

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

Chairman Hansen opened the November 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. Rose and Mr. Ouimet. Chairman Hansen asked if the Board reviewed the September 6, 2005 and the October 3, 2005 Town of Halfmoon Zoning Board of Appeals meeting minutes.

Mr. Ouimet made a motion to approve the September 6, 2005 Town of Halfmoon Zoning Board of Appeals meeting minutes. Mr. Rose seconded. Motion Carried.

Mr. Rose made a motion to approve the October 3, 2005 Town of Halfmoon Zoning Board of Appeals meeting minutes. Chairman Hansen seconded. Motion Carried.

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

Chairman Hansen opened the Public Hearing at 7:36 PM. Mr. Gil VanGuilder, VanGuilder and Associates representing Mr. William Lussier, stated Mr. Lussier operates an auto body repair shop near Capitol Storage and Bast Hatfield. The property was previously approved for an auto body shop in the earlier part of 1990. The existing rear building with the existing auto body shop was constructed per the previous approved plans in the early 1990's. The site plan also represented that the existing front building would be removed and a new proposed building would be constructed further back from Crescent Vischer Ferry Road. The front building was never removed and still exists today. During the construction of the rear building Mr. Lussier experienced problems with the steep sloped hill adjacent to the rear building. Due to the soil conditions of the hill and steep slope, Mr. Lussier built a retaining wall. The retaining wall stabilized the slope and kept soil from washing up onto the building's exterior walls. Mr. VanGuilder stated sometime this year, through error of his client, Mr. Lussier tried to place a roof on the retaining wall in order to utilize the space to store equipment. The Town's Building and Code Department placed a stop work order on the roofed retaining wall because it did not meet the minimum side yard setback requirement for the commercial zoned parcel. Mr. Lussier has met with Town officials and has appeared in Town Court. A decision was made that Mr. Lussier will need to abide by the previously approved early 1990's site plan and will need to gain a variance to enclose the retaining wall area. Mr. VanGuilder stated that is why his client is before the ZBA tonight.

Mr. VanGuilder they are seeking a side yard variance in order to place a roof on the existing retaining wall. Mr. VanGuilder stated that his client has met with the owners of Capitol Storage and they do not have a problem with the proposed variance requests due to the sloped area will not be able to be built upon. Chairman Hansen if anyone from the public wished to speak. No one responded. Mr. Ouimet asked on what side of the building is the retaining wall. Mr. VanGuilder stated on the east side. Mr. Ouimet asked how far is the existing building from the side yard boundary line. Mr. VanGuilder stated 17.1 ft when 15 ft is the minimum requirement. Mr. Ouimet asked why the retaining wall was built 2 ft from the side yard boundary line. Mr. VanGuilder stated due to the need to place a 4 ft frost wall and to keep the toe of the slope from washing down onto the

building, which has caused the tin siding to rust. Mr. Ouimet asked if the Planning Board reviewed the retaining wall. Mr. VanGuilder stated no and that the retaining wall was placed about 6 years ago. Mr. Lussier stated he wished to enclose the retaining wall for storage of equipment. Mr. Ouimet stated that there would be no access around the east side of the building. Mr. Lussier stated he has an easement from the Sicko's to enter upon their land to access the rear of the building. Mr. Ouimet stated that if the fire department did not have an issue with the east side of the building not being accessible, that would make a ZBA determination simpler. Mr. VanGuilder asked if the fire department has responded with their review. Chairman Hansen stated that the fire chief was to submit a letter but has not received any correspondence. Chairman Hansen stated that the fire department's main concern was being able to access the site because the entranceway is always congested with parked cars. Mr. VanGuilder stated that the applicant is in the process to gain site plan approval to remove the front building and build a new building further back from Crescent Vischer Ferry Road, which should alleviate the congested entrance. Mr. Tedrow asked if the Planning Board would be involved with the review of the retaining wall structure. Mr. VanGuilder stated yes, it would need a site plan approval. Mr. Ouimet stated that at first the applicant wished to place a roof on the retaining wall and now he would like to enclose it. Mr. Lussier stated that was correct he would like to enclose it to access it from the main building. Mr. Ouimet asked if a storage facility could be placed anywhere else on the site. Mr. Lussier stated that the lay out of the parcel and due to the slope in one area and a creek in another area that he feels there is not another good location to place a storage area. Mr. Rose asked where the water drains from the site. Mr. Lussier stated that the slope had drain benches installed and the water runs to the north of the site and some water runs to a catch basin and ultimately into the stream. Mr. Rose stated there is a pole represented on the site plan that shows it to be on the Lands of Tanski. Mr. VanGuilder stated it may not be and needs for verify it. Chairman Hansen asked what happened to the Sicko easement when Tanski purchased the property. Mr. VanGuilder stated that the easement did not show up when they performed a Title search but stated Tanski did work on the drain benches. Mr. Ouimet asked if the applicant could submit information on said easement. Mr. Rose asked how many employees work at the auto body shop. Mr. Lussier stated 12. Chairman Hansen stated that this application has been referred to the County and the ZBA needs to hear back from the County before a determination could be made. Mr. Ouimet made a motion to adjourn the Public Hearing on this application in order to allow the County to respond to the referral. Mr. Tedrow seconded. Motion carried. This item was adjourned to the December 5, 2005 ZBA meeting.

#### **Edwin Dalston, 116 Route 236, Area Variances**

Chairman Hansen opened the Public Hearing at 8:08 PM. Mr. VanGuilder, VanGuilder and Associates representing Mr. Edwin Dalston, stated that his client purchased a 1.19-acre parcel located on Route 236. Mr. Dalston appeared before the ZBA a few years ago to gain an approval to place two primary residences on one lot. At that time, the two primary residences included Mr. Dalston's house and to re-hab an existing building, once uses as a paint store, into a dwelling. Mr. VanGuilder stated the ZBA did grant that use variance and allow two primary residences on one lot. Mr. VanGuilder stated his applicant submitted a proposed subdivision to the Planning Board to separate the two

residential dwellings. The Planning Board denied the proposed subdivision on the basis that one proposed lot did not meet the required lot width of 150 ft and the other lot did not meet the required lot width or minimum lot area of 30,000 SF. Mr. VanGuilder stated that the two residential dwellings do act as stand alone homes. The two residential dwellings have separate septic areas, separate driveways and will have separate water lines with shutoff curb boxes provided. Chairman Hansen stated that the ZBA received two letters regarding the proposed variances needed for the proposed subdivision. One letter was from Mr. Jeff Bagnoli, the applicant's attorney, stating the need to separate the two dwellings in order to sell the property and to allow the purchaser to get financing from its lender. The second letter is from Ms. Jean Maloney, the applicant's realtor, stating a history of the parcel and detailing the hardship of selling the property with two primary residents on it. Chairman Hansen asked if the property is for sale at the present time. Mr. Dalston stated no. Mrs. Maloney stated the bank has declined a mortgage due to the property having two houses on it. Mr. Rose asked if this is a normal reaction from a lending firm. Ms. Maloney stated that she never has experienced this type of situation before and is not sure if this is a normal reaction. Mr. Ouimet stated that there were three banks that denied financing and asked if the property was considered as an owner occupied – income producer. Ms. Maloney stated the banks did not consider the property as a two-family or commercial. Mr. Ouimet asked when did the owner remove the property from the market. Ms. Maloney stated in September after 9 months of "hot realty sales" period. Mr. Hansen asked if there were any other lending agencies that would consider financing. Ms. Maloney stated that they have not found one. Mr. Dalston stated he feels the problem exists because the two dwelling units are separate as opposed to being connected. Mr. Tedrow stated that when the applicant appeared before the ZBA a few years ago and was granted relief to allow two primary residences on one parcel, the Board felt at that time it was the best interest for the Town to keep the parcel whole. Mr. Rose stated that what the ZBA granted at that time created a hardship for the applicant to sell the property. Mr. Dalston stated that at the time of the first ZBA appearance it was his intention to live in the larger house and re-habing the other building so his parents could live there. Mr. Dalston stated that he is leaving the area and needs to sell the property. Mr. Ouimet commented that the proposed subdivision would create two very a skewed lot lines for each of the proposed lots. Mr. Tedrow stated that the Town's "new" comprehensive plan shows the area of Dalston's property to be mixed use and if the parcel were to be subdivided it would restrict any type of commercial development. Chairman Hansen agreed. Mr. Ouimet questioned of whether or not 9 months on the market is a sufficient amount of time. Mr. VanGuilder stated that his client spent a sufficient amount of money to rehab the second residential dwelling and now cannot sell it off. Ms. Maloney stated the parcel has been on the market with an asking price of \$339,000. There has been plenty of interest from prospective purchasers but the banks will not finance the property. Ms. Maloney stated that she is willing to submit a letter from the bank with their reasoning for not financing. Mr. Rose stated that the two separate dwelling do operate on their own. Chairman Hansen stated that the parcel as a whole does have the potential to be used as a commercial use in the future. Chairman Hansen stated that this item has been referred to Saratoga County and that the County has not responded to this referral. Mr. Ouimet stated he would like the applicant to submit information on the appraisals. Mr. VanGuilder stated he would gather information on the

bank's reasoning for not financing and information on the appraisals and market value of the property.

Mr. Ouimet made a motion to adjourn the Public Hearing on this application in order to allow the County to respond to the referral and for the applicant to submit additional information. Mr. Rose seconded. Motion carried

Motion made by Mr. Rose to adjourn the November 7, 2005 Town of Halfmoon Zoning Board of Appeals meeting at 8:34 PM. Seconded by Mr. Ouimet. Motion Carried.

Respectfully Submitted,

Jeff Williams  
ZBA Coordinator: