

**March 7, 2005
Town of Halfmoon
Zoning Board of Appeals
Meeting Minutes**

Chairman Hansen opened the March 7, 2005 Town of Halfmoon Zoning Board of Appeals meeting at 7:34 PM with the following members present: Chairman Hansen, Vice Chairman Tedrow, Mr. Drake, Mr. Ouimet and Mr. Rose – Zoning Board Members. Mr. Williams – Zoning Board Coordinator

Chairman Hansen stated that the Board will take a few minutes to review the December 6, 2004 Zoning Board of Appeals meeting minutes. Chairman Hansen asked the Board if they have had enough time reviewing the December 6, 2004 Zoning Board of Appeals meeting minutes. Mr. Ouimet made a motion to approve the December 6, 2004 Zoning Board of Appeals meeting minutes. Mr. Rose seconded. Motion carried.

The Dance Department – Dawn Maniccia- Use Variance, Interpretation of Use

Chairman Hansen opened the Public Hearing at 7:40 PM. Chairman Hansen explained that Mrs. Maniccia (applicant) was denied by the Town's Planning Board on February 14, 2005 due to the Planning Board determination that the applicant's proposed Dance Department was an educational facility and that educational facilities are not a permitted use in the Town's Commercial (C-1) districts. Chairman Hansen further explained the applicant is before the Zoning Board of Appeals (ZBA) for a use variance for the Dance Department in the C-1 district or can ask for an interpretation of whether the proposed Dance Department use is a permitted use in the C-1 district. Mr. Harold Berger, P.E., stated he created the site plan for the proposed Dance Department. Mr. Berger presented the Board with additional plans, and displayed a site plan to the audience. Chairman Hansen stated that the ZBA and the audience should not get into site plan issues but should be concentrating on the proposed use being questioned in the C-1 zone. Chairman Hansen opened the issue for discussion. Mrs. Dandra Lonczak, Stone Quarry Road, asked if the Dance Department use variance was approved, how it would affect the NXIVM application. Chairman Hansen stated that honestly he does not know how to answer that question. Mr. Hansen stated that he does not see any similarities between the two proposed projects. Mr. Hansen stated the Board needs to review the application that is before them on this night. Mr. Tedrow asked if the proposed Dance Studio would be regulated, in anyway, by the NYS Department of Education. Mrs. Maniccia stated no. Mr. Maniccia (applicant's husband) stated he compares the use to karate classes. Mr. Rose asked for the applicant to explain the business operations for the proposed Dance Department. Mrs. Maniccia stated they offer dance instruction for all types of dance to different age groups. The types of dance range from ballet, tap, jazz and ballroom dancing. Mr. Hansen asked if the applicant currently operates a dance studio. Mrs. Maniccia stated yes, in Plaza 8 in the Town of Clifton Park. Mr. Greg Mayo, Stone Quarry Road, asked if the applicants have looked at other zoning districts in Town where this type of use may be permitted. Chairman Hansen stated the only districts that allow educational type uses, which are regulated by the NYS Dept of Education, is in the Residential zone under the Special Use Permit. Mr. Hansen stated that the Dance

Department is not regulated by NYS Dept. of Education. Mr. Hansen questioned whether or not a dance studio would be an appropriate use in the R-1 zone. Mr. Tedrow stated that there is no zoning district in the Town's Zoning Ordinance that allows a school type uses that is not accredited by the NYS Dept. of Education. Mr. Hansen stated that is one thing the Board needs to decide, is the proposed use a school. Mr. Berger stated that the Planning Board made a determination that this use is a school. Mr. Tedrow stated the Town's Planning Board has approved two Tae Kwon Do studios and Curves for Women that appear to be very similar to the Dance Department's proposal. Mr. Hansen added that there is another dance studio in the Accent on Health facility off of Rt 9. Mr. Greg Mayo asked if there would be another chance for the Public to comment on the site issues in the Planning arena. Mr. Williams stated that under the Planning Board's discretion, the Planning Board would schedule a Public Informational Meeting when two differing zoning districts abut to one another. Mr. Williams stated that this is the case with this site being a C-1 district abuts a residential district. Mr. Williams stated that it would be his recommendation that a Public Informational Meeting be scheduled once and if the applicant gains necessary approvals from the ZBA. Mrs. Julie Mayo stated there are other dance studios near by and that if the new dance studio was to be out competed then there would be a big empty building. Mr. Hansen stated he believes it is the Town's view of not limiting competition between similar uses noting the Lowe's/ Home Depot locations. Mr. Drake asked why did the Planning Board deny the application. Mr. Hansen read the February 14, 2004 Town of Halfmoon Planning Board minutes for the Dance Studio explaining how and why the application was denied. Mr. Drake asked if the permitted uses in the C-1 district were to be all inclusive. Mr. Hansen stated he never believed so and the permitted uses listed are a broad spectrum of uses and that is why the applicant is asking for an interpretation of whether the proposed use matches the uses permitted in the C-1 district. Mr. Ouimet asked if the area is zoned C-1. The area to the site is as follows: to the east - Commercial, to the South - Professional Office/Residential and to the north and west - Residential. Mr. Ouimet stated that it would not be a stretch from the ZBA to determine the proposed use is a permitted use in the C-1 district. Mr. Ouimet stated it appears to be consistent with the intent of the C-1 district. Mr. Rose asked if there were other uses being proposed for the site. Mr. Maniccia stated that there is only one use being proposed which is the Dance Department. Mr. Maniccia stated they have been renting their business space and would like to own their business site. Mr. Hansen explained that the applicant is asking for a use variance or seeking an interpretation of the allowed uses in a C-1 district. Mr. Ouimet stated that whatever decision is made by the ZBA it will be for the specific site. Mr. Drake added that each case is brought in by its merits. Mr. Tedrow stated the request for a use variance is not proper due to a cost analysis not being supplied as to why the other permitted uses listed in the Town's zoning ordinance can not be established on this particular site. Mr. Tedrow stated that an interpretation of the proposed use being allowed or not in the C-1 district appears to be the proper procedure for the ZBA to make its decision. Mr. Ouimet stated he agrees that the applicant should seek an interpretation. Mr. Mark Walker, owner of Assist to Sell, stated there are a number of permitted uses allowed in the C-1 district and wanted to express his feeling that under the current permitted uses in the C-1 district there could be other uses that would be more intense and offensive than a dance studio. Mr. Tedrow made a motion to determine that the Dance Department use is an

allowable use in the C-1 district. Mr. Ouimet seconded. Mr. Hansen stated this item needs to be sent to the Saratoga County Planning Board. Mr. Hansen explained any item before the ZBA that involves state or county lands (roads) needs to be referred to the County for their review. Mr. Hansen explained that he signed an agreement to allow the County to waive some of the referrals sent to them and is interested in reviewing the language of the waiver agreement. Mr. Hansen suggested the ZBA to hold off any decisions made on the Dance Department until they receive correspondence from the County over the matter. Mr. Tedrow retracted his earlier motion.

Mr. Ouimet made a motion to Table this item until the April 4, 2005 ZBA meeting in order to allow the County's Planning Board to review and comment on this application. Mr. Rose seconded. Motion Carried.

Mr. Tedrow made a motion to deny the use variance acknowledging an agreement that the applicant should seek an interpretation rather than a variance. Mr. Ouimet seconded. Motion carried.

Mr. Drake made a motion to adjourn the March 7, 2005 ZBA meeting at 8:43 PM. Mr. Rose seconded. Motion carried.

Respectfully Submitted,

Jeff Williams, ZBA Coordinator