

**March 5, 2007
Town of Halfmoon
Zoning Board of Appeals
Meeting Minutes**

Chairman Hansen opened the March 5, 2007 Town of Halfmoon Zoning Board of Appeals meeting at 7:30pm with the following members present: Mr. Rose, Mrs. Jordan Mr. Brennan and Mr. Tedrow. Also present were alternates Mr. Burdyl and Mrs. Lois-Smith and Town Attorney Mrs. Murphy.

Chairman Hansen asked if the Board reviewed the February 5, 2007 Town of Halfmoon Zoning Board of Appeals meeting minutes.

Mrs. Jordan made a motion to approve the February 5, 2007 Town of Halfmoon Zoning Board of Appeals meeting minutes with minor corrections. Mr. Rose seconded. Motion carried.

Mr. Richard VanNorden, Cary Road- Area Variance

Mr. Gil VanGuilder of VanGuilder Associates stated that the applicant applied for a building permit to place a residential structure on the 1.98-acre lot and was denied due to no frontage on a town road. The lot was created in 1984 when it was conveyed to the VanNordens from the Marlows. Access to the site was maintained through a 30 ft easement. The applicant is seeking an area variance to place a home on the landlocked parcel. Mrs. Jordan asked if the McCarthys owned Lot C. Mr. VanGuilder stated yes. Mrs. Jordan asked if the VanNordens were planning to build for themselves on this lot. Mr. VanGuilder stated that he believed that the VanNordens were under contract with Mr. Older to purchase the property. Mr. Ron Czajkowski asked if the applicant was looking to treat the lot as a flaglot and if the easement would continue through the Lot D parcel in question. Mr. VanGuilder stated that the easement would go through Lot A, Lot B, and Lot C to give access to Lot D. The applicant would not need an easement to access his own property. Mr. Czajkowski asked what would keep someone from coming in to apply for another variance in the future to further subdivide the rear lot. Mr. VanGuilder stated that was up to the discretion of the Board. Mr. Czajkowski stated that the way that the driveway exists now he did not believe that a fire truck could get back there. He asked if that would be handled privately with the property owners. Mr. VanGuilder stated that it would be a private party that would be responsible for maintaining that. Mr. Czajkowski asked if there would be any specifications regarding the width and maintenance of the driveway. Mr. VanGuilder stated that the Board could consider placing a restriction on the variance regarding this driveway. Mrs. Czajkowski asked if the original owner owned both lots A and B and if they were one lot at that time. Mr. VanGuilder stated yes. Mrs. Czajkowski asked if the Town allowed the subdivision of Lot C and Lot D. Mr. Tedrow stated that the owner of the two parcels filed a deed with the county and never filed application for the subdivision with the Town. Mr. Rose asked how the Planning Board approved the Lot B subdivision as a flaglot as wasn't Lot C already a flaglot with an existing house on it. Mrs. Murphy stated that Lot C is not a flaglot because it does not have any land that fronts on Cary Road and only has access through an easement. Mr. Tedrow asked if the applicant has taken any action to purchase

land from either adjoining landowner. Mr. VanGuilder stated not that he is aware of. Mr. Hansen asked if Lot B has land that fronts on Cary Road. Mrs. Murphy stated yes, it is a true flaglot. Mr. Hansen asked if state law requires frontage on a town road. Mrs. Murphy stated yes and that state law 280-A does permit the ZBA to approve a variance if criteria including health and safety are met and there is case law regarding both approvals and denials. Mr. Brennen asked what the approximate length of the driveway would be. Mr. VanGuilder stated it appears to be around 675 ft. Mr. Rose asked if there was public sewer and water and if there were fire hydrants on Cary Road. Mr. VanGuilder stated that there was not public sewer or water at this site. Mrs. Czajkowski asked if the VanNordens had purchased Lot C and Lot D as one or if they were two separate lots. Mr. VanGuilder stated that the lots were separate lots at the time of purchase. The VanNordens purchased Lot D four years after they purchased Lot C. Mr. Rose asked if Lot D was purchased with the knowledge that it could not be built on. Mr. VanGuilder stated that he could not say for sure whether the VanNordens were aware that they could not build on Lot D. Mrs. Murphy asked if Mr. VanGuilder had spoken to the owners of Lots A, B, and C to find out if there was any opposition to widening and paving the driveway. Mr. VanGuilder stated that there has been some conversations with Lot C, McCarthy, but he is not aware if there have been any discussions with Lots A and B. Mrs. Jordan asked if Mr. Older was under contract to buy Lot C and also seeking to purchase Lot D. Mr. VanGuilder stated yes, he is a homebuilder. Mrs. Murphy asked if Lot C has been transferred to Mr. Older. Mr. VanGuilder stated he believed so. Mrs. Czajkowski stated that she is concerned that the developer would seek to further subdivide Lot D in the future and the driveway is not sufficient. Mr. Hansen stated that if the Board was to approve the variance they could put restrictions on it in regards to those issues. Mr. Hansen asked if the law was violated when Lot C and Lot D were subdivided. Mrs. Murphy stated that she is not sure when State Law 280-A was created so she cannot be sure if the owners were in violation at the time the lots were subdivided. The Board would have to refer to the five tests for an area variance in the Town Local Law to make a determination. Mr. Hansen asked what obligation the Board had to correct a violation of law. Mrs. Murphy stated that this is a difficult question to answer as many individuals are not aware of the laws and that now there are safe guards in place to protect this from happening. There are no fines associated with this. Mrs. Smith-Law asked if the Board had to forgive ignorance of the law. Mrs. Murphy stated that ignorance is never a defense. Mr. Czajkowski asked why the applicant didn't just combine Lot C and Lot D to create one lot. Mrs. Jordan stated that two different individuals currently owned Lot C and Lot D. Mr. Hansen stated that if the same person did own both lots there was a section in the Town Local Law that they would be required to combine them. Mrs. Murphy stated that it is not applicable to this case as there are two different owners. Mr. Hansen asked if anyone else from the public wished to speak. No one answered. Mrs. Jordan made a motion to close the public hearing. Mr. Tedrow seconded the motion. All-aye. Mr. Hansen asked if the Planning Board would review this project. Mrs. Murphy stated that this application was never before the Planning Board and if more technical review was needed the Board could use Clough Harbour and Assoc. for help with the criteria. Mr. VanGuilder stated that the driveway could be built wider and a pull off could be added to allow emergency vehicles and built to stand 50,000 pounds. Mr. Rose stated that this was a unique situation as the two rear parcels

are not flaglots, but landlocked with only an easement for access. Mrs. Jordan referred to the five tests for an area variance and stated that there would be a change to the neighborhood character with four lots going back. She stated that she did not believe that this was what was intended in the Town Zoning Law. Mr. Hansen stated that the applicant has shown no evidence that they have attempted to purchase property to create a legal lot. Mr. Rose stated that this is an extraordinary request for an area variance that is substantial. Mr. Rose stated that physical concern is the safety in regards to the driveway. Mr. Rose stated that this is a self-created hardship as the legality of the creation of the lots is in question.

Mrs. Jordan made a motion to deny the request for the area variance. Mr. Tedrow seconded. All-aye. Motion carried.

Halfmoon Jewelers, 1686 Route 9-Area Variance

Mr. VanGuilder, of VanGuilder Associates, stated that the applicant wishes to utilize an existing 800 SF residence for a commercial use on Route 9. The proposed use is an internet jewelry business. Customers will visit the site by appointment only. There will be two employees on site. Public water and private sewer will be provided. There will be five parking spaces added to the site. The parcel is substandard in area at 13,660 SF, lot width, and front yard setback. The lot size was reduced when Route 9 was widened. Mr. Tedrow asked if there would be manufacturing on the site. Mr. VanGuilder stated no, there would be internet sales on the site. The manufacturing would take place elsewhere. Mrs. Smith-Law stated that it would not really be a retail use but more of an E-commerce use. Mr. VanGuilder stated yes, the low intensity makes it a good use on the parcel. Mr. Brennan asked what type of shipping and receiving would take place at the site. Mr. VanGuilder stated that he could provide that information to the Board. Mr. Rose asked if this had been before the Planning Board. Mr. VanGuilder stated yes. Mr. Rose asked if a SEQR determination was made at the Planning Board. Mr. VanGuilder stated that this is usually made at site plan approval. Mr. Rose stated that he would like to see correspondence from the Saratoga County Planning Board on their review of the project. Mr. Rose asked why the variance was necessary when the structure is pre-existing on the site. Mr. VanGuilder stated that the variance was necessary do to the expansion of the parking area. Mr. Rose asked why the applicant was adding parking. Mr. VanGuilder stated that the Town Zoning Law requires 1 parking space per 200 SF of office space and 1 handicap space.

Mr. Rose made a motion to set the Public Hearing for April 1, 2007. Mr. Brennan seconded. All-aye. Motion carried.

Mr. Rose made a motion to adjourn the Town of Halfmoon Zoning Board of Appeals meeting. Mrs. Jordan seconded. All-aye. Motion carried.