

## DECISION

A rescheduled public hearing was held before the Board of Zoning Appeals of the Village of Amityville, Suffolk County, New York at Village Hall on Thursday October 20, 2016 at 7:00 p.m. A recording of the hearing is on file with the Village Clerk.

The following persons were present:

Tracey Cullen, Chairperson  
Richard Ubert, Vice Chairperson  
Kirk Hurme, Member (Mr. Hurme participated via video conferencing)  
Todd Brice, Member  
Bill Ordon, Member  
Robert Alweis, Building Inspector  
Dina Shingleton, Clerk/Treasurer

John J. Vigorito, Owner of 335 Merrick Road Realty, LLC  
Joseph F. Buzzell, Esq., Attorney for the Applicant  
Michael Lynch, Applicant's Real Estate Appraiser  
Richard Handler, Esq., Amityville Village Attorney  
Members of the Public

Alternate member Chuck Vinciulla was absent from the October 20, 2016 meeting.

At various times preceding the hearing, physical inspections of the exterior of the site were made by all members of the Board of Zoning Appeals ("the Board"), as well as Building Inspector, Alweis. Public Notices of the Meeting were printed in The Amityville Record in accordance with statutory requirements. Copies of the application and the Public Notice are on file with the Village Clerk.

Proof of registered, return receipt letters to all affected residents as required by the Code, and due publication and posting was submitted and filed with the Village Clerk/Treasurer. The Chairperson personally observed a sign posted on the premises regarding the hearing, in accordance with the Code.

Following deliberation and comment at the open meeting, the Board reserved decision, noting that the Village was awaiting a response from the Suffolk County Planning Commission regarding this application. Thereafter, the Suffolk County Planning Commission submitted a letter, stating that the application "is to be a matter for local determination as there appears to be no significant county-wide or inter-community impacts." The Board then voted on the applications at its December 21, 2016 meeting, voting three (3) ayes with one (1) abstention to affirm the Determination of the Code Enforcement Officer (CEO), and by the same vote, to deny the Application for a Special Exception. The formal filing of the Decision with the Village Clerk was delayed, pending completion of a written decision.

**RELIEF SOUGHT:**

Applicant takes an appeal pursuant to Village Law (VL) §7-712-a(5) from the determination of the Code Enforcement Officer who declined to forward an application to the Planning Board for Site Plan Review, finding that the Applicant's proposed use at 335 Merrick Rd., Amityville, NY, (the "subject premises") for "off-street parking for employees and customers' is not a permitted use" under the Code of the Village of Amityville (CVA). Applicant also seeks alternative relief for a special exception for "use as vehicular parking," presumably under CVA §183-82(A)(10) or (12).

**OVERVIEW AND BACKGROUND:**

335 Merrick Road Realty, LLC, owns the property located on the south side of Merrick Road, approximately 180 feet east of South Bayview Avenue, in a "Business 2" District, also known as Suffolk County Tax Map # 101-10-3-5. On or about March 23, 2016, 335 Merrick Road Realty submitted an Application to the Planning Board seeking approval of a "site plan for off-street parking for employees and customers of Security Dodge located at 345 Merrick Rd." That location is the main automobile sales / showroom, repair facility and offices for Security Dodge, a premier south shore dealer of new and used cars and trucks.

On May 31, 2016, then Village Code Enforcement Officer ("CEO") Thomas Whalen rejected the Application for Site Plan Review, finding that:

"[l]ast January, and before the two-story building was demolished on the subject premises, the site was used for retail sales and general offices by Cameo Beauty Products. The Applicant now seeks to use the premises for employee and customer parking in connection with automobile sales and servicing conducted by Security Dodge at 345 Merrick Road, Amityville, New York.

The premises is situate within the B2 General Business District whose zoning is governed by CVA § 183-82. Thereunder, a lot may not be used solely for off-street employee and customer parking, unless incidental to a lawful use conducted on the premises. Further, no lot may be used for automotive sales or servicing, or for the storage of automobiles or vehicles for any purpose.

As a result of this determination, it would be fruitless to undertake Site Plan Review when the intended use is not permitted under the Code and no permits for such use could be issued. Consequently, the Planning Board Application scheduled for June 2, 2016 will not be considered."

Thereafter, Applicant appealed the CEO's determination to the Zoning Board of Appeals, and alternatively sought a special exception for "use as vehicular parking."

### THE APPLICATION:

Applicant submitted an Application to the Zoning Board of Appeals, appealing the Determination of then CEO Whalen. Applicant characterized Inspector Whalen's denial as follows, even though the Denial Letter did not articulate those issues:

- (a) the use of the Property constitutes illegal occupancy;
- (b) the use of the Property constitutes an unlicensed automotive operation;
- (c) the use of the Property constitutes an unpermitted use;
- (d) the use of the Property requires a special permit for a public garage;
- (e) the use of the property requires site plan approval for new commercial development; and
- (f) the use of the property requires a Certificate of Occupancy.

Alternatively, Applicant sought a special exception to permit Applicant's use for vehicular parking.

### APPLICANT'S PRINCIPAL POINTS:

1. Joseph Buzzell, Esq., counsel for the Applicant argued that CEO Whalen's Determination was erroneous.
2. Mr. Buzzell stated that CEO Whalen "has no inherent right to make decisions on behalf of the Planning Board."
3. Mr. Buzzell explained that companies "related" to Applicant "own other nearby properties." (Transcript, at p. 14). He stated that "[a]n associated entity who owns the property at 345 Merrick Road...supports the Security Dodge dealership. Another related entity owns the property immediately next door to the west [of the subject premises], 315 Merrick Road, which is used in connection with the dealership, particularly for the storage of inventory." (Transcript, at pp. 14-15).
4. Mr. Buzzell stated that "Security Dodge is one of the largest retailers in the Village, providing sales and services of four motor brands, Chrysler, Dodge, Jeep and Ram." (Transcript at p. 19).
5. Mr. Buzzel stated that the premises were previously "improved with a partially one and partially two-story building... [t]he building has become old and it became rundown. The tenant moved out, the buildings have not be (*sic*) maintained, and it is sometimes said the building looked dark. The applicant after acquiring the property demolished the old rundown and out-of-date improvements..." (Transcript at pp. 15-16).
6. That Applicant intends to use the premises for parking; not sales, repair or service of vehicles, and Applicant's attorney contended that "[p]arking is not an unlawful use." (Transcript, at p. 22).

7. Specifically Mr. Buzzell stated that Applicant is using the premises solely for parking – “no selling vehicles on the premises, no fueling or even washing vehicles on the premises. Just parking.” (Transcript at p. 22). He also said “I’m not storing vehicles” (Id.) and “none of the vehicles would be unregistered... [n]o storage of vehicles.” (Id. at p. 40).
8. The Site Plan was drawn to provide for approximately 68 parking spaces, with an access point from Merrick Road. (Transcript, at p. 62.)
9. That the Planning Board is authorized to review and approve an application for a certificate of occupancy for the use of parking facilities located on any other parcel whether adjacent or not to the commercial use.
10. The curb cuts are to remain at the same location. (Transcript, at p. 86.)
11. Mr. Buzzell stated that Security Dodge employs 150 people, and there can be up to 70 employees working at any given time. (Transcript, at p. 69.)
12. Mr. Buzzell claimed the Applicant's proposed use was being mischaracterized as a public garage, but “[i]t is just parking.” (Transcript at p. 22).
13. Mr. Buzzell alleged that “[p]arking is in harmony with the surrounding community and will not negatively affect the neighborhood” (Transcript at p. 42.) and submitted aerial photographs in support of the application.
14. Michael Lynch, a licensed real estate appraiser retained by Applicant, spoke on behalf of the Applicant as a “real estate expert.” (Transcript at pp. 44-45). Mr. Lynch purports to be a New York State certified real estate appraiser, based in Huntington, New York. He submitted a copy of his resume to the Board. He referenced a historical Google Earth aerial photo, which showed according to him, a “tired, neglected property. There was - the photo seems to show a broken window. There was mold on the exterior portion.” (Transcript at p. 48). He stated that “parking areas that serve the permitted retail and office and restaurant uses in the immediate area are similar in nature to what is proposed for this lot.” (Transcript at p. 49).
15. Mr. Lynch opined that the premises previously housed “a neglected building with no landscaping to speak of,” (Transcript at p. 50), and Applicant's proposed use, with landscaping, is an improvement.
16. Applicant submitted a Petition addressed to “Village of Amityville, Amityville Planning Board & Board of Trustees.” The petition states:  
  

“We support the granting of this application. Security Dodge needs parking & additional (*sic*) room. The application would provide that.

Security Dodge is an asset to Amityville. It is a major Village employer

& serves the needs of many Village residents. Many Village residents look to Security Dodge to service their vehicles.

Many look to Security Dodge when it comes time to purchase a new vehicle. Customers & employees also frequent other Village businesses. Something those businesses need.

The Village should support a Village business which is doing well & growing. So many businesses in the Village have seen or are experiencing just the opposite.

We strongly urge the Village to grant the application & work with Security Dodge not against it.”

The Petition was signed by 117 individuals purporting to be Village residents. It is on file with the Building Department.

#### **STATEMENTS FROM COMMUNITY:**

1. Joan Kaplan of 112 Bryan Avenue stated that she was opposed to the application. She spoke about several negative experiences regarding Security Dodge, including a car carrier parked on the wrong side of the street, that, when pulling out, hit her husband’s vehicle causing over \$5,000 worth of damage. She observed employees showing vehicles at the end of her street. She expressed concern about the ingress and egress, its proximity to Stop & Shop’s furthest west entrance, and worried that “it will cause too much traffic at that point.” (Transcript, at p. 63.) She understands that employee parking is important, but stated “I’m living in the area that’s going to be directly affected, whereas a lot of people in this room are not going to be effect.” *Id.* at p. 64.
2. Joan Donnison of the Bay Village Civic Association stated that she is opposed to the application. She noted that she has repeatedly passed by the premises, and whenever she and others go by, during the day or evening, there are already cars and trucks covering the entire lot. Transcript at p. 65. She expressed concern that “unfortunately, the history with Security Dodge is a difficult one for us to live with. We hear one thing and then we see another in action.” (*Id.* at pp. 65-66). She noted that if the premises on the Application is connected to 315 Merrick Road, she finds it “questionable as to whether or not that lot is going to be restricted for parking and for customers and employees. I mean, it just is inevitable to me from my experience that that’s going to become a sales lot.” (*Id.* at p. 66.) Ms. Donnison also expressed concerns about safety, lack of safety, and believes South Bayview Avenue is dangerous. (*Id.* at p. 67.)
3. Maureen Macmillan of 169 Bayview Avenue stated that she is against the application, and asked why vehicles are parking in the lot when they do not have permission to do so. The Chairperson explained that violations were issued for this and is part of what led to the proceeding. Transcript at pp. 68-69, 70.

4. Sirus Vascoville of 18 Wanser Place spoke in favor of the Application. He is employed by Security Dodge. He stated that some older female customers have difficulty walking, so Security Dodge employees park their cars for them. He lives in the Village and walks to work because he cannot find parking at work. (Transcript at pp. 70-72.)
5. Stacy Thanison of 155 South Ketcham Avenue spoke in favor of the Application. She is employed by Security Dodge. She has had to get a coworker bring her to work due to a lack of parking, and it is inconvenient, as she also needs to find a ride home. She stated that she understood other's views regarding traffic congestion, but "to live in Amityville, work in Amityville, I spend money in Amityville, it should also be able (*sic*) convenient for me as well. And working and living there I shouldn't have to worry about how I'm getting to work." (Transcript at pp. 75-76).
6. Brandon Troy of 11 Etna Court spoke in favor of the Application. His kitchen overlooks the premises. He would prefer a paved lot with landscaping. Mr. Troy is an employee of Security Dodge. (Transcript at p. 76.)
7. Joseph Smith of 66 Towne Street spoke in favor of the Application. He is employed by Security Dodge, lives on the corner, and wants to be able to drive to work. (Transcript at p. 77.)
8. Robert Ridell of 95 South Bayview Avenue spoke in favor of the Application. He has lived in his home for 21 years and has never had an issue with Security Dodge. He stated that at the fruit stand that used to be at the location, to "park in there and come out of there you are taking your life in your hands." He was in favor of expansion of the business provided that it is regulated. (Transcript at pp. 77-79.)
9. Sharon Zukowski of 4 Etna Court spoke in favor of the Application. She feels they will beautify the property, and will be easier for her guests to park on her street. (Transcript at pp. 79-80.)
10. Gabriela Vigorito of 69 Griffing Avenue spoke in favor of the Application. She is the daughter of the owner of Security Dodge and is employed by Security Dodge. She said the situation will be an improvement for residents on South Bayview and Bryan Avenue, when there will not be people parking near them. (Transcript at pp. 81-82.)
11. Michael Reichert of 14 Etna Court spoke in favor of the Application. He believes what currently exists, a dirt lot with weeds, is an eye sore, and the parking lot will relieve traffic and pedestrian crossing. (Transcript at pp. 83-84.) Applicant submitted an email dated June 2, 2016. The email was from Mr. and Mrs. Reichert of 14 Etna Court, and stated that they were in favor of Applicant's site plan.
12. John Palmer of 5 Etna Court spoke in favor of the Application. He thinks it would be "a great thing for the town." (Transcript at p. 84.)

13. On the day following the hearing a letter in opposition was received from the President of Snug Harbor Condominium, a copy of which was sent to the Applicant's legal counsel the same day to enable the Applicant to comment. A copy of the letter was made part of the record. Snug Harbor is a residential, seniors only community, located approximately 50 ft. from Security Dodge and consists of 176 units with 214 residents.

**FINDINGS:**

1. On April 10, 2006, the Amityville Village Board of Trustees approved Local Law No. 1 of 2006 ("Local Law 1"), which amended CVA §183-81 and §183-82 prohibiting any further automotive uses in those Business Districts. Section 1 of Local Law 1 stated that:

"The Board of Trustees finds that it is in the best interests of the Village to encourage a change of use along the Merrick Road business corridor from predominantly automotive sales, service and repairs to a mix of retail business and residential. Consequently, the uses permitted in the B-2 General Business District should be modified to eliminate automotive uses as special exceptions. This...will require that any such new premises or substantial modification of an existing one will require a use variance from the Zoning Board of Appeals."

2. Security Dodge and its predecessor car dealerships have operated at 345 Merrick Rd. for approximately 50 years.
3. (a) The Security Dodge operation consists of three principal locations in the immediate area. The automobile showrooms, service areas and offices are located at 345 Merrick Rd., approximately 250 ft. from the subject premises on a 2.4 acre parcel with approximately 670 ft. of road frontage upon Merrick Rd. and South Bayview Ave. (SCTM # 101-10-2-64.3). Approximately 1.0 acre is available for the parking and storage of vehicles. About 200 cars are regularly stored on the site.  
  
(b) Security Dodge through a related corporate entity operates an automobile storage lot at 315 Merrick Rd. directly across the street from Security Dodge, having a land area of approximately 17,100 sq. ft. (.39 acre), with 283 feet of road frontage upon Merrick Rd. and South Bayview Ave. (SCTM # 101-10-3-2.1). The premises has no structures and serves as a parking and vehicle storage lot for about 100 vehicles.  
  
(c) Security Dodge through a related corporate entity also operates a parking and storage lot diagonally across from the subject premises at 322 Merrick Rd. (SCTM #101-8-4-10) consisting of approximately 33,490 sq. ft. (.77 acre) with about 533 feet of road frontage along Merrick Rd., Bryan Ave. and Wood Ave., accommodating 178 vehicles for parking and storage. Under an agreement with the Village dated June, 2015, concerning renewal of their Village Auto Sales License, the Village insisted that parking spaces had to be reserved along the northerly boundary for Security Dodge employees. A review of draft agreements reflect that the Village attempted to impose a requirement that Security Dodge reserve the two northerly rows ( about 44

spaces) for employee parking, however, that request was resisted by Security Dodge and whittled down to 10.

(d) The subject parcel known as 335 Merrick Rd., Amityville, NY (SCTM # 101-10-2-5) is a .70 acre site with 200 ft. of frontage upon Merrick Rd. The proposal would result in 27,840 sq. ft. of paved area accommodating a minimum of 68 parking spaces. Thus 92% of the premises would be paved with no improvements erected, other than mounted steel pole lighting with five street trees upon Merrick Road and shrub plantings within a 5 ft. buffer.

4. A Certificate of Occupancy for the subject premises, related to Building Permit No. 13377, dated June 1, 2016, reveals the following historical use of the subject premises:

- BP#46-116 (Issued 1946): Retail furniture store
- BP #49-80 (Issued 1949): Enlarge tow windows in front wall; install new door in front wall
- BP #53-92 (Issued 1953): Addition to existing building
- BP #54-118 (Issued 1954): Addition on present furniture show room to be used as storage
- BP #54-84 (Issued 1954): Show room and sales of furniture
- BP#55-36 (Issued 1955): Alterations to present furniture sales and storage building; addition of second floor.
- BP #74-13 (Issued 1974): Addition of new mansard roof and store front.

The subject property was used for retail sales since at least 1946. The current Certificate of Occupancy shows that the current use is for "vacant land."

5. Cameo Beauty Products was the immediate prior user up through December 13, 2015.
6. The Deed for the premises indicates that Applicant closed title to the premises on December 14, 2015. Prior to purchasing, the Village records reflect that no inquiry was made to the Village Building Department regarding the proposed use of the premises for employee/customer parking or any other use, including automotive uses.
7. On December 31, 2015, Code Enforcement Officer John Lauria issued a Demolition Permit permitting applicant to demolish the Cameo Beauty structure.
8. Soon after the building as demolished, CEO Whalen and other Village personnel observed Security Dodge parking registered and un-registered vehicles on the premises. CEO Whalen advised Security Dodge that this was an improper use and should stop. Thereafter, formal Notices of Violation were served. The Notices were ignored, and a series of nineteen (19) Code violations have been issued, which remain pending in the Village Justice Court.
9. The Board notes that despite Mr. Buzzell's numerous statements on the record that cars are not being stored at the site, on various occasions several ZBA members, as



well as assorted Village employees, observed the storage of unregistered, non-plated vehicles during and after business hours on the premises.

10. The Applicant's Zoning Board Application contains an Appendix B- Short Environmental Assessment Form. This form states that "Applicant is proposing to utilize the property for parking vehicles."
11. The Board noted substantial interest in the application by a larger than usual attendance at the public hearing. Although the sentiments of surrounding neighbors are not dispositive, the Board did give their sentiments minimal weight.
12. The Board viewed that portion of the Application relating to an appeal of the Building Inspector's determination, based solely upon Applicant's stated intended use for the property as an employee-customer parking lot.
13. Although Applicant's appraiser Mr. Lynch, claimed that the proposed parking was similar in nature to other retail, office and restaurant space in the immediate area, the Board could find no other use in "the immediate area" or elsewhere in the Village, where a private, non-adjacent lot is used to serve as a parking area for a business located on another privately owned lot.
14. Applicant's appraiser identified the Applicant's storage lot at 322 Merrick Rd., Amityville, as a "contaminated parcel." The Village records reflect that the subject contamination was abated and that the State of New York entered a judgment upon the parcel for the cost of the remediation. The appraiser's statement reflect a gross failure to acquaint himself with germane facts, which taints the reliability of all of his opinions and comments.
15. The Findings herein are based upon the documents presented, the official records maintained by the Village, testimony heard, as well as the comments of the Applicant and other persons which were presented on the record. Findings were also premised upon personal observations made by each Board member who made a visual inspection of the premises, as well as their familiarity with the location, the character of the neighborhood in which the subject premises are located, including the traffic conditions, and the physical and environmental characteristics of the neighborhood.

#### ANALYSIS AND FURTHER FINDINGS:

- 16 §183-1(B) of the Village Code contains definitions for terms used within the Village's Zoning Code. The term "accessory use" is defined as "[a] use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building." The use contemplated by Applicant to support its automotive uses will be on a different lot and held under a different record title ownership. Therefore, Applicant's argument that the use of the subject lot is "accessory to" the Security Dodge lot must fail, as the plain language of the Code explicitly states that an accessory use must be for the same lot. Applicant's proposed

usage of the 335 Merrick Road lot as accessory to the Security Dodge lot is not a valid use under Village Code.

17. The 2006 amendment to Village Code §183-82, removing the sale of new or used automobiles or for the storage, repair and rental or servicing of automobiles as permitted uses, have rendered the operations of Security Dodge non-conforming uses.
18. Even if customer and employee parking were deemed an “accessory use”, incidental to Security Dodge’s main building or use, such non-conforming use cannot be extended to a new unrelated, separate lot, whose prior use as an office, sales and product showroom was a conforming use. A conforming use may not be changed to a non-conforming use without a use variance.
19. The Village Code provisions relating to Required Parking under CVA §183-129 et seq., make no provision for, nor do they set requirements for employee or customer parking.
20. Applicant’s counsel acknowledges that the “accessory parking” is “accessory to the dealership property that already exists” on another lot. (Transcript at p. 24). Accessory parking by definition in the Village Code must be accessory to a permitted use on the lot, where the business activity occurs and not a separate parcel. The Chairperson asked Mr. Buzzell if the accessory parking was accessory to anything occurring now on the subject property. (Transcript at pp. 24-25). Mr. Buzzell conceded that two separate properties were involved, with a distance of approximately 250 feet. (*Id.* at p. 26). Mr. Buzzell posited that “whether it’s accessory to something happening on the lot or not, is not the question.” (*Id.* at p. 26-27). Mr. Buzzell is mistaken; this is precisely the question.
21. Off street parking is a conditional permitted use in any zoning district pursuant to CVA §183-126. Such parking must, however, be (a) “in conjunction with a permitted use” and (b) authorized to meet “parking required by this article”. The Applicant may not rely upon this provision as authority for its proposed use. The subject premises was a conforming business use. The substitution of a parking lot to be used in connection with automotive sales, servicing, repairs, employee parking, etc., would be an illegal extension of a non-conforming use which is prohibited under CVA §183-123(C) which mandates that “[a] nonconforming use of a building or premises shall not be extended...” Additionally, even if some argument could be colorably made that off street parking were appropriate at this site, CVA §183-126 permits it only to the extent necessary to provide “[o]ff street parking *as required by this article...*” The Applicant presented no argument or proofs attempting to establish that the existing Security Dodge facilities (three lots in close proximity) could not satisfy the existing parking requirements under the Code.
22. As of this date a count of the number of unregistered vehicles currently stored on the 3 existing Security Dodge lots in the immediate vicinity show about 478 inventory vehicles currently occupying those spaces. It is respectfully noted that a reduction of

vehicle inventory would create more parking spaces for employees. Further, Security has a Lease for 20 parking spaces for employee parking at DMA Automotive across the street and has been approved for a 1.5 acre storage lot on Sunrise Highway for inventory storage and additional parking, per a May 5, 2015 email from Security Dodge's legal counsel.

23. South Bayview Ave., Perkins Ave. and Grand Central Ave., nearby streets, provide all-day non-metered, unlimited customer parking, except between 2 AM and 6 AM.
24. (a) Applicant argues that the use of the subject premises for an employee/customer parking lot is valid because the Planning Board may approve a Site Plan where parking facilities are located on any other parcel, whether, adjacent or not.  
  
(b) The Board recognizes that CVA §24-16(A)(2) authorizes the Planning Board to approve a Site Plan to use parking facilities located on a parcel, whether adjacent to the principal use or not, however, inherent in that authorization is the right of the applicant to use such parking for a permitted use. The Planning Board has no authority to grant variance relief to authorize such use if such parking is associated with a prohibited use.  
  
(c) It is clear that the expansion of automotive uses in the B-2 Business District is prohibited since the enactment of Local Law 1 of 2006. CVA §183-121(C) prohibits the extension of a non-conforming use within a "Building or premises" let alone onto a separate unassociated lot.
25. (a) The use of a premises for parking in connection with an automotive dealership falls within the Code category of a "Public Garage, which is defined under CVA §183-1 as:  
  
"Any garage...available to the public, including land or building for the sale of new or used cars or for the storage, repair, rental or servicing of automobiles or motor vehicles..."  
  
(b) The Board finds that the proposed parking would be accessory to a Public Garage, the expansion of which is not permitted in the B-2 District. Further, such use requires a Special Use Permit from the Board of Trustees pursuant to CVA §183-140. In considering that Permit, the Code expressly requires that approval of the subject use:  
  
"...shall be in addition to any relief required from the Zoning Board of Appeals and the Planning Board."  
  
(c) Since the proposed accessory parking use is in connection with automotive sales, servicing and repairs located on a separate lot, use variance relief is necessary. The Building Inspector properly determined that variance relief should be resolved before the Planning Board entertained an Application for Site Plan Review.

26. Applicant had actual and constructive notice of the zoning and Local Laws related to the subject premises, at the time the premises were purchased.
27. The Village has prohibited an expansion of automotive use on Merrick Road. Allowing Security Dodge a backdoor into expanding its footprint, for an automotive use on Merrick Road, would be in direct contravention with the plain language of and legislative intent of Local Law 1 and contrary to the Village's comprehensive plan.
28. The CEO's Determination to reject the Planning Board Application was proper since the Planning Board has no power to grant variance or special exception relief. Submission of the Application for Site Plan Review would have been a needless exercise costing the Village and the Applicant financial resources and delays. Resolution of the ability to use the property for employee/customer parking was an essential question before Planning Board objectives were considered.
29. Parking is an accessory use subordinate to and dependent upon a principal use permitted under the Zoning Code. CVA §183-82 does not permit parking lots as a separate stand alone use. To the extent that parking could be construed as storage, the same is prohibited as well, since CVA §182-83(12) prohibits the ZBA from granting a special exception for other uses of the same general character unless related to specifically permitted uses. §183-82(A)(12) expressly provides that "sales, service and repair of motor vehicles...shall not be authorized as special exceptions. Thus, it is manifestly clear to this Board that the Board of Trustees intended to prohibit the introduction of additional automotive uses into the B-2 District and intended to prohibit the expansion of any automotive non-confirming use. Applicant has not proposed a valid, permissible principal use for the premises, and therefore this Board is not empowered to grant a special exception. Accordingly, Applicant's request for a special exception must be denied as well.

### CONCLUSION:

NOW, THEREFORE, BE IT RESOLVED that the Application of 335 Merrick Road Realty, LLC is decided as follows:

On a poll of the Board at the December 21, 2016 Zoning Board of Appeals meeting, the following vote was taken to affirm the Determination of the Code Enforcement Officer that Applicant's proposed use of the subject premises for "off-street parking for employees and customers is not a permitted use."

Tracey Cullen, Chairperson – Yes

Kirk Hurme – Yes

Bill Ordon – Yes

On a poll of the Board, the following vote was taken to deny the request for a special exception for "use as vehicular parking."

Tracey Cullen, Chairperson – Yes

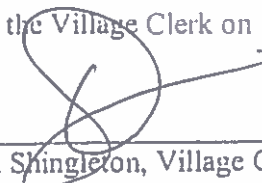
Kirk Hurme – Yes  
Bill Ordon –Yes

Mr. Ubert (Vice Chairperson) and Mr. Brice were absent from the Zoning Board meeting on December 21, 2016.

Dated: February 14, 2017  
Amityville, New York

  
Tracey A. Cullen, Chairperson

Filed by the Village Clerk on February 14, 2017

  
Dina Shingleton, Village Clerk

