

Town of Halfmoon Zoning Board of Appeals
Draft Meeting Minutes
August 5, 2013

Chairman Rose called the meeting to order for the Town of Halfmoon Zoning Board of Appeals at 7:07 p.m. on Monday, August 5, 2013 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Hansen, Mrs. Jordan, Mr. Brennan
Alternates: Mr. Burdyl
Town Attorney: Mr. Chauvin
Town Liaison: Mr. Polak
Secretary: Mrs. Mikol

A motion was made by Mr. Hansen and seconded by Mrs. Jordan to approve the minutes from the July 1, 2013 meeting. Motion was carried.

Chairman Rose commented that for tonight's meeting there would be a public hearing for St. John Plaza for 1683 Route 9.

St. John Plaza, 1683 Route 9

Chairman Rose commented: The first request is an application made by the Rexford Group Associates of 1399 Crescent Vischer Ferry Road, for an area variance at 1683 Route 9, St. John Plaza. Under Zoning Chapter 165 Attachment 2 Schedule B Minimum Off-Street Parking Table of the Code of the Town of Halfmoon, the Planning Board determined that based upon the existing and proposed tenant and information provided by the applicant relative to the square footage, number of seats, and number of employees of each existing business; the site lacks a total of forty three (43) required parking spaces. The applicant received a denial from the Planning Board at its June 24, 2013 meeting. Some of the Board Members have visited the site on Saturday. Some Members went to the site at a different time and day and may have some questions.

Mr. Tom Pratico is present representing the Rexford Group as it relates to the Halal Meat Market, the proposed new tenant at the Plaza. We have had several tenant changes from the original group that started with us when we built the mall. It has since changed with a couple of restaurants that require more parking. We have parking for 12 land-banked parking spaces in the rear of the building and 4 in the middle of the parking lot. Also, we could put 12 more parking spaces up on the front part of the property on the west side and create spaces within the green area without losing any of our green area ratio by using a product called grasscrete.

There is also literature on it in your packet that you all received. It goes on top of the base and then topsoil is put in the middle of it. You plant grass on it and you can drive a fire truck on it. It is used quite often in a lot of different areas; the employees can park out there and grab 12 more parking spaces to help mitigate the number. There are two tenants that do not use any parking even though the ratio you see there on the third page allows 12 parking spots for them.

Chairman Rose commented: Excuse me, Mr. Pratico, just for the record the Rexford Group entered into the record here a letter with attachments on August 1, 2013 to the Zoning Board and I gave everyone a copy of that package. There is one in the file and one will be added to the minutes for the record.

Note: A letter was submitted to the Board dated August 1, 2013 listing the following attached documents to substantiate a variance request.

- ❑ Signed tenant statement regarding parking
- ❑ Tenant parking summary
- ❑ Plaza Site plan
- ❑ EZ Roll Paver Product data and sample
- ❑ Plaza parking photos

This packet of information is available in their file in the office of the Zoning Board of Appeals records.

Mr. Pratico commented: The second page of the packet is a form that I had all of the tenants sign saying that there is no parking problem as long as they have been a tenant at the mall. The next page shows the Town's estimate of 171 spaces and ours at 140 parking spaces and if we did bank 12 more parking spaces it would leave us at negative of 31. If you look at Sheron's Uniforms, he has one person there, himself and at the most 2 employees at a time. He is allowed 12 parking spaces. So there is an overage there. The same with Weichert Realty they have 2 people in the building all day and on Saturday or maybe in the evening when they have a closing there will be 4-5 people in their conference room. There are people there during the day in the retail spots when the restaurants are not open and not doing much more than lunch. In the evening hours the retail places are closed and the restaurants are open for dinner. The pictures I attached in the packets show noon time and 6-7 pm through the course of the week except for Tuesday, I missed that day. The front two rows closest to Route 9 never have cars in them. The bank has 3 employees and one to two customers at a time during the business day. I am sure, in the future, that more tenants will be coming and going, but right now the proposed tenant is an Indian Halal Meat Market, which is a speciality store. At the request of the Chairman I went and took pictures of their existing store in Albany on Central Avenue. They don't have a parking lot, only street parking in front of the store for about 4 cars. I also took pictures on the front spaces in front of our mall.

Chairman Rose commented: I asked Mr. Pratico to take a picture from a direction showing the grid material that he proposed putting over top of a green area and grass would grow through it. It will add 12 more parking spaces to the front of the Plaza.

Mr. Hansen commented: Where is the Albany store?

Mr. Pratico commented: It's on Central Avenue just below Ontario Street.

Mrs. Jordan commented: Is this an additional store that would be in this plaza?

Mr. Pratico commented: Yes, same operator, and the Albany Store will not be closing.

Mrs. Jordan commented: I also have a question about the grid on the grass. Will that enable safe parking without ruining the grass? Also, would it be used just for emergency vehicles or will you advertise it for patron parking?

Mr. Pratico commented: We could have the employees of the restaurants park out there if the parking would become a problem. We feel that we won't even need them but I wanted to show the Board where we could put at least 12 more parking spaces. That will be all you're going to max out on for this piece of property.

Mr. Burdyl commented: Would you have to use the entire green area or is it roughly out to where that icon sign is? That would be overflow parking? It wouldn't be normal patron parking?

Mr. Pratico commented: No, you would be in about 20' and that's all. That sign is probably about 30' in. The Icon sign that is for the real estate agency it would be in front of that. The grid would be in place and the grass would be on it and the only people that would know that could park on it would the employees that are instructed to park there.

Chairman Rose commented: My understanding is that you would add 12 parking spaces and that is the 12 spaces that would be added to help offset the significance of the variance.

Mr. Chauvin commented: Mr. Chairman I don't want to see us walk into a secondary problem. I just want to confirm that I am not familiar enough with the layout of the site. I want to make sure the parking spaces you are talking about aren't going to fall into the right-of-way or have setback issues that would create additional problems which would not necessarily be the purview of this Board but it would make it un-approvable. I just want to make sure we are not talking about something in the right-of-way. I don't know. I can't tell.

Chairman Rose commented: I agree with that. If we were to go forward with that proposal our recommendation would have to be reviewed by the Planning Board and/or the appropriate folks who have jurisdiction in the Town to make sure.

Mr. Pratico commented: It's a good point Mr. Chauvin. If in the future we ever did have a problem and we need to put these 12 parking spaces in, we would put them in the rear of the building first and then in the parking lot that is all within our property line and it still is 5-6' more than that to the property line.

Chairman Rose commented: Technically if it's within your property line you could pave those spots versus putting those plastic grids down.

Mr. Pratico commented: Yes, but then I have another problem. I could pave it if you wanted to relax on the green area. We are not objecting to paving it.

Chairman Rose commented: I just want to explain why in case the question should come up.

Vice-Chairman Tedrow commented: I was just looking through the table here in the Code and, for instance, your chart shows that the Town requires 30 parking spaces for Fantastic Sam's. I gather that they have 10 employees and parking for 3 spaces per employee?

Mr. Pratico commented: Yes, it's because of the booths and the employees.

Vice-Chairman Tedrow commented: So they have 10 chairs in there?

Mr. Pratico commented: Yes, I think it's exactly 10 chairs. The same thing holds true for Nail Expo.

Vice-Chairman commented: What part of the chart did they use to determine Sheron's Uniform's parking requirements?

Mr. Pratico commented: You mean how did they get to the 12 parking spaces? They used one space for 200 ft. of floor space in that suite.

Chairman Rose commented: I noticed that the current Revolutionary Velo-Watts is not included in the parking space chart. If I were to look at your chart in relation to the Town's grid given to us by the Planning Department, is some portion of those spaces already accounted for that use?

Mr. Pratico commented: Yes, those are already counted they have 10 parking spaces.

Chairman Rose commented: So the Halal Meat Market requirements, at face value, would be plus 7 parking spaces to that 10? Is that 17?

Mr. Pratico commented: I believe it would be 16 I think I remember 16 parking spaces.

Chairman Rose commented: The previous occupant, even though they are no longer there, was 16 of the 17 parking spaces, so the new requirement is really a plus one. The reason for my question is I want the Board to consider the significance of the variance request. They already were 16 parking spaces over with the previous occupant that is no longer there. I think that is an important fact to consider. Secretary Mikol was asked: Did the tenant, Revolutionary Velo-Watts, apply for a variance for parking spaces or anyone prior to this?

Secretary Mikol commented: No they did not. This is the first time someone is looking for a parking variance.

Chairman Rose commented: This is the first time because the Planning Board denied it based on the change of tenant at a Planning Board meeting.

Mr. Pratico commented: Yes, that is correct. They denied it based on the overall number.

Chairman Rose commented: What I am trying to ascertain from the facts is if there was another occupant/tenant change, would the next tenant have to come back for another variance request as well because of the overage. Is that where we are going with this?

Mr. Chauvin commented: My understanding from the minutes of the denial was based upon the evaluation that was triggered by the change of tenant for review of the site and it was discovered that there was a deficiency of the parking spaces which forced the denial. That is why the applicant is here now. The site has been functioning but it has been operating outside of the proper guidelines.

Chairman Rose commented: It has been operating outside the proper guidelines but this is the first time a change of occupancy has triggered this event.

Mr. Chauvin commented: Correct.

Mr. Pratico commented: The Planning Board wants to bring this back into full compliance.

Mr. Polak spoke but was not recorded on microphone.

Chairman Rose commented: Do any of the Board Members have any questions?

Vice-Chairman Tedrow commented: In a very conservative approach that the Town uses in looking at parking it assumes that all the uses peak at the same time. We have a phasing of uses which peak at different times and I think the proof of the pudding is how many times you have seen cars parking on this green area because there was not enough parking on the lot. I have certainly never seen that.

Mr. Brennan commented: If the applicant is successful in this particular case what happens the next time a tenant changes. Does that have to go back before the Board again? Every time a tenant changes, unless for some reason enough tenants change and it reduces the number of required parking spots, this would have to be reviewed again?

Mr. Chauvin commented: It would be reviewed by the Planning Board for a change of tenant and a determination of what the intensity of the use was that would be altered and if that triggered a need for further additional parking above and beyond the variance that has already been granted. The Planning Board would the issue the applicant a denial and the applicant would have to seek an additional variance.

Chairman Rose commented: Mr. Brennan your question was along the lines of what I was thinking when I asked for the picture of the parking spaces in front of the Meat Market on Central Avenue in Albany. Right now, he is claiming that they have 4 parking spaces in front of the store and with the fire hydrant there it looks fairly close to the front of that store or the next store. Only 4 cars could park for that store at a time. That is the appearance.

Vice-Chairman Tedrow commented: Is the variance we are considering attached only this tenant? Or are we considering a variance for the overall parking plan for the plaza.

Mr. Chauvin commented: The application before the Board seeks a variance due to the lack of 43 parking spaces. Again, the evaluation is triggered as a result of the change of tenant but it is the 43 additional parking spaces that you are evaluating in reality.

Mrs. Jordan commented: I appreciate the packet and the pictures but we all know that retail is way down in the summer time and people are on vacation too. As empty as the parking lot looks, I also have been there in the winter time when Tailgators is going strong and the lot is pretty full and people are parking in the shopping center next door too.

Mr. Pratico commented: Yes, you are right retail is down and the track is open and people are on vacation and it is a slower time of year.

Chairman Rose commented: I kind of think the spacing for Tailgators versus Saigon Springs is 19 parking spaces and 25 parking spaces. It just seems to me that the way this is calculated is kind of what the occupant is depending on how much algebra goes on here in the determination of how many spaces he is allowed. Another change in occupancy and that could change this dramatically. For example, if Saigon Springs were to move out we are down from 143 and we would be down another 25 if Domino's Pizza leaves. Now we are down significantly. This is going to vary by applicant. I know we are being asked to give judgment on 43 parking spaces. I don't know whether our ruling tonight would be a cap that could never exceed 43 spaces if we were to approve this. In essence if we were to rule on 43 parking spaces, I think we would be ruling and forming a cap that could be arbitrary to the Town's rules and how they determine parking calculations by tenant. I would just like to get that on the record because I don't know a reasonable answer here. The fact that calculations are based on seats and employees and square footage, that is a mixed use retail environment that has to fluctuate for at least the past 17 years that I have lived here in Town. I have seen many different tenants in that location: Hoff Jewelers moved down the street.

Mr. Chauvin commented: Your review Mr. Chairman, with reason and evaluated in the context of both the information provided by the applicant, and the tests that you will apply to the information, and the application that has been provided to you will not be arbitrary. You, as a Board, will apply your discretion and that is the reason why there is a Zoning Board of Appeals. You do apply your discretion in the tests that are provided to you in the law to the facts that are presented so that in the event that the four corners of the code don't necessarily apply to a certain thing, you may need that determination. It will not be an arbitrary decision.

Chairman Rose commented: I might have used the wrong word. Arbitrary is the wrong word. My point is its situational based on the tenant. That is more of what I was trying to convey.

Mr. Brennan: Just to be clear, we are deciding on 43 parking spaces right now that is what the variance is for. Does that set the precedence of a cap if another tenant is changed? The Town's calculations are sound and accurate, in this particular case they are asking for a variance. If another tenant comes in and now it's a variance for 40 spaces does that reset the process at the discretion of the Planning Board? If the Planning Board decides that every time a tenant changes they will be back here again or can they just go up to the 43 spaces?

Mr. Chauvin commented: We would grant a variance allowing the applicant to function in a deficiency of 43 parking spaces. That would be the extent of the deficiency allowed. It couldn't by the way of changing a combination of tenants to authorize 44 parking spaces without seeking an additional variance.

Mr. Brennan commented: A change of tenant could cause 42 or 41 parking spaces so the change of tenant doesn't reset this process, only exceeding the 43 parking spaces would.

Chairman Rose commented: If we did approve this and we said 43 parking spaces is the cap and if a change of tenant occurs and it didn't effect the combination of numbers to be anything greater than 43 parking spaces would it have to come back to this Board for consideration?

Mr. Chauvin commented: No, not as long as it doesn't exceed what you authorized as the variance. It's the same as a setback variance. As long it doesn't exceed what you authorized, they don't need to come back.

Mrs. Jordan commented: I understand what you are saying, but then you also have to keep in mind that when we are set that 43 cap on parking spaces, that is with the mix of tenants we have. As tenants change, that number may change. A tenant may have 9 spaces that they are not using and another tenant has 6 spaces they are not using. That may not always be the case. When a different mix is in there, they might actually be using all of them. If we allowed this cap of 43 parking spaces, because now we are deciding that those spaces are not all needed, they may be needed in the future with another mix of tenants. It's dangerous in this way, because we are setting a cap for the future, but we are setting it for the mix that's here today.

Chairman Rose commented: I would guess that we would have the power to say that we are not setting a cap but we are setting the variance of 43 parking spaces and send the message forward to the Planning Board that any change of tenant would require a variance analysis. We have the discretion to do that as well.

Mr. Chauvin commented: If you're granting the variance, that variance would be for the 43 parking spaces and a change of tenant would trigger a lesser parking requirement. It would not require the applicant to come back for an additional consideration of the zoning variance or an area variance. They would certainly have to go before the Planning Board in order for any change of tenant to be done. The Planning Board would have to make an evaluation as to what the appropriate number of parking spaces that were needed for the new tenant and whether it met with the requirements of the variance granted by this Board.

Mrs. Jordan commented: So what you are saying is that we really can't condition it because it will be under the purview of the Planning Board and whether or not they want to differentiate it in the future with the 43 cap on parking spaces.

Mr. Chauvin commented: They can't exceed that number. That would be the limit of the condition.

Mrs. Jordan commented: So that is going back to what I am saying. We are allowing this under the tenants presently here. This mix of tenants in many excess spaces for the current tenants, but not necessarily for all the different tenants in the future that may have to utilize all the spaces that are required.

Mr. Hansen commented: The 43 parking space count is from the 31 parking space difference plus the 12 proposed banked parking spaces. All the banked parking is proposed at this point because none of it has not been paved and stripped for use. Is that correct?

Mr. Pratico commented: Yes, that is correct.

Mr. Hansen commented: So, at this point you have only 114 parking spaces that are actually useable. If all the banked parking was made available for use there would be a 31 space deficit then instead of 43 and that is based on the Town's estimate. I am just suggesting that if we approved a variance we would want to have all the banked parking made available. It would have to be a condition of the approval if that is the direction we are heading in.

Mrs. Jordan commented: What would you be suggesting with the green area?

Mr. Hansen commented: That is what I am suggesting that the banked parking spaces, as suggested by the applicant. That would use the plastic grid to restore the lawn to a green area and make them parking spaces be used if needed. Would the Planning Board accept that as a green area?

Mr. Chauvin commented: I would have to look into it. I would imagine based upon the literature we have been provided with that it's possible. I don't know enough about the product or how it functions to be able to give you that answer. That is the first I have ever heard of it. I know Mr. Polak has heard of it in the past but I don't know whether or not or how it would function and whether it would be acceptable.

Mr. Hansen commented: My understanding of it is if you fill in the voids with top soil and plant grass there and you look at it from an angle and not standing right over it, it looks like a grassy lawn. You don't really see the plastic. In fact, you may not see it at all even standing over it once the grass fills in, you cut it just like the rest of the lawn.

Mr. Pratico commented: You do cut it just like the rest of the lawn. There are other systems not necessarily by this manufacturer in different places in Clifton Park and in Halfmoon. It has been done in spots where they had to have green area and had to have fire truck access in the rear of buildings so it is in those areas.

Mrs. Jordan commented: We're looking at calculations based on how the Town calculates. Is that anything that is being studied or do you stand behind how the Town Calculates parking now?

Mr. Polak was not on microphone and was not heard.

Mr. Chauvin commented: I believe those numbers were are code dated February of 2005.

Mr. Hansen commented: What happens if we approve this and it fails and they start having problems there, how will the Town correct that?

Mr. Chauvin commented: That is what you're here for.

Mr. Hansen commented: I don't think we could answer that question. That is my concern. This is a lot different than someone asking for a 5' variance on a side yard. There is virtually no future instance where that would become a problem. But here it's almost like asking a builder coming in; well I don't want to put in 2 x 12's I want to use 2 x 8's or something like that. We will just see what happens. If you don't have a storm over 20" you will be fine. We get a 24" storm and the ceiling collapses. This is the same type of thing. What happens when 20 more cars than you have available parking for shows up. You can't let them just wander around the streets or to let them park over in Lowe's or Aldi's or some other place. I don't know.

Mr. Pratico commented: It's not failing at 114 parking spaces. We could up the ratio and put all the banked parking in if that is the Board's wish. It is my understanding that the Planning Board has to approve every tenant that comes in over the years. If someone wanted to come in and build a gymnasium and they need parking for 80 cars obviously that is not going to fly.

Mr. Hansen commented: I am not trying to be argumentative here but we are sort of in that position right now except we are talking about a meat market instead of a gymnasium and where do you draw the line at 21 cars, 31 cars, 40 cars.

Chairman Rose commented: I think it is relevant from a point of view that the current occupant already uses 16 of that overage.

Vice-Chairman Tedrow commented: The only way to get compliance with the existing numbers is to vacate a couple of stores and bring the parking needs down to the 140 parking spaces.

Mr. Pratico commented: The type of tenant that we would entertain in the future is determined by what parking we have. Obviously I wouldn't go before the Board with a gymnasium. That is not a good example. That is someone that would require a large amount of parking.

Mr. Hansen commented: I think the straw that broke the camel's back is if you get another Tailgaters in there, or something like that, I think that will be a problem. It is going to be a place like that if they have some big event a few times a year. That is the kind of place that is going to be a problem.

Chairman Rose commented: Actually looking at the math here the biggest space users are Saigon Springs Restaurant and Fantastic Sam's so if you brought in another barber shop or beauty salon you will have more of an impact than a Halal Meat Market would. Tailgaters is only 19 parking spaces and we all know, because we have lived in the area long enough, that around Super Bowl time it's a problem over there. That is a fact just from observation just from living in the Town. I don't know if there is a run-on for haircuts at Fantastic Sam's when there is a \$5 coupon in the paper that causes the need for 30 parking spaces to be filled out on a Saturday morning. I can't predict that, can you Mr. Pratico.

Mr. Pratico commented: On a Saturday morning all the restaurants are closed. It's a balancing act.

Chairman Rose commented: Going back to Vice-Chairman Tedrow's comments peaking at different times because of the different tenants and their hours, I think we need more help and need to explore the cap question. Whether we can approve it with a cap for this situation and this mix of tenants and then a new mix of tenants is yet another situation until we can develop a trend to understanding it better. I don't think I have enough data to make a decision based on the current mix of facts to determine if a cap is valid or not. That is me personally looking at this.

Mr. Pratico commented: We don't want to loose this tenant if we can help it.

Chairman Rose commented: I think it's in the Town's best interest to have occupants of retail stores that is the idea of approving a PDD and have buildings like that there. Is there a way we can explore that, as a suggestion, and to come to consensus or does anyone have a different idea.

Mrs. Jordan commented: I am just not sure because I think we asked our Town Attorney what we can do in that regard.

Mr. Chauvin commented: You have to evaluate the configuration as it's presented to you. You cannot "what if it" the application is for this particular configuration and this is what this Board is required to evaluate.

Chairman Rose commented: So the cap would apply for just this event.

Mr. Chauvin commented: You are using the word cap. I would say it's a variance and the requirement is based upon this configuration which exceeds the requirement by 43 parking spaces and that would be the limit to which the applicant is required to be at.

Chairman Rose commented: I think I am just trying to look at it from this point. The 43 parking spaces is not a variance that stands on its own based on these facts and not on a separate set of facts that may be presented to us in the future. The 40 parking spaces maybe the next cap we live with based on the configuration.

Mrs. Jordan commented: That was my point before and we were told that this wouldn't be triggered again unless it was to exceed 43 parking spaces and that is where I have a problem.

Mr. Chauvin commented: You are allowing a variance on the site to exceed the required parking for this configuration.

Chairman Rose commented: You can't link it to the occupants.

Mr. Chauvin commented: You can link it to the occupants the problem is the change of tenant process has to start with the Planning Board evaluation and there is no guarantee that it would get to you.

Mrs. Jordan commented: Is there a way to make it come back to the Zoning Board with a different mix of tenants?

Mr. Chauvin commented: You can make your approval if you so choose to grant an approval, and maybe I have said it enough, for the variance conditioned upon this configuration of tenants. That variance would not apply for any other configuration of tenants but then we would be putting ourselves in a position where at the next change of tenant it would be required to come back here and seek another variance for whatever and it maybe 135 or 140 it would trigger a need for a variance at every stage and as I point out we are already in excess with the tenants that are in place. Literally necessitate in order to be 100% in compliance without a variance and would have to remove tenants.

Chairman Rose commented: I think the only factor that I can see is based on what the peaks are by tenant because they occur at different times so the likelihood on the bell curve of all 171 parking spaces being required at any one given time is that a singular event or is that a multiple event situation during a one-year window. Statically speaking the 1% of events or is that average event that occurs there. I think we know based on the pictures that there is a variety of parking configuration needs based on different times of the day and different days of the week and that is by evidence. We are sort of making this decision based on the one singular event the max event that may occur if I am saying that correctly.

Mr. Hansen commented: Well I think that is the way they have to design it as the worst case because theoretically none of these people who are doing business there should parking anywhere else. They should not be parking next door on one of the other properties that don't belong to their plaza. You can't build a store and say we don't have enough parking so park next door. It is the worst case basically because people theoretically could all park elsewhere. You have to be prepared for it unless you want to be in a position to refuse business to these people for whatever reason. That is where the numbers come from. There is no way of knowing or maybe there is from doing a traffic study that would tell what times are peak hours and when the maximum parking time is. Someone would have to sit and observe these businesses over a period of time.

Vice-Chairman Tedrow commented: Right now there are 114 parking spaces available and 170 parking spaces are required for the plaza including the new tenant. Right now the needs are 50% more of what is there. Is there a chronic parking there at the plaza, is there a once a year problem or 5 times a year problem. The needs are 50% greater I think the computed amount of 171 parking spaces is very conservative.

Mr. Pratico commented: When the mall was built it was built with the code that existed at that time and now the new formulas call for this extra figure.

Mr. Hansen commented: That is a question when you went in for an approval for the mall as it is what did you use as an estimate of how much parking you needed because you had no idea at that time what the mix of tenants would be.

Mr. Pratico commented: We had 2 tenants the Cleaners and Fantastic Sam's everyone else was an empty space everything else was retail and that is how the Board did the calculation.

Mr. Hansen commented: It was based on general retail.

Mr. Brennan commented: I think to support what the Vice-Chair said as I look down through that list I contemplate what businesses I would remove a certain portion of the parking from so that the number would be reduced if it were possible. You would have to remove a great deal of parking spread out all over pretty good size businesses there and I am just kind of dumb-founded as to how we would get down to 10 people or 8 people for Fantastic Sam's or 6 people for Tailgaters' some of that stuff just doesn't make sense that you would be able to reduce it that much. I really question how those values came up without specifically asking for proof of variance or verification on how the numbers were calculated. I also reflect on other businesses in the area like Wal-Mart being the most notable ones and the size of the parking lot they have. The quantity of there filled on any regular day including weekend. They have an awful lot of space there and a lot of black top which serves nothing better than landing strip for karts to go sailing down into my car on any given day except for Christmas and the more busier shopping days. They seem to be able to work around that if there are no parking spaces available then people can't park. Or they park illegally and they get ticketed. That said if you go through our measures 50% is one of the measures to decide on is one persons opinion could be significant.

Chairman Rose commented: Has St. John Plaza ever been cited for exceeding the parking calculations. What would be the basis for issuing a violation today if they are already over by 43 parking spaces?

Mr. Pratico commented: No we never had any violations.

Mr. Chauvin commented: It would be a violation of site plan. They would be held accountable to the required parking for the tenants now existing. Obviously they have a vacancy they are seeking to fill by way of this application so that number would be removed from the equation.

Chairman Rose commented: At a peak day if they were over and had 200 people at the plaza you could be sited.

Mr. Chauvin commented: The citation would be for the deficiency and you don't have enough parking built out under the requirement of the code. It has nothing to do with the number of cars in the parking lot.

Mr. Brennan commented: Just to clarify do people park in the wrong spot. Not that someone would be out there counting cars and figuring out if there were too many per tenant.

Mr. Hansen commented: If you did something to those banked parking spaces in the bank that is not paved at all. The service road is paved and yet the area between the service road and Lowe's is not paved.

Mr. Pratico commented: Its crusher run.

Mr. Hansen commented: Does factor in as part of your green area.

Mr. Pratico commented: No that does not green area. So that could be paved and 4 spaces that already there I would just have to change the striping in the parking lot and then the area out by Route 9 that are banked parking spaces.

Mr. Hansen commented: So what I am getting is that if you went to the full 140 parking spaces including the banked areas now you are talking about a difference of 20% instead of 50%.

Chairman Rose commented: It reduces the significance of the shortage of the variance needed.

Mr. Hansen commented: I suggested before that if we are inclined to approve it I would say to justify all they are doing I think we would have to request that the banked parking spaces be utilized rather than making this another experiment.

Vice-Chairman Tedrow commented: And the proposed banking is added to the present banked spaces. Add the 12 parking spaces that they are proposing in the front of the green space.

Mr. Hansen commented: I am saying take them out of the banked parking spaces and make them usable parking spaces. Add all the current and the proposed parking spaces make them actually useable if we choose to approve it.

Chairman Rose commented: Does that add 26 parking spaces back into the mix which would be the 12 and the 14 parking spaces.

Mr. Hansen commented: That is how I would calculate it. Add that to the existing 114 parking spaces it will give you the total of 140 usable total parking spaces. When you come up with an estimate of 171 parking spaces by the Ordinance because that is really all we can look at. The estimate that they provided is sort of a guideline of what they think the parking is but legally the Town Ordinance requires 171 parking spaces. You would be talking about a variance of 31 parking spaces if they provided an additional 26 parking spaces.

Chairman Rose commented: Which would then in effect, to your point, lower the variance to 31 parking spaces until the next set of decisions that would need to be made at the Planning Board for change of occupant.

Mr. Hansen commented: That would be a variance of 31 and a cap of 171 parking spaces. So if they came in for the next project and had to be 172 parking spaces they would have to come back that is the way I understand it.

Mr. Chauvin commented: Unless you make your approval contingent upon this configuration you would be triggering a variance request at each change of tenant.

Chairman Rose commented: How much green space would be eliminated as a result of adding the 14 parking spaces back in.

Mr. Pratico commented: None.

Chairman Rose commented: There would be no impact to green space.

Mrs. Jordan commented: That is with that plastic grid you're talking about not if it was paved. What if it were paved?

Mr. Pratico commented: If it were paved we would be losing 120 x 20 square feet of green space.

Mrs. Jordan commented: I would prefer the look of green to pavement.

Mr. Chauvin commented: I believe what we would be running into there is we would be coming in underneath the green space requirement if that were to be paved.

Mr. Pratico commented: We would be under that. The pavement is a lot cheaper to do.

Mr. Hansen commented: I think it would be nice to keep that green and it adds to aesthetics. I think if you pave that you may be well within your property lines I think it would detract from the attractiveness of the site. If you have the plastic grids it would be sufficient. Nobody is going to park a fire truck there and the fire trucks would never need to be there in that area anyway they would want to be much closer to the building. Only thing will be cars and that would only happen occasionally. I think leaving it green and using that stuff will get a deal use out of it seems to be a feasible way to go.

Mrs. Jordan commented: Just remember when we are making a less substantial variance by using the extra spaces, but also keep in mind that whatever we do, we are setting precedent for other shopping centers. With being so far off what the Town requires, we don't want to make a mockery of the Town calculations that exist.

Vice-Chairman Tedrow commented: I would like to see the Town make better calculations if it's possible. I think Mr. Burdyl's point about Wal-Mart is well taken. It seems there always so many empty parking spaces there.

Mrs. Jordan commented: Maybe they have to.

Mr. Hansen commented: It always seems to be the bigger shopping centers that have the most unused parking spots if you go to a super market you never see a parking lot full. I don't know what they use for calculations but it's the smaller shopping centers that seem to have more problems. I think they are designed right to edge of the grade whereas the super markets are so big and if they based on the floor area I think they always over estimate the total amount of parking needed. If your off 10% in a 2000 parking lot that is 200 parking spaces right there, but if you're off 10% in a small plaza maybe it's a small number but it's also a small parking lot.

Chairman Rose commented: Or the Board has the option as early mentioned that you close down existing stores in that shopping center since you are already over capacity the variance is too significant and no further expansion should be allowed. Anything there should be brought back into code compliance that is the other extreme of the conversation. They are in violation that is the point. It's not reasonable.

Mr. Pratico commented: We weren't in violation when we built the mall.

Chairman Rose commented: Right, but every time you change a tenant you can possibly be in violation, technically. That is my point. I am not proposing to shut down the stores I am just saying hypothetically that is part of the decision making process. If you already are in violation so if this Board says no that store either remains empty or you have to do another configuration so you become back in compliance. That is really what we are saying is if we say no then nobody can come in there until the plaza is re-configured to meet the 140 parking spaces.

Chairman Rose commented: Does anyone from the public want to speak? Does the Board have any more comments? Or do we want to make a motion? The public hearing was closed at 8:07 p.m.

Vice-Chairman commented: Why don't we go through the statutory requirements and see where that leads us.

"The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Enforcement Officer, to grant area variances as defined herein"

"In making this 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. Hansen commented: Can I just ask a question? If we are to approve this should we propose the conditions first before we evaluate them?

Chairman Rose commented: I am ok with that if it's ok with the Board.

Vice-Chairman Tedrow commented: I agree with considering changing the parking capacity to the full 140 parking spaces by utilizing the existing banked spaces and proposed banking spaces.

Mr. Hansen commented: Well that was just an idea I tossed out there we need to formally propose it as a motion; I guess that is what I am saying. So we don't know what we are evaluating against.

Vice-Chairman Tedrow commented: We need something to shoot at we need something to evaluate to these assessments.

Mrs. Jordan commented: Before we make a motion, maybe we can agree on some of this. For instance, are we in favor of using all the land banked parking spaces? That would be one question. The other question would be, do we want the applicant to have to come for an area variance on the parking every time there is a tenant change? That may be another requirement. Does anyone have any other ones?

Mr. Hansen commented: The reason why I was asking is because what is the specific application, maybe I am missing that point. What was specifically asked for? Did they just ask to use the existing paved parking spaces only and not the banked parking?

Chairman Rose commented: The application is looking for a relief from Chapter 165 Attachment 2 Schedule B #20 of the Minimum Off-Street Parking Table.

Mr. Hansen commented: Right, but there has to be an option like if someone were asking for a 5' variance from 15' side yard and that is what we would be evaluating. It's specific.

Chairman Rose commented: My understanding of that question is that the Town Attorney told us under recommendation that we have to consider the 43 parking spaces they are under 43 parking spaces so we have to consider the variance of 43 parking spaces minus the land banked and the retrofit grid in the front of the parcel. So it would end up being 31 parking spaces for the variance. So it starts at 43 parking spaces.

Mr. Brennan commented: But aren't we changing the application then?

Chairman Rose commented: Well the application isn't specific to how many they are asking us to consider. I don't know that if the time of the application they knew because I don't know if they had the parking information from the Town Planning Board at the time of the application. It is not clear to me based on agenda but that made available at the time of application. I think that was information that was presented to us after the application was made. Is that your understanding?

Mr. Chauvin commented: Correct me if I am wrong because I do not want to put words in your mouth. The application is in connection with the change of tenant denial that was issued by the Planning Board which the application was a subject of that denial triggered the need for 171 parking spaces on a site that was built with 114 parking spaces plus the land banked parking spaces. The Board is evaluating the application for a variance to allow tenants in a configuration that would require 171 parking spaces. Did I miss state?

Mr. Pratico replied, yes you are exactly right.

Chairman Rose commented: When you look at the application it is blank in the requirement to and from area so that is what we are struggling with.

Mr. Chauvin commented: We just framed that issue in that fashion. The applicant is asking for a variance the required parking to allow the current 140 parking spaces if all spaces are utilized a variance to 140 from 171 that would be required.

Mr. Hansen commented: Well is that are you offering up the 140 parking space total? That is my point it's not on the application.

Mr. Pratico commented: Yes, we will put the banked parking spaces into permanent spaces.

Mr. Hansen commented: It's not 128 usable parking spaces there is 114 usable parking spaces 14 previously banked spaces and then they are proposing another 12 parking spaces banked.

Chairman Rose commented: The 114 plus the 26 banked spaces and proposed to be altered with the plastic grid brings us to 140 parking spaces decreasing the significance of the variance from 43 parking spaces without those modifications down to 31 parking spaces. I think we have talked about it a couple times but we are just getting confused in our own conversation.

Mr. Chauvin commented: Mr. Hansen is correct. We need to have a clarification here of exactly what is being requested of this Board. I do not want to speak for the applicant but it sounds to me like the Board is being asked to consider a request for a variance to allow 140 parking spaces for this site when the requirement would be 171. That is what you are being asked to evaluate. Is that correct?

Mr. Pratico replied, yes that is correct. We would have no problem putting these modifications in.

Chairman Rose commented: Just so the Board is aware, the 171 parking spaces are based on Town's estimates based on the current occupants. That number could have been different based on a different set of occupants, totally.

Vice-Chairman Tedrow commented: True.

Chairman Rose commented: That is irrelevant here. We have to consider what is there in the current configuration.

Mrs. Jordan commented: I am not making this motion yet, but a motion could be that we would approve an area variance from 171 parking spaces to 140 parking spaces with this tenant mix and we could require that the owner come back when there is a new tenant to be evaluated again.

Vice-Chairman Tedrow commented: It is a new tenant that would trigger a change to the total number of spaces required.

Mr. Chauvin commented: You have the ability to condition it in that fashion as long as that configuration would exceed the requirement of the code as calculated.

Chairman Rose commented: At that time.

Mrs. Jordan commented: I would only add that condition that we discussed to show that we are being lenient because we are looking at tenants now and seeing that they're not using all the spaces. That may not be so in the future.

Chairman Rose commented: In essence we could be asking to hold banked parking and pull up green space to add 12 parking spaces for possibly a singular event once a year to hit a peak situation. My only opinion is that I like green space. I don't necessarily want to see ground torn up to put plastic grid in if we don't really need it, just for the sake that it's there. I look at the variance difference and I am going through this test in my head. The difference between negative 43 and negative 31 parking spaces; you can say it's not that significant, only a few extra spaces. It is 12 extra spaces that we are short by and is it worth it to take the green out of the front? I would just ask that you would all consider that I am not readily agreeable that that's the right solution here, to take out the 12 parking spaces in the front.

Mrs. Jordan commented: It will still look green.

Chairman Rose commented: I don't know what it would look like. I have never seen the result of that product. That would be a pure guess on my point.

Mr. Hansen commented: You still have the impression that it's grass and you wonder should I drive on this or not. The other thing is that we don't have anything in front of us that says you only need 140 parking spaces. We don't even know for sure that 140 parking spaces work. None of us have ever been up there the day the lot was totally full, if it ever has been. We don't have a quantative way of coming up with a better estimate so I guess my point is it's a give and take here. If we give them the approval let's take some more parking spaces so if it's ever full it won't be bad as it could be.

It gives us a neutral zone to say, we will meet you half way. I am saying that from my perspective I wouldn't feel bad voting for using the banked spaces. If they don't use the banked spaces I would say I'm not going to vote for it.

Mrs. Jordan commented: Right, because you don't want to open the door for other shopping centers to use this and say, well, you didn't require all the land banked spaces there and I think it is a substantial difference.

Mr. Hansen commented: We have to compare it to the 114 existing spaces that the Vice-Chair came up with the 50% of shortage. You are not really comparing the 40 to the 30. You are comparing it to the overall. It is a fairly significant request so I think in my mind, I am only speaking for myself, that you have to say, ok let's not just let them leave the parking lot the way it is and potentially make it worse. Let's try to absorb some of that possible overage and do it by getting those banked spaces and start using them. That is what they are there for in case you didn't guess right the first time.

Chairman Rose commented: Is it possible to consider, to your point Mr. Hansen, that we request those banked spaces to be used but we wait and allow the applicant some time to come back and show us there is a real need to change those banked spaces into productive use? We can watch it over time and let the Planning Board make the decision on whether to invoke.

Mrs. Jordan commented: Who is going to police it in reality and does an applicant ever come in to ask if they have a deficiency?

Chairman Rose commented: I think we would ask the Town to police it and watch it because that is their responsibility. I wouldn't ask the applicant to self police. I have been to the site over the last 3 weeks. The parking lot has been empty over the last 3 weeks. I know its summer time I still stand by the fact that I don't ever think that parking lot ever gets full except one day a year. I've seen it full once in my 17 years here and that was Super Bowl Sunday because I was there.

Mr. Brennan commented: I would like to offer my opinion. If we feel that the green space isn't typically going to be needed with the plastic grid, we should ask for qualification depending on the time of year, the time of the day, the mix of tenants when a tenant changes. Do we have to have more frequent inspections or less frequent inspections? It seems to me that we are creating an erroneous process for the potential results of the Zoning Board. Again, this is just my opinion in speaking from my observation. If someone chooses to do business from there and all the paved parking spaces are full. I can almost guarantee you that someone will park on that grass anyhow. I can tell you first hand that I know of people that have done that in other areas. Possibly me. If you want a spot and you need to park, you park on it.

Mr. Chauvin commented: To clarify, and I think it is important to draw the distinction that the applicant has indicated that their application to this Board, and while the written form was slightly incomplete the applicant has articulated tonight that their application is for the 140 which would include the build out of those spaces.

Chairman Rose commented: That is what I am worried about. Actually invoking the need to require the build out of those spaces physically for the disruption of the existing green grass that is there and the parking lot.

Mrs. Jordan commented: It is still going to look green.

Mr. Hansen commented: The other thing is that if you don't do something with that grassy area and people do park there and it's after a rain storm you will get ruts all over and it will look like a mess. Whereas, if you put the plastic in there, you will never have to worry if someone does park there.

Mrs. Jordan commented: I will just add that I would not allow this variance to go through if we don't utilize the land banked parking. You would be setting bad precedence and really making a mockery of the Town Parking Regulations.

Mr. Brennan commented: Let me ask a question that is an interesting point that Mrs. Jordan brings up. What decides whether an area is suitable for parking? Is there a construction qualification or characteristic? Maybe to describe the question differently, could we put 12 spaces up there with no plastic down and say put a sign there and park there?

Mr. Pratico commented: And not have it paved?

Mr. Brennan commented: Not has it paved, no plastic, nothing. Is there any reason why from a building code standpoint or parking lot code standpoint you couldn't do that?

Mr. Pratico commented: I don't know I don't have an answer for that. If that is the case if people want to use that spot it's overflow parking. If it raises concern that maybe putting plastic down is not going to be green.

Chairman Rose commented: I walked the property and Mr. Hansen was there and Mr. Burdyl was there and no one has ever parked on the grass. I walked through the entire grass area I don't think there has ever been a car on there.

Mr. Pratico commented: We take a lot of pride in our properties.

Chairman Rose commented: I understand Mr. Hansen's point and my point is not to make a mockery of the Town's Ordinance, but I am just saying from a reasonability point of view in my opinion, there is rarely a singular event that causes having to reach the Town Board's limit. The parking lot is empty most of the time.

Mrs. Jordan commented: That is opinion. We have definite figures in front of us that the Town requires.

Chairman Rose commented: My point is the significance of the variance request. The difference of making it -43 and -31 is not really that significant for what I am seeing from a factual point of view looking at that site.

Mr. Brennan commented: My point is unless there is a building code requirement for having the parking there and putting plastic down then the tenant can say this is parking and I don't have to do anything to it.

Chairman Rose commented: I think we all made our points. Why don't we have someone make a motion with your conditions and we can go through the tests; unless there is anymore comments.

Mrs. Jordan commented: I will make a motion to approve an area variance from 171 parking spaces to 140 parking spaces which means that all land banked parking spaces are used, the green area would have the plastic grid used under the grass and conditional that when the next tenant comes in, that this Board review the parking spaces again.

Mr. Hansen commented: I will second that motion.

Mr. Chauvin commented: Chairman I would like to ask for a clarification of the motion. When you indicate that it's conditioned upon the re-evaluation of the parking would it be fair to say that your motion is conditioned upon the configuration of tenants as it is presented and you would like to re-evaluate should there be a change of tenant at the site.

Mrs. Jordan commented: Yes, that is exactly what I am trying to say.

Mr. Brennan commented: As long as we are clarifying the motion I want to make sure there are no other issues we would get involved with like the Building Department or other governing body specifying the type of engineering that is to take place with the green space parking. Is that true or not true?

Mr. Chauvin commented: You can condition that upon use of those 12 parking spaces in the green area and if that substance is suitable, as it certainly hasn't been used previously in Town, it would be up to the Building Department to determine the appropriate manner in which it is utilized.

Mr. Brennan commented: The reason why I am asking is the motion specifically called out the plastic grid.

Mr. Chauvin commented: And it would be conditioned upon the use of some substance of that nature to make those spaces functional.

Vice-Chairman Tedrow commented: Are there any conditions that the Planning Board sent us to request a variance for any tenant that comes into this plaza, even if the total calculations are less than the requirement?

Mr. Chauvin commented: To the extent that it exceeded the required parking.

Mr. Burdyl commented: The required parking that was approved tonight or the variance tonight or the required parking for the site.

Mr. Chauvin commented: The variance you are granting is only with regard to the configuration here based upon the motion. If there is a change of tenant that changes the configuration of the parking then it would be required to be re-evaluated.

Mr. Pratico commented: If in a year from now Weichert Realty leaves and I have a shoe store that comes in and they take the same 8 parking spaces that the Weichert Realty uses now, is the Planning Board going to automatically deny me and then we come back before this Board or how is that going to work?

Mr. Chauvin commented: You would still be in violation of the required parking that is the way this motion or approval has been worded.

Mrs. Jordan commented: Maybe in future years we will see that the Zoning Board won't make that condition any longer.

Mr. Pratico commented: We will always be in violation.

Vice-Chairman Tedrow commented: The Planning Board would deny it anyway whether we condition it or not.

Mr. Polak spoke but it was not recorded due to not using the microphone.

Mrs. Jordan commented: No, that is not the motion. Maybe it will become very busy there so I think it has to be looked at again. This approval is for this mix of tenants now.

Mr. Hansen commented: What if the next tenant has exactly the same requirement for parking.

Vice-Chairman Tedrow commented: It would still have less than the 140 parking spaces that the Town requires. The Town will still say you need more spaces.

Mr. Hansen commented: Anything over the 140 parking spaces, even if it's 171 again, would have to be denied by the Planning Board.

Chairman Rose commented: In essence, every change of tenant request would come back based on the conditions that are there now.

Vice-Chairman Tedrow commented: Unless you get a tenant or tenants that require 31 fewer spots.

Mr. Chauvin commented: If there are multiple vacancies that brought the plaza into conformance with the Town parking requirement then there would be no requirement for them to seek a variance.

Chairman Rose commented: Right now, the way it looks based on the Town's estimate, there is not a single tenant there that would bring it into conformance. It would have to be a combination of tenant changes.

Mr. Chauvin commented: That may be the case, but again, we could sit here all night and go through what permutation may happen.

Chairman Rose commented: There is a permutation of what would have to happen for that not to occur. It's not an automatic but it could happen.

Mr. Chauvin commented: My understanding is that is why the motion is conditioned the way it is conditioned.

Chairman Rose commented: I understand Mrs. Jordan's motion but it is an absolute that there could be a combination of events that would have to cure in order to not require them to come back. Is everyone clear on the motion and the proposed conditions? I will now read into the record the five tests for the area variance.

"The Zoning Board of Appeals shall have the power upon an appeal from a decision or determination of the Enforcement Officer, to grant area variances as defined herein."

"In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighted 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. Hansen commented: I would say that it is not going to be an undesirable change because the basic use of the Plaza remains the same and it would be tough to determine if there would be a detriment to nearby properties. I would tend to think it's not going to be a major detriment.

Vice-Chairman Tedrow commented: And as long the appearance of the 12 banked parking spaces looks like green area it would not have an apparent affect on the neighborhood.

"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: I don't think there is any evident feasible alternative for the applicant to pursue. They pretty much have to consider each tenant as they come along and assuming it's not an un-matching business and it fits in with the other businesses it will take any tenant, they need to take someone that is acceptable. At this point, other than converting those banked parking spaces they do not have any room to expand the mall because they are surrounded by other properties that fully developed their own sites so there is no additional property they can purchase to make this parking lot any bigger than it is. They have to use what is there. There is no other feasible alternative.

Vice-Chairman Tedrow commented: A parking garage would be very expensive.

"Whether the requested area variance is substantial."

Mr. Hansen commented: Well by using the banked parking spaces and developing it, it could certainly reduce the area variance.

Chairman Rose commented: This applicant, by sheer happenstance, is really subject to a situation that couldn't be prevented. The site is already over on the parking requirement. I really don't think it really matters if its substantial or not that was my whole point before. The whole site was over before the applicant even arrived. That was not being watched or policed properly.

Mr. Hansen commented: You can say that but I think it goes back to the way the estimate was arrived at in the first place when we approved it. Perhaps a more rigorous estimate for the number of parking spaces required should be reviewed, not just use a retail store. The Town may need to use something that would require more parking per square foot so they don't significantly underestimate the possibility of not having enough parking for each tenant. The estimate that is put together both the Town's and the owner's there isn't much leeway in there in this particular project. They went over. It's a normal mix of businesses in there and they are already way over the original parking spaces required. There is something wrong with the estimates or they are not being applied properly.

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

Mr. Hansen commented: Again, I think they would be minimized. Hopefully it will solve the problem by adding the additional parking spaces. Only time will tell.

"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."

Mrs. Jordan commented: I would say that it's not really self-created because we are going back to when the plaza was built and the parking was figured out along with the amount of parking spaces required at that time.

"The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."

"Imposition of conditions: The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restriction as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

Chairman Rose commented: Are there any other comments?

Mr. Hansen commented: Apparently at some point in time somebody must have felt that the banked parking spaces would eventually be used. It's just an assumption from allowing them to have banked spaces to begin with. Lowe's has the same situation. Why would you give people banked spaces if they could provide enough to meet the estimate to begin with.

Vice-Chairman Tedrow commented: To save green area.

Mr. Hansen commented: I suppose that could be an argument. It does mean they calculated more spaces than they provided.

Chairman Rose commented: Mrs. Jordan's motion is on the table. It's time to vote with the conditions. Seconded by Mr. Hansen. Motion was carried it was unanimously approved by the Board.

Chairman Rose commented: We will have to look at the resolution once it's typed up so we can understand the nuance of it and make sure it is clear. This will now go back to the Planning Board for the change of tenant.

Mr. Chauvin commented: This will go back to the Planning Board to have the change of tenant application heard based upon the existence of the variance which will allow an approval by the Planning Board.

Vice-Chairman Tedrow commented: May all tenants have long leases.

Mrs. Jordan commented: She has to leave early from tonight's meeting.

Chairman Rose commented: Mrs. Jordan has left for the evening and Mr. Burdyl, Alternate, will be voting in her place.

New Business:

Ronald Clapper, 94 Lower Newtown Road

Chairman Rose commented: We have an application by Ron Clapper of 94 Lower Newtown Road for an area variance at 96 Lower Newtown Road. The building permit was denied by the Director of Code Enforcement under Zoning Chapter 165-79B(2) Area Variances (b) [2] "Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance." This is an agenda meeting and we will determine if there is enough information here to visit the site and schedule a hearing for your case.

Mr. Clapper commented: This has been an approved building lot since 1993 when the Town changed the square footage that is what put me out of compliance so they said if you own land next to the land that you are going to build on and you can add to it that was the reason for the denial. The septic that exists on the home being occupied now would interfere with the changing of the property lines so that can't be done. It shows on your map where the approximate location is for the leach field on the existing property and the proposed location of the leach field on the new home.

Chairman Rose asked if everyone had a map copy in your packet. The reply was yes. Is this like a re-visit of a previous variance approval request?

Mr. Clapper commented: I don't know what you want to call it.

Chairman Rose asked: Was this previously granted a variance or is this a new proposal?

Vice-Chairman Tedrow commented: The code was different at the time. Now you need to have 40,000 sq. ft. of area with no public utilities. Mr. Clapper has 25,000 sq. ft. of area.

Chairman Rose commented: It was granted on an exception once before.

Vice-Chairman Tedrow commented: It wasn't an exception, as far as I know maybe I am speaking out of place here.

Mr. Hansen commented: Based on what I am looking at the variance back then was for the driveway for the rear lot. So it's a flag lot.

Mr. Clapper commented: It's a common driveway for both properties it was set up that way back then. It will continue to be the same.

Mr. Hansen commented: The back lot didn't use the deeded right-of-way to go through to the back

Mr. Clapper commented: The back lot will have access to that land to the left going in the driveway.

Mr. Hansen commented: It's not been used according to the map. If I read the map right it's labeled on the easement.

Mr. Clapper commented: Yes, it is being used. There is only one driveway there. It's labeled for the front property to use the same driveway.

Mr. Hansen commented: The total frontage for the front lot was 14.88' back in 1993. They applied for a variance for the lot in the back because it needed a 20' access easement and they only had 14.88'. Now this lot also becomes non-compliant because the new requirements are 150' of frontage if you don't have public water and sewer. In this case he doesn't have either one. So to meet the new standard you need 150' and 40,000 square feet of area. What you have is 100' of frontage and 25,000 square feet of frontage.

Chairman Rose commented: They are short by 15,000 square feet of area and 50' of frontage. According to the variance application it looks like its 14.88' to your point to 20' for a conforming flag lot so its negative 5.2'.

Mr. Clapper commented: The only issue here is the square footage.

Mr. Hansen commented: When we approved the variance for the access easement, even if they don't use it, they needed to have it.

Chairman Rose commented: His application is requesting 20'-14'.

Mr. Hansen commented: That is the old application.

Chairman Rose commented: I don't see the new request. So he is looking for a request from 40,000 sq. ft. of area to 25,000 sq. ft. of area.

Mr. Hansen commented: This lot was created after zoning but it was under the zoning that was in effect in 1994.

Mr. Polak spoke but did not use a microphone and therefore was not on tape.

Mr. Hansen commented that it is pre-existing non-conforming with respect to the current zoning. The only thing is the area regulation.

"Any lot with an area or a width less than that required in the district, in which said lot is located may be used for any purpose permitted in the district, provided that all other regulations prescribed for the district shall be complied with, and further provided that said lot was held under separate ownership at the time of the adoption of this chapter and the owner thereof owned no adjoining land that could be combined with said lot to meet the dimension requirements."

Mr. Hansen continued to comment: It has both area and width less than what is required. That is why he had to request a variance.

Chairman Rose commented: The map we are looking at originally is dated 1993 and the new map, just for clarity, is from 2013.

Mr. Clapper commented: I believe they are identical maps. I have been paying taxes on the lot since 1993. The neighbors haven't changed and the property hasn't changed all the pins are there in the same location.

Chairman Rose commented: We are looking at the application to see the request from the 40,000 sq. ft. to the 25,000 sq. ft.

Mr. Hansen commented: There is an area variance and also the frontage variance. Without public water or sewer you will need 150'. If you have both utilities you only require 100' of frontage.

Chairman Rose asked, if there are any more questions or comments? No one replied. Mr. Hansen brings up a comment that I feel is relevant as well. There should be two variance requests on the application one for the frontage and one for an area request. The requirement asks for 150' of road frontage.

Mr. Clapper commented: I have to go for a frontage variance again? That was already approved in the past?

Mr. Hansen commented: The frontage variance that was approved in the past was for the access road going to the house behind this lot. That was a different situation. The reason you need to request the variance now is because the requirement for the area and frontage has changed since you got that other approval.

Mr. Clapper commented: I understand the square footage but I don't understand the frontage.

Mr. Hansen commented: That is what the ordinance requires now.

Mr. Clapper commented: That is not what I was told for what I had to apply for a variance for when I came to the Town Hall. I have been paying land/tax school tax on that property since 1993. The Town of Halfmoon is the one that made the change for the area, not me. If there was a house built on there in the past I would not be standing in front of you now. Nothing has changed and nothing will change.

Mr. Hansen commented: The point is they can't issue you a Building Permit if you don't meet the current conditions unless you request a variance.

Mr. Clapper commented: I had a variance for the frontage that was already approved in the past. I don't know why it needs to be approved again.

Mr. Hansen commented: It was legal in the past and the reason you had to request the variance was there was a 20' minimum if you were going to have an easement into the lot in the back and you had 114.88' of frontage total. If you take the 20' out it would have made it a non-conforming lot because you would have been less than 100' of frontage. So that is why you got a variance from 20' to 14.88' but that was for the ingress/egress easement and frontage required for a flag lot that you are apparently not even using now. You're driveway is actually in this 100' lot according to this map that was done by the Surveyor. You're not using the easement that we granted you the variance on. That is not really why we are here tonight anyway. The lot in the back which someone built a house there, correct?

Mr. Clapper commented: Yes, that is my house and the road is being used for my driveway.

Mr. Hansen commented: Yes, that is correct but this request is on the other lot. It's on the lot you created. The easement for the 14.88' is in a different location. We are talking about the lot in the front. The new requirements for lots are 150' of frontage 40,000 sq. ft. of area if you don't have public water or public sewer. That is why your application only mentions the area variance from 40,000 sq. ft. to 25,000 sq. ft. It should also state a frontage variance from 150' to 100'. Your application needs to be corrected.

Mr. Chauvin commented: The applicant can make the correction to the application but the Board has to consider both of those issues if you were to consider granting a variance. Both issues must be addressed because with only one or the other you would still not have a conforming lot and the Building Department would not be able to issue you a Building Permit.

Mr. Hansen commented: Is this your original application?

Secretary Mikol commented: The application has been amended to reflect the variance request for both frontage and area.

Vice-Chairman Tedrow made a motion to set a public hearing for Tuesday, September 3, 2013 at 7:00 p.m. to consider an application for Mr. Clapper at 96 Lower Newtown Road for a frontage and area variance. Seconded by Mr. Hansen. Motion was carried.

Chairman Rose commented: The Board will be doing a site visit on August 31, 2013 at 9:30 am.

Motion made by Mr. Hansen and seconded by Mr. Brennan to adjourn the meeting.

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