

**December 5, 2005
Town of Halfmoon
Zoning Board of Appeals
Meeting Minutes**

Chairman Hansen opened the December 5, 2005 Town of Halfmoon Zoning Board of Appeals meeting at 7:36 PM with the following members present: Chairman Hansen, Vice Chairman Tedrow, Mr. Ouimet and Mr. Rose. Chairman Hansen asked if the Board reviewed the November 7, 2005 Town of Halfmoon Zoning Board of Appeals meeting minutes.

Mr. Ouimet made a motion to approve the November 7, 2005 Town of Halfmoon Zoning Board of Appeals meeting minutes with noted changes. Mr. Rose seconded. Motion Carried.

Lussier's Auto Body, 1385 Crescent Vischer Ferry Road, Area Variance

Chairman Hansen stated that this application was adjourned at the November 7, 2005 ZBA meeting to allow the County and the Halfmoon Fire Department to respond to the applicant's request for an area variance regarding the location of a retaining wall and its proximity to the site's property line. Mr. Hansen stated that the County has returned the referral back to the ZBA for a local decision with a November 18, 2005 correspondence of a "No Significant County Wide or Inter Community Impact" response. The Halfmoon Fire Chief, Mr. John Cooper, corresponded with a December 1, 2005 letter stating that he conducted a site visit and does not have a concern with the proposed variance request from a "fire fighting" standpoint. Mr. Cooper stated that he discussed with the applicant the need to keep the access road to the site unobstructed. Chairman Hansen re-opened the Public Hearing at 7:40 PM. Mr. Gil VanGuilder, VanGuilder and Associates representing Mr. William Lussier, stated Mr. Lussier operates an auto body repair shop off of Crescent-Vischer Ferry Road. Mr. VanGuilder stated that Mr. Lussier constructed a retaining wall, to stabilize a hill next to the existing auto body repair building several years ago and is requesting to utilize the area as a sheltered storage area. The proposed sheltered storage area is in the need of relief of the required side yard setback as prescribed in the Town's Zoning Ordinance. Mr. VanGuilder stated there have been no changes from the November 2005 meeting and that the two issues with the County and the Fire Department appear to be resolved. Mr. VanGuilder stated the applicant is asking for a side-yard set back variance from the required 15 ft to 2 ft in order to use an existing retaining wall as an equipment storage area for his auto body business. Mr. Hansen stated there was a question on a power pole represented on the site plan and its location to the property boundaries. Mr. Van Guilder stated they have reviewed the location of the power pole and that it is on the boundary line and it will be corrected on the site plan. Mr. Hansen asked if anyone from the Public wished to speak. No one responded. Mr. Hansen closed the Public Hearing at 7:44 PM. Mr. Ouimet asked what is the maximum number of pieces of equipment that could be stored in the proposed retaining wall storage area. Mr. William Lussier stated approximately 4-5 vehicles. Mr. Rose asked for clarification that the Fire Department does not have a problem with gaining access to left side of the existing building. Mr. Hansen stated that he would have to assume that by the letter submitted and that he is aware of the situation. Mr. Rose

stated that the Fire Chief understands that there is no access to the right side of the existing building. Mr. VanGuilder stated that the Fire Chief did visit the site and did not raise any fire fighting concerns. Mr. Ouimet asked what is the length of the retaining wall. Mr. VanGuilder stated 134.1 ft. Mr. Ouimet stated that he would not want to see the proposed storage area overcrowded. Mr. Tedrow asked if the Town's Planning Department would be involved with further review of the site plan. Mr. VanGuilder stated that the applicant would be presenting a site plan to the Planning Board to remove the existing building in the front of the site and constructing a new building further off of Crescent-Vischer Ferry Road. The applicant has agreed to go through this and complete the project within a 1-year time frame. Mr. Rose stated that this was a stipulation from an earlier site plan approval. Mr. VanGuilder stated yes and that a site plan approval has a 1-year valid approval and if no improvements are made the site plan approval is voided. Mr. Ouimet made a motion to approve the requested side-yard setback variance in order to allow the applicant to convert the existing retaining wall area to a covered storage area with the following conditions: 1) that the storage area will only store a maximum of 5 vehicles, 2) the storage area will only be roofed and that the other three sides will not be enclosed and 3) that the storage area will not have access to and from the existing main building (auto body shop).

Mr. Lussier stated he was not comfortable with the motion made and questioned why he could not enclose the structure in order to keep the equipment being stored weather proofed. Mr. Lussier continued that if he wanted to store a motorcycle in the proposed storage area and that a motorcycle would count as a vehicle, he could store a hundred motorcycles in the proposed area. Mr. Lussier stated he could not agree to the motion that is before the Board. Mr. Rose stated he is surprised by the reaction due to the fact that the applicant is looking for a 13ft difference in the required setback. Mr. Rose stated that you came to the ZBA to ask to place a storage building that is 2ft off of the side yard boundary line and he feels that no where in the Town would such a variance request be granted. Mr. Ouimet stated the applicant requested to place a roof over the retaining wall area in order to keep some equipment out of the weather. Mr. Lussier stated that was his intention when he was making application but felt it would serve his purposes better if the retaining wall area was enclosed. Mr. Ouimet stated the applicant has the right to amend his application. Mr. VanGuilder asked for a moment to discuss the motion with conditions with Mr. Lussier. Mr. VanGuilder, after speaking with Mr. Lussier, stated that they would like to amend the application to allow the proposed storage area to be enclosed. Mr. VanGuilder asked if they needed to make another formal application. Mr. VanGuilder stated he is unclear if the application was that specific as to roofed vs. enclosed storage area. Mr. Ouimet stated that the applicant told the Board that the structure would only be roofed when the Board members visited the site. Mr. Rose agreed with Mr. Ouimet's comment. Mr. Hansen stated the application itself is not very specific on what type of storage area is being proposed. The application stated the need for a side yard setback variance, that a roof structure was being placed on the retaining wall and the Code Enforcement office placed a stop work order and the applicant came to the ZBA to seek relief for the side yard setback. Mr. Tedrow stated there is a statement that the retaining wall be converted to a storage use by placing a roof and there is no mention of siding. Mr. Rose stated the application has morphed into a shed-roofed storage to an enclosed storage building. Mr. Rose stated that the motion in front of the

Board is fair considering where the boundary line is and not wanting to set any precedents for similar future requests. Mr. Lussier asked what are his options. Mr. Hansen stated that the applicant could proceed with the motion made which would allow him to place a roof on the retaining wall area and to adhere to the three conditions and/or amend the application by submitting a new application for a future ZBA meeting date. Mr. Hansen asked the applicant if he obtained a building permit from the Town's Building Department. Mr. Lussier stated no. Mr. Hansen stated that the Board can only act on the roofed retaining wall storage area only or the client could withdraw the application. Mr. VanGuilder, after discussing the issues over with Mr. Lussier, stated that the applicant would like to proceed with the motion that has been made and will possibly reapply for the enclosed storage area at a later date. Mr. Hansen stated the applicant will need to gain site plan approval from the Planning Board and will need to gain a building permit to place the roof on the retaining wall storage area from the Building Department. Mr. VanGuilder stated that the applicant can live with the condition of the roofed storage only but would like to enclose the area. Mr. Ouimet stated that there are two other conditions of a maximum of 5 vehicles to be stored and that there would be no access to and from the main building. Mr. VanGuilder stated he understood the motion with conditions that was made.

Mr. Hansen asked for a second to Mr. Ouimet's motion to approve the requested side-yard setback variance in order to allow the applicant to convert the existing retaining wall area to a covered storage area with the following conditions: 1) that the storage area will only store a maximum of 5 vehicles, 2) the storage area will only be roofed and that the other three sides will not be enclosed and 3) that the storage area will not have access to and from the existing main building (auto body shop). Mr. Tedrow seconded. Motion Carried.

Edwin Dalston, 116 Route 236, Area Variances

Chairman Hansen stated this item was adjourned at the November 2005 ZBA meeting to allow the County to comment and the Board asked the applicant to provide additional information. Mr. Hansen explained that the County has returned the referral back to the ZBA for a local decision with a November 18, 2005 correspondence of a "No Significant County Wide or Inter Community Impact" response with a comment of placing a vegetative buffer between the two existing dwellings. Mr. Hansen stated the applicant has submitted a November 18, 2005 letter from the applicant explaining the history and difficulty of trying to sell the property with two primary residences on it. Chairman Hansen re-opened the Public Hearing at 8:02 PM. Mr. VanGuilder stated that the applicant has had difficulty of selling the property due to mortgage companies not being able to appraise the property because there are two separate dwellings on one property. Mr. VanGuilder stated that the Town's water department has granted the applicant to provide each dwelling with its own separate water service and each dwelling is already served with its own driveway and septic system. Mr. VanGuilder stated each dwelling would be able to function independently of each other. Mr. VanGuilder stated the applicant does not have a problem with placing the vegetative buffer between the two dwellings as asked by the County. Mr. Hansen asked if anyone from the Public wished to speak. No one responded. Mr. Hansen closed the Public Hearing at 8:07 PM. Mr. Tedrow asked if there is currently a mortgage on the property now. Mr. Dalston stated

yes and actually there are two. Mr. Tedrow asked how could the applicant have two mortgages. Mr. Dalston explained that the first mortgage is on the large dwelling and the second mortgage was to repair the garage and also from his own personal money. Mr. Ouimet stated he is having a hard time deciding why this request is not self-created. The initial variance was to allow you to convert the old paint store to a second dwelling unit on the same parcel. The ZBA made its determination that the area conformed to the minimum lot area for a two-family and that the applicant stated his parents would move into the second dwelling. Mr. Dalston stated his parents never moved in, he did not want to rent out the smaller dwelling. Mr. Dalston stated that he is moving from the area and does not want to be a long distance landlord. Mr. Dalston stated the lending firm needs two comparables for appraisals to be able to mortgage the property. No lending firm can find two similar comparables with this unique situation. Mr. Dalston stated that when he asked to have the first variance to allow two residential dwellings on one property he never intended to be in this situation of not being able to sell the property. Mr. Dalston stated that he is moving and at this time the only way he will be able to sell the property is to find a cash buyer, which is very unlikely. Mr. Rose stated that by splitting the property would not be in the Town's best interest due to the Town looking to zone the property for a mixed business use. Mr. Dalston showed the Board an aerial view of the area and that there were other smaller, non-conforming lot sizes in the area of his proposed subdivision. Mr. Dalston stated that if sewer were to become available that one of the proposed lots would meet the minimum lot requirements. Mr. Dalston stated that if someone wanted to put a commercial use there they could purchase both lots to do so. Mr. Rose stated that is why there is a concern of subdividing the parcel rather than keep it whole and have conforming lot size for a commercial use. Mr. Dalston stated that it is impossible to tell if a commercial use will ever happen there in the future and if so he believes they could buy both parcels. Mr. Rose reiterated that he feels splitting the lot is not in the best interest to the Town. Mr. VanGuilder stated that he recently had the same discussion with a client with a disabled son who wanted to allow his son live on the same property by building a second dwelling on the one parcel. Mr. VanGuilder explained to the client of what problem that would create if ever they wanted to sell the property. Mr. Tedrow asked if the applicant considered a condo type deal where the land is owned by a Home Owner Association and each dwelling would be personally owned. Mr. VanGuilder questioned if a Planned Development District would need to be established to do so. Mr. Tedrow stated he talked with a realtor about financing a lot with two residential structures and the realtor stated that the situation is very difficult but added that it can happen. Mr. Rose asked if a residential transaction is being requested rather than a commercial transaction. Mr. VanGuilder stated the area is currently zoned residential (R-1). Mr. Hansen asked the applicant if he gained appraisals for the lots if they were separated by the proposed subdivision. Mr. Dalston stated no. Mr. Rose stated that the last ZBA minutes (Nov. 7, 2005) stated the asking price is \$339,000.00. The Board asked where that number was derived. Mr. Dalston stated it was from an independent appraiser for the people who were to buy the house. Mr. Dalston stated the financing fell apart 2 days before the closing. Mr. Stewart Thomas, a realtor from the audience unrelated to this application, stated there are three ways to appraise properties, a cost approach, comparable approach, and an income approach. The appraiser will need one comp and as it becomes a more unique and difficult to find a comparable, the second

mortgage will throw out the unique property. If there is a large uniqueness and as the closing becomes closer the second mortgage company will pull out of the deal. Mr. Ouimet asked if the applicant has any idea what the large house with garage would sell for without the smaller dwelling unit being considered. Mr. Dalston stated he feels the large house would go for about \$200,000. Mr. Ouimet stated there is a four-step test for the ZBA to look at to make a determination. The first is reasonable return on the investment, the second is unique circumstance and the third is that it is not a self-created hardship and the last would be no change to the neighboring characteristics. The self-created hardship is the one that is difficult to argue due to the fact of the initial variance request from the applicant was to allow two dwellings on one parcel rather than knocking down the second structure. Mr. VanGuilder stated he believes the Board needs to take the four-steps in consideration but can make determination even if all four steps are not met. Mr. Rose stated that the applicant is asking to create two substandard lots, which would make it very difficult for any commercial use to happen. If the sub-standard lots were created by approving the variance and proposed subdivision and a commercial use was proposed on any one of them it would be the third time the ZBA would need to review this property. Mr. VanGuilder asked the Board how they would feel if the deed for each lot would have the caveat that no commercial use would be allowed to happen on any one of the individual lots and if a commercial use was to be proposed that both lots would need to be combined by consensus of the individual landowner in order to do so. Mr. Tedrow stated that the Town does not enforce deed restrictions. Mr. Rose asked if it would further hinder mortgage companies by placing a deed restriction and not place too much of a difficult situation for the perspective buyer. Mr. VanGuilder stated that the deed restriction would not counter zoning. If the property were zoned commercial it would mean both landowners would need to agree to sell their property in order for it to be combined for any proposed commercial use. Mr. Rose asked if the property has been marketed for a commercial use. Mr. Dalston stated no because it is a residential use in a residential zone. Mr. VanGuilder stated it would require a use variance to have a commercial use in the residential zone. Mr. Rose asked if the applicant tried to market the property for other uses. Mr. Dalston stated he talked with Mr. Tironi, a realtor, who stated for a commercial use to happen there would be the need of demographics to show it would support the commercial use and a commercial use would need to show a desire to be in the area and that could take ten or twenty years to occur. Mr. Rose stated that bolsters his concern of keeping the property whole and not creating two-substandard residential and/or commercial lots. Mr. Rose stated that he is curious about the deed restrictions and would like the applicant to look further into the idea. Mr. VanGuilder stated he could have the applicant's attorney draw something up for the Board's or the Town's attorney to review. Mr. Rose recommended of tabling the item until the next meeting to gain more information over the issues raised by the Board. Mr. Ouimet asked the applicant to gain an appraisal for the property with the larger dwelling and without the smaller dwelling being considered. Mr. Hansen asked the applicant if he could gain an appraisal on the smaller dwelling on the proposed small, non-conforming lot. The applicant agreed to gain the two appraisals and information on the deed restrictions. Mr. Ouimet asked if the smaller building could be moved to eliminate the problem. Mr. Dalston stated that it would be difficult to move the unit and would need to find another property to move it to.

Mr. Ouimet made a motion to table the item for the applicant to gain additional information asked for by the ZBA. Mr. Rose seconded. Motion carried.

Betts Subdivision, Betts Lane, Area Variance

Chairman Hansen stated that this item is before the ZBA due to the applicant being denied by the Town's Planning Board because of the proposed subdivision would create a second flag lot from the Lands of Betts. Mr. Hansen stated that the Town's Subdivision Regulations allows one flag lot to be created for lots in existence prior to the Town's Regulations of 1968. Mr. Hansen opened the Public Hearing at 8:39 PM. Mr. Brian Holbritter, land surveyor representing William and Beverly Betts, presented the proposed subdivision plan to the Board. The proposed subdivision consist of creating a 12-acre, conforming parcel incorporating the existing farm house and outbuildings, a conforming conveyance of 0.15-acre of land to an existing adjacent residential parcel and the proposed creation of a second (1.52-acre) flaglot. Mr. Holbritter stated that the proposed flag lot is to allow Mr. Leo Betts, son of the applicants, to live nearby his parents, on the family land, and to help with the upkeep of the farm. The proposed flag lot will be west of the existing farm buildings. Mr. Holbritter stated all of the proposed subdivisions are to separate the existing farm stand from the large farm parcel. Mr. Holbritter stated that the large, vacant farm field (~125-acres) is in contract for sale for future development. Mr. Hansen asked if anyone from the audience wished to speak. Mr. Paul Bradley owns the adjacent lot west of the Betts property on Betts Lane (Lands of Gatulik on subdivision map). Mr. Bradley stated that he may want to subdivide his 6-acre parcel in the future and asked the Board if the applicant could place his septic and well away from his property line in order to allow the needed 100 ft separation if he was ever to create another lot. Mr. Bradley stated he is limited on where to place the septic systems due to the location of an existing stream at the western edge of his property. Mr. Bradley stated this would allow him to subdivide his property and place the needed infrastructure on the possible future lot. Mr. Holbritter showed the Board a separate plot plan with the proposed house, septic and well location for the proposed flag lot. Mr. Holbritter stated that the well is already represented to be 100 ft from the property line and the septic is 50 ft from the property line. Mr. Rose questioned if the placement of a possible future development is a zoning issue that the ZBA is involved with in regards to the placement of a possible future septic area. Mr. Hansen stated that generally the ZBA does not and that the Planning Board would be more involved with that issue. Mr. Rose stated he appreciates the neighbor thinking forward but it is not an issue involved with the requested variance due to possible future development with regards to the placement of the septic area. Mr. Bradley stated it may not be an issue if the proposed development on the large Betts parcel brings in municipal utilities but wanted to raise the concern. Mr. Hansen closed the Public Hearing at 8:47 PM. Mr. Leo Betts showed the Board the proposed orientation of the proposed house and driveway location.

Mr. Tedrow made a motion to approve the request to create the second flag lot on the Lands of Betts as represented. Mr. Ouimet seconded. Motion carried.

Motion made by Mr. Rose to adjourn the December 5, 2005 Town of Halfmoon Zoning Board of Appeals meeting at 8:50 PM. Seconded by Mr. Ouimet. Motion Carried.

Respectfully Submitted,

Jeff Williams
ZBA Coordinator: