

**February 5, 2006  
Town of Halfmoon  
Zoning Board of Appeals  
Meeting Minutes**

Chairman Hansen opened the February 5, 2006 Town of Halfmoon Zoning Board of Appeals meeting at 7:30pm with the following members present: Chairman Hansen, Vice Chairman Tedrow, Mr. Rose, Mrs. Jordan, and Mr. Brennan. Also in attendance were alternates Lois Smith-Law and Jeff Burdyl, and Town Attorney Lyn Murphy. Chairman Hansen asked if the Board reviewed the January 3, 2006 Town of Halfmoon Zoning Board of Appeals meeting minutes.

Mr. Tedrow made a motion to approve the January 3, 2006 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 re-opened the public hearing based on discussion at the January 3, 2006 ZBA meeting to rescind the motion due to the 62-day window. Mr. Gil Vanguilder of Vanguilder Associates stated that Mr. Dalston purchased the single-family lot in 1996. He subsequently applied for a variance with the Town to create a separate dwelling unit from an existing structure on his property for his parents. Mr. Dalston is now asking for an area variance to subdivide the lot into two non-conforming lots so that they can be sold separately as single-family homes. He is asking for this variance after difficulty selling the property as a single lot with two separate dwelling units. The property had been placed on the market for nine months, at which time the sale fell through due to the unavailability of willing lenders to fund the mortgage on the property. The lot was viewed as a unique property as the lenders were unable to find comparable properties. Mr. Vanguilder expressed Mr. Dalston's need to market the property separately with a deed restriction that the lots would need to be consolidated to be sold for commercial use. Mr. Hansen asked if anyone would like to speak. No one responded.

Mr. Tedrow made a motion to close the public hearing at 8:01pm. Mrs. Jordan seconded. Motion carried.

Mr. Hansen then referred to the tests outlined in Article XIV, Section 1403, Part B2 for area variance in the Local Laws relating to Zoning of the Town of Halfmoon (revised 1997). Mr. Hansen asked about surrounding neighbors. Mr. Dalston stated that there are four duplexes, one business, and the rest single-family homes. Mrs. Jordan stated that the structures would not be changing and that the variance would simply be a line on a map. Mr. Rose stated that by granting the area variance the Board would be creating two sub-standard lots. Mr. Vanguilder stated that there would be no physical change. Mr. Hansen asked if there were any other methods other than an area variance to make the lots conform such as the purchase of adjoining properties. Mr. Vanguilder stated that Mr. Dalston had inquired about this and that unfortunately the properties were not available for sale. Mr. Hansen asked if it was possible to connect the smaller dwelling that was the old paint store to county sewer. Mr. Vanguilder stated that it was a high-pressure line so

it was not feasible to connect without a pump station to over-ride the high pressure, as this would cost Mr. Dalston approximately \$150,000. Mrs. Murphy stated that it is possible to put a restriction on the deed that would make it necessary to connect to county sewer if it were to become available. Mr. Brennan asked at what distance it would be considered necessary. Mrs. Murphy stated that this is at the discretion of the Planning Board. Mr. Tedrow asked if it would be possible to change the proposed lot line adjustment so that the larger lot would be a flag lot to allow for more frontage for the smaller lot. Mr. Vanguilder stated that while it was possible, it was undesirable as that area of the larger lot is currently used as the front yard. Mr. Hansen then asked if the variance was substantial. Mrs. Jordan stated that while she feels that the area variance is substantial, there would be no physical changes to the lots and they would continue to be used as they are. Mr. Hansen stated there would be no adverse effects on the environment and that Mr. Dalston had obtained the necessary building permits for all changes that were made to the dwellings and the new septic systems. Mr. Hansen asked if the difficulty was self-created. Mr. Brennan asked if it was relevant if the difficulty was self-created. Mrs. Murphy stated that Mr. Dalston was aware of the difficulty he created when he had come to the ZBA asking for the initial variance. Mr. Rose stated that the Board would not have granted that variance had they known that this would have created this difficulty. Mr. Hansen stated that the approval of the variance was not applicable as the lot is zoned residential and that two dwelling units are allowed on one lot. Mrs. Murphy stated that the variance was necessary as the dwelling units were separate. Mr. Rose stated that the Board, in hindsight, recognizes that granting the variance created a hardship. Mrs. Murphy said that from a legal standpoint this is a self-created difficulty. Mr. Rose stated that the ZBA had granted the variance. Mr. Hansen stated that there is nothing in the code that directly states that two separate dwelling units cannot exist on the same lot, but that this was rather an interpretation by the Town Building Dept. Mr. Hansen stated that the wording in the code would need to be changed to specify that both dwelling units must be in the same structure. Mr. Rose stated that the Board created the difficulty in making the incorrect decision to grant the initial variance. Mr. Hansen asked if the approval would be based on a deed restriction to consolidate the two lots if the lots were sold for commercial use. Mr. Rose stated that he believes that the deed restriction condition should be thought through. Mrs. Jordan stated that the deed restriction would ensure that there would be no future difficulties in the sale of the properties. Mr. Hansen asked if the Town could enforce the deed restriction. Mrs. Murphy stated that the Town could deny any future non-conforming changes. Mr. Rose asked how the Board would be sure that the restriction would not cause problems for future owners. Mrs. Murphy stated that the property is currently zoned residential and that the zoning would need to be changed to use the property for commercial use. Mr. Vanguilder stated that all mortgage lenders will see the deed restriction and that future buyers would be aware at the time of purchase. Mr. Hansen asked if the deed restriction could potentially be a deal breaker for future buyers in the event that one buyer wants to sell for commercial and the second buyer does not. Mrs. Jordan stated that it is impossible to predict future events. Mr. Hansen stated that he wants to be sure that the Board does not solve the problem at hand of two separate dwelling units on one lot to create another problem with the deed restriction. Mrs. Smith-Law asked if the deed restriction was necessary. Mrs. Murphy stated that the lots would be pre-existing non-

conforming lots. Mr. Dalston stated that he offered the deed restriction because he intends to sell the lots as residential. Mr. Brennan asked if the lots could possibly be sold as two separate lots for commercial use without the deed restriction. Mrs. Murphy stated that the lots would be pre-existing non-conforming. Mr. Hansen stated that he was not in favor of the area variance because of possible re-zoning to commercial use. Mr. Brennan stated that it was undesirable to have two non-conforming commercial lots and that he sees the validity of the deed restriction. Mr. Hansen asked if someone was ready to make a motion with the two conditions.

Mrs. Jordan made a motion to approve the area variance with the two conditions that the deed restriction would make it necessary to consolidate the lots for commercial use and that the property would need to be connected to county sewer if it were to become available. Mr. Brennan seconded. Mr. Hansen asked for a vote with the following responses: Mr. Hansen-aye, Mr. Rose-aye, Mrs. Jordan-aye, Mr. Brennan-aye, and Mr. Tedrow-aye. Motion carried.

Mr. Hansen made a motion to adjourn the February 6, 2006 Zoning Board of Appeals meeting at 9:13pm. Mr. Tedrow seconded. Motion carried.