

Town of Halfmoon Zoning Board of Appeals  
Meeting Minutes  
November 7, 2011

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:00 p.m. on Monday, November 7, 2011 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mrs. Jordan, Mr. Brennan  
Alternates: Mr. Burdyl and Mrs. Smith-Law  
Town Board Liaison: Paul Hotaling  
Town Planner: Mrs. Zepko  
Secretary: Mrs. Mikol

Chairman Hansen commented that Mrs. Smith-Law, Alternate would be voting tonight in the absence of Mr. Rose.

Motion was made by Mrs. Jordan and seconded by Mr. Brennan that the minutes from the October 3, 2011 meeting be approved. Motion carried.

**John Forino, 14 Upper Newtown Road**

Chairman Hansen commented that the public hearing from our last meeting was tabled because the applicant was using the wrong second page of the application and therefore had to submit a new second page. The Board received a significantly revised application and map from the applicant. Since this is a new application we will have to set a new public hearing for the next meeting. Mr. Forino withdrew his last application in writing at the Town Attorney's request.

The new application was e-mailed to all the Board Members. This is a fresh new start with a new application; the previous application was withdrawn.

Mrs. Jordan commented that, just to make it clear, the clock has stopped from the last meeting and now we start fresh with a new application, set a new public hearing, and start all over again.

Chairman Hansen commented correct.

Chairman Hansen asked the Board if they had any questions with respect to the new application? There were no questions.

Motion made by Mrs. Smith-Law to set a public hearing for the December 5, 2011 meeting for the Forino application at 7:00 p.m. Seconded by Vice-Chairman Tedrow. Motion was carried.

Chairman Hansen commented that he is not sure if the audience and the applicant would have to go through all the testimony all over again. We will have to check with the Town Attorney on that.

Secretary Mikol asked the members of the audience if they understood what just happened? The audience responded no. It was explained to the audience that since the applicant sent in a new application and not a revised application that the Board will consider it as a new application. Mr. Forino has withdrawn his first application therefore; the process starts all over again. You will receive in the mail a new public hearing notification for our December 5, 2011 meeting at 7:00 p.m. to discuss the application. It will be open to the public and you may speak.

### **Stewart's, 454 Route 146**

Chairman Hansen commented that the Stewart's Shop at 454 Route 146, is requesting an area variance to re-develop the existing site by adding a 0.34-acre parcel to the existing 2.35-acre site and to re-locate and re-build not only the Stewart's Shop but also the gas pumps with canopy on the expanded site as well.

The public hearing opened at 7:30p.m. At this time, Vice-Chairman Tedrow commented that he has recused himself from this project and as it proceeds through the process.

Mr. Burdyl will be acting as alternate because Vice-Chairman Tedrow's recused himself with respect to the Stewart application.

Mr. Tom Lewis, Real Estate Representative for Stewart's was present and introduced Ms. Jennifer Howard and Mr. Pat Russo. Mr. Lewis went over the evolution of how we got to where we are. We are running out of new sites so we are looking to revamp existing sites they don't work well. This is one of those sites.

At this time, residents sitting in the back of the room are claiming they can't hear Mr. Lewis speaking.

Mr. Lewis offered to speak without the microphone. If Mr. Lewis speaks without the microphone it will not be taped. We use the tape to transcribe the minutes.

Mr. Lewis commented that he handed out sheets to the Board Members. It shows the initial application before the Planning Board back on September 12, 2011 where they received a denial on the basis that the proposed gas pump canopy does not meet the minimum front yard setback for Plant Road as described in Zoning, 165 Attachment 1- Schedule A-Commercial District in the Town's Local Laws. The plan showed where they were going to add an addition onto the building, the gas island removal and replacement, and a bank with a drive-through. The Planning Board told Stewart's that there was too much on the site. The Bank shown was needed for a return on our investment, so rather than buying the piece of land on the corner, we decided that if they didn't buy the land they could still do the addition and the additional curb cut on Plant Road as part of the difficulty we have with all the cars coming in and out of the site on Route 146.

Mr. Lewis showed why Stewart's needs a variance. The variance is very minimal and we are asking for 4 gas pumps with a canopy and to relocate the store with a new elevation and the new entrances off Route 146 and Plant Road with new landscaping. The new improvement would be less than 9', which is less than 1% of the entire buildable area.

Mr. Lewis further commented that with the questions that there are four questions that we have to answer. We certainly feel that there will not be a detriment to the character of the neighborhood, that we will improve what is there substantially. We looked at many different designs and this submission requires the least amount of variances and that window of buildable space is small but it fits and we are buying more land. The variance is less than 9', which related to the whole site is certainly is not substantial. The variance will not have an adverse impact on the physical and environmental conditions of the neighborhood and the difficulty is not self-created and we purchased more land to make it all fit.

Mr. Burdyl asked Mr. Lewis what he means by saying that you're a real estate agent for Stewart's. Are you a direct employee? Mr. Lewis replied yes and so are Mrs. Howard and Mr. Russo.

Mr. Brennan asked how many gas pumps are there now? Mr. Lewis responded two. However, we are proposing four gas pumps. Mr. Brennan commented that he was sorry that he wasn't more observant while at the site visit. Mr. Brennan asked what the study was that determined that four gas pumps were needed.

Mr. Lewis commented that when you are spending additional money on additional land to rebuild a store there has to be some kind of return on your investment. The buying of the additional land showed us that it fits and that it works. It is a financial consideration. We would not build a store without four pumps. Every new Stewarts Shop over the last five years would never have less than four pumps. I'm not sure what the new Sunoco has...either four or six. We are more of a food store than a gas station so we can live on four pumps.

Mr. Burdyl asked what is the differential on the car count between three and four pumps?

Mr. Lewis commented very little.

Mr. Burdyl asked between three and four percent?

Mr. Lewis responded less than ten percent. Our customer base is the vehicle that is on the road already. Any traffic report ever done whether it's us, Cumberland Farm or Hess, the customer base is 80% of the cars already on the road. It does help being close to a neighborhood as well. Whether they are on their way to work, on their way home, just running an errand it's definitely generated from cars on the road. It makes the sight work better because if you have seven cars there they could move in and out faster as apposed to waiting in line, this is what happens now with only two gas pumps. I know a lot of people who live in the area and they will not go into that Stewart's Shop because it's too congested.

Mrs. Jordan asked if you were to move the whole pump section forward toward Route 146 is that a possibility and if not, why not?

Mr. Lewis commented that it would mean that more of a variance would be needed, not less. Right now, the top right hand northwest corner is right on the edge of the window of building area. It's amazing how much goes into why the gas pumps have to go here and not over there. There are multiple sites that don't work like this one does that we would love to do something to but you just can't physically do it. Our object is to improve the store and not make it more difficult.

Mr. Brennan commented that I am sure that this proposal is to increase the amount of traffic coming in and out of Stewart's?

Mr. Lewis commented very little. One of the reasons why we built the new shop on Route 146 and Vosburgh Road is because so many people came to this store and it didn't work well. By building that Stewart's it lessened the amount of customers at the Plant Road shop. It means the site will function better. There are customers that no longer go to Plant Road and now only go to the Vosburgh Shop. The business has to increase other wise it won't work. We have to go from two pumps to four. What is inside the building will work substantially better. The storage area, the islands, and the shelves will work better and there will be fewer deliveries.

Mr. Brennan commented with a follow-up question to Mrs. Zepko and Mrs. Mikol if there were any up-to-date traffic studies done in that area in the last few years especially in light of the additional curb cut request.

Mrs. Zepko commented no, not in the specific area of the Stewart's on Route 146 but there could be something on file from years ago with regard to Lowe's.

Mrs. Smith-Law asked how many feet on the southern side of the building is the one-story house?

Mr. Lewis commented 29' and the requirement according to the code is 15'.

Mrs. Smith-Law asked if the site could be moved back further to bring the canopy in more?

Mr. Lewis commented that if we move the island and canopy we would loose our delivery area.

Mrs. Smith-Law asked if deliveries were made behind the building?

Mr. Lewis commented that yes, deliveries are made behind the building.

Chairman Hansen commented that the new store would only be about 50 sq. ft. bigger.

Mr. Lewis responded, yes.

Mrs. Smith-Law asked how many more parking spaces were being added to the site?

Mr. Lewis commented there are approximately 40 spaces and 32 are required by the code. Sometimes we don't use the spaces. We bank them but we will be using all these spaces.

Chairman Hansen asked the Board if they had any questions? The comments were opened to the audience.

Chairman commented that any approvals made here would have to go back to the Planning Board for site plan approval. This Board only deals with the variance request.

A resident spoke but was not on microphone.

Mr. Leonard, 145 Plant Road, directly behind the Stewart's Shop, and I am opposed to the entrance and exit on Plant Road. Not only will it change the character of the neighborhood but it will also add to a problem that has existed for many years. The Y intersection does not work and adding another leg into the Y will certainly not help. The Town has talked for years about doing something with that intersection. They talked about going straight out to Route 146, they talked about closing off the east end of Plant Road, and the last thing they talked about is making a T intersection. If Stewart's runs another entrance and exit into that Y intersection I don't see how it's going to work. Something needs to be done with the existing Y before anything else is done to it. We did request a fence, it was a verbal request, and it would follow the same footprint as the exiting fence that is there now.

Mrs. Zepko commented that there is no legal requirement for the Planning Board to hold a public hearing for site plan review. The Board can however, hold a public informational meeting if there are neighbors that have an issue with a proposal. A public informational meeting does allow the public to speak and notification is sent to the adjoining landowners. Mr. Leonard, we have talked before about this and you are welcome to submit anything in writing if this should go before the Planning Board to have your voice heard in that manner.

Mr. Leonard commented that the neighbors would like to have a fence there because the hours of operation from 6 a.m. to 11 p.m. is 17 hours a day and 119 hours a week. There are many deliveries before 6:00 a.m., which I am not too happy about. Gas deliveries are sometimes at 3:00 in the morning. There is garbage pick up at 5:00-5:30 a.m. We have a record of times of deliveries and events going on there prior to their hours of operation. Then there is the noise from the cars driving by with loud music, their loud exhaust systems and loud motorcycles. One last thing is that the last site plan had a vegetation plan on it. We would like to see all the vegetation to remain in addition to what is being proposed for the new site plan. The speed limit is not enforced on Plant Road or on Route 146. We have sent in a request to Mrs. Marchione in 2005 to lower the speed limit sign and nothing was ever done about it. It's 40 mph and Route 146 is 45 mph. It is a very challenging intersection.

Mrs. Gardner, 138 Plant Road, second house back from the Y on Plant Road. We wrote letters to the Town Supervisor back in 2005 asking them to lower the speed limit on Plant Road, I have a daughter that was disabled in 1989 and we have lived there since 1975 and used to take her for walks along the road. We can't even get out of our driveway let alone take her for a walk along the road. Mr. Palmer that lives next to us has cars going into his driveway because they are going so fast around the corner. It's 25 mph by Lowe's and where he lives at the Y in the road it's 40 mph. We asked for a T to be put there since 2001 because we now take our daughter into Martindale for a walk and every car flies through the intersection doing more than 40 mph. Plant Road is now being used for a short cut because of all the new lights installed on Route 9 everyone tries to avoid them. We wrote a letter to the Town about the problems we have and the Town said they would put a T in the road and never did it. As of the spring last year the T was to be installed and it's still not done. We have more traffic on Plant Road than Route 9 does. When Lowe's came in they paid the Town \$90,000.00 to fix the road and it was never done. Route 9's speed limit is 40 mph and Plant Road, a residential road, is 45 mph. It makes no sense. We have enough traffic issues now; we certainly don't want Stewart's traffic on Plant Road too. If you open up Plant Road we will be getting the auction's traffic too. Twenty years ago Stewart's got a variance from the Zoning Board of Appeals contingent on no access on Plant Road. The Board didn't allow it then and it was part of their approval so don't let them have it now. No one is helping us; we have enough traffic and don't need or want any additional traffic.

Mrs. Jordan asked the Chairman how broad is our scope? Are we just looking at the canopy variance or are we also to consider curb cuts. I assumed that was the Planning Board's business and we would look solely at the variance.

Chairman Hansen commented that was a question I was going to ask our Attorney tonight but we don't have that opportunity. We may have to wait until our next meeting to do it. I don't know what the extent of our jurisdiction is of determining mitigating circumstances for a variance request.

Mrs. Leonard, 145 Plant Road commented that when Stewart's came before the Zoning Board 20 years ago, it was the Zoning Board that said no entrance on Plant Road and there was no entrance on Plant Road. You can listen to your tapes and do whatever you want but that is what was said. In fact, you were the one that said it. This was a residential area until Stewart's came.

Chairman Hansen commented that he asked his secretary, Mrs. Mikol to look up the meeting minutes for back then and they were February and March 1989 everyone has a copy for their review. A decision was not made at the first meeting in February but we did make a decision on March 6, 1989. The minutes read as follows: "The Board voted to restrict access to the site to Route 146 only in order to minimize the impact on residential properties on Plant Road and would also continue landscaping along Plant Road. That was for the existing building that is there now. The Board did approve it with the elimination of any access onto Plant Road. Chairman asked Mrs. Zepko if the Planning Board had discussed it at all with respect to the entrance request on Plant Road and traffic issues.

Mrs. Zepko commented that the Planning Board has had some review of the site and Mr. Lewis had shown us the previous application that would have required both variances for the building as well as the canopy. We looked at the site a little bit. This is the second plan that came into us.

Mrs. Jordan commented that she does not see the curb cut as part of this Board's duties to help make a decision on the variance we are looking at.

Mrs. Smith-Law commented that she would agree with that.

Mr. Lewis commented that on the Y and T intersection there would be numerous discussions that he had with the Planning Board and with the Supervisor before submitting this to the Town. If the Town finds the money to do the work or if they want to do something they still can.

Mrs. Leonard spoke but was not on tape.



Mr. Lewis commented that the map doesn't show anyone what anyone is doing. I recognize that I am an applicant so anything I say is suspect. I have been doing Planning Boards for over 20 years and the curb cuts and the Y's and access is the pervue of the Planning Board and you folks have the power to do what you do and we are here asking for. I adventure to say one of the smallest variances you will ever see, less than 1%. We have made ever effort to comply with the law, the neighbors rightfully should be unhappy with things like deliveries at 3:00 a.m. and that is one of the things that we are going to solve, we are going to improve. The reason why that happens is that this lot is so congested and works so poorly that you can't get a delivery truck in there during regular hours. We called the delivery trucks and asked them about 3:00 a.m. and 3:45 a.m. deliveries, which is very unfair to the neighbors, this is going to solve that. That will stop. We can easily access this lot the way it's proposed. I would ask this Board to hopefully make a decision this evening on a less than 1 % variance. Which I don't think is unreasonable and this Board knows that you are balancing things like what is the detriment against the neighborhood versus the improvement. This will vastly improve this site as well as the look and the circulation. I have been before the Planning Board a lot over the years and I have never seen them not allowing the neighbors to speak. I have never seen them not do it. It is unusual for the Planning Board not to let a neighbor talk.

Mrs. Leonard, 145 Plant Road further commented that she lives directly behind the Stewart's Shop on Plant Road and Mr. Lewis is talking about Stewart's making a profit because they bought that house and the property. Well, the value of our property has gone down because of Stewart's being right in front of us. The gas tanks are right in front of my door. We have a very large investment here. If you get that entrance onto Plant Road, which I hope you don't, do you plan on having your delivery trucks going in there?

Mr. Lewis responded no.

Mrs. Leonard asked who is going to police it? Well someone has to police it. When Stewart's first came here we had all big trucks parked on our side of the road and we had to do anything we could to keep them from parking there and they use to go through the fence because the fence didn't go all the way down.

Mr. Lewis commented that it's really not in our interest to aggravate our neighbors.

Mrs. Leonard commented that these are questions that we need answers too.

Mrs. Zepko commented that perhaps she could answer that question for you and I am sorry to interrupt your conversation with Mr. Lewis but in the event of the Planning Board's site plan review there were restrictions placed on the site given where the ingress and egress for delivery trucks can and can't go on the site that would be enforced by the Town's Code Enforcement Officers and should that become a problem and that the deliveries are being utilized in the access that is granted during site plan review they could enforce that.

Mrs. Leonard commented that she sure hopes so. Also, you have that entrance on Plant Road. It goes directly across in front of the store and out onto Route 146 so traffic will be cutting there just like they cut through Lowe's and cut around Burger King and all the other places. You want to get rid of the problem and the Town wants to get rid of the accidents on Route 146 all this was brought up when Stewart's was being proposed to the Town. The Town knew and Stewart's knew that the site was too small. There is plenty of other land that Stewart's can build on but they chose this spot and this is Stewarts' problem and they are making it the neighbors' problem. We do not want the entrance on Plant Road and the Town needs to find a solution for our end of the road. The other end of the road got a light and now they want a right hand turn lane onto Route 9, which will cost \$100,000 and you can bet your life they will get it but we can't get anything. It's not right you're dumping more and more traffic on us. There will be traffic coming at us 5 different ways. I walked up the road there today and three cars going around the bend never even stopped at the stop sign. They kept right on going 40 mph up and down. There are people that walk that road, they jog, ride their bikes, people push their kids up to Stewart's in their strollers and someone is going to get hurt and then who will be to blame. You have to think about the safety of the people. You can't dump all that traffic and do nothing to resolve it. The Town knows about the situation we have been complaining about it since Stewart's arrived there 20 years ago. I think this should be tabled until the Town decides what to do with the Road. The Zoning Board of Appeals can say no entrance or exit on Plant Road because they already did it 20 years ago. Don't tell me that they can't do it again. Please save our residential neighborhood. It should also be known that the land behind on the Plant Road side is owned by Stewart's and has to be maintained and seeded and mowed. We went to Mrs. Marchione to have the lot cleaned up. We are tired of fighting with everyone. We suffered enough with the traffic, the values of our homes, the garbage on the ground, the deliveries, the gas pump deliveries. You don't live there; you don't understand it.

Mrs. Jordan commented that I do live off Plant Road and I am at that Stewart's probably 4 times a week and I understand your concern but what I feel is before us now is looking at the canopy. Stewart's is already there. The traffic is already there.

Mrs. Leonard commented to Mrs. Jordan how come Wal-Mart didn't get an entrance onto Plant Road; did you fight against that?

Mrs. Jordan commented that she was new to the area at that time and no I wasn't part of any fights.

Mrs. Leonard commented they have a huge stockade fence; they got trees, an emergency access gate, and no entrance on Plant Road.

Mrs. Jordan commented that we understand all the things that the Planning Board reviews with their site plan. This is the wrong arena that you are in.

Mrs. Leonard commented that the Zoning Board of Appeals didn't allow the access on Plant Road. The Planning Board let them do whatever they want.

Mrs. Jordan commented that things have changed.

Mrs. Leonard commented no; they haven't. In fact, a lot of people that were on the Planning Board are on the Zoning Board 20 years ago. We had 19 meetings at that time. I didn't see anyone at that meeting say "gee we don't want this". It was up to the neighbors to come and speak with their concerns and the Board listened to us and took our issues into consideration because we lived there. We are tired of it.

Mrs. Jordan commented that we are the Zoning Board of Appeals. We are here to look at the variance request. Things have changed since 20 years ago. I am not here to argue that.

Mrs. Leonard commented that she is not here to argue either. I am here to state my opinion and state what we would like. If your going to put an entrance on Plant Road, which you didn't allow the first time they came before you, you have to do something with Plant Road you just can't dump that on the people. Stewart's is interested in the traffic going by which includes the auction on Thursday's. If they don't get the traffic they wouldn't want to do this. If Stewart's gets the traffic they are looking for so do we.

Mrs. Jordan commented that the store would look really nice when it's done.

Mrs. Leonard asked Mrs. Jordan if she worked for Stewart's?

Mrs. Jordan commented no but Stewart's is already there and you have to understand that and they have already brought the traffic in the area to their site. You can't go back to not having a Stewart's.

Mrs. Leonard commented that it's not a big enough site. That is the whole thing. Keep the traffic off Plant Road; keep the traffic on Route 146 where it belongs.

Mr. Brennan commented to Chairman Hansen that he would like to re-ask the same question again what is our legal responsibility? The reason why I ask is that some of the measures we have, for instance, significantly changing the character of the neighborhood, is of interest to me with the traffic flow change. I also ask the same question because in many cases we have discussed traffic flow. For instance, when we looked at signs specific to some of the recent signs down on Schoolhouse Lane at one of the businesses there and the site distance that would be changed. And the car dealership on Route 146 and the site lines of traffic so I think it's going to be without legal opinion. It would be potentially exposing ourselves before we have a clear answer. Just because of a previous precedence about traffic flows.

Mrs. Jordan commented that in other instances we decided a variance with the stipulation that the Planning Board specifically look at a certain issue. We can certainly do that.

Mrs. Smith-Law commented that if we get involved in this Plant Road entrance that we could be overstepping the bounds of what we have been asked to do and discuss. We are asking to discuss a 9' variance on a canopy and I think we are reaching. I clearly understand all your points and concerns but this is the wrong forum for that.

Mrs. Leonard commented that you did it 20 years ago and that is the precedence that the Board set, not me. This Board didn't want the entrance on Plant Road and neither did the neighbors. All along the road is going to get development. It's all for sale and you know what everyone is getting an entrance onto Plant Road. The people from Martindale, they are all older people and they didn't come here tonight. I got 21 signatures from people that don't want an entrance on Plant Road because of the traffic. Stand there for 20 minutes and you will see it yourself. Someone will get hurt. Mr. Nadeau from the Planning Board said to me one day that there are no accidents on Route 146.

Yes, there are accidents. I have pictures of them to prove it. My son got in an accident there. Someone was turning into the Stewart's and pulled out over the double yellow lines and hit my son. You can't tell me. I know. I live there. I see it and I live it every day. I have nothing against Stewart's; it's the whole thing of it.

You have to look out for the people, the neighbors, we were there first and you are just taking over and forgetting that we are there. We've all been there for 40-50 years. I don't want to see a little kid get hurt. They ride their bikes down here from D & R Village. Something has to be done. We can't talk to the Planning Board this is our opportunity, so we are talking.

Mrs. Zepko commented that it is your pervue to make your comments at this Board. The Board is acting on the variance request for the canopy tonight. These comments would be much better addressed to the Planning Board, as I suggested, in writing and it would then be entered immediately into the record and usually when we have public comment prior to a meeting they will hold a public informational meeting in order to hear your comments. They may or may not have a public informational meeting it's the Board's pervue to say so. But this Board that is incapable of make decisions that you are suggesting.

Mrs. Leonard commented that is not true they have made the decision before and I am here to make sure that decision doesn't change.

Chairman Hansen commented that rather than debate that anymore tonight I would recommend that we put some closure to this discussion at this point and that the Board consider holding the rest of this hearing at our next meeting when we have council present and we can ask the question to counsel as to what more specifically, what is our jurisdiction in looking at a variance for a setback and to what extent of conditions we can put on a request. I know we have put that condition on last time and I am not going to debate this one way or the other right now but it could have just been that Stewart's at that point didn't care and just wanted to get the store built and said the heck with the entrance on Plant Road, let's not debate it. Chairman Hansen commented that Stewart's wanted the entrance on Plant Road but not so bad that they wouldn't build the store without it, that is my point.

Mrs. Leonard commented that if there is going to be an access onto Plant Road more has to be discussed about it.

Chairman Hansen commented that personally he should recuse himself because he does live on Plant Road too and I can see where it could be a problem but then again it may not be a problem because it may put an end to a lot of cars going in front of your house to make that idiotic left turn out toward Mechanicville. You shouldn't even do that but they do it because they can, making a left turn onto Route 146 and coming into Stewart's that way. I did it the other morning. It is suicidal to do it that way. I usually go the other way.

Mrs. Leonard commented that they fly around that bend. It's only 40 mph on that bend. They fly into the parking lot. A truck was going too fast and almost didn't make the turn and came onto our front lawn and landed upside down on our lawn. The Town doesn't want to hear about it. I could understand Stewart's wanting that and relieving the traffic on Route 146. I know the Town is getting complaints about the big trucks parking out there on Route 146 they can't fit on that site. Now they want 2 entrances and exits on Route 146. There should be turning lanes on Route 146 to accommodate the traffic. Stewart's should pay for turning lanes on Route 146 for their customers. You can't just let them come in and not look at the big picture. If there were a turn lane going into Stewart's it would relieve a lot of the accidents.

Chairman Hansen commented that I agree with you there should be a turning lane on Route 146 all the way down from Route 9 to Route 236. This is the worst intersection even down to Werner Road to the commercial development. For tonight I strongly suggest that we table further discussion on this until we have our counsel present. I also tend to somewhat agree with the other members of the Board that we may have a limited jurisdiction regarding what decisions we made the last time. If our attorney says you can put any condition on that you may want; then we can put any condition on what we want. If the attorney says no you can only look at this, this, and this then we look at that. This is an issue that, I agree with other people here, that it goes beyond our Board. I know this is the only place you folks can voice your opinion, that is too bad in my opinion, because I feel that you should be able to express your opinion at all these meeting.

Mrs. Leonard commented it's still America.

Chairman Hansen commented that it's kind of coming in the back door of our Board to do a lot of this.

Mrs. Leonard commented that if they were able to get this through and they didn't have to come here tonight, then we wouldn't have any say we wouldn't know what happened until the building comes down.

Chairman Hansen commented that is correct. If it were strictly a Planning Board view we would not be talking right now.

Mrs. Zepko commented that is a false statement that you would have no say. You have the opportunity to put your comments in writing and submit them to the Planning Board in writing. That is an option you have and that you have always had by the Planning Board. Whether or not it will be at a public hearing. You always have that option. Anything in writing is read and is part of the record. Your voice would be heard at that level. All members are given a copy to read. I am confirming that they all got a copy of your letter.

Mrs. Leonard commented that the Planning Board should be there for the people of the Town just like the Zoning Board and the Town Board. All the Board's are for the people of the Town and if they get the entrance on Plant Road that there be no deliveries and that someone watches it and that something is done to the Y in the road like it was promised to us. You can't have traffic coming at us 5 different ways.

Mrs. Zepko stated that we all understand what your comments are and what your concerns are. We are just trying to move you in a direction to get your voice to the board that it needs to be made to. It's not that we don't want to hear what you have to say. We want to make sure that what you say is directed to the appropriate board that has the pervue to make the decision based on the concerns that you have.

Mrs. Leonard asked, then when would we hear back from the Board with an answer? We deserve an answer.

Mrs. Zepko commented that would be from the Planning Board. Should the applicant receive a variance it will go to the Planning Board for site plan review.

Mrs. Leonard asked if the Planning Board is obligated to address our concern? The last time we had 19 meetings and we could talk to them and now all of a sudden we can't talk to them. It's their discretion.

Mrs. Zepko commented that there are legal requirements of what has to be done and what doesn't have to be done in the events of all these public meetings that are held. A subdivision of lands does require a public hearing. In the event a variance request is needed a public hearing needs to be held. A site plan review is not one of those that require a public hearing by law. I think Mrs. Leonard we have talked about this at least ten times by now. If you want your voice heard, submit your request in writing. It is very often that in the event we have concern from public comment that the Planning Board will set and hold a public informational meeting and they do allow you to speak in the event of site plan review. And again, I am not the Board I am not one of those seven members that make those decisions but it does open the possibility to hold a public informational meeting.

Mrs. Leonard commented that they have more cooperation from the Stewart's than from the Planning Board and I would like that to go on record.

Mrs. Jordan commented that again, as a procedural issue, or a question that I have, can't we make a decision tonight on the variance and can we stipulate that there be a public informational meeting by the Planning Board? Are we allowed to do that? Can we make it conditional?

Chairman Hansen commented that I would have to ask our counsel that question because I honestly don't have that answer. If you approve it tonight could we put conditions on the Planning Board, I would have to say that what they have to do procedurally I would probably say no.

Mr. Lewis commented that you could certainly add all the comments that you have. You could certainly say, you need to look at x, y, and z.

Mrs. Jordan commented that we have done that before.

Mr. Lewis commented that I heard that the Planning Board approves everything, well no they don't. I would be here for a bank with a lot of variances and as to the deliveries which I stated earlier is a totally legitimate issue, we will stipulate no deliveries through there. As Mrs. Zepko said, the Planning Board absolutely has the authority to do that. This building is going back 140' more than what it is now away from the Leonard's. The gas islands are going back away from the Leonard's. Now this is my problem this is not your problem. I have a contract that expires on December 31, 2011 and this is my second contract with this gentleman. Who would have imagined this would have taken 8 months? And the notion about your Planning Board being easy. Guess what. They are not.



So I would again ask this Board to vote on this this evening on a 1% variance on a canopy. You can be sure that the Planning Board will address every one of those issues. As to the T intersection, that is a Town Board issue, which is going to cost money and I hope, they can do it. This proposal doesn't prevent that from happening.

Mrs. Smith-Law commented that she hates to beat the dead horse, in the big round but we have not been asked to discuss this Plant Road access. Your application asks us for a variance for the canopy. Period. If we start deluding into all this other stuff we are going to have these people come back for another meeting about something that we are not currently being asked to do. This is so far out of our area.

Chairman Hansen commented that we would not have to do that. All I am saying is we don't know, because we don't have the benefit of counsel tonight what the extent of the conditions are that we can apply to this. We certainly think we can apply some conditions and we have in the past. But, to what extent how far can we go with that.

Mrs. Smith-Law commented that I do understand that. I would think that the Planning Board will look at this curb cut and the T intersection and I just think we are reaching to put those kinds of conditions. We have done landscaping and noise barrier type things and move the sign a little bit but now we are talking about a canopy and somehow that's bringing in a curb cut. This is like apples and oranges to me.

Mr. Lewis commented that the rules in Halfmoon have been that you don't go to the Zoning Board until the Planning Board hears the proposal. They did discuss the Plant Road curb cut both times. The Planning Board is well aware of it and they know it is an issue. I think that if they had a problem with it they would not have sent us to the Zoning Board for a variance. That is why the process works that way in Halfmoon.

Mr. Brennan commented that Mrs. Zepko commented before that the Planning Board gave a general look at this and then realized it needed a variance. In anticipation of it going back to the Planning Board again, I can't necessarily speak for the Planning Board, certainly, but I don't know that I would agree with that fully. I think there has been precedence set before where the Planning Board has sent something to the Zoning Board knowing that a variance has to be given before they have given a full review. I think that is probably conjecture and it certainly is conjecture on my part.

Mr. Lewis commented, I apologize if it sounded like they gave a full review because they did not. It was discussed. It was not a full review.

Mrs. Zepko commented that this application, once it does start review and once it makes its way to the Planning Board, it is referred to the Town's Engineers for review and Mr. Lewis's Engineer and the Town Engineers will both bounce comments back and forth regarding concerns such as site distance, traffic, congestion within the site and movement throughout the site and deliveries. All of those issues are addressed during that comment period between engineering and review for our Planning Board and it is quite a lengthy process that results in several comment pages back and forth between our Town Engineer and the Engineer of the applicant.

Chairman Hansen commented that you are saying that none of this has been done up to this point.

Mrs. Zepko replied yes, that is correct.

Mrs. Jordan commented that it couldn't be done, it was denied to come here. No one has looked at any of that as of yet. Maybe it was looked at behind the scenes but not publicly.

Mrs. Zepko commented that in order to review a site they have to know what restrictions are placed on the site prior to being able to decide whether the site works or not and in this case it does require a variance in order to work as it is proposed. The Planning Board needed to know whether this variance request would have reached an approval from this Board before reviewing the site as being proposed right now.

Chairman Hansen commented that specifically we are being asked by one of the neighbors to impose a condition that would restrict the access to Plant Road or eliminate it as one of the conditions. It is up the Zoning Board to decide if they want to accept that or not.

Mrs. Smith-Law commented that she is uncomfortable imposing that condition and I completely understand those concerns but I think that is up to the engineers and the Planning Board to take a look at that. I think we should stick to what we are being asked to do and that is to look at the canopy.

Chairman Hansen commented is that everyone else's opinion as well?

Mr. Brennan commented that they are two different things. Imposing a restriction is one thing and I think being asked to look strictly at the canopy is another one. I will continue to offer that one of the measures on how it will remarkably change the characteristics and whether there is also a financially feasible way of doing this is something that we do have some jurisdiction over. Frankly if we were looking at three pumps there wouldn't be a variance required at all. But the applicant has already stated that it's financially not feasible for them, although we don't have any documentation on that. It will increase traffic. By virtue of the fact that they are increasing the size of the canopy, requiring a variance will by Stewart's submission, increase the number of vehicles going out of that facility and store.

Mr. Lewis commented that it would make it more efficient.

Mr. Brennan commented that this could very well be true that you will be more efficient from your store. I am not an expert on traffic so I can't speak inequitably towards that, but I would think that common sense and the community would agree with you that it would become more efficient coming out of the store. I am not worried about efficiency I am worried about numbers. Again, I will offer that the canopy and increasing the number of gas pumps will increase the number of cars going in and out of there. That is my concern to the point of jurisdiction over that and how that will remarkably change the characteristics of the neighborhood is something that I would wonder and want to seek extra comment on. I am one of five people and want to remind everyone of the obvious.

Chairman Hansen then commented that Mr. Brennan would want to see more documentation on the impact of traffic.

Mr. Brennan commented no, I am not interested in documentation of traffic. I will go back to what we said before and try to understand what our length of our jurisdiction is, if we have the ability to do that. I am not suggesting that we and I am not agreeing with anyone on the Board per say, I am not suggesting that we put restrictions or don't put restrictions. My sole question is what is our authority to do that? If we have authority in that, then I will be happy to put restrictions on it, as I am sure many other people on the Board would.

Mrs. Jordan commented that she is looking at 165-79 Section 3 of the Zoning Ordinance. "Imposition of condition: The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

Mr. Lewis commented that we would like to postpone this until you have legal council present and I will contact the owner of the property to see if he will extend the contract with us. Chairman, can you postpone the meeting please so you can have the benefit of council?

Chairman Hansen commented that he would prefer it that way.

Mr. Lewis commented, "Good lets do it!" I will ask for the extension of the contract and we will either get it or not.

Chairman Hansen commented that it's up to the rest of the Board to decide that. I have expressed my feelings. Chairman asked if there was a motion to adjourn to the next meeting?

Mrs. Jordan made a motion to adjourn a decision for the Stewart's proposal until the December 5, 2011 meeting when we have legal Council present. Seconded by Mrs. Smith-Law. Motion was carried unanimously.

Mr. Chris Marchand, 87 Button Road

Chairman Hansen commented that the last item on the agenda tonight is a request for a use variance for CGM Construction to build a storage building at 87 Button Road for equipment storage in a R-1 Residential zone.

Mr. Marchand was present with the proposal. Mr. Marchand commented that the parcel he is proposing the variance for is 1.8 acres. We are proposing a pole barn of approximately 7500 sq. ft. The adjoining neighbors are all C-1 Commercial: RJ Valente, MEI Construction and there are some residents to the north. We spoke to all the adjoining property owners and they were no opposition to our request to go there.

Chairman Hansen commented you are aware that this has to go to a public hearing.

Mr. Marchand commented that is he aware.

Mr. Higgins, Carey Road commented that the applicant has to meet the four requirements that have to be met for the first item that was on the agenda tonight also?

Chairman Hansen commented that yes, every applicant that comes before this Board for a use variance has to meet the four tests.

Mrs. Zepko commented that there are only four tests for the use variance. There was some confusion previously and I just wanted to state that for the record.

Mr. Burdyl commented where is the Valente operation in relation to your proposal north or south?

Mr. Marchand responded to the north Valente will be on the top of the hill on the left side.

Mr. Marchand presented a map to the Board. The larger parcel of 1.8 acres is where the pole barn building would be located. The smaller lot is where MEI Construction is storing some concrete. A subdivision was done when we purchased the 1.8-acre parcel. I now own the property.

Mrs. Jordan asked when the property was purchased.

Mr. Marchand commented that he purchased it about a month ago. The deed has already been recorded.

Motion was made by Vice-Chairman Tedrow to set a public hearing for Monday, December 5, 2011 at 7:00 p.m. and was seconded by Mrs. Smith-Law. Motion was carried.

The Board will be meeting at the site to view the property on Saturday, December 3, 2011 at 10:00 a.m. The Board asked Mr. Marchand to attend the meeting at the site. The file for Marchand has building plans but not a property map. Mr. Marchand will submit property map to the Board prior to the next meeting.

Motion made by Mrs. Jordan to adjourn the meeting at 9:00 p.m. and seconded by Mrs. Smith-Law. Motion was carried.

Respectively submitted by Denise Mikol, Secretary  
Town of Halfmoon Zoning Board of Appeals

