

Town of Halfmoon Zoning Board of Appeals  
Meeting Minutes  
January 7, 2013

Chairman Rose called the meeting to order for the Town of Halfmoon Zoning Board of Appeals at 7:07 p.m. on Monday, January 7, 2013 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Hansen, Mr. Rose, Mr. Brennan  
Member Absent: Mrs. Jordan  
Alternates: Mr. Burdyl, Mrs. Smith-Law  
Town Board Liaison: Walter Polak, absent  
Town Attorney: Mr. Chauvin  
Town Planner: Mrs. Zepko, absent  
Secretary: Mrs. Mikol

Chairman Rose stated that he wished there were more people in the room to honor the 43 years of service Mr. Hansen has given the Town of Halfmoon as Chairman of the Zoning Board of Appeals with a round of applause. You, in the Town, have been one of the most unnoticed names but probably has the most impact of anybody that I know. Mr. Hansen, as your friend and your colleague, thank you on behalf of the Town of Halfmoon and this Zoning Board, the folks sitting around the table, and in the audience. This is not something we should take lightly. My hats off to you. I hope that it's been with great thought and pleasure that you've made this decision. Now you will be in your retirement phase a little bit more because you don't have to deal with this. On behalf of everyone here thank you so much (everyone stood and applauded Mr. Hansen) because I think it's that important.

Mr. Hansen thanked everyone and commented that he enjoyed working with all of you and I will continue to work with all of you as a board member for the next couple of years until my term runs out, I am looking forward to that too. Thank you very much.

Chairman Rose commented that Mr. Hansen is a man of few words but they are very effective words and they are long lasting.

Motion was made by Vice-Chairman Tedrow and seconded by Mr. Brennan that the minutes from the December 3, 2012 meeting be approved. Motion carried.

Motion was made by Mr. Hansen and seconded by Mr. Vice-Chairman Tedrow to have Mr. Burdyl voting tonight as alternate, Mrs. Jordan is not present. Motion was carried.

Chairman Rose commented that we would now do a few 2013 housekeeping items:

Motion was made by Mr. Hansen and seconded by Vice-Chairman Tedrow that the Board unanimously approves the 2013 - Meeting Schedule and deadline dates. Motion carried.

Motion was made by Mr. Hansen and seconded by Mr. Brennan that Mr. Tedrow be our Vice-Chairman for 2013. Motion was carried.

Motion was made by Vice-Chairman Tedrow and seconded by Mr. Hansen that Mr. Rose be our Chairman for 2013. Motion was carried.

Motion was made by Mr. Hansen and seconded by Vice-Chairman Tedrow that Mrs. Mikol be the secretary for the Zoning Board of Appeals for 2013. Motion carried.

Motion was made by Mr. Hansen and seconded by Vice-Chairman Tedrow that the Board of Appeals follows 267 Article 16 of the Town Law to conduct their duties, rights, powers and functions as a Board. Motion was carried.

Chairman Rose opened the public hearing at 7:15 p.m. Chairman asked Mrs. Mikol if the neighbors were properly notified and if the receipts from certified mail were received.

Mrs. Mikol replied yes to both.

### **Victor Santoro, 45 Route 146**

Mr. Jason Dell, Lansing Engineering stated there are two separate variance requests. The project location is at the intersection of Farm-to-Market Road and Route 146, where the road intersects and creates a triangular parcel of property. The parcel is approximately 2.86-acres currently zoned AR – Agricultural-Residential.

The existing facility is 6,600 sq. ft. warehouse distribution building operated by Sanson Snacks Distributors. The existing use is pre-existing non-conforming. The front yard setback is 70' to Farm-to-Market Road.

The proposed project is to add a 13,978 sq. ft. warehouse to the site to expand business opportunities for the existing operation. There will be one access to the site off Route 146, the water service will be provided off Route 146, and the sewer connection will be made from the proposed warehouse to the existing line on Route 146. Stormwater management will be handled on site in accordance with NYS DEC Standards.

Mr. Burdyl asked if they were proposing all underground storm drainage from the proposed building to the holding pond. Is there an outlet to the road?

Mr. Dell replied, yes that is correct. It will all flow to the stormwater management area. Ultimately the stormwater will drain to the required DEC stormwater management area.

Mr. Brennan commented that when we did the site visit on Saturday, January 5, 2013, the person that was representing your firm, sorry I don't remember his name, and went over the exact drawing that you have shown tonight. However, he mentioned that there were some things on the drawing that were for illustration purposes only. It made me think about this because Mr. Burdyl just mentioned the drainage area and that it was not finalized yet. Is the drainage or the top logical position there been finalized yet? Is there anything else on the drawing that is there only for illustrative or general presentation purposes?

Mr. Dell replied the detailed drainage analysis and design would be worked through in the future with CHA Engineers. As we go through the design process CHA will have comments and suggestion of the design. We have to look to NYS DEC for design approaches for stormwater management standards that will include tree plantings, stormwater and permeable asphalt. There are several items that will be scrutinized by DEC. So the exact size of the stormwater, drainage pipes, draining and will all be designed and reviewed by DEC. This is a conceptual location for the storm water area. The second question you had: the trees along Route 146 corridor are shown on the plan and the intent for that is for vegetative screening along Route 146. The exact type of tree has not been determined yet. Once it is chosen it will be updated on the plan by the landscape architect.

Vice-Chairman Tedrow asked if NYS DOT had any issues here or did they sign off on the project?

Mr. Dell commented that we would be using the existing curb cut, if anything they may want some minor improvements to that.

Chairman Rose commented that the Saratoga County Planning Board had responded with no significant countywide or inter community impact, dated December 7, 2012.

Mr. Brennan commented that the existing warehouse right now has approximately a 50' setback.

Mr. Dell commented yes, that is correct.

Chairman Rose commented that the existing building on the lot; if you were to relocate the new structure and tear down the old structure can you explain why you wouldn't want to do that to avoid having an area variance.

Mr. Santoro, owner of the business commented that we did talk about taking the building down and putting up a new one it just seemed silly, a waste of a good building, it's already there and a big expense.

Chairman Rose commented that one other test for a variance is the hardship. We are just trying to understand, from your point of view, what the hardship would be.

Mr. Santoro commented it would be financial.

Mr. Hansen commented that the Board does not have to meet the same requirement because we are not dealing with a particular variance in this instance. This is an extension or enlargement of a non-conforming use.

Chairman Rose commented that there is also a request for an area variance.

Mr. Hansen commented that we are doing these applications separately.

Mr. Chauvin commented that they are separate applications and should be treated as such with separate resolutions.

Chairman Rose commented that 13 neighbors were notified and no one has made a comment in writing or came forward about this application.

Motion made by Mr. Hansen and seconded by Mr. Burdyl to close the public hearing at 7:34 p.m. on an application for a request for pre-existing non-conforming use. Motion was carried.

Mr. Rose asked if the Board should be reviewing them independently of each other. Are these two separate applications that are related to one overall entity of approval.

Mr. Chauvin commented that they are two separate applications with two separate decisions and two separate approvals. The discussion can be together but the ultimate decision must be separate.

Chairman Rose asked the Board if they would agree to hold off on the first vote until the second application is completed?

The Board had no objections.

Mr. Hansen asked what impact would it have on the location of the building as its shown on the plan if NYS DOT had to widen Route 146 to accommodate a third or fourth lane. As I understand it, the pattern of traffic of the tractor trailers will come in the entrance come around the back of the building to the loading dock then would go around the front of the building and back onto the highway. How much impact or will the setback be chewed by the state. Does this plan show the existing right-of-way line? I presume that what your showing is the state highway line, is that correct?

Mr. Dell commented showed the Board the location of the property line and the State Highway line on the map. To answer your question, the edge of pavement was shown on Route 146 to the property line is approximately 37'. A typical lane is about 10-11' for DOT there is room for three lanes on Route 146 within the right-of-way before you even get into the front yard. Between the edge of asphalt and the property line we have about 20'. If the State were to widen Route 146 it wouldn't have any impact at all on the building or the operation of the facility.

Mr. Hansen commented that it appears that the ROW is fairly wide for a state highway.

Mr. Dell commented that between the edge of pavement and the edge of asphalt for the travel lane is roughly 57'. There is ample room for the State to do whatever they need to do, as far widening right there without impacting not only the building, but also the travel lane.

Mr. Hansen commented that when we get to the tests we may want to know why the building can't be set back and what their reasons are for not meeting the requirement or not being able to meet the requirement.

Mr. Dell commented that the proposed building is shown at the 50' setback and the existing warehouse building is at roughly 48'. We are proposing 50' back from the right-of-way it is consistent with the C-1 Commercial Zone.

Mr. Hansen commented that he was thinking more along the lines of what would be the impact if you had to move the building back to 70'. How would that impact the design of the building that you are showing here? What effect would it have on that?

Mr. Dell sketched the dimensions on the plan for the Board to see what the building would look like at 70'. It really chews up space because of the configuration of the lot.

Mr. Hansen commented that for benefit of the rest of the Board show how the back of the building will look. If you had to setback the building another 20' and how would that impact your driveways and loading docks with respect to your rear property line.

Chairman Rose asked how many feet that would cut off. If you move it back about 13' or 20'.

Mr. Dell commented that the rear would have to face Farm-to-Market Road and there would be no area to maneuver the trucks around the back of that building.

Chairman Rose asked if you could back the trucks up the way you have it planned with the current setback?

Mr. Dell commented that you would only have about 25' between the property line, the right-of-way line and the edge of the building. Basically the configuration of the property is such that it chews up any usable land that you have.

Chairman Rose commented that his question before was if you were to relocate that building, what issues would there be, because I could see that now it would restrict that access in the back and probably make it a safety issue for the trucks coming around the corner.

Motion was made by Vice-Chairman Tedrow and seconded by Mr. Hansen to close the second public hearing for the area variance at 7:45 p.m. Motion was carried.

Chairman Rose commented that under Article XII Nonconforming Uses 165-65 Continuation of nonconforming building, structure or use.

"The lawful use of any building or the uses of land existing at the time of the adoption of this chapter may be continued although such use or building does not conform to the provisions of this chapter. Uses, which are in violation of the current zoning ordinance being supplanted by this chapter, are not considered grandfathered uses."

165-66 Extension or enlargement.

"No nonconforming 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."

You did need to come back to the Board to get an extension of a nonconforming use which is what the application requests and that is why the Planning Board at the October 9, 2012 meeting stated that their request was denied, because of a nonconforming use and failure to meet the setback and area requirements.

Vice-Chairman Tedrow commented that we should have some discussion on the record and we are not changing the use here historically the use has been the same commercial activity. It is hard to imagine that this lot would be an attractive place for an AR-Agricultural-Residential development. I don't see a problem with approving the expanded use.

Mr. Hansen suggested that if we actually look at the test for the area variance, which is what the setback is I think the discussion of each and each of the five tests will probably answer the questions for the extension of the nonconforming use. It asks questions like whether an undesirable change will be produced in the character of the neighborhood, whether they could achieve some other method. Granted those tests only apply specifically to the area variance but I think in the discussion of those we would have enough background to make a decision of a nonconforming use as well. That is just my suggestion.

Chairman Rose commented that he planned on reading all of those prongs for the next motion into the record but for this one there are no, specific tests.

Mr. Hansen commented no they are not specifically required. I am just suggesting that the discussion that the questions generate and the conclusions that we reach on those, in my mind, would also be a justification for either approving or disapproving the enlargement of the nonconforming use as well. If we want something in the record it helps.

Mr. Dell made a comment but it was not heard on the microphone.

Mr. Rose commented that in keeping with the character of the neighborhood the building as it stands now looks to be an improvement to that part of the neighborhood.

Mr. Hansen commented that we noticed during the site visit that there are a considerable number of other significant commercial properties located both across Route 146 and across Farm-to-Market Road from this facility. There is a bar, a well pipe supply place that was a car dealership, a machine shop on the other side of Farm-to-Market Road and Raloid Tool. It's an existing commercial property. It will not change the character of the neighborhood in my opinion.

Chairman Rose commented that we are ready to vote for Mr. Santoro, 45 Route 146 for the extension or enlargement of the nonconforming use.

Motion made by Mr. Hansen to approve the extension or enlargement of the nonconforming use for Mr. Santoro of 45 Route 146 and was seconded by Vice-Chairman Tedrow. Motion was carried.

Chairman Rose commented that the next proposal is for the area variance for Mr. Santoro of 45 Route 146.

Chairman Rose commented "In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:"

- "Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance."

Mr. Burdyl commented that the new use would actually enhance the commercial nature of the neighborhood so it will not be a detriment at all.

- "Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance."



Mr. Hansen commented that based on what the applicant has told us it would be impractical for them to meet the full 70' setback line and still be able to place a useable size building on that property, to obtain the ability to move the vehicles to move there, to load and unload trucks, and get them back onto the highway again.

- "Whether the requested area variance is substantial."

Chairman Rose commented that it is substantial in percentage but based on the other factors it doesn't seem to be unreasonable for us to uphold an approval based on this test and based on the other conditions that exist on the site and on the road and in the neighborhood.

- "Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and"

Mr. Hansen commented that we have covered that. It will not have an adverse impact on the physical or environmental conditions in the neighborhood or district. They will be adding a buffer zone basically in the back with landscaping that may mitigate anything that would be caused by the building that may have an effect on the one or two homes that are still existing on Farm-to-Market behind it. As far as the front of the building is concerned it is already facing commercial property across the street and I don't think that would detriment that at all.

Vice-Chairman commented that it would meet the stormwater regulations; it should not create an adverse impact in that area either.

- "Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance."

Vice-Chairman commented that yes, it was self-created, by choosing to do a project here you are creating this situation, but I do not think it would adversely affect our consideration of the application.

Chairman Rose commented that I also think that because it is an extension or enlargement of a nonconforming use that it sort of speaks for itself. It's in an area where only a certain type of activity could occur there. The applicant is choosing to extend his existing business, which benefits the Town and this area. While it is self-created, it is in line with what is there. It will not change much other than to expand.

Mr. Hansen commented that there is but one feature of this lot that was not self-created, which is the shape of the lot. The junction of the two roads that are fairly small angled there dictated it. That is determining why they are asking for the variance. If the lot were more rectangular in shape they wouldn't needed to request the variance because they could have met it but just moving the building back. Since the lot comes down to a very narrow spot where the two roads come together by virtue of that, they had to move the building back so there would be no encroachment in the back of the building. They can't acquire more land there is no more land to acquire.

Motion was made by Vice-Chairman Tedrow to approve the request for the area variance and was seconded by Mr. Burdyl. Motion was carried.

Both applications will need to approach the Planning Board to be placed on their agenda to continue with their application process.

Mr. Chauvin commented that just because the applicant received a blessing from this Board doesn't mean they will also receive one from the Planning Board. The applicant is subject to site plan review and approval by the Planning Board as well.

Motion made by Mr. Hansen and seconded by Vice-Chairman Tedrow that the meeting be closed at 8:00 p.m. Motion was carried.

There will be an agenda meeting on February 4, 2013.

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