

**TOWN OF SOUTHEAST  
ZONING BOARD OF APPEALS  
CIVIC CENTER  
ONE MAIN STREET  
BREWSTER, NY 10509  
AUGUST 15, 2005**

**Board Members**

<b>Edward Colello</b>	Chairman	Present
<b>Thomas Costello</b>		Present
<b>Timothy Froessel</b>		Present
<b>Kevin Sheill</b>		Present
<b>John Gallagher</b>		Absent
<b>Joseph Castellano</b>		Present
<b>Willis Stephens</b>	Town Attorney	Absent
<b>Richard Honeck</b>	Town Board Liaison	Absent
<b>Linda M. Stec</b>	Administrative Assistant	Present

**Ed Colello** – Good evening everyone. Welcome to the August meeting of the Town of Southeast Zoning Board of Appeals we will get started. Please stand for the Pledge of Allegiance. Pledge of Allegiance said. Once again good evening my name is **Ed Colello**. Let me introduce you to our Board members. Board members introduced. We are a seven person Board we have an opening right now which will be filled next month so we will be back to seven and we have one on vacation so we are down to five of us this evening. Once again let me read the agenda it has been shorted somewhat by a couple of postponements. Number one, Brewster Honda, number two, Lori Fava, number three, Scott Jeffrey, number four, Bruce LaChapelle, number five, Gregory and Geraldine Valeriot, number six, Luis and Sylvia Pauta, number seven, Louis and Joanne Sbarra. So those are our seven items on the agenda this evening. Before we get into our first item this evening, we have a little housekeeping but I have been asked with conversations I have had with an applicant, our Town Attorney, and our Enforcement Officer for our Board to make a decision. Let me run this by you gentlemen and let me see what you think. If you remember a couple of years ago Mallory-Kotzen Tire Company came before us for a sign variance that is formerly Brewster Tire on Brewster Hill Road and they were issued a variance for a new illuminated sign in front of the building and in the process of them going to their sign company and having the sign made it was delayed and all of sudden they get hit with the moratorium so they weren't allowed to hang the sign so that put it on hold for along with the sign moratorium maybe a year but who knows exactly so the moratorium held them from putting up the sign. Then the moratorium ended and they had to go before the Architectural Review Board. Well, we didn't have an architect for a while so that put them on hold. The reason I am involved in this is the question is the variance going to hold with the new zoning ordinance for signs and the Town Attorney believes yes which I don't agree with that the variance because it is permanent would oversee the new Zoning Code. So now there is

an Architectural Review Board and the sign company meets with them and while they have a variance for the size of the sign where it was not an issue before now with the new ordinance there is height requirement. A height limit, the limit was 25 feet before now I believe it is nine feet under the ordinance. Now the question is does this applicant because of the moratorium, etc, do we ask the applicant to come back for a height variance on the sign or is he OK. And the decision of this Board will then go to the Architectural Review Board and then they will make a decision as to the design of the sign etc. This Board has to decide whether to bring him back in for another variance, not that we want to do we have to, how do we interpret the law. Do we bring him in for another variance or do we let him move on the process.

**Tom Costello** – Did he get a building permit when he got the last variance?

**Ed Colello** – He was issued a, very good question, a sign permit, I don't know if he did because when he went down to meet with Ron Harper that is when Ron told him that his sign was too big and that was the issue with the size of the sign. The height issue only came up when it came before the Architectural Review Board so maybe Ron issued a sign permit, I don't know. I can't answer that.

**Joseph Castellano** – What is the gap between when you made the decision with the Zoning Board of Appeals and when the moratorium started?

**Ed Colello** – From the time he got his variance to the moratorium? It was a length of time. I would say it was probably a matter of months, six, eight months, by the time they got the final sign approved by the sign company and what they were going to go with, and then the sign company was going to take it over from there and meet with Mr. Harper to get the permit. I would say it was definitely months, it wasn't 30 days, it was months.

**Tim Froessel** – The fact that it went before the Architectural Review Board would lead me to believe it doesn't have a building permit.

**Ed Colello** – I am not sure about the chicken or the egg who goes first.

**Tim Froessel** – How did they end up in front of the Architectural Review Board?

**Ed Colello** – They have to approve all signs.

**Tim Froessel** – Unless they come back to the Town for some reason.

**Ed Colello** – I know Ron sent to the Architectural Review Board because all signs have to be approved. They can't be too many colors, that is one thing they are changing on it because they were more than three colors, I am not an expert on it so I don't know, there are only so many colors you can put on a sign that is why it has to go back. But the sign that we approved is clearly higher than nine feet. I believe it was approximately 15, 16 feet.

**Tim Froessel** – What did we give them a variance for?

**Ed Colello** – The size, the square footage of the sign.

**Tim Froessel** – Nothing else?

**Ed Colello** – Nothing else. But there is the issue he didn't need a variance from the height requirement because the maximum height allowed was 25 feet then so now with the new ordinance it is down to nine. I think he was at 15, 16 feet.

**Tim Froessel** – My gut reaction is he didn't get a building permit and he is just going back to get one now whatever we gave him a variance it is good he still has a variance but any other changes he is not in compliance with I think before Ron can issue a building permit he has to get a variance for. That is gut reaction.

**Tom Costello** – I would agree with that.

**Ed Colello** – So, how do you guys feel about that?

**Joseph Castellanol** – I agree.

**Kevin Sheill** – We have to find out if he had a permit first.

**Tom Costello** – Let me just read you the section that applies to this. “Upon filing a complete application for a sign permit and the payment of the required fee the Building Inspector shall examine the plans, specification and other data submitted and the premises on which the sign is to be erected or now exists. If it shall appear that the application is complete with respect to requirements of this article the Building Inspector shall then within 15 days refer the application to the Architectural Review Board. In the case of a concurrent application to the Planning Board for site plan approve or to the Town Board for special permit approval the application for a sign permit shall be referred to the ARB with the site plan or special permit application. The issuance of this permit shall not excuse the applicant from conforming to the other laws and ordinance of the municipality.”

**Ed Colello** – So with that it is probably a good bet that obviously no permit was ever issued.

**Tom Costello** – Right.

**Ed Colello** – If they followed the process.

**Tom Costello** – The permit is not issued until after the ARB.

**Ed Colello** – So what I will do is then if we are all in agreement go back to Ron tomorrow and have him make sure that no permit was issued. Assuming for some strange reason that permit was issued how do we want to handle it? Does that change matters?

**Tom Costello** – I would still say he probably needs another variance for the height. Because the Building Inspector all he has to work with is the current ordinance.

**Ed Colello** – The issue was, the question that was brought to me and I didn’t have an answer I said I am going to bring this to the Board because I can’t render a decision. The question was due to the fact that he received a variance the first time and he was as the saying is “good to go” does he now with the change of height need a height variance. And the key thing is he never got the permit to put up the sign.

**Tom Costello** – But if he did get the permit, he has a permit, then one of the issues is why is still before the ARB?

**Ed Colello** – Because the ARB is the one that said you are too high.

**Tom Costello** – Then he should have a permit.

**Tim Froessel** – I agree. I find it hard to believe that he does have a permit but in the event that he does there is all kinds of vested rights and whatnot. If he didn’t take some physical action to put up the sign or if he vested rights but again whatever we gave him a variance for he has a variance for.

**Ed Colello** – All right so are we in agreement no matter what he has he has to come back for a height variance?

**Tom Costello** – If he wants to build it that high.

**Ed Colello** – I don’t know what it is exactly, I didn’t get that from Ron but what I did get is that he is over nine feet it is no where near the 25 feet but it is over nine. OK. Very good now we can go to our regular agenda.

**1) Brewster Honda**  
**941 Route 22**  
**TM# 67.8-1-41**

Donald Rossi, attorney, Hogan and Rossi appeared for this application.

**Don Rossi** – Just to go back to the last meeting for a second there were a couple of questions Tom you had asked about the width of the right of way, I don't want to take up extra time, Kevin was not here but if there are any questions on this just let me know we are dealing with the Brewster Honda building we are asking for asking for a use variance to permit a three acre parcel of land that is situated to the right of Brewster Honda in the Town of Southeast and on the river so as to allow the accessory use of outside storage of automobiles in connection with the business operated on what we call tax lot 6 and 7 in our papers. Tom had a question about the right of way which crosses the railroad land, specifically the width, it is 20 feet in width. We have done a lot of research in the back title to the properties and interestingly came across a lot of information dealing with the use of this piece for outside storage that we weren't aware of prior to this. Back to 1932 continuous use of the property for outside storage uses the property used to be owned by a company called Brewster Lumber Company so another questions was there any other access possible to the site and we also concluded that the answer to that was no. From a practical standpoint if you go to the rear, we also had some questions as to where it is situated there is a Scout Realty building then the tracks are directly to the left of the Scout Realty Building to the right is the shopping center where Tom & Jerry's is and the former U.S.A. Baby. If you go to the back of that parking lot and drive along it to the left of the parking lot between it and our site is a stream that goes down to a ravine so for practical purposes it would be very difficult to have access there. Also there is no legal right to that. We tossed around the idea of there is a concept of easements by necessity that a property might be able to take advantage of if it is in fact landlocked but we would not be able to take advantage of that because we actually do have an easement to get us out over to the other property there is no way out as far as alternate means of access. What the research was also interesting to me is that is showed a long history of interrelationship between the parcels. One of the standards when your Board is considering a use variance is whether there are unique characteristics that are applicable to this piece that are different than characteristics of other properties in the area and we have really found that this is the only land locked piece that has access on the river but we thought it especially important that the property has really never been used without it being used as an accessory to lot 6 and 7, that is a big part of it. We also checked the watershed regulations because the Croton River qualifies as a reservoir stem in a 300 foot setback for impervious surface and for the installation of septic systems so that virtually renders this property unusable for any of the permitted uses either those permitted as a right or by special permit and really leaves us with an accessory use like we are proposing as the only really viable use of the property. I don't think there were any other questions relative to it, I don't recall any.

**Tom Costello** – I did take a look and I had some additional questions, there is a lot of vehicles parked on it when you drive underneath the right of way and come onto this lot the cars to the right are they parked right up to the property line? It looks like there is an embankment that goes up 30 feet.

**Don Rossi** – It hasn't been flagged so I don't know exactly if that is where it is. I don't believe they are going off the property because they have gone off to areas that have been used previously but I don't have a specific answer.

**Tom Costello** – What about if you go to the whole length of the property? What is beyond it there?

**Don Rossi** – The lands of the City of New York.

**Tom Costello** – So to the best of your knowledge the lands that the cars are parked on all belong to this parcel?

**Don Rossi** – My understanding is that it is. I don't think there is actual flags out there.

**Tom Costello** – I guess the other question I had is on the right of way, you said the right of way is 20 feet wide there is a lot more than 20 feet being used by Brewster Honda how do you explain that.

**Don Rossi** – I think that use has evolved over the years the railroad hasn't caused any issues with it. There is a section there that I know that is used by the Fire Department to get down to it so when you come in here and turn down to the river there is an actual cut out because the Fire Department regularly goes down there and fills up tankers so there is use that has been made of us. Our survey here shows an existing gravel parking area that is in that right of way. I think that is a lot of the active use it is directly behind the Service Department and cars are parked here. I would explain it just as use for generations of the property back there and not any notice from the railroad to cease and desist using it. One of the things that is also apparent from the history is that the lumber company, the railroad had various agreements and it was originally that the railroad was there by easement from a prior landowners maybe it is something that goes back so far that it has always been an accepted state of fact.

**Tom Costello** – You mean the railroad had an easement over the landowner's property?

**Don Rossi** – Yes.

**Tom Costello** – Is that typically how the railroads operated, I thought they usually took ownership?

**Ed Colello** – It is the other way around.

**Don Rossi** – We have old copies of railroad right of way maps it shows a number of other buildings that were in existence when that map was done.

**Tom Costello** – That yellow that is highlighted on the map what does that represent?

**Don Rossi** – That is my depiction of the tracks and the trestle.

**Tom Costello** – But that is not the railroads right of way, the right of way is a lot wider?

**Don Rossi** – That is right.

**Tom Costello** – Now when you are coming down the hill on the Brewster Honda side and there is a Suburban Propane type tank it looks like it is on the property of the railroad?

**Don Rossi** – Tom, I have to tell you it looks like there is a lot of encroachments that might go back and forth on the properties. It looks like this is the existing driveway that you are referring I don't where the propane tank is but this is where you drive in. It looks like you probably straddle the boundary line with the railroad and that is use that has existed for decades and so you might be right in connection with that because it certainly looks it is. This is a retaining wall and I will point it clearly for everyone there is a retaining wall that runs here and this is where the driveway is that goes down and it looks like it is too close.

**Tom Costello** – The tank is on the little retaining wall that is maybe three feet high and it looks like it is carved out and sitting on that little embankment.

**Don Rossi** – It must be in this little area.

**Tom Costello** – That general area.

**Ed Colello** – Why would that be there?

**Tom Costello** – I would guess it has to be a certain distance from the building because as you drive down it gets pretty narrow the right of way and the building and it looks like it is going to be 25 feet away from the building. It is a big one.

**Don Rossi** – It is a multi-tenant building. It is not just Brewster Honda. It has a fair amount of usage.

**Tom Costello** – On the subject property are there any permanent structures on it?

**Don Rossi** – Permanent structures, there is old framed foundation that is showing the remains of a framed building but other than that no permanent structures.

**Tom Costello** – There is a lot of vehicles down there.

**Don Rossi** – There are. There is no question of the purpose of the application is to utilize it for storage. It is thriving business, a good business, and one that we hope is going to result an overall improvement of the main buildings. They have made a significant investment in Brewster.

**Tom Costello** – Don, how is that going to improve the buildings though? You are currently using that property. It looks like you are practically maxing out the amount of space. You could probably squeeze a few more cars down there.

**Don Rossi** – How it is going to improve the buildings is that it is going to act to promote the business that owns the building. It permits them to utilize a piece of property that is otherwise unusable for purposes of the zoning ordinance to their business advantage so it is going to we only just purchased this property only about four months ago from the DeMarisco's. The property has fallen into some degree of disrepair so this part of an overall business plan to permit their business to...

**Ed Colello** – I think what Tom is saying and I don't like to speak for anybody but I agree with Tom I am not saying it is a bad application, don't misread what I am saying, I am not saying it is not going to help Brewster Honda do their business, but how can it improve it now because they have been using it for a long time now, correct, forget the fact that they just recently purchased it but when they rented it for years. You first came before us how long ago?

**Don Rossi** - Almost a year ago.

**Ed Colello** – But again how many years before it.

**Don Rossi** – Brewster Honda has been using it for years and DeMarisco Pontiac used it for years.

**Ed Colello** – I don't know how this is going to now help Brewster Honda because they have used it for years.

**Don Rossi** – It is not going help them anymore than use up to this point has but they are under scrutiny by the Building Department.

**Ed Colello** – I understand that taking away can hurt them but giving it to them isn't going to help them anymore because they already got it.

**Don Rossi** – Glass half full and glass half empty. Taking it away would severely hurt them.

**Tom Costello** – Do you know how many vehicles are parked there?

**Don Rossi** – I don't know exactly I haven't been down there recently. How many are there I don't know. Does anyone have any questions about the history?

**Tim Froessel** – I have one and I apologize for not thinking of it last month but it occurred to me afterwards the easement that runs and connects the two properties lot 7 is the one that is question?

**Don Rossi** – Lot 41. 6 and 7 this is actually two lots.

**Tim Froessel** – Does that easement continue across lots 6 and 7 unto Route 6. If I am the owner of lot 41 do I have an easement to get from my lot all the way to Route 6 across lot 6 and 7?

**Don Rossi** – Yes, we do.

**Tim Froessel** – OK.

**Don Rossi** – That is my reading of it. Extensive affidavits, I shouldn't say extensive affidavits, affidavits in the file as to the continuous use in connection with the sale of both sides that have been relied upon by two title companies so yes it could be used for access out to 6. My understanding reading it though is that it is conjunction with the use of these lots so we couldn't sell this lot off separately together with an easement across lot 6 and 7. So there is an easement to cross the railroad right of way to get to 6.

**Tim Froessel** – That is what I am getting out. What I am getting at is could someone buy lot 41.

**Don Rossi** – Someone could buy it Tim but they couldn't use it for any permitted use except for a very limited set of accessory uses and what we are proposing is to tie the use of this lot to lot 6 and 7 and the use variance is to use it for the accessory use only, no principle use. The accessory use is the storage of automobiles in connection with the business on lot 6 and 7. Quite frankly we have looked to use it for other uses, we can't. Another thing that occurred in the history of Brewster Honda's dealings is Brewster Honda leased the property starting back in 1991, they had an option to purchase. At the time they exercised their option which I have to check I have it here November I believe of 2002 automotive sales was a permitted use in the NB1 district so when they exercised their option and decided to purchase the property it was their understanding that this accessory use was going to be permitted albeitly it might have had to come to a variance we really never planned on this it is an accessory use that we would have gone to the Planning Board with because it was permitted but we would have had an issue with it not being on the same lot. But nonetheless automotive sales was permitted in the district when they exercised the option. After they exercised the option they were obligated to buy the property there was a gap from the exercise of the option to the closing because when we exercised the option we thought the overall property was worth "x" and the DeMarisco's thought it was "y" and we got into a hassle with them over the evaluation of the property, the appraisals and what price we ultimately had to pay so there was a big gap so when they exercised the option permitted in the NB 1 automotive sales continued I believe in the original drafts of the commercial amendments in NB 1 but then it was eliminated so we talked about this last month in as far as them buying the property and then coming to your Board and saying we have a hardship but the timeframe bears out when they exercised there was a lease permit on the property. So again I think we have a classic situation here that warrants a use variance we can't use this property for any permitted use. We are frustrated not only from the fact that from the river we would have a difficult time doing but we would have a difficult time meeting the setbacks and

the ordinance itself. So we have an unusable parcel of land with what we think is again a reasonable limited use that could only occur in conjunction with uses on 6 and 7 and we really don't have an alternative site.

**Ed Colello** – With that said the problem we have as I mentioned to you earlier is that Town Code Section I38-81C states that if there is an open case in court where a business has been cited as been sited that Town Law prohibits us from voting on any application we have two questions here. Don and his firm believe they have researched and that they only pertains to the Planning Board, site approvals in the Planning Board while this Board has followed that law for a number of months, a year, however long it has been. Unfortunately, I don't think we can settle that dispute tonight.

**Don Rossi** – Just if I could I want to state for all the members of the Board what has prompted this comment is a memo that was received from Ron Harper dated June 8<sup>th</sup> where he raises this issue and he raises this in a way that kind of indicates that there is a discretion on the part of the Zoning Board of Appeals because I believe it says that the Zoning Board of Appeals not to hear us but I also want to point on that June 8<sup>th</sup> the date of that memo we meet with Ron and also Joe Charbonneau from Willis Stephens office to specifically discuss the violations that Ron had issued and he has been very zealous in communicating with us and keeping an action pending before Judge Borkowski in the Town Court but we reached agreement in that meeting which I memorialized with a letter to the court with copies to Joe and Ron that the violations were issued and the court proceeding commenced, not the violations issues but the court proceeding, the enforcement proceeding was commenced in violation of the automatic stay provisions of Town Law 267 provides if there is alleged violation and the land owner makes application to the Zoning Board of Appeals that all enforcement proceedings are stayed. That is clear and the Town Attorney agrees with that completely. In our letter we said we are going to proceed with the Zoning Board of Appeals application and no one took any issue with that. I don't have my copy of the code as I said. I specifically had our office research the issue we had a meeting, a couple of meetings ago I was hearing of this restriction I had not heard of it before your Board but again it appears to us that it is the Planning Board that is precluded from hearing an application. I don't have anything else to give you on that. If it is something that you need the Town Attorney to give you an opinion on that.

**Ed Colello** – I don't see another way around it. I really don't. Again this has just sort of jumped up in front of us we just got this.

**Don Rossi** – Also so there is no misunderstanding we wouldn't be proceeding before your Board if we didn't think we weren't entitled to do it. Obviously it is number one if you are going to refer this to the Town Attorney's office and Ron to further review it I don't want there to be any misunderstanding we are going to pursue what we believe know are pre-existing non-conforming rights to the use that we are in fact asking you for so there might be a bit of alternative and two paths running concurrently and I wouldn't want to take up anyone else's time if we come to a resolution with Joe on that than obviously that would be a much better situation for us because we would have a pre-existing non-conforming outside storage use that we would be able to continue in my opinion.

**Ed Colello** – So how are you going to do that? That is end run.



**Don Rossi** – Not an end run. I would call it a screen. Here is what happened. I am just bringing it up so you don't find out a month from now that we are coming back to you for an interpretation I want to let you know what we are planning on and really what it came from was looking into the history of the easement we have affidavits from the fellow that bought the property from the lumber company specifically stating in a recorded instrument that he used the property continuously for storage uses which we were not aware of when we brought the application to you. We are giving this to Ron and Joe.

**Ed Colello** – What did he store?

**Don Rossi** – Storage of materials. This is what he said. Then you get into the issue of storing lumber and maybe Borden's milk crates and things like that. But the Zoning Ordinance lists as an accessory use.

**Ed Colello** – So you are going to ask Borkowski to make a decision?

**Don Rossi** – We are not going to ask Borkowski anything yet. We are going to talk, we are going to look the issue before your Board with regard to the processing of the application because we certainly don't want to do anything to derail the impending use variance application and as long as we are entitled to proceed we can still come to you.

**Ed Colello** – I agree with you. I am going to tell Joe and I don't like to speak for this Board but I am here but I strongly don't want Borkowski running the Zoning Board of Appeals and he is a friend of mine. His job is to run the court, the Zoning Board of Appeals is to make rulings in regard to these matters.

**Don Rossi** – I didn't mean to say we were running to the judge to make we are going to discuss that with Joe Charbonneau and Ron Harper to let them see the results of the research that has been done since the last meeting but as I said before I think we have a classic case for a use variance I can't imagine a better one I have never seen one in 25 years of practice that was like this. That is my feelings about the merits of this application and if we come up with something and we are able to prove to the Town Attorney and Ron, Ron is really the first step on the issue of pre-existing, non-conforming use, if Ron use then it might this use variance proceeding moot and then if agrees then we really don't have to do anything so that is the way we are.

**Tom Costello** – When were the dates of the three violations issued?

**Don Rossi** – Approximately the time when we submitted the application in the fall of last year. He sent us a letter saying you are in violation. We applied to this Board for the use violation. At the time the moratorium was in effect.

**Tom Costello** – And the violations were for what?

**Don Rossi** – There were for the storage of new, unregistered vehicles on the property. I can summarize it, I can get you copies of it.

**Tom Costello** – That is OK. All three of them are related to the same thing?

**Don Rossi** – Yes. Three counts arising out of the storing of automobiles.

**Tom Costello** – What have you been to rectify other than coming to this Board have you been trying to work anything else out?

**Don Rossi** – No.

**Tom Costello** – Because there was a period of time when you weren't before us?

**Don Rossi** – We were before you in the sense that the application had been submitted but we were stayed, you were stayed from hearing the application because of the moratorium then there was the lifting of the moratorium back in February.

**Tom Costello** – So you came back on the docket?

**Don Rossi** – Yes.

**Ed Colello** – We are going to keep the public hearing open are there any questions, thoughts or opinions from anyone in the audience?

Lynn Eckardt – If there is a variance granted it runs with the property so then the property would then be more valuable when it is sold?

**Ed Colello** – The entire property?

Lynn Eckardt – Yes.

**Ed Colello** – Yes. I would assume so.

Lynn Eckardt – It was in front of the Board back in June '04 do you know what that was for I have the notes there but it wasn't for November but I wasn't sure about the June meeting.

**Ed Colello** – It was for the same issue.

**Don Rossi** – I will check too. It was my recollection it was June I could tell you the exact date.

Lynn Eckardt – It was June 21, 04.

**Linda Stec** – It was June.

**Don Rossi** – It was still subject to the moratorium.

Lynn Eckardt – I guess my point is that once they bought the property it appears to more of a hardship but in fact it was always the same hardship. They do go into that it is problematic.

**Don Rossi** - I would just like to say that at the time we exercised our option we didn't think it was going to be problematic.

**Ed Colello** - You didn't think when you bought the property you would be able to park the cars there.

**Don Rossi** – When we bought the property, when the closing occurred on the property in April, when the Zoning Ordinance was in effect when the option was exercised in 2002 and the ordinance had not been amended and automotive sales was a permitted use so then it was a factor in exercising the option because I as you are all I am sure you can imagine this is a business that is growing and continuing to grow and while it was independency of its lease and decided hey we really should buy this place we have a great location here and what we have to buy, the lease, the option covered all three pieces so we have to buy all three and we have been using this land for the storage of vehicles, the Zoning Ordinance permits it, it is business that somebody tell me if I am wrong, it is a good neighbor, albeit it is automotive use but we all drive automobiles and they are a good neighbor and do the right thing whenever they are asked so it is a home run but permit uses, accessory, no other possible uses didn't seem to be a big stretch to be able to use it.

**Ed Colello** – Let me say this, and I am only speaking for myself again, personally, whether the applicant owns the land or whether they lease the land has no bearing on how I feel about the land. I don't think it is a greater hardship now that they own it.

Personally I look at the criteria for a use variance and I am looking it and I say to myself can they realize a reasonable return for something that is an alleged hardship relating to the property in question is unique. I think it is somewhat unique. “That the requested variance will not alter the essential character of the neighborhood”, no one even knows it is there. “That the alleged hardship was not self created” you could say it is self created because the applicant bought the applicant but the applicant had that problem before he

bought the property whether he owned it or leased it to me and I don't know how the other Board members feel really has no basis. Nor does the fact that if this variance is granted that property is worth more as part of the overall property but it is just the nature of beast so to speak of any kind of variance. Variances usually for example when we give a variance for a person to put a house on a piece of property one foot closer to the property line does it increase the property value sure because now there is a house on it. It is probably a bad analogy but I think most variances increase the value of the property. I don't think there are too many variances that decrease the value of the property if they do we are not doing a good job now.

Lynn Eckardt – I think it is more of a hardship for them.

**Ed Colello** – They don't know how many cars they have. I am not making fun of them they have this property that is so valuable to the business and they don't know how many cars are on but thank God there is no back entrance you might lose some and not know for a week which shows you are storing them meaning you are not turning them quickly which is fine I have no problem with that.

**Don Rossi** – I guess one reaction would be if we had no cars there we would still have the same factors for the variance.

**Ed Colello** – I am not denying that, please I am not denying that whatsoever. Nobody even knows it is there. You have to have a helicopter to find that piece of property which is good in my opinion for a use variance because I have to tell you in 15 years we have granted what one variance, one, two?

**Tim Froessel** – One I know of.

**Ed Colello** – Didn't you present A & M Carting.

**Don Rossi** – I remember being on the losing end of one and working it some arrangement the parking.

**Ed Colello** – So we will keep the public hearing open we have to get this open.

I will call Joe, I will call Ron, we will get this resolved.

**Tim Froessel** – One question if there is any recorded document or written agreement that spells out that easement?

**Don Rossi** – I have a memo here that sort of summarizes that. I have copies of that. It covers all the bases that we have been talking about. And the attachments and the affidavits and it continue further on.

## 2) **Lori Fava**

**5 Sycamore Road**

**TM# 56.12-1-20**

**Ed Colello** – Just to remind you you are still under oath.

**Lori Fava** – You said you needed one measurement.

**Ed Colello** – That was the question that we needed last month if you look at this we needed point C because we needed to see the overall of 50 feet and we have 27 on C and 15. No, this shows 18 to the deck, so we have 27 and 15.

**Tom Costello** – I don't remember if we ask you this last month but the lot line looks like it has been adjusted because it looks like it describes old property line.

**Lori Fava** – I think when they built the house next to me they a bigger variance.

**Tom Costello** – So they had to move the lot line?

**Lori Fava** – Yes.

**Tom Costello** – You are the third house in on Sycamore?

**Lori Fava** – Yes.

**Ed Colello** – If you look at Ron’s denial lot it says the “existing structure does not comply with the required setback provisions. It would be an enlargement of non-conforming structure which is prohibited by code section 138-11.” This woman only needs one variance from the overall setback but Ron’s letter she needs two one from the overall setback and one from 138-11, do you agree it is only one?

**Tim Froessel** – I definitely agree.

**Ed Colello** – She definitely needs a variance from the overall setback she needs 50 feet she has 50 feet she has 42 so she needs an 8 foot variance but if you read Ron’s denial letter and he brings up section 138-11 which is the expansion of a non-conforming pre-existing structure it almost implies that we should go for two variances which we never have before we have never really done that because this Board has always had the position because if we take care of the mathematical problem that assumes or I guess that supersedes that we know that it is pre-existing non-conforming structure.

**Tim Froessel** – It is 15 or whatever to the house the deck is going to be 18 if we grant our variance and give her eight feet from the total she could make a deck that goes all the way across.

**Tom Costello** – Let me ask this question if the deck was 20 feet from the property line not 18 the only thing that she is non-conforming from is the enlargement would he still deny it?

**Ed Colello** – Probably.

**Tom Costello** – Have we had one that is just that?

**Ed Colello** – I don’t remember.

**Tom Costello** – It is always in conjunction with a setback issue. Because she would still enlarging if she put the deck onto a non-conforming structure so it would still be theoretically be violation of that as long as you meet the setbacks of the enlargement historically you said that was conforming. You didn’t need a variance.

**Ed Colello** – So we are in agreement the applicant needs one variance eight feet relief from the overall requirement side setback requirement of 50 feet.

**Tom Costello** – As long as we reference the map.

**Tim Froessel** – Can I play devil’s advocate for a minute here. The deck itself is an accessory structure is it considered an accessory structure? I am thinking about the side yard setback which is 20 feet she only has 18 feet does she need a variance to go two feet into the side yard setback this is an accessory structure.

**Tom Costello** – I don’t think it is an accessory structure because it part of the structure.

**Tim Froessel** – Because it is pertinent to the house.

**Ed Colello** – I think we understand the application is there any other final comments you would like to make? Is there any final comments you would like to make?

**Lori Fava** – No.

**Ed Colello** – Do you think you have had a fair and adequate opportunity to state your case?

**Lori Fava** – Yes.

**Ed Colello** – We will close the public hearing please have a seat.

Public hearing closed.

**Ed Colello** – I will entertain any discussion, motions either in favor or opposed to the application.

**Tim Froessel** – I will make a motion to grant applicant a eight foot variance from the total side setback requirement from the construction of a deck as shown on the survey as submitted with the application.

**Ed Colello** – Do I have a second?

**Kevin Sheill** – Second.

**Ed Colello** – Will you address the criteria please Tim.

1. Whether an undesirable change will be produced in the character of the neighborhood, (or a detriment to nearby properties will be created by the grant of the variance).

No, I don't think so it is a deck practically everyone has one.

2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

No, because no matter where she put the deck or what type of deck she built she would need a variance.

3. Whether the requested variance is substantial.

It is eight feet of the require 50 so it is less than 20% it is on the border line but because it is a deck and it is common structure that it not considered substantial.

4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.

There is no evidence of that.

5. Whether the alleged difficulty was self created.

No, it is how her house is situated on her lot.

**Roll Call Vote:**

**Joseph Castellano** – In favor

**Tim Froessel** – In favor

**Tom Costello** – In favor

**Kevin Sheill** – In favor

**Ed Colello** – In favor

The variance was approved by a vote of 5-0, 1 absent, 1 vacancy.

**Ed Colello** – If you could up here and do one thing and come up here and sign this map so we know exactly where the deck is going. Thank you

**3) Scott Jeffrey**  
**4 Pine Tree Lane**  
**TM# 45.16-1-17**

**Ed Colello** – This is a carry over. The mailings are all in order?

**Linda Stec** – Yes.

**Ed Colello** – Can you just give us the tree top version, the abbreviated version of what you are trying to do one more time.

**Scott Jeffrey** – We have an existing pool and a deck I need a variance for a 35 foot setback and I am only the minimum is 14 feet and it is 16 feet for the deck. The reason why I have to the pool in the front of the house because the back is all septic fields and the other side is all steep inclines and last month I gave you all the letters from all my adjoining neighbors that had no problem with it.

**Ed Colello** – So the only variance is one from the front yard setback because you are on the corner?

**Scott Jeffrey** – Yes, because I am 36.2 from the other property line.

**Tim Froessel** – He has two front yard setback.

**Ed Colello** – What do you mean 36?

**Scott Jeffrey** – 35 foot setback.

**Ed Colello** – 35 is what you need. You have 13.2 inches.

**Scott Jeffrey** – Because I have two variances according to Mr. Harper because on Pine Tree I am on a corner lot.

**Ed Colello** – You have two front yard setbacks, correct.

**Scott Jeffrey** – This one here I need it but this one I don't.

**Ed Colello** – Right exactly which is on the Brewster Hill side. So you have it as how far?

**Scott Jeffrey** – 14 feet is the pool and the deck is 16.

**Ed Colello** – So we will go to the closest the point he has it as 13.2 and it is not a big difference.

**Scott Jeffrey** – That is because my first measurement I was under the gun I didn't have anybody to help me and he wanted the measurement pretty quickly.

**Tom Costello** – So what is it?

**Scott Jeffrey** – It is 14 feet.

**Ed Colello** – You are sure. And I am not trying to give you a hard time but I have it at 13.2 as your first measurement. It is 14?

**Scott Jeffrey** – Yes, because I didn't have help I wanted to get on the agenda for last month. I didn't have anybody and then I had my wife help me and then I got a more accurate one.

**Ed Colello** – It is better for us to use this one because you are getting a little room for error. This you are asking for a six foot variance you are going to ask for a seven foot.

**Tom Costello** – I don't think he is going to move the pool a foot.

**Ed Colello** – Let's use the 13.2, is that OK with you?

**Scott Jeffrey** – That is fine.

**Ed Colello** – So the applicant is requesting one variance the problem is that this lot sits on a corner when you sit on a corner you have two front setback requirements one he is OK one he is not so he is requesting a variance of 22 feet. Any questions, thoughts or opinions from anyone in the audience in regard to this application?

**Tom Costello** – Is the deck that is constructed on the end of the pool is that completed?

**Scott Jeffrey** – No, a neighbor had called Mr. Harper about it so I had stopped it. He had told me to stop the work on it so I took the stairs off it I have railings on there, locking gate.

**Tom Costello** – So your intention is only to build a deck on the end of the pool?

**Scott Jeffrey** – Correct, just what it there.

**Ed Colello** – Can I see that picture for a minute? Now this depicts exactly where this is going to go, this is exactly where your steps will go and etc, right.

**Scott Jeffrey** – Part of the steps going coming this way.

**Ed Colello** – But that is your deck. Do I have one of this in here?

**Scott Jeffrey** – You should.

**Ed Colello** – Because we are going to want initial that.

**Tom Costello** – If you did go by and look at it I can tell you that even though it is relatively close to the road it is a much different elevation and it is heavily screened with shrubs and trees and it is not at all it does look like there is a pool there when you drive by.

**Scott Jeffrey** – That is Brewster Hill there as you are driving down and that is the corner of Pine Tree and Brewster Hill.

**Tom Costello** – And normally I wouldn't be in favor of approving a pool 13 feet from a road but the way it is there it is really screened and relatively safe because it is at a different elevation.

**Scott Jeffrey** – The embankment is about seven feet high, the embankment that is protecting between Brewster Hill and the property line and the pool.

**Ed Colello** – Any other questions? Any other final comments you would like to make?

**Scott Jeffrey** – No.

**Ed Colello** – Do you think you have had a fair and adequate opportunity to state your case?

**Scott Jeffrey** – Yes.

**Ed Colello** – We will close the public hearing, take a seat.

Public hearing closed.

**Ed Colello** – Once again the applicant is requesting a 22 foot variance from the front setback requirement on the eastern side of the property on Brewster Hill Road. I would like to make a motion to grant a 22 foot variance from the front setback on the east side of the property to face Brewster Hill Road. Do I have a second?

**Tom Costello** – Second.

**Ed Colello** – I will address the criteria.

1. Whether an undesirable change will be produced in the character of the neighborhood, (or a detriment to nearby properties will be created by the grant of the variance).

No, the pool is already obviously and as Tom mentioned from driving by you can barely see you would have to be really looking for it, hunting for it, so I think it would have no change in the character in the neighborhood.

2. Whether the benefit sought by the applicant can be achieved by some feasible method other than a variance.

I don't know if he could because he has two front to deal and you are not supposed to put pools in front of the houses but here when you are on the corner and you have two fronts it is very difficult to do it any other way.

3. Whether the requested variance is substantial.

I think you could call it substantial again the requirement is 35 feet and the applicant only has 13 but again as Tom mentioned with the slope of the property and the elevation it gives the appearance that it is not even there from most angles.

4. Whether the proposed variance will have an adverse effect or impact on the environmental conditions in the neighborhood or district.

I think it will have none.

5. Whether the alleged difficulty was self created.

Obviously, the applicant wanted a pool and wanted to put a pool on his property so someone could make the argument that it was self created but again the applicant didn't design the property or the elevations etc while the applicant did put the pool in I don't think you could look at this as a self created type problem.

**Roll Call Vote:**

**Tom Costello** – In favor

**Joseph Castellano** – In favor

**Kevin Sheill** – In favor

**Tim Froessel** – In favor

**Ed Colello** – In favor

The variance was approved by a vote of 5-0, 1 absent, 1 vacancy.

**Ed Colello** – If you could just come up and initial something. If you could just sign this to show where the deck will go. We will take a 10 minute break.

**4) Bruce LaChapelle**  
**18 North Road**  
**TM# 56.14-3-10**

**Tom Costello** - Are the mailings in order?



**Linda Stec** – Yes.

**Bruce LaChapelle** was sworn in by **Tom Costello**.

**Ed Colello** – Can you walk us through the application?

**Bruce LaChapelle** – I was here before the Board before and I guess it was viewed as the project being too expansive what I would like to do is add a second story to existing non-conforming structure and I am short on the side yard setback and the total overall side yard setbacks and the front yard setbacks. Really everything here is existing and non-conforming and I don't plan from deviating from the footprint.

**Tim Froessel** – There is another issue on this I went by there not too long ago and there was a stop work order posted to the front door.

**Bruce LaChapelle** – It hasn't been lifted because I had to come before the Zoning Board of Appeals I removed the drywall from the interior walls and I wasn't aware that we needed a building permit to do it because what we were going to do was insulate the existing structure and put it back together without trying to do an addition on it but since the stop work order we decided to come back in front of the Board.

**Ed Colello** – So help me out here. So your first process you weren't going to put an addition, you were just going to insulate it?

**Bruce LaChapelle** – Right. The first process was I came before the Board.

**Ed Colello** – That was for a garage if I remember.

**Bruce LaChapelle** – I wanted to incorporate the existing garage and a second floor.

**Ed Colello** – So now I haven't looked at it yet you ripped off some of the siding or most of the siding?

**Bruce LaChapelle** – None of the siding we were inside we just removed the drywall inside.

**Ed Colello** – And he issued a stop work order?

**Bruce LaChapelle** – Right.

**Ed Colello** – How did he know about did somebody complain?

**Bruce LaChapelle** – I had a dumpster in front of the house.

**Ed Colello** – That is a dead giveaway.

**Bruce LaChapelle** – I wasn't aware that I needed a building permit. Twenty five years in construction to remove drywall I do that everyday.

**Ed Colello** – OK, so your first thought was to remove the drywall insulate the house thoroughly.

**Bruce LaChapelle** – But new kitchen cabinets in.

**Ed Colello** – All right and no addition. Now you decided to put a second story?

**Bruce LaChapelle** – Yes.

**Tim Froessel** – The original one was for a second story that was going to go all the way across to the garage.

**Tom Costello** – So to summarize your proposed plan is to put a second story on your entire first story and you are not going to extend the footprint at all?

**Bruce LaChapelle** – No.

**Tom Costello** – What is the difference from the house to the garage?

**Bruce LaChapelle** – Eight feet.

**Ed Colello** – Are you doing the work yourself?

**Bruce LaChapelle** – Yes.

**Ed Colello** – And once again I want to make sure you are not increasing the footprint at all?

**Bruce LaChapelle** – No.

**Ed Colello** – But you haven't started on this process yet?

**Bruce LaChapelle** – No.

**Ed Colello** – Do we have any questions, thoughts, or opinions from anyone in the audience on this application?

Walter Hermann – North Road. A couple of questions. Mr. LaChapelle you have owned the property for about a year and a half?

**Bruce LaChapelle** – Six months.

Walter Hermann – You are changing the characteristic of the ranch by going up do you plan in living there or renting it?

**Bruce LaChapelle** – Living.

**Ed Colello** – Any other questions?

**Tom Costello** – Do you live there now?

**Bruce LaChapelle** – No.

**Tom Costello** – Do you live in town?

**Bruce LaChapelle** – No.

**Ed Colello** – I have seen the property before I would like to look at it again just to get in my head obviously pictures are very good but to give me a feeling for the character of the neighborhood again.

**Tom Costello** – Do you have septic up there?

**Bruce LaChapelle** – No, town sewer.

**Tom Costello** – I would like to take a look as well.

**Ed Colello** – Mailings are all in order?

**Linda Stec** – Yes.

**Ed Colello** – So you will be on the agenda for September 19th.

**Bruce LaChapelle** – Yes.

**5) Gregory and Geraldine Valerioti  
19 Marlin Road  
TM# 56.14-2-18**

Geraldine and Gregory Valerioti, **James Nixon**, architect, and Robert Lusardi, attorney, Daniels and Porco, appeared for this application and were sworn in **Tom Costello**.

**Tom Costello** – Did you check the mailings?

**Linda Stec** – Yes, I did.

**Tom Costello** – What are these?

**Geraldine Valerioti** – This is copies of letters from the neighbors that we didn't submit.

**Ed Colello** – Who wants to start?

**James Nixon** – I am the architect for the Valerioti's. The Valerioti's own a ranch house on Marlin Road in the Brewster Heights section where it is common that there are pre-existing non-conformities to the lot. In this particular case they own a 10,625 square foot lot and the zone requires a 20,000 square feet. What the Valerioti's propose to do is enlarge their existing a one car garage which was common when the house was built to make that into a decent sized two car garage and in order to that a side yard variance is

required and a front yard variance is required and the combined side yard would require a variance. What is proposed is the side yard where the expansion would be of 10 feet where 20 feet is required the pre-existing side yard which the other side yard the other side which is not to be changed by this proposal is existing 15.7 feet and that would remain so however the combined two yards would be 25.7 feet right now they are non-conforming at 37 feet and the side setback and the side yard therefore need the same variance 20 feet is required we have 10 feet and that would apply to the driveway as well as to the garage. This is existing house that is seen pretty well head on from the street, this is the existing house again is to the left in this photograph I am showing you the neighboring property that is close to the area where the construction would be.

**Ed Colello** – Can you pass those around?

**James Nixon** – The proposed construction is pretty straight forward. It is a one story house, the addition would be one story, this is where the single car garage is now this would expanded to accommodate a two car garage and this would also come forward where that existing portion of the house is now however it would come out and be align with the wing which is to the left side of the house currently rather than being an “L” we would call an double “L” or a “U” shape. Any questions or comments so far? Let me point out that we believe that the application does not propose construction that will be inconsistent with the character of the neighborhood but in fact the photographs of many of the properties close by and throughout the rest of the neighborhood these kind of conditions have become rather common as I said. In the ‘50’s a one car garage was common but two car garages are more a minimum standard in 2005. The two car accommodation seems to work without any detriment to this neighborhood.

**Tom Costello** – I have a question do you have a picture of what the interior use of the space is going to be? How wide the garage will be?

**James Nixon** – No, I did not build a floor plan but the two car garage will be 22 feet and 35 feet deep.

**Tom Costello** – So that full shaded will all be garage?

**James Nixon** – The full shaded area will be garage and existing area will be all one large space.

**Ed Colello** – How many cars will fit in there?

**James Nixon** – It is two cars wide and it is deeper than I wouldn’t say it is quite double deep?

**Ed Colello** – How deep it is?

**James Nixon** – 35 feet deep. If there were two small cars it could be double deep.

**Ed Colello** – How long is an average size car?

**James Nixon** – About 17 feet.

**Ed Colello** – So it is a three car garage.

**Robert Lusardi** – I think the average car is about 20 feet I don’t think it is about 17 and it is a two car garage.

**Ed Colello** – Just out of curiosity what kind of car is that under the tarp?

**Gregory Valerioti** – That is my son’s car.

**Ed Colello** – What is that?

**Gregory Valerioti** – It is a Camaro, it is finished, he drives it on the weekends.

**Tom Costello** – Which one are you looking at?

**Ed Colello** – That is clearly a three car garage? Jim, how deep is this?

**James Nixon** – That is about 11, 12 feet. It is the depth of the wings.

**Ed Colello** – Your dormers are going to be here?

**James Nixon** – That is correct.

**Tim Froessel** – This area is going to be garage too?

**James Nixon** – The area and the dashed line and that rectangle.

**Ed Colello** – So this is all the garage.

**James Nixon** – Yes, a two garage.

**Ed Colello** – It is a two car garage if you have limos, if you have normal cars it is a four car garage.

**James Nixon** – Perhaps, it is two car garage to me it would be tight to do cars but you could squeeze them in.

**Ed Colello** – Let me ask this question.

**James Nixon** – Usually a garage is about 24 by 24.

**Ed Colello** – Weren't there some questions about cars being worked on the last time this application I am going on memory on.

**Gregory Valerioti** – I wasn't working on those cars, those cars are gone, I got rid of them, I had back surgery.

**Robert Lusardi** – Mr. Chairman we also have a number of neighbors, immediate neighbors and also neighbors in the general area that came out tonight in support of this application who have been waiting here a while I just was wondering if we could perhaps take it a little bit out of order and let them comment.

**Ed Colello** – Sure.

**Elaine Morehead** – 20 Marlin Road, directly across, every window I look out I can see out. They take care of their own cars, they are not taking of mine or theirs, they are just doing there own, washing them, vacuuming them that is all I ever see and I don't know where the rumor got out where they are servicing other people's cars if I had know mine would have been over there. That is my story.

**Roseanne Costello** – I live at 17 Marlin which is to the right of the Valerioti's.

**Ed Colello** – Immediately to the right.

**Roseanne Costello** – The construction would be to the right of my house. My comment is that I support what they want to do I also want to mention that we got a variance years ago to do our garage and that time Greg came and he asked if the fact that we put a garage and needed a variance would that ever hinder him if he wanted someday to put a garage and we said no it would have nothing to do with his property.

**Robert Lusardi** – Can you show your house on these photos?

**Roseanne Costello** – This one. The double "L".

**Robert Lusardi** – And you received a variance to do that.

**Ed Colello** – And you have a how many car garage?

**Roseanne Costello** – Just one.

**Gregory Valerioti** – The same depth.

**Roseanne Costello** – The same depth.

**Ed Colello** – You can put two cars deep if you wanted to.

**Roseanne Costello** – We never have. I don't know if you could we don't know if you could we only use the one.

**Ed Colello** – But is it 35 feet.

**Gregory Valerioti** – Most of the time they use the back as a little storage there is not too much storage in those houses so it is not all going to be garage either. Anybody that lives up in the Heights will tell you there is not much storage in those houses so it is not all going to be garage either being handicapped you don't want to go out in front anymore slip on the snow you like to pull your car into the garage and get out inside with the snow and all since the back surgery.

**Robert Lusardi** – We have some more neighbors.

**Ed Colello** – OK.

**Walter Hermann** – North Road. I live a block away from the Valerioti's we have know them for many years looking out of my family room window I see nothing wrong with the design and I support their endeavor.

**Ed Colello** – Thank you. Anyone else?

Man in audience – The Valerioti's are clean, they are meticulous people, they buy and sell cars or do repairs there, no one has had a problem. I hope the Board approves the project.

**Ed Colello** – Anyone else?

**Robert Lusardi** – We have attached a number of letters and petitions from other neighbors for this project.

**Geraldine Valerioti** – And this is from my neighbor Audrey Smith she couldn't get a baby sitter.

**Gregory Valerioti** - We also have 30, 40 letters from people in the neighbor besides the certified letters that went out and they are all marked different roads they are all clipped together.

**Tom Costello** – How does this application differ from the last one?

**Robert Lusardi** – It differs in that in several respect but primarily they are requesting a much lesser than the one that was before you a number of years ago so it is moved back significantly further.

**Tim Froessel** – It was 60 right?

**Robert Lusardi** – Now it is 10. And also the front of the building is moved, the garage part is out so it symmetrically so it is more in keeping with a number of other houses in the neighborhood with a similar type of double “L” or “U” and is usually attractive and pleasing that way so moves forward pretty much the same way as the neighbor's house does it would be almost identical to the way the neighbor's appears. We feel it is a much better application.

**Ed Colello** – Do you guys want to take a look at this?

**Tom Costello** – I don't remember it.

**Ed Colello** – I remember it but not well enough I would like to drive by it again. That is what we usually do. That is the usual practice of the Board. Do we have any other questions? We are going to leave the public hearing open obviously. We will drive by in the next 30 days. And then we are September 19th. You will be number three. So we will see you next month.

**6) Luis and Sylvia Pauta**  
**19 Root Avenue**  
**TM# 55.12.-1-17**

Sylvia Pauta, Luis Pauta and **James Nixon**, architect, appeared for this application and were sworn in by **Tom Costello**.

**James Nixon** – The Pauta's own property on Root Avenue and the corner of Route 6 and have been before you previously with regard to a roof over a deck and the interim the zoning has been changed in that area it is now a GC I zone I am told by Mr. Harper. I don't know what a GC stands for but it is a commercial zone and therefore the residential use is a now a pre-existing non-conforming use so we are requesting a use variance to expand the non-conforming use and that expansion would also require an area variance.

**Ed Colello** – Let's work on this a little bit. Was the first project done?

**James Nixon** – No.

**Ed Colello** – No, that has never been done?

**James Nixon** – No.

**Ed Colello** – Is that going to get done?

**James Nixon** – Well, if this goes through that is going to get changed, modified.

**Ed Colello** – Help me on the thought process. You come before us we give you a variance for what you want to do which is the roof on the deck, correct? But you didn't do that for whatever reason that is none of my business that is fine but now you are going to plan B.

**James Nixon** – Plan B is a little bit more ambitious than that plan.

**Ed Colello** – Well, plan A started a little bit more ambitious if you remember. I don't think you were involved in that.

**James Nixon** – I wasn't involved.

**Ed Colello** – Plan A was a little more aggressive. Plan A originally not only to roof you were going to do two parts correct? You were going to put a roof on the front and the side, is that correct?

**Luis Pauta** – My one bedroom has a big storm window.

**Ed Colello** – So where are we now?

**James Nixon** – But to generally refresh your memory the structure would be on the south side which is to the left of the photos. The one bedroom that Mr. Pauta is referring to the shaded area is the proposed construction the blank white area is the existing house the wing area in the back was apparently added on many years ago I don't know the story and I think in their earlier proposal among other things they were changing the roof line but not the room and there is a deck on the side which is something that was addressed earlier but now the proposal is these rooms are just not this big. The house is at is now is just over 1,000 square feet, less than 1,050 square feet. We want to increase it to about 1,700 square feet. Which is not huge but better. Basically the proposal is to build around that little bedroom wing that somebody else added onto that gets demolished and built over but to have a good sized we are referring to as a great room and have a living room and dining room and have a big enough space for the family to be together and be big enough for the kids to do something in one area and the adults can be in another.

**Ed Colello** – One story?

**James Nixon** – One story. The house will remain two bedrooms. So the plan here is that this bedroom that will get lost by this construction moves to what is now the living room. So it will be living room, bedroom, bedroom, kitchen.

**Ed Colello** – Do you have a floor plan?

**James Nixon** – Yes. This is the outline of the house. The kitchen will remain the same. This front room which is now a living room will become a bedroom. This bedroom will still be a bedroom, bathroom, this bedroom as I said now gets incorporated into this larger room. We moved the main entrance into the side which makes a nicer entrance.

**Tom Costello** – Where is the septic and well on this property?

**James Nixon** – The septic is in the front and the well is in the back. From her description the septic is somewhere in this area and as I recall the well is somewhere in the back. The well is in this little house and the septic is down in front here.

**Ed Colello** – And where does the property line start in regard to these pictures on this side?

**Sylvia Pauta** – Approximately from the trees along the side.

**Ed Colello** – Whose fence is that?

**Sylvia Pauta** – Ours.

**Ed Colello** – That is your fence. Not your garage?

**Sylvia Pauta** – No.

**James Nixon** – According to the survey that neighboring garage is two feet off the property line at the closest.

**Tom Costello** – Is the stone wall on your survey there?

**James Nixon** – It appears that the stone wall may go a little off his property. The wall seems to go in a line with the garage which a couple of feet past the property line I am not sure.

**Tom Costello** – When was that survey done?

**James Nixon** – 1971.

**Tom Costello** – He needs a use variance it is a commercial zone now.

**Ed Colello** – If you look at the criteria for a use variance in essence to grant a use variance the property has to be deemed worthless.

**Tom Costello** – I don't think so I think if you look at it what could you could use that lot for in a commercial way.

**Tim Froessel** – Another criteria is that the applicant cannot realize a reasonable return.

**James Nixon** – One thing I will point if the applicant wanted to convert the use to a permitted use he would have to change the use the lot does not work for anything the zoning does not work because the minimum lot width is 50 feet. All the minimum yards are 35 feet. And although we 50 foot wide lot the 35 foot yards are overlapping there is no place you can build.

**Tom Costello** – Is there a building envelope within the 35 feet?

**James Nixon** – They would have a three feet wide building envelope. They have a property of 72.9 feet.

**Tom Costello** – So you could argue that they couldn't be built for any commercial purpose.

**James Nixon** – It would lose its pre-existing non-conformity.

**Tom Costello** – The only value it would have if it was merged with another adjacent property that has the same zoning. I don't a problem with the use issue. My problem is the overbuilding on the small lot on a very busy road. That was my problem with the prior application. We are trying to do too much. Where you designate where the septic is I don't know how that is working because it doesn't look like it is big enough.

**Ed Colello** – It is probably a very small septic. How many bathrooms? Two?

**James Nixon** – Two bedrooms.

**Ed Colello** – How many bathrooms?

**James Nixon** – One.

**Tom Costello** – How many people live in the house now?

**James Nixon** – Four, them and two children.

**Tom Costello** – Has this been referred to the county yet?

**Linda Stec** – I didn't know I needed to do that but I will.

**Ed Colello** – That is OK, we have time.

**James Nixon** – If it is within 500 of a county road?

**Ed Colello** – Yes. What that means we will hold it off till next month but we have to go to the county because the county gets a vote either in favor or opposed not to scare you but the vast majority of them they don't have a problem and I don't remember the last time we got one back I do remember one that came back that they were opposed to. So we will see you next month. There is nothing we can do till next month.

**Tom Costello** – If you could do a measurement to the wall just so we have an idea we will go out and look at the property again and we can go out and look at the pictures and if you go out and see where the wall is relation to the property line.

**James Nixon** – I will give you some dimensions.

**Ed Colello** – See you next month.

**7) JoAnn and Louis Sbarra**

**71 North Brewster Road**

**TM# 56.28-1-10**

**James Nixon**, architect, appeared for this application.

**James Nixon** – This application is for JoAnn and Louis Sbarra on North Brewster Road.

**Tom Costello** – Paul, if you want to come up and look at on anything.

**James Nixon** – The Sbarra's own a relatively two story small colonial style house the lot is 100 feet wide with a little bit over 100 feet deep.

**Ed Colello** – Where is this house, sort of guide me a little bit. I am trying to remember it. I have probably driving by it a million times. If I was coming from the village would it be on the left side of the road?

**James Nixon** – Correct, it would be on the left side of the road.

**Ed Colello** – Is that Home Depot on the back?

**James Nixon** – Could be.

**Paul Fucito** – It is about a half a mile up from Shore Drive, coming from the village, there is a guard rail.

**Tim Froessel** – Is that the house with the pool?

**Linda Stec** – I think we made them take down the pool.

**James Nixon** – I think they moved the pool, I am not sure but the pool used to be right on the property line and now the pool is where the addition will go so if they get this variance to build this addition there will be no more pool.

**Ed Colello** – So now what do they want?

**James Nixon** – So now they moved the pool and now we are talking about getting rid of the pool entirely and putting more house there where the house is.

**Tom Costello** – Is the pool in the photo?



**James Nixon** – No, I just looked for it now it is not in the photo. It would be down the hill from this car. What they would like to do is add a family room addition to the first floor and to make that addition appear two stories in height but they don't want a full second floor but what they do want is in building code terms is a mezzanine over the family room. In building code terms a mezzanine is not a second floor if it under a certain size and it is open to below and things below. The key is that at this time there is no intention to expand the second floor and to expand the bedrooms. The expanded area is the family room on the first floor and the basement below that. They would like to make that basement a garage and because of the house as it is as close to the front property line and because of the grade they want to make the grade they would like to make the garage accessible for a vehicle would be a driveway down the side and it turns 90 degrees into the garage underneath.

**Ed Colello** – Isn't that a steep grade?

**James Nixon** – It is fairly steep.

**Tom Costello** – Can you meet the grade requirement in that short a distance?

**Ed Colello** – Is it 15%.

**Tom Costello** – The house is only back 42 feet so you don't have much front.

**Ed Colello** – Besides in the wintertime I don't know how you can get in.

**James Nixon** – It might not make 15. I pointed that out to them.

**Ed Colello** – They do not have a garage now?

**James Nixon** – They do not have a garage at all. Right now they park where the cars are seen, a parking pad right off of the road.

**Ed Colello** – There is no way in the wintertime they could use that garage. There is no way. In my opinion.

**James Nixon** – It would be nice to build it, sometimes use it as a garage but it not their high priority so if that doesn't work. Their first thought was to drive right into it that is never going to work because they only have 42 feet to work with. If that doesn't work and/or if the Board is amiable to the variance required for building construction but say nor for the driveway which is only two feet from the property line they could live with that. They want the house. It would nice to have the option for the driveway but they could live without it.

**Ed Colello** – The existing footprint is this right here?

**James Nixon** – Yes.

**Ed Colello** – They want to add this on from the basement up and then this is?

**James Nixon** – The deck.

**Ed Colello** – That is there now?

**James Nixon** – That is existing.

**Ed Colello** – So the only addition is this square right here.

**James Nixon** – And then a small porch area.

**Ed Colello** – So this will be a basement and then a one story and then a first floor. So the first floor will go to this floor hypothetically correct?

**James Nixon** – Correct.

**Ed Colello** – I understand what is the above it. I don't understand the mezzanine.

**James Nixon** – From the elevation from the front it would look like a two story. The portion where the siding is not drawn in is existing, this portion is the new addition.

**Ed Colello** – Why is not a two story addition?

**James Nixon** – Why is not a story addition?

**Ed Colello** – That is why I said it was building code terms because what the plan what they want to do is to go up and having a sitting room that overlooks over the family room. It will just a rail or a low wall.

**Ed Colello** – So hypothetically you are saying the front of this room will be a family room?

**James Nixon** – Right.

**Ed Colello** – So the front of this room would be open all the way to the ceiling.

**James Nixon** – That is right.

**Ed Colello** – Almost like a cathedral ceiling.

**James Nixon** – That is right.

**Ed Colello** – And to the back of the room hypothetically would be a stairway would be a a 10 x 12 area for them to have a library or something.

**James Nixon** – Right, and that would be even with the second floor but it is only with the back third of this addition.

**Ed Colello** – Let me ask you a questions would there would be corridor for them to go to the second story to these rooms?

**James Nixon** – Yes, the second story room in the back can connect to the corridor. The plan of the house is to go from the front door and immediately to your left is the stairs to go upstairs so when you get to the top of the stairs you are at the end of the house at that point you could cut a door you could turn left and go to that mezzanine and go down the stairs. But that mezzanine or loft is open to down below that is what makes it a mezzanine.

**Tom Costello** – How many square feet is the house today?

**James Nixon** – The house is 768 square feet per floor. A little over 1,500.

**Tom Costello** – And the proposed?

**James Nixon** – And the addition is another 747 square foot on the first floor and on the basement and the mezzanine above is about a 1/3 of that.

**Tom Costello** – So the total would be about a 1,000 not counting the basement?

**James Nixon** – Right.

**Tom Costello** – So you are going from 1,500 square feet to about 2,500 square feet. Not counting the basement.

**James Nixon** – That is about right.

**Ed Colello** – Let me go back to the page before this so if the Board you are telling they would be happy I don't want to say happy but if they didn't get this driveway and this garage away it would just be a basement and they would still park in front.

**James Nixon** – Yes.

**Ed Colello** – Can you get a measurement of what your proposed addition by getting this from here to the property line?

**Tim Froessel** – 26 feet.

**James Nixon** – So that would meet the requirement of 20 feet but they would not have the combined of 50 feet because they are short on the other side.

**Tim Froessel** – This survey from '94, '95 shows 24.5 they must have built this little bump out here and 14.5.

**Ed Colello** – Is the house going to be resided?

**James Nixon** – I am not certain.

**Ed Colello** – What will this be made?

**James Nixon** – I am pretty sure it vinyl. My recommendation would be siding to match. So they could either match this siding or reside the whole thing. I didn't discuss that in detail what they had in mind to do.

**Ed Colello** – And this porch will be exactly where there front door is only go up to be another door you are saying. There will only be one door?

**James Nixon** – No, there is another way. Because they want to be able to go down to basement or come up to the basement and so rather than have two front doors they will have a side door off the porch and the stairs will go down to the basement.

**Ed Colello** – But that will not go into this room?

**James Nixon** – No.

**Ed Colello** – How do you do that? Build a little closet?

**James Nixon** – Here is our family room, and here is a stair that is on the other side of the wall from the family room you would not necessarily know that stair was there.

**Ed Colello** – I go you. So this would be a new stairway. OK. It is a lot of work.

**Tim Froessel** – That is up the stairs?

**James Nixon** – Down.

**Tim Froessel** – And these are solid walls?

**James Nixon** – Yes.

**Tim Froessel** – So if you come up from the garage you have to come up out back in.

**James Nixon** – Yes.

**Ed Colello** – Questions?

**Paul Fucito** – 65 North Brewster Road. My immediate concern I don't know if you brought it up he is asking for two variances let's go to the second one the one for the driveway that driveway would be two feet off my property line take that with the house which to me seems to me a very ambitious redoing there. It is not a big lot and you are taking a house that is 1,500 and you are going to 2,500 is a lot of house for a small lot. I am concerned about and am also concerned about and I don't mean this in any harm to you Jim there are some pictures there that don't depict actually the way it looks right now as far as the way it is kept. I am very concerned about that.

**Tom Costello** – You mean the physical appearance?

**Paul Fucito** – Debris and stuff like that.

**Ed Colello** – I have to tell you I have a major issue with that driveway.

**James Nixon** – I am not surprised.

**Ed Colello** – Because all I see is God forbid someone coming out of there in the wintertime and not stopping and coming straight down that hill.

**Paul Fucito** – Jimmy and I are friends and I called him up just to talk to him up about it just so you know.

**Ed Colello** – And that is the difference between where the house would stop 26 feet away from the property line as opposed to the driveway being two feet from the property line. And who is not to say that if you get on the hill and someone backs up into the neighbors yard. They could easily back up into his yard.

**Paul Fucito** – Even coming out of that. Come out of there on that busy road. You can't back in. That is just the driveway. The other thing is the size of this house on that lot.

**Ed Colello** – We will go by and take a look. Can you ask them what they plan to do with the siding? I would like to know what they plan to do with the siding are they planning to match it or redo the whole thing. It is going to be clapboard or vinyl.

**Paul Fucito** – Am I the only neighbor that has concerns?

**Tom Costello** – You are the only one that showed. Although in the previous application the other neighbor on the other side did come.

**Paul Fucito** – Most of the problem lies on my side. I am very concerned about how this looks.

**Ed Colello** – I look at if you look at it aesthetically I can appreciate how big it is going to be the way you pictured it Jim it is a lot prettier house.

**James Nixon** – That is what I think.

**Ed Colello** – The porch, it looks better.

**Tim Froessel** – Aesthetically I really don't have a problem with the addition the driveway is a separate issue the way you have it depicted there is nice.

**James Nixon** – It is bare bones.

**Ed Colello** – We have some many people who do a terrible job of tying in the siding and it makes the addition look like an addition.

**James Nixon** – And not tying in the roof line.

**Ed Colello** – Do you have to move that pole if you don't put the driveway in?

**James Nixon** – Moving the pole is only for the driveway so if we do the addition and no driveway then we leave the pole.

**Ed Colello** – And this is going to take up where the pool is?

**James Nixon** – Yes.

**Ed Colello** – They can't move the pool further back?

**James Nixon** – Then it gets really steep.

**Tom Costello** – If you look in Section 138-46D 7, it says vehicular access into the lot shall not exceed a grade of 10% and shall meet the street line and travel way of the street in such a manner as to conform to the standard cross section for the street.

**Ed Colello** – And Lawlor will find it.

**Paul Fucito** – And what about the fact that is so close to my property?

**Ed Colello** – That is absolutely a factor. But the first thing I look it as safety and the second thing I look at it who is going to bother. In my opinion the driveway is a double whammy not only is it two feet from the property line but it is really a safety factor and as Tom said you probably can't do it anyway. I don't think you can make it work.

**James Nixon** – I had some concerns there and we established the priority is the house if they can do the addition and not the driveway that would be fine.

**Tom Costello** – The existing house, this little bump out, on the north side, is that two story?

**James Nixon** – It is two story. It is single window over here.

**Tom Costello** – It was originally a modular.

**James Nixon** – Yes. That box was only about 26 feet wide was a modular and they added that 10 by 12 bump out and it is two story it has a living room but I guess it expands a bedroom.

**Tom Costello** – The lot has more room to the rear then it does to the side probably more can be more with less impact on the neighbors if it was built back rather than to the side from a floor plan point of view.

**James Nixon** – That would be the problem. It is very steep.

**Tom Costello** – It would have to be on a different level.

**Ed Colello** – Are you clients going to be here next month?

**James Nixon** – I don't know.

**Ed Colello** – Make sure you pass on to them some of our concerns about the driveway and things like that. It may be a moot point because when you do your map and engineering you might realize it wouldn't have worked anyway.

**Tom Costello** – Is the driveway for your house adjacent to this lot line or is on the other side?

**Paul Fucito** – The driveway is on the side of my house and about 25, 30 feet off the next lot.

**Ed Colello** – How far is your house from the property line?

Paul Fucito – Twenty feet.

**Ed Colello** – We will check it out when we drive by.

**Paul Fucito** – Do I need to come again? Do I need to follow up with a letter?

**Ed Colello** – It is on the record if you would like to follow up with a letter you are more than welcome to. Your thoughts and your concerns as you mentioned about the driveway being two feet from the property line.

**Paul Fucito** – The integrity of the neighborhood as well.

**James Nixon** – Driveways are not easy on that road.

**Ed Colello** – So we will see you next month.

**Ed Colello** – Who wants to make a motion to approve last month's minutes?

**Tom Costello** – I will make a motion.

**Ed Colello** – Second?

**Kevin Sheil** - Second.

**Ed Colello** – All in favor?

All in favor.

Meeting ended at 10:30 PM.

Submitted by:

Linda M. Stec

