

Town of Halfmoon Zoning Board of Appeals  
Meeting Minutes  
September 6, 2011

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:05 p.m. on Tuesday September 6, 2011 at the Halfmoon Town Hall with the following members present:

Members: Mr. Tedrow, Mr. Rose, Mrs. Jordan

Alternates: Mr. Burdyl

Town Board Liaison: Paul Hotaling

Secretary: Mrs. Mikol

Chairman Hansen commented that Mr. Brennan and Ms. Smith-Law would not be present tonight. Mr. Burdyl, Alternate would be voting tonight.

Motion was made by Mrs. Jordan and seconded by Mr. Burdyl that the minutes from the August 1, 2011 meeting be approved. Motion carried.

Chairman Hansen explained that this is an agenda meeting tonight. If the Board determines that your applications are complete we will entertain a public hearing at the next meeting of October 3, 2011.

***John Forino, 14 Upper Newtown Road***

The proposal is for a use variance at 14 Upper Newtown Road to subdivide a property and use a barn for a welding shop.

Mr. Dwayne Rabideau, VanGuilder Associates issued site location maps to the members of the Board and explained that the use variance was for a welding and fabrication shop in an AR zone at 14 Upper Newtown Road. The welding and fabrication shop is for Mr. Forino for his current business. He is the sole proprietor. Mr. Forino owns an existing metal building that is located next to the railroad tracks on his parcel. Mr. Forino owns the home in the front and would like to work out of the shop in the back, there will be no changes made to the building. Mr. Forino's business is comprised of welding and fabrication for local developers; 75% of it is done on construction sites with a full service truck. The part of the business that would be done at the metal building is very small. He buys the steel from Kivort Steel on an as needed basis. It is not delivered to his site. We are requesting an LI-C use variance in an AR zone.

Mr. Rabideau explained that Mr. Forino is before the Planning Board for a subdivision to create a parcel around the metal building. The parcel is surrounded to the east by railroad tracks, north by Upper Newtown Road where the house parcel is located and, across the street is parcel that Mr. Forino owns right to the tracks and the canal. We feel that our request is appropriate and a low impact and would have a nominal effect on the neighborhood.

Chairman Hansen stated that the actual zone of the parcel is AR for the house parcel. Apparently the official map for the Town shows it is AR. There is a draft map that is for limited use it is drafted 2008 which shows that lot as LI-C.

Mr. Rabideau commented that the current map he has is from a brand new Zoning Book that he purchased from the Town Clerk's Office.

Chairman Hansen commented that the map they are selling in the zoning book is the wrong map it's just a draft and was not officially adopted yet. There is an error in that. I asked the Planner, Jeff Williams, and he told me that he spoke with Mr. Bianchino from Clough Harbor and Associates and he said that the zoning map was never officially adopted by the Town Board.

Mr. Rabideau commented that running concurrent with the use variance was go through the subdivision process. We were going to initially do the lot line adjustment for the parcel around the house and we were going to expand it and include the building but we were informed that the mixed use is not permitted so that leads to what your saying and they always thought it was AR. We just discovered with this map that it was labeled LI-C. We now have to re-work it and keep the house parcel separate and just create this 3-acre parcel and request the use variance for that parcel itself. It's not whether the house is LI-C or AR it doesn't make a difference to us we will just adjust it to make it work.

Chairman Hansen asked how long has the shop building been there?

Mr. Rabideau replied it has been there many decades. It was the former owner's business building. The train would drop off fertilizer there and it would be distributed from there.

Chairman Hansen asked was the former property owned Mr. Robert Jennings?  
Mr. Rabideau replied yes.

Chairman Hansen asked how long was Mr. Jennings in business?

Mr. Rabideau commented that Mr. Forino bought the property and the house and the buildings were already there.

Chairman Hansen asked if Jennings was the owner when he bought the property? Mr. Rabideau replied yes. This may qualify as an existing non-conforming use. That would have to be established to proceed in that direction. It would depend on how long it sat vacant.

Mr. Burdyl commented that it was vacant for 30 years since Jennings went out of business.

Mr. Rose asked if the fertilizer business was permitted in the AR zone?

Chairman Hansen commented that the uses permitted are farms.

Mrs. Jordan commented that the fertilizer business is not a farm. So is the fertilizer business covered under LI-C which then is a possibility that it could go in the vein of a pre-existing non-conforming use?

Chairman Hansen commented that it would be a permitted special use. If you look under Article V Use Regulations Section B "Uses permitted upon issuance of a special permit by the Planning Board subject to the site plan review and approval provisions of Article VI, Item 10 states "Farm-related uses: farm equipment sales, feed storage, agricultural processing plants." It would not include the welding. So it is still AR. The fertilizer use could be a special permitted use but not the welding. Although it doesn't specifically state fertilizer it mentions farm equipment sales, feed store, and agricultural processing plants.

Mr. Rabideau commented that Mr. Jennings also had an excavation business there if that has any bearing on anything.

Chairman Hansen commented that he was aware of the trucks and the lime spreading being there.

Vice Chairman Tedrow commented that one of the requirements that we have to look at when considering a use variance is "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." In other words, you have to show you can't earn a living or get a return on your investment if you're forced to make one of the permitted uses of the property.

Mr. Rabideau commented that the issue of why he is asking for the use variance is obviously that the economy is still very slow right now and still very fragile. Mr. Forino has a shop in Stillwater and basically since he works for developers and the developers have cut back, Mr. Forino has cut back. It is one of these situations that it's hard to run a business on a smaller scale and maintain a smaller shop in Stillwater. His home is on Lower Newtown Road. With the existing shop building located behind his house he can get his overhead under control due to the constraints of the economy. It is a situation of possibly going out of business. By moving here from Stillwater to his own property he can save on overhead and consolidate his operations.

Mrs. Jordan commented that the applicant acquired the property in 2007. Has that building not been used all that time by him?

Mr. Forino commented that it has storage in it. It just sits there.

Mr. Rose commented that for our purpose we are deeming the parcel with the house zoned AR and the zoning map indicates that it's LI-C.

Chairman Hansen commented that the railroad tracks are to the east the rest of the parcel between the old Canal, which is everything shown on the map to the left of the railroad tracks, is AR and to the left is LI-C and to the east is LI-C. Basically it's LI-C to the east and just south of Upper Newtown Road is the remainder of the Jennings Property. Apparently at one time it was on both sides of the track.

Mr. Rose asked if this map dated 2008 is currently up for approval or adoption? I ask this question because of the type of variance requested and that property's zoning is important to us acting on this request; knowing which map is which. It's the basis for our decision making.

Chairman Hansen commented he is talking about subdividing out a portion that is AR. The map shows it is only the house portion in question at this point. It's not debated that the rest of this parcel where the building is, is an AR zone. See everything except that house is definitely in an AR zone. No one is arguing that. It's only where the house parcel is and in fact it also includes a driveway to the new parcel.

Mr. Rabideau commented that there was a natural strip in the AR zone from the road back to this building. A 30' strip was left between the house and the railroad tracks and apparently a 60' strip from the house going towards the canal, which was all A-R zoned.

Chairman Hansen commented that he doesn't quite understand the house's parcel. What is the history of that parcel and when was it created?

Mr. Rabideau commented that the parcel was created by subdivision in 2005 by David Flanders.

Mr. Rose asked if it was carved out as LI-C?

Mr. Rabideau commented that he did not know how it was designated as LI-C.

Vice-Chairman Tedrow commented that it's backwards. The parcel with the house is LI-C and the parcel with the potential LI-C building on it is AR.

Mr. Rose commented that the set of facts is very confusing because there are no facts. Mr. Rose wants to establish what the facts are before we move forward.

Mr. Rabideau commented that the confusion is strictly on the house parcel as to whether it is LIC or AR. I don't think it has a bearing on our building that we are requesting the use variance for. I think everyone is in agreement that it's in an AR zone and the house parcel is not really part of this. There is confusion with the Town mapping on the house parcel. As far as our request it has no bearing because originally we were going to add the house with the building and Town Planner, Mrs. Zepko told us that you couldn't do that. Mrs. Zepko explained to us that we could not do a lot line adjustment that a subdivision would have to be done. That is what we did and it was presented to the Planning Board at the August 22, 2011. With that we said ok that both parcels are AR, we just discovered that the house parcel may be zoned LI-C today.

Mrs. Jordan commented that it would have a bearing on our decision. As to what the house parcel is, in order for us to decide if we can change what the use is where the building is. It is an easier decision for us to make if the house parcel is LI-C.

Mr. Rabideau commented that we basically came in under the worst-case scenerio this is something we just discovered today. This will help our cause. There is no question about it.

Mrs. Jordan commented that it would be really important to clear this up before we can act.

Mr. Burdyl commented that the Flanders subdivision was a minor subdivision. Was it for 4 lots?

Mr. Rabideau commented that it was a minor subdivision and the house parcel predates the balance of the lots.

Chairman Hansen asked do we know whom the owner of record is for the other 2 lots that are carved out of the bigger parcel?

Mr. Rabideau commented that Donna and John Forino own those lots as well.

Mr. Forino commented that when the property was bought there was an agreement that Mr. Forino pays for 2 lots to be subdivided for the Jennings when Mr. Jennings was alive. When Virginia Jennings decided that she could no longer live in the house and moved into an apartment she sold the lots to Mr. Forino.

Mr. Burdyl commented that Mr. Forino actually bought the house lot in 2005 and the balance of the land was subdivided in 2007.

Mr. Rabideau commented that Mr. Forino bought the other 2 lots in April 2010.

Mr. Rose commented how much of the property will be used as a steel fabrication business? Will there be steel laying out there? If people were to buy the property behind, which is AR zoned, they would have to stare at steel lying outside. There is 3 acres, will any potential landowner be looking at a steel plant?

Mr. Forino commented that the building is big enough to store whatever he needs. As far as inventory goes...the cost of steel is very high and with the economy the way it is I don't have the funds to keep steel in storage. I only buy it from Kivort Steel when I need it. It's just not profitable to store steel. I am in a smaller direction right now; I generally go to job sites because I work for developers.

Mr. Rose asked if there would ever be an expansion on the building?

Mr. Forino commented that the existing building is about 1500 sq. ft. and I really don't need anything larger than that. It's cheaper for me to use a building on my property that already exists than to start from scratch.

Mr. Rose commented that he was just trying to get a usage plan from Mr. Forino for the property with the building on it.

Chairman Hansen asked the Board if they felt they had sufficient information on this to set a public hearing?

Mr. Rose commented that if your telling us it's zoned A-R and that should be the premise we should be using, we are all in agreement with that. If it changes then it might not be a use variance depending on what type of variance we grant.

Chairman Hansen commented that the applicant is requesting a use variance. That would be the test that we would have to use.

Mrs. Jordan commented that we need a definite answer from our Town Attorney or our Town Board what the house parcel is actually zoned before we assume what it is.

Chairman Hansen asked the Board if he sent Mr. Williams response to each member for their view?

Secretary Mikol commented that there is a copy of the email in the folder.

Chairman Hansen will resend the e-mail from Mr. Williams. The e-mail included a request to Michael Bianchino, Clough Harbour & Associates for an updated zoning map. It's an on-going process. Whenever a new subdivision comes in to town the map has to be updated. There were also several mistakes made that had to be updated. When the Town Board adopts Planned Development Districts the map has to be updated again. The last official changes that were made to the zoning ordinance were 2005. The official zoning map should reflect what was adopted at that point. Changes to parcels here and there all need to be reflected on the new map as well. I don't know if anyone has a definitive answer of that one parcel and how it came to be changed. It makes no sense. Why a small piece of it where the house is was changed to LI-C and the big parcel around it was A-R. It's not directly adjacent to the existing LI-C.

Mrs. Jordan commented that she agrees but I wouldn't like to make a determination unless I know what the proper zoning is officially.

Chairman Hansen commented that we would look into it and see what Mr. Williams has sent us; it may not give us a definitive answer. If anyone can give us the why to that answer of why that particular parcel got changed on the draft map. I don't know if anyone will have that answer. So far, it doesn't seem like anyone can find the reason why.

Motion made by Vice-Chairman Tedrow to set a public hearing for Monday, October 3, 2011 at 7:00 p.m. for a use variance for Mr. Forino at 14 Upper Newtown Road with the understanding that information will be available at the hearing for the reason why the house parcel is LI-C and the 15-acre parcel behind is A-R zoned. Seconded by Mr. Burdyl. Motion was carried.

Mr. Rose asked the applicant to come prepared for the use variance test worse case scenario. We can't tell you what to come prepared with.

Mr. Rabideau commented that we initially came with the understanding that this should be treated as worse case scenario.

Chairman Hansen commented that I should point out to you that the basis in the granting of a use variance. It's not the applicant's personal financial hardship that is the determinant it's a hardship that would apply to anyone that would own that land. Basically you have to show that the land could not be used for any other permitted uses in our zoning ordinance. Another words, if you can use it for anything listed there a single family home and all other uses permitted there.

Chairman Hansen further commented that it is a tough argument to make for many parcels. It's not based on individuals. It's not based on Mr. Forino's hardship in this particular case that his business isn't doing well. It's why that parcel cannot be used in a way he could sell it for profit or use it for an existing use. So that is the argument you have to make. A lot of people think it's an individual thing and that it's personal. It's related to the property and it's related to anyone that would own that property whether they are in business or not.



***Valerie Parker, 444 Route 146***

Chairman Hansen commented that the applicant is here for an extension of a formally existing non-conforming use. A building that was used for a single family home and then used for several years as a beauty parlor. The house is now being rented by a family member as a single-family home.

Ms. Parker commented that she purchased the beauty parlor in December 2000 and closed the business in 2006. It has been vacant and empty for a while then it was used for office space and paperwork.

Chairman Hansen asked Ms. Parker to explain to the Board what the situation was when she tried to sell it.

Ms. Parker explained to the Board that it is zoned C-1 commercial and it was put on the market 4 years ago. The original realtor had it prices extremely high because she thought it would sell. Since then I have dropped the price several times. It's finally at a price where it should be. I have an offer on it but the person interested in purchasing the house would like to use it as residential property. For 4 years I have been paying on the empty building and I can't sell it commercially but now I have an offer as an R-1, residential home. I would like to put it back to what it was so I can sell it.

Vice-Chairman Tedrow commented that the house was used as a beauty parlor. Did anyone ever live in it while it was a beauty parlor?

Ms. Parker stated no. It was strictly a hair salon. Everything will remain as is.

Mrs. Jordan asked Ms. Parker if she changed the use when she purchased the property. Ms. Parker replied yes. It was a single-family home. Everything was upgraded including the wiring, the plumbing, and the home itself.

Mr. Rose asked if all the adjacent properties are C-1 commercial? Ms. Parker replied yes but all the homes around it are all single-family homes. There are families all around it and across the street. The lots are small and trailer park is behind all the homes.

Mr. Rose asked if the owners of the homes are living there or if they are all renters. Ms. Parker replied yes they are homeowners. The homeowners would like the use to stay residential. The people that live there have been there for many years.

Mr. Rose asked why the zoning is C-1 commercial if the area is used for R-1 Residential uses?

Vice Chairman Tedrow commented that is C-1 commercial because of the road Route 146.

Mr. Rose commented that Ms. Parker is essentially just asking us for a variance for the home to be residential again. All the homes there now are pre-existing non-conforming uses.

Chairman Hansen asked Secretary Mikol about the letter that Mr. Watts sent to Ms. Parker. He suggested that she apply to the Zoning Board for an extension of a non-conforming use. The letter stated that my belief is that asking for the change of use rather than rezoning your property would be the best scenario for you and for the town.

Mrs. Rose asked if the property was ever used as a residential use.

Ms. Parker replied yes it was residential until I bought the property in 2000.

Mr. Rose asked if Ms. Parker asked for a re-zone at that time?

Vice-Chairman Tedrow commented that she converted it from a non-conforming use to a conforming use because it is in a C-1 zone.

Mr. Rose commented that this is a grey area of an extension of a non-conforming use.

Chairman Hansen commented that in Mr. Watt's letter he references that in our ordinance "when any presently non-conforming use of and/or building has been discontinued or has not been in use for two years, the land and buildings shall thereafter be used only in conformity with this chapter, except that the Zoning Board of Appeals, after a public hearing, may permit the resumption of said non-conforming use." Technically according to his letter she should be applying for a pre-existing non-conforming use. Because what could happen if we granted a variance for Ms. Parker?

Ms. Parker commented that if the new owner wants to use it as residential and doesn't care he would be fine.

Chairman Hansen commented for right now nothing is ever permanent. You could pursue that route. We approved one recently that was zoned a residential use and it had been used commercially before and they wanted to go back to commercial.

Mr. Rose commented that you want to sell it as residential so asking for an extension of a non-conforming use, or a resumption, would give you exactly what you are asking for. The application would have to be revised. You are asking us to make a determination then you are limiting yourself and your buyer. We have the power, based on the facts, to determine whether a resumption of a non-conforming use could be granted.

Chairman Hansen commented that based on what I told Mr. Forino a little while ago you have a good argument, you are almost a perfect example of someone having the proof that you can't sell it for what it's zoned for. There are people out there, not now, not today, but there were years ago that were willing to buy it. You grew up in that area so we know what is going through the strip of homes one by one, they are going to commercial. The economic condition is stopping it right now but someone will come up with the money in the future. At some point the entire strip, door to door, will eventually go commercial and not put up with the traffic anymore.

Chairman Hansen commented that the application you need to fill out is called an extension of non-conforming use. Technically the commercial zoning has been there for a long time. The Dworak Family when they sold it to Ms. Parker, they were living in it, they passed away and then the son and sister of the heirs sold the property legitimately to Ms. Parker to use as a beauty salon in a commercial zone. Up to that point it was being used as a residential use. Basically this will put it back, if you apply for that, to the way Ms. Parker bought it. It will not prohibit them using or selling it as commercial property because it is in a commercial zone. If you re-zone it to residential then you would have to go through the process again if you ever want to use it commercially in the future.

Chairman Hansen commented that based on a new application being received the Board could entertain a motion to set a public hearing.

Ms. Parker asked if the new application had to be seen by the Board Members before setting it for a public hearing.

Mr. Rose made a Motion to set a public hearing contingent that she modify the existing application in process for a pre-existing non-conforming use for Monday, October 3, 2011 at 7:00 p.m. Seconded by Mrs. Jordan. Motion was carried.

Chairman Hansen commented that the Board Members would meet at the property the Saturday before the meeting on October 1, 2011 at about 9:00 a.m.

Mr. Rose made a Motion to adjourn the meeting at 8:10 p.m., seconded by Mrs. Jordan. Motion was carried.

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