

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
January 3, 2011

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:05 p.m. on Monday, January 3, 2011 at the Halfmoon Town Hall with the following members present:

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

Motion was made by Mr. Rose and seconded by Mrs. Jordan that the minutes from the December 6, 2010 meeting be approved. Motion carried.

Motion was made by Mr. Rose and seconded by Mrs. Jordan that Mr. Tedrow be Vice-Chairman for the Zoning Board of Appeals for the year 2011. Motion was carried.

Motion was made by Mrs. Jordan and seconded by Mr. Burdyl that Mrs. Mikol be Secretary for the Zoning Board of Appeals for the year 2011. Motion was carried.

Motion was made by Mrs. Jordan and seconded by Mr. Burdyl that the calendar meeting dates and application dates be approved as presented for the Year 2011. Motion was carried.

Greg Massengale, 160 Woodin Road

Neither, Mr. Massengale nor his attorney, Mr. Imhof was present at the meeting. Chairman Hansen explained that the public hearing held on December 6, 2010 meeting was closed and that a final decision pending review by the Saratoga County Planning Board was adjourned to this meeting.

Chairman Hansen commented that the Board was waiting for a response back from Saratoga County Planning Board ruling on the decision of the use variance. On December 16, 2010 the Saratoga County Planning Board denied the use variance. If the Zoning Board Members choose to approve it must be by at least 4 voting members or the County's vote will supersede the Town's vote.

Saratoga County Planning Board's denial letter signed by Michael Valentine is attached.

Chairman Hansen commented that the Board would next go over the four use variance tests listed in Section 165-79 of the Town Zoning Ordinance.

"No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate the following to the Board of Appeals:

(1) That for each and every permitted use under the zoning regulations for the particular district where the property is located, the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

Mrs. Jordan commented that in fact, Mr. Massengale told us that with the one truck allowed to be kept on his property, he received a reasonable financial return. His return was so great that he went out and purchased the additional trucks. Mr. Rose commented that Mr. Massengale is aware that he is using the property above and beyond the intended R-1 use. We are not denying the use of the property as R-1 Residential.

(2) That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood:

Mr. Rose commented that the applicant, Mr. Massengale presented only one estimate for parking costs where he would have expected the applicant to seek other proposals as evidence for the hearing if indeed he was seeking to explain the hardship on cost factors and therefore did not demonstrate a hardship. The hardship was in fact self-created. Chairman Hansen added that except for the larger size of his property, that it was essentially similar in other respects to each of the surrounding residential properties.

(3) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

Mrs. Jordan commented that the essential character of the neighborhood would be significantly changed if Mr. Massengale were permitted to park his trucks on the property. The neighbors were at the public hearing and were not happy with the parking of the trucks. The neighbors had concerns with the safety, health and well being of their neighborhood if its character was changed and altered by parking the trucks there.

(4) That the alleged hardship has not been self-created.

Mrs. Jordan commented that the hardship was self-created in that Mr. Massengale was successful with one truck permitted. He then added 3 more trucks to his business without bothering to check to see or ask if expanding his business in this way was permitted in a R-1 Residential District. Therefore, it was totally self-created.

Mr. Rose commented that when listening to the applicant he stated that his livelihood was better with 4 trucks. Mr. Massengale had the opportunity to put together some cost factors for the parking of the tractor-trailer trucks at other locations and failed to do that. The evidence was not strong enough. He didn't prove a hardship; he missed his mark.

The Board of Appeals in the granting of use variances shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Chairman Hansen commented that the applicant clearly had no hardship as it relates to the legally permitted uses of his property.

WHEREAS, on October 18, 2010 an application was filed with the Zoning Board of Appeals of the Town of Halfmoon (the "Town") by Greg P. Massengale, owner, for approval of a use variance located at 160 Woodin Road in the Town of Halfmoon; and,

WHEREAS, the submitted site plan titled "Site Plan for Greg & Christina Massengale at 160 Woodin Road with a date of 9/2/10 and created by M. Besse Architect and depicts a four (4) tractor trailer truck parking area off of a shared private driveway on a 2.75 acre parcel SBL # 278.15-2-88 that is within the Town of Halfmoon's Residential R-1 zoning district; and,

WHEREAS, the Zoning Board of Appeals stated at their November 1, 2010 meeting that the parking of four tractor trailer trucks is not a permitted use in an R-1 Zone; and,

WHEREAS, a public hearing was held at the Town of Halfmoon Town Hall on Monday, December 6, 2010, where the applicant provided details supporting the application and neighbors expressed their opinions regarding the property of granting the use variance; and,

WHEREAS, the Zoning Board of Appeals considered all of the evidence and testimony presented regarding this application together with the standards as set forth in section 267 of the Town Laws of the State of New York; and,

WHEREAS, The Saratoga County Planning Board met on Thursday, December 16, 2010 and a resolution was made that this application be denied; and,

WHEREAS, a resolution was made that the Greg & Christine Massengale use variance request is denied by Motion made by Mrs. Jordan and seconded by Mr. Rose, motion was carried unanimously; and,

NOW THEREFORE, BE IT RESOLVED by the Zoning Board of Appeals of the Town of Halfmoon at its meeting of Monday, January 3, 2011 during regular session duly convened as follows:

- That the applicant has failed to demonstrate that an unnecessary hardship with regards to the necessity of parking multiple tractor trailers at the above referenced property in that competent financial evidence was not provided to prove that a reasonable return could not be made at the property without the parking of multiple tractor trailers; that the hardship is unique to the property in question when compared to the other properties in the neighborhood; that the application if granted would substantially alter the character of the neighborhood; and that the alleged hardship was in fact self-created.
- That the testimony as put forth by many of the neighbors demonstrated how granting the use variance would detrimentally affect the character of the neighborhood and that the alleged hardship was in fact self-created.

Country Drive-In, 1455 Crescent Vischer Ferry Road

Mr. Hugh Mariaca, owner of Country Drive-In was present to request an extension or enlargement of a non-conforming use to erect a covered patio in a PO-R district to allow customers to sit and eat in inclement weather.

Chairman Hansen commented that the Country Drive-In has been in existence since 1969 prior to zoning and has been added on since then.

Mrs. Murphy commented that this is a PO-R Professional Office / Residential district and the current use would be C-1 Commercial use. That is why there is a need for an extension of a non-conforming use.

Mr. Mariaca commented that only the left side of the building would receive a roof and the size would be approximately 480 sq. ft. The current hill would be flattened out and would make for a patio area with the extended roof from the building.

Secretary Mikol commented that an application was sent to Saratoga County Planning Board for their review and comment; it's on a County Road.

Chairman Hansen commented that if the members feel the application is complete we could proceed to set a public hearing for the next meeting.

Motion made by Mr. Rose and seconded by Mrs. Jordan that a public hearing will be set for Monday, February 7, 2011 at 7:00 p.m. to consider the application for the Country Drive – In at 1455 Crescent Vischer Ferry Road. Motion was carried.

Motion made by Mr. Rose and seconded by Mrs. Jordan to adjourn the meeting at 8:00 p.m. Motion carried.

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