

Town of Halfmoon Zoning Board of Appeals  
Meeting August 4, 2014  
7:00 p.m.

Chairman Rose called the meeting to order for the Town of Halfmoon Zoning Board of Appeals at 7:00 p.m. on Monday, August 4, 2014 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Hansen, Mr. Burdyl, Mr. Brennan  
Alternate Member: Deborah Curto  
Councilwoman: Mrs. Jordan  
Town Attorney: Ms. Lyn Murphy  
Secretary: Mrs. Mikol

Motion was made by Mr. Hansen and seconded by Vice-Chairman Tedrow that the minutes from the June 2, 2014 meeting be approved, motion was carried.

Motion was made by Vice-Chairman Tedrow and seconded by Mr. Burdyl that the minutes from the July 7, 2014 meeting be approved, motion was carried.

**OLD BUSINESS:**

**Jimmy Vasilakos, 1 Birchwood Drive – 278.4-2-1**

The public hearing was closed at the July 7, 2014 meeting. The Board has 62 days to make a decision on this variance request. The Board requested more time to review all the comments and concerns from the adjoining residents with respect to the proposal.

Mr. Jimmy Vasilakos of 1 Birchwood Drive is requesting an area variance to construct a 1,934 SF retail facility which is an allowable use in a C-1 Commercial District. Pursuant to Section 165, Attachment 1, Schedule A the minimum lot size of 25,000 SF is required and the lot has 16,965 SF, 8,035 SF less than required. Pursuant to Section 165-32C and Section 165, Attachment 1, Schedule A, the minimum lot frontage for this proposal is 150' and the lot has 100' of frontage, 50' less than required. Pursuant to Section 165-32F and Section 165, Attachment 1, Schedule A, lots that abut a residential district are required to have a side yard setback of 100' or 50' with opaque fencing or evergreen plantings.

The side yard to the south has a 25' setback, 75' or 25' less, respectively, than required. Pursuant to Section 165-35A, parking spaces are required to be 10' x 20', with Planning Board discretion to allow 9' x 20' spaces for employees parking. The site plan presented has parking spaces with dimensions of 9' x 20' for all parking spaces. The applicant received a denial from the Planning Board at its meeting of May 12, 2014 and again on June 9, 2014 on the plan that was presented to the Zoning Board at its June 2, 2014 meeting with changes made as a result of their first Planning Board Meeting.

Mrs. Effie Vasilakos, 444 Grooms Road, was present proposing a boutique at 1 Birchwood Drive zoned C-1 Commercial. The variance requests are for lot size, the frontage, transition yard and the parking space sizes. We had the public hearing last month and the Board was unable to come to a decision. We are hoping to address some of the concerns of the residents and try to resolve some of them.

Chairman Rose commented: I believe we closed the public hearing portion of this and I believe there is no more public comment. I leave it up to the Board to make any comments or ask any questions.

Mr. Hansen commented: Was there an attempt made to resolve the issue with the screening between the proposed store and the neighbor?

Mrs. Vasilakos commented: At the beginning we did go visit the neighbor. We don't have the space that we require so we asked her what would be preferable and she did mention some natural landscape and some bushes to be put in.

Mr. Hansen commented: Have you had any further conversations with her since then?

Mrs. Vasilakos commented: We spoke about a month ago, at that time we showed her the plans.

Mr. Hansen commented: I asked the question because I think she filed a letter with the Town at the last meeting that she apparently is not in favor of the proposal, she has changed her position.

Mrs. Vasilakos commented: We received the current emails but at the last meeting we did not have that however, from the last meeting until now we now have it.

Mr. Hansen commented: So now you are aware of that.

Mrs. Vasilakos commented: Yes.

Mr. Burdyl commented: There was some discussions of deliveries with respect to the proposed occupancy could you please tell us more about that. Do you expect to have tractor trailers for deliveries or UPS and FEDEX deliveries and how many times a day do you plan on getting deliveries?

Mrs. Vasilakos commented: Deliveries will be 2-3 times per week maximum and it will be UPS and FEDEX and mostly me going down to New York and bringing back the product it is top shelf gowns which would not be deliverable. There will be no tractor trailers. Whatever is ordered from overseas will be delivered UPS and FEDEX as well.

Chairman Rose commented: Let's go over it one more time, what do you propose the screening to be between the properties.

Mrs. Vasilakos commented: Originally we were doing bushes all across the property line or maybe putting in a fence. When we originally spoke to the neighbor, Wendy said she didn't want a fence and that she wanted natural landscaping as natural as possible. She mentioned a certain type of bush that has flowers on it I cannot remember the name of it. That is what she suggested at that time. We don't mind either way.

Chairman Rose commented: Mr. Hansen do you have the letter? Just to recall did the neighbor ever mention that they don't want a fence at all or any type of screening?

Mr. Hansen commented: I could dig out the letter but it sounds like she is opposed to the project now.

Chairman Rose commented: What was her specific reason.

Mr. Hansen commented: Well she mentioned a few things it sounded like some of the other concerns were recited too. It was in a batch of comments that our Secretary sent out to us.

Chairman Rose commented: This is a letter from Wendy McMahon right?

Mr. Hansen commented: Yes that sounds right. It is kind of ambiguous Mrs. McMahon doesn't specifically mention the screening in this letter. Mrs. McMahon was definitely not in favor of the project. It says she listed a number of things that she is not happy about. I don't see any mention of the screening at all. I thought that would all be resolved before they considered coming here. She does have a valid point but there is absolutely no room or break there between the paved driveway for the dumpster and the property line.

Chairman Rose commented: The reason why I asked Mr. Hansen to take a look at that letter again because at one point when we made the site visit there was a discussion on screening and the fence and/or the option of either/or and then a couple of comments from the meetings here. I did notice in the notes that there was a discussion that Mrs. McMahon didn't want a fence screening. Some type of barrier needs to be put in place so that would have to be determined if this is approved. I think that the comment is that the zoning requires evergreens. That was Mr. Hopper's comment. I am not quite sure if that is accurate or not but that was the comment from the applicant. Does the Board have any other questions?

Mr. Vasilakos, 444 Grooms Road commented: May I say something?

Chairman Rose commented: Technically the hearing is closed. This is questions for the Board at this point. Unless someone needs a clarifying question that we need an answer on, we would allow that.

Mr. Sodoti, 22 Birchwood Drive commented: Mr. Sodoti made a comment and was not on microphone and could not be heard.

Chairman Rose commented: Please come up to the microphone and state your name and address for the record please. If you need to recall something that happened at the last meeting that is fine.

Mr. Sodoti, 22 Birchwood Drive commented: At the last meeting the Board said they would look into seeing how the property got changed from R-1 to C-1 because nobody on the street knows what happened. We were never informed that it was going to be switched to commercial and at the last meeting the Board said you were going to look into it to see how it came about.

Mrs. Murphy commented: My understanding is that it was always C-1 Commercial even though it was a residential development that took in a parcel that was always zoned commercial. There was some confusion generated by a petition that was circulated a long time ago before I was with the Town by the residents regarding a different C-1 Commercial use and whether or not it is was permitted at the time. As far as we looked back it was C-1 Commercial.

Vice-Chairman Tedrow commented: That is my recollection as well, Woodcourt was built before there was any zoning or subdivision and then when zoning went in the late 60's the one lot got caught in the C-1 Commercial zone that came around from Route 9.

Mr. Sodoti, 22 Birchwood Drive commented: Mr. Sodoti was not on tape, he spoke without a microphone.

Secretary Mikol commented: Mr. Sodoti is not going to be on tape unless he uses a microphone.

Chairman Rose commented: Mr. Sodoti can you do me a favor because we need to get the minutes could you please come up to the microphone to speak for record.

Vice-Chairman Tedrow commented: We cannot enforce deed restrictions.

Mr. Sodoti, 22 Birchwood Drive commented: Mr. Sodoti again spoke he was not on tape, he spoke without a microphone.

Chairman Rose commented: Mr. Sodoti could you please come up to the microphone and start over again? If you're going to make a comment it has to be for the record. I am giving you some latitude to make some comments but it has to be on the record.

Mr. Sodoti, 22 Birchwood Drive commented: Yes, I understand. Our deed restrictions state that they are good for 25 years and they could be renewed every 10 years. Every lot in our neighborhood is zoned R-1 Residential according to our deed restrictions. If the neighbors did something between themselves it would have nothing to do with the Town. How could the Town change it from residential to commercial, they can't it's a residential neighborhood.

Mrs. Murphy commented: For as long as zoning existed that lot was always C-1 Commercial. It has never gone from commercial to residential. There was a house on it but it was still always commercial.

Vice-Chairman Tedrow commented: That is right.

Mr. Sodoti, 22 Birchwood Drive commented: Even though our deed restrictions say every house is residential and it says it's for residential use only and no businesses.

Chairman Rose commented: The Board cannot comment on the deed restrictions for your properties. We can only go by what the zoning was at that time. For the purposes of the Board that property is C-1 Commercial and it is the only thing we can consider.

Mr. Sodoti, 22 Birchwood Drive commented: But it's only 9,000 SF too small to put a building on.

Chairman Rose commented: Does the Board have any other questions?

Mr. Burdyl commented: There were some concern over utility services to the building, would you have any plans to alter the timing of services if that is possible? Such as garbage pick-up and things like that?

Mr. Jimmy Vasilakos, 444 Grooms Road commented: We can ask the garbage removal company, one of the emails someone mentioned that it would be picked up between 3am – 6am which is false because there is no garbage there to be picked up at 3am - 6am so I think we can call up and tell them to come during business hours or whenever we don't have much business or whatever is good for when there is less traffic.

Mr. Burdyl commented: What is the normal time frame for garbage collection in your area?

Mr. Jimmy Vasilakos, 444 Grooms Road commented: At the restaurant across the street it varies it is early in the morning but you are talking about two totally different things one is a restaurant and the garbage that we are going to have at the store will be more like cardboard and plastic and no food. I don't think a big garbage dumpster is needed. We will need a smaller household garbage service.

Vice-Chairman Tedrow commented: When you purchased the property was the house still there and was it occupied?

Mr. Jimmy Vasilakos, 444 Grooms Road commented: I didn't purchase the property my father, Peter Vasilakos did. Yes the house was still there and yes it was occupied.

Mr. Peter Vasilakos, 20 Crestwood Drive, Clifton Park commented: When I bought the house in 1993 from the lady I was told it was residential and she went around having people sign a petition that she filed with the Town and Saratoga County Clerk. The petition was filed in 1993 according to my lawyer and she only needed 22 signatures out of the 33 that lived there. So all the residents signed the 65 page petition and it was filed. When I bought the house it was commercial the land was commercial. It was changed from residential to commercial.

Vice-Chairman Tedrow commented: But the house was still standing and was habitable.

Mr. Vasilakos, 20 Crestwood Drive, Clifton Park commented: The house was there she moved out. I rented it to a couple of people and they destroyed it.

Chairman Rose commented: Mr. Sodoti we are done with the public comment.

Mr. Sodoti, 22 Birchwood Drive commented: I can rebut what he just said this isn't public. I have to rebut. He admitted himself that it was residential and switched to commercial.

Mrs. Murphy commented: The application before you is for an area variance the lot is commercial and always has been there is no argument about that.

Chairman Rose commented: Mr. Sodoti we are done with public comment. We understand your point. The application here is whether this property is commercial or residential is inconsequential to what our Board is going to decide on. The property is commercial based on the evidence we have to work with for the area variance.

Vice-Chairman Tedrow commented: If this were a commercial lot sitting in the middle of an extensive commercial zone with a 30% reduction in the area it would be significant but this lot is also burdened with being a corner lot which requires you to have two front yards. By being adjacent to a residential district it will lead to the requirements for buffering between the commercial zone and residential zone. It just seems to me that the lot is simply too small to take this use and to buffer it properly and so on. I think that the specific use being proposed here takes up too much of the lot area and will generate too much traffic for us to approve it. That is just an opinion.

Chairman Rose commented: Are there any other comments? I for one, look at the property that if something isn't improved it is going to remain an eye sore, it's not in the best interest of the Town to be sitting there with a blue box on it collecting clothing and a garage and a dirt lot. I am not quite sure what else could be proposed there that would be of a lesser impact and lesser size that would have a chance of sustainability in a commercial zone.

Vice-Chairman Tedrow commented: A residential use now is not permitted in a commercial zone there was a residence there at one time and was lived in. There is the route of a use variance if a less intensive commercial use could not be found. I think there are alternatives for development of the lot and it's not this or nothing.

Chairman Rose commented: Are there any other comments or thoughts? I will then start on the tests for an area variance.

"The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Enforcement Officer, to grant area variances as defined herein."

"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."

Vice-Chairman Tedrow commented: I think in particular with regard to the lot immediately to the south it would be a detriment because the buffering requirements of the ordinance will have to be compromised to some extent if this proposal is approved.

Chairman Rose commented: I will take an alternate attack to that, I don't think the property is ever going to developed residentially and by the evidence by this application request to a commercial property and their desire to build a business on it. What we need is more of a detriment than allowing an approval of a commercial structure in terms of what is best for the Town and what could be placed on that property and make an income out of it. There are probably not many options.



Mr. Burdyl commented: I agree with Mr. Rose that the neighborhood itself along that stretch of road is turning commercial and this one building would not have a significant impact on the neighborhood overall.

"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: Probably for this specific use there is no alternative but I believe there are alternative uses that could be developed here that would lead to benefits to the applicant.

"Whether the requested area variance is substantial."

Vice-Chairman Tedrow commented: I think a 30% reduction in the lot size is substantial.

Mr. Brennan commented: I will agree with what Vice-Chairman Tedrow said that 30% reduction in the lot size is definitely a substantial variance that is being requested for that particular area.

"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: I agree with the testimony that there are issues with traffic in that area but I don't believe the applicant's proposal will have any more of a detrimental issue with traffic than already exists there. I don't believe it will have an adverse impact.

Vice-Chairman Tedrow commented: I would disagree specifically for the lot and the immediate neighboring to the south.

Chairman Rose commented: Again taking into consideration what exists today looking at the lot, I have driven by the lot over the last 4 weeks everyday at different times of the day on the way to work and home from work; I haven't experienced any traffic issues at 5:00, 5:30 or even 6:00 p.m. I know it's summertime so I know it's not about a traffic study that is not the intent of my point; but what is noticeable is the fact that there is an empty lot and it's such a visible spot, it does get a lot of traffic going by it, from the looks of it and it just doesn't look like it should. There should be something on that lot that is an improved structure, something usable.

I don't think it's an adverse impact on the neighborhood or area based on the fact that next door is commercial across the street is commercial adjacent is commercial with the markets there and the gas station and the restaurant. That entire area is commercial and I don't think it's a stretch to think that this is an impact on the neighborhood I just don't see it. I do respect your opinion Vice-Chairman Tedrow I do see your point.

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

Vice-Chairman Tedrow commented: I believe it is self-created the zoning exists as commercial when the lot was purchased we have heard testimony that the lot was purchased as a commercial property. The onerous is on the buyer to understand both the zoning and the requirements that have to be met with regard to developing such a lot and in that regard I think the hardship is self-created.

Mr. Brennan commented: While I understand and I am somewhat compassionate over the comments that were made as far as that lot becoming undeveloped and the desire to put a structure on there of some kind to help improve the characteristics of it. The fact remains that no matter what structure goes on the lot that structure could fall into the same state of disrepair and I am surely not suggesting it in any stretch of the imagination that that's what would happen but we don't know what the future is going to be. There could be other problems with the structure, there could be any number of things that could happen and to make a decision on whether zoning should be approved based purely on the fact that the existing situation is an eyesore I think falls more under a code enforcement issue than a zoning issue and that is my opinion.

Chairman Rose commented: Something I neglected to do in the beginning of the meeting, the Board is fully represented tonight and Mrs. Curto is our alternate so the Board will be voting tonight and Mrs. Curto will not be voting tonight.

"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."

"Imposition of conditions: The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restriction as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

Vice-Chairman Tedrow made a motion to deny the application request because of the unacceptable impacts of the proposal. Motion was seconded by Mr. Hansen. Role Call: Chairman Rose nay, Vice-Chairman Tedrow aye, Mr. Brennan aye, Mr. Hansen aye, Mr. Burdyl nay. Motion was carried to deny the application.

### **Public Hearing:**

#### **Upstate New York Subway LLC, 1508 Route 9, 278.4-3-3.11**

The applicant wishes to occupy the 1,820 SF retail facility currently occupied by D.A.M. Liquors, for purposes of establishing a Subway fast food restaurant. Pursuant to Section 165-35C, minimum aisle width shall be 22 feet. The site plan has an aisle width of 15' at the most narrow location, 7' less than required. Pursuant to Section 165-31 and Section 165, Attachment 1, Schedule A, the minimum lot frontage for this proposal is 150'. The frontage on Route 9 is 85', 65' less than required. The applicant received a denial from the Planning Board on June 9, 2014.

Mr. Donald Zee, Attorney for the applicant commented: With me tonight is the applicant, Mr. Robert Hurley as well as Mr. David Flanders, Surveyor. There was recently a site visit prior to this meeting. I just want to talk about the property as it is and some of the changes that we would propose to the property if the variances that we seek are granted.

Mr. Zee commented: It is a unique situation because this property was part of a subdivision going back to 2007 and when the subdivision occurred two lots were created. One lot complied with all aspects of the Town's Zoning Code and that lot is immediately to the south of this. This parcel meets the requirements with regard to area however there are issues dealing with the width of the lot at the building setback line. The Planning Board has requested based on an interpretation from your Town Attorney, Mrs. Murphy because when the subdivision occurred this parcel was used as a Liquor Store, DAM Liquor Store.

It was a determination of your Town Council that a Subway Fast Food Establishment has a greater intensity than a Liquor Store. A Liquor Store doesn't have this many customers on a regular basis and during peak hours it would most likely have substantially more occupants and customers.

Mrs. Murphy commented: I do agree with everything you are saying except that the Planning Board determined that it would be a more intense use and during the peak hours it would be a more intense use. When the subdivision took place one lot was in compliance and this lot was not in compliance. This proposal lessens the non-conformity.

Mr. Zee commented: I apologize for that, I was not at that meeting and I wasn't their Council at that time.

Mr. Zee commented: The other aspect is there are questions with regard to the width of the roadways internally. I think your maybe all familiar with the D.A.M. property and currently the traffic as one enters goes clockwise around the property. We are proposing to make it counterclockwise. The reason for that is as the property is today it's a non-conforming use in the sense of the width of the parcel and the width of the travel lanes is non-conforming. The parking spaces are non-conforming. Parking spaces have to be 10' x 20' some parking spaces are only 9' x 15' currently as it exists. We are proposing to upgrade the development in that making all the parking spaces within the site comply with the current code requirements of 10' x 20'. The concern then deals with the width of the travel lanes. As I pointed out we are now proposing the traffic counterclockwise and in doing that we would have angled parking in front, angled parking at the handi-cap spaces and we would add additional parking in the rear as well as add two parking spaces on the southern side of the property. Obviously the travel lanes are pre-existing and the travel lanes are substandard per your code. However, normally the travel lanes are a requirement of 22' talk about lanes in both directions.

In this case we are talking about lanes traveling in one direction and where there is varying widths on the westerly portion of the property we have adequate travel lane and on the southerly side we have 19.7' where it is required to have 22'. On the northerly side of the property with one lane we have 19.7' and required to have 22'.

We have the more substantial or larger variance request in the front yard. We are talking about angle parking here and there we have 15' and the parking spaces furthest to the north if you measure out 20' from the parking space to the closest parking space to the east is at 15'. We don't have any problems with regard to movement but because of the one way direction of a travel lane normally you need 11' when you have 22' for both directions we need to have 15'. The mention at the property setback line your notice talks about frontage at the Route 9 line that's not what your code looks at with regard to the width of the property at the 50' setback line we have 97.1' rather than 150' that is required under the code.

Like I previously said this is a pre-existing site so we respectfully submitted that and when you are looking at the variance and the level of the variances you are looking at you should really look at the pre-existing use or the conditions of the lot that had been previously approved by the Planning Board in 2007. When we talk about the variance of 150' to 97.1' realistically the pre-existing is 97.1' and that has been an approved subdivided lot within the Town of Halfmoon. It is respectfully submitted that with regard to the width of the lot there is really no change of what the pre-existing condition was.

Same thing as regard to the width of the travel lanes, the travel lanes have been at a minimum of the 15', in fact we are improving the conditions of the parcel by increasing the size of the parking spaces. Previously they were very substandard and we are proposing to comply with your Town Code as a result, if you look at the test that you have gone through on your application whether an undesirable change will be produced in the character of neighborhood or a detriment to nearby properties. It's been a C-1 Commercial parcel and we propose to keep it a C-1 use in fact with the project as we propose it we are improving the conditions by not having substandard parking spaces. When you look at the second point of your test which is whether the benefit sought by the Town the applicant can achieve it by other method there really isn't because this is a pre-existing situation that was approved by the Planning Board back in 2007 when the zoning was still for the dimensional requirements exactly the same. Whether the requested use variance is substantial as I said, if you utilize what the existing condition is because the building is built and has been there for quite a few years we are not seeking to expand the size the building whatsoever, we are not building a new building, we are just saying based on what the pre-existing non-conforming use condition the variance that we are seeking is not substantial.

Whether the proposed variance will have an adverse physical impact on the environment we don't believe it would because it is pre-existing everybody in the area knows what the conditions are.

Chairman Rose commented: When you say there is no significant impact there is a greater than 50% impact of road frontage that is probably the greatest variance request in front of this Board that I have ever seen since being on the Board.

Chairman Rose commented: Well the frontage is 85', 65' less than required.

Mr. Zee commented: We are not seeking a variance with regard to road frontage. If you look at the Planning Board minutes we are seeking lot width and lot width which is measured at the building setback line. We are 97.1' versus 150'. Bear with me for one second and I will pull out the Planning Board minutes to show you what the specific variance is for. I am referring to the June 9, 2014 meeting of the Board. "Mr. Berkowitz made a motion to deny the commercial site plan application for Upstate NY Subway LLC due to inadequate lot width and two inadequate aisle width" so it's not for frontage it is with regard to the width.

Chairman Rose commented: I am not sure, I am looking at the agenda for tonight it is stated that the frontage on Route 9 is 85' less 65' than what is required. It is also stated in the Resolution of denial from the Planning Board.

Mr. Zee commented: If you look at the application itself the first page says request minimum lot width from 150' to 97.1' so as I said we did not ask for a frontage variance. It is a lot width.

Mrs. Murphy commented: Yes I attend both meeting and it had to do with the lot width not the frontage on Route 9.

Chairman Rose commented: I am looking at the minutes of June 9, 2014 it's called out in the resolution as inadequate lot width, it is the 7<sup>th</sup> whereas.

Vice-Chairman Tedrow commented: The point is that the lot width is measured at the set back line and not at the road.

Chairman Rose commented: I am ok with that I am just reading the minutes.

Mrs. Murphy commented: I am just waiting to see if you had any other questions. Your right it's because it's measured at the setback line and not at the street. It is just the terminology.

Chairman Rose commented: I didn't know if there was any significant reason for the resolution to include that if it was irrelevant.

Mrs. Murphy commented: It's irrelevant because he needs a variance with regard to lot width.

Vice-Chairman Tedrow commented: The notice is wrong.

Mr. Zee commented: The last part is that it's not self-created the applicant which is the LLC did not create the lot. They were not the applicant at the time of the lot being created. Once again, this is a very unique situation where you have two lots that were created and I don't know the specific reason why they had the application but I can believe that the parcel to the south is the residence and so for various reasons they needed to subdivide it out.

Mrs. Murphy commented: If memory serves me the Planning Board granted the subdivision despite the fact that the DAM Liquor Store at the time the lot was created was not in compliance with our local law because the entire thing was a pre-existing non-conforming use. This lessens the amount of the non-conformance. Then they acknowledged during that process that should the business use become more intense then you would have to get an area variance which is what brings you here today.

Chairman Rose commented: Is this still considered a pre-existing non-conforming use?

Mrs. Murphy commented: This is less than a conforming use because it is a commercially zoned area. The non-conformance part was the residence and by reducing the lot size it made it less non-conforming.

Chairman Rose commented: Thanks, it makes more sense.

Mr. Zee commented: Are there any more questions?

Vice-Chairman Tedrow commented: Can you describe the relationship with the residential lot? When we visited the site on Saturday it was clear that access to the garage in back will be across this lot and also one end of the driveway for the house also appears to come across this lot. There is an easement shown on the plan. Are there any requirements that you have to keep it clear or anything like that?

Mr. Flanders commented: I prepared this site plan. At the time the subdivision was approved we simply created a 20' wide ingress egress easement for the garage in the back. The parcel to the south was a residence it has a circular shape driveway with two accesses on Route 9 and a portion of the driveway actually does as you say, go over onto our lot but it is not totally necessary.

The reason I configured the parking spaces on the south side of the building the way I did is because the parking spaces are only 10' wide and the easement is 20'. So you still have 10' if you should choose to drive within the easement. Nobody really knows that it's there except for the two people that own the property. It's there legally so you can pass the cars.

Mr. Burdyl commented: Based on your other existing business how many cars per hour do you expect to be using the paved area?

Mr. Robert Hurley commented: I would say that we are busiest during lunch so during 12 -2 we might have 25-30 cars.

Mr. Burdyl commented: Is that lunch hour? Is that what you are getting at your present location?

Mr. Hurley commented: Yes. We were originally expecting to expand with a drive-thru but we're not, it's about 1,000 customers a week.

Mr. Brennan commented: Concerning the traffic flow you were commenting on and specific to the 15' justification that you mentioned, what kind of traffic or flow control devices have you considered to ensure that people don't swim upstream when they are suppose to be swimming downstream?

Mr. Flanders commented: We are going to have large parking arrows on the pavement similar to the ones on the site now. The ones that are there now are going the other way. Because of the gradient they are fairly visible. We can add a sign; we may actually do that in this cross hatched area immediately to the left of the southerly handi-cap space. That may be a good idea.

Mr. Brennan commented: How many cars given the average length of a car would you be stacked if cars were going out and someone tried to get back in and was already half way in the entrance? If I see that there might be a bottleneck here in the portion where you come off of Route 9 I am curious to know how you will mitigate what happens if a car is already half way in there and another car is trying to come around and trying to get out of the place.



Mr. Flanders commented: Depending on which parking space you are trying to get in and out of. I would say anywhere from 2-4 cars. If they are trying to get into the back I don't see that there would be any problem whatsoever because you can have at least 5 cars along side the building including in the back. The driving lane in the back is 24' wide.

Mr. Brennan commented: So there is enough room in the front the curb cut is about how wide?

Mr. Flanders commented: It is in excess of 20', I don't remember the exact number I think it is shy of 30'.

Mr. Brennan commented: To the best of your opinion you would be able to have a car coming in from the curb cut and make that right hand turn around into a parking spot or into the back while still having a car on the left hand side of the south side being able to get out of the parking lot.

Mr. Flanders commented: Yes. The first parking space with the number 4 and of course would be very difficult may only get used when the availability is there to make that maneuver is there.

Chairman Rose commented: Up the road at Dunkin Donuts they have a similar traffic thing where you drive-in, go to the right and go around the back side of the building to the drive-thru. On Sunday's when I go there for my coffee I have seen cars back out simultaneously. As I am pulling in, it's almost a three way collision right in front of Dunkin Donuts as a result of that because people are pulling out of two spots one facing the highway and one facing the building and as people are pulling in to make that right jug handled turn to go around the building to the drive-thru. There is a concern of cars stacking up on Route 9 internally as a result of people and the traffic. I witnessed that first hand myself.

Mr. Hurley commented I wish we did what Dunkin Donuts does in volume. They do triple of what we do. They are much, much busier than we are.

Chairman Rose commented: We are just commenting on the traffic safety there. How many cars are at the Subway today? How many approved parking spaces are there across the street?

Mr. Hurley commented: The side parking lot across the street is pretty big so I don't really know the exact number. I would say that 95% of our customer's park right in front of the store and we never have an issue. I think it is mostly employees that park on the side lot. Everyone likes to park right in front.

Chairman Rose commented: Does the Board have any other comments to make? Would anyone from the audience like to make a public comment?

Mr. Alan Brown, 1506 Route 9 commented: I have owned the liquor store for 27 years we have never once had a fender bender, we have never had a back-up at the site. There are times at Christmas, Thanksgiving and New Years we have had a lot of people with 3-4 cars at one time. This gentlemen Mr. Hurley says his business is busy from 12-2p.m. at that time the traffic on Route 9 is minimal. I live right on the road I in and out of the Route 9 area with no problems. The only problem I can make is way back when I opened the store Mr. Tedrow was on the Board and he didn't want me to use the name DAM Liquor at the time. We stuck to it, we have been there for 27 years, I am retiring and the building is empty at the present time. There is no problem with the traffic. I hope that you give Mr. Hurley your blessing. Thank you.

Vice-Chairman Tedrow commented: Tom, the name is ok with me now, in fact I admire your sense of humor.

Mr. Brennan commented: I don't see a full illustration of Route 9 does anyone know with some certainty whether in front of the building is a turning lane?

Mr. Hansen commented: I think the turning lane goes all the way up Route 9 now.

Chairman Rose commented: I think the turning lane starts before Savemore Beverage all the way to the traffic light up to where Plant Road intersects. I think it may even go farther up Route 9 all the way to Sitterly road where there is a left hand turn lane.

Mr. Hansen commented: Some where near the store where the dry cleaning is it changes from a double where you turn either way to left only to go over Guideboard Road.

Mr. Brennan commented: Yes, that is really my question, when does that transition happen.

Chairman Rose commented: Since there are no more comments from the Board or the public I will close the public hearing at 8:04 p.m. I will read the tests for an area variance.

"The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Enforcement Officer, to grant area variances as defined herein."

"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 don't see any particular detrimental effect on the area. You are going from one type of commercial use to another it maybe a little more intense but it's not a major difference. If it accommodated for the one business and I think it could easily accommodated the other one.

"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. Brennan commented: I don't see how that is practical to one side the north side has a ravine which I think is very impractical it is not even something they can dwell on. The other side is the residential we would only be exacerbating that particular problem in the residential side if they were to achieve some sort of result that way.

"Whether the requested area variance is substantial."

Mr. Hansen commented: I don't think it's particularly substantial it has the required number of parking spaces, the lot width only effects for a practical point it only affects the aisle width but they are dealing with that by making a one way aisle around the building. Essentially the effect is minimal I would say.

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

Vice-Chairman Tedrow commented: Again it's one commercial use replacing another commercial use no change in the size of the building and minimal change in the paved area. I don't think there is a significant adverse effect here.

"Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but 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: Well it is only self-created on the new applicant by virtue of the fact that have they chosen to do it they could go somewhere else I suppose but they are dealing with what is there so it's not as if they created the particular situation that exists it's there. The Planning Board allowed it to be created seven years ago and the new business is coming along and trying to make the best of it to seek their own needs.

"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."

"Imposition of conditions: The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restriction as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

Motion was made by Mr. Hansen to approve the area variance request. Mr. Brennan made the second and the Motion was carried unanimously.

Chairman Rose commented: You will now have to go back to the Planning Board for site plan review.

### **David Canfield, 157 Anthony Road, 266.-2-65**

Chairman Rose opened the public hearing at 8:13 p.m. The applicant would like to build a single-family home at 157 Anthony Road, a Building Permit was denied by the Director of Code Enforcement. Pursuant to Section 165 Attachment 1 Schedule A, requires a minimum lot size of 20,000 SF and the lot has 15,987 SF, they are short 4,013 SF. The minimum requirement for frontage is 100', with water and sewer and the applicant has 99.76 feet, .24' less than required. The applicant is requesting an area and lot width variance.

Mr. Dwayne Rabideau was present from VanGuilder Associates. Mr. Rabideau commented: I am representing Mr. Canfield and basically there are three separate applications and different reasons for variances. The applicant will tie into the public water and sewer they are all currently on private well and septic. This is a pre-existing lot with an existing wood frame garage on the parcel. This lot is encroached by a mobile home that will be removed from the western side of the parcel. These lots all existed prior to zoning. This lot needs two area variances.

Chairman Rose commented: I am opening up the public hearing to the Board. Does anyone have any questions?

Vice-Chairman Tedrow commented: I just want to confirm that you are saying that you can build houses on these lots without requiring a side yard variance.

Mr. Rabideau commented: Yes that is correct. Basically we are in a situation where all of the 3-lots pre-exist prior to the zoning. We are tying into the public water and public sewer for all 3-lots and the lot sizes will work at this point in time. All of the lots vary in width between the three lots even though they don't meet the variances that they each need. They are very easily designed houses to fit the lots so we will meet all requirements based on receiving the variances. Walking the lot Saturday and I walked it again tonight one advantage is that the lots have a vertical relief from east to west and there is a plateau on the first lot which is the end lot. The center lot is a little bit lower and the farthest lot is also a little bit lower. The terrain is actually more conducive for three buildings. I also looked at site distances on the two lots to the east and the driveways are close together. The land mass is there to actually do a nice job.

Mr. Brennan commented: Walk me through the reason for three lots as opposed to two.

Mr. Rabideau commented: It is pre-existing prior to zoning. We have 2-trailers on these lots. It is one of these issues where sewer and water have to be brought to the lots. There is a cost to that, it's not on-site. It is doable with three lots. The main reason is that it was bought as 3-lots and we were denied by the Building Department. There is a provision in the Zoning Ordinance that if the owner owns the three adjoining lots that they could be forced to combine them to meet the zoning. It depends on how you interpret it. You could combine the three and get two. I don't really think that the intent of that provision was to penalize a person that has pre-existing lots to lose a lot because of that. It is almost like you have 3-lots and you owned a larger parcel in the back, the Town could take some land off the lot in the front and get 3 conforming lots.

It would really be penalizing and we are in a situation where 3-houses can make the lots more conforming based on the fact that where the structures are now they don't meet the current zoning in any respect. Also, on these lots versus the ones on Werner Road there are no environmental constraints on these lots.

Chairman Rose opened the comments to the public.

Mrs. Sandy Engles, 163 Anthony Road commented: This is about 15' to the fence line? I recently spent a lot of money on a fence and I don't want anyone driving in drunk and hitting my fence.

Mr. Rabideau commented: We are showing that a driveway and a house can fit on the lot. It doesn't mean that is where it will be located. It was just to show that it's a buildable lot.

Mrs. Sandy Engles, 163 Anthony Road commented: Will it be one or two stories? The only thing I can say is that if the driveway is close to my fence put some kind of plantings.

Mr. Rabideau commented: Probably two-story house.

Chairman Rose commented: During the site visit Mr. Engles made a comment to the members that were present that they invested \$8,000 into their fence.

Mrs. Sandy Engles, 163 Anthony Road commented: It is a beautiful fence.

Mr. Rabideau commented: I can see your concern I didn't realize the fence issue.

Mr. Craig Engles, 163 Anthony Road commented: The drainage on these 3-lots they come down to a gully that is right in the front of our house. Ten years ago we asked Halfmoon to fix the gully. The Highway Department came out and said we can't see that happening. Our gutter rotted out last week and we had it replaced at \$1800.00 now your plan is to put three homes here and the water is going to run down into the gully that is right in front of our house. I don't know if you noticed the gully that runs right across the road the highway is deteriorating it is all cracked.

The Town came out and fixed it once we called them again it is still deteriorating to the point where the road is starting to cave in. Aren't you afraid of the water rushing down because when it rains it's a rush of water right where Lot 161 is located, you saw the grass at the site visit it was totally flooded after the hard rain that we had. I am afraid of this gully getting over-flooded and we are going to lose the hill on our house.

Mr. Burdyl commented: Sir, can you point out where the gully is? Is it under the driveway.

Mr. Engles, 163 Anthony Road commented: The gully is right in the middle of the low point.

Mrs. Engles, 163 Anthony Road commented: Does anyone here remember Mr. Adler that lived down the road on the left hand side of the road. The gully goes right under the road and it really runs down hill where the road is deteriorating because we keep planting grass seed and every winter the plows kill it.

Mr. Burdyl commented: Is it really actually a gully or is it the normal road drainage?

Mrs. Engles, 163 Anthony Road commented: That is how low the property was in 1970 when we moved in. We were the lowest point on Anthony Road. I had Mr. Stiles come in and take my backyard and put it in my front yard. We planted pine trees to hold the lot.

Chairman Rose commented: Is it a pre-existing situation today?

Mrs. Engles, 163 Anthony Road commented: It's been there forever. Mr. Adler used to come down and put rocks in the gully because he didn't want it to drain on his side of the road. The Town installed it in the early 1970's.

Chairman Rose commented: Regardless of the house did it change the drainage pattern.

Mrs. Engles, 163 Anthony Road commented: I don't see the drainage changing. I know what he is saying but it is going to be the same water coming down hill because those people are going to be putting water into the sewer.

Mr. Rabideau commented: We are in a situation where on each lot you have impervious surfaces with the existing driveways and the trailers now we are going down to 3 houses and 5 more condensed driveways I don't believe we are adding more water or much more impervious surfaces we are not going to make the existing condition worse per say.

Mrs. Engles, 163 Anthony Road commented: I agree I don't think it will be worse.

Mr. Burdyl commented: The house that is next door how is the house positioned in relation to the current residence as far as elevation? Is it going to be looking over their residence?

Mr. Rabideau commented: As far the proposed house, no it is pretty much on the same level. The grade will be the same. The mobile home on there is about 6' higher and the houses are anticipated to be where it is cleared down it will be minimal with the cutting of the trees. There is one tree leaning over onto their side of the fence which will be taken care of.

Chairman Rose commented: My Secretary is cringing because we don't have everything on the record I will summarize. There has been some discussion regarding the trees and the drainage. It appears to be that those issues will be resolved is that a fair statement?

Mr. Rabideau commented: Yes.

Chairman Rose commented: You can put that into the minutes if you want. We are trying to do our best for our secretary because she spends most of her afternoons for weeks trying to decipher what we have been talking about here for hours. I apologize.

Mr. Engles, 163 Anthony Road commented: This is kind of a shock to us we haven't had neighbors for over 20 years and now it's just up and sold. Which is their right and we are just concerned about the house where it will be placed and the position of it. I don't want a 3-story house looking over my yard all the time. If you can move the house further away toward the other property line it would be great.

Mr. Burdyl commented: Mr. Rabideau what is your plan for buffering to address their concern?

Mr. Rabideau commented: Right now they have a stockade fence that is 7' high and that is the buffering now. I don't know if there is any vegetation? There is also a chain-linked fence.

Chairman Rose commented: There is a lot going off tape here and I don't know how else to ask you politely to use the microphone and not yell from the audience. Please come up to the podium and state your name and address for the record. Thank you.



Mr. Burdyl commented: I was asking Mr. Rabideau what other plans he has for buffering as the view toward the neighbor.

Mr. Rabideau commented: They have a 6' high vinyl fence that is existing. The house is going to be facing toward the road and the side of the house and whether it is one, two, three windows I am not sure what will be facing the neighbor.

Mr. Burdyl commented: We can safely say there will be two windows on the second level.

Mr. Rabideau commented: Yes looking west.

Chairman Rose commented: Would anyone like to comment on that?

Mr. Engles, 163 Anthony Road commented: That is what we are worried about is the windows over looking our property. It is our privacy that we are concerned about.

Chairman Rose commented: Are there any more comments or concerns from the Board? The public hearing closed at 8:28 p.m.

"The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Enforcement Officer, to grant area variances as defined herein."

"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: It appears that the intensity of the use will remain the same because at one point you had three separate dwellings on these three different lots. It will be consistent with what they would have there now and what they had before. It should be a general improvement to the properties a couple of places look like they haven't been lived in for some period of time. I don't know if that is correct or not. I think there stands to be an improvement by allowing these properties to be used as single-family lots again.

"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. Brennan commented: The reason why I asked the difference between combining the three lots into two lots I personally continue to struggle with the economic factor that this is presented before the Board when an applicant comes and says it is going to be more physically advantageous for us do a particular process one way versus another. In this particular case having three lots as opposed to combining into two lots, I am certainly sensitive to that and I understand the cost and the financial benefit of having 3 structures versus 2 and the associated utilities it is never the lesser decision of the builder or the person buying those lots to build on to decide whether it's going to be advantageous or not. I am also sensitive to what Mr. Hansen mentioned earlier that we would certainly like to see those lots developed into something more attractive for the surrounding community. Nevertheless the fact remains that there are other ways to accomplish this I suspect just to be less financially advantageous to the builder.

"Whether the requested area variance is substantial."

Mr. Hansen commented: On 161 Anthony Road the difference is not substantial because the lot area is only about 1300 SF smaller than it should have been and it has 100' of frontage along the road. It should have 100' of frontage at the building setback line too. That lot has the least variance requests.

Mr. Hansen commented: On 157 Anthony Road the deficiencies in the frontage from 100' to 86' and 3" short at the building setback line.

Chairman Rose commented: I think your point there is that 159 Anthony Road has the most significant impact and 161 Anthony Road has the least.

Mr. Rabideau commented: 159 Anthony Road does have the most impact but one way to look at that is the impact is in between the two other potential lots.

Chairman Rose commented: Is that a comment or a clarification?

Mr. Rabideau commented: Both.

Chairman Rose commented: The public hearing is closed, I am sorry.

"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: As I stated earlier it is going to be a positive enhancement to the existing use in that there will be new properties and enhancements that will be made to the existing properties.

Vice-Chairman Tedrow commented: It will also bring in public sewer to these lots should diminish the possibility of that sort of a problem developing.

Mr. Brennan commented: Can I ask you for a clarification when the Vice-Chair mentioned public sewer is this gravity fed sewer or a grinder pump.

Mr. Rabideau commented: It will be a grinder pump.

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

Vice-Chairman Tedrow commented: You can look at it a couple of different ways the choice to stick with three lots creates a need for the variances.

Chairman Rose commented: They were three lots to begin with, right? Does the Board have any other questions? If not I will need a motion.

"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."

"Imposition of conditions: The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restriction as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

Motion was made by Vice-Chairman Tedrow and seconded by Mr. Burdyl that 157 Anthony Road be granted an area and lot width variance from 20,000 SF to 15,987 SF (they are short 4,013 SF) and the lot width requirement at the building setback line is 100' and the applicant has 99.76' (they are short 3').  
Role call was taken:

Chairman Rose – aye, Vice-Chairman Tedrow – aye, Mr. Hansen – aye, Mr. Burdyl – aye, and Mr. Brennan – nay. Motion was carried.

**David Canfield, 159 Anthony Road, 266.-2-76**

The applicant would like to build a single-family home at 159 Anthony Road, a Building Permit was denied by the Director of Code Enforcement. Pursuant to Section 165 Attachment 1 Schedule A, requires a minimum lot size of 20,000 SF and the lot has 13,289 SF, they are short 6,711 SF. The minimum requirement for frontage is 100', with water and sewer and the applicant has 89.4 feet, 10.6' less than required. The applicant is requesting an area and lot width variance.

Mr. Dwayne Rabideau was present from VanGuilder Associates. Mr. Rabideau commented: I am representing Mr. Canfield and basically there are three separate applications and different reasons for variances. The lot is currently on well and septic and if the variance is granted the lot will tie into water and sewer.

Chairman Rose commented: I am opening up the public hearing to the Board. Does anyone have any questions?

Vice-Chairman Tedrow commented: I just want to confirm that you are saying that you can build houses on these lots without requiring a side yard variance.

Mr. Rabideau commented: Yes that is correct. Basically we are in a situation where all of the 3-lots pre-exist prior to the zoning. We are tying into the public water and public sewer for all 3-lots and the lot sizes will work at this point in time. All of the lots vary in width between the three lots even though they don't meet the variances that they each need. They are very easily designed houses to fit the lots so we will meet all requirements based on receiving the variances. Walking the lot Saturday and I walked it again tonight one advantage is that the lots have a vertical relief from east to west and there a plateau on the first lot which is the end lot. The center lot is a little bit lower and the farthest lot is also a little bit lower. The terrain is actually more conducive for three buildings. I also looked at site distances on the two lots to the east and the driveways are close together. The land mass is there to actually do a nice job.

Mr. Brennan commented: Walk me through the reason for three lots as opposed to two.

Mr. Rabideau commented: It is pre-existing prior to zoning. We have 2-trailers on these lots it is one of these issues where sewer and water have to be brought to the lots. There is a cost to that, it's not on-site. It is doable with three lots. The main reason is that it was bought as 3-lots and we were denied by the Building Department. There is a provision in the Zoning Ordinance that if the owner owns the three adjoining lots that they could be forced to combine to meet the zoning. It depends on how you interpret it you could combine the three and get two. I don't really think that the intent of that provision was to penalize a person that has pre-existing lots to loose a lot because of that. It is almost like you have 3-lots and you owned a larger parcel in the back they could take some land off the lot in the front and get 3 conforming lots. It would really be penalizing and we are in a situation where 3 houses can make the lots more conforming based on the fact that where the structures are now they don't meet the current zoning in any respect. Also, on these lots versus the ones on Werner Road there are no environmental constraints on these lots.

Chairman Rose opened the comments to the public.

Chairman Rose commented: I am opening up the public hearing to the Board. Does anyone have any questions?

Vice-Chairman Tedrow commented: I just want to confirm that you are saying that you can build houses on these lots without requiring a side yard variance.

Mr. Rabideau commented: We are showing that a driveway and house can fit on the lot. It doesn't mean that is where it will be located. It was just to show that it's a buildable lot.

Chairman Rose commented: Are there any more comments or concerns from the Board? The public hearing closed at 8:28 p.m.

"The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Enforcement Officer, to grant area variances as defined herein."

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"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: It appears that the intensity of the use will remain the same because at one point you had three separate dwellings on these three different lots. It will be consistent with what they would have there now and what they had before. It should be a general improvement to the properties a couple of places look like they haven't been lived in for some period of time. I don't know if that is correct or not. I think there stands to be an improvement by allowing these properties to be used as single-family lots again.

"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. Brennan commented: The reason why I asked is that the difference between combining the three lots into two lots I personally continue to struggle of the economic factor that this is presented before the Board when an applicant comes and says it is going to be more physically advantageous for us do a particular process one way versus another. In this particular case having three lots as opposed to combining into two lots, I am certainly sensitive to that and I understand the cost and the financial benefit of having 3 structures versus 2 and the associated utilities it is never the less the decision of the builder or the person buying those lots to build on to decide whether it's going to be advantageous or not. I am also sensitive to what Mr. Hansen mentioned earlier that we would certainly like to see those lots developed into something more attractive for the surrounding community.

Nevertheless the fact remains that there are other ways to accomplish this I suspect just to be less financially advantageous to the builder.

"Whether the requested area variance is substantial."

Mr. Hansen commented: On 161 Anthony Road the difference is not substantial because the lot area is only about 1300 SF smaller than it should have been and it has 100' of frontage along the road. It should have 100' of frontage at the building setback line too. That lot has the least variance requests.

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Chairman Rose commented: I think your point there is that 159 Anthony Road has the most significant impact and 161 Anthony Road has the least.

Mr. Rabideau commented: 159 Anthony Road does have the most impact but one way to look at that is the impact is in between the two other potential lots.

Chairman Rose commented: Is that a comment or a clarification?

Mr. Rabideau commented: Both.

Chairman Rose commented: The public hearing is closed, I am sorry. Let's go to the tests.

"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: As I stated earlier it is going to be a positive enhancement to the existence use in that there will be new properties and enhancements will be made to the existing properties.

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Chairman Rose commented: They were three lots to begin with, right? Does the Board have any other questions? If not I will take a motion.

Motion was made by Mr. Burdyl and seconded by Mr. Hansen that 159 Anthony Road be granted the area and lot width variance request. The minimum lot size is 20,000 SF and the lot has 13,289 SF (they are short 6,711 SF) and the minimum requirement for lot width is 100' and the lot has 89.4' (they are short by 10.6") Motion was carried.

"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."

"Imposition of conditions: The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restriction as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

### **David Canfield, 161 Anthony Road, 266.-2-67**

The applicant would like to build a single-family home at 161 Anthony Road, a Building Permit was denied by the Director of Code Enforcement. Pursuant to Section 165 Attachment 1 Schedule A, requires a minimum lot size of 20,000 SF and the lot has 18,733 SF, 1,267 SF less than required. The applicant is requesting an area variance.

Mr. Dwayne Rabideau was present from VanGuilder Associates. Mr. Rabideau commented: I am representing Mr. Canfield and basically there are three separate applications and different reasons for variances.

Mr. Rabideau commented: Yes that is correct. Basically we are in a situation where all of the 3-lots pre-exist prior to the zoning. We are tying into the public water and public sewer for all 3-lots and the lot sizes will work at this point in time. All of the lots vary in width between the three lots even though they don't meet the variances that they each need. They are very easily designed houses to fit the lots so we will meet all requirements based on receiving the variances. Walking the lot Saturday and I walked it again tonight one advantage is that the lots have a vertical relief from east to west the plateau on the first lot which is the end lot. The center lot is a little bit lower and the farthest lot is also a little bit lower. The terrain is actually more conducive for three buildings. I also looked at site distances on the two lots to the east and the driveways are close together. The land mass is there to actually do a nice job.



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Chairman Rose opened the comments to the public.

Mrs. Sandy Engles, 163 Anthony Road commented: This is about 15' to the fence line? I recently spent a lot of money on a fence and I don't want anyone driving in drunk and hitting my fence.

Mr. Rabideau commented: We are showing that a driveway, house can fit on the lot. It doesn't mean that is where it will be located. It was just to show that it's a buildable lot.

Mrs. Sandy Engles, 163 Anthony Road commented: Will it be one or two stories? The only thing I can say is that if the driveway is close to my fence put some kind of plantings.

Mr. Rabideau commented: Probably two-story house.

Chairman Rose commented: During the site visit Mr. Engles made a comment to the members that were present that they invested \$8,000 into their fence.

Mrs. Sandy Engles, 163 Anthony road commented: It is a beautiful fence.

Mr. Rabideau commented: I can see your concern I didn't realize the fence issue.

Mr. Craig Engles, 163 Anthony Road commented: The drainage on these 3-lots they come down to a gully that is right in the front of our house. Ten years ago we asked Halfmoon to fix the gully. The Highway Department came out and said we can't see that happening. Our gutter rotted out last week and we had it replaced at \$1800.00 now you're going to put these three properties here and the water is going to run down into the gully that is right in front of our house. I don't know if you noticed the gully that runs right across the road the highway is deteriorating it is all cracked. The Town came out and fixed it once we called them again it is still deteriorating to the point where the road is starting to cave in. Aren't you afraid of the water coming down because when it rains it's a rush of water right where 161 is now you saw the grass that was totally flooded when it rains hard. I am afraid of this gully getting over-flooded and we are going to lose the hill on our house.

Mr. Burdyl commented: Sir, can you point out where the gully is? Is it under the driveway.

Mr. Engles, 163 Anthony Road commented: The gully is right in the middle of the low point.

Mrs. Engles, 163 Anthony Road commented: Does anyone here remember Mr. Adler that lived down the road on the left hand side of the road. The gully goes right under the road and it really runs down hill and the road is deteriorating because we keep planting grass seed and every winter the plows kill it.

Mr. Burdyl commented: Is it really actually a gully or is it the normal road drainage?

Mrs. Engles, 163 Anthony Road commented: That is how low the property was in 1970 when we moved in. We were the lowest point on Anthony Road. I had Mr. Stiles come in and take my backyard and put it in my front yard. We planted pine trees to hold the lot.

Chairman Rose commented: Is it a pre-existing situation today?

Mrs. Engles, 163 Anthony Road commented: It's been there forever. Mr. Adler use to come down and put rocks in the gully because he didn't want it to drain on his side of the road. The Town installed it in the early 1970's.

Chairman Rose commented: Regardless of the house did it change the drainage pattern.

Mrs. Engles, 163 Anthony Road commented: I don't see the drainage changing. I know what he is saying but it is going to be the same water coming down hill because those people are going to be putting water into the sewer.

Mr. Rabideau commented: We are in a situation where on each lot you have impervious surfaces with the existing driveways and the trailers now we are going down to 3 houses and 5 more condensed driveways I don't we are adding more water or much more impervious surfaces we are not going to make the existing condition worse per say.

Mrs. Engles, 163 Anthony Road commented: I agree I don't think it will be worse.

Mr. Burdyl commented: The house that is next door how is the house positioned in relation to the current residence as far as elevation? Is it going to be looking over their residence?

Mr. Rabideau commented: As far the proposed house, no it is pretty much on the same level. The grade will be the same. The mobile home on there is about 6' higher and the houses are anticipated to be where it is cleared down it will be minimal with the cutting of the trees. There is one tree leaning over onto their side of the fence which will be taken care of.

Chairman Rose commented: My Secretary is cringing because we don't have everything on the record I will summarize. There has been some discussion regarding the trees and the drainage. It appears to be that those issues will be resolved is that a fair statement?

Mr. Rabideau commented: Yes.

Chairman Rose commented: You can put that into the minutes if you want. We are trying to our best for our secretary because she spends most of her afternoons for weeks trying to decipher what we have been talking about here for hours. I apologize.

Mr. Engles, 163 Anthony Road commented: This is kind of a shock to us we haven't had neighbors for over 20 years and now it's just up and sold. Which is their right and we are just concerned about the house where it will be placed and the position of it. I don't want a 3-story house looking over my yard all the time. If you can move the house further away toward the other property line it would be great.

Mr. Burdyl commented: Mr. Rabideau what is your plan for buffering to address their concern?

Mr. Rabideau commented: Right now they have a stockade fence that is 7' high and that is the buffering now. I don't know if there is any vegetation? There is also a chain-linked fence.

Chairman Rose commented: There is a lot going off tape here and I don't know how else to ask you politely to use the microphone and not yell from the audience. Please come up to the podium and state your name and address for the record. Thank you.

Mr. Burdyl commented: I was asking Mr. Rabideau what other plans he has for buffering as the view toward the neighbor.

Mr. Rabideau commented: They have a 6' high vinyl fence which is existing. The house is going to facing toward the road so you will see one side of the house. We are not sure how many windows there will be one, two, three windows I am not sure it is up to the builder.

Mr. Burdyl commented: We can safely say there will be two windows on the second level.

Mr. Rabideau commented: Yes looking west.

Chairman Rose commented: Would anyone like to comment on that?

Mr. Engles, 163 Anthony Road commented: That is what we are worried about is the windows over looking our property. It is our privacy that we are concerned about.

Chairman Rose commented: Are there any more comments or concerns from the Board? The public hearing closed at 8:28 p.m. We will now read the tests.

"The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Enforcement Officer, to grant area variances as defined herein."

"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: It appears that the intensity of the use will remain the same because at one point you had three separate dwellings on these three different lots. It will be consistent with what they would have there now and what they had before. It should be a general improvement to the properties a couple of places look like they haven't been lived in for some period of time. I don't know if that is correct or not. I think there stands to be an improvement by allowing these properties to be used as single-family lots again.

"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. Brennan commented: The reason why I asked before the difference between combining the three lots into two lots I personally continue to struggle of the economic factor that this is presented before the Board when an applicant comes and says it is going to be more physically advantageous for us do a particular process one way versus another. In this particular case having three lots as opposed to combining into two lots, I am certainly sensitive to that and I understand the cost and the financial benefit of having 3 structures versus 2 and the associated utilities it is never the less the decision of the builder or the person buying those lots to build on to decide whether it's going to be advantageous or not. I am also sensitive to what Mr. Hansen mentioned earlier that we would certainly like to see those lots developed into something more attractive for the surrounding community. Nevertheless the fact remains that there are other ways to accomplish this I suspect just to be less financially advantageous to the builder.

"Whether the requested area variance is substantial."

Mr. Hansen commented: On 161 Anthony Road the difference is not substantial because the lot area is only about 1300 SF smaller than it should have been and it has 100' of frontage along the road. It should have 100' of frontage at the building setback line too. That lot has the least variance requests.

Mr. Hansen commented: On 157 Anthony Road has a deficiency in the frontage from 100' to 86' and 3" short at the building setback line.

Chairman Rose commented: I think your point there is that 159 Anthony Road has the most significant impact and 161 Anthony Road has the least.

Mr. Rabideau commented: 159 Anthony Road does have the most impact but one way to look at that is the impact is in between the two other potential lots.

Chairman Rose commented: Is that a comment or a clarification?

Mr. Rabideau commented: Both.

Chairman Rose commented: The public hearing is closed, I am sorry.

"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: As I stated earlier it is going to be a positive enhancement to the existence use in that there will be new properties and enhancements will be made to the existing properties.

Vice-Chairman Tedrow commented: It will also bring in public sewer to these lots should diminish the possibility of that sort of a problem developing.

Mr. Brennan commented: Can I ask you for a clarification when the Vice-Chair mentioned public sewer is this gravity fed sewer or a grinder pump.

Mr. Rabideau commented: It will be a grinder pump.

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

Vice-Chairman Tedrow commented: You can look at it a couple of different ways the choice to stick with three lots creates a need for the variances.

Chairman Rose commented: They were three lots to begin with, right? Does the Board have any other questions? If not I will take a motion.

Motion was made by Mr. Brennan and seconded by Vice-Chairman Tedrow to approve the area variance for 161 Anthony Road. The minimum requirement of the lot size is 20,000 SF and the lot has 18,733 SF (they are short by 1,267 SF) Motion was carried.

"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."

"Imposition of conditions: The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restriction as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

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