

**September 5, 2006  
Town of Halfmoon  
Zoning Board of Appeals  
Meeting Minutes**

Chairman George Hansen opened the September 5, 2006 Town of Halfmoon Zoning Board of Appeals meeting at 7:30pm with the following members present: Mr. Rose, Mrs. Jordan, Mr. Tedrow, and Mr. Brennan. Also in attendance was alternate Mr. Burdyl. Chairman Hansen asked if the Board reviewed the August 7, 2006 Town of Halfmoon Zoning Board of Appeals meeting minutes.

Mr. Rose made a motion to approve the August 7, 2006 Town of Halfmoon Zoning Board of Appeals meeting minutes. Mrs. Jordan seconded. Motion carried.

**Auto America Site Plan, Route 9-Special Extension of a Non-Conforming Use**

Neil Rivchin, the attorney representing Denooyer, stated that the applicant wishes to use the two buildings in the rear of the site for auto service and repair. There has been some confusion with the applicant as to the necessity to make this application to the Zoning Board of Appeals. They believe that under Section 14 of the Commercial Zoning provision of the code, that the intension for the buildings to be utilized for service and repair is a permitted use. A portion of one of the buildings will be for reception and customer service which are also permitted uses under the C-1, commercial zone. The application for Commercial Site Plan was before the Planning Board where it was decided that an Extension of a Non-Conforming Use would be necessary from the ZBA in order to proceed with the site plan. The previous tenant, Mr. Mackey, had utilized the location for service and sales in June of 2004, which falls into the two-year statute of time for the continuation of a non-conforming use. Mr. Rivchin submitted a signed affidavit from Mr. Mackey stating the previous uses of the site. Mrs. Jordan asked if Mr. Mackey had serviced just the cars that were for sale or any customers from the public. Mr. Rivchin stated that he could not say for sure. Mr. Hansen stated that the current code stated that used car sales are allowed only incidental to new car sales making the used car sales a non-conforming use. Mrs. Jordan stated that she had read the 2004 Planning Board minutes that stated that the service offered on the site was for the cars sold there, including no oil changes or inspections for the general public. Mrs. Russell stated that initially there was no intention of having repair and service on the site; however, transferring cars to and from repair sites has become increasingly difficult as business grows. Mr. Hansen stated that the Zoning Board of Appeals does not have the authority to approve the site plan only the ability to allow the expansion of the non-conforming use. Mr. Rose asked if the Planning Board could place restrictions on various issues including solicitation signs and advertising for the general public to have their cars serviced at this site. Mr. Hansen stated that he could not answer yes or no to that but typically the Planning Board does not go into that much detail on a site plan. Mr. Rose asked what the non-conforming use was on this site. Mr. Hansen stated the sale of used cars was the non-conforming use and the addition of auto service on the site was an extension of that use. Mr. Rose asked what the differences were between the types of service Mr. Mackey offered and the types that Auto America will offer. Mr. Russell stated that they do not plan to do major repairs or bodywork at this site. Mr. Rose asked

if there would be less work on the site than the previous tenant. Mr. Russell stated yes. Mr. Tedrow asked how much traffic the site generated. Mr. Russell stated that this question had not been raised, but that information could be provided. Mr. Brennan asked if the Board were to act on this tonight would it be only for the repair of vehicles sold on site. Mr. Hansen stated that the Planning Board typically would not regulate which cars can be serviced on the site, only the type of services allowed. Mr. Hansen stated that the tests usually required for a use variance are not required for the Special Extension of a Non-Conforming Use. Mr. Hansen asked if anyone from the public wished to speak. No one responded. Mr. Hansen closed the public hearing.

Mr. Rose made a motion to approve the request for the Special Extension of Non-Conforming use as submitted. Mr. Tedrow seconded. The vote was as follows: Mr. Hansen-aye, Mr. Rose-aye, Mrs. Jordan-aye, Mr. Tedrow-aye, and Mr. Brennan-aye. Motion carried.

### **Frechette Subdivision, Upper Newtown Rd-Area Variance**

Mr. Gil VanGuilder, of VanGuilder Associates, stated that the applicant owns a 6-acre parcel that he wishes to subdivide to create four lots that all meet the minimum size requirements for the A-R zone. Two of the lots will have the required frontage on Upper Newtown Rd. and the applicant is seeking an area variance to allow for two flaglots. The lots will have private sewer and water. There are plans to connect to the public water when it becomes available with the extension of the water treatment plant in approximately a year, however, they have allowed enough square footage to allow for wells should the need arise. There is a small amount of federal wetlands that are drainage corridors and connect to culverts. They are subdividing the lots in this way to allow for the least impact on these wetlands. There will be an agreement written into the deeds of the lots stating that they will share maintenance on the common driveway. Mr. Rose asked how fire trucks would turn around on the common driveway. Mr. VanGuilder stated that the shared driveway could be designed to accommodate emergency vehicles including 50,000-pound trucks, have a turn around area for such vehicles every 100 ft and be a minimum of 16 ft wide. Mr. Rose asked what other options there was for the maintenance of the driveway other than a deed agreement. Mrs. Jordan stated that an alternative would be to eliminate one of the lots. Mr. VanGuilder stated that if the water was not going to become available that was a possibility the applicant had looked at but spatially the 4-lot scenario works with public water. Mr. Hansen asked if anyone from the public wished to speak. Joe Coppola, 119 Upper Newtown stated that his parents, the Slades, own adjoining property and he wants to be sure that drainage will not runoff onto neighboring properties. Mr. VanGuilder stated that drainage would be directed toward the driveway. Mr. Hansen closed the public hearing. Mr. Hansen referred to the five tests in the Town of Halfmoon Local Law, Article XIV, section 1403, part B, number 2. Mrs. Jordan stated that regarding the first test she believes that the Town did not intend to have several flaglots coming off of main roads and that this was undesirable to the Town. Mr. VanGuilder stated that the purpose of the ZBA was to have the ability to review these situations on a case-by-case basis. Mr. Hansen stated that the density of the subdivision was within the parameters of the Town code. Mrs. Jordan asked what is to prevent all landowners from requesting more than one flaglot. Mr. Hansen stated that the Board needs to review them on a case-by-case basis. Mr. Hansen asked if there could

be another way to reconfigure the lots, possibly a cul-de-sac type driveway. Mr. VanGuilder stated that the houses could be moved to reflect a more conventional layout. Mr. Hansen asked if the Planning Board had discussed the layout of the proposed lots. Mr. Williams stated that he did not recall and would have to review the minutes. Mrs. Jordan stated that the benefit sought by the applicant could be achieved by another method, reducing the number of lots. Mr. VanGuilder stated that the applicant's objective and benefit is the proposed number of lots. Mr. Rose stated that he did feel that the area variance is substantial. Mr. Brennan stated that the access for emergency vehicles is a concern. Mrs. Jordan stated that the hardship was self-created. Mr. Brennan made a motion to approve the area variance to allow the second flaglot conditioned that the applicant providing note on the plan showing a common driveway that will support emergency equipment. Mr. Hansen asked for a second. No one responded. Mr. Hansen opened the item for further discussion. Mr. Hansen stated that he feels that it would be useful to this Board to pass the application back to the Planning Board for technical review and to receive comment on the proposed subdivision. Mr. Rose stated that he does not feel that it would be fair to have the applicant referred back to the Planning Board. Mr. Hansen stated that he feels that the Planning Board needs to make the decision as to what is acceptable. Mr. Tedrow made a motion to pass the application back to the Planning Board for technical review and to receive comment on the proposed subdivision. Mr. Tedrow stated that in the future if the applications needs further Planning Board review that decision should be made at the initial meeting with the Zoning Board. Mr. Rose seconded. The vote was as follows: Mr. Hansen-aye, Mr. Rose-aye, Mrs. Jordan-aye, Mr. Tedrow-aye, and Mr. Brennan-aye. Motion carried.

**Krupsky Subdivision, 141 Ushers Rd- Use Variance**

Mr. David Flanders of David A. Flanders Associates stated that the applicant subdivided a 3.7-acre lot to convey a 50ft strip to the neighboring parcel of Melinda Lehman that served as an easement for their driveway, and created a second parcel that is a flaglot. The applicant is seeking to place a residential home in the current Light Industrial/Commercial zone. The proposed home is going to be serviced by public sewer and private water. The Planning Board has approved the subdivision. Mr. Hansen asked if anyone from the public wished to speak. No one responded. Mr. Hansen closed the public hearing. Mr. Hansen referred to the four tests in the Town of Halfmoon Local Law, Article XIV, section 1403, part B, number 1. Mr. Tedrow stated that other lots in that area have not developed as Light Industrial/Commercial. Mr. Hansen stated that the lot was not unique, as other lots in the area have received variances for this use. Mr. Tedrow stated that the use variance would allow the same character as the rest of the neighborhood. Mr. Tedrow stated that the hardship was self-created. Mr. Rose stated that in regards to the second test the lot is unique as the lot is not suitable for the Light Industrial/Commercial use.

Mrs. Jordan made a motion to approve the use variance from Light Industrial/Commercial to residential. Mr. Rose seconded. The vote was as follows: Mr. Hansen-aye, Mr. Rose-aye, Mrs. Jordan-aye, Mr. Tedrow-aye, and Mr. Brennan-aye. Motion carried.

**Swalsky Site Plan, 1456 Vischer Ferry Rd-Area Variance**

Mr. Andrew Rymph of Chazen Companies stated that the applicant has a 1.22-acre parcel in the PO-R zone with a single family dwelling on it. He wishes to put an addition onto the house to create a six chair dental facility. The current structure is setback 45.2ft from the right-of-way and does not meet the setback requirement of 70ft. They are seeking an area variance for the setback to allow for the expansion. Mr. Hansen asked if anyone from the public wished to speak. No one responded. Mr. Hansen closed the public hearing. Mr. Tedrow asked what the Planning Boards response was to the project. Mr. Rymph stated that it was discussed that the house would be utilized with the additions and the Planning Board seemed in favor of the site. Mr. Rose asked if there had been any concerns received by the neighbors. Mr. Hansen stated no, the neighbors were notified of the hearing. Mr. Hansen referred to the five tests in the Town of Halfmoon Local Law, Article XIV, section 1403, part B, number 2. Mr. Tedrow stated that the variance would not produce an undesirable change to the neighborhood. Mr. Tedrow stated that the only other solution would be to create a strange jog in the addition to the building. Mr. Rymph stated that architecturally it would change the residential feel of the building. Mr. Hansen stated that there is also a need for a large area to place a septic system. Mrs. Jordan stated that the parking in the rear is more desirable. Mr. Hansen stated that the area variance is not substantial. Mr. Rose stated that the proposed site plan will be an improvement to the site. Mrs. Jordan stated that the hardship was self-created. Mr. Rymph stated that while the expansion is self-created the setback existed on the site for the previous owner. Mr. Hansen stated that the applicant chose to purchase the property with the substandard setback.

Mr. Brennan made a motion to approve the area variance for the substandard front yard setback. Mr. Tedrow seconded. The vote was as follows: Mr. Rose-aye, Mrs. Jordan-aye, Mr. Tedrow-aye, Mr. Brennan-aye, and Mr. Hansen-aye.

**John and Becky Lemieur, 48 Dunsbach Road-Area Variance**

Mr. Hansen stated that the applicant received a building permit for a shed/garage type accessory structure. The applicant bought the structure as a package and in the process of building it was discovered that the structure was 3 ft higher than the maximum allowance of 20 ft for an accessory structure per the Town code. Mr. Rose asked which section of the zoning ordinance this was in. Mr. Williams stated that in Section 704, Part A, it stated that the maximum height is 20 ft for a residential accessory structure. Mr. Hansen asked if a certificate of occupancy would be needed for the structure. Mr. Williams stated that any building that has been issued a building permit requires a certificate of occupancy. Mrs. Jordan asked what the possible remedy could be if the variance was not granted. Mr. Hansen stated that he was not an attorney, but it was his personal opinion that the only other recourse would be a civil suit. Mr. Rose asked if it was necessary to make application for this. Mr. Tedrow asked if a public hearing was necessary. Mr. Hansen stated that a public hearing was necessary.

Mrs. Jordan made a motion to set a public hearing for the October 2, 2006 Zoning Board of Appeals meeting. Mr. Rose seconded. The vote was as follows: Mr. Rose-aye, Mrs. Jordan-aye, Mr. Tedrow-aye, Mr. Brennan-aye, and Mr. Hansen-aye.

Mr. Rose made a motion to adjourn the September 5, Zoning Board of Appeals meeting. Mrs. Jordan seconded. The vote was as follows: Mr. Rose-aye, Mrs. Jordan- aye, Mr. Tedrow-aye, Mr. Brennan-aye, and Mr. Hansen-aye.