

Town of Halfmoon Planning Board

June 9, 2008 Minutes

Those present at the June 9, 2008 Planning Board meeting were:

Planning Board Members: Steve Watts – Chairman
Don Roberts – Vice Chairman
Rich Berkowitz
Marcel Nadeau
Tom Ruchlicki
John Higgins
John Ouimet

Alternate

Planning Board Members: Gerry Leonard

Senior Planner: Jeff Williams
Planner: Lindsay Zepko

Town Attorney: Lyn Murphy

Town Board Liaisons: Paul Hotaling
Walt Polak

CHA Representative: Mike Bianchino

Mr. Watts opened the June 9, 2008 Planning Board Meeting at 7:01 pm. Mr. Watts asked the Planning Board Members if they had reviewed the May 27, 2008 Planning Board Minutes. Mr. Roberts made a motion to approve the May 27, 2008 Planning Board Minutes. Mr. Ouimet seconded. Motion carried.

Public Hearings:

08.054 PH Czajkowski Subdivision, 7 McBride Road – Minor Subdivision

Mr. Watts opened the Public Hearing at 7:01 pm. Mr. Watts asked if anyone would like to have the public notice read. No one responded. Ms. Bernadette Czajkowski, the applicant, stated the following: My husband and I would like to create a 1.67-acre flaglot from our existing 47-acre parcel. This newly created lot would be for my daughter and son-in-law to build a single-family home. Mr. Watts asked if anyone from the public wished to speak. No one responded. Mr. Watts closed the Public Hearing at 7:03 pm. Mr. Nadeau stated I have looked at this lot and everything looks fine.

Mr. Nadeau made a motion to approve the minor subdivision application for the Czajkowski Subdivision. Mr. Berkowitz seconded. Motion carried.

08.056 PH McBride Subdivision, 9 & 11 McBride Road – Minor Subdivision

Mr. Watts opened the Public Hearing at 7:04 pm. Mr. Watts asked if anyone would like to have the public notice read. No one responded. Mr. Duane Rabideau, of Gilbert VanGuilder & Associates, stated the following: I am representing George and Rosemary McBride in their request for a 2-lot subdivision. The parcel of land is located on the northeasterly side of McBride Road approximately 500 FT north of Farm to Market Road. The overall parcel is 2-acres of land and the applicant's wishes to subdivide the property as Lot #1 being the front lot which would be 0.98-acres encompassing the existing improvements. Lot #2 would be 1.02-acres and would be a flaglot for a proposed house and septic system. Both the lots would have on-site septic and water. One of the questions that came up at the last Planning Board meeting was the nearest well on the site and that well is located where the old barns are. Mr. Watts asked if anyone from the public wished to speak. No one responded. Mr. Watts closed the Public Hearing at 7:05 pm. Mr. Higgins asked how long ago was this 2.0-acre parcel subdivided out of the Lands of Czajkowski. Mr. George McBride stated in 1968. Mr. Nadeau stated I have no issues with this lot.

Mr. Nadeau made a motion to approve the minor subdivision application for the McBride Subdivision. Mr. Ouimet seconded. Motion carried.

Topic for Discussion:**Saratoga County Emergency Services, Brookwood Road****– Antennae upgrade on water tower**

Mr. Watts stated this is an informational presentation, by Mr. Paul Lent, Director of Saratoga County Emergency Services, relative to the placement of antennas to be upgraded that are located on our Town water tower. Mr. Lent stated the following: I am here tonight to make a presentation on behalf of the new County radio system that Saratoga County is now implementing. Most of you are probably aware that for more than 25 years or so have had equipment installed on the water tank located at Devitt Road and Brookwood Road. What we are doing now is upgrading the system and a requirement of that system is to replace the existing microwave antenna with an additional larger dish. That is required because the FCC has sold our microwave license to T-Mobile and we have to vacate that frequency band and go to another frequency band, which requires us to have a larger dish. You will see that we have also requested a second dish as part of the new system, which would look northward toward Stillwater. We are going to have some equipment mounted on the FAA tower in Stillwater. We are here tonight to explain it because there is a visual change, although we believe it to be minor, and there will be some additional whip antennas placed on top of this tank during the process because we are going to a new spectrum that requires us to add four more additional whip antennas. Those antennas are approximately 2.5 to 3.0 inches in diameter and about 6 to 7 FT tall. Mr. Watts asked the public and the Board if they had any questions. Mr. Berkowitz asked what would happen if that were to be struck by lightning. Mr. Lent stated the following: We hoped that our grounding system has worked well. Actually being located on top of this water tank really is a very good place for us because the tank is so well grounded but we do put lightning suppressors in our lines. Any time we mount on anything there is always that risk. Mrs. Murphy asked if lightning were to hit somewhere in the general area, would it be drawn to the tower. Mr. Lent stated lightning likes the tallest metal object it can find. Mr. Higgins stated there was some discussion about the possibility of this tank being replaced sometime in the future. Mr. Lent stated that is correct. Mr. Higgins asked at that point would you then move over to the new tank? Mr. Lent stated the following: Yes, we have been talking

with Mr. Frank Tironi, Director of the Town's Water Department, and they are presenting actively looking at constructing a tank on this site which would replace the existing tank. During the design phase and construction phase, we would design elements into that tank to minimize the visual effect because these would be mounted down into the body of the tank so they would lose the skylight effect. We can't do it on the existing tank because of those fins and it doesn't work radio frequency wise but on the tank that Mr. Tironi is proposing to construct we have had discussions with him about building our equipment right into the design. Mrs. Murphy stated so the Board is aware, we are in the process of putting together an agreement with Saratoga County so all of that is clear and it is spelled out in regards to what would happen. Mr. Watts thanked Mr. Lent for his informational presentation and asked when this would occur. Mr. Lent stated the work would probably start in the next 45 days.

New Business:

08.059 NB Werner & Searles Subdivision, Werner Road – Minor Subdivision

Mr. Duane Rabideau, of Gilbert VanGuilder & Associates, stated the following: I am representing Pipino Builders in their request to subdivide a 6.7-acre parcel of land into 4 lots. The parcel is located on the easterly side of Werner Road opposite of Willowbrook Terrace of the Dater Woods Development. Lot #1 would consist of approximately 30,000 SF on Werner Road. Lot #2, which is not a flaglot and is a conforming lot, would be approximately 1.2-acres of land and Lot #3 and Lot #4 are proposed to be flaglots. Lot #3 would be approximately 1.9-acres of land and Lot #4 would be approximately 2.9-acres. The reason why we are going with this layout is because we are in a situation of infilling on this parcel. We were also in a situation where there is another flaglot and in order to avoid any impact to DEC wetlands, which has a 100 FT buffer area, we pushed the flag portion of one of the lots for the common ingress/egress. We do meet the sight distance looking north which is about 525 FT and we need 445 FT so we do meet that issue. Public water and public sewer will service these lots. The common drive would service 3 houses and would be built to specifications for emergency vehicles. One advantage of this subdivision is it lowers the impact of any view-shed issues. Two of the homes would be back into the woods and you would only be able to see 2 of the homes. I have an aerial photo to show what these lots would look like compared to lots in the immediate vicinity. Mr. Roberts asked who would maintain the driveway. Mr. Rabideau stated it would be maintained by a Homeowner's Association (HOA). Mr. Roberts stated we don't normally have something like this. Mr. Rabideau stated it would be a situation where it would be a shared maintenance. Mr. Watts stated this would not be a HOA. Mrs. Murphy stated the following: The Town Board is not in favor of creating HOA agreements that have no benefit to the parcels but for one issue like this. I believe this would be a maintenance agreement and not a HOA. Mr. Rabideau stated the following: Correct, there would be a maintenance agreement. There is an ingress/egress utility easement through Lot #3 only, which benefits Lot #2 and Lot #4. We are trying to avoid impact to wetlands but we are in a situation where this comes out on the road and there is an existing flaglot situation in another area. There have not been any issues as far as traffic and safety at the existing flaglot. Mr. Berkowitz asked if these were single-family homes or duplexes. Mr. Rabideau stated they are single-family homes. Mr. Ouimet asked the length of the common driveway. Mr. Rabideau stated the common driveway is approximately 600 to 700 FT. Mr. Higgins asked if Lot #1 was a conventional lot. Mr. Rabideau stated that is correct and Lot #2 is also a conventional lot. Mr. Higgins asked what was the road frontage for Lot #2. Mr. Rabideau stated the following: Lot #2 looks like a flaglot but it does meet the requirements for lot width. The reason we are using the common driveway is because now we are in a situation where we don't have the sight distance to come

off of Werner Road. Mr. Higgins stated according to the drawing that I am looking at it says 95 FT and I thought 100 FT is required. Mr. Rabideau stated it is 95.5 FT but you also have 12.7 FT so it is about 108 FT total. Mr. Williams stated the following: There are times this Board approved conforming lots that are discussed as single-family lots but meet the minimum requirements for two-family lots. The Board approves these lots with the notion that it is for a single-family home but when it comes time for the building permit, the owner ask to build a duplex. Is there anyway they can put a note on the plans that only single-family homes could be built on this property? Mrs. Murphy stated I could research that. I don't see why not because as long as it was filed on the plans that were stamped it would be binding on any future purchaser but I would need to research that. Mr. Roberts asked if you were going to propose this as a standard subdivision, how would you do that? Mr. Rabideau stated the following: With a standard subdivision we would have 1 flaglot and would have 2 standard lots with the required road frontage. It is a situation where one lot would be extremely large. Mr. Watts asked isn't that rather common when we have a flaglot situation. Mr. Rabideau stated looking at the density of this, 4 houses fit extremely well in there and that is what they are trying to do. Mr. Roberts stated the following: My concern is as our Town gets developed and we have parcels of land that may not be the best developable parcels around, we are going to be setting a bad precedent by allowing multiple flaglots where maybe we shouldn't. Every parcel in Town is not conducive to development and I am worried about what's going to happen to a parcel similar to this in the future. Mr. Rabideau stated the following: This parcel does meet that litmus test as far as being developable. We are not pushing any environmental concerns creating a situation where it is marginal lands and things of that nature. These lots could easily have on-site septic but since the utilities are there, we are going to tie into that. As far as fire safety and things of that nature, because the next subdivision (Donati) has the same situation, people have a tendency that you need to drive 5 trucks down the driveway to fight a fire in the rear of the property. In essence one truck goes in, they leave a hose, the next truck comes in hooks the hydrant up and they fight the fire with one truck. When the fire is done, they load the hose back up and back the truck out and that is standard operating procedure. A lot of people don't understand that so they think they need turnarounds. Mr. Watts stated that is an issue that we will have to review with our fire people. Mr. Higgins stated the following: I agree with Mr. Roberts. I think we are pushing to try and put too much on a site that can handle a couple building sites but I think 4 lots, especially with the common driveway and everything else, is pushing the envelope a little bit. Mr. Nadeau stated I agree as well that this could be setting a precedent for other people and we don't want to set a precedent for everyone to come in with any kind of lot and end up like this. Mr. Watts stated the following: I am not prepared to set a public hearing based on the concerns that have been raised by the Planning Board. I would like you to consider what was stated and then get back to us.

This item was tabled for the applicant to review the concerns of the Planning Board with the proposed multiple flaglots with regards to density and setting a precedent for future multiple flaglot proposals.

08.060 NB Donati Subdivision, 172 Anthony Road – Minor Subdivision/Lot Line Adjustment

Mr. Duane Rabideau, of Gilbert VanGuilder & Associates, stated the following: I am representing the Donati's in their request to subdivide their 2 parcels of land into 5 residential lots. There is a portion of the property that is all DEC wetlands. We have a situation where there is an existing house on 1.3-acres of land. Lot #2 would be about 9.3-acres, and Lots #3

is about 1.1-acres, Lot #4 would be 1.2-acres and Lot #5 would be 1.4-acres. They are looking to have on-site septic and we did look into tying into the public sewer in Dater Farms but that wasn't feasible. There is public water available to the sites. We are proposing a common drive to avoid any impacts to the wetlands with a 100 FT adjacent area. We are proposing 5 lots in this configuration. When we first approached the Planning Department for some input, this is when the issue of multiple flaglots came up upon the discretion of the Planning Board. We also have a layout where we could create a total of 4 lots. Mr. Williams and Mrs. Zepko were not in favor of that configuration and that is when we came up with this multiple flaglot. When we tried that we ended up with more buildable area where we could put an additional lot in there. I also have an aerial photo of what that would look like compared other lots in the area. Again, it is the same situation where we were able to get houses and septic systems in here without any impact to the wetlands. None of the neighboring landowners would be affected as far as the buffering. There are wetlands in the area and the parcel along the southerly line has an evergreen tree row that is pretty dense and the visual impact is quite minimal. Mr. Nadeau stated this answers my question as setting a precedent from the previous proposal (Werner & Searles) that we now have a second one similar to that proposal. Mr. Higgins asked if the rest of the lower parcel was all wetlands. Mr. Rabideau stated that is correct. Mr. Ouimet stated the following: Again, what we are doing is taking a marginal piece of property and jamming as much buildable area into and through creative engineering. I think it is too much for too small of a piece of land even though the lots are conforming it is still jamming an awful lot into a small area. Mr. Higgins stated I agree with Mr. Ouimet and Mr. Nadeau; just because you can physically get it in there, doesn't mean it is correct. Mr. Roberts stated I agree also. Mr. Rabideau stated the following: Again, we are in a situation where we are infilling and it is almost like we are being penalized for being creative. We are meeting all the zoning and I understand your concerns. The Donati proposal came in first and then this concept of the flaglots came in. It sounds like these 2 proposals are bad timing more than anything. Mr. Watts stated correct me if I am wrong, but these 2 proposal are our first multiple flaglot presentations since the Town Board in June 2007 made a resolution that multiple flaglots would be allowed at the discretion of the Planning Board. This is new to us, we haven't done this before and again we would like you think about what has been said.

This item was tabled for the applicant to review the concerns of the Planning Board with the proposed multiple flaglots with regards to density and setting a precedent for future multiple flaglot proposals.

Old Business:

08.048 OB JD's Tire Kingdom, 1540 Route 9 – Change of Tenant & Sign

Mr. John Hoke, Attorney for JD's Foreign Car Sales, stated the following: I am representing JD's Tire Kingdom. It is my understanding that we originally tabled the matter for a legal determination from Mrs. Murphy and I have had an opportunity to speak with Mrs. Murphy. I would just like to state the applicant's position relative to the analysis of an expansion of a non-conforming use. The applicant takes the position that there is absolutely no expansion of a non-conforming use. The use that is envisioned at the property has been consistent from the time it was owned by a previous owner. Mrs. Murphy stated the following: As I stated to the Board at previous meetings the inclusion of a retail tire store would be an expansion of a pre-existing, non-conforming use on that particular subdivision including retail sales and a service for a service provider would be an expansion of that use. Mr. Hoke stated the following: For clarification, there is no retail tire sales store envisioned for that property. It was always a

service facility. There were going to be tire incidental to every vehicle that we service at that facility and parts exchange and any kind of automotive servicing facility, which I believe the facility is currently approved for servicing. Mrs. Murphy stated and now you're retailing car tire sales. Mr. Hoke stated no, we are not retailing any particular tire sales. We are providing car service. Mrs. Murphy stated the previous people who before the Board said the whole idea was to be able to sell tires in association with a tire retail business. Mr. Hoke stated the following: I think we have always said that we were servicing vehicles and car parts would be sold incidental to the service of those vehicles. I tried to make that distinction last time because I think there was always confusion relative to the name "JD's Tire Kingdom" selling tires; like having a Sears Tire Auto Center there. That was never envisioned. We were always envisioning servicing vehicles and selling parts incidental to that servicing. There was never an emphasis on only selling tires there or anything like that. Mr. Berkowitz asked so why is your name "Tire Kingdom". Mr. Hoke stated the following: That is a marketing plan. They found it to be a successful marketing plan in Colonie, NY. Mr. Berkowitz asked you are spending all this money on a marketing plan then you are not going to retail? Mr. Hoke stated the following: They envision servicing vehicles and replacing tires and they definitely do that. But they never envisioned selling tires as an exclusive stand-alone tire sales facility. Mr. Roberts asked you already have a sign for the car dealers and asked why do you need a separate sign for tires? Mr. Roberts stated that is not the impression that I get and I don't like the idea. Mr. Hoke stated the following: They want to emphasize servicing at the facility. But again it is my understanding that your objective is the name "JD's Tire Kingdom". Mr. Roberts stated no it is not the name it is the use. Mr. Hoke stated the use that we are envisioning is the servicing of automobiles there and the changing of parts incidental to their sales. Mr. Ouimet asked what is the application that is before this Board, wasn't it to expand the use of the Auto America Property to sell tires? Mr. Hoke stated I believe it is for a change of tenant application. Mr. Watts stated the following: It is for automotive service facilities, used car dealership facility, automotive service facility. There is a change of tenant application and a sign application. Mr. Berkowitz asked who was there before that they need a change of tenant. Mr. Hoke stated originally it is Auto America Super Store and back in 2006 it changed from Mackey to Auto America and the change of tenant was done in 2004. Mr. Berkowitz asked what tenant was there that you are replacing now? Mr. Hoke stated Mackey. Mr. Ouimet asked if this change of tenant application is to change from Auto America to JD's Tire Kingdom? Mr. Hoke stated the following: They want to use two DBA's at the facility. It is going to remain under the same corporate ownership. Mr. Ouimet asked are you are still going to be doing business as Auto America and JD's Tire Kingdom. Mr. Hoke stated correct. Mr. Berkowitz stated you are expanding by one entity. Mr. Hoke stated no, it is the same corporate ownership. Mr. Berkowitz stated one company plus one company is two companies at one site. Mr. Hoke stated with all due respect there are not two corporations that are operating out of that site, there is only one entity. Mr. Berkowitz stated Auto America and JD's Tire Kingdom are two separate corporations. Mr. Hoke stated they are two separate DBA's. Mr. Berkowitz stated for me corporation and DBA are the same thing; they are two separate entities. Mr. Hoke stated I understand that is your position. Mr. Higgins stated when this Board approved Auto America, and you look back at the meeting minutes, we specifically said that there could not be two separate companies operation on that site and we were assured by the applicant that Mackey's operation of a retail outlet was not going to be on that site and there was only going to be the one company operating on that site. Mr. Hoke stated there is only one company; Mr. Mackey is not involved on that site. Mr. Higgins stated it was approved as a used car sales. Mr. Hoke stated the following: It is my understanding that we would just have to do an application for a

change of sign to Auto America Sales and Service as that is already approved at the site. The only thing that we are changing here is the name pursuant to the marketing plan to include a different DBA so they are operation under a different name. So there are not two corporations that are operating there. Mr. Higgins stated I previously stated that the intensity of the traffic going in and out of that site is a concern of this Board because used car auto sales is not as an intense use for the entrance and exits on that site as there would be if you are adding full additional retail of automotive parts and accessories as you're stating. Mr. Hoke stated I don't have the exact measurements and the exact intensity but in comparison to the fast food, which would have a higher intensity, the outlets are the same on Route 9. There is a larger access port with a single curb cut on both the Dunkin Donuts and the Auto America Super Store location. Auto America has a single curb cut with a 10 FT larger access to the property than at the Dunkin Donuts. To answer your question, this is something that we would be more than willing to analyze for you if that is a concern and it is my understanding that a response was already submitted relative to that. The last time there was 3 concerns; one was the traffic flow, another one was the tire storage and the third was the size of the sign and we attempted to address those 3 concerns. Mr. Ouimet stated the following: I think 2 of those concerns you attempted to address the tire storage and the sign. But I don't know if the traffic flow was adequately addressed. I think that as you move from a used car sales operation to more of a service-oriented operation, I think the traffic is very much a concern that this Board has. Mr. Hoke stated I am not really in a position to answer that for you tonight. Mr. Ouimet stated the following: The original proposal that Auto America made to this Board was that as a adjunct to their sale of vehicles they wanted the ability to provide service to the people who bought vehicles from Auto America and also they wanted to be able to use the servicing facilities to service other DeNooyer Group vehicles. There was never a discussion made to this Board that I recall that Auto America wanted to engage in the retail servicing business. Mrs. Murphy stated the following: The previous minutes reflect with regards to an approval of the expansion of the pre-existing, non-conforming use as granted by the ZBA. So any addition to that would in essence be in nature of an expansion of a pre-existing, non-conforming use, which was granted by the ZBA back in October 2006. So that is where we are at this point, therefore, the other issues don't matter. Mr. Hoke stated I am not in a position to concede that point but I think there was always a distinction between heavy use and light use at the facility. Light servicing verses heavy servicing. Mr. Ouimet stated I don't think there was ever any discussion on light verses heavy use. Mr. Watts read a portion of a letter submitted by Mr. James Towne, Attorney for JD's Tire Kingdom. "JD's Tire Kingdom is an operation run by the DeNooyer Family in Albany which proved successful in the connection with the facility they have on Central Avenue. The idea would be to use the buildings in the back to expand their usage in the sense that we would have more of a public precedent with dealing with the tire operation, continue the sales in front and continue service and inspection that now exist in the back." I think it was expanding the sale of the tire business and that is where everybody got that idea. Mr. Hoke stated the following: I apologize if there is a misconception in terms of the idea. But it was always envisioned that the sale of tires would be incidental to the servicing of vehicles. Mr. Watts stated from what Mr. Towne said that is not what we believed it to be. Mr. Polak stated I think the tire operation should be denied and when they really find out what they want then they can submit a new application. Mr. Hoke stated I disagree with that characterization.

Mr. Robert made a motion to deny the change of tenant and sign application for JD's Tire Kingdom based upon the retail sales of tires is an extension or enlargement of a pre-existing, non-conforming use. Mr. Ouimet seconded. Motion carried.

Mr. Higgins made a motion to adjourn the June 9, 2008 Planning Board Meeting at 7:47 pm.
Mr. Ruchlicki seconded. Motion carried.

Respectfully submitted,
Milly Pascuzzi
Planning Board Secretary