

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

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

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

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

Hugh Mariaca, 1455 Crescent Vischer Ferry Road

The public hearing opened at 7:05 p.m. The proposal is for an enlargement of a non-conforming use for Country Drive-In in a PO-R Professional Office Residential District. Chairman Hansen commented that Jeff Burdyl is a voting member tonight because Mr. Rose is absent.

Mr. Mariaca is present. He is proposing to put a covered patio of 480 sq. ft. on the west side of the building at County Drive-In so that customers have an area to sit in bad weather. He further explained that there is a small hill. The area will be flattened out where the slab will be placed. Mr. Mariaca explained that the parking area will not change and the number of tables will not be increased. The over all site will remain the same. CGM Contractors will do the construction. The Board should have the construction plan, the property information on file.

Chairman Hansen asked if anyone in the audience had any comments, seeing that no one had any, Chairman opened questions up to the Board.

Mr. Burdyl asked where the storm water drainage would be going? Is it going into your current drainage system or will additional drains be installed.

Mr. Mariaca replied, that the roof has gutters and the water goes directly onto the ground.

Vice-Chairman Tedrow asked if Mr. Mariaca had any intentions of eliminating any parking spaces that are on the site now? Mr. Mariaca replied no, parking spaces will not be eliminated and tables will not be added to the site.

Mrs. Jordan commented that it was snowy when we were there for our site visit it wasn't really clear where the parking area was according to this site plan you have on file? Mr. Mariaca pointed out to the Board where the parking spaces were on the west side of the building. The perimeter of the building is all paved and stripped.

Mrs. Jordan asked if we had received any comments from Saratoga County Planning Board? Chairman replied that we did get a letter from them and they had no significant County-wide or inter-community impact.

Motion made by Vice-Chairman Tedrow to close the public hearing at 7:16 p.m. Mrs. Jordan made a second to the motion. Motion was carried.

Chairman Hansen commented that there are no specific criteria for approving extensions of non-conforming uses. If we go to Article XII on page 165-62 Section 165-66 Extension or enlargement. It states the following:

"No non-conforming use shall hereafter be extended or enlarged except following authorization by the Board of Appeals as a special extension and subject to the site plan review and approval provisions of Article VI which are administered by the Town's planning board."

Chairman Hansen further commented that this particular application has been before the planning board but they could not approve it until we look at for an extension or enlargement.

Mrs. Jordan asked if this would go back to the planning board after we approve it? Chairman Hansen replied yes. The planning board will look at all issues regarding parking or anything like that.

Chairman Hansen commented those are the criteria there are none for us to review it. Generally, keep in mind that there is criteria that applies to variances, but there is nothing specifically outlined in the ordinance itself regarding criteria's for extensions of non-conforming uses. Chairman asked the Board if they had any concerns with the application as far as its impact on the neighborhood?

Vice-Chairman Tedrow commented that the use of the site during optimal conditions, sun shining and not raining, that is not going to be changed. It will not encourage traffic its not taking away parking spaces that might be used. It just seems to me that the impact during the most stressful times will not be increased. There may be some more people patronizing the place when it's raining but that's not a peak time and I don't see it as having a significant impact on the neighborhood.

Chairman Hansen asked if there were any other comments by the Board. Having none the Chairman asked for a vote.

Mrs. Jordan made a motion for an approval for an enlargement of a non-conforming use for Country Drive-In at 1455 Crescent Vischer Ferry Road for a 480 sq. ft. covered patio on the west side of the building. Vice-Chairman seconded the motion. Motion was carried.

Chairman Hansen commented to Mr. Mariaca that he now has to go back to the planning board for final site plan approval.

### **Shawn Boschelli, 381 Hudson River Road**

Chairman Hansen commented that the proposal is for an area variance for a sign being proposed at 381 Hudson River Road for an in-home occupation for the Personal Training Studio in an M-1, Manufacturing District.

Mr. Boschelli was present and said he bought the duplex approximately 6 years ago and was approved for a Personal Training Studio. Mr. Boschelli commented that he was not aware that he needed an approval for his sign. His sign has been there for about 6 years and he just learned that it needs planning board approval.

Mr. Boschelli commented that he was approved for an in-home business. The business is not in his house it's technically in a separate building that is attached to the duplex in an M-1 zone. Kivort Steel is across the street and Momentive is down the road, a site plan should be on file.

Chairman Hansen asked if the actual zone is R-1 Residential? Mrs. Zepko replied no, it's M-1 Manufacturing.

Chairman Hansen commented that the map he has may not be the most current it is dated November 2001 and it says that it's an R-1 Residential District. Mrs. Zepko commented that the zoning is M-1 Manufacturing. Mr. Boschelli showed Chairman Hansen and the Board where the property was located on the zoning map, which is right near Lock 1 Road. It is clearly M-1 Manufacturing District.

Mrs. Zepko commented that he has a pre-existing non-conforming residential use with an in-home occupation of the gym.

Mr. Boschelli said he was approved for his business allowing him to have only 6 sq. ft. for signage. Mr. Boschelli said that his sign is 12 sq. ft. because it's double sided because of the road being such a high traffic area. Knowing this prior to getting approved he would have sought a variance. The sign is larger than allowed because its 2-sided and more than 6 sq. ft. That is why I am here.

Chairman Hansen commented that this is an interesting case. You are in a manufacturing zone and I would think that the manufacturing zone would apply for the sign regardless of whether he was a home business or not.

Mrs. Zepko commented that it would better if an Attorney interpreted that. Chairman Hansen commented that it's kind of crazy for an in-home occupation in a manufacturing zone when he is living there.

Vice-Chairman Tedrow commented that if he were to move out he could reapply for a regular manufacturing use.

Mrs. Zepko commented that the gym use may not be an allowable use in a M-1 Zone. Even if he did move out there is still another apartment there. Vice-Chairman Tedrow commented that you would still have to extinguish the residential uses.

Chairman Hansen commented that the existing non-conforming use is the house part. Mr. Boschelli commented that the gym has its own parking lot and driveway. At one time it was a bus garage, then a wood working shop, and now it's a gym. Chairman Hansen commented that it's a unique situation but I don't see why that should be an impediment to approving a sign.

Mrs. Jordan would like clarification because I know of another instance that may come before the board in the next few months and maybe we do need to have an attorney look at it.

Chairman Hansen read the Planning Board denial letter: Resolution of denial says it does not conform to the town's sign ordinance with regard to Article 10 Section 165-49 .A3 which only applies in residential districts. That whole section applies to residential districts. Chairman Hansen commented that he is not in a residential district he is in an M-1 District. Mrs. Jordan commented that she reads it that way too.

Chairman Hansen commented that we could still make interpretations of the ordinance that is why we are here. Either the building department or the planning department makes a decision that the applicant chooses to appeal we are the appeal board. That is what we are and we would need an interpretation. We could have our attorney come to the next meeting and offer her suggestions. This section applies to a R-1 district. Even in a residential district it says business signs so long as related to an approved or a pre-existing non-conforming use.

Mrs. Zepko commented on the e-mail definition of a name plate or identification sign that pertains to in-home occupations.

Mrs. Jordan commented that this section applies to an R-1 district. It's not an R-1 District.

Chairman Hansen commented that 10-15 years ago we issued a variance to them. Mrs. Mikol replied yes, it was for a second dwelling which then made it a duplex and a real estate office in-home occupation as well.

Chairman Hansen commented that he didn't necessarily agree that he couldn't have or prohibit him from having an in-home occupation in the M-1 District because you could have a residential dwelling when incidental to the primary use. Even though it's not strictly listed as a permitted use in the district doesn't mean it's a prohibited use. Chairman Hansen asked the Board if they were ready to proceed to a hearing?

Mrs. Zepko stated that residential uses are permitted in C-1 Zones when incidental to the principal use upon issuance of a special use permit.

Vice-Chairman Tedrow made a motion to set a public hearing for Monday, March 7, 2011 at 7:00 p.m. for a proposed sign at 381 Hudson River Road for an in-home occupation for Personal Training Studio. Seconded by Mrs. Jordan. Motion was carried.

Chairman Hansen commented that the public hearing would be interesting and will help and guide us in our decision-making. The Board will meet the Saturday before the meeting on March 5<sup>th</sup> for a site visit.

Motion made by Mr. Burdyl to close the meeting. Seconded by Mrs. Jordan.  
Motion was carried.

Meeting closed at 7:45 p.m.  
Respectfully submitted by  
Denise Mikol, Secretary  
Town of Halfmoon Zoning Board of Appeals