

**Town of Halfmoon Zoning Board of Appeals
Meeting - Monday, May 4, 2015
7:00 p.m.**

Chairman Rose called the meeting to order for the Town of Halfmoon Zoning Board of Appeals at 7:05 p.m. on Monday, May 4, 2015 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Hansen, Mr. Burdyl, Mr. Brennan
Alternate Member: Deborah Curto - absent
Secretary: Mrs. Mikol
Mr. Marlow - Planner
Councilmen: Mr. Connors - absent
Town Attorney: Ms. Cathy Drobny

Motion was made by Mr. Brennan and seconded by Mr. Burdyl to revise the minutes of January 5, 2015 to rescind a housekeeping item and appointing Mrs. Mikol as Secretary to the Board. Motion was carried.

Motion was made by Mr. Brennan and seconded by Vice-Chairman Tedrow to approve the April 6, 2015 minutes of the Zoning Board of Appeals. Motion was carried.

These are summary minutes and are not word for word at the request of the Zoning Board of Appeals.

PUBLIC HEARINGS:

Kennedy/Choate Garage, 405B Hudson River Road – SBL# 286.-1-66

Chairman opened the public hearing at 7:07 PM. The notice was not read. The application is for an Area Variance.

Chairman Rose commented: The request is for an area variance to build a 1528 SF 3-car garage for personal use in an M-1 Zoning District. The applicant received a denial for a building permit from the Code Enforcement Office under Section 165-34B Accessory Structures Location Part 1, 2, and 3.

The Board did a site visit on Saturday, May 2, 2015 at 9:30 AM

Mrs. Kennedy and Mr. Choate were present with their proposal for their garage and commented: We live in a small ranch style house we bought 2 years ago which doesn't have much storage. We want to build a garage for our vehicles, tools, snow-blower, and garden things. It would be for personal use, no business. I believe we need a variance for setbacks, road frontage, the garage would be located in the side yard but not forward of the house.

Mr. Burdyl commented: The garage doors will face the river and not the restaurant.

Vice-Chairman Tedrow commented: The canal property is very close to the back of the house and there was really no option to put the garage in the back of the house.

Chairman Rose commented: This is an M-1 Zoning District. The area where you are putting the garage is where a tennis court was located.

The public hearing closed at 7:17 PM. No one from the audience chose to speak.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

"Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance."

Mr. Hansen commented: I would say there would not be. The area is zoned M-1 and this use is strictly for their own personal use as part of their dwelling and there would be no effect on the surrounding properties.

"Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance."

Vice Chairman Tedrow commented: Just from my prior comments if he wants to build a garage I don't think there are many options on that parcel without requiring a variance of some sort.

"Whether the requested area variance is substantial."

Chairman Rose commented: The request is substantial for a variance request. From the site visit there is not a lot of options as Vice Chairman has mentioned. The way the property is configured the garage can't go behind the house or on the other side of the house.

"Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;" and

Mr. Burdyl commented: It appears from our site visit that there will be no additional adverse impacts from what is currently there.

"Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance."

Mr. Hansen commented: It is not really self-created other than they have no alternative as far as putting their garage on the site. The only alternative would be not to build a garage. There will be no impact on surrounding properties.

"The Board of Appeals, in the granting of area variances, shall grant the minim variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."

Mr. Hansen made a motion to approve the Area Variance being requested for a 3-car garage for personal use located at 405B Hudson River Road in an M-1 Zoning District, seconded by Mr. Burdyl. Motion was carried.

RJ Valente, 118 Button Road – SBL# 279.-2-23.2

Chairman Rose commented: This proposal is for a Use Variance at 118 Button Road which includes the office and garage structure that is no longer needed by the current owner under the approved mining permit governed by NYS Department of Environmental Conservation. The applicant is re-locating the truck equipment out of Halfmoon to a new site. The applicant is requesting to subdivide a 7-acre parcel out of the 71-acres and sell it off as a C-1 Commercial use and removing the new parcel from the DEC Life of Mine Permit. The applicant received a denial from the Planning Board at its meeting Monday, March 23, 2015.

The public hearing opened at 7:40 PM, the notice was not read. The Board met at the site on Saturday, May 2, 2015.

Mr. Marotta was present with a request for a Use Variance. We are looking to reduce the size of the 71-acre parcel by carving out a 7-acre piece which would include the Office and Garage, removing the 7-acres from the DEC Life of Mine Permit and sell the parcel. We are looking for a Subdivision and a Use Permit from the Planning Board but were denied because we are requesting that the use change from R-1 Residential to C-1 Commercial. We plan to move our facility to Troy to a new location.

Mr. Burdyl commented: Please explain the road access on the north side of the lot where the quarry is located now, how will that be retained in the future?

Mr. Marotta commented: There are 2 accesses paved one road goes to the gravel pit and one road continues to the back area where they currently park the heavy trucks and equipment. One road will have verbiage in the title either giving them an easement or us an easement, who ever they may be.

Chairman Rose commented: Essentially this is a Use Variance request in order to separate the property from the Life of Mine?

Mr. Marlow commented: If you choose to grant a variance tonight it will be on a future subdivided lot.

Mr. Marotta commented: We have an opportunity to buy a piece of property in Troy. It is isolated from residential properties however, the office is in disarray and completely destroyed from being vacant for so long. If we sell the property on Button Road we can take the money and roll it into the new site and rebuild a new office and move the maintenance facility to Troy. There is a 5-acre parcel with a building that will house all of the trucks, we would be moving to the old Bruno Building in Troy.

Chairman Rose commented: When does the current Life of Mine permit expire?

Mr. Marotta commented: They expire every few years but we have about 30 years of Life of Mine left on the sand part of the DEC Permit.

Chairman Rose commented: You're asking for a Use Variance and for 30 years from now you don't need any structures on the property to run your business. You only need access. I want to clarify for the record that this is an R-1 zone not AR zone. We are being asked to make it a C-1 Commercial District.

Mr. Marotta commented: Yes that is correct.

Chairman Rose opened the hearing to the public.

Mr. Kevin Koval, 57 Canal Road commented: I am here tonight representing my brother Thomas Koval who lives at 97 Button Road (across the street from this property) he is interested in moving his business to this property. Mr. Koval read a letter to the Board from his brother. Mr. Koval is not opposed to the subdivision and by moving the truck repair facility would greatly diminish the heavy truck traffic. The original agreement that the building was temporary and would be removed in fact was never going to actually happen. If the subdivision is approved, that it only be approved as a non conforming use, and subject to public comment and approved each time there is a change of tenant or ownership, under no circumstances should this be allowed to be rezoned commercial or industrial. Mr. Koval is interested in purchasing the property and moving my business to this site. I still want my neighbors to have a future say in what happens on this site proves that it is in every ones best interest to keep this zoned R-1 with non-conforming uses. The letter is on file in the office of the Zoning Board for anyone to see.

Chairman Rose commented: The letter states that your brother is not opposed to this proposal and you are not opposed to it either however, you are opposed to changing the designation to commercial.

Mr. Koval commented: Yes, that is correct. The reason for that is so the neighbor's that live there have a say in the future as to what is allowed keeping it a non-conforming use.

Chairman Rose commented: I guess my question is the request to subdivide the property or to designate it as C-1 Commercial or R-1 Residential or should it just default to the property in question or the designation in question. I think the application is requesting that it move to C-1 Commercial.

Mr. Marlow commented: It does say R-1 to C-1. It does ask for a variance for the zone change.

Chairman Rose commented: When we were at the field visit I thought I heard Mr. Marotta tell us that the Koval Electric Business would want to put their business there as part of this sale which is confusing me now. The reason why I bring it up is because that would require it to be something other than an R-1 district to put an electrical business there. Even though it changes out the truck business and uses and all of that I think I just heard Mr. Marotta wouldn't mind if the application was revised to an R-1. I want to be clear as to what you are asking for. If we approve it one way or the other it could have an impact on what you are trying to accomplish.

Vice-Chairman Tedrow commented: If it goes to R-1 we do nothing.

Chairman Rose commented: Exactly, we just have to approve the change of use to subdivide the property.

Vice-Chairman Tedrow commented: No we don't. If you want to go to R-1 you deny the variance application and then the question is does the Planning Board approve the subdivision if they do it goes to R-1 and anyone that wants to put a use in thereafter that doesn't comply with R-1 has to come before us with a use variance.

Chairman Rose commented: I agree with that now that you said it that way.

Mr. Marlow commented: I am just double checking with Ms. Drobny we have no provision in AR, R-1 zoning that allows for an expansion of a pre-existing non-conforming use. Essentially if, worst case scenario for Dean is if you guys say no and he goes ahead with the subdivision now he has one-lot with a commercial building on it we can't give the change of tenant Planning Board approval because it's not an allowed use in that zoning district so they would have to come back to the Zoning Board to get a use variance.

Mr. Koval commented: The reason for requesting R-1 with a non-conforming use was so that other residents in the area could have a say in what happens in the future. The intention was to allow others to have a say but if the end result is not being able to use that property then I think that a C-1 zoning would be recommended.

Mr. Marotta commented: Correct me if I am wrong but I think Mr. Koval is trying to achieve that if it's sold to someone and then 5 years down the road someone else buys it he wants to be able to have the neighbor's have a say who goes in there. Even under C-1 it go before the Planning Board and have a hearing anyway so if there were any comments for a change of tenant there the residents would still be able to come in and give their opinion.

Mr. Hansen commented: I see other complications there too. I don't think C-1 would cover Mr. Koval's use anyway. If you look through the C-1 permitted uses it's more of sales and that sort of thing it doesn't include as I see it unless I am missing it, storage and trucks and that sort of thing.

Chairman Rose commented: Based on what we are seeing in the code here a better designation for what Koval might be doing would fall under LI-C because its storage, products and office space it's mixed and covers it more comprehensively under LI-C. There seems to be a conflict of what they are trying to achieve based on what we are reading and what is possible.

Mr. Marotta commented: Could the Board leave the public hearing open for the next meeting for the applicant to re-visit their options with the variance request.

Motion was made by Mr. Brennan and seconded by Vice-Chairman Tedrow that the Board table the public hearing to the June 1, 2015 meeting. Motion was carried.

Jimmy Vasilakos, 1 Birchwood Drive – SBL# 278.4-2-1

Mr. Brian Osterhout was present from MJ Engineering presenting the applicant.

The applicant is seeking approval to construct a 1,934 SF retail boutique on an existing lot at the corner of 1 Birchwood Drive and Grooms Road in a C-1 Commercial Zoning District therefore an Area Variance is being requested.

The public hearing opened at 8:14 PM. The notice was not read. The Board made a site visit on Saturday, May 2, 2015. Chairman commented that 3 letters were received from the neighbors: 2 Birchwood Drive, 23 Birchwood Drive, and 31 Park Plaza the letters are in the file but were not read.

Mr. Osterhout commented: The building being proposed is 1934 SF upscale clothing boutique there will be a residential garbage can. The property is .38 in size and is zoned C-1 Commercial. The residential garage is currently occupying the property there will be 12 parking spaces with entrance and exit on Birchwood Drive. Several variances are needed: Area, front yard setback, side yard setback, rear yard setback and width variance. Mail order deliveries will be by UPS and FEDEX. Hours will be 10 AM – 8 PM. This will bypass the busy traffic hours. Non-intense use, quiet business will be more appealing than now. Buffering will be done to the residence to the south. Architectural plans are not ready yet. It will be a walk-in business and some appointments as well.

Chairman Rose commented: Did we get a letter from the County Planning Board?

Mr. Marlow commented: There was no significant impact for this proposal but made a recommendation that the Grooms Road entrance be eliminated.

Chairman Rose opened the public hearing to the audience, the notice was not read.

Mr. Michael Sidoti, 22 Birchwood Drive commented: I would like to ask the Board if they reviewed the meetings and their decisions from last year when this project was denied by the Board?

Chairman Rose commented: Yes, I did.

Mr. Sidotti commented: I live about 100' away from this proposal. It seems like nothing has changed except they moved the position of the building the lot is 9,000 SF too small to support a business. They still have a shortage on the frontage the side setback has not increased. They want to put a business 25' from this ladies house she is going to work a 10 hour day come home want to relax on her deck or in her yard and she has a business 25' when you require 100' or 50' with a partition. In my opinion moving the building accomplishes nothing. I do believe that the applicant is creating his own hardship because as far as I know he owns property in Salty's Plaza that is vacant where he could gladly put a building. As far as the Engineer said he wouldn't want his kids playing in the front yard; the house that was there was on Birchwood Drive not on Grooms Road the front yard was on Birchwood Drive. The reason that lot is so small is because there was a full size single-family house there that could fit on that lot that is why it is too small for commercial.

Ms. Sandy LaFountain, 23 Birchwood Drive commented: You have my letter. I am opposed to this proposal it is a residential area. One of the main things is that this property has been kept like crap and has been a junk yard for many years. It is eye sore to all to our development. There is nothing to guarantee us that it won't look like that later. The garage that is there is an eye sore. They want to go back and put a house on it and make it residential I think variances could be met if that was possible through the Zoning Board and keep it part of the development. We are not in favor of it.

Ms. Wendy McMahon, 2 Birchwood Drive commented: You have my letter. I am still concerned about the impact that a business would have on the sale ability of my home when and if I choose to sell it and also for me to enjoy my home with a business next door. I appreciate that they came back with ideas of not having a commercial dumpster and trying to make it more residential. They have other properties where they could locate this business.

Mrs. Mary Sagendorf, 16 Birchwood Drive commented: I live down around the corner but our friends lived in 1 Birchwood and they were not allowed to go out onto Grooms Road from their garage. They had to have a driveway come out onto Birchwood Drive. The traffic is impossible we can't get in and we can't get out. This is not going to help us and it will change our residential look.

Mr. George Beyer, 15 Birchwood Drive commented: Just FEDEX and UPS and no tractor trailers the UPS and FEDEX are a fairly good size truck there is no way they can turn around in that little parking lot so they are going to all the way down Birchwood Drive. There are children and traffic on Birchwood so we don't need that. A retail business needs a commercial dumpster not residential.

Chairman Rose commented: One other letter came from Brendan & Carla Miller of 31 Park Plaza expressed a strong opposition to the proposal.

Mr. Burdyl commented: The last gentlemen had comments about road access and turn around radius issues can you comment on that?

Mr. Osterhous commented: That is more of a site plan issue. UPS and FEDEX comes in my residential driveway on an every other day basis and they have no problem getting around. If it were a tractor trailer there would be an issue but a box truck will have no difficulties.

Chairman Rose commented: Traffic issues, site plan issues are the responsibility of the Planning Board. We should focus on the variance request.

Mr. Sidotti, 22 Birchwood Drive commented: I would like to make a request that all the Board Members review the meeting from last year and the reasons why this was denied to refresh your memories.

Mr. Brennan commented: Chairman I did review from last time the information was in our packets.

Chairman Rose commented: I believe Mr. Sidotti already asked that question and we answered that. Mr. Burdyl said it was answered in the affirmative. Mr. Brennan commented: The information from the previous findings was included in e-mails sent to the Board and file packets.

Chairman Rose closed the public hearing.

In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

"Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance."

Mr. Brennan commented: I actually think there will be a detriment to the area. Anytime there is a transition between commercial property and a residential property it's my opinion that there is an effect. Exacerbating that effect is the fact that the buffer even with foliage in place is reduced by 50%. Given that I think that amplifies the effect so it's my opinion that it will add to an undesirable situation.

"Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance."

Mr. Burdyl commented: Based on the restrictions of the site it appears that it will not be available to be achieved by any other method. The applicant has taken into consideration the concerns and has modified the site plan accordingly.

Vice Chairman Tedrow commented: The size of the lot has been brought up a lot that it's too small for commercial use. It is what it is and is zoned C-1 commercial and is pre-existing. Anything applied for will need variances. Something that we should consider is that something has to be approved there. You cannot require a landowner not to do anything with their property unless you are willing to step up and buy it. I think we also should consider what alternative would be with less impact. I think the applicant has done a good job or as good as they can with the lot. Removing the dumpster was a huge issue with me and nudging the building to the other corner of the land I think is an improvement too. It's not a good situation but it has been zoned commercial for a long time and something has to go there someday.

"Whether the requested area variance is substantial."

Mr. Hansen commented: It is hard to judge just how substantial they are. It's all relative to the sense but the applicant has made an attempt to make a change the distance between the existing home next to it by increasing the buffer zone. Granted it doesn't meet the 50' landscaping requirement it is 15' short. I am sure if they put in an intense green buffer they could easily screen it to the adjacent property. That is up to the Planning Board to decide. As far as the other variances I don't see them having a very big impact on the homes in the rear at all. There is not more traffic other than somebody inadvertently making a left turn for whatever reason. There is no reason for anyone to go down Birchwood Drive that would not be done intently. We are here tonight to consider the setback and the lot area. As pointed out the lot is what it is they can't add anything to it. They have to work with what they have.

"Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;" and

Mr. Hansen commented: They are not proposing a major change in their proposal it's not an intense use even for a commercial use.

Chairman Rose commented: I have to agree with that. Under C-1 uses I can't find a less intense use. It's an eye sore as underdeveloped land.

"Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance."

Mr. Hansen commented: I don't believe it was self-created. They bought the lot as is they didn't change it in anyway. They didn't make it smaller. The applicant did not make significant changes to the property.

"The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."

Motion made by Mr. Hansen to approve the Area Variances for 1 Birchwood Drive in a C-1 Commercial District as requested by the applicant, seconded by Mr. Burdyl. Mr. Brennan voted nay the motion was carried.

NEW BUSINESS:

Christopher Speck, 23 Ridgewood Drive – SBL# 260.19-2-53

The proposal is for an Area Variance to place an accessory structure 3' from the primary structure in the Rolling Hills Subdivision. According to Section 165-34 – 13 (3) it states that Accessory Buildings cannot be closer than 10' to principal buildings. Mr. Speck received a denial for a building permit.

Mr. Speck commented: I am looking encroach into the 10' setback off the house to place my shed due the lot and site constraints I am unable to place the shed anywhere else on the property. I had to build a retaining wall because the builder did not finish the grade properly off the main structure so the basement flooded.

Vice Chairman Tedrow made a motion to set a public hearing for Monday, June 1, 2015 at 7:00 PM, seconded by Mr. Burdyl. Motion was carried.

The site visit will be on Saturday, May 30, 2015 at 9:30 AM.

Motion made by Mr. Hansen and seconded by Vice- Chairman Tedrow to close the meeting at 9:15 PM.

Respectively submitted by Denise Mikol, Secretary
Town of Halfmoon Zoning Board of Appeals