

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
July 6, 2010

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:13 p.m. on Tuesday, July 6, 2010 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Rose, Mr. Brennan
Alternates: Mrs. Smith-Law - will be voting tonight, Mr. Burdyl
Town Attorney: Lyn Murphy Town Board Liaison: Paul Hotaling
Planner: Mrs. Zepko
Secretary: Mrs. Mikol

Motion was made by Mrs. Smith-Law and seconded by Mr. Rose that the minutes from the March 2, 2010 meeting be approved. Motion was carried.

Dan Chouiniere, 10 Guideboard Road

Chairman commented that Mr. Chouiniere is applying for an extension of a non-conforming use. We are under advice from our Town Attorney, who is present tonight, that this board should table any further action on this application as there is a pending court case which is pending in State Supreme Court in Saratoga County. Chairman suggested that the board do that rather than go any further with it tonight but I am willing to listen to Mr. Chouiniere's representative, Mr. Matthew Hug if he has any other updates.

Mr. Hug commented that it is in the Board's pervue I can just speak of the reason for tabling the application at this time. Currently there is an Article 78 proceeding pending just against the Planning Board of the Town of Halfmoon with respect to a tenant use application that was denied on the grounds that they determined that it was going to be an expansion or extension of a pre-existing non-conforming use. That was the only grounds on which they denied the application. It is our position in the Article 78 proceeding that it was improper and that it is this Board that decides what is an extension or enlargement of a non-conforming use and that the Planning Board, and this is well said over 30 years of case law starting with the court of appeals, that a Planning Board has absolutely zero authority to make any determination with respect to a zoning code, and what is or isn't in keeping that code. That is the purpose of the Zoning Board of Appeals that is all that the Article 78 alleges.

The Deputy Town Attorney, Robert Chauvin in his responding papers states that our Article 78 proceeding should be dismissed because we didn't come to the Zoning Board of Appeals. So both sides are saying we should be here for an initial determination as to whether the proposal that Mr. Chouiniere would like to put before you is or is not an extension of a pre-existing non-conforming use. If it were not then this Board would so determine that we would go back to the Planning Board for a re-review of the tenant use application. If this Board were to decide that it is an expansion or extension of a non-conforming use then we would continue on with this Board to determine if you would grant special permission to continue or whether we would be in the realm of a use variance. Quite simply there is no legitimate reason why a pending Article 78 proceeding, which is against the Planning Board, would be serving this Board's authority as to why this Board cannot at least hear a presentation tonight. As I understand it this Board's rule is that they don't make a decision on the first initial night. That there would then be a scheduled public hearing hopefully in August. Not only would there be any reason not to hear it legitimately because of the Article 78, but hearing the presentation with no vote I can see no harm that would be done on simply hearing what inevitably would be back before you. Mr. Chouiniere has a current tenant that is interested in the property and if we extend this on for months and months maybe that tenant would be lost and I would hate to see that on account of something that just doesn't need to be drawn out and stalled. So with that said if there is a legitimate reason aside from that which I am trying to explain here that would allow you to table it I think. Mr. Chouiniere is entitled to hear that.

Chairman Hansen commented that the Board acts under advice from our Council and if she feels that its not advisable for us to make any decisions regarding this application tonight I have to abide by her decision.

Mr. Hug commented that he can concur with that but what I guess what we are looking for, for the record, is some reason. If the reason is the Article 78 is pending, therefore we will not hear the application there should be something on the record to explain why exactly the Article 78 puts this Board in some odd position that they can't hear a presentation.

Chairman Hansen commented that from his own perspective I think Ms. Murphy and I agree that we can't anticipate what the decision will be by the court it could affect the route. What if they agree that the Planning Board could act on it? There is no reason for it to even be before us.

Mr. Hug commented that the court couldn't do that. In fact, Mr. Chauvin doesn't argue that.

Ms. Murphy commented just for clarification what Mr. Chauvin's argument is, is that Mr. Chouiniere did not exhaust all of his administrative remedies, which involves coming to this board. He did not tell you to come to this Board first, and that is the determination we are waiting for from the court. What was the appropriate route to take.

Chairman Hansen commented that would affect them being here tonight and there is your reason.

Mr. Hug had one more thing to say. First off, his first affirmative defense is that the failure to exhaust administrative remedies because we addressed it to the wrong local municipal board lacks merit and should be dismissed. If the assertion were that the court could say that the Planning Board has Zoning Board authority they would be on their own, which the Supreme Court would never do, would be going against the Planning Board. In Brook Haven, Court of Appeals 1980, Swank vs. Planning Board Village of Cobleskill third department 2006, Apostolic Holiness Church vs. Zoning Board of Appeals Town of Babylon second department 1995, Matter of Esposito Builders vs. Koff second department 1992, all of those courts, in fact, settled that a Planning Board lacks the authority to interpret the local zoning law and that said power is vested solely and exclusively in the local code enforcement officials and the ZBA. The Supreme Court will not say that is what the Planning Board did. The ultimate remedy may be the same. What the court will have to do is to say that by the Planning Board deciding a Zoning Board issue, it would have to be under authority. It should go to the Zoning Board. The Planning Board should have tabled the tenant/use application pending and then we would be back at square one. All parties are arguing that. I can appreciate Ms. Murphy's point of view, that is not what Mr. Chauvin is arguing, that is not what the law is and that is not what we are asserting that the Planning Board's decision should be reversed or changed all the way around and give us the permission we are requesting. That is not even on the table, all that is on the table is that the Planning Board stepped beyond it's authority, made the decision that this board should not agree with or honor and move on from there. We start at square one that is what everybody is arguing.

Chairman Hansen commented that in a sense you're wasting your time and making arguments that should probably be made before the court and not this Board I am acting on advice from our Attorney, Ms. Murphy and can't do anything else at this point.

Mr. Hug asked if it was the Board's position that regarding Mr. Chouiniere's Article 78 proceeding, you will not allow him before this Board unless or until there is a withdrawal?

Chairman Hansen and Ms. Murphy both replied no. Chairman Hansen commented that is not at all what we are saying. We are going to table this tonight until it is resolved in court. I am not suggesting that you withdraw your action at all. I don't even think Ms. Murphy suggests that.

Mr. Hug commented that it was council's position this morning.

Ms. Murphy commented that you are mis-stating Mr. Chauvin's position and my position and if you continue to do so and I will not stand here and listen to it.

Mr. Hug commented that we spoke this morning and I asked if we withdrew the action would we be heard and you said yes.

Ms. Murphy commented that I advised you if you withdrew your petition the reason for this board to table the action no longer exists, that is reality. That is not something that is some sort of method to get you to withdraw your petition. The reality is that this Board cannot act until the Supreme Court acts. If there is no Supreme Court action that hurdle disappears.

Mr. Hug commented not to belabor it just for the record there still hasn't been voiced a legitimate reason by this board to not hear the action I have explained at length. The issues have nothing to do with one another. The Article 78 is for the purposes of determination as to whether this is an existing expansion of a pre-existing non-conforming activity. The two are completely and separately distinct and there is no legitimate basis to reject Mr. Chouiniere' petition or table it indefinitely until a court is heard on this, especially in light of the fact that the application was accepted, payment was accepted, and Mr. Chouiniere was not even informed that this would be removed from the agenda until this morning by perpetuity because he came in and dropped off the maps early. If he had not done that we would have come here completely blind. I was speaking to Ms. Murphy and Mr. Chauvin about our coming here to the ZBA last week and still there was nothing. I am not in favor of this but I understand the Board's decision. I don't understand it's rational.

Chairman Hansen commented that based on what we have heard so far is there a motion to table this to the next meeting?

Motion made by Vice-Chairman Tedrow to table until a decision is rendered in Supreme Court for the Article 78 proceedings not to our next meeting because we don't know when the Court will be acting on it. Seconded by Mr. Rose. Motion carried.

Mastercraft Equipment Corp., Woodin Road

Chairman Hansen commented that Mastercraft Equipment formally Mastercraft Builders is next on the agenda for an area variance.

Mr. Gil VanGuilder was present with a proposal from Mastercraft Equipment owning property since 1973 at the corner of Woodin Road and Grooms Road. There were three lots 100, 101, 102 purchased by Mastercraft from Mr. Beatle that were conveyed in 1973. C.T. Male made the drawing with 280' of frontage on Woodin Road. The site was used over the years as a construction staging area for lots being constructed in the area. Mr. Monticup would like to construct a single-family home in this R-1 Zone. There is not public sewer or water immediately available. The sewer system in the subdivision is privately owned and goes into the Saratoga County Sewer District line, but the sewer district will not allow any other lots to tie into that private sewer company. A septic system will have to be installed and soil conditions are favorable for an on-site septic system. Under the current zoning in an R-1 Zone a lot with individual septic and private water requires the lot size to be 40,000 sq. ft. and the lot is 32,807 sq. ft. The home for the site meets all the setbacks it just doesn't meet the size requirements.

Chairman Hansen asked where the closest water line is that would be available to the site.

Mr. VanGuilder responded about 400-500 ft. down to the intersection of the first road down in Colonial Green. I know that the Water Department had always wanted to tie in Woodin Road to Colonial Green but right now there is no water available on Woodin Road except where it comes out of the subdivision.

Vice Chairman Tedrow asked isn't water available to the lots immediately adjacent? Mr. VanGuilder said yes right out in the front. Vice-Chairman Tedrow asked if an easement was possible from someone there? Mr. VanGuilder said he believes he has investigated that. There are more modern ways of making those connections with directional drilling so people don't have to have their lawn dug up with excavation. I will speak to Mr. Monticup about that before the next meeting. Mr. Monticup feels that it would be fairly easy to develop the water source and septic from that site.

Mr. VanGuilder commented that the only way to get to the sewer is a property on Grooms Road. I did talk to the Sewer Department about that and they don't want any more sewer connections into that private sewer company that services Colonial Green. Mr. VanGuilder has been told by the Sewer District there is a number of problems with the existing system and they will not allow additional connections it will just exasperate the existing problems.

Chairman Hansen asked isn't there a utility building on this property. Mr. VanGuilder replied that it's not on this property there maybe one in the backyard of another lot. Chairman Hansen commented that it looked like an old sewage plant. Mr. VanGuilder met the applicant on the site a couple of years ago he has been trying to work with the neighbor on the Grooms Road side for a lot line adjustment but they never came to terms on how to do the lot line adjustment. There is a portion that is quite wet and he wanted to add the additional square footage to his property to make it a conforming lot but that never worked out.

Mr. Rose asked why did this property get subdivided like this from the original Colonial Green Development? Mr. VanGuilder replied that he believes that this subdivision was created in 1969. A man named Beatle owned the land; he conveyed these three lots to Mastercraft Renovation. Mastercraft Renovation, at that time, hired C.T. Male to create parcels in the rear. In 1973 a lot was created with frontage on Woodin Road. So for 37 years the parcel has existed and it has been on tax maps.

Mr. Rose commented now we know how it was created, why was it created? Mr. VanGuilder replied that it was additional land that Mr. Monticup saw as a viable building lot and over the years he used it as construction staging and now wants to build a home on it. Mr. Rose asked for 37 years it was used as a construction staging area? Mr. VanGuilder replied that he has been active in building all of that time; he still builds homes generally in the Halfmoon/Mechanicville area. Now Mr. Monticup would like to slow down and build a home on this remaining lot and it may very well be his last home to build.

Mr. Rose asked when Colonial Green was built in 1969, was it approved with an entrance and an exit? Was it a P.D.D.? Vice-Chairman Tedrow asked if it were before subdivision regulations. Chairman Hansen replied that it was about the same time as subdivision regulations and I think it was approved as a conventional subdivision because at that time I don't think we had P.D.D.'s. Mr. Ray asked if he would enter and exit off Woodin Road for one house vs. the neighborhood that was created by Colonial Green Development, which has specific entrances, and exits that were planned out. How close is this driveway to the entrance and exit. Chairman Hansen replied a few hundred feet.

Vice-Chairman Tedrow commented that there are a lot of driveways in Colonial Green that exit and enter onto Woodin Road. Mr. Rose asked if those driveways onto Woodin Road are still part of the Colonial Green Development? Chairman Hansen replied yes. Vice-Chairman Tedrow commented that the old building Chairman Hansen is talking about was the office that Mr. Beatle used.

Mr. Brennan asked Mr. VanGuilder to repeat the situation with the water. Mr. VanGuilder replied that Mr. Monticup investigated with the neighbors how to get a right-of-way to tie into the water in the streets. It is quite a distance to the street and he offered directional drilling, which is very expensive. Mr. VanGuilder commented that when he talked to Frank Tironi in the Water Department it was not extended up to Woodin Road. Chairman Tedrow commented that the houses that face Woodin Road now that are part of that development do not have public water? Mr. VanGuilder commented that it might extend toward Sitterly Road but not to the south to Woodin Road. Does Lands of #99 immediately to the north have water? Mr. VanGuilder believes that water comes from the interior of the subdivision. Mr. Rose asked if this is where you planned on doing the directional drilling? Mr. VanGuilder commented yes that might be one of the lots we will look into.

Mr. Rose asked where the house would be placed? It was shown on the plan for the Board's review. The plan showed the setbacks from the front, sides and rear. The front of the house would face Woodin Road. Chairman Hansen commented that it is in the water district.

Ms. Smith-Law asked how far is the water main up the road? Mr. VanGuilder is not sure but could be further up Cambridge Court but could be closer to Sitterly Road. The water main is on Grooms Road and you would have to go through the Rickard Property to get to the water main.

Mr. Brennan asked how far the lot line would have had to be adjusted to meet the square footage under the zoning? Mr. VanGuilder commented that it would have been a land swap squaring off the property but they couldn't meet an agreement.

Mr. Brennan would like to see a letter from Mr. Tironi regarding the closest water connection in the area and also maybe comments from the neighbors allowing or refusing water connections through their parcels.

Motion made by Vice-Chairman Tedrow to set a public hearing for August 2, 2010 at 7:00 pm for an area variance for Mastercraft Equipment Corp. on Woodin Road, Seconded by Ms. Smith-Law.

Motion carried.

Abele/Capital Region Business Park, Corporate Park Drive

Chairman Hansen commented that the Abele's are requesting to put an off premise sign on the entrance to Corporate Park Drive on Route 9 on Peter Belmonte's property. It would be the only entrance on Route 9. The other entrance with a sign is on Sitterly Road.

Mr. Chris Abele was present. The Capital Region Business Park located on Sitterly Road and Route 9 only has one two-sided sign on Sitterly Road when the park was approved in 1994. In the original P.D.D. we obtained an easement from our property to Route 9. We never owned any property to Route 9 henceforth; we could not place a sign. With the Route 9 entrance being a prime entrance to our park especially with the Sports Plex of Halfmoon we wanted to get a presence on Route 9. Mr. Abele recently approached Mr. Peter Belmonte who owns the southwest corner of Route 9 and Corporate Park Drive to obtain an easement or get permission to construct a sign to identify the park from Route 9. Mr. Belmonte granted permission and then made application to the Planning Board to grant permission for the sign.

Mr. Abele commented that in his informal discussions with Mr. Jeff Williams he said that the Planning Board was not against this additional sign and was referred to the Zoning Board of Appeals for a use variance.

Chairman Hansen commented that Corporate Park Drive is a public road. Vice-Chairman Tedrow asked if he considered getting his P.D.D. Legislation amended to allow a sign outside of your park. Vice-Chairman Tedrow commented that he is not clear on how this board has jurisdiction to over-ride anything in the Sign Ordinance as a variance.

Mr. Abele commented that with his application to the Planning Board he was directed to come this route.

Ms. Smith-Law asked Mr. Abele if he owned the property with Pai Academy? Mr. Abele said no.

Mr. Rose asked what variance are you looking for? Mr. Abele replied an additional sign for a P.D.D. but off premise. Mr. Abele explained that in a PDD you can have one sign and I am asking for two. One sign will be off premises and not be on PDD lands. It makes tremendous sense to be identified off Route 9 for the park and in addition to that I want to construct the same exact sign that is on Sitterly Road with the plantings as well. The Board had pictures of the existing sign.

Mr. Abele explained that there is a big ditch on Route 9 and there was no sense of an entrance into the park off Route 9 for vehicles traveling that route. We intend to do a good job with the masonry sign with the landscaping and it will be nice.

Mr. Rose asked if the Route 9 entrance part of the original P.D.D. Mr. Abele replied yes it is.

Chairman Hansen commented that he thought the reason for the requested variance was for an off premises sign.

Chairman Hansen commented that he is not convinced that a use variance is what this is called. It falls between the cracks. They are requesting a variance from the sign ordinance. The sign themselves are permitted on commercial lots. He doesn't own the lot and the ordinance states that the sign has to be on the premises of the business.

Mr. Rose commented that the sign should be located on the premises of the business. Mr. Rose asked Mr. Abele what was the thought process for putting the Capital Region Business Park Sign off Sitterly Road. Mr. Abele said that the parcel that Mr. Belmonte owns had a prior owner and we never pursued placing a sign on that parcel. The sign would have to be placed in the ROW there is a telephone pole there and would obstruct the view and was not aesthetically pleasing.

Mr. Brennan asked, where is the sign exactly on the adjoining street or on Route 9? Mr. Abele responded it would be on the intersection of Corporate Park Drive and Route 9 at the southwest corner on the vacant lot. This lot is not part of the PDD and is Mr. Belmonte's land.

Ms. Smith-Law asked what plans Mr. Belmonte has for his property? Mr. Abele commented that he would like to develop the lot; it is for sale but he has not heard lately of anything.

Chairman Hansen commented that the Sign Ordinance was amended in August 20, 2009 with items 165-48 through 165-52.

Mr. Rose made a motion to set a public hearing for Monday, August 2, 2010 for the Capital Region Business Park Sign and was seconded by Mrs. Smith-Law. Motion carried.

Vice-Chairman Tedrow asked if we could get clarification on how to treat this. Mr. Abele could have been here to ask for a billboard and that would also be an off premise sign. With what they went through with billboards I don't think this Town is interested in that sort of an application. The process is still the same. It is still an off premise sign in a Commercial Zone.

Chairman Hansen asked Ms. Zepko how this application got to us. Mrs. Zepko replied she wasn't sure. Mr. Abele stated that he applied for the building permit and it was denied. Mr. Williams coached me through what the process was. He did have an informal discussion with the Planning Chairman and possibly with the Town Attorney. He did say he did not have a problem with the sign. We did get approved for events at the Sportsplex building for garden shows, sports events, car events which has become very successful and a good portion of the traffic comes from Route 9 and the entrance really needs the sign.

Mrs. Smith-Law asked how he had the Sportsplex sign on another property. That sign is on the property of the Sportsplex which has a stem going out to Route 9 which is where the sign is located.

Mrs. Murphy came back into the meeting and Chairman Hansen asked her regarding to the revised Sign Ordinance. Under the fees and procedures. It states: "Except as otherwise detailed herein, all fees and procedures for obtaining sign permits shall not be affected by the adoption of this article. The Planning Department may waive any and all applicable fees for not-for-profit organizations with proof of the organizations current status granted by the State of New York. The Planning Board may waive any of the requirements set forth herein if it determines the waiver to be necessary to maintain the character and nature of an existing area or to protect the health, safety, and welfare of the citizens of the Town of Halfmoon."

Vice-Chairman Tedrow asked why didn't the Planning Board address the sign application? Mrs. Murphy responded that it never came to the Planning Board.

Chairman Hansen commented that the request never went to the Planning Board it went to the Building Department where it was denied. Mrs. Murphy spoke to Mr. Williams not realizing that it went before the Building Department.

Chairman Hansen commented that the Planning Board has to look at all the sign applications. The Planning Board would have to determine if what they are requesting would fall under exemption/waiver power that they have.

Chairman Hansen commented that the application doesn't fall neatly under the Ordinance. My argument is that if the Planning Board can make the argument that they need the sign there to prevent accidents or something like that for people being confused about where to enter into the park, they have the jurisdiction to grant a waiver and allow the sign.

Vice-Chairman Tedrow commented that the PDD existence and the proximity of the whole thing, there is substantial evidence to prove that.

It was the opinion of Mrs. Murphy that Mr. Abele should apply to the Planning Board for his sign application based on the fact that the Planning Board can make a determination on the sign without a variance from the Zoning Board of Appeals. Therefore, it is not necessary for the ZBA to hold a public hearing on the sign.

Meeting was adjourned at 8:15pm.
Respectively submitted by Denise Mikol, Secretary
Town of Halfmoon Zoning Board of Appeals