

**January 3, 2006
Town of Halfmoon
Zoning Board of Appeals
Meeting Minutes**

Chairman Hansen opened the January 3, 2006 Town of Halfmoon Zoning Board of Appeals meeting at 7:30 PM with the following members present: Chairman Hansen, Vice Chairman Tedrow, Mr. Ouimet and Mr. Rose. Chairman Hansen asked if the Board reviewed the December 5, 2005 Town of Halfmoon Zoning Board of Appeals meeting minutes.

Mr. Ouimet made a motion to approve the December 5, 2005 Town of Halfmoon Zoning Board of Appeals meeting minutes with noted changes. Mr. Rose seconded. Motion Carried.

Edwin Dalston, 116 Route 236, Area Variances

Chairman Hansen stated this item was adjourned at the December 2005 ZBA meeting to allow the applicant to provide separate appraisals on the two dwellings. Mr. Hansen opened the public hearing at 7:32pm. Mr. VanGuilder stated that the applicant has had difficulty selling the property due to mortgage companies not being able to value the property because there are two separate dwellings on one property. Mr. Dalston submitted a letter from Michael Muratori, NYS certified appraiser dated December 12, 2005 that valued the main dwelling and garage on 1.19 acres in the range of \$200,000 to \$220,000 and the smaller converted paint store on 0.48 acres at \$120,000 to \$130,000. The appraisal went on to read that in his professional opinion the property is virtually unsellable due to the unwillingness of banks to finance it. Mr. VanGuilder stated that the Town's Water Department has granted the applicant permission to provide each dwelling with its own separate water service and each dwelling is already served with its own driveway and septic system. Mr. VanGuilder stated each dwelling will be able to function independently of each other. The applicant also submitted a letter from his attorney, Jeffrey N. Bagnoli, Esq. dated December 16, 2005 stating that the applicant would agree to provide a restriction on the two deeds that should the properties ever be sold for commercial use they would need to be recombined. Mr. Hansen asked if this could pose a problem for perspective buyers who would not want to agree to this deed restriction. Mr. Dalston stated that if a perspective buyer did not want to agree to the deed restrictions, they would not be able to purchase the property. Mr. Ouimet stated that he does not believe that creating two non-conforming lots from one conforming lot is in the best interest of the Town and that this was a self-created hardship. Mr. Vanguilder states that he demonstrated a hardship, that was unknowingly self-created and that all variances are beneficial to the applicant not necessarily to the Town. Chairman Hansen asked if the public would like to speak. No one responded. Mr. Hansen closed the public hearing at 7:48pm. Mr. Hansen stated the ZBA approved the variance for the paint store to be converted to an in-law apartment. Mr. Ouimet stated he is having a hard time deciding why this request is not self-created. The initial variance was to allow Mr. Dalston to convert the old paint store to a second dwelling unit for his parents on the same parcel. The ZBA made its determination that the area conformed to the minimum lot area for a two-family and that the applicant stated his parents would move into the

second dwelling. Mr. Ouimet states that the ZBA approved this initial variance in part to not have to create two substandard lots, and so voiced its reluctance to create 2 non-conforming lots. Mr. Dalston stated his parents never moved in, he did not want to rent out the smaller dwelling. Mr. Dalston stated that he is moving from the area and does not want to be a long distance landlord. Mr. Ouimet asked how many other non-conforming lots were in the area. Mr. Vanguilder stated that there were some non-conforming lots that had been created prior to zoning laws. Mr. Rose expressed concern over the proximity of the paint store to the road and the danger this could pose to young families. Mr. Tedrow stated that the same concern could be expressed in the possibility of renting the property. Mr. Dalston stated that when he asked to have the first variance to allow two residential dwellings on one property he never intended to be in this situation of not being able to sell the property. Mr. Dalston stated that he is moving and at this time the only way he will be able to sell the property is to find a cash buyer, which is very unlikely. Mr. Vanguilder stated that if someone wanted to use the property for commercial use, they could purchase both lots to do so. Mr. Rose stated that that is why there is a concern of subdividing the parcel rather than keep it whole and have a conforming lot size for a commercial use. Mr. Rose states that he is concerned that the deed restriction could cause additional problems for future owners of the property. Mr. Ouimet also expressed this as a concern. Mr. Rose stated that the deed restriction wording would need to be reviewed by the Town's attorney. Mr. Ouimet reiterated that he feels splitting the lot is not in the best interest to the Town. Mr. Vanguilder stated that the lots will not change as far as the existing structures with this variance unless the lots would be sold in the future for commercial use. Mr. Hansen stated that this was the end of the 60-day window and that a decision needs to be reached. Mr. Tedrow asked Mr. Hansen if he felt that this was a self-created hardship or if he felt that the ZBA created the hardship by allowing the variance. Mr. Hansen stated that Mr. Dalston asked for the variance and the ZBA approved it. Mr. Vanguilder states that whether or not it is a self-created hardship it was unintended. Mr. Ouimet states that he does not necessarily feel that a nine-month window was a long enough period for the property to be on the market to show hardship. Mr. Dalston stated that he had the property sold and the financing fell through two days prior to the closing.

Mr. Tedrow made the motion to approve the requested area variance, as shown on the proposed subdivision plan contingent on the deed restriction that would make it necessary to combine the lots in the event of future commercial use and in making this recommendation based on Article XIV, section 1403, part B, determining that there will not be an undesirable change to the character of the neighborhood, that there is not a discernable alternative for the applicant to pursue to achieve his goals, that it will not have an adverse affect on the physical environmental characteristic of the neighborhood, and while it was a self-created hardship it happened through ignorance of how the market operates. Mr. Hansen seconded the motion. Mr. Hansen asked for a vote as follows: Mr. Rose-nay, Mr. Tedrow -aye, Mr. Hansen- aye, Mr. Ouimet-nay. Motion not carried.

Mr. Hansen stated that Mr. Dalston could resubmit the application and restart the process.

Coreno Subdivision, 93 Ushers Road, Minor Subdivision

Chairman Hansen recused himself from this item and Vice Chairman Tedrow will chair the topic. Mr. Tedrow opened the public hearing at 8:36pm. Mr. Vanguilder states that Mr. Coreno is requesting a use variance on property zoned Light Industrial/Commercial to allow a residential use. Mr. Coreno wants to construct a single-family home on the lot. Mr. Tedrow asked if anyone from the public wished to speak. Mr. Michael Stiles stated that he does not oppose the variance provided that he would not have a problem in the future if he were to sell his property as Light Industrial/Commercial. Mr. Tedrow asked if anyone else would like to speak from the public. No one responded. The Public Hearing was closed at 8:41pm. Mr. Ouimet stated that there are mostly single-family homes existing in the vicinity. Mr. Vanguilder stated that there are residences on both sides of the lot. Mr. Tedrow stated that the applicant has evidence of residential use. Mr. Ouimet made the motion to approve. Mr. Rose seconded the motion. Motion carried.

Mr. Tedrow motioned to adjourn the January 3, 2006 Zoning Board of Appeals meeting at 8:47pm. Mr. Ouimet seconded the motion. Motion carried.

The Board discussed the 62-day to reach a decision factor and decided to rescind the decision based on when the public hearing was closed.

Mr. Rose made a motion to re-open the meeting. Motion was seconded by Mr. Tedrow and approved unanimously. The meeting was reopened at 8:48 p.m.

Mr. Rose posed the question of new ZBA members being able to take on the Dalston item in progress. Mr. Hansen stated that he believes that Mr. Dalston should re-apply for the variance request. Mr. Watts stated that he believed that as long as all members are provided with pertinent information, they could cast vote. Mr. Hansen states that the town attorney will be consulted and the public hearing will be re-opened at the February ZBA meeting.

Mr. Ouimet made a motion to re-opened Mr. Dalston's variance request at the February meeting. Mr. Tedrow seconds. Motion carried.

Mr. Tedrow made a motion to thank Mr. Ouimet for his service to the ZBA and wish him luck with his future on the Planning Board. Mr. Hansen seconded. Motion carried.

Mr. Ouimet motions to adjourn the re-opened January 3, 2006 Zoning Board of Appeals meeting at 9:00pm. Mr. Rose seconded. Motion carried

Respectfully Submitted,

Lindsay Zepko
Town Planner