

**Town of Halfmoon Zoning Board of Appeals  
Meeting – Tuesday September 5, 2017  
7:00 PM**

Chairman Curto called the meeting to order at 7:04 PM on Tuesday September 5, 2017 at the Halfmoon Town Hall with the following members present:

Members- Chairman Curto, Mr. Hansen, Mr. Burdyl (absent), and Mr. Gemellaro, Mr. Koval  
Alternate Member - Mrs. Paluocci, Mr. Griggs (absent)  
Planner - Mr. Marlow  
Town Attorney – Lyn Murphy

*Motion made by Mr. Hansen and seconded Mr. Gemellaro by that the minutes of August 7, 2017 be approved as presented. Motion was carried*

**Public Hearing:**

**Zepko Shed, 72 Somerset Drive- Area Variance**

Ms. Lindsay Zepko presented the application. The applicant is before the Board seeking approval to construct a new 24'x 24' shed in the front yard of the property. Due to the topography and location of the home on of the property, they cannot locate the shed behind the existing home and as a result would like to be just in front of the house but still beyond the building setback. They are before the Board seeking variance for an accessory structure in the front yard

Mr. Koval asked if there was any other place to locate the shed; Ms. Zepko explained that due to topography they were limited as to where they could put it, if they put it closer to the house they would cut off access to the rear of the lot and would not be able to meet separation requirements of the building code.

No one from the public chose to speak.

Chairman Curto closed the Public Hearing closed at 7:12 PM

A site visit occurred on August 26, 2017 at 9am

Pursuant to Article XIV Section 165-79 the following resolution was made:

- 1) Mr. Koval commented: No, due to the unique nature of the flag lot, it will not be a detriment to the area;
- 2) Mr. Gemellaro commented: No due to the topography, it can't be placed anywhere else;
- 3) Ms. Koval commented: No, it's just a shed;
- 4) Mr. Hansen commented: No, it will not have a significant impact;
- 5) Mr. Koval commented: No, they were not the ones who graded the lot.

*Mr. Gemellaro made a motion to approve the Area Variance, seconded by Mr. Hansen. Motion was carried.*

**The Garage Sale, 45 Route 146- Use Variance**

Ms. Lisa Cooper presented the application. The applicant is before the Board seeking a Use Variance to allow for retail sales of merchandise within an A-R zoning district. The facility on site is a pre-existing non-

conforming use which previously held a commercial warehouse and distributor (Santoro Warehouse); the proposed retail use does not fall within the parameters of the approved pre-existing non-conforming use of the site. They are requesting a Use Variance to allow for C-1 uses within an A-R zoning district.

Mr. Koval asked for clarification regarding the Saratoga County Planning Board's determination on the application. Mr. Marlow explained that the Board issued a determination being no significant county wide or inter community impact with suggestions that the Town re-evaluate the area surrounding this to determine the existing uses. Should the existing uses largely be commercial, the Town should look to potentially re-zone the area to better suit the existing uses.

Ms. Murphy explained that at this time, the Town is looking to re-zone areas of Town and this would be one of the areas that is being considered for re-zoning.

Mr. Koval asked what the previous uses of the site were; Mr. Victor Santoro explained that prior to being vacant the site operated as a lighting store, a gas station.

No one from the public chose to speak.

Chairman Curto closed the Public Hearing closed at 7:20 PM

A site visit occurred on August 26, 2017 at 9:30am

Pursuant to Article XIV Section 165-79 the following resolution was made:

- 1) Mr. Koval commented: Based on documentation, they have not been able to make a reasonable return;
- 2) Mr. Hansen commented: It is unique as the surrounding areas are C-1 and this is not, an exception would apply in this case;
- 3) Mr. Gemellaro commented: Based on the past uses, it would not alter the surrounding area;
- 4) Mr. Hansen commented: That's true, he's been using it for what it's allowed to do, and this is just a continuation that if we allow this to be done.

*Mr. Gemellaro made a motion to approve the Use Variance, seconded by Mr. Hansen. Motion was carried.*

### **New Business:**

#### **Synder's Restaurant Subdivision, 2 Cemetery Road- Area Variance**

Mr. Jeff Williams presented the application. He explained that he is before the Planning Board seeking approval to subdivide the existing parcel at 1707 Route 9 in order to create two new lots. One of the proposed lots will have the existing Synder's Restaurant, but due to the pre-existing nature of the site, the building would not be able to meet today's setback and they are before the Board seeking area variances as it relates to setbacks.

A Site visit will occur on September 30, 2017 at 9:00am.

A Public Hearing will be held on October 2, 2017.

*Mr. Gemellaro made a motion to have a Public Hearing on October 2, 2017, Mr. Koval seconded. Motion was carried.*

**Santy/Tracy Apartment, 9 Terminal Road- Expansion of Pre-Existing/Non-Conforming Use**

Ms. Lis Santy presented the application. They are before the Board seeking an extension of a pre-existing/non-conforming use for the existing four unit apartment building at 9 Terminal Road. The Town currently classifies the residence at 9 Terminal to be a three family home, but the building has traditionally been operating as a four unit home and wishes to be approved to do so. They are before the Board requesting formal approval to operate as a four unit building

Chairman Curto asked if they purchased the building as a four-unit; Ms. Santy said that yes they purchased it as a four-unit.

A Site visit will occur on September 30, 2017 at 9:30am.

A Public Hearing will be held on October 2, 2017.

*Chairman Curto made a motion to have a Public Hearing on October 2, 2017, Mr. Gemellaro seconded. Motion was carried*

**Old Business:**

**Appeal from Enforcement Officer's Determination- Fairway Meadow's Brew Pub- Zoning Interpretation**

Ms. Jackie White presented the application. They are before the Board appealing the determination by the Director of Code Enforcement of whether or not a "Brew Pub" is an allowed use in an area zoned Agricultural-Residential in accordance with the Building Code. They summarized the two letters from Mr. Micklas dated May 30, 2017 and June 4, 2017, together with two letters from the Director of Code Enforcement responding to Mr. Micklas' letters. Ms. White cited section 165-9 of the Town Code and the allowed uses, none of which included a "brew pub" in their opinion. They stated that the Fairways of Halfmoon states that the brew pub is an expansion of the gold course; the applicant feels this is not in fact true, rather this is a manufacturing use and they will be manufacturing product to sell, which is not an allowed use within this zone.

Mr. Gemellaro asked the applicant what their understanding of the role of the Code Enforcement officer was; Ms. White responded that it is his role to issue determinations based on the code.

Mr. Gemellaro asked if their client specifically asked about the Building Code, Ms. White stated that he use the term "building code" as a lea person trying to put this before the Code Enforcement officer.

Mr. Gemellaro asked the applicant what is your understanding/what sort of matters can the Code Enforcement pass judgment on?, Ms. White stated it is his role to interpret the code and if someone should request his determination and not agree with it, it is up to the Zoning Board of Appeals to review the determination.

Mr. John Henry, on behalf of the Fairway Meadows stated that is an approved use, has had additions approved and is approved to sell beer and maintain a pro-shop. He noted that there is no dispute by the applicant over whether or not you can sell beer there, or if the restaurant is okay; so there should be no reason to dispute the brew pub. The applicant referenced the building code in their appeal letter, and they are now looking to transform it to an appeal under the zoning code.

Chairman Curto stated that the Town does not have anything like a "brew pub" at this moment, so it's a new concept for the Town.

Mr. Henry stated that just because they call it a “brew pub” doesn’t mean anything, they may sell beer made on site or beer brought in; it’s somewhat like the difference between a restaurant, bistro and café; where the specific terms don’t make a difference for zoning. Calling a bar in the golf course a brew pub does not change it for zoning purposes.

Ms. White stated that it is more than a restaurant, they’re manufacturing beer on property which is not normal of a typical restaurant, and additionally they will be selling growlers onsite; where people can come in and buy them. They are manufacturing beer that can be sold in growlers to be brought off site.

Mr. Henry stated there is no evidence that there will be large amounts of beer sales on site, it is intended as an ancillary use to the existing business. It is very common for restaurants around the area to brew their own beer.

*Mr. Koval made a motion to uphold the determination made by the Director of Code Enforcement, seconded by Mr. Gemellaro. Motion was carried.*

*Mr. Gemellaro made a motion to adjourn the meeting, seconded by Mr. Koval. Motion was carried.*

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These are summary minutes and are not word for word at the request of the Zoning Board of Appeals. A copy of the recorded tape is available by F.O.I.L. through the Town Clerk.

Meeting adjourned at 7:56 PM.

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