. It would still be a commercial access for this piece and a residential access to the piece in the back. But that's not happened. And even if the use has ceased as far as the Dill's Best operation facility-even if that's no longer in existence still the zoning is commercial and therefore this is still a commercial access.

Ms. Kropkowski: And is it your intention to take down the building that's depicted in the small pictorial?

Mr. Liguori: That's right. It's proposed for us to demolish that structure. We're going to go back, depending on the outcome of what happens here tonight obviously-I don't want to make any assumptions, that's for sure-but it's proposed that we take down that building and then what we'll have is some underground drainage treatment structures in the area where the building formerly was which will covered over with dirt. We will go back to the Planning Board with a plan that shows some additional landscaping in that area. We had a public hearing before the Planning Board and the Planning Board had taken a significant amount of comments. We hadn't made any revisions to the plans to go back to the Planning Board because we needed to come to the Zoning Board for a variance. They made the referral so depending on the outcome of the variance than what we'll do is we'll go back to the Planning Board with plans that address the remaining public comments that were made then.

Ms. Kropkowski: Just so I'm clear, the pink and the crosshatch that is not red, that is the existing blacktop that they re using as ingress and egress for the property?

Mr. Liguori: This area over here. It's hard to see, but this little piece right here is the only piece that doesn't have pavement on it. And this part in the yellow right here is where the new pavement is proposed.

Ms. Kropkowski: And you're saying that the red area is beyond the 35 foot setback.

Mr. Liguori: That's right.

Ms. Kropkowski: And the current pavement is the pink and the crosshatch.

Mr. Liguori: That's right. And some of the red. That is what I was trying to point out before-there s area over here that's paved and some over here that's paved.

Ms. Kropkowski: Is that the parking area for the building that is still in existence?

Mr. Liguori: That is the parking and the access, both.

Ms. Kropkowski: But you haven't delineated what is currently being used as parking versus what is access?

Mr. Liguori: No, we've only delineated the pavement.

Ms. Kropkowski: Anybody else have any questions?

Mr. Gianguzzi: I have a question. The road in front of Allview with all of the trucks coming through—who would be responsible for the wear and tear on that road, considering that a significant amount of usage would be big rigs coming through?

Mr. Liguori: We would be responsible up until the right-of-way. And the Village would be responsible for the rest.

Ms. Kropkowski: I'm sorry. What do you mean by right-of-way?

Mr. Liguori: There's a portion of the road that is difficult to show here because when you leave the property line it's paved from the property line all the way out to the center of the road that's not actually Allview Avenue but is still our property but is paved. That's part of the right-of-way. We're responsible for everything on our property and the Village is responsible for everything that's part of the road and its right of way. It doesn't matter if it's us or any other business that's in the Village of Brewster, regardless of what the use is if it's a Village road the Village is responsible.

Ms. Kropkowski: And just one other question. Theoretically, could you put the entire access way 35 feet away from the residential property lines?

Mr. Liguori: We think that, as per our traffic studies our engineer has said to us if you came too far over to the right then we would have an issue with the turning radius. It would be too sharp for the trucks to make the loop around. That's from the statement from our traffic engineers. Obviously it wouldn't have an impact going in this way.

Ms. Kropkowski: Making the right hand turn?

Mr. Liguori: The right hand turn.

Ms. Kropkowski: All right. Who's up next? I guess it's you Keith.

Mr. Greene: This is a copy of what's been submitted to various Boards. My name is Keith Greene. I am an adjacent property owner. I have recused myself from the Board and this decision. I am representing, as I have in the past before the Town Board and the Town Planning Board, the Allview Avenue Meadow Lane Coalition. We're concerned about this action and we've let all the Boards and governing bodies know about our position. With regard to this Application in the Village there are two major points that I want to make and everything else will relate to one of those two points. First of all is the site and the recent history of the site as it relates to this Application in the Village. Second is State and Village Law and this Board's obligations under that law as it applies to this site. I think Mr. Liguori has done a good job of going through everything here on the site and what is proposed. The Applicant has summarized in partial format what some of the criteria are for reviewing a variance. But he has left out some important parts also which will help you to understand and maybe make a decision about this Application. Let's start with the history of this site. We know that Dill's Best used the Town portion of the site for their storage and their distribution and even for a little while I think for some of their retail operations. And it is true that trucks accessed the site for the entire duration of Dill's Best as they used that as their operation center. However, what the Applicant refers to as occurrences in the past where tractor-trailers would turn into the oncoming traffic lane that never happened when it was Dill's Best.

Ms. Kropkowski: Could you tell me what page that was from your Application.

Mr. Greene: It's the first page of the Application entitled Memorandum. I don't have page numbers. Application at the top of the page. No wait, I'm sorry. It's after page five.

Mr. Gianguzzi: Was it Dill's?

Mr. Greene: When Dill's Best was occupying and using the site the beneficial use was box trucks, cars, pick-up trucks and tractor-trailers.

Mr. Gianguzzi: Pick-up trucks?

Mr. Greene: And tractor-trailers. Meaning semi-tractor-trailers. There was a cab and a single trailer of various lengths and varying turning radii. However, if you look at all the traffic incident reports on this corner you will notice that there has never been an accident with a truck. This hasn't been a problem for us in the past. Not until car carriers used by Brewster Honda started using the site did we have

any problem at all at the corner of Route 6 and Allview Avenue and the access to the site. So the Applicant's statement that what's happening at this corner is not self-imposed. I'm sorry, what's it called?

Ms. Kropkowski: Self-created.

Mr. Greene: Self-created. I think it's false because they're using a different kind of vehicle. It has different engineering requirements and safety requirements. This is a self-created hardship. This site, which was previously used for a whole different business entity, has not only been rezoned by the Town, possibly, to accommodate this use, they also changed the Zoning Code to accommodate this kind of use which they didn't have before. So this entire use of the site which is accessed through the Village has changed. The use has fundamentally changed. It is now an automobile service center and an outdoor storage facility for the inventory of new cars. It was never that before and the fundamental nature of this access has changed. So to say it was grandfathered I think is probably not correct. But that's for you to decide. If it was only for this being a lumberyard again we'd only be talking about dates. How long was it abandoned and then has the use been abandoned and then would this be an existing non-conformity. We don't believe that it's an existing non-conformity as a group of neighbors concerned about the use of this site because the fundamental nature of the use of the site and its access have changed to the point where the entire drive has been reconfigured and reengineered so that this new use can function here safely. So we disagree that it's an existing nonconforming and quote unquote grandfathered driveway. I think this bears it out. We've never had these issues before. We've been at bus stops. We've lived here since 1992 and we never had an issue at the corner. This is now one of these articulated nine car carrier trucks exiting the site to try to make the turn to go east toward Danbury.

Mr. Gianguzzi: And it seems like they're doing a good job. The bus seems like it has its path there in the right lane. It's difficult to see the perspective of not being on the other side, seeing that truck turn around into the lane there onto the road.

Mr. Greene: Route 6. This is one of a series of photographs taken the same day. In order to get himself there he actually had to-this is the yellow line here so when he pulled out he was actually over here and then he was in a better position. The only reason we used this is that a bus is there and the bus cannot make the turn.

Mr. Gianguzzi: So ultimately if we don't do anything that will be a continuing issue.

Mr. Greene: Yes.

Mr. Gianguzzi: So what we're doing is increasing the safety.

Mr. Greene: Absolutely.

Mr. Gianguzzi: By potentially saying that we should approve this.

Mr. Greene: If the driveway as proposed, with the larger turning radius, and the queuing lane or the prep lane to get onto Allview Avenue, that is absolutely an improvement that has to happen if Brewster Honda uses the Town part of the site. It's been mandated by the engineers, who have reviewed it and said you can't make the turns if you leave the driveway the way it is. So I think it's a self created hardship. If they're going to use these kinds of vehicles on that site the driveway as configured is not a grandfathered condition. It's a new use. The new use is on the Town site that it serves so whether that is a use variance for the driveway I don't know but certainly the area variance is required for the entire driveway we contend. The Applicant has also said that there is no other feasible method to achieve the same ends to gain useful access to the Brewster Honda site which is in the Town. And in their Application they say that in theory it may be possible to relocate a portion of the driveway entirely outside the 35 foot setback. However, a further relocation would create turning radius issues on Allview Avenue which the Applicant seeks to avoid. So what they're saying but haven't demonstrated yet to this Board is that it is not possible to approve this condition without creating a turning radius issue on Allview Avenue. I think that the burden of proof is on the Applicant to show that there is a way to do it. Now I will talk about this Board's responsibilities and obligations under the law as they apply to the site. It seems simple and conclusive when you look at the Application but there are other things that this Board has to consider in reviewing an application like this. Just because they feel that it's usable the way it is the engineer's review and I think the proposed use of the Town site would prove otherwise. We've taken a stab to help the Applicant demonstrate what might happen on this site to more closely conform to our zoning ordinance which was written to protect residential properties in the Village from traffic, noise, from diesel fumes and everything else that goes along with truck traffic. Because these are such big trucks we have even more concerns. They are a lot louder than semi trucks. If you hear one of these things you would understand exactly what it is. As adjacent property owners we can tell you we've never heard noise like this on that property before the use of car carriers. They are a very different machine from a semi tractor-trailer. They are engineered for

different purposes and they're really noisy. In any case, this is a blowup of what the Applicant submitted to this Board for review. It's twice the scale of the 11x17 that was provided to you. So what was 20 feet on what you have is 40 feet. What we have done is shown here, this is what the Applicant proposes. This is the driveway. What we're saying can be done without going any further onto Allview Avenue and without changing any of the engineered turning radii for these trucks is to just on your way in continue in. Get out of the 35 foot buffer as soon as you're able with the same engineering requirements being satisfied and get over to the north side of the site and then run up on the north side rather than taking the path of least resistance along the south side which was used previously for access to Dill's Best. The disadvantage of that is that there is very little screening area and there are other disadvantages to that as well. So we think that using the same 55 foot and 82 foot radius for these tractor-trailers with two lanes and then swing to get straight is to double that radius and being even more gentle with the requirement that it is feasible, very feasible to access the north side of the site with the same driveway they're proposing to build on the south side of the site. This is what they're proposing right now. This is the way the site is used. They propose to come in here and go around in a counter-clockwise fashion with the trucks, the car-carriers and then back out. This has been engineered so they know it works. This is where they intend to offload, even though they're showing semi tractor-trailers, that's not what's going to be there. The engineering requirements are very different. They're showing semis but this is where they'll offload. So what happens is the real heavy traffic comes in through here goes around. This is customer parking. The rest is employee parking, this is storage of unregistered new car inventory. And so is this. It's taken from the site position plan that they submitted. So what's in yellow highlight is what they say they need for new car inventory for storage. And the Town seems to agree that that's something that may be permitted, given the new zone and the way it's been written. So in blue is the main circulation through the site. The disadvantages to this is that as soon as you drive up Allview Avenue and cock your head to the left you're going to look into the garage. This is where they have 12 cars, tuned up and ready to go in.

Mr. Gianguzzi: How many yards from Allview to this?

Mr. Greene: This is 100 feet, so let's say 800.

Mr. Gianguzzi: 800 feet. What's that in yards?

Mr. Greene: Almost 300. Unfortunately, the architect's rendering of this project and virtually the same driveway was not available to us tonight. It is a rendering

that shows a very clear direct visual access from Allview Avenue whether you're coming into that site or not right to the garage door bays, and it's a straight shot and it's paved. There's nothing between this circulation of Allview and that building. And it's a matter of convenience. There was a paved way there and they're going to reuse it. The Town has said in their review of this project that they would very much like this to be an invisible project from the Village and the Town residents' perspective. The Supervisor has said that on more than one occasion and I think the Planning Board has also reiterated that though I don't see it in my notes. It follows logically that you would like a facility as big as this, covering 50,000 square feet permitted in this redefined zone adjacent to a residential zone to have some screening, not only from the traveled way but also from the adjacent sites. There is a direct visual connection here to this big building. There is a substantial variance required for the driveway as its shown and there's a very very narrow opportunity to screen the Village residential properties. All the properties adjacent to this site are residentially zoned in the Village. Only the portion from here down is in the Village that's owned by Brewster Honda so this is the only thing that they require a variance for because they don't have the 35 foot setback requirement in the Town. So you're protecting from here to Allview with this variance request. It's very narrow screening. In the winter-I happen to live here and these are 100 year old pines- most of the shade is on this route so there are plowing and icing conditions that have been there forever.

Mr. Gianguzzi: So does that make it different than when it was Dill's?

Mr. Greene: No. It just means they have to chop the ice a lot and they plow more than a lot of others need to plow. And I hear them because the driveway currently runs right on our property line. That's an existing condition. It has to do with Dill's using the site that the Applicant is proposing to use. So it is our position that there is in fact a feasible alternative which was demonstrated on the first sketch which was a blowup that meets the very same needs of the Applicant as they have been stated at the Town level, their Boards and the Village Boards. Just by continuing this turn to the north side of the site, running the driveway around with no changes at all to this part of the site, the building stays where it is, the parking count is the same, the storage is the same although we've flipped it over now to the south side of the site so that the vehicular access moves in the same way but it's removed from the residential area. So some of the differences are there are now two areas where before you had a direct visual connection right into the heart of this facility which is where you can have a dozen cars queuing up and people getting out and checking in and things. Now we have the opportunity here where the driveway turns to do some real screening. Nobody is saying that that can't be

an earthen berm or something that is a real visual screen or a site element. So if you put the parking here you have another opportunity here. What this really doesn't show is that from here to there you rise up 14 feet. So this is up on a hill. Originally when you look up this driveway you're down and then at this point if you're going to turn your car in or you're a tractor-trailer driver you're coming up 14 feet and around the site. So this thing is up on a plateau. It's our position that having these two areas of buffers or berms or screenings will not give a direct access visually from Allview Avenue to the building. You will have the minimum necessary and adequate barriers that don't require as much of a variance on the part of this Board to have a solution. There are deeper visual and acoustic barriers for this neighborhood. Right now when they plow that driveway, when cars are coming in and out at night, it's visual, it's acoustic when these guys are also proposing to have some speed bumps. With nine cars and a car carrier going over the speed bump it's going to be loud. If we use whatever they're able to do here for screening and these cars as an acoustic barrier between the neighborhood and this highly traveled way there will be real benefits to relocating the driveway. The geometry is the same for the trucks and there's visual screening. So that's a proposal we think that the Applicant should really owe this Board in showing that they have asked you for the minimum reasonable and adequate variance so that they can still gain entrance to and use of the site. As regards to the State law and this Board's responsibility the Applicant did go through some of the things and requirements that you have to use to review the variance. But what they left out was the requirement of the New York State Village Law Section 7-12(b). It's under 3(c). The Court of Appeals in granting an area variance shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health and safety and welfare of the community. In other words the law says you shall grant the minimum variance. We believe that the requirements to show that they are asking for the minimum variance rests on the Applicant.

Mr. Liguori: How much of a variance would we need for that plan?

Mr. Greene: The difference in one variance to the other that this Board would be considering is only in green for the driveway if it goes to the north but the green and the blue if it goes where it's proposed now. So it's self-evident that there's much less of a variance that's being requested if the driveway veers off to the north and if it stays where it's being requested.

Ms. Kropkowski: Now the Applicant has indicated that the only variance they're looking for is a planter. Do you have any clue where the planter is on your

particular chart? They're claiming that the area variance that they're asking for, because there's a prior non-conforming use.

Mr. Greene: I think that it's right here.

Ms. Kropkowski: Right. They have crafted their Application indicating that they only need to have the variance for that planter.

Mr. Greene: It's the Applicant who crafted that Application, not the Code Enforcement official, correct?

Ms. Kropkowski: That was my understanding.

Mr. Liguori: It was referred by the Planning Board.

Mr. Greene: It's this Board that makes the decision on what the zoning variance is that they really need.

Mr. Stockburger: I would like to speak.

Ms. Kropkowski: Sure

Mr. Stockburger: Rick Stockburger, 50 Oak Street. I just want to make sure because this was in front of the Planning Board. The Code said the driveway had to be outside of the 35 feet. I just want to make sure whatever variance is granted if it does make sure that it's for all of the driveway that's inside 35 feet. It's very ambiguous for the Planning Board. The Planning Board has no interpretive powers on that. So I just want to make sure that if the Zoning Board grants a variance it's for all of the driveway that's in 35 feet. Whether you think it's new, preexisting, nonconforming but make it clear to the Planning Board that you're granting a variance for whatever driveway you're granting it for. Don't leave it ambiguous cause the Planning Board, as counsel may be able to say, doesn't have interpretive powers. So if you grant a variance of 12 feet down here the Planning Board may well say you have no variance for this.

Ms. Burdick: Why would you say it has no variance for that-on the claim that it's not preexisting?

Mr. Stockburger: The Village Law says you can't have a commercial driveway within 35 feet. But the Village Law doesn't say preexisting-it says preexisting

nonconforming. If it's been abandoned for a year it's abandoned. It hasn't been used so it's abandoned. If you want to say it's preexisting nonconforming that's fine but just include that in your variance so you don't have the Planning Board hemming and hawing back and forth. Whatever variance you give make sure you include whatever driveway you allow within the 35 feet to be in whatever variance you give.

Ms. Kropkowski: Mr. Liguori, I have a question for you. Who actually specified that it's only the planter you're asking a variance for? Is it your Application or was it from some other entity?

Mr. Liguori: It's our Application that specifies the area of the variance. But it has never been tested by the Planning Board, that the entire driveway needs a variance. They don't have the authority to state that it is not a preexisting nonconforming driveway. The fact of the matter is, and Greg please feel free to correct me, it doesn't matter what the use is on the other piece, whether it's abandoned or not abandoned, that is a driveway in a commercially zoned area. It is a commercial driveway that exists. There is no denying the fact that it is there. It doesn't matter what happened on Dill's Best piece. The fact that Dill's Best was a preexisting nonconforming use in the Town of Southeast that has been abandoned. That driveway is still a commercial driveway. Even if it led to nowhere it is still a commercial driveway.

Mr. Folchetti: I was going to weigh in on that before the end of the meeting. With respect to the cessation of any preexisting nonconforming use the Town of Southeast feels firmly that it is not within the jurisdiction of this Board dealing only the Village piece whether or not it conforms to zoning right now, whether or not it's preexisting nonconforming. There's some discussion about the cessation of use by Dill's. The facility there, that's Southeast.

Ms. Kropkowski: Right.

Mr. Folchetti: I'm just making that clear for the record. I'm not sure it was clear through all the comments.

Ms. Kropkowski: It's only the Village portion that we even care about at this point.

Mr. Folchetti: It's the only thing you can care about.

Ms. Kropkowski: Right.

Ms. Burdick: Can the driveway ever lose what it was?

Ms. Kropkowski: It's a driveway.

Mr. Folchetti: It's been an access for as long as I've been aware with respect to that property. It's been there for the period of time that's required. So there's an issue of whether it's been abandoned as an access or not. I don't know that that's been presented to the Board. I think that's a problematic position to take on it for the Board. You always have to deal with access for the property and the access has been there and it's been there on the property line, either preexisting or legal non-I m assuming preexisting that preexisted the Code, hugging the property line in violation of what was passed subsequently requiring the 35 foot setback.

Ms. Kropkowski: But for 24 months Dill's was not using that particular driveway for access to any part of the property. They were sitting fallow for lack of a better description, is that correct?

Mr. Folchetti: Dill's may have been but the property could have been used for the access.

Mr. Liguori: There's another commercial user that's up there-the countertop place. It's the only access for the property

Ms. Kropkowski: And where is the countertop place in relation to all of this?

Mr. Liguori: It's still in existence. He's up in this area over here. This doesn't show the existing improvements-this is the proposed site plan. So if you look at the existing site plan you will see a structure that's up here. And that's where the countertop person is located. So that is still the sole access for that. And it's still in existence and it's still being used.

Mr. Folchetti: We have to make a determination-is the access itself a preexisting nonconforming and been abandoned for 24 months. I don't know if there is any evidence to that effect. If Dill's was at that operation it's one thing.

Ms. Kropkowski: That's what we were told initially, that Dill's was not operating at that point.

Mr. Folchetti: I did not hear that part of that. That doesn't necessarily mean that the access wasn't used. That's all I'm saying.

Ms. Kropkowski: Yes Renee.

Ms. Diaz: I'm Renee Diaz, 8 Meadow Lane. I didn't own my house when it was Dill's. I bought my house two years ago. Within six months of moving in the property was being used to unload cars. I know Brewster Honda gets deliveries here. I can see the cars coming in and out. What I would like you to consider is how that access road is going to impact the people in the surrounding neighborhoods.

Ms. Kropkowski: Ms. Diaz, is your structure located on the,,?

Ms. Diaz: Mine is not adjacent. My house is actually across the road from Mr. Greene s. The Greenes' house is here, my house is over here. Suffice it to say I can see the site from my property. Without seeing when the cars are coming in I can hear it. As Mr. Greene has proposed, the further away this can be from the residences the better the surrounding neighborhood and the community in the Village of Brewster will be. The further away from the surrounding residences the more of a buffer can be afforded and the better it will be for the Village community that is next to the site. The more of a buffer we can be afforded the better it will be for the Village community. The people that pay Village taxes and live here will reap the benefit. I'm not concerned with the Town of Southeast. I'm the one who lives next to that property and I'm the one who hears when those trucks come in and out at all hours of the night. I went in front of the Planning Board when they started unloading cars and took pictures at 4:00 in the morning and screamed because there was no gate there at the time.

Ms. Kropkowski: What do you mean by a gate?

Ms. Diaz: There's a gate there now limiting access to the property. There wasn't before. There were trucks coming in and out of that property all hours of the night. Four o'clock in the morning I got up and took pictures of them unloading trucks on that property.

Mr. Liguori: The gate's now been proposed to be relocated to the front of the property so that the trucks can't come in unless it's during the operational hours.

Ms. Diaz: The gate hasn't been locked in several weeks.

Mr. Liguori: The gate is over here. I can't speak to whether it's open or not. It's proposed to be relocated down to Allview so the trucks can't come into the property during the evening hours. That was a complaint of the neighbors that was made when we were here in front of the Village Planning Board.

Ms. Kropkowski: Okay. Anyone else? Yosh.

Mr. Ito: My name is Yosh Ito. I live at 10 Meadow Lane. The Zoning Board of Appeals has the power to grant or deny this variance request. We are here because a request for a variance has been made. You can grant the variance with conditions if you choose to do so. But let's remember that we are here because the request for a variance has been made. Village Law 712(b) specifies your powers and responsibilities when asked to grant a variance. The guiding principle is that any variance you grant should be the minimum required in your opinion to satisfy the Applicant's needs as well as to protect the safety and welfare of the people living in this area. There is a reason under the Village Zoning Code for the 35 foot setback. And I think it should be obvious to everyone, to create a buffer. Maybe the driveway has to be moved to make a safe turning radius. But the same argument holds true when you are considering does it hold true for the entire length. That's something for you to judge. And if there is a way for a safe entrance and exit and at the same time create at least a 35 foot buffer required under the Village Zoning Code-I think that is something you are authorized to consider. As a matter of fact I think you are required to consider when you weigh the safety and welfare of the people living in this area against the new introduction of huge truck carriers. Two things quickly. Until Brewster Honda started trucking their cars in here this has never been-Allview Avenue has never been used on a regular basis as an access to a trucking terminal or for offloading I guess of cars. And there is a tonnage weight limit on the entire Allview Avenue, again, in order to protect the safety and welfare of the people living in this neighborhood. There is an exception to the weight limit. That is when you are making local deliveries. Whether that exception applies to a regularly scheduled delivery of cars going up and down I think is open to debate. I think common sense will tell you that any local delivery exception does not apply to commercial operation of delivery of cars using huge trucks. And the second point is if we concentrate only on the Village portion of this property it is zoned B-4 meaning it is all right to have an automobile dealership and as an accessory use repair facilities. So if this project is proposed for here under the Village Code it is not an authorized use because there would have to be an automobile dealership on site-it is only a repair service center and storage. It's an accessory use with no principal use which you just can't have. It is

a contradiction in terms. You have discretion, you can weigh protection of the residents and is there any other alternative available to the Applicant and I think Mr. Greene has presented a very workable alternative to the scenario.

Ms. Kropkowski: All right. Mr. Liguori, you heard Mr. Greene comment on your proposal. Do you have any comments on that? If you don't at this time that's fine.

Mr. Liguori: I was just thinking about something that Yoshi said that I just wanted to respond to which is that you can have a driveway on its own. That is perfectly permitted. If you take his logic to its extension, if I own two pieces of land next to each other in the Village and one of them was vacant and the other had a house on it and my driveway was on the left parcel but the house is on the right and my driveway is on the left and came in to the right that's perfectly acceptable. What I am saying to you is that auto sales and services are permitted on this piece but it doesn't mean you cannot have a driveway on its own on that piece. It is acceptable to have that situation. In addition, it is the only access for the property and that's a very critical point. I can't speak to Keith's diagram because I'm not the client, I'm only his representative. It's completely new information. Keith, I appreciate it. We've always had an open discourse in the public hearings about what is best for here. I'm happy to go back to the client with Keith's proposal. I don't want to have the public hearing open but what I would do is agree to not have the time period toll for the 62 days. That way you guys are not under any pressure deadlines whatsoever to make a decision. I know Jack had made reference to keeping the public hearing to provide a written comment period. There is no objection to a ten day written comment period. What that does for us is that it gives us a point where you're done hearing all the comments and then we can make a reasoned response to the comments.

Ms. Kropkowski: I was actually going to ask for two weeks, not ten days.

Mr. Liguori: Fourteen days, whatever you think is appropriate, is fine. But look, I'm happy to go back to Donald Lever and Chip Robinson. Chip is the guy who usually comes to the meetings but he didn't feel well tonight so he didn't come but he's usually always here. The issues that I think are going to come up from the engineers are going to be related to the location of the drainage. I'm not an engineer. Quite frankly a lot of times when I have questions I have to go to the engineers to ask the same questions. I often have the same questions that the public has-why can't we do this, why can't we do that.

Ms. Kropkowski: The drainage being the lower right hand side of the property.

Mr. Liguori: Yes. This area right here.

Ms. Kropkowski: Which is drainage that's going to be right underneath of some kind.

Mr. Liguori: Yeah, it will be underground, an infiltration system. Drainage is driven by where's the lowest point on the property. If that's the lowest point of the property that's going to be a consideration. That doesn't mean there can't be a piece of property lower than it already is. The question is what's the cost that's going to be involved in this and so on and so forth. The other thing is-and these are the questions I'm going to have for Tim Allen and our guys-potentially are we going to trigger any DEP requirements for the stormwater by changing the location of the pavement. That's something we're going to be able to get to the bottom of pretty quickly. I'm happy to go back to the client and-Keith if you wouldn't mind if we can somehow coordinate a copy.

Mr. Greene: I'll be very happy to send a scan.

Mr. Liguori: That would be great. I'll send that right along

Ms. Kropkowski: Just so I'm clear, does everyone agree that widening the very base of it onto Allview is a good thing to do from the safety perspective?

Mr. Greene: I think it is.

Ms. Kropkowski: So on that level we're going to make sure we decide on everything for the Planning Board so they don't have any questions about it. So the last bit as it touches Allview Avenue-widening that is actually a good idea.

Mr. Greene: It appears that the curb cut width and the turning radius, the first 50 or 60 feet, really are not changeable. It's after that, and after the curb cut has changed to conform to the new vehicles that maybe there's an opportunity to move away from the site.

Ms. Kropkowski: Anybody else have any comments? Ms. Greene.

Ms. Greene: Just a couple of statements.

Ms. Kropkowski: I'm sorry-your name.

Ms. Greene: Laura Greene. The car carriers have a negative impact on the safety, health and the quality of life of the residents. The Applicant should consider car carrier deliveries at a location away from a residential neighborhood. Car carriers are very different from the vehicles that used that driveway with past owners. And a note about the wear and tear-we do have some photos that show the bottom of those car carriers hitting Allview Avenue as they come out and make that turn-it actually touches the road so there is wear and tear. And as Renee mentioned, there is a gate there now although it may be moved. The gate hasn't been closed. A couple of weeks ago I happened to wake up at 2:00 in the morning and I see a vehicle driving back there. So the gate must be closed to be of any help.

Ms. Kropkowski: Anyone else?

Mr. Greene: The architect of record for the building itself and I are friends and he is a colleague of mine. Looking at the site plan and the approach and the way the driveway is configured I can only imagine that he probably was not invited to have input on the site plan because I know him to be a thoughtful, creative and energetic planner. I asked if I could have a copy of the rendering so we could look at the building from Allview but I thought about it too late and he couldn't get permission to forward it to me. He has a very real rendering of what it looks like the way it's proposed. I would have to imagine the design team on this project would welcome a change like we're asking for. I'm not a civil engineer but it looks like the driveway could be moved to the north and it doesn't affect the infiltration system. It looks like you simply flip the parking and the driveway. It looks like it just flips the driveway and outdoor storage. But they might have something else in mind that's not on the drawings yet.

Ms. Kropkowski: But all that area you're talking about is actually outside the parameters of the Village at this point. Everything beyond that.

Mr. Greene: There's a part of the site to the east of the Village line that's affected by your request to move the driveway out of the 35 foot setback. It looks to us as we sketched it up that it is a win-win. The Town has requested there be screening and that it be invisible. Right now with the height of the screening that exists on our property that driveway is going to be icy any time it's freezing or below. It's right on our property line so we're going to hear all the traffic. If it gets flipped to the north side it will have natural sunlight and be less noisy for us. There may be other benefits-I don't know. It might be sketch B that they just didn't get to yet.

Ms. Kropkowski: Anyone else?

[No response]

Ms. Kropkowski: Okay. With that I would make a motion to close this portion of the public meeting and hold it open for two weeks for any other additional commentary.

Mr. Gianguzzi: Seconded

Ms. Burdick: Aye.

[Whereupon the hearing and meeting concluded at 8:35 p.m.]

