

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
November 1, 2010

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:05 p.m. on Monday, November 1, 2010 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mrs. Jordan, Mr. Rose and Mr. Brennan
Alternates: Mr. Burdyl and Mrs. Smith-Law
Town Attorney: Mr. Matthew Chauvin
Town Board Liaison: Paul Hotaling
Planner: Mrs. Zepko
Secretary: Mrs. Mikol

Motion was made by Mr. Burdyl and seconded by Mrs. Jordan that the minutes from the October 4, 2010 meeting be approved. Motion carried.

Greg Massengale, 160 Woodin Road

Mr. Massengale was present with his attorney, Mr. John Imhof.

Chairman Hansen commented that tonight is an agenda meeting; no decision will be made on this application tonight. We will review the application to decide if it is sufficient to go to a public hearing at the next meeting. The applicant resides at 160 Woodin Road in a R-1 Zone and is requesting a variance from article 165.44 of the Town's Zoning Ordinance. The particular portion of the ordinance prohibits the parking of commercial vehicles on private property in an R-1 Zone. The applicant is applying for a use variance from that prohibition.

Mr. Imhof stated that Mr. Massengale has a trucking company and was honestly not aware that he was in violation of any of the ordinances or zoning regulations until he received a ticket to appear in Court. Mr. Massengale parks up to four vehicles on his property at anytime. He has a large parcel of land located off Woodin Road down a private shared gravel driveway. When the trucks are not being used they are parked; they are not coming and going at odd hours of the night, they do not run them all night, it doesn't disrupt anything or anyone.

There is another business to the west, a sharpening shop. There is screening so it is hard to see the trucks unless you are looking for them. This is the essence of our request for a use variance.

Chairman Hansen stated that in order to meet the tests for a use variance your client would have to show that his property is somehow different than any other property in a residential zone that would allow him verses any of his neighbors from parking commercial vehicles on their property.

Mr. Imhof commented that is why we show in his map the size of his property. He has 3 acres totally screened off from the other neighbors. He lives on a private road, not a public road. It is essentially different than the other lots in the same zoning area.

Chairman Hansen asked, but is it different in use? We will not debate the whole thing tonight but essentially its not just the size of the property it's what is unique about that property that makes it so different than any other property in the residential zones generically other than the size. There are many large lots in the Town of Halfmoon and truck parking is not permitted on them either.

Mr. Imhof commented that it is more than just the size it's the fact that it is totally screened off on a private road off of the main road. It's not on the main road it is on a private road and it's screened off in addition to the size.

Mr. Massengale commented that he is right on the corner of Woodin and Grooms Road and there is a lot of heavy truck traffic on those roads. There is a private access road for 4 houses, like a cul-de-sac, and it's a dirt gravel driveway. I am not in a development we are tucked back. We can hear the Northway and Woodin and Grooms Road. We are off the road with no road frontage.

Mr. Imhof commented that when you couple that with other non-conforming uses in the area he would not be the only commercial non-conforming use. There is a sharpening shop right near him. It is very important to note the buffers he has put up so it would not interfere with his neighbors in anyway.

Chairman Hansen asked if the Board Members had any questions?

Vice-Chairman Tedrow asked if Mr. Massengale had his residence on this lot as well? Mr. Massengale replied, yes.

Vice Chairman Tedrow commented, so you are not replacing a residential use you are adding to a residential use.

Mr. Massengale replied, yes, we park the trucks there and I have nowhere else to park them. If I move the trucks it will put me out of business. It is not feasible. I have checked around I priced a few places to park the trucks. I had one person tell them it would be \$100 per week per truck. For four trucks it would be \$1600.00 a month and my business would be closed. I have guys that work for me. The guys come in take the trucks, and they don't run all night. I can't just take the trucks and put them on a vacant lot. They need electricity at night to stay warm. There is a block heater on the trucks, it has to stay plugged in because they have a diesel motor. If they aren't plugged in, it will gel up the fuel and the trucks will not start. If I try to take the trucks and put them on a vacant lot somewhere where someone will rent to me for \$25 a week per truck, that is fine, except they will not start, they will freeze up. If there was an emergency repair on the truck it can be handled on site. Mr. Bonesteel is the mechanic. He owns Bonesteel's Truck Repair in Burnt Hills and that is a full service truck repair shop. That is where the trucks go for maintenance and repairs.

Mr. Brennan asked what has determined that this is a commercial site? Is it the trucks being parked there? What is the deciding factor? What triggered that?

Mr. Massengale responded to the Board: The trucks are commercial trucks. You can have one commercial vehicle on a R-1 lot. For safety reasons, I can't leave the trucks. One motor is worth \$15,000.00. If I take the trucks and put them anywhere I feel that I am at risk. In my driveway I am not at risk. If I try to move them now how much do I need to pay for parking?

Mr. Brennan asked if there is more than one commercial vehicle parked on a lot that turns it into a commercial use?

Mr. Imhof stated that his client receives tickets everyday that he has more than one truck on the site. We are waiting to hear from the ZBA ruling before dealing with the tickets.

Mrs. Smith-Law asked, so employees come to your house everyday? Mr. Massengale replied that they pick up the tractor leave their vehicle and go. Mrs. Smith-Law asked so this is where you run your business?

Mr. Massengale commented that he only parks the trucks there. They are dispatched from Rensselaer but the trucks are parked in Clifton Park. Right now there are 2 trucks in my driveway because two guys are out and they will not bring them in tonight. There are times when they are not in the driveway; it means the guys are out working.

Mrs. Jordan asked is it just trucks or trailers also? Mr. Massengale replied trucks only, no trailers. The trailers are on sites which we have no problem with those. Once again, I don't have to plug in trailers if I can just take my trucks and park them there I would feel pretty safe leaving them there but there is no electricity to leave them there.

Mr. Chauvin, Esq. asked where is the business itself? You say that the trucks are dispatched out of Rensselaer, where is the actual business conducted, where is the paperwork, bookkeeping, paychecks where is that coming from? Where are the phone calls coming from?

Mr. Massengale replied all the phone dispatches are through my cell phone. I do my bookkeeping in my house on my computer and paychecks are picked up at my house when the truck is brought back they pick them up. My business address is P.O. Box 1556, Clifton Park, NY.

Mr. Imhof commented that if it were important that he separate from his house, he does his work on his laptop; it can be done anywhere in the house, or out of the house. I don't know how that impacts the business.

Mr. Massengale commented that I could start mailing them their paychecks instead of picking them up at my house.

Mr. Imhof commented that it's a virtual business done through cell phones and a lap top computer. It's run from a P.O. Box.

Mr. Rose asked, Mr. Massengale, did you know you were in a residential zone when you decided to park the trucks there or did you not know that?

Mr. Massengale commented that he knew he was in a residential zone. I thought it could have been L-I Light Industrial because of the truck traffic on Woodin Road and Grooms Road. I never knew that I could only have one commercial truck there. I have been conducting business there for 7-8 years with commercial trucks. I never knew, never knew I got my first ticket and contacted Mr. Imhof and we proceeded.

Mr. Rose how did this business come to be on this property?

Mr. Massengale replied back in 2002 I went back to driving a truck. When I started I drove for an owner operator. The owner operator treated me in a very rude crude fashion so I decided to buy my own truck. I bought my own truck and went after his freight that is how it all started. I had one truck for 6 years. When you are in a small business you want to grow, to stride, to do better so I bought another truck and it was doing so well I bought a few more trucks. Now all of these things are happening. It's not going so well.

Mr. Imhof asked Mr. Massengale if he was going to have more trucks? Mr. Massengale said no the economy couldn't handle more trucks and neither can I. That is all he is looking for is the parking of his 4 trucks.

Mr. Rose said thank you I just wanted to see how you became a business at Woodin and Grooms Road.

Mr. Massengale commented that he lived there since 1999, about 11 years.

Mr. Brennan asked if the sharpening shop is allowed there? Is it pre-existing non-conforming or grandfathered in? Mrs. Zepko replied that the sharpening shop is an in-home occupation approved by the Planning Board on its own parcel and it's an allowable use in an R-1 Zone. The sharpening shop uses the same access off Woodin Road. They are all land locked parcels with no frontage on a town road.

Mr. Rose asked how did the private road come to be? Who approved that road? Mr. Massengale commented that they all own a piece of that road. Larry that owns the sharpening shop owns a piece, Bill Werner my neighbor owns a piece and Steve and I maintain the road. Mr. Massengale bought a four-wheeler with a plow so he can plow out the road. The Town doesn't maintain the road.

Mr. Brennan asked if he has right-of-way access or something in your deed for the sharing of the private driveway? Mr. Massengale replied yes.

Mr. Brennan asked if there was any point that would curtail that right-of-way based on the property being used as commercial? Would that affect your deed in any way? Is that independent of what our decision would be? What happens if we say it is zoned commercial? What happens to the rest of that road?

Mr. Chauvin commented it would be an independent decision for just that property. The Board was analyzing the application as it stood before them, only whether to grant the use variance for the parking of more than 1 commercial vehicle on the property. They did not have to analyze the impact on the defendants property rights via the easement.

Chairman Hansen commented that before that question goes too far, we are not talking about re-zoning this property. That is not what they are requesting. Mr. Massengale is asking specifically for a variance from the parking prohibition of commercial vehicles in a residential zone. There is no request within the application for operating a commercial business at this property, which is essentially a separate issue and is not being addressed by this application. Chairman Hansen further commented that he was not aware of any action the Town has taken with respect to a business on this property. The issue right now is that he is getting parking tickets, zoning violation or summons or an appearance ticket.

Mr. Brennan asked what was the event that led to these tickets, a casual enforcement or a complaint? Mrs. Zepko commented that it was a complaint that the Building Department received.

Mr. Imhof commented that there is a history with a neighbor and a dog. It kind of echoes way back. It could also spin it into Mr. Massengales children ride 4-wheelers and dirt bikes, which is on private property.

Mr. Massengale commented that we got along fine with all the neighbors for a long period of time. It was the four-wheelers and dirt bikes that they are mad at. They couldn't do anything about it because it's on private property. There is no noise ordinance in the Town of Halfmoon. However, we make sure they don't ride before 9am and shut down by 8:30pm – 9pm. We have respect for all the neighbors. Mrs. Brown, who is one of the complainers, and I have a long history. Mr. Massengale received many dog complaint tickets through the Town, and had to hire an attorney for \$2,200.00 to get her to stop. Its harassment.

Chairman Hansen asked if anyone had any more questions with respect to the sufficiency of the application or any other questions you may want to ask?

Mr. Rose asked under the use variances are there any provisions for truck parking on a residential property? What is allowed on a residential property?

Chairman Hansen commented that you have to specifically review what they are asking for from this section, and this section prohibits parking of commercial vehicles in a residential zone.

Mr. Imhof asked if that section wasn't in there then what my client is doing is not in apposition to the zoning rules that is why we are looking for relief to park commercial trucks.

Mr. Rose asked how far away are these trucks parked to the next residential property? Mr. Imhof replied 50' and about 400' to Mrs. Brown's house, the person that complained.

Mr. Massengale commented that Mrs. Brown is blocked by rows of trees and is 400' away and can't see the trucks from her house at all. Mr. Massengale explained that he had foot surgery with pins in his foot. There was a tree that came down and broke 3 blades on her fence. Mrs. Brown came to my home and demanded that I clean up the tree immediately. I explained to her that I just had surgery, had pins in my foot and was on pain medication and that it would have to wait. Mr. Massengale gave her his insurance company information and told her to call the insurance company. Mrs. Brown called and the adjuster came to his house and said, Mr. Massengale you are not responsible for this and I asked him what should I do? The adjuster said the neighborly thing to do is to clean it up. When the pins were removed from my foot I went there in a surgical shoe with a chain saw in the snow and ice and I cut up the tree and removed it and ever since then I have had a problem with this lady for 11 years, when is it going to stop. This is how my children eat I am not doing anything crucially bad here I am parking my trucks. Where else am I supposed to put them? If I made enough revenue to put them somewhere with a garage by all means necessary I would do it tomorrow but I don't make enough revenue to do that. One tire is \$400 it is not feasible for me I can't afford to do that. If I had known about this before I expanded and I grew I would have sought this first.

Mr. Brennan commented that he didn't know if there was additional information that we may want the applicant to present. Any emergency services questions. Any hazard materials stored on site with the tractor-trailer trucks? It's an open question for the rest of the Board so we have all the data so we don't delay this application. Mrs. Zepko responded to Mr. Brennan that the questions he has would come up during commercial site plan review, the health and safety of the neighbors, at the Planning Board meeting.

Mr. Massengale commented that there are no hazardous materials on his site.

Chairman Hansen commented lets go back. This application has nothing to do with a commercial site plan. Mr. Brennan replied that during the commercial site plan review they will review multiple trucks, what the load would be, the number of vehicles and fire department issues. We don't want the fire department to come back to us and say we didn't have time to review this, we are concerned about having 4 commercial vehicles, the road isn't wide enough for a vehicle to get down there.

Chairman Hansen commented that the questions are valid, but if it were approved, it would never go to a site plan review because we would only be allowing him to park the vehicles there. There is no site plan review for this even if we approve it.

Mr. Brennan asked, in your opinion, we as the ZBA wouldn't want to exercise a site plan? Chairman Hansen replied what I am saying is that it is valid to consider those issues in determining whether to approve this or not but there won't be any other site plan approved by the Town if we did approve this. There would be no reason, specifically related to the parking of commercial vehicles. It does not authorize him to conduct a business there, so there is no reason for him to go in for a site plan review for the Town Planning Board.

Mr. Rose commented that he thinks what the Chairman is saying is that by parking the trucks there, we are not considering the fact there is a business there.

Chairman Hansen commented that they are asking for the variance from the section that specifically prohibits the parking of commercial vehicles. Mr. Rose commented that he was trying to interpret what Mr. Brennan is saying. Chairman Hansen commented that you can have a daycare center in an R-1 zone and if you wanted to park 4 commercial vehicles there you couldn't do it.

Mr. Rose commented that we are just considering this request as a parking lot not as a business concern.

Mrs. Jordan commented that maybe our legal council could explain that this was before the Planning Board. I thought they were asking the Planning Board to make a commercial site. Is that what originally happened at the Planning Board and because they couldn't make a decision, it came to us?

No, replied Mr. Imhof. He commented that they applied to the Planning Board just to park the trucks there that is the first step to get to the ZBA. They had to deny my application to go to the Zoning Board of Appeals.

Mr. Rose asked, is that correct? Mr. Chauvin replied yes.

Mrs. Jordan further commented that just following procedurally they are asking for relief from section 165.44 and that is it. If we were to grant that relief Mr. Massengale will park his 4 trucks in his driveway and have a commercial business in a residential zone without having to go through all the things that people have to go through with the Planning Board.

Mr. Chauvin commented that is correct. The applicant is asking for relief from section 165.44 it is the Board's decision to determine the parking of 4 commercial vehicles on a R-1 residential lot by going through your analysis of the 4 prongs making sure they have been met before determining if the variance request has been met.

Mr. Chauvin replied that is all there is before this board at this time.

Mrs. Jordan asked does it go anywhere after the ZBA? Mr. Chauvin replied that he could not speak for that under the circumstances.

Mr. Massengale stated that he does not run a commercial business from his residence it is done as a virtual business; my cell phone is in my truck that is how I communicate to the guys. If it makes everyone more comfortable that I mail employees their paychecks, I can do that. All my work comes out of Rensselaer through our cell phones or the computer. My driver is here right now and he could figure out his work, we don't go to an office. Trucking companies do not need an office to function. My dispatcher is in Rensselaer and dispatches the trucks from Champlain, New York.

Mr. Imhof asked if we would be better off addressing both issues at once. I don't want to have happen that my client gets a use variance that he can park his trucks there and then somebody comes by and says you are running a business from there as well. It is a virtual business and he is not running the business from his house so could I talk to you, Mr. Chauvin afterwards to decide what to do with this.

Mr. Chauvin the only issue before this Board is the application for the use variance that is all that is before them at this time. That is all they can discuss and act on.

Mr. Imhof stated that he understands that, but practically speaking, we don't want to get into a position that they grant him a use variance and someone comes after him saying but you can't use your cell phone there to get calls for work. I understand the concern but I also understand how the business works it's not really a business, it's all virtual. I will address that with you after the meeting.

Mr. Steve Bonesteel would like to address a few issues. I grew up in this Town, been here for 33 years. I have been a volunteer fireman for West Crescent Fire for 19 years and a Fire Chief for 5-6 years back in 2000. To answer Mr. Brennan's question about toxic waste or materials and fire fighter access. The trucks are never with any containment. The trailers are with the product not with the truck. The trucks are in top shape they do not leak oil. They are always parked in a straight line all the way back far enough off the private road fire truck access is never a problem. He also removed some trees in the front of the property so that there is even more room for a fire truck to pull over for a fire or a rescue. Mr. Bonesteel also explained to the Board that when you see these big trucks going down the road they have these huge stacks on them and really loud they have all the equipment on them with full exhaust and mufflers they are not short loud heavy trucks bouncing down the road and making all sorts of noise. They are very quiet trucks they are brought to my shop on Grooms Road if any repairs need to be done.

Mr. Bonesteel commented that all maintenance is done at my shop and not at their house except for emergencies like a flat tire that would be done at the site.

Mr. Rose asked how far Mr. Bonesteel lives from Mr. Massengale. Mr. Bonesteel replied, off Grooms Road just past the Harvest Church.

Chairman Hansen asked Mr. Chauvin if there was a chance that after tonight's discussion that they would be changing their application.

Mr. Chauvin replied that the Board's review is for parking only. A site plan would not be the purview of this Board and would not be relevant to this application. The only thing you are looking at is this variance. What the applicant chooses to do based on the decision of this board we can't predict that.

Chairman Hansen commented that if we did approve this it would open that specter of putting a blessing on a commercial operation and I think there is a bigger issue here and I am not sure this requests covers it all.

Mr. Chauvin commented that your review is limited to the application on hand as far as the parking of the commercial vehicles only.

Mr. Massengale commented that for all the years that I have been parking my trucks on my property there is not one sign that illustrates that G & C Trucking exists here. There is no advertising. I am leased on with a company so if you had a trailer that you needed pulled you would say hey what about that guy that lives on Woodin Road lets call him. I cannot do it I am leased with a company. I have to work exclusively for them. I can only work for G & C Trucking; that is how my insurance works. If I ever got caught pulling other people's trailers, I would be moonlighting and I could loose my job. My trucks are insured under the mother company that I work for, ARL I have to pull exclusively ARL's freight.

Mr. Imhof commented that this answer's your question that there really isn't a business being operated out of there but I will discuss this with Mr. Chauvin.

Mr. Brennan asked if there were other reasonable alternatives that Mr. Massengale could seek, you have already mentioned that to us. Do you have those other artifacts that you can present to us?

Mr. Massengale responded no he does not I hung up on the guy the offer was unreasonable.

Mrs. Jordan commented that is the test for a use variance. It is a test for an area variance replied Vice-Chairman Tedrow.

Vice-Chairman Tedrow commented that trying to get at this, the implications of a decision here in a broader realm, do we have to do SEQRA, which asks the questions of the implications of the decision for various neighbor impacts and environmental impacts, at least a short form.

Mr. Imhof replied that he would prepare a short form.

Chairman Hansen asked if we need additional information at this point? Does the Board want to entertain a motion to set a public hearing at the next meeting?

Motion was made by Mrs. Jordan to set a public hearing for Monday, December 6, 2010 at 7:00 p.m. Seconded by Mr. Rose. Motion was carried.

Mrs. Jordan asked Chairman Hansen when they set the site visit it would be helpful to have the trucks at the site.

Mr. Massengale commented that as long as he knows when they are coming he would make sure he has at least 3 trucks at the site.

Chairman Hansen asked the Board if they could meet on Saturday November 20th at 9am.

Meeting was adjourned with a Motion made by Mrs. Smith-Law and seconded by Vice-Chairman Tedrow. Motion was carried.

Meeting adjourned at 8:15 p.m.
Respectively submitted by Denise Mikol, Secretary
Town of Halfmoon Zoning Board of Appeals