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**MINUTES MEETING  
Town of Halfmoon Planning Board  
December 9, 2019**

**Those present at the December 9, 2019 Planning Board meeting were:**

**Planning Board Members:**

Don Roberts –Chairman  
Marcel Nadeau- Vice Chairman  
John Higgins  
Tom Koval  
Richard Berkowitz  
Thomas Werner  
Mike Ziobrowski-absent

**Planning Board Alternates:**

Charlie Lucia- absent  
Brendan Nielsen-absent

**Coordinator- Building, Planning and Development:**

Richard Harris

**Senior Planner / Stormwater Management Technician:**

Paul Marlow

**Town Attorney:**

Lyn Murphy

**Deputy Town Attorney:**

Cathy Drobny

**Town Board Liaison:**

John Wasielewski  
Jeremy Connors

**Town Engineer / CHA:**

Joe Romano

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*Chairman Don Roberts opened The Planning Board Meeting at 7:00 pm*

**Don Roberts:** Good evening, I would like to call the meeting to order, have the Board members had a chance to review the minutes from the last meeting?

**Rich Berkowitz:** I make a motion to approve the minutes.

**Tom Koval:** I'll second.

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**Don Roberts:** All In favor? (All were in favor) Opposed? (None were opposed) Motion Carried.

**Marcel Nadeau:** I'll abstain Don.

**Don Roberts:** Marcel was not present he abstains. Before we start under new business Twin Bridges Storage has been removed from the agenda.

**New Business:**

**19.090/ 19.091                      Infinite Care, 1406 C Route 146- Change of Use/Tenant & Sign**

**Don Roberts:** Come on up say your name and address and tell us what you want to do.

**Demetris Fullard:** Good evening my name is Demetris Fullard I currently own a child care center in the city of Albany, we have been open since 2005 so 14 years and I am looking to expand into 1406 C Route 9, which was the former location of Jazzy Kids Care.

**Don Roberts:** Now how many children?

**Demetris Fullard:** I am looking to supply care for approximately 60 to 65 children.

**Don Roberts:** How will they be arriving and departing?

**Demetris Fullard:** The majority of them will be arriving via parent drop off, I am looking to add about 10 to 15 school aged children who may be bussed in after school probably a smaller bus because it's only 10 to 15 but otherwise most of them will again be arriving through parents.

**Don Roberts:** Any questions by the Board?

**Rich Berkowitz:** How many were approved for Jazzy?

**Demetris Fullard:** I believe she was at 37 when she closed I think she was opening up one class room at a time as she staffed the class rooms but Im not quite sure, Im looking to operate open full once we are licensed by the State, Im looking to open at capacity.

**Rich Berkowitz:** You won't have any children signed up now?

**Demetris Fullard:** No we have not been licensed yet we wanted to come in and make sure.

**Rich Berkowitz:** So it is going to take a while for you to build that up?

**Demetris Fullard:** Yes definitely.

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**John Higgins:** When they came in originally we were concerned about traffic because it's a limited access in and out of that spot do you foresee any problems with traffic?

**Demetris Fullard:** No not at all we kind of have a staggered drop off and pick up time from 7 am to 9:30 so most of the parents will be arriving in that window and its very rare to see parents all coming in at one single time so 2 ½ hours drop off, 2 ½ hours of pick up is pretty staggered with everyone coming in.

**John Higgins:** Yea because that was one of the concerns we had when she originally came before the Board.

**Demetris Fullard:** Right, but again with the staggered pick up and drop off I don't think we should see that much of a problem

**Don Roberts:** Now did you say what your hours of operation are going to be?

**Demetris Fullard:** I am looking to open at 7 am and close at 6 pm.

**Rich Berkowitz:** Do you ever have any events where everybody would be there at once

**Demetris Fullard:** Probably like a moving up day ceremony and possibly an open house but that's pretty much it.

**Rich Berkowitz:** There is enough parking there for that?

**Demetris Fullard:** Yes there are 14 spaces there we could encourage carpooling for something like that we could work something out like that.

**Rich Berkowitz:** I make a motion to approve the change of use and tenant.

**Marcel Nadeau:** Ill second.

**Don Roberts:** All in favor? (All were in favor) Opposed? (None were opposed) Motion Carried, and the sign is going to be?

**Richard Harris:** It's an insert into the existing structure.

**Demetris Fullard:** Yes.

**Don Roberts:** Okay.

**Rich Berkowitz:** I make a motion to approve the sign.

**Tom Koval:** Ill second.

**Don Roberts:** All in favor? (All were in favor) Opposed? (None were opposed) Motion Carried, good luck.

**Demetris Fullard:** Thank you.

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*Infinite Care - Change of Use/Tenant & Sign*

*APPROVED. Board approved the Change of Use/Tenant and Sign applications for the use of vacant space at 1406C Route 9 for a child care facility.*

**19.192      Cingular Wireless Co-Location, 204 Brookwood Road- Telecommunications Co-Location**

**Rebecca Rivera:** Hello Im Rebecca Rivera I am from Aerosmith Development, we represent AT&T and Im here about the application to update the equipment at 204 Brookwood Road and the water tank property.

**Don Roberts:** And what are you going to be adding to the tower?

**Rebecca Rivera:** We are changing the mounts so that is probably the biggest thing, Mr. Harris and Mrs. Murphy have actually already approved the conceptual approval.

**Don Roberts:** We haven't heard all of this so, what are you going to be doing?

**Rebecca Rivera:** Oh I'm sorry.

**Lyn Murphy:** So let me just clarify for the record, there is a contractual obligation that prior to them bringing any application to the planning board which is the soul decider, determiner whether or not the site plan would be modified, the Town has to sign off and we have to give them permission to even make the application, so we gave permission, the Supervisor gave permission for them to make this application, we in no way gave them any kind of pre-approval.

**Don Roberts:** Okay, understood thank you.

**Rebecca Rivera:** Sorry if that was confusing.

**Don Roberts:** So you're going to be upgrading?

**Rebecca Rivera:** Yea so we are upgrading the existing equipment, the biggest change is probably the mounts, the existing mounts are changing if you look at the drawing they are standing off the tower, it's a little less than a foot just to allow enough space for the equipment to stand the way it needs to, so the overall change is that we are adding 3 antennae's. The rest of it we're swapping 3 RU's they are about the size of a brief case and they sit behind the antennae's so you don't see them from the outside and then we are adding 3 more of those as well again behind the antennae's so you won't see them from the outside and then the mount swap so that's it.

**Don Roberts:** No change in height?

**Rebecca Rivera:** No change in height no change to the ground space everything will stay the same.

**Don Roberts:** Other questions by the Board?

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**Rich Berkowitz:** I make a motion to have a negative declaration for SEQR.

**Marcel Nadeau:** Ill second that.

**Don Roberts:** All in favor? (All were in favor) Opposed? (None were opposed) Motion Carried, good luck.

**Rich Berkowitz:** I make a motion to approve the final site plan.

**Marcel Nadeau:** Ill second

**Don Roberts:** All in favor? (All were in favor) Opposed? (None were opposed) Motion Carried.

**Rebecca Rivera:** Thank you.

*Cingular Wireless Co-Location- Telecommunications Co-Location*

*APPROVED. Board approved the request to replace existing equipment and add new equipment on the Town water tower.*

**Old Business:**

**19.158 Nichols Marine /TNT Boat Tops, 929 Hudson River Road – Change of Use/Tenant.**

**Don Roberts:** We had a site visit, want to explain what happened at the site visit Tom?

**Tom Koval:** Rich, Paul and I went down took a look at the layout of everything, we discussed potential spaces that could be utilized namely where the truck bodies are currently. They said they may be able to move those to a different location afterwards. Right now by the looks of things you are pretty much maxed out with the layout they have. We went in the garage where TNT is operating and that looked fine, Jim Nichols expressed to us that he wanted to use the back side of the garage and boat cover, TNT was going to use the front part of the garage which looked fine, so basically the only thing we really looked at was the amount of boats that were there in the configuration and the esthetics of the property with the way the boats were parked.

**Marcel Nadeau:** So was that in conformance to what we were told we would get?

**Tom Koval:** When we did the site visit it was conformed but prior to the day before it wasn't conformed.

**Marcel Nadeau:** They were moving boats.

**Tom Koval:** Right, I didn't see the burm that we had discussed in our original approval as being constructed yet, you didn't get to that yet?

**Jim Nichols:** As far as in front of the property where we are eventually going to put a sign up as far as small shrubbery or something along those lines?

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**Tom Koval:** When we originally gave you your conditional you agreed to build a berm out in front, you haven't gotten to that yet.

**Jim Nichols:** We haven't gotten to that yet, no.

**Don Roberts:** When do you plan, I know you can't do it now but.

**Jim Nichols:** It would be a spring –April type once we get our thaw, we would work on that, we have some other things around the property we want to, as far as aesthetics, we want to make it look a little bit more appealing.

**Don Roberts:** Now as far as TNT Boat how does that look?

**Tom Koval:** I don't see a problem with TNT Boat, TNT Boat Covers as long as they are inside where they are already set up, I don't think right now with the current lay out Im not ready to move forward with any additional parking spots until your April conditional is up , and you've done the other things you have agreed to do that haven't been done yet , the burm and such unless in the meantime if you get those trailers out of there that would certainly increase your spots if you get the boats organized and make the place look a little more presentable for one of our entryways into Town, we are trying to market that section of Hudson River Road and get potential manufacturing or industrial businesses in there and right now it's not as appealing as we would like it to be.

**Marcel Nadeau:** So prior to that you were not in compliance, you had more units there then you were authorized?

**Jim Nichols:** What we experienced was with the move to the location we've had an influx of business we made an effort although it may not have appeared to, we've made an effort, we moved when we were getting over that number or close to that number we had a delay in people picking up their boats in the fall, unfortunately it is common when they kind of drag themselves picking them up it's not like spring time when they are eager to get them. We moved them down to my Marina location, Rensselaer County we were moving boats around when we did come to the first meeting November 12<sup>th</sup> I did honestly answer the question at that time I was 4 boats over we had people that were called, they hadn't picked them up, and that was really what our issue was, the number of 20, we've had a lot of business and we've just been working to get them out of there.

**Don Roberts:** Now see when you were in here before we mentioned to you that before you came to the Town we went and looked I and some other guys went and looked at your site in Cohoes, we don't want to see that in Halfmoon.

**Jim Nichols:** Right and respectfully I also did try to state my case that even when I came in April a lot of what you saw in Cohoes was not my doing it was another business, and I don't feel I have that here you know.

**Marcel Nadeau:** It seems like your over, you have more units than you have down in Cohoes.

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**Jim Nichols:** The units down in Cohoes the issue was there was another automotive repair shop there that had a lot of junk cars and so forth there as well.

**Marcel Nadeau:** But your site is your site and you were not in compliance.

**Jim Nichols:** Right.

**Tom Koval:** Jim you mentioned that you might have the availability to put some of the short term stuff up behind Jack Byrnes?

**Jim Nichols:** Right when I talked with our landlord we had said maybe if we had a few boats that we needed to put up there in the meantime we could.

**Tom Koval:** Until your customers come and get them, then it's not, then you are not out of compliance, I mean.

**Rich Berkowitz:** Tom one problem with that we thought that was Mechanicville, it's actually Halfmoon.

**Tom Koval:** Its Halfmoon too, I was just making a suggestion.

**Jim Nichols:** We had that discussion afterward so that is something that we won't do.

**Tom Koval:** Im not trying to tell you how to run your business but maybe you should tell your customers that you will charge them storage if they don't pick up their boats, that might prompt them , I mean it's not, your customers not doing what they are supposed to is not , it doesn't become our responsibility

**Jim Nichols:** I've got it.

**Don Roberts:** Rich do you have something to add?

**Tom Koval:** Our responsibility is keeping the aesthetics of that corridor decent so we can market that to other companies that want to come into the Town.

**Rich Berkowitz:** No, I agree and this is also a conditional approval so it's good until April 1<sup>st</sup>, was it April 1<sup>st</sup> so we can also revisit this in April and see if the site is cleaned up, we can see what happens with those trailers.

**John Fortune:** Nothing is happening to those trailers

**Rich Berkowitz:** Okay so that settles that.

**Don Roberts:** So that takes care of that very easily.

**John Fortune:** Those trailers have been there since 1983.

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**Tom Koval:** That's fine but you are asking for more parking and that was one of the options that we were giving you.

**Don Roberts:** Wait use the microphone please and say your name.

**John Fortune:** My name is John Fortune.

**Don Roberts:** And you are the landlord?

**John Fortune:** Yea my dad is, listen we've owned that property, the first warehouse was constructed back in 1978 the one that Jim is in now and in 1983 the second warehouse, which is the tan warehouse went up. Our first tenants that were there were BW Steel, and those trailers were there back in 1983. With BW Steel being there he had more trucks, he had tandems he had cranes that were in the area and those trailers sat there and it was use of more than that area before than there is going to be used now than what there is going to be used now and there was never a problem with the trailers. The trailers never caused a problem this gentleman is asking for 10 boats, alright give him 8 just for location.

**Tom Koval:** We don't have to give anything.

**Don Roberts:** Just so you know times have changed through the years okay, we're...

**John Fortune:** I know but do you want to know something we were one of the first founders that helped develop in the Town of Halfmoon and we never had a problem with any of you folks before and you always welcomed us, that's when they had no business in Town, now suddenly okay the popularity of Halfmoon has increased and suddenly now the founders, people like myself who have been here for so many years, please let me talk have to go through a lot of this red tape and these buildings have been there for over 30 years. Now granted there are new laws and I can understand that but we are working with you trying to resolve this issue.

**Lyn Murphy:** As are we Sir.

**John Fortune:** I know, so you know let's try to work together with a number here, if you want ill even paint the trailers if you want but the trailers have been there so long I want to keep them there.

**Tom Koval:** But you're asking us to leave the trailers and add more stuff to the lot, what I am saying personally is I am saying is your over congesting the lot now, it's not 1983 it's not 1973 the Town has changed we're trying to clean up a lot of the errors of the past and we are doing it all over the Town, we are not picking on you it's just the way it is, times change.

**Don Roberts:** Why is it so important the trailer stays there?

**John Fortune:** Because I want to keep them there, why not?

**Don Roberts:** I mean are they of any use?

**John Fortune:** I want to keep the trailers there.

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**Don Roberts:** How is that working with us?

**John Fortune:** That is working with you.

**Don Roberts:** By not moving them?

**John Fortune:** The trailers never bothered anyone before , and as a matter of fact if you go back to about 2 years ago when I was at this board maybe 3 years ago when we thought we had a change of tenant and what happened was there was Don Sweet, he owned Home Improvement, or Home something he put a new sign on the building you thought it was a change of tenant , this issue came up once before about those trailers and they said those trailers are not the problem, now 2 years later the trailers have come up again and this gentleman wants to put this item in here you could check your notes on that.

**Tom Koval:** Because you're going to 20 something vehicles now, it's not like your just storing stuff in the trailer and...

**John Fortune:** Okay, okay that's a valid point, so can you tell me then where it is in your code, because there is always a code and there is always something specific about land usage and what you can do and how many items you can put on it, what is your code about storage units for boats?

**Don Roberts:** Go ahead Rich.

**Richard Harris:** Well your property and we talked about this, is zoned well now its zoned M-2, manufacturing 2, this is not an allowed use, it was not an allowed use under prior zoning which was residential, we have talked about that. I don't know what the zoning was in '73 that allowed you to put up warehouses, I can research that, but you are a nonconforming use, so the Board has significant, Lyn weighed in on this, has significant discretion to determine whether this is consistent with what has been allowed there since '73 since '83 since whatever date you're not subject to the specifics of the zoning district because if you are none of this would be allowed so your considered pre-existing non -conforming which is an ode to people who have had properties in Town prior to zoning being changed, that being said the Planning Board has leeway so there is different zoning districts in Town which you cannot have outside storage without a site plan approved, nobody's asked you for a site plan for this site, they could, that requires an engineer, that's C-1 zoning that's light industrial commercial. There are residential districts where it is not allowed in any form, commercial storage. So if you want to pick and choose the zoning you're actually at a very advantageous spot right now because you're considered pre-existing non- conforming and the Board does not have set rules other than to determine whether it's more intense and consistent with what they will allow.

**John Fortune:** The question I asked was basically what is, what plan, what bylaws do you have established.

**Lyn Murphy:** He just explained them to you, what this Board is saying to you what they are willing to do based on the fact that you want to keep those trailers there is allow 20 outside storage units until April when the issue is revisited. It's your choice is you want to keep the trailers there, if you want to the Board is not telling you to remove them, they are just telling the applicant his limit is 20 period.

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**John Fortune:** Okay that was 20 for the existing warehouse, this is a second warehouse so he only had permission to put 20 on at the property, and this is the other half of the property.

**Lyn Murphy:** This is a different tenant.

**John Fortune:** No he is the land lord, he is sub leasing it to this gentleman here.

**Lyn Murphy:** That's 2 businesses, we had 1 now we have 2.

**John Fortune:** Right, but he is the gentleman that I am dealing with him is the tenant that I had the lease set up with.

**Richard Harris:** You had to set up for one building now you are going into 2.

**John Fortune:** To 2 right and its half the property , so we got permission for 20 for half the property and now you are not going to give us any permission for the other warehouse which is ..

**Tom Koval:** You are using the entire property, you want to split hairs I will give you permission for one for TNT and 19 for the other I mean if you want to split hairs.

**John Fortune:** How many are you allowing?

**Tom Koval:** 20 for Jim because he's been using the entire property, but if you want to split hairs TNT can have one and Jim can have 19.

**John Fortune:** What about the rest of the property, your saying total 19 all together, so you come up with that number 20 is the question, how do you come up with that number of 20 units?

**Tom Koval:** We looked at the spot, we actually went and visited the site the other day.

**John Fortune:** But what bylaws do you have governing you to make that decision, there isn't any.

**Lyn Murphy:** Perhaps you didn't hear Mr. Harris explain to you that you are pre-existing non-conforming, if I were to show you the bylaws the answer would be you could not have that operation there period. They are granting you a curtesy because of your long term position in the Town the fact that you have been there for so long and they are allowing you to continue with what they are saying is a pre-existing non-conforming use. So there isn't going to be a by-law because any by-law that I would show you would tell you that you couldn't be there so they are using their discretion based on the fact that it is a pre-existing non-conforming use to allow you to do something to use the property.

**John Fortune:** The property when we had it was zoned industrial though correct?

**Lyn Murphy:** It's not anymore.

**John Fortune:** But we should be grandfathered in.

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**Lyn Murphy:** That's what I'm just saying to you it's a pre-existing non-conforming use.

**John Fortune:** But regardless of the fact we should still be able to put what we want there with in guidelines of

**Lyn Murphy:** I am just going to ask the Board to take whatever action they deem is appropriate because this back and forth is not beneficial.

**Don Roberts:** Thank you Lyn, we could go on all night we are trying to work with you, I know you don't realize that, we are trying to work with you here I don't think you appreciate that, alright. I think at this point we should just stick with the original approval for Mr. Nichols, we have to deal with TNT Boat Tops alright.

**Rich Berkowitz:** I will make a motion to approve the change of use/ tenant for TNT Boat Tops.

**Don Roberts:** And how many Boats may he have there?

**Lyn Murphy:** He's inside.

**Rich Berkowitz:** All of his work is done inside am I correct?

**Tony Zielinski:** Yes

**Rich Berkowitz:** When you're working on a boat all your work is done inside?

**Tony Zielinski:** I have one inside right now, yes.

**Rich Berkowitz:** do you propose having any more boats there stored on the property? Do you propose having any more boats there that you are going to store on that property that you are going to be working on besides the one that is inside the building?

**Tony Zielinski:** As of right now I only have one inside?

**Rich Berkowitz:** In the future when you are busier will you have any more boats outside?

**Tony Zielinski:** I usually get 2 or 3 outside, and one inside, maybe 2, I can get 3 boats inside so.

**Tom Koval:** Let me interject here, Mr. Fortune you said that Jim is leasing the entire property and sub leasing to TNT?

**John Fortune:** Yes.

**Tom Koval:** Okay, so Jim's approval is for the entire project, the entire property because he is the lessee. The sub lessee is TNT so combined both the lessee and the sub lessee are allowed 20 units that's on the property, the entire property because it's all one lease.

**Rich Berkowitz:** Sir that does not include inside boats though.

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**Tom Koval:** That does not include anything inside.

**Rich Berkowitz:** You can have as many boats inside as you please as long as they are not stored outside.

**Tony Zielinski:** Im sorry?

**Rich Berkowitz:** You can have as many boats inside your building as you please.

**Tony Zielinski:** 3 at the most yea.

**Rich Berkowitz:** You could have 3 inside that building if they fit, but that total piece of property cannot have more than 20 boats stored outside both buildings. Okay.

**Don Roberts:** Mr. Nichols you understand that too right? Mr. Nichols you understand no more than 20 boats outside, okay.

**Jim Nichols:** Now we are allowing 3 units inside.

**Tom Koval:** We are not saying anything about inside we don't care about inside.

**Rich Berkowitz:** He can only fit a certain number of boats inside that facility, he has a large table that he does his manufacturing on, it takes up about a third of the space, so at the most he might be able to fit 2 large boats maybe 3 small boats, Mr. Nichols I don't know how many boats you can fit inside your facility but I sure tis about 3 to 4.

**Jim Nichols:** Again it varies on size probably 4 large 6 large.

**Don Roberts:** Now is there going to be a sign for TNT Boat Tops, is there going to be a sign there?

**Jim Nichols:** Once we were getting this item squared away there we were going to work on a sign together and ...

**Don Roberts:** You have to come back to the Board for approval. So what are we going to do here?

**Rich Berkowitz:** Okay ill make a motion to approve the change of use and tenant conditioned on having no more than 20 boats stored outside the facility they can have as many boats inside the facility as they can fit

**Don Roberts:** This is the TNT Boat Tops

**Rich Berkowitz:** This is for TNT and for Nichols Marine.

**Marcel Nadeau:** These are units not boats.

**Rich Berkowitz:** Units Im sorry units, and this is also a temporary conditional until April 1<sup>st</sup> from the previous approval.

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**Don Roberts:** And we will revisit at that time.

**Jim Nichols:** Yes

**Don Roberts:** Can I have a second

**Tom Werner:** Ill second that.

**Don Roberts:** All in favor? (All were in favor) Opposed? (None were opposed) Motion Carried.

*Nichols Marine/TNT Boat Tops– Change of Use/Tenant*

*APPROVED. Board approved the use of vacant space at 929 Hudson River Road by TNT Boat Tops, with conditions limiting the total number of units to be stored outside to 20 and approval through April 1, 2020.*

**Charlie Lucia:** Motion to adjourn

**John Higgins:** Ill second that.

**Don Roberts:** This is our last meeting of the year, so Merry Christmas, Happy New year, see you next year.