

**Town of Halfmoon Zoning Board of Appeals  
Meeting – Monday February 1, 2021  
7:00 PM**

Chairwoman Curto called the meeting to order at 7:03 PM on February 1, 2021 this meeting is being held via Microsoft Teams following members present:

Members- Chairwoman Curto, and Kevin Koval, *Mr. Griggs-absent*  
Alternate Member - Leonard Micelli, Dave Maxfield  
Planner - Paul Marlow  
Town Attorney – Cathy Drobny, Lyn Murphy

*Mr. Micelli made a motion to Approve the January 4, 2021 Zoning Board of Appeals minutes, Mr. Koval seconded, Minutes Approved.*

*Public Hearing(s)*

**Lineback Subdivision, 121 Ushers Road – Area Variance**

**Chairwoman Curto:** Ill open the first public hearing at 7:02, Lineback Subdivision, 121 Ushers Road for an area variance, for the record letters were sent out to neighboring properties and a site visit occurred on January 23<sup>rd</sup>... The property is currently used as a single family home, the applicant is before the Board seeking approval to subdivide the existing lot into 2 parcels for the purpose of constructing a new single family home. The parcel currently maintains a single family home and the applicant wishes to construct a second home on the proposed lot. This property is located in a light Industrial commercial zone and the applicant is looking at three variances tonight, a lot width variance for lot B, which requires a 150 ft. lot width, the proposed lot width is 82.73 feet thus requiring a 67.27 ft. variance. On lot A, it requires a minimum lot area in a light industrial commercial zone, its 60,000 sq. ft., the lot area of lot A will be approximately 35,966 sq. ft. or .82 acres, therefore a variance of 24,034 sq. ft. for a minimum lot area must be issues before the application can go to the Planning Board. Lot B requires a minimum lot area in a light industrial commercial zone is 60,000 sq. ft. , the lot area of lot B is approximately 17,333 sq. ft. or .39 acres. A variance of 42, 667 sq. ft. for a minimum lot area must be issued before the application can proceed to the Planning Board. If the applicant is online, if you would like to make additional comments or provide us with any additional information, if so please state your name and your relationship to the project.

**Duane Rabideau:** Duane Rabideau from VanGuilder Associates I am representing Duane Lineback for these three area variances

**Duane Lineback:** My name is Duane Lineback the property owner at 121 Ushers Road

**Duane Rabideau:** He is the actual owner of the parcel so any questions about this parcel that Duane Lineback can answer, so basically we need these three variances for the application to proceed before the Planning Board. You did go over the area variances, this is somewhat of a unique zoning district which is residential and commercial, the applicant has gone to a professional engineer and had an actual septic system designed to basically prove that the configuration of lot that the septic system would work. There is a whole lot even though it is smaller than allowed in the area that it's zoned. This is all usable there are no constraints on it environmentally or grading wise things of that nature. The applicant is very aware that this is a light industrial commercial zone

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and that the build out could relatively be close some time in the future, we are aware of that, basically that is our request for the Board.

**Mr. Micelli:** I have a question for the homeowner if it were approved what are we looking at, is this going to be aluminum siding, a brick building, how many bedrooms?

**Duane Lineback:** It's going to be a modular home for my in-laws, they are getting up in age and we are looking to try to get them a little closer since we will be their main caretakers. It will be a three bedroom modular home small home.

**Mr. Micelli:** Will you be putting that on a slab or will there be a basement?

**Duane Lineback:** No, there will be a basement

**Mr. Micelli:** Okay, and you said that the septic would be there so you would get Town water and you would be supplied gas and electric through National Grid in that area or would you have a propane tank there?

**Duane Lineback:** Most likely if it's going to be like my home , my home I have propane , I have a well and that's what we are working on for this new home as well, a well and it will probably have propane to supply power to the stove or to the furnace , water heater stuff like that.

**Mr. Micelli:** Okay thank you.

**Duane Lineback:** Thank you.

**Chairwoman Curto:** Mr. Lineback at one time was there a modular home on that site?

**Duane Lineback:** Yes , the property was owned by the Sweeny family quite some time ago and they had a single family trailer on the property and approximately the same spot we are looking to put this home. Im not exactly sure the year we bought this property back in 2000 there was no trailer at that time but the owner at the time was John Sweeny had said that his mother had lived in the house that we live in now and he and his wife lived in a trailer that was at that same location where we are looking to put the modular home.

**Chairwoman Curto:** Thank you.

**Mr. Micelli:** I just have one more question will there be a garage attached to that or is it just going to be the modular home?

**Duane Lineback:** Yea, no garage just the modular home.

**Mr. Micelli:** Okay.

**Duane Lineback:** We have a barn on the property if they needed to park their vehicle in there we have access to that.

**Chairwoman Curto:** Any other comments? (No further comments)Any other public comments? (No further comments) And just for the record one letter was received from Mr. Stiles just wanted to ensure that the applicant

was aware of the light industrial commercial district. I'll make a motion to close the public hearing at 7:10 and at this time the Board will answer a series of five test questions for an area variance.

1. *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 consider #1 whether an undesirable change will be produced and the character of the neighborhood or a detriment to nearby properties will be created by the granting of the Area Variance.*

**Mr. Koval:** I don't feel there would be any detriment to the neighborhood, looking at the satellite map it doesn't look like there are any neighbors nearby anyway.

**Mr. Micelli:** I will agree with him on that.

**Mr. Maxfield:** I also say it fits with the character of the area obviously lot A already is a residential and there are other residential on that road.

**Chairwoman Curto:** As well

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

**Chairwoman Curto:** I think based on the topography of that land the second lot cannot be achieved in any other manner.

**Mr. Maxfield:** I agree to that.

**Mr. Micelli:** I agree also

**Mr. Koval:** I concur.

3. *Whether the requested area variance is substantial.*

**Mr. Micelli:** I would say yes, David.

**Mr. Maxfield:** This one is interesting to me because although I feel its substantial, however if you look at the whole lot width of Lot a and Lot B combined that's, I wrote 53, 299 so that property was already short 6, 701 to make it even like a residential, so I feel as though its substantial so in one way but being that it went from residential to commercial I feel like it's not substantial.

4. *Whether the proposed variance will have an adverse -affect or impact on the physical environmental conditions in the neighborhood or district?*

**Mr. Micelli:** I don't see any.

**Mr. Koval:** I think residential would be the least impactful in the area.

**Mr. Micelli:** I agree

**Chairwoman Curto:** I agree

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

**Mr. Maxfield:** I don't think it's self-created I think it has to do with the zoning changes from residential to commercial

**Mr. Micelli:** I agree, either the area variance because none of it was compliant with ZBA so I will have to say it wasn't self-created.

**Chairwoman Curto:** Would anyone like to make a motion?

**Mr. Koval:** Make a motion to approve as presented.

**Mr. Micelli:** Ill second that.

**Chairwoman Curto:** I'll do roll call, Maxfield – approved, Mr. Micelli – approved, Koval – approved, Curto – approved, variance has been approved thank you.

**Rexford Group, 3 Jones Road – Expansion of a Pre-Existing /Non –Conforming Use**

**Chairwoman Curto:** The building has been used as a single family home for more than 2 years has passed since it was last utilized as a residence and at this time the applicant wishes to use it as a residence once again. Due to the fact that the applicant has lost the pre-existing nature of the site they are before the ZBA seeking an expansion of a pre-existing non-conforming use to allow them to use it as a single family home. For the record letters were sent out to neighboring properties and a site visit occurred on January 23<sup>rd</sup>. Would the applicant like to offer additional comments or provide any other information if so please state your name and relationship to the project?

**Tom Pratico:** Yes, Tom Pratico with Bash Hatfield and The Rexford Group, no we have no additional comments at this time.

**Mr. Maxfield:** Paul can you show the map please? Thank you.

**Mr. Koval:** I have a comment as a neighbor across the street at 4 Jones road, Bast Hatfield has been a good neighbor, I don't have any issue with it, even when the house was not occupied they maintained it well, maintained the lands well, I don't have any issue with it.

**Mr. Micelli:** Tom I just have a quick question on the non-conforming, what will you be doing are you going to be doing both the property and the building or the building without the property or vice versa could you explain to me what your gonna do?

**Tom Pratico:** We are going to strip it out and just rebuild the interior, new sheet rock , insulation , new mechanicals , the house stays the way it is so does the yard, probably repave the driveway and re-do the deck that's on the back , put a new deck on the same size that is there

**Mr. Micelli:** Okay thank you.

**Chairwoman Curto:** For the record no letters were received to oppose or support the project. Any other public comments? (No comments) Any comments from the Board? (No comments) Ill close the public hearing at 7:18, I'll make a motion to approve the expansion of the pre-existing non-conforming use at 3 Jones road, and I need a second.

**Mr. Micelli:** I second that

**Chairwoman Curto:** I'll do a roll call, Koval-approved, Maxfield- approved, Micelli-approved, Curto –approved, motion is approved.

**Tom Pratico:** Thank you.

**Chairwoman Curto:** You're very welcome.

### **GT Toyz, 1537 Route 9- Area Variance**

**Chairwoman Curto:** Here before the Board seeking approval to expand on the existing signage on the site, property is located in a C-1 zone, they are requesting a variance for permitted signage. The applicant is allowed 272 sq. ft. of total signage on the site. The existing signage as it stands is currently at 272 sq. ft. and the newly proposed signage will be 72 sq. ft. for a total of 344 sq. ft. thus requiring a variance of 72 sq. ft. . . . For the record letters were sent out to the neighboring properties and a site visit occurred on January 23<sup>rd</sup>. It is important to note the intent is to protect the property values to create a more economic and business climate, enhance and protect the physical appearance of the community and preserve the scenic ad natural beauty and provide a more enjoyable and pleasing community. The appearance, character and quality of the community are affected by the location, the size, the construction and the graphic design of its signs. Would the applicant like to offer additional comments or provide any additional information? If so please state your name and your relationship to the project

**Ron Lavesque:** Yes, my name is Ron Lavesque, I am with the Sign Studio, the applicant for GT Toyz. I had originally been the individual that went before the Planning Board back in early 2020 for the signage for the walls at this location. This location was originally given Planning approval underneath the 272 sq. ft. for the free standing road sign at the time that initially occurred e was no building sign proposed. So when we had gone in there in early 2020 there was no wall signs and the facility was open for tours for retail business, so when we had gone in there we had originally asked for 381 sq. ft. but during the Planning Board meeting we were advised that we could not seek any additional sq. ft. above the 272 that was allotted for that location. And the reason for this that we came in with additional square footage is because these types of manufacturers branding is very important to them and it's kind of in-line with your automotive dealers where each branding is a specific entity on its own, which you can kind of relate to in your community is a Wal-Mart and a Fed-Ex having a location with inside the building. Even though Wal-Mart sells a lot of different products the branding of Fed-Ex being its own entity with inside the facility would need to be branded on the outside. So that being said, each automotive manufacturer would like to be branded on the outside of the building as well. But when this facility first opened up, there is always a possibility because the nature of these types of businesses that they could grow into additional branding. Some brands would like to see the facility up and running before they make a commitment to a franchise, and this is typically what happens over and over with auto manufacturers and auto dealerships , is that some dealerships will grow and brand and that's what actually happened at this location, whereas when we went in for the initial

381 sq. ft. we were hoping to get the sq. footage aligned so that future growth, we would have the available signage to go along with it to bring it on as a new brand and also what happens is each time these manufacturers come in and want to sign a franchise agreement they typically don't like to do it unless their branding is going to be out prominent, on the building, and it doesn't want to be smaller than their competition so there is Yamaha, or Kawasaki coming in second now doesn't want to be smaller than Yamaha, so it does create a lot of problems trying to bring on new franchises. So Mr. Goldstein had the great fortune of growing rapidly within the first year of bringing on two additional manufacturers, which created this problem where we were originally allowed 272 sq. ft. and we could have gone to the Zoning Board back in early 2020 but again as I go back he was already open for retail sales and the only branding he had for Yamaha was a little small directory sign, and he wanted to get the two additional manufacturers on the building so we didn't go in for the Zoning we wanted to go ahead and get the initial approvals get the signs on the building allow him to operate, allow him to meet his legal requirements to the other manufacturers of having branding on the sign. That being said we are here today, Mr. Goldstein has two new manufacturers, they would like their signs on the building but they don't like to be less than what the other two manufacturers are so we are proposing 72 additional sq. ft., which is identical in size to the other two signs that are there, and we have placed them one above the other so that we didn't seek to expand across the whole building but try to keep everything confined into certain areas and balance it out a little better on the building. So if anybody has any questions I'd be glad to answer any questions.

**Mr. Maxfield:** Why can't we just change the faceplate out, for example for the existing Yamaha, split in half and put Yamaha at the top and Kawasaki at the bottom?

**Ron Lavesque:** That's a very good question and that's something we hear consistently over and over but when you sign these franchise agreements and you go ahead and you put it in the contract that we are going to supply a certain amount of sq. ft. for signage on the building Yamaha doesn't like to go back and re-negotiate a smaller square footage, a smaller branding on a building for their brand. It creates a lot of problems for the dealership and that franchise because Yamaha, he is already committed to Yamaha and what if Yamaha doesn't want to budge, he is going to have to work with Kawasaki to see if they are going to accept a lower amount, typically they don't, and then he is going to have a harder time competing against another dealership maybe another municipality or not too far away securing that franchise from them so it always puts these auto manufacturers in a tight situation so when we originally wanted to go in there back in early 2020 for the additional square foot we tried to alleviate that happening in the future, but again Mr. Goldstein had already opened up and he was already selling his product and they needed to have their sign on the building to comply with the branding requirements of the franchise. So again it's a good question, it would be very, very difficult for Yamaha to agree to anything smaller on the building that is already on the contract.

**Mr. Maxfield:** Does it have to be on the building, because out by the street sign you have GT Toyz on the street sign like you do on the building and then below GT Toyz on the street sign you have Avalon and Yamaha, could the Avalon and Yamaha be taken off the building and be put with Kawasaki and Blizzard, or have the ones on the street sign be the new companies of Blizzard and Kawasaki and achieve your same goals?

**Ron Lavesque:** Again it would be something that is unique to automotive manufacturing and branding and dealerships. It would be like saying to Honda can you go out on the road and we just want to leave Toyota on the building because we are only allowed one on the building, it's very difficult landing franchises when you start telling manufacturing brands they are not going to be entitled to the same space as other manufacturers on the building and that they would be delegated to the road side sign only, very hard to obtain additional franchises and it can even result in the loss of a franchise. So again it's like when you go down to any car dealership that has multiple manufacturers their all listed on the building and it's just something that I've never seen done before, it's

something that these franchisees always got to be weary of and always got to be mindful of , and again we could have gone early in 2020 for the additional square footage in anticipation that there were going to be additional manufactures and at that time we didn't have that time available to us to do that because Yamaha and Avalon were pressing the franchisee to get the branding on his building because he was already selling the product.

**Mr. Maxfield:** I guess my last question would be , this may be not the most cost effective way but would an option be since GT Toyz is already on the street sign, remove GT Toyz off the building and maybe utilize that inside the building, and then put your other two signs right in that area?

**Ron Lavesque:** GT Toyz is more than just the few brands you see on there because he also has a used car division as well, it's a multi-faceted dealership, that sells different manufacturers and has a separate used car, which is totally different than a Avalon Boat line, a Blizzard trailer line, and a couple recreational vehicle lines, which those 4 have nothing to do with automotive but a different type automotive, road bikes, atv' s, snowmobiles and that sort of thing, so it would be hard to take his name branding off the building.

**Mr. Micelli:** Has Kawasaki and Yamaha discussed this at all was there any conversation between the both of them to point out the question that Dave had asked about splitting the sign?

**Ron Lavesque:** We do sometimes, we like to get numerous manufacturers together but very rarely happens that one manufacturer will concede to another manufacturer, so no they did not speak to each other. Yamaha did approach Mr. Goldstein , excuse me Mr. Goldstein did approach Yamaha spoke to them about the dilemma he has to exhaust all avenues before they will even consider it and so therefore if he was not to get approval tonight he would have to go back to Yamaha and say we didn't get approval would you be willing to concede , most likely Yamaha will not concede , Im not saying that its already written in stone , but from my past experience in 20 something years its very rare that a brand manufacturer will concede to another one especially in a very strict competitive environment that these two brands go against each other .

**Mr. Micelli:** I understand that but I think I would feel more comfortable if they tried to make that approach, I mean things being the way they are with the pandemic and the world and everything like that I mean I don't know how fast people are knocking down doors to buy motorcycles, but I think that would be a more suitable fair option to at least give that a shot to split the sign your still getting the advertisement your still getting it lit up at night time and your still advertising and then you're not touching the other signs on the building so that would like to throw out there and to see maybe to be considered, or at least you know have Yamaha be spoken to and then come back to the Board and say, hey look at we spoke to them, yadda , yadda , yadda and I think I would feel a little more comfortable with that , I don't know how the other Board members feel about that but Im just throwing that out there .

**Ron Lavesque:** Okay well let me clarify, that has been proposed to them and that is why we are here today.

**Mr. Micelli:** Is there anything in writing that says that they are against it, I mean I don't know anything about it could just be here-say between what your telling me, there is no documentation you know saying that we had spoken to Kawasaki, Yamaha and they declined it so I don't know, I'm going on any information but what your telling me.

**Ron Lavesque:** Well Im not here to deceive you in any way form or fashion , I hope you know that becomes quite clear, but by doing these over the years I can assure you that these things are written in franchise contracts that are pretty in depth and if Mr. Goldstein were to have to provide some of those franchisers he would have to speak to

his legal team to see if he is able to disclose any of that information on a franchise agreement to anybody but that would be up to Mr. Goldstein but these talks have been taking place, they have been discussed, they have been discussed by all the major brands that are on the building right now, and this is not to say this isn't going to happen again because what you're seeing now with this pandemic here is your seeing an overwhelming surge in demand so these recreational sports I think we all realize now are all great for social distancing and great for one on one the demand is so very big right now the supply is not abundant right now, so Mr. Goldstein may have the opportunity in the future to bring out additional brands which may cause a new problem for Mr. Goldstein to maybe expand the building, expand further, buy additional property nearby, but those things are something he will have to consider in the future . But for right now I think he is pretty much maxed out on this building for the brands he has right now, and he has been very , very lucky that this sort of thing has a high demand for him right now and has been able to be sustainable in these kind of conditions but again it's all to do with branding and I know you heard this before from other people about wanting to come back for just square footage , I think we all know that automotive and these types of branding always want to represent their own entity, their own way of wanting to do things, different than somebody wanting to open up a sub shop down the street or a clothing line down the street, I get it it's like any other automotive dealership they all want their branding on there and automotive dealerships always are confronted with variances I probably have not done any automotive dealerships , and I've probably done well over a hundred of them that did not require a variance. They all required a variance, I've done them as high as 19 variances for one location, it's just the nature of this type of industry, that when you have these multiple brandings and these franchise agreements, we are always going to have to ask for a variance most towns don't have codes set up for one specific industry, you just don't see it.

**Mr. Goldstein:** May I interject, Im looking at the pictures here and Im trying to digest everything that's going around and around and neither manufacturer is going to concede to one another, hell they were having problems with who was on the top and who was on the bottom, the sign when I look at the second picture of the existing signage, which is a better depiction of the Building from the roadway if you were to split that sign in half you wouldn't read either name.

**Mr. Micelli:** Because of all of the letters that's a good point.

**Mr. Goldstein:** You're not going to see it, it almost just turns it into a bunch of scribbles that you just can't see but.

**Mr. Koval:** I'd like to make a few comments here. Ron I understand your comments about the automotive industry and all of that but, I don't think it's the intention of the Town of Halfmoon to make Route 9 like Wolf Road or Central Ave, I think there are some other solutions here, if you already have GT Toyz on the sign out by the road, you could reduce the GT Toyz sign on the building to a 5 x 2 sign down to 10 sq. ft. still have 2.-36 sq. ft. signs for the additional manufacturers and have them all in a line and resolve these issues. It's not the Towns fault that this wasn't thought of ahead of time to leave more room for signage in the future for expansion you know so that's just my two cents on this.

**Mr. Goldstein:** What's the opinion if we came back with a different proposal for a digital sign that would rotate the brands?

**Mr. Koval:** I don't know that , that would involve us if it was under the square footage then it would just be the Planning Board not on the Zoning Board if you had a digital sign that rotated that is under the square footage that takes it out of the hands of the Zoning Board I believe



**Mr. Marlow:** Hey Gregg, I just want to chime in , Paul here, Kevin's right if you scrap this whole thing and say Im going to replace the existing signage on the building with a digital one and your under the allowed square footage or at it you don't exceed it then it's just a Planning Board thing.

**Mr. Goldstein:** Not what I want to do but it's an alternative I guess.

**Ron Lavesque:** Im not quite sure on current Zoning in the Town of Halfmoon but is digital display boards, even though they are underneath the square footage are they still not allowed and do require Zoning Board approval?

**Mr. Marlow:** No, we do allow them, we do have certain requirements for how often they can change, but we do allow for digital signs, there is a lot of them throughout the Town.

**Ron Lavesque:** I was just wondering though, I just think that four stationary signs opposed to 1 moving around and flashing and messaging would defeat a lot of the comments that we've already heard about the characteristics of not being Wolf road, because I know this location is definitely on an area that's heavily commercialized with a lot of signage even with a strip mall down the road, if you look at the amount of building frontage on the front elevation, it may have equal to or more than in square footage of signage than this building but being classified as a retail center its allowed. So it's just one of those things that I don't think that the location itself and the distance from the road and the placement of these signs on top of each other is going to create any discomfort to anyone as far as the characteristic of the community and the neighborhood , I think it fits in quite well and the community and neighborhood it's a nice building the signage are stacked on top of each other , we've got nice balance of blank space, negative space on the building and between the signs and it reads well and it looks well it just , it's not one of those obstructive signs that when you're driving down the road and it catches you by the eye it distracts you over its just not going to happen with this design and this square footage in that area that's just my opinion and I've been doing this for a long time and I do understand your concerns but I think this would probably be a better alternative to a flashing sign , but again I'd have to leave that up to Mr. Goldstein.

**Mr. Marlow:** Just for the record, our digital signs they are not allowed to flash, just for clarification and we have time limits on how often they can change.

**Mr. Micelli:** The think the other day I was driving down Route 9 and I see that there was a Kawasaki flag outside , that gave me the impression like , wait , wait a second he sells Yamaha and he does sell Kawasaki so you have the flag out there, just hung right out there that's just kind of like a much cheaper option obviously advertising Kawasaki they would never go for a flag over the Yamaha but it said to me as a consumer if I was looking for a motor cycle and I was in particularly in the market for Kawasaki and I was driving that route I mean that thing is almost on Route 9 on the northbound side so , I'd say wow let me go in here and check this out, I mean I don't know what your thoughts are on that but me like I said I would see that right away its right there right on the road, couldn't miss that no way.

**Mr. Koval:** Is that considered signage?

**Mr. Micelli:** It's considered advertising.

**Chairwoman Curto:** They are allowed one flag per parcel.

**Ron Lavesque:** Typically flags are temporary signage not considered permanent signage.

**Mr. Micelli:** I understand that but once again Ill repeat myself, if I was in the market looking for a motorcycle and it was particularly a Kawasaki I see the sign so it's telling me as a consumer your selling Kawasaki's in that building, and Im going to stop and see what it's all about, that's what my whole point is.

**Ron Lavesque:** Right and I think that what we are trying to get at, somebody like you going by seeing that sign on the building minus the flag on the road is Im looking for a Kawasaki this is where I need to go, and that's the importance of having the branding on the building.

**Mr. Micelli:** Well I disagree with you on that.

**Mr. Marlow:** Debbie just so you know we do have 4 people from the public who would like to speak when we do go to that portion of the presentation.

**Chairwoman Curto:** Okay, under general regulations for signs which was amended in 2009 I don't know if there is an update but, LED signs that change content every 20 seconds shall not constitute a violation.

**Mr. Marlow:** That is correct.

**Chairwoman Curto:** Okay, any other comments from the Board?

**Mr. Koval:** I personally would rather see fixed signs than digital signs for the record, I believe it's less intrusive.

**Chairwoman Curto:** Okay all public comments will be heard, if we have someone that would like to make a comment please state your name and your address.

**Mr. Marlow:** I have John Higgins first in line here

**Chairwoman Curto:** Hi John

**John Higgins:** Hello, John Higgins 31 Cary road Mechanicville NY 12118. Im an over 30 year resident of the Town, I am a member of the Planning Board , however this evening I am talking as a citizen of the Town and not a Planning Board member, I just wanted to make sure that that was understood. I am also a business owner in Town and my wife and I had to be allotted footage on our business and I agree with a lot that was said earlier by some of the other members that we don't want, or I don't want Route 9 in Halfmoon to look like Wolf road or other places with very high intense signage. We have a bunch of businesses along that strip that are presently even bigger areas as far as geographic areas that are keeping with the signage and they are staying under what is allowed. I understand where Mr. Goldstein is coming from however I totally disagree with him getting a variance as far as more signage than what is allowed by Town regulations, I think several things were offered to him as far as eliminating some of the existing signs and moving things around , I think any of those as long as he stays under the square footage allowed without a variance I don't have a problem with that , but I definitely do not feel that this application should be approved and he should get a variance for additional signage because it is definitely his own problem and it was not something that was inflicted on him by someone else, thank you very much for allowing me to speak.

**Chairwoman Curto:** Thank you John.

**Mr. Marlow:** The next person we have online is Marcel Nadeau.

**Marcel Nadeau:** Marcel Nadeau, 37 Cary road Mechanicville, Im also a Planning Board member but Im speaking tonight as a resident of the Town. My concern is that approving this type of situation is that we could be setting a precedence , as you people have said we have enough signs , we have a lot of businesses. Looking at this, I think we are probably 25 to 30% increase in the Town Sign ordinance and I feel that's quite a large amount, but more concerning I do feel it would be setting a precedence that many other people will be trying to do the same and that's my comment.

**Chairwoman Curto:** Thank you, any other public comments?

**James Hildebrandt:** Yes, my name is James Hildebrandt, I live at 18 Plant road just directly behind GT Toyz, You know if you look out here on Route 9 we've already started on being like Wolf road so I mean just one extra sign is not going to make one, just I'd say not one difference at all, that's what I would say. It's not going to affect, I don't even think you could find anybody else in this neighborhood that would even be objected to it. I mean you look across the street we have a billboard and we have another old used car lot across the street, this here is a beautiful place , well kept , its meticulous and yes during this pandemic he is doing okay he is doing alright , it's a small business we should be helping him along. I mean it's just one sign, one more sign, that's it that's all I have to say.

**Chairwoman Curto:** Thank you, any other public comments? (No more public comments) I will make a motion to close the public hearing its 7:47 and at this time the Board will discuss the five test questions for an area variance to render their decision

1. *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 consider #1 whether an undesirable change will be produced and the character of the neighborhood or a detriment to nearby properties will be created by the granting of the Area Variance.*

**Chairwoman Curto:** And I will say yes this will be an undesirable change to the character of Halfmoon Parkway

**Mr. Micelli:** I agree with you Madam Chairwoman

**Mr. Maxfield:** I don't feel that it will change the characteristics but I think it's going to start to look like a billboard

**Mr. Koval:** I don't think that it would change the characteristic but I agree with some of the public comments that we are creating a slippery slope and opening up the possibility for a lot more signage in the future.

2. *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. Maxfield:** I believe that there are other ways that they can achieve this goal

2/1/21

**Mr. Koval:** I concur, I believe there are other ways that would not be detrimental to the business to achieve the goal of signage

**Mr. Micelli:** I agree.

**3. Whether the requested area variance is substantial.**

**Mr. Koval:** At 23% increase I believe it is somewhat substantial

**Mr. Micelli:** I would agree with that

**Chairwoman Curto:** Agreed

**4. *Whether the proposed variance will have an adverse -affect or impact on the physical environmental conditions in the neighborhood or district?***

**Mr. Koval:** I don't necessarily think that this one or two additional signs would have a great impact but it sends a precedent to have a cumulative effect in the future

**Mr. Maxfield:** I agree

**Chairwoman Curto:** I believe the Town strives to preserve and enhance and protect the physical appearance of our community

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

**Mr. Maxfield:** I feel it was self -created

**Mr. Micelli:** I would agree with that

**Chairwoman Curto:** I would agree that it is self -created. I will make a motion to deny the signage

**Mr. Maxfield:** I also deny

**Chairwoman Curto:** I need a second on that motion.

**Mr. Micelli:** I second

**Chairwoman Curto:** Alright I'll do a roll call, Koval-deny, Micelli- deny, Maxfield- deny, Curto – denied. Area variance has been denied. I will open the next public hearing at 7:52.

**Brooks Pool House, 33 Deer Run Hollow – Area Variance**

**Chairwoman Curto:** Geoff Brooks has followed his fathers' foot- steps in building custom homes in the capital district, he has built Heritage Point and several homes in the Deer Run Hollow neighborhood, as a matter of fact

for the past four to five years he has built 200 to 300 homes and the reason I mention this is as a construction professional Mr. Brooks is well versed on building codes and zoning within our Town. Mr. Brooks is before the Board seeking approval for an area variance as it relates to the construction of a newly built pool house at their existing home at 33 Deer Run Hollow. The applicant seeks to complete the interior as the exterior has windows, siding, and roofing shingles installed. The Town did allow the applicant to secure the building because of winter elements, not because of the pool. It should be noted that there are literally hundreds of in-ground pools that are winterized, without having an enclosed pool house. This pool house is approximately 1334 sq. ft. In size, their current home is 4569 sq. ft. and with the proposed pool house there will be a total of 5903 sq. ft. Of the building coverage on the lot. The lot as it stands is 23086 sq. ft. the Town code states the maximum building coverage shall not exceed 20%. 4617 sq. ft. of the lot size. Due to the size of the existing home and the pool house the applicant is unable to meet the 20% requirement and was therefore denied by the Building department. He is seeking a variance for 1286 sq. ft. . . . As a note the applicant was previously before the ZBA back in 2018 at which time the applicant withdrew the request prior to the public hearing. Since that time the applicant was discovered to have constructed the pool house, and has been working with our Planning and Building departments to address the matter. For the record 11 letters were sent out to neighboring properties, we received responses from 3, two of which were opposed. We did conduct a site visit on January 23<sup>rd</sup> at that time the pool was covered with plywood so we did not actually see the depth of the pool or how large the pool was or is. Mr. Brooks did circulate a letter to neighbors and friends which they have signed in favor of the project, it should be noted that some of the signatures were not of neighboring properties. The applicant or representative can provide additional comments or provide additional information if so please state your name and your relationship to the project.

**Victor Cabanara:** Thank you Madam Chairman, can you hear me?

**Chairwoman Curto:** Yes

**Victor Cabanara:** I'd like to know first of all how Jennifer M. whose picture Im looking at can stand so soulless through all this thing she hasn't blinked her eyes once since we started this whole thing , I think it's just a picture of her Im just trying to make a joke. Alright , I represent the owners of the property the Brooks and I will note that I sent a letter to the Board on January 19, 2021 with two letters from Capital Region Orthopedics Bone and Joint does the Board acknowledge receipt of that letter?

**Mr. Koval:** I have seen that letter

**Mr. Micelli:** Yes, I have seen it

**Mr. Maxfield:** I have seen it.

**Chairwoman Curto:** Yes

**Victor Cabanara:** Okay so Im going to run through this letter and give a little perspective and a little history to the whys and the wherefore on this property, so we all know that my clients purchased the property in 2007 they obtained a demolition permit to remove the pre-existing home and then construct a new home on the site, the property. I too have visited the site and I too have visited the rear pool house and went inside and recognized that it was unfinished on the inside and unusable and Madam Chairman was quite correct when she said that the pool was covered and unusable. So the facts of this case show that in November my client's wife was diagnosed with a medical condition, was and continues to be treated by Dr. Doss who is a medical doctor from Capital Region Orthopedic. Bone and Joint. She is seen by Dr. Doss several times a year for assessment of an ongoing medical

condition and Dr. Doss in a letter that I submitted to the Board must participate in exercise which include pool therapy. 2 to 3 times a week. Oddly enough the Brooks daughter in 2018 was diagnosed with the same medical condition as her mom and they also started doing pool therapy at St. Peters facility and pool with a therapist. In April of 2018 my clients contracted with Concord Pools to install a therapy pool in their back yard. This isn't a normal swimming pool, its smaller it only has chest deep water it comes with a number of high powered jets to assist in therapy exercise. They applied for and received a permit from the Town to build their in ground water therapy pool. During the time they lived in this neighborhood 54 Deer Run for 17 years they never asked for nor did they ever construct a pool because they didn't really want a pool, too much maintenance. In May of 2018 a building permit was filed to enclose a therapy pool in the back yard, the Town denied the permit due to the fact as stated by Madam Chairman, the maximum allowable density in your zoning code is 20% and this pool would increase it to 26% thereby requiring a 6% variance from the maximum 20% density allowed in the zone. Due to negative neighborhood response they withdrew their area variance application and stopped the construction of the pool. At that time the footing was poured for the pool the walls were formed and were ready to be poured. The construction stopped. While Jennifer and her daughter continued to do pool therapy at St Peters facility with a therapist. In July of 2019 they enclosed their entire back yard with a decorative cedar wood fence, that I observed when I was there the other day, and in August received a C/O for their new home and in April 2020, due to the cost of therapy over the past 2 years for both Mrs. Brooks and their daughter and obviously this Covid Pandemic and the shut- down resulting it forced the Brooks to obtain a permit to re start the construction of the therapy pool in her backyard. In October 2020 the Brooks received the permit for the therapy pool, Mr. Brooks informed the Building Department that they needed to protect the pool equipment from freezing and required the use of the therapy pool during the winter months. Then in October of 2020 70 plus arborvitae trees that are 14 to 16 feet tall were installed around the perimeter of the Brooks backyard and there is also an additional 20 that will be going up when the spring comes and weather permits, which would encompass the entire back yard. In October the pool enclosure was re-commenced and the Town issued a stop work order. In November 2020 Richard Harris allowed the Brooks to enclose the pool but only to the point it would protect the pool and equipment from freezing. He further had communications with my client and advised him that the Town Attorney was drafting language requiring a removal bond to be submitted and Mr. Brooks received the Towns agreement language for the pool enclosure which was submitted to my firm for review and comment. The Town mandated that my client agree to remove the pool enclosure within 30 days of disapproval if it were dis-approved by the Board, I feel that the agreement as written has violated my clients due process under the law to challenge any decision by the Board in what's called an article 78 lawsuit in the Supreme Court of the State of New York. I modified the agreement to that extent, which was signed by my client who stated that he would dismantle and remove the structure either 30 days from the date of dis-approval or if an article 78 lawsuit was commenced wit in 30 days of the Judge's decision and notice of entry. I submitted that document along with a draft bond to the Town on January 11<sup>th</sup>. Only because of the medical condition that my clients wife and child has, that they constructed the in-ground therapy pool and covered it so as to allow them to continue to do pool therapy that they need 2 to 3 times a week as prescribed by Dr. Doss for both and stated as for part of my papers and submissions were the letters from Doctor Doss dated 1/4/2021. Due to the owner and applicant installment and a solid wood fence and the planting of the 70 plus or minus arborvitaes that enclose the side yards and part of the back yard which will be fully enclosed in the Spring, and due to the fact that all arborvitae trees are 14 to 16 feet tall, and given the fact that the pool houses 12 feet tall we believe that there will be no character changes to the neighborhood but the granting of this daminimous 6 percent area variance. Clearly the Board earlier tonight granted an area variance on a pre-existing substandard lot that was only 53,000 that was separated into two lots and one variance was 71 percent higher and the other one was 41 percent higher.

**Chairwoman Curto:** That was also in a different type of zone

**Victor Cabanara:** I completely understand what you are saying Madam Chairman, but the facts are that the Board granted a variance , whether it's in a different zone or not it was 41percent in one lot, it was sub- standard and 71 percent in the other lot that was granted .

**Chairwoman Curto:** And this Board looks at each and every case individually.

**Victor Cabanara:** Absolutely right which is what this Board is required to do under the law.

**Chairwaman Curto:** Absolutely, that's what we are doing.

**Victor Cabanara:** Regarding whether the benefit is sought by the applicant could be achieved by some other method is feasible , it is only due to the unique medical condition with the applicants family which requires a special water therapy pool, and water therapy 2 to 3 times a week., this is why he enclosed the pool. Inspection of the pool on January 12<sup>th</sup> confirms that the inside of the pool is covered its unusable due to the request of the Town not to complete the inside of the pool enclosure, which I think you confirmed when you first started this case Madam Chairman. So a 6percent variance from a 20 percent lot coverage, currently 20 percent is certainly not substantial as the Board has granted others on other occasions as early as this evening as recently as this evening more substantial area variances including one in 2015 granted to I think its Joseph Koktowski at 4 Mann Blvd. which approved a substantial area variance for a building that was started by the applicant without first obtaining a building permit as it was in this case. The Board also granted a 2015 variance to Raymond Giroux on Jennifer Drive, for medical issues with one of the owners of the property. We believe based upon the facts of this case by the planting of the trees and the placement of the fence, with that the applicant is doing is ameliorating any potential adverse conditions that the construction of this pool house would have on the surrounding properties. Certainly it lessens any visual impact on the enclosed therapy pool from the surrounding properties, which minimizes any visual or audible impacts that an in-ground pool would have that wouldn't be covered. Now clearly this is a self- created hardship, but due to the unique situation of the Brooks two family members which require year round physical therapy as well as pool therapy, the use of both third party pools and therapists have become difficult although not impossible to schedule due to the Covid. So we know that under the area range criteria that is area variance could be self- created but it does not preclude the granting of the variance. Madam Chairman also mentioned I think you said 7 or 8 letters, I believe that 9 letters have been submitted and you can confirm that with the gentleman that is running the meeting, I think he verified that, I had 9 letters that were submitted, I have copies of 9 from 32 Deer Run, 38 Deer Run, 39 Deer Run, 53 Deer Run, 32 Jason Lane, 15 Jason Lane, 10 Cindy Lane, 44 Deer Run, and 5 Cindy Lane. That was previously mentioned that comments that were made by those folks that submitted it that they did not feel that this proposed, minimum in my opinion, variance would have any adverse effect on the surrounding properties. So that's my application that I submitted , that I just spelled out and I would be happy to answer any questions and I think my client is on this call also.

**Chairwoman Curto:** I believe the letters that you are referring to is a letter that Mr. Brooks generated to his neighbors for them to sign and send back is that what you are referring to of the 9 letters?

**Victor Cabanara:** Yes

**Chairwoman Curto:** Okay so it was a standard form letter that Mr. Brooks sent out to various friends and neighbors, thank you. I am empathetic to the medical hardship I have reached out to 3 physical therapy centers in our area that are offering pool therapy during Covid and all 3 of them are up and running and offering appointments during Covid.

**Mr. Maxfield:** I have a question, I saw on the doctor's note that they specified specifically for both the Brooks folks that it's for the next year must participate, is this going to be a lifelong therapy or is it just for the next year?

**Mr. Brooks:** This is Geoff Brooks, I just wanted to share some information if I could please. To Mr. Maxfield, the doctor requires a minimum of an annual visit that's why the prescription is for 1 year, but every year both of our family members have to go and have at least one check -up, 1 my wife it will be a lifelong situation, for the other individual, our daughter we're hopeful that it will not be and so far over the past 2 years there has been a continued-.need for it so I'm hopeful that, that will go away.

**Chairwoman Curto:** Im sorry what was the diagnosis?

**Mr. Brooks:** Additionally I really don't want to get into the diagnosis at this point just for personal reasons please.

**Chairwoman Curto:** Certainly

**Mr. Brooks:** The other issue to that has not been discussed is the fact that we also have and while I also appreciate the chairman confirming that there are pools available appointments open, that is true we have scheduling conflicts with , we have two children left in our house and wife's' scheduling and schooling and what not it's very difficult to try to get all of the stars to align so that we can make these appointment happen and as such, we've also build unwanted a full gymnasium in our house because we have discovered over the past years is the amount of money that we have been spending on these therapy visits we could have built and now have and it's cheaper for us to maintain that so, anyone can notice we have multiple physical therapists parked outside our home several times a week for several hours each day, and they come into the home and they do the physical therapy inside for now and we're traveling to do the pool therapy, but if we can get this variance we will do the physical therapy inside the house and then we will do the pool therapy in the enclosed pool .

**Mr. Maxfield:** Will the therapist travel to your home for the pool therapy?

**Mr. Brooks:** We have three now that are traveling to our home and they will continue yes. And if I may just to re iterate this, hey I understand from your opening comments that we are involved in the building business, however this was an absolute, complete surprise to us, this 20% coverage and that's why in 2018 when our request for the variance came up , with the push back that came from our neighbors as Mr. Cabanara mentioned, we've lived in this area neighborhood already for 17 years, and we've never caused any issues with our neighbors and we don't want to cause any issues now we had several neighbors while we were building the house that wanted us to help out with certain things we removed trees at no cost for some of our neighbors, we planted new arborvitaes for some of our neighbors, we repaved one of our neighbors driveways at no cost to them, planted sod just to be nice and thank them for their understanding, while we were constructing the home. When the opposition came up as Mr. Cabanara pointed out , we stopped construction and we filled the pool in didn't do anything , then when this hardship came up with Covid 19, and the fact that we realized how much we were spending on this it became apparent that we needed to re-visit the pool , the physical therapy pool, so we started construction, and at that point , we at this point are just looking to get the variance so that we can try to maintain some semblance of physical therapy regiment without having to spend a lot more money and a lot more time traveling and driving everybody around, but we do appreciate everybody's stand and review of the situation.

**Victor Cabanara:** May I ask Geoff a question, we had talked about a possibility of a sunset provision, if this were to be granted, and do you recall that discussion Geoff?



**Mr. Brooks:** I am a 100% okay with that Mr. Cabanara and the Board members if we plan our youngest will graduate from Shenendehowa in four years and at that point we plan on moving and if the Board was to grant us a variance and tell us that once we go to sell the house they want us to remove the enclosure Im fine with that I'll, gladly take the enclosure down and sell the house and move.

**Mr. Cabanara:** I just wanted to make sure that was out there because in the various sports that I represent in various other locations, or municipalities or around, we often times Boards consider sunset grant variances which means it has a time limit on it.

**Mr. Brooks:** And one more thing please to the Chairman's point, we did contact, we actually sent out 30 notices to all of the neighbors , we sent everybody on Jason Lane and everyone with in the vicinity of our home here in Deer Run Hollow, we sent them all notices and we tried to explain to them what our situation was and asked them all if they wanted to contact us , we would have normally gone door to door but obviously with Covid 19 we didn't want to do that so we sent out the mailer and we asked them all to please give us a call if they wanted to discuss with us what their concerns were with us and if there was anything we could do to address those. And we did not receive any calls, or any requests to sit down or even through emails, but we did have several friends who throughout the neighborhood said they would sign for us, but I would say that of the nine letters that you did receive of support seven of those people are on Jason Lane and directly within our house here on Deer Run Hollow.

**Mr. Maxfield:** And I think to be what my understanding of all of those letters are, and too Paul please correct me if Im wrong, The Town sent out 11 certified letters, out of the 11 certified letters that surrounded your property only 1 of those residents replied back. Then there are the 30 letters you're are speaking of which you sent out which you got 9 in favor of support back. Is that a correct statement Paul?

**Mr. Marlow:** Yes, so we are required to notify adjacent parcels, I checked today we sent out 11 certified letters and then I cross referenced the mailing list that I had with the letters that we received from Mr. Brooks and there was one name that fell on my list and Mr. Brooks list that was I believe 32 Deer Run was the letter of support that he submitted, that was also a resident that would have gotten a letter from the Town.

**Mr. Koval:** This is a question for Cathy, because this has come before us before, should we consider or not consider the letters from residences from the prior Board appearance.

**Mrs. Drobny:** I do not have an answer to that I would have to do research, did they respond this time? Does anybody know?

**Mr. Marlow:** I have not heard specifically, I don't know, there was a lot of people the last time, I would have to go back and look at who exactly sent a letter or email last time. You know we did receive some complaints initially when this was all first under way with the property owners, but in writing I don't think that we received anything since the public hearing notices went out at least, there was some correspondence, early on before the last meeting with neighbors that were concerned, I would have to look and see if they were the same people that spoke last time.

**Mr. Maxfield:** Mr. Brooks I guess I have a question for you too, in May of 2018 when you originally wanted to put the pool in and then you stopped, was it originally for therapy?

**Mr. Brooks:** Yes it was.

**Mr. Maxfield:** Did you know at that time that you would be using it year round?

**Mr. Brooks:** Yes

**Mr. Maxfield:** Okay

**Mr. Brooks:** Then that's why we asked for the enclosure.

**Mr. Maxfield:** Okay and you asked for the enclosure before you installed the pool?

**Mr. Brooks:** Up front yes.

**Mr. Maxfield:** And what was the Towns decision on that?

**Mr. Brooks:** They referenced the 20% maximum coverage and we would be over that so that's why we had to apply to your Board for the variance.

**Mr. Maxfield:** Okay

**Mr. Micelli:** Mr. Brooks I have a question, on the stop work order under the law of the Town is 169-85 and that was issued twice, from our conversation with Paul earlier today. On 10-29-20 and then it was stopped and then it was resumed on 10-30-20. Now my whole outlook on this is, it's not the issue that it's not needed for the disability but the fact that protocol was not followed by getting the necessary variance , built without proper documentation, so that's where Im looking at this from my perspective, that it was just done without clearance of the Zoning Board of Appeals.

**Mr. Brooks:** So are you saying that because there wasn't a variance application put before you is what you are concerned with?

**Mr. Micelli:** Im concerned with, when a work order is issued a job should be stopped. Im concerned that there was no protocol, no variance was ever brought to us prior to 2018 and I was on the Board at that time and the hearing was closed and you guys pulled out of the project and then went ahead and just like did it without the proper documentation that's just the way Im looking at that.

**Mr. Brooks:** If I may the actual process that was followed was the construction was stopped in 2018 the pool was removed, the footing and what not of the prep work was removed, and no work was being done. When the shut down in March occurred we then re- applied for the building of the pool, the therapy pool and we were granted a permit to do that. The construction of the pool moved forward and the C/O for the pool was granted, at which point I said to the inspector who came out I need to obviously protect this and at that point the application for variance was mentioned again, at which point we knew Winter was coming quickly because we were granted the C/O for this in September or October. But once the construction was started Mr. Harris notified us with a stop work order on the first go around , on the first notice, I did email him and he notified me, and I didn't know what it was my wife actually called me it was pouring rain, she said there is something out on the front lawn and I said what is it go grab it and she brought it in and we didn't know that you weren't allowed to remove that , at which point I emailed Mr. Harris that evening letting him know that I had removed it and I had received his stop work order and that we were stopping work. He then told me that he was going to post a second notice because we

removed the first one and I said fine, he came and there was no work going on and he came and posted the second stop work order notice. We had a phone conversation I believe that was Thursday or Friday we had a phone conversation we set up a meeting for Monday. So no work was done between the first and second posting of the stop work notice. I came in and met with Mr. Harris and the Town Inspector in their offices, we discussed the situation at which point Mr. Harris did allow us to complete, weather-tight the structure insulate it only but no further work was to be done and I agreed to allow, his inspector to come in and take pictures while that weather proofing was being performed, and they did come in and take pictures.

**Mr. Harris:** I would like, this is Richard Harris speaking, I have a different recollection of the facts and how this transpired. We were unaware of the construction on October 29<sup>th</sup> 2020 when we received two phone calls from neighbors with photos that were went indicating the construction. I called Mr. Brooks , I also emailed him that day the 29<sup>th</sup>, the inspectors installed a stop work order on the lawn, when he responded back to me by email , I responded back that I noticed that it was removed , a second stop work order was installed on the 30<sup>th</sup> . Then we spoke on November 4<sup>th</sup>, by email that he wished to come in and meet with me, we did have a telephone conversation, also on the 30<sup>th</sup>. On Monday the 4<sup>th</sup> I believe it was, he requested to meet with me, and we met on the 5<sup>th</sup>. At no time did I grant him permission to continue construction what he requested was if he could be permitted to make it winter tight, protect it. I said that I would need, certainly that was a reasonable request that it would likely involve an agreement or possible bond or letter of credit with that, and that I would need to consult with the Town attorney. I also asked that the inspectors be allowed to take a look at it to determine what is the minimum construction necessary to winterize it, to make it airtight, to protect it. The inspectors did visit on the 9<sup>th</sup>. Between the 10<sup>th</sup> and the 20<sup>th</sup> of November I conducted research on what would be a reasonable amount for the Town to obtain in a Bond, we also worked on language with the Town attorney, we sent that to Mr. Brooks, Im sorry I emailed Mr. Brooks on the 20<sup>th</sup> that while the inspectors were out there on the 9<sup>th</sup> not only did they observe the pool house, but additional construction related to a roof overhang that would need a separate permit. I told him we were getting ready to send him the final language of the proposed Bond, which I sent to him on the 24<sup>th</sup> of November, a draft agreement for his signature. On the 30<sup>th</sup> I emailed Mr. Brooks asking what the status of the agreement is, what's the status of a variance application, and what's the status of submitting another permit of the roof overhang. On November 2<sup>nd</sup> Mr. Brooks responded with revised agreement language and requested a sample letter of credit. After discussing it with the Town attorney on December 3<sup>rd</sup> I responded back that the revisions that he made to the agreement were unacceptable, and I provided him with the draft language on the letter of credit which we needed in had by November 4<sup>th</sup> because he had continued construction of the pool house without the agreement and letter of credit o place. By the end of business on the 4<sup>th</sup> there was no agreement letter of credit by 4 pm, I personally visited the site and issued a third stop work order. Upon no response on December 16<sup>th</sup> Code Enforcement officer Mr. John Cooper issued appearance tickets for both, the construction of the pool house and the roof overhang two separate appearance tickets. On December 22<sup>nd</sup> no response, we issued another set of appearance tickets for both the pool house and the roof over- hang, and then on January 4<sup>th</sup> the ZBA heard the first variance request and then we received somewhere around the 20<sup>th</sup> of January, a signed revised agreement which we had informed Mr. Brooks was not acceptable and draft language for a letter of credit that referenced the revised agreement that was not acceptable to the Town. At no point did I give him permission to proceed without the agreement and letter of credit in place and is in fact one of the reasons or main reason I personally issued the third stop work order on December 4<sup>th</sup> because he continued construction to winterize it without the agreement and without the letter of credit in place, and in fact was one of the reason or the main reason I personally issued the third stop work order on December 4<sup>th</sup>, because you continued construction , to winterize it without the agreement and without the letter of credit in place.

**Mr. Koval:** While I appreciate all of this input , stop work orders and permits don't fall under the peer view of the Zoning Board and I believe we are here to decide on and this based on the merit of whether we should grant an

area variance or not. I don't think that stop work orders or possible scofflaw should necessarily come into play at the Zoning Board level.

**Chairwoman Curto:** And neither should medical issues, we are here to solely look at the area variances

**Mr. Koval:** Agreed, if there are issues to stop work orders or non-compliance that's a Building Dept. Issue.

**Chairwoman Curto:** Question could the pool have been secured with just a pool cover rather than an enclosed building? Every other pool I know in Town just covers their pool to secure them for the winter.

**Mr. Brooks:** This particular pool has equipment in the pool as well as controllers and jets that require a structure over them that keeps them at an ambient temperature. So we would have to have a minimum a 20 x 10 structure just to cover the mechanical devices then you could cover the pool water itself I guess with a cover as you were saying in other areas.

**Mr. Maxfield:** Can the equipment be removed or not from the freezing.

**Mr. Brooks:** The point of the therapy pool is to have year round use of it, and to not have use of it in the winter time really defeats the purpose of even having a therapy pool. this is not a pool for my family and I to sit around and enjoy and have fun at, this is strictly a pool that you walk into it you ride the bike you get on the treadmill, you have the jets for resistance swimming and what not, this is not a slide, diving board, swimming pool, kids having fun in it so to have it just during the summer months defeats the use of even having it at all.

**Chairwoman Curto:** What is the dimensions of that pool?

**Mr. Brooks:** The inside pool is probably 14 x 14 generally.

**Chairwoman Curto:** That is the size of the pool that's there?

**Mr. Brooks:** That is the size of the water itself that's there, there's probably steps that go down into it that are 6 foot by 5 foot as you walk down into it, the hand rail was taken off obviously, when you were there for the site visit the platform that's been built over it to cover it, and the hand rails have all been taken out but there is a hand rail when you walk down in for handicapped access and the hand rails were removed.

**Chairwoman Curto:** So what is the width of the pool?

**Mr. Brooks:** It's about 14ft wide.

**Chairwoman Curto:** So then it would be 14 x 20 is the total dimensions of the pool?

**Mr. Brooks:** Somewhere in that neighborhood yes I could pull out the exact dimensions for you I would have to go to the contract but it's somewhere in that neighborhood

**Chairwoman Curto:** That is not considered a small pool.

**Mr. Brooks:** Well with the amount of equipment that was in it that was the space that was required

**Chairwoman Curto:** Paul should we start going for public comment

**Mr. Koval:** I have another question I believe I saw a print for the pool house that showed a utility area is that to house equipment, what would that utility area be used for?

**Mr. Brooks:** Yes there is quite an extensive sized electrical panel because all of this equipment requires a sizeable, I think it's a 200 amp service that is back there, so in that utility room they have the electrical panel, you have the jet system, you have the heater to the water itself, you have the furnace you also have the salt water filtration system and then we have the jets themselves to develop the current.

**Mr. Koval:** Thank you.

**Mr. Marlow:** Debbie whenever you are ready for the public hearing portion of it for the residents to speak I do have five or six people that are in line

**Chairwoman Curto:** Any other comments from the Board at this time? (No comments) we can certainly come back to comments if the Board has additional comments once the public has made their comments. We can start with public comments, please state your name and your address.

**Mr. Marlow:** First one up we have is Betsy Bitner.

**Betsy Bitner:** Hi my name is Betsy Bitner, my husband Gregg Brown and I live at 34 Deer Run Hollow which is directly across the street from 33 Deer Run. We are opposed to granting this variance for the following reasons, the current home at 33 Deer Run has already irrevocably altered the character of our neighborhood. The original house at 33 Deer Run was 2100 sq. ft. a size that was in keeping with the other houses, that was torn down in 2017 and a substantially larger house was built in its place. That was their right but then they had to abide by the Towns 20% building coverage cap. The proposed variance would exceed that cap by more than 1200 sq. ft. or roughly the footprint of the house they tore down. They could have built their home elsewhere on a piece of land large enough to let them have a pool house without needing a lot coverage variance, but they chose to shoehorn their house on this small lot instead and so they are not entitled to a variance of such a large magnitude. In addition they went ahead and built the pool house without seeking the required variance. They knew one was required because they applied for one in 2018. There was a considerable neighborhood objection at that time including 24 signatures on a petition that was circulating but were not able to do so now due to Covid restrictions and their application was withdrawn. They then proceeded with construction last fall without getting the necessary permission from the Town. They ignored multiple stop work orders they were told to post a bond to cover the cost of demolition and the removal of the pool house if the variance was denied. Such repeated failures to act in good faith cannot be rewarded with a variance after the fact. Lastly granting the variance at this point sets a dangerous precedent building laws and zoning codes exist for a reason. Many in our neighborhood ourselves included have improved our homes and yards over the years, but we've done so following the law. They gambled with putting up a pool house without gaining permission beforehand and without cooperating with the Town once construction began in the hope that they would be allowed to keep it once it was built, and the equipment that needs protecting was installed before they ever attempted to get a variance. So of course variances can be granted to avoid hardship but in this case the hardship is of their own making. For these reasons we request that the variance be denied. Thank you.

**Chairwoman Curto:** Thank you, next public comment.

**Mr. Marlow:** Chuck Stewart is next

**Chuck Stewart:** Hi Im Chuck Stewart I live with my wife Luann at 4 Jason Lane, our back yard is perpinducular to 33 Deer Run Hollow, we are also opposed to the variance for the following reasons, most of which have been already stated but I will restate them. The variance is quite large and violates both the letter and the spirit of the zoning law. It has been stated that the variance is only 6% of the lot size, this is of course true but also misleading it is over 7% on the allowed building lot and at 1334 sq. ft. Is larger than the first floor living area of most houses in the neighborhood. Essentially it is a second house on a single lot. This disrupts the character of the neighborhood and opens the door to other equally extensive violations of zoning laws, which we all have been abiding by for many years. Next we do not propose to comment of the stated of health concerns but instead raise several objections on how they have been used to justify the variance. First construction began in the fall long after the pool was constructed and long after Covid related shut downs occurred. Second there was no attempt to work with the Town Board to seek permitting for the construction and as we have seen multiple stop work orders were issued. Third the building is not complete and the pool is not in use and by the time it would be in use the quarantine related justifications for its construction will likely be over. The pool house is overly large permanent solution to what is best a short term transient accessibility problem. Thank you.

**Chairwoman Curto:** Thank you, next public comment.

**Mr. Marlow:** Mathew Ryan

**Mathew Ryan:** Hi my name is Matt Ryan I live with my wife Cary Ann Ryan at 36 Deer Run Hollow, we live almost directly across just a little kiddie corner across the street from 33 Deer Run Hollow. While my comments won't be as eloquent I don't have a real prepared statement as the previous two neighbors. I would like to say a couple of things, first of all I did not send a letter in to the Town because I had planned on being on this particular call and I was one of the 11 people to receive notification from the Town. Secondly we keep referencing this letter that was sent out to the neighborhood and I feel like when I read the letter sent out to me by the Brooks it was a reworking of history. I could not agree more with the previous two comments from my other neighbors in the since that we talk about the character of the neighborhood just by the fact they built a house that is exceedingly larger than anything else in the neighborhood and clearly does not fit into the neighborhood and then they went on to build a ten foot wooden fence around it and they talk about all the trees they are going to build around it, that's not how any other house in this neighborhood is. There is nothing else like it and I don't want to comment on the health issues it's not that I'm not empathetic or sympathetic, but any time someone builds a house or buys a house we all have to follow the same rules, nothing is ever perfect, and the fact of the matter is that in this neighborhood , the house doesn't fit in, it doesn't go with the character they could have built that anywhere else that they wanted to, and to kind of take a paraphrase , a quote from one of the Board members on earlier topic when talking about GT Toyz, it's not the neighborhoods fault that they didn't think of this, you know at the end of the day we all have things that we would love to have but can't have and you know another topic that came up was the slippery slope in regards to GT Toyz, well that's exactly how I feel , if we continue to allow this bad behavior to continue to go on and we allow them to get away with it by re-writing history and um doing whatever they want we set the expectation that it's okay, then other people will do the same. So with that I want to say thank you for letting me speak and I appreciate your time.

**Chairwoman Curto:** Thank you, next public comment.

**Mr. Marlow:** Next one, please forgive me if I butcher your name is it Yanna?

**Yana Grimmond:** Yes I knew that would be me , my name is Yana Levchinsky-Grimmond and my husband Brian Grimmond and I have been residing at 12 Jason Lane since March of 2002. We are located directly behind the property of 33 Deer Run Hollow, and we are opposed to the variance I wrote against the variance a couple of years ago but I have not wrote this time because I was planning on attending and voicing my concerns. For the record I was one of the neighbors that received the certified letter from the Town, I also urge the Board to consider all neighborhood voices that spoke out about this request back in 2018 because of the Covid situation we were not able to talk to neighbors directly like last time, and I want to say that neighbors that spoke before me did a wonderful job of outlining my concerns and my husbands. I request the Town deny this variance for a number of reasons some of which have already been outlined but I will also like to repeat them. In a sense the petition is very misleading and ignores the fact that the construction without the variance being approved or permit being obtained. The work continued despite multiple stop work orders by the Town. The homeowners knew very well that the variance and the permit were required. Before I personally initiated a construction project I made a point of calling Town to find out if permit was necessary not being familiar with the local codes. The owners as was stated own construction business and have built enough in Town ought to know Town regulations. And Board just heard two such variance requests before this one. It's just the way things should be done. I also don't want to comment on the health reasons but it is a very slippery slope and can set a precedent when Town regulations are ignored, it's built and justification is presented as therapeutic reasons, what if I decide to get a herd of goats n my back yard as emotional support animals obtain a note from my physician and then ignore the zoning. I just don't think that it would go over very well or be fair to my neighbors or be appropriate for the character of the subdivision. Im not personally convinced that the arguments presented concerning the timing because the original variance request was for the enclosed pool, every other pool including our own is a summer pool. Despite the fence and the shrubbery that was mentioned earlier I can clearly both houses from the second floor windows whereas before I saw none. I invite the Board in my yard or inside my house to take a look what I see about the fence. The requested variance is very substantial being it almost 1400 sq. ft. For comparison the footprint our two story 2000 sq. ft. is about the same as the new unauthorized structure. Having two structures on your property distracts the neighborhood, plain and simple it is very much an undesirable change, I further would voice my concern that a known builder is given special considerations by the Town, when Town codes and regulations are ignored. I feel strongly the issue is very much self -created, they knew the regulations but proceeded to purchase the property at 33 Deer Run Hollow and construction of their second house in the neighborhood and the current address. Thank you for allowing me to speak.

**Chairwoman Curto:** Thank you.

**Mr. Marlow:** The last one I have in the chat is an Alex Harmouth, Alex are you still on? Alex you can type your comments in the chat and then we can read them as part of the record.

**Mr. Koval:** Yana what was your address I missed that part of the conversation.

**Yana Grimmond:** It's 12 Jason Lane.

**Mr. Koval:** Thank you.

**Chairwoman Curto:** Paul is Alex the last person that wanted to public comment?

**Mr. Marlow:** Yes at least according to the chat I do not have anyone else on here that has asked to speak on this application, you may certainly get someone who wants to add to it before you close but as of right now Alex is the last one

**Chairwoman Curto:** (Chairwoman read comments from resident online into the record due to technical difficulties the resident was having) Okay. This is from Alex Harmmuth, 31 Deer Run he lives right next door, his comment is, I would also request that his variance be denied, since this is all text based I will keep my comments short, the applicant is requesting to build a pool house that is 1334 sq. ft. for reference my house right next door is roughly 1600 sq. ft. and that is included 2 stories of living space, end of message.

**Mr. Marlow:** So that's the last person in the chat unless Alex has something else further to add or if someone else online has not said so in the chat wants to speak, I think everybody is, we've at least covered the chat, I don't know if there is someone else that has logged on since then that would like to speak if there is please just let us know.

**Chairwoman Curto:** I'll just wait a minute.

**Mr. Cabanara:** Madam Chairman while we are waiting how many members are on the Board at the Town?

**Chairwoman Curto:** The Zoning Board of Appeals has 5 members.

**Mr. Cabanara:** And tonight you have 4 there is that correct?

**Chairwoman Curto:** That is correct. Okay I hear no other public comments, are there any additional Board comments?

**Mr. Koval:** Not at this time

**Chairwoman Curto:** Okay I'll make a motion to close the public hearing at 8:55 and at this time the Board will review the 5 test s to review or deny the area variance.

- 1. The Zoning Board of Appeals shall have the power upon an appeal from a decision or determination of the enforcement officer, or Zoning enforcement officer to grant the 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 consider #1 whether an undesirable change will be produced and the character of the neighborhood or a detriment to nearby properties will be created by the granting of the Area Variance.*

**Mr. Micelli:** Listening to the neighbors this evening, I will have to say absolutely yes

**Mr. Koval:** I concur based on the seven neighbors that are opposed to this, it would be a negative impact on the neighborhood.

**Mr. Maxfield:** I would just like to say that there may be other pools in the neighborhood but none of them have a pool house, so I agree.

**Chairwoman Curto:** I agree as well.



**2** *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. Maxfield:** I believe there are other ways, such as therapy at local medical facilities or by purchasing maybe an indoor therapy pool.

**Mr. Micelli:** I agree with that.

**Mr. Koval:** Well I think it would be more convenient for the home owner to have this pool house but there are other ways to achieve this.

**Chairwoman Curto:** I also agree.

**3** *Whether the requested area variance is substantial.*

**Chairwoman Curto:** I would say that the variance is substantial.

**Mr. Koval:** It is substantial

**Mr. Maxfield:** I believe it is substantial as well

**Mr. Micelli:** I do too.

**4** *Whether the proposed variance will have an adverse -affect or impact on the physical environmental conditions in the neighborhood or district?*

**Mr. Koval:** I believe that is correct that it would have an impact.

**Mr. Micelli:** I agree, it would be physical and environmental

**Mr. Maxfield:** I concur

**Chairwoman Curto:** I concur as well.

**5** *Whether the alleged difficulty was self-created , which considerations would be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance*

**Mr. Maxfield:** I feel it was self-created they didn't have to move ahead with the pool without getting all the final approvals

**Mr. Micelli:** I agree.

**Mr. Koval:** I believe the medical condition was not self –created, I believe this hardship was self-created.

**Chairwoman Curto:** I agree as well and I've seen therapy pools that actually fit into two car garages so they do come in various sizes as well with the equipment. So I would say it was self- created. The Board of Appeals in granting of the Area Variance 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. I move that we deny the application for the area variance for the pool house.

**Mr. Maxfield:** I second

**Chairwoman Curto:** All in favor we'll do a roll call- Maxfield, denied – Micelli, denied – Koval, denied- Curto, denied, the Area Variance has been denied.

**Mr. Cabanara:** Thank you very much for hearing our case

**Chairwoman Curto:** Thank you.

**New Business:**

**293 Middletown Road Re-Use, 293 Middletown Road – Use Variance**

**Chairwoman Curto:** The zoning is R-1, it was formerly Town owned, the applicant is before the Planning Board seeking approval to occupy the vacant space at 293 Middletown road for a residential dwelling and storage for their business. The property was formerly owned by the Town and was utilized by the Water department. Since that time the Town has sold the property and it has reverted back to the underlying R-1 residential zoning. The property in its current state maintains a stand- alone building in front and an accessory garage in the rear. The applicant would like to rent the front building as a residence and use the rear garage as a place to store products related to their tent business. No operations of the business will take place on site and they will only use it for storage. They typically operate business seasonal between June and October and they would only use the facility to pick up the tents which would be delivered to a job site and then they would be returned to the storage unit. This was a Town owned property and traditionally used as a pump station, since it has been sold it resorts back to R-1 which does not allow operation of a business, therefore the application was denied by the Planning Department. The applicant is seeking a use variance to allow commercial use in a residential zone. Is the applicant here?

**Jennifer Manny:** I am here

**Chairwoman Curto:** Oh hello, can I please get your name for the record?

**Jennifer Manny:** Jennifer Manning, I'm at 19 Chester Drive, Waterford.

**Chairwoman Curto:** Would you like to provide us with any additional information?

**Jennifer Manny:** Sure so the 293 Middletown road actually is still owned by the Town we are under contract to purchase it, it has been something that we have been in the process of purchasing now going on 14 months. For forty years it was used as a Town building, a water department building and given the sale, the sale that is in process, it will revert back to its original zoning status. Our proposed use for the front building is actually going to be more consistent with the characteristics of the neighborhood, in that residential zoning characteristics, we are only seeking a use variance for the garage that is in-line with the historical use of that garage which is in the back of the property. The property sits on just under 1.8 acres and the garage is, if you look at the map, housed all of the way in the back, approximately 150 to 200 feet from the road, so we are just seeking the use variance for the garage as you stated for storage of business assets, but the front building will be converted to a residence. So we want to use the garage for what it has historically been used for and the front building will be used as a residence.

**Chairwoman Curto:** Thank you.

**Jennifer Manny:** Thank you.

**Mr.Koval:** Jennifer what is the type of business that you would like to run out of there?

**Jennifer Manny:** So we don't want to run the business out of there, but we own a tent business, we rent like seasonal party tents for celebrations that people have at their homes typically or that businesses have at their businesses so we just need extra storage for our equipment and the garage that is on site there is a 900 sq. ft. garage, it's very industrial in size and in structure so we simply want to use that facility to store our equipment and basically have a place to put it.

**Mr. Koval:** Is this a full time business or is this a part time sideline kind of thing?

**Jennifer Manny:** Its seasonal so we typically only operate May or June through October and we are only usually setting up Fridays and taking down on Mondays and sometimes on Sundays, so I guess it's part time in nature , it's not 7 days a week , people usually have events on the weekends so we usually have a truck that goes out say on Friday morning and that same truck will return on Friday evening and then it would go out again on Sunday or Monday and do the same thing, you know pick up equipment and then come back and store it at the facility.

**Mr. Koval:** Thank you.

**Mr. Maxfield:** Jennifer will all of the commercial equipment fit in the garage or do you feel you will need additional storage beyond that garage?

**Jennifer Manny:** No, they will fit in the garage.

**Mr. Maxfield:** Okay.

**Jennifer Manny:** The garage is like I said 900 sq. ft. it's a great size.

**Mr. Maxfield:** Okay, thank you.

**Mr. Micelli:** Jennifer you said that road is 150 feet back from the main road correct?

**Jennifer Manny:** Im estimating that based on the site plans that I have access to that the garage sits approximately that far back off the road.

**Mr. Micelli:** Now what time do you generally get done in the evening, the wee hours of the morning if you go to a wedding or a banquet or something like that? What I'm trying to, what time in the evenings?

**Jennifer Manny:** In the evenings I would say that our trucks return between 4 and 6 pm.

**Mr. Micelli:** Oh, okay.

**Jennifer Manny:** Yea we typically do most of our set ups a day ahead of time so you know

2/1/21

**Mr. Micelli:** When you go along that road are there any homes on either side of that road when you are returning all of your equipment?

**Jennifer Manny:** On either side of the building or on either side of the road?

**Mr. Micelli:** Either side of the road, that 150 ft. road that you have.

**Jennifer Manny:** We don't have a road, there is like a long driveway that goes into that facility and there is houses on either side but the lots like I said almost 2 acres so they are not visible from the property.

**Mr. Koval:** You should be able to see the screen it has an aerial view of the garage in the back of the property

**Mr. Micelli:** I know it seems to me like it's so small Im having a hard time zooming in.

**Jennifer Manny:** Its very heavily treed on both sides so that is a nice thing, there is privacy for those homeowners as well as that facility.

**Mr. Micelli:** I just blew it up perfect, thank you very much.

**Chairwoman Curto:** The property, the house kind of sits up on a hill where the garage is almost not visible as you are driving down on the road it was very well done by the Town.

**Jennifer Manny:** Yes

**Mr. Koval:** Jennifer would heavy equipment be used like a fork-lift or a tractor or anything to load the trucks or is that all hand unloaded?

**Jennifer Manny:** No that's all hand unloaded.

**Mr. Koval:** So it's a pretty quiet operation then?

**Jennifer Manny:** Yea

**Mr. Maxfield:** Jennifer will there be one family in the house or will it be multi-families?

**Jennifer Manny:** One

**Mr. Maxfield:** Thank you.

**Chairwoman Curto:** And it looks like is it fenced in?

**Jennifer Manny:** The back of the property is completely separately fenced in, there is a fence all around the garage area and that runs behind the main building so it's actually completely separate.

**Chairwoman Curto:** Very nice

2/1/21

**Mr. Maxfield:** So the garage will just be used for tents and stuff so you won't be planning on parking vehicles back there or were you planning on parking vehicles back there as well?

**Jennifer Manny:** Part of our request was that we have one box truck that we want to park back there

**Mr. Maxfield:** So the box truck will be outside the 900 sq. ft. garage and not in it?

**Jennifer Manny:** Right next to it.

**Mr. Maxfield:** Okay

**Chairwoman Curto:** Any other questions from the Board? (No more comments) Alright we will schedule a site visit on Saturday February 20<sup>th</sup> at 9:30, Jennifer would you be available at that time to show us the property?

**Jennifer Manny:** Sure

**Chairwoman Curto:** Okay so Saturday February 20<sup>th</sup> at 9:30 and I'll make a motion to hold a public hearing on Monday March 1<sup>st</sup>, 2021 at 7pm.

**Mr. Koval:** I second

**Chairwoman Curto:** All in favor? (All were in favor) Motion carried, any other business for the Board?

**Mr. Marlow:** No that's all we have tonight.

**Mr. Koval:** I make a motion to adjourn.

**Mr. Micelli:** I second that

**Chairwoman Curto:** I thank you all.