

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
June 2, 2014

Chairman Rose called the meeting to order for the Town of Halfmoon Zoning Board of Appeals at 7:10 p.m. on Monday, June 2, 2014 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Hansen, Mr. Burdyl
Alternate Member: Deborah Curto – voting tonight in absence of Mr. Brennan
Town Attorney: Ms. Cathy Drobny
Town Liaison: Mr. Polak - absent
Secretary: Mrs. Mikol

A motion was made by Mr. Hansen and seconded by Vice-Chairman Tedrow to approve the minutes from the May 5, 2014 meeting. Motion was carried.

Chairman Rose will be making changes to the order of the agenda tonight. Motion was made by Mr. Hansen and seconded by Mr. Burdyl to make those changes. Motion was carried.

Old Business:
Public Hearings:

Jack Byrne Ford, 1003 Hudson River Road – 268.-1-8.122, 268.-1-8.2 and 268.-1-9.1

Chairman Rose has excused himself from this item. Chairman Rose commented that he is a neighbor of Jack Byrne and purchased a car from him. Vice-Chairman Tedrow will be acting Chairman for this proposal.

For the record, Mrs. Curto commented: I am a neighbor as well; it will not alter my decision making ability.

Mr. Hansen commented: I am a neighbor as well; it will not alter my decision making ability.

Vice-Chairman Tedrow commented: The Byrne Family is requesting a 2,700 sq. ft. addition to their existing automotive sales facility which includes an expansion to the service area and showroom space at 1003 Hudson River Road in an M-1 Industrial District. The current use as an automotive sales facility is pre-existing, non-conforming and requires a variance.

The proposed addition would further reduce the pre-existing non-conforming front yard setback of the automobile sales facility along Routes 4 & 32 from 30' to 15', 35' less than the required 50' setback pursuant to Section 165-31 and Section 165 Attachment 1, Section A of the Halfmoon Town Code and would need an area variance.

In addition, the site currently contains less than 1% green space with 20% required, pursuant to Section 165-16 (D) (1), Section 165-31 and Section 165, Attachment 1, Schedule A of the Halfmoon Town Code would also require an area variance. The applicant received a denial from the Planning Board at its regular meeting of Monday, April 14, 2014.

Mr. Walt Lippmann, PE from McDonald Engineering commented: I am here representing Jack Byrne Ford at 1003 Hudson River Road also with me tonight is Mr. Brian Lamansky, Construction Manager with Bette & Cring. We are here for a couple of reasons tonight the first one is a request for an extension or enlargement of a non-conforming use. This facility which Mr. Byrne took over in 1984 was an auto dealership it's located in an M-1 District. The former dealership across the street was also in an M-1 District. The other variance request is setback requirements and green space. It all started when Ford was offering incentives to Dealerships around the country to modernize and update their facility. As part of the incentive you had to do an addition to your facility. On the south face of the building is where the 2,700 sq. ft. addition will be located. The addition will be used to increase the showroom space as well as the service area. The service area will have a dual door. When you come in for service you will pull up to the door and drive your car in. You will then be greeted by a Service Manager; he will take you to the desk area where you will take care of the business you came in for. You will then leave out the new main entrance. As part of this proposal process, the Planning Board was also looking at all the existing buildings on the lot.

Currently, this is made up of three lots. In discussions with the Town Planner the existing middle building would have a setback violation on the east side and the north side of the building along with the existing facility which will have a non-conformance setback on the north side and the east side as well. As part of this process Mr. Byrne is consolidating those three lots and by doing so the middle building in the back of the parcel is now conforming to the current Zoning Regulations and the existing building and the two side setbacks will now become conforming by consolidation. The variance that we are looking for is for the front of the building which we have 126' setback and with the two sides 15' would be an acceptable setback and the rear of the property was shown. After further investigating the Town determined that they have frontage on two roads Hudson River Road and Main Street. Which means the side setback of 15' is now a front 50' setback.

The existing building that will not be touched is 30' and that was pre-existing from the early 1980's. As part of the addition they will also be paving and re-stripping the front portion of the facility. The east side of the facility is going to remain the same it will be re-stripped to match what is there already. The inventory lot at the northeast and northwest end of the site will stay as they are now.

Vice-Chairman Tedrow commented: Will snow removal be an issue or do you have a place to store snow removal.

Mr. Lippmann commented: No we have no problem removing snow and storing it.

Mr. Lamansky commented: There is also a DOT ROW area where there is a concrete wing gutter that DOT did install. During the winter time Mr. Byrne plows the entire paved area to allow all the water to drain. Mr. Byrne not only plows to the property line but they also plow another 8-9' of pavement that they clear as well to make the water drain into that without any build up.

Vice-Chairman Tedrow commented: Any questions from the Board?

Mr. Hansen commented: One of the requests is for an extension of a non-conforming use is that correct?

Vice-Chairman Tedrow commented: It's not really a request so they don't have the criteria for the use variance for that.

Mr. Hansen commented: True, the other two are area variances.

Mr. Burdyl commented: The main entrance where it shows the Ford symbol and the tower what is the top height of the tower?

Mr. Lamansky commented: 24' is the total height. They actually went with the smaller tower height. It works better in scale with the front of the building.

Mr. Burdyl commented: Have you considered any alternatives in increasing the green space beyond the additional hedge along the building?

Mr. Lamansky commented: In the rear of the parking lot there is actually (where the metal building is located) there is a portion around this which is not really maintained, we intend to actually fill that space with shrubbery, mulch and then make into more of a green space. As Mr. Lippmann said, there is going to be an 18" landscaping strip that will be around the front. Unfortunately with an auto dealership every sq. ft. of pavement is needed for inventory. At the last meeting we did mention that in order to meet the 20% requirement for green space I think it was 150 spaces but they would lose inventory which wouldn't be feasible for them. One thing that we did mention was there is a lot of DOT easement that is green. There is a space in the front of the building between where the two roads meet and there is also the entire bank going along the side that Jack Byrne does maintain and keeps landscaped. We are hoping that will help to compensate. When you're on site there is actually green space around the buildings that are groomed and maintained.

Mr. Burdyl commented: The rear building where you will be maintaining space what would be your square footage estimate of the potential green space there?

Mr. Lamansky commented: It is a very small area. It would move us up to 1-2%. It is really the only area that is not used for customer parking, inventory parking or service parking. Unfortunately with the nature of the business the parking is not feasible. With exception to a bush or two the addition is only going over an existing paved space so we are not actually decreasing any greenery.

Mr. Burdyl commented: What would be your estimate of the actual DOT space that you are maintaining as green space?

Mr. Lamansky commented: Approximately 10,000 sq. ft.

Mr. Burdyl commented: So on an effective basis not an owned basis you do have a substantial green space around the area.

Vice-Chairman Tedrow commented: Does anyone from the public wish to speak please come forward and state your name and address for the record.

Seeing that no one chose to speak we will close the public hearing at 7:28 p.m.

Vice-Chairman Tedrow commented the following:

"In making its 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. Burdyl commented: Due to the site itself I believe they have created a plan which is in keeping with the objectives as much as possible. With respect to the green space issue, even though they don't own all the property the DOT green space certainly contributes to the overall environment of the particular site and I don't believe there would be any detriment. In fact, with the new showroom design it looks like it would actually improve the site.

Vice-Chairman Tedrow commented: I would like to add that the neighbor near the boundary is not really a neighbor to be effected by the site. It will have a minimal effect 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: To do what they want to do to improve the site there is no other alternative if you are going to use the existing site.

Vice-Chairman Tedrow commented: If they were going to close the entrance area to the service bays there is not much of a choice.

"Whether the requested area variance is substantial."

Mr. Hansen commented: It is substantial it is currently being used for the same purpose it's just being used in an enclosed structure. It may even be an enhancement.

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

Mr. Burdyl commented: It appears in general that the proposed variance request will be an enhancement to the site.

Vice-Chairman Tedrow commented: They are taking an area that is already paved so they are not losing any green space or increasing any run off.

"Whether the alleged difficulty was self-created, which considerations shall be necessarily precluded the granting of the area variance."

Mr. Hansen commented: It is self-created and is being done voluntarily but the irony is to enhance the attractiveness and make use of the facility, I don't think that should be a reason not to grant the variance.

Vice-Chairman Tedrow commented: The Code doesn't really give us any criteria to consider on the enlargement of the pre-existing non-conforming use but I think maybe the first item under area variance would be a pretty good thing to look at.

"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."

Vice-Chairman Tedrow commented: Does anyone have anything else to add here?

Mr. Hansen commented: It is what it is, it doesn't sound like from what they said, other than a normal growth of the business and it doesn't sound like there is going to be a big change to the business itself. In terms of the number of cars sold is that going to be different?

Mr. Lippmann commented: The inventory is not changing due to the project. The business will not double in size.

Mr. Hansen commented: At some point you may outgrow the site but you will have to deal with that when it happens.

Vice-Chairman Tedrow commented: "Extension or enlargement" Section 165-66 Article XII

"No non-conforming use shall hereafter be extended or enlarged except following authorization by the Zoning Board of Appeals as a special extension and subject to the site plan review and approval provisions of Article VI." Article VI, which would then be site plan approval from the Planning Board.

Vice-Chairman Tedrow commented: That is as much guidance as we get for dealing with the expansion of the non-conforming use.

Mr. Hansen commented: We should approve each item separately.

Mr. Hansen made a motion to approve the extension of the non-conforming use for Mr. Jack Byrne at 1003 Hudson River Road, seconded by Mr. Burdyl. Motion was carried. Chairman Rose abstained.

Mr. Burdyl made a motion to approve the setback variance for the corner of the building subject to the application, seconded by Mr. Hansen. Motion was carried. Chairman Rose abstained.

Mr. Burdyl made a motion to approve the variance for the green space as proposed in the application, seconded by Mr. Hansen. Motion carried. Chairman Rose abstained.

Vice-Chairman Tedrow commented that the Jack Byrne Site Plan will have to go back to the Planning Board for site plan approval.

Kevin Koval/Adirondack Basements, 4 Jones Road 284.-2-16

Chairman Rose commented: This is our last item on the agenda tonight but we have moved it to our second item.

Mr. Koval is requesting an area variance to build a 507 sq. ft. building to be used as office space and a training area at 4 Jones Road. The addition would cause the site to have inadequate front yard setbacks along Crescent VF Road from 32.4' to 26' and along Jones Road from 26.2' to 20'. The required setbacks for both roads is 50' pursuant to Section 165-31, Section 165 Attachment 1, Schedule A, and Section 165-66 of the Halfmoon Town Code. The applicant received a denial from the Planning Board.

Mr. Koval commented: I live at 57 Canal Road and I am owner and President of Adirondack Basements at 4 Jones Road. The reason for the addition is that currently we hold weekly sales, production and training sessions. The area we do that in is what use to be the back porch of this house that we converted to an office it is very cramped. In an effort to foster more of a sense of pride in the employees and having more space and space more conducive to actual training we would like to add an addition to the end of the building. In my opinion, it doesn't really impact the neighborhood; there is no home across the street from this end of the building. It is right out in front of Bast Hatfield and there really is no other place to put an addition because of the layout of the land.

If you are familiar with the area Jones Road is an off shoot of Crescent Road and when the Northway exit was built Crescent Road was straightened and now I have a road on both sides of the building. It has created a very narrow strip of land that this building sits on. The building is on top of a hill so there is a very good buffer there. I am not expanding outwards toward Jones Road or Crescent Road at all. I am extending an addition toward the point on the eastern end of the building towards Bast Hatfield. It would match a similar addition on the west end of the building that is currently there. It would be uniform on both ends. We would use the same building material that is on the building now same siding and roofing. It is not designed to allow the addition of any more employees in house it is just to train the current employees that we have.

Chairman Rose commented: We have received comments from Saratoga County Planning Board that there is no impact county wide.

Mr. Burdyl commented: What is the new drainage situation and how does that compare to the current structure?

Mr. Koval commented: As far as the roof, there will be an additional 18' of gutters and will drain as it does now. We are on sand and there will not be any foundation drainage.

Mr. Burdyl commented: What is the current situation as far as the current building and the foundation drainage?

Mr. Koval commented: The current building doesn't have any foundation drains.

Mr. Burdyl commented: Where does that water drain to?

Mr. Koval commented: It drains to Jones Road side and down hill into the grass and Crescent Road side into a steep ditch for the State ROW.

Chairman Roe commented: How many people do you think will attend the training session?

Mr. Koval commented: On Tuesdays we have sales meetings with 1 sales manager and about 8 others. On Wednesdays we have production meetings with 12 people.

Chairman Rose commented: How many cars would that represent?

Mr. Koval commented: There are employees that are already there, the production guys park their vehicles and use company trucks to job sites at 7am. Tuesdays are sales meetings with the staff and the design specialist comes and parks where the company trucks were parked.

Vice-Chairman Tedrow commented: An issue that the County Planning Board raised in their review is that we should talk to you about how much longer this site will serve your needs and would we see more requests for variances for expansion in the future?

Mr. Koval commented: I have been looking for a new facility I have not been successful in finding an area that would suite my needs. This is a temporary measure until I find something that would work for my business. At this time, it is feasible to do the addition.

Chairman Rose commented: Does the Board have anymore questions? Does anyone from the public have any questions? Seeing that no one chose to speak I will close the public hearing at 7:45 p.m.

"In making its 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. Burdyl commented: From what has been presented to the Board I don't believe there will be an undesirable impact. You are expanding the current use of the building but the building would still have the same drainage and parking.

"Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance."

Vice-Chairman Tedrow commented: With the unusual nature of the site, as stated, there are two front yards one in the front and one in the back. There is really no other way to add space to the building without requiring a variance.

“Whether the requested area variance is substantial.”

Chairman Rose commented: It is substantial it's not a minor change. However, it doesn't preclude me from thinking that it's an unreasonable request to go forward. I looked around the property several times from different angles it's not going to block or change anything significantly because you are up on a unique knoll on the side of the road. You have satisfied my question about the parking spots. It's unique.

Mr. Hansen commented: The existing building at the corner where this addition will be added the setback already is at 32' and will go down to 26' on Crescent Vischer Ferry Road and on the Jones Road side the setback is 25' to 20'. The existing building as it is can't meet the requirements. By proposing the addition it doesn't seem that significant.

“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: No it's already an existing Commercial Use and he is not proposing to park more vehicles, or materials to the site it is just part of the building. It will continue to have the same use.

“Whether the alleged difficulty was self-created, which considerations shall be necessarily precluded the granting of the area variance.”

Mr. Hansen commented: Again, it is a decision that was made its part of the business. If he is going to continue to expand his business he will need to be able to do that inside the building and that is a decision that he made. It's part of the business.

Chairman Rose commented: The County referral touches on that. Any further request for a variance the County Planning Board is putting you on notice that from the size of your business you may need to look for another facility but you already know that and you have already looked. I can't tell you that we would prohibit you from coming back again I think the message has certainly been cast.

Mr. Hansen made a motion to approve the request for the area variance for Mr. Koval at 4 Jones Road, seconded by Vice-Chairman Tedrow. Motion was carried.

Michael Holohan, 81 Woodin Road – 278.19-2-34

Chairman Rose commented: Mr. Holohan is requesting an area and frontage variance to construct a single-family home on Woodin Road near the corner of Woodin and Breski Lane. The lot has 146.17' of frontage and 17,608 sq. ft. of area. Under the requirements of the Town of Halfmoon General Code Article 165 Attachment 1 Schedule A the applicant is required to have 150' of frontage and 30,000 sq. ft. of area in an R-1 Residential District. The applicant received a denial for a building permit from the Director of Code Enforcement. The Board requested additional information from the applicant with respect to perc test data, well locations of adjoining land owners and a drainage plan. The applicant asked to be placed on tonight's Agenda to address the concerns of the public and board at the public hearing. The public hearing is still open. Chairman Rose welcomed Mr. Holohan back to tonight's meeting.

Mr. Holohan emailed an updated map to Secretary Mikol made by ABD Design, the new map showed the location of the septic drawing. Mr. Holohan commented that his Engineer dropped off 8 copies of the plan to the Town but town employees do not recall receiving such plans.

Secretary Mikol commented: ABD Engineers may have dropped off plans while I was on vacation but office staff said that plans were not dropped off. I only have the emailed copy of the plan which was enlarged for the Board's view.

Chairman Rose commented: The hearing is open again from the March 3, 2014 meeting.

Mr. Holohan commented: I am the property owner of 81 Woodin Road. I am here for an area and frontage variance on my vacant lot next to my existing house. I am looking to build a 3-bedroom 2-bath home. Changes were made to the plan to include the septic location and design to fit onto the lot correctly.

Mr. Burdyl commented: It looks like the septic design outlet is going out to the front of the house and then curves around the house to the leach field. Is there going to be a grinder pump installed or gravity fed?

Mr. Holohan commented: I believe the Engineer said it was going to be grinder pump. It is a cut out and is going underneath the driveway. It was the best method to feed to the field.

Vice-Chairman Tedrow commented: This is a raised system so you would have to pump up to it.

Mr. Holohan commented: Correct, after the first meeting and multiple problems that we had with the property sitting below grade, the Engineer did the perc test and it was determined that this was the most efficient type of system that could be put on the property to make sure it never fails. It had to be a raised system.

Mr. Burdyl commented: What was your Engineers comment as a result of the perc test?

Mr. Holohan commented: We hit water at 3' granted it was late April so it was wet. It is so far below grade that to put a septic in the ground it would fail. It may not fail right away but it would eventually fail. So we moved it over to where the land dips down and we plan to build it up blending it into the septic system you won't even see the septic system.

Chairman Rose commented: Where is the well location going to be?

Mr. Holohan commented: There is no well it will be public water.

Chairman Rose commented: One of the requirements that we had asked for was to come back and show us where the existing wells and septic locations were on any of the adjoining lots.

Mr. Holohan commented: No one is on a well, everyone is on public water. There is actually a sewer line about 120 yards down to the end of Breski Lane it is pretty close but not close enough. The sewer line was brought in from the Ellsworth Landing development behind her house. The only house that could legitimately be on the sewer is Kathy Marchione her house is at the end of Breski Lane. She may have paid to bring the sewer line in and I really don't know how far it goes to the development but the sewer line is there and it is too far for me to reach. For me to bring sewer up Breski Lane is over 100 yards and it would be cost prohibited.

Chairman Rose commented: Does the Board have any other questions?

Vice-Chairman Tedrow commented: We are not experts on current sewer/septic or raised system designs and we don't know if the Town Engineer would agree with this design so I think we need a review by the Town's Engineer to see if they agree with the design.

Chairman Rose commented: Our Town Engineer, Mr. Bianchino reviewed the map back in February. Has he given us his opinion on this map at all?

Secretary Mikol commented: No, the Engineer was reviewing the plot along with the deed.

Chairman Rose commented: We were hoping the plans would be resubmitted and sent to Mr. Bianchino for his comment because the lot itself was a concern as to what the impact of the ponding water and septic system would have on the adjoining lots in the area along with any wells that could still be used. The information regarding the sewer availability on Breski Lane is new news to the Board. We are troubled right now without all the details.

Mr. Holohan commented: Coming to the Town there was no way I was going to find an old non-working well located on other pieces of property. The 100' comes into play with the wells and everyone has been on public water for a long time now. The Town has not been able to give me that information.

Chairman Rose commented: Did you ask the Town for that information?

Mr. Holohan commented: Yes, they were not able to provide that information to me.

Mr. Holohan commented: His Engineer told him that baring walking on other people's property and doing tests on their property there is no way to tell that.

Chairman Rose commented: That is beyond the pervue of our Board to rule on an Engineering matter. We ask the Engineer to give us a recommendation we are the last step in the process. What we have in front of us unfortunately is in front of the process again which we were trying to avoid by having you come back.

Mr. Holohan commented: It was my understanding that you folks wanted to know that an appropriate septic system would fit on the property within the setbacks. The Engineer has given me this plan based on the facts that this is the septic that could operate efficiently on this lot.

Chairman Rose commented: I don't disagree with that I just think that our position is that we would like the Town Engineer to review it just to make sure and would he recommend it for this lot.

Mr. Holohan commented: It is difficult for me to go to the Town Engineer. I can't apply for a building permit. I have and I was denied so now my step was to come to you folks.

Chairman Rose commented: I don't think that is true. I think you could ask the Town Engineer for a recommendation on this.

Vice-Chairman Tedrow commented: We certainly can.

Chairman Rose commented: Yes we can. At the public hearing, at the last meeting we had back the Board stated what information they wanted prior to coming back. A letter was sent to Mr. Holohan listing the information the Board and Town Attorney requested. A copy of the letter is on file. The additional information has not been addressed to date. There was a lot of public comment on the drainage of the lot and how the water would be handled on the site with foundation drains, roof drains, surface water, etc. That information has not been provided to us. Has the perc test data been submitted to the Town yet?

Mr. Holohan commented: I can't do that, I can't move forward without your Board's approval.

Chairman Rose commented: I think we need to ask Mr. Bianchino to look at the perc test data as well. It needs to be verified and to look at the reports. My assumption and the Board's assumption was that when it came back on the agenda all the requested information would have been readily available. I don't think it's readily available yet. We are missing the neighboring septic and well information and the Town Engineer should also validate it just to confirm the information.

Mr. Hansen commented: Yes, you are correct that is what we asked for.

Mr. Burdyl commented: I would like to hear from the applicant's Engineer as to what all this data means and how it impacts the site. As Chairman mentioned I agree we need to get an opinion from our Town Engineer and his evaluation of the data. I would like to have a written evaluation prior to the meeting.

Chairman Rose commented: I think that we could keep the meeting open for the applicant. We are one step ahead of the applicant. We need additional information and a review from Mr. Bianchino. If it's not too much of a hardship, which we are not trying to create however, I can't look at this perc test and give you an honest opinion or understand it or not or if it's valid or if it meets the test of the Town. I'm not trained to do that and the other member's of the Board are not either. I think we need to do our due diligence because of the nature of the request.

Mr. Hansen commented: It does have to be reviewed by the Town Engineer.

Chairman Rose commented: The map given to us is not stamped or signed by anyone, is there a reason for that?

Mr. Holohan commented: That is the copy he gave me, the 8 copies he was suppose to send to the Town were stamped and signed.

Chairman Rose commented: Usually there is a raised seal on it as well. While I am sure that will occur I think it would be good to present it to the Town Engineer with a stamped and signed copy. I am sure Mr. Bianchino will ask the same question.

Mr. Holohan commented: At this point I am naïve to this situation I need it spelled out I noted that this is what I was told to bring minus the well and septic which I know your looking for but without trespassing on people's property I cannot get that information. I asked the Town they will not provide me with that information and I will again ask them for the well and septic locations but I find that to be a hardship, at this point. Septic we don't need we only need the septic to fit within the setbacks of the property I don't need to be 100' away from another septic so really what we are looking for is unused wells from 20 years ago which I do understand you do need for the 100' separation.

Chairman Rose commented: That is the issue here. We do not want to create a new issue by granting your variance so we need one equivocal piece of evidence that there is no impact.

Mr. Holohan commented: Yes, but I could have also given this to the Town Engineer if I was told that is what I should have done. In February and March's meeting I was not told to do that. In fact, I was told that I was denied and that I had to go to the Zoning Board of Appeals.

Chairman Rose commented: I don't have a stamped Engineering plan in my file it is within my power to say there is no reason to continue this hearing as well. I don't know what happened to your maps but unless I have that data in front of me I can't in good faith ask the Board to make a decision. I think we need to rectify that first and then I think you can take that time to go talk to the Town Engineer and meet with him privately if you need to or with our Secretary and work out these issues. Those issues have to be resolved first before we proceed. I will keep the hearing open.

Mr. Hansen commented: I will make a motion to keep the public hearing open and was seconded by Mr. Burdyl. Motion was carried.

Mr. Hansen commented: These maps are not official until they are stamped by an Engineer.

Mr. Holohan commented: My Engineer did stamp 8 copies of the plan and they were dropped off to this building which no one can find.

Chairman Rose commented: I will give this map back to you. So we are clear we need a stamped map showing well, septic and drainage information on the plan. It needs to be submitted to the Town Engineer for his review and comments back to the Board for hopefully the next meeting which is July 7, 2014. We would like a written recommendation from Clough, Harbour and Associates.

Mr. & Mrs. Kelly spoke up that they wanted to speak regarding Mr. Holohan's proposal.

Chairman Rose commented: I didn't realize you were in the audience, I apologize for that. Let's try to grab Mr. Holohan. Mr. Holohan, I am sorry I didn't realize a neighbor was present. I would like to give them a chance to speak. The hearing is still open. It will be open until the Board closes it.

Mrs. Kelly commented: I sat here for hours waiting for it to be open to the public. I am not that good at speaking so please bear with me. My name is Lois Kelly and I reside at 3 Breski Lane. According to what I am reading right now about this variance he can't build a house there it has been turned down. He doesn't meet the lot size requirement by the Town. That is the first thing and he is short quite a bit of land. Secondly, there is a drainage problem. I have lived there for 50 years next month.

We have had water and boats out there. When we moved there the Janis's and the Kelly kids had boats in the yard there was so much water. You need to wear knee high boots to get onto the second lot. In the winter time the kids were skating on the ice because there was so much water. Now we have leach fields that we are concerned about. We can't take on the water from this lot. Where is the water going to go? There is a gentleman at the lot today and my husband went out to talk to him. He said he planned on building a house level with Woodin Road that would put him up higher than us and we are down here so you know there is going to be water. There is water there all the time. My concern is my leach fields and the water. The man planning on building a house there said that if he gets approval to build the house the Town will be responsible for your leach fields not me. I am quite concerned. I can't see how you would let him put a house there and disturb our home where we have lived for 50 years.

Chairman Rose commented: Thank you for your patience, I apologize for not realizing you were there for this proposal. No decision has been made and we are still evaluating the variance request.

NPH LLC, 11 Solar Drive – 272-3-61.1, 70, 6.121

Chairman Rose commented that the applicant is requesting a use variance to allow Crossfit to operate at 11C Solar Drive, Parkford PDD, off Route 146, in the Town of Halfmoon. The applicant would like to use 6,000 sq. ft. of vacant space for a physical fitness and wellness training facility, which is not a permitted use under the M-1 Industrial zone of the Parkford PDD, pursuant to Section 165-16 Section 166-14 Land Use, and Section 166-18.1 Amendment 2008 of the Town Code of the Town of Halfmoon. The applicant received a denial from the Planning Board at its meeting of Monday, March 24, 2014.

Mr. Dean Taylor Licensed NYS Real Estate Agent with Remax Park Place at 1795 Route 9. I am the authorized representative for NPH and I brought with me the potential tenant Ian Hogan.

Mr. Ian Hogan commented: I am currently located at 1580 Route 9 and I am the potential tenant, Crossfit for 11 Solar Drive.

Chairman Rose commented: Just for the record Mr. Taylor submitted a letter to the Board dated May 30, 2014 for the record. The Board members also have a copy.

Mr. Taylor commented: We believe that we are here because of an oversight we are between a rock and a hard place. The activity is considered to be a fitness and wellness center and the last update of the Town Ordinance was 1995 when this type of product didn't really exist. So it isn't a specific use but it's also not a prohibited use in the Zoning Regulations. The property has been built in 2009 and has never had a tenant in this portion of the building. I have had it on the market since August 5, 2009. That is 1760 days or 4 years and 10 months. We feel that the activities that we've had on the property are certainly under a financial hardship from NPH standpoint. What I have done to help demonstrate this is I went and catalogued 16 tenants that looked at this building and then located somewhere else in the Capital District. This space was not suited for their needs. This was built as a 30,000 sq. ft. building and the applicant only needed 20,000 sq. ft. and based on what the leadership of Saratoga County was suggesting is what the business people and real estate developers did. Trying to locate a building for Global Foundries and in the meantime there was a series of events that affected the marketability of this for Global Foundries. The biggest thing is that there has been some substantial development up at exit 10 which is only 12 minutes to the plant. It is also only 18 minutes down to Sematech in Albany. As the process developed the landscape was for in the industrial warehouse in 2009 substantially changed by 2011. We don't feel that it was a self-imposed hardship, we feel that this was a good legitimate working with the community trying to do what was right and it has not worked out. I have included a list of the zoned uses, do you want me to go through the 20 allowable uses. If the zoned uses were on the tenant showing list then I referred back to why they chose another site opposed to this site. Some of the other uses for example that weren't there is a truck terminal. This is not enough area for a truck terminal, saw mill, outside storage, cold storage, automobile wrecking area you need a large area to store the vehicles and we don't have that area. There is not enough exposure to operate a service station. There is not enough area for a farm or equestrian facilities and public utility structures there is really no demand for. There is not enough traffic for restaurants. Hardware supply, building material sales yard are also high traffic areas and we don't have that kind of area. Marina and boat sales couldn't fit to make that use work. By going through this list it also determines that our request for a variance is much less than an impact than most of the zoned uses. We feel that we are pretty well safe on that one. Obviously we are looking at it this way. We feel that were very strong on that. In addition, last meeting I submitted a list of several of this type uses that are in Industrial Zones. Two of them are in Halfmoon. I don't know if the word precedent is appropriate having said that but it has been done in this Town before and with this we would like to ask the Board to grant us relief in the way of a use variance for this use.

Chairman Rose commented: Thank you for your presentation, are there any questions?

Mr. Hansen commented: What are the two uses of facilities you were referring to?

Mr. Taylor commented: They are currently in one right now, Pai Tae Kwon Do at 1580 Route 9 in the Capital District Business Park which is an Industrial PDD and the other one is Ideal Body at 381 Hudson River Road. We are in a Planned Development District but our zoning uses are M-1 and that is in an M-1 Zone. No I didn't go and get the minutes but I am pretty sure that they received a variance from this Board for that and it is the same similar type use.

Chairman Rose commented: Was that area zoned commercial one time in the past? I think there has been some discussion about in the past that before it became a PDD or M-1 it was zoned C-1 Commercial?

Mr. Taylor commented: It was zoned C-1 I know that because the existing zoning map that I have showed it as C-1. What happened was applicant is manufacturing windows and doors and it was not an allowable use in a C-1 zone so they had it changed to the PDD which also brings up the other point we have been in contact with the Town Attorney, Mrs. Murphy because we felt that perhaps the Planning Board was in error when they denied us as a use that we felt was a zone use. Mrs. Murphy insisted that is not a process to go with that we need to get a zoning variance that we would not be able to appeal it. I don't know if there is even a process in Town to appeal the Planning Board decision but it was right here at the Planning Board meeting last week. Mrs. Murphy said she was going to be here and she was going to let this Board know that this needed to get a variance if it was going to get anything. There was not a way to appeal and said is not the way to go. It was a short 2 minute conversation. We are stuck between a rock and a hard place.

Chairman Rose commented: Is that consistent with what the Town has on record. We will need to check on this information.

In 1972 the original zoning for Parkford PDD was M-1 Manufacturing District.

Chairman Rose commented: So it was never a C-1 Commercial.

Mr. Taylor commented: No, this particular parcel was C-1 Commercial.

Chairman Rose commented: That is my question. What was the Zoning of the parcel at 11 Solar Drive?

Ms. Cathy Drobny, Hacker and Murphy Law Firm represented the Town of Halfmoon tonight. Ms. Drobny commented: I don't know for sure but I was told that all mixed uses run with the land forever.

Mr. Hansen commented: You might be right because this parcel was added to the Parkford Industrial Park it wasn't originally here.

Mr. Taylor commented: Yes it was added and they did need to get a PDD Amendment that I can state with certainty and also true I don't know what the people's name is that is on the corner of Crew Road he bought the parcel from them. I believe the name was Johnson. All of his parcels were zoned C-1 he would not have zoned it a different zone it was all the same.

Chairman Rose commented: Here is my thought, if this was originally a C-1 Zone and it was amended or changed to an M-1 through the processes of the Town there is in all the zoning through the whole book twice there is no such thing as a Cross Fit use defined anywhere in our Town Codes. I am not sure what that means or doesn't mean but I think the point being if the original tenant was C-1 Commercial of the property and if it were still a C-1 this wouldn't have been here before this Board. They would have been able to classify this as a service use under the definition of 165:14 A (2) and is similar types of services.

Mr. Hansen commented: I don't necessarily agree with the notion that this a prohibited use and that the Planning Board is more or less interpreting that this is a prohibited use but it's not specifically prohibited by the Law and the first paragraph.

Chairman Rose commented: It's permitted not prohibited. The denial is based on the fact that this use was not permitted in the zone not prohibited. There is a difference in the definition of the words permitted and prohibited.

Mr. Hansen commented: Right that is where I take issue too. If you're going to read the first paragraph it says, "The intent of this district is to allow industrial and manufacturing uses and those commercial uses which will provide support to the companies or employees within this district. The following use regulations shall apply in any M-1 Industrial District, subject to the site plan review and approval requirements of Article VI." Number 13 of the permitted uses is restaurants which can only support the employees which is quite obvious.

Chairman Rose commented: I agree with that.

Mr. Hansen commented: If the Board is not opposed to this use and I am not personally opposed to it I see no reason why this would have any interference with of the other activities going in the Industrial Park. In fact, I think it could make a strong argument that it would provide support to some of the employees in that Industrial Park. I don't know how many people work there, maybe a few hundred people. It's not too far of a reach for some of them to come in and use your facility.

Mr. Taylor commented: What happens with his facility is that it's not your standard gym where you have 700 membership units. The idea behind the Cross Fit is to keep it small and intimate. The classes are kept small there is a lot of one on one. They don't want to be Health Plex they don't want to have 700 members.

Chairman Rose commented: I just want to go back to some questions from the site visit. How do you transact your business? Say someone wants to join and use your facility and product. How do you transact that?

Mr. Hogan commented: We have memberships so they will have monthly fees that we would sell them the product there is a receipt there is a point of sale system that we use it's all on-line based. There is receipts and e-mails generated we also do sell retail product.

Chairman Rose commented: So for the Board, I am looking at Item 16 in the M-1 District "Wholesale and retail sales when incidental to the primary use." This is a permitted use within the zone. I am struggling with why we are here with this case. I think the applicant described a transaction of a retail sales nature of a product or a service.

Mr. Taylor commented: I can only tell you why we are here. That is because we have no place else to go.

Chairman Rose commented: I am posing this question to the Board.

Mr. Burdyl commented: Here is another question for the applicant. What percentage of sales of products and gym memberships in rough terms would be the sale of product?

Mr. Hogan commented: The actual product sells for much less maybe about 5-10%. Membership is the majority of what we do sell. We also sell massage services as well so we do massage therapy.

Mr. Burdyl commented: Massage therapy is incidental to the primary use? Compared to products which is larger?

Mr. Hogan commented: Massage therapy is larger than products but membership is the largest.

Chairman Rose commented: Going back to Mr. Hansen's theme if the applicant decided to put a restaurant inside of the Glass place we wouldn't need a variance it would be granted, correct? If you decided to put an auto-wrecking business there including junk that would be acceptable. A marina or boat sales could also be there. A self-storage facility could be put there. I am being rhetorical on purpose but I am struggling with why we are here with this case as a member of the board.

Vice-Chairman Tedrow commented: I think we have inadequate tools to deal with this situation too. It has been pointed out to us at the last meeting that we don't on our own hook have the authority to do interpretations of uses. It's only on an appeal on a determination by the Enforcement Officer or a referral from the Planning Board. I agree that if you had a modern M-1 you might include facilities that meet the large enclosed spaces with a gymnasium, work-out places and rock climbing places. It would make sense to have those in a warehouse district. It's not an option for us to say and use the common sense approach and make an interpretation.

Mr. Taylor commented: The fact that I got totally shot down from Mrs. Murphy isn't that basically an appeal and a denial?

Chairman Rose commented: That is just an interpretation from the Town Attorney.

Mr. Taylor commented: But now were asking what the process is and she said no, you need to go the Zoning Board for a use variance.

Chairman Rose commented: There is strict interpretation in my opinion would be that there is two ways for the appeals process. The Planning Board says we deny it based on a permitted use and I don't know what is their minds and their intent because I was not there and I didn't ask, nor do we ask generally speaking but if they didn't see it on the list of approved permitted uses that could have been sufficient for them to say we deny it. It is up to us we I think broader power we are allowed to interpret the situation under Section 165-79, we have the ability to interpret a decision made by the Town Board or the Code Enforcement Officer upon referral and it has been referred here and that is why we are here.

We have the power to interpret any provision of this chapter. Now I think the struggle here is that Use Variances have four tests of which I think you are going to have a hard time proving to us under those four tests.

Mr. Taylor commented: Can we go through them one by one without taking a vote?

Chairman Rose commented: Please, let me finish. I am thinking that we have the ability to interpret and use it as guidance and that would be my opinion.

Vice-Chairman Tedrow commented: Just to get it on the record let me express a couple of concerns that I have. The first: You made reference to the hardship whether it was self-created or not. I think it was self-created it was a business decision based on what was thought to be reliable information at the time to build a building that big. The hardship is resulted because in the current market, anyway apparently maybe the building is too big. It's not a function of the zoning it's just too much space to rent out. The second: If we were to approve it, here we have a lot which is already for the most part being used for a complying M-1 use much more than half of the lot and the building are being used for that. If we were to grant a use variance how is that implemented we paint a line on the floor on the building and say if your on the south side it's M-1 because you have a facility operating there now which does comply with M-1 but if you step across to the north side nope you can't do business or make a financial return in this area.

Mr. Taylor commented: I thought that a variance would run with the land and they couldn't expand into the whole building should they decide to do that which I don't know would be very likely.

Vice-Chairman Tedrow commented: If we give you a use variance, and I don't know how the use would be described but for one that would allow Cross Fit in, then suppose sometime in the future market shifts and Cross Fit moves some where else and you want to lease the building space to M-1 use then it's illegal because we said you can't do M-1 business here because you can't make a return and therefore just this other use is permitted.

Mr. Taylor commented: I don't believe that is what a variance allows for a use I don't believe we are held to that strict use. I don't want to disagree with you because you know your way around town but as far as the hardship goes if these guys knew that the Planning Board was going to stick to 20 uses they would not have build the building.

The hardship I believe is created because of the narrow interpretation. I guess we all agree that this narrow interpretation is what I feel created the hardship.

Chairman Rose commented: What the Vice-Chairman is saying is that we are carving out a specific, because you're asking us to, subset of that building as a variance. What that means is that only 6,000 SF will be for Cross Fit that is what we would be approving. Make no mistake about that. That is what it is.

Mr. Taylor commented: I thought a use variance was to add to the site. If I got a use variance for a fast food restaurant in an office park that would be in addition to the other zoned uses isn't that correct?

Vice-Chairman Tedrow commented: No, to make the case for the use variance in the first place you're saying you can't do business with that use.

Mr. Taylor commented: Yes, at this particular time. This tenant is looking for a 7-year lease but after the 7 years we wouldn't be concerned about that.

Vice-Chairman Tedrow commented: We can't just throw switches and flip flop zoning back and forth to the convenience of the owner.

Mr. Taylor commented: That is the first time that I have heard that and I have gotten many zoning variances before that the use would be in addition to the zoned uses there now.

Vice-Chairman Tedrow commented: Well I don't know how we can stand on one foot and say you can't get a return for this use and stand on the other foot two years later and say, oh yeah you can. In the meantime we have changed the zoning.

Mr. Taylor commented: All I can tell you is that is you can fault me because I have been the real estate agent on it. It's been marketed for 4 years and is just way too long for industrial space.

Chairman Rose commented: We should probably ask our Attorney to comment on your comment. None of us up here are Attorneys obviously and we do need an opinion. You're asking us to create a variance on a portion of the building and can a mixed use go back and forth on a parcel depending on whatever they need at the time? Can we get an interpretation on that?

Ms. Drobny commented: I believe that once you get a variance it stays as what it was approved for and you would have to come to this Board to make a change to another use.

Chairman Rose commented: Yes that is how it has always been in the past.

Mr. Hogan commented: Essentially what your saying is once we switch it to put our business in there and we do plan to be there for 7 years. When and if we move out and an M-1 use wanted to come in they would have to come back to the board to have that use approved again.

Chairman Rose commented: Yes you would have to apply for a variance and give us facts presented of why the change is being requested to be an M-1 Manufacturing use just like you are applying to us today. The new tenant would have to follow the same process.

Mr. Taylor commented: The landlord has had a vacant building and hasn't been able to fill it because we couldn't find something that meets your list of uses that to me and I guess we're all looking at it differently. The other part of it is were going to have to be the ones that are going to have to suffer because the Town didn't update their zoning and the Town doesn't have a process because Mrs. Murphy said she would be here and she isn't here to explain her interpretation so we are put in a tough spot here. We are here looking for a relief, guidance, an interpretation and action from this Board. The Board even expressed that a restaurant could go there but not a gym. I don't think that the erroneous should be all on the owner.

Chairman Rose commented: I can't comment on that. I have to go by the interpretation of the Town Law that is all we are trying to do here. We don't set the policy we just enforce it or interpret it.

Mr. Hogan commented: I would understand that if it was switched and you did grant the approval it would be just for that use, correct.

Chairman Rose commented: Yes that is correct. I think the intent of the Zoning is make sure that people just don't do whatever they feel like doing. You are making it a conservative effort to ask us to rule on something that isn't in the code. I don't know if anyone could have foreseen that when they were developed that a business like Cross Fit ever existed. Most of us when we got the application had to ask what it was we were not quite sure. I can see the linkage to that from probably when they determined what the laws were.

Mr. Hansen commented: I don't want to make this any more confusing but I still don't quite grasp it myself. Here they are asking for a use that is not specifically permitted in the zone. If I were at the Planning Board I would have tried to convenience them to look at the first paragraph a little more carefully and determine whether they really think this isn't a permitted use in that district. But, they made a decision saying it wasn't a permitted use so we are going to deny it. Mr. Taylor are you representing the property owner or the tenant?

Mr. Taylor commented: The property owner.

Mr. Hansen commented: He is now coming to us on behalf of the property owner and saying I can't find anyone that wants to use it as a Manufacturing Facility so I am going to ask for this use that is not specifically permitted or not permitted in a M-1 Zone and is subject to interpretation. No matter how you slice someone has to make an interpretation even in that first paragraph. Do we think this is permitted in this use because it's going to be good for the employees in this district or not. That is the only thing you can hang your hat on because there is nothing else specifically in the ordinance that you can do what you want to do in this manufacturing zone. Do you agree with that? If we come along and make our interpretation based on a use variance and then you want to go switch it back to manufacturing how are you going to do that?

Mr. Taylor commented: We are not asking to switch it back.

Mr. Hansen commented: His business may go on forever or it may collapse a year or two from now or may last the 7 years of the lease, we don't know, nobody knows. All you have to do is read the papers and you can see what is coming and going all the time.

Mr. Taylor commented: That is hypothetical.

Mr. Hansen commented: Yes, it's hypothetical but there has to be a decision someday.

Mr. Taylor commented: We are looking to have a business there for the next 7 years.

Mr. Hansen commented: Yes I do understand that. Quite frankly, like I said if I was doing this myself you would have had it approved 3 weeks ago but I am just one person in the wilderness here.

Chairman Rose commented: What we are all saying is that we see a circular issue here. It probably shouldn't have ended up here with this Board and I can say that as the Chairman. It moves here because it's not a word that shows up on the list. This is now everybody's problem not just your problem. It's our problem too. I think our Board has the power to interpret the use variance test based on some uniqueness here. We are in some uncharted territories here for sure. We see some defect by a ruling and we should be looking at how to deal with that. I do agree with the applicant that the less intense use of what is going on there now. You would not be doing something above and beyond M-1 that would put us in another territory. You are asking for an expansion of that. I think you are asking for something lower and my question is that the parcel is originally C-1 and if it had stayed C-1, and I don't know how it got to M-1 we wouldn't be here. I don't think anything has changed to that area from an interpretation point of view other than some buildings that were built there to put some commerce into the town. It would be convenient to change the PDD and it would get around other zoning rules, requirements, and building permits and things like that.

Vice-Chairman Tedrow commented: Just to muddy the waters a little bit more, as far as I know all the zoning districts run to the boundary of lots and in this case when we would be splitting a lot into two districts. I may be wrong.

Chairman Rose commented: That is a very good point and I don't think the intent is for us to try to do that either. Are there any other questions from the Board?

Mr. Burdyl commented: I think we have covered the major issues here.

Chairman Rose commented: We do have some options here and I am not in any mode to rush and I will look at the Board to see how we should proceed. Do we want to seek some other opinion or do we want to move forward?

Mr. Hansen commented: Just to continue on what I did say before, if the 16,000 SF of this building, we are not talking about the lot we are talking about a piece of the building and some parking around it does get rezoned officially by a use variance what does it make that 16,000 SF now what? What does it make it? I don't understand it. Or is it just an exemption of the M-1 in that particular spot on that lot. There are so many questions here that I have that we can't answer, I don't know. Nothing has been answered to my satisfaction yet.

Chairman Rose commented: Adding to that, does that allow us to add a use within the M-1 Zone? Can we add another use after #19 and make #20 a Cross Fit Training Facility. Do we have the power to add to the code of the Town? I don't think we do. I think we have the ability to interpret what a previous number of item is 1-19 of which I think we could justify amending or interpreting number #16, retail sales incidental to the primary use. It's consistent with the fact that the property was C-1 prior. I think I will keep going back to that because I think there is some linkage to that. I think that is what we really are trying to do is link it forward. But, we are also telling the applicant that once we do this this is what that portion of the building is. You would have to come back to this Board to change it again.

Mr. Hansen commented: Is that what the owner of the building really wants? Do they realize that it's a consequence of the variance request?

Mr. Taylor commented: They don't realize that it's a consequence but they do realize that they have had a vacant building for 4 years and they do want to fill it.

Mr. Hansen commented: I understand that but it may affect the future use of that building.

Mr. Taylor commented: I am going to take that risk because we have a 7 year lease with these guys.

Chairman Rose commented: Let me ask you this; are you willing to take the risk? Do you have permission to do that?

Mr. Taylor commented: I am their authorized representative.

Chairman Rose commented: We can rely on that? We don't want the owner to come to us so I am asking it specifically. So I can rely on that for this decision.

Mr. Taylor commented: If you prefer I could make a quick phone call.

Chairman Rose commented: We can take a quick break if you want. I am asking for a reliance on that as their authorized representative which is stronger than just he's ok with that. It's hypothetical.

Mr. Hansen commented: Well, before we have him go do that, is there any way that this can be fixed if we don't feel we are comfortable. The Town could modify it if they wish to do so. They could modify this law to add other uses or maybe some general and specific general uses so that a person could look at it and say, that's ok. It doesn't specifically say that but it's close enough maybe add a few more words in the first paragraph so that the Planning Board can maybe figure it out without a variance. Maybe it could be permitted in there too so they don't have to think so much. What really annoys me is that this is being dumped on our laps because they don't want to, well they made an interpretation but I'm sure it's consistent with what other people would think. Why should we have to grant a variance when a simple amendment to the PDD could resolve it?

Vice-Chairman Tedrow commented: I think that is the real effective remedy is to make an amendment to the existing PDD Legislation.

Mr. Hansen commented: I don't think that we should be used as the back door of the zoning ordinance. Even though we may have that power. I think there are too many questions in this particular case because as you pointed out we are not talking about the whole lot we are only talking about 16,000 SF of the building and they are sharing the parking lot. I don't think they are going to fence off the parking lot so people can only park on one side of the road if they are going to the gym and the other side if they are going to work at the other end of the building.

Chairman Rose commented: So are you putting forth that we table this action and send it back to the Town Board to amend the zoning?

Mr. Hansen commented: I don't know is everyone else satisfied and do you want to vote on this tonight?

Chairman Rose commented: That is what I am asking; we can ask to make motions and vote on them, if we have more than one motion and it sounds like we might.

Mr. Burdyl commented: Do we need clarification on the paragraph as to what is prohibited.

Chairman Rose commented: I think it's a sticky situation it has to be addressed. There are valid questions and I don't want to discontinue it or dismiss the concerns.

Mr. Burdyl commented: What is the advantage to sending you back or keeping an open hearing until we get some interpretations.

Chairman Rose commented: Well it is a time issue. I think there is two axes here, either we send it back or we make a motion to approve it and go through the test or make a motion to deny it based on the rules that govern this Board. It might be in the applicant's best interest that we send it back to the Town and have them amend the PDD Legislation.

Mr. Taylor commented: Unfortunately I don't know that if we sign this lease in February and we couldn't get pushed up on the Planning Board agenda we have been going through this whole process it's been a laborious process to go through. I see the Board, I think legitimately that this use if you can find a way to do it, it's not that I would blame you it's just that other Town's are up to date on zoning. This is the trend, a new business and the other Town's are set up to do it. If we can't do it in Halfmoon we are going to have to do it some place else. I'm saying that as an ultimatum believe me you guys are awesome and I know your trying to do this but this is not good for the tenant. They have a lease and they would have to extend it and they need to move someplace. You can't do it and Mrs. Murphy says that the Planning Board did the right thing and she was going to be at this meeting tonight. We are frustrated and they can't have an interruption on the business.

Mr. Hansen commented: When did you first go to the Planning Board when did you apply to them.

Mr. Taylor commented: March 26th and we had to wait 2 weeks. We filed the application with them on March 13th. Then we had to apply to this Board and the dates of the meeting didn't work out so we had to wait a whole cycle.

Mrs. Mikol commented: They couldn't meet the deadline dates to get on the agenda because they still had to go before the Planning Board to get a denial from them.

Mr. Taylor commented: I just got word from my assistant that we are authorized to accept a variance on that specific space. So we are willing to throw it up there and take our chances. Hopefully you are willing to keep here until you come to a resolution.

Mr. Hansen commented: If it was just an interpretation but it wasn't an actual change of the zoning of a portion of the property for a use that is not allowed in the M-1 District it would personally be more acceptable to me. I would then be making an interpretation and not granting a use variance.

Mr. Taylor commented: But, unfortunately we have a process that we have to go through and it is a long drawn out process and you guys just can't do it.

Chairman Rose commented: I am responsible for that as the Chairman while I understand that we are causing you some hardship it still is no reason for this Board to rush through any decision and I will not allow that to happen. We do understand that we are causing you guys some aggravation here and we don't intend to do that but we do what is right for the Town. The Town is our final arbiter here and we make the decision for the Town and that is under no time table and that needs to be clear. We don't want you to leave and go to another Town we need to take action as we see fit. I am not saying that to aggravate the situation but we are not rushing because of that because you have an issue. We want to try to help you; I am just trying to figure out the fastest way to get you there.

Mr. Taylor commented: We believe you sincerely are working on it because you don't want to see us go to another Town. Unfortunately, because of the situation we have a situation too.

Chairman Rose commented: Right, you need to make your decisions as we do too based on what we decide after reviewing the facts. I will put it back to the Board again, do we have more than one motion to make or do we have just one or do we need more time, we could send it to the Town Board for a special request for an amendment to the PDD Legislation based on the fact that we don't think this is enough information based on the interpretation of the M-1 district.

Mr. Burdyl commented: I think there is enough on Owens here that we should send it back to the Planning Board.

Mr. Hansen commented: I am curious does anybody know why specifically the Planning Board process was in rejecting this. How did they reach this conclusion that this was not a use for an M-1 Zone?

Mr. Taylor commented: I don't know what it says but I know what Mr. Harris told me. It's not listed as a specific use in that zone.

Chairman Rose commented: On March 24, 2014 there was a resolution of the Town of Halfmoon Planning Board denying the change of use for Cross Fit to be located at 11 Solar Drive is a permitted use under the M-1 Zoning of the Planned Development District. Therefore, a change of use application is denied.

Mr. Hansen commented: Did the Board actually do that? Or did Mrs. Murphy write it?

Chairman Rose commented: Motion was made by Mr. Roberts and seconded by Mr. Partlow? It was unanimous.

Mr. Hogan commented: While we did receive an email prior to the meeting that we were getting a denial. We walked in and they essentially said we already had an issue with this it's M-1 and they made a motion to deny it. We received an email ahead of time.

Chairman Rose commented: My interpretation of that is that the book didn't say the use and they denied it. The words didn't show on the page we have seen that before from the Planning Board. It's either there or it's not. If it's not then it gets denied. That has been my experience that is referred to us from the Planning Board. I need to take a quick break here to get some water I will be right back. You can continue talking if you would like.

Vice-Chairman Tedrow commented: A moment of silence prayer. Have we ever referred anything directly to the Town Board?

Mr. Hansen commented: I can't recall that.

Mrs. Mikol commented: The Planning Board has but never the Zoning Board. Was it ever suggested that you go to the Town Board?

Mr. Taylor commented: I thought we should have gone there for an amendment to the PDD Legislation and Mrs. Murphy told me no, go get a variance this was the best route to go. I am doing what I am told. I was told that by an Attorney so she must know and feel that her authority and leverage can make the decision whether yes or no she didn't tell me. She only said this is where it's going to go. She told me that enough times that I will not ask her again.

Mr. Hansen commented: Her thinking may have been that the length and the time to make the change to the PDD would be probably be faster if you came to this Board but if wasn't in your favor then it wouldn't do you any good but it may take longer and it could possibly not go in your favor if it went to the Town Board either because they may say no we are not going to make just one change to the Zoning.

Mr. Taylor commented: And it may not go in our favor here either.

Mr. Hansen commented: The Zoning Committee is meeting right now to make changes which ultimately is a Town Board action. They only do that so many years. As far as getting an answer and not necessarily getting to answer that you want but you would get an answer much quicker from this Board.

Mrs. Mikol commented: If you go to the definition section of the book and read the definition of a use variance. Page 165-12.1, reads, "A variance from the use regulations to allow the establishment on a specific lot of a use otherwise prohibited in the district."

Ms. Drobny spoke but was not heard on tape.

Mr. Burdyl commented: We do have an occupancy there now at 15 Solar Drive for a training of wood working. Is Cross Fit considered a training then you have a precedent.

Chairman Rose commented: Back to where I was earlier, 165.16 #16 I was hoping that maybe we could look at this as Board this is already a permitted use and we could just make the interpretation which the Planning Board was not able to do because they don't have the power to interpret they only have the power to determine whether something is permitted or not. The analogy is if it's listed specifically then they can say yes. If not, it would require an interpretation that is where I was thinking and how I summarized that.

Vice-Chairman Tedrow commented: We have the authority to do an interpretation on an appeal from a determination from the Enforcement Officer or a referral upon request from the Town Planning Board. We have neither of those.

Chairman Rose commented: I think that means that they denied it and sent it to us for further review or am I misunderstanding what the definition of a referral is. It's not an opinion it's a rule.

Vice-Chairman Tedrow commented: We've had no communication from the Planning Board other than a denial. We could read it in their minutes.

Chairman Rose commented: My personal opinion is that yes. I think it falls under services and uses. I think certain times we are put in certain situations when they come in for interpretation of what is the guiding factor and how far we decide to interpret the span the gamut sometimes it's a minor interpretation something's it's a very broad interpretation that is why my opinion was that I think there is some linkage between C-1 and M-1 and the intent. Without sending it right back to the Town Board saying we would like you to amend the law, I think we have two choices either we make a motion to do that or we make

a motion to approve or deny it. I think we have to make a decision as a Board and I need the Board here to do that.

Vice-Chairman Tedrow commented: I will make a motion that we deny the application for the variance on the basis that the alleged hardship has been self-created and secondly that it is proposed to apply to part of a lot which would be an unenforceable situation for the Town.

Chairman Rose commented: Can you clarify on unenforceable?

Vice-Chairman Tedrow commented: How does an Inspector walk and determine what the boundaries of the use are? I think the definition of the use talks about a lot not part of a lot.

Secretary Mikol reminded the Board that they still have to go through the test and answer all the questions one by one.

Vice-Chairman Tedrow commented: Do we still have to do that?

Chairman Rose commented: We sure would like to do that.

Mr. Hansen commented: There is one thing to keep in mind is that you have answered all the questions it's not as easy as the area variance because if you recall from going to those seminars you have to be able all the questions positively in order to create the variance. That is the catch on the use variances.

Chairman Rose commented: All four tests have to be met unequivocally proven to be met.

Mr. Hansen commented: We can go through all of them and see if we can.

Mr. Taylor commented: In my mind they are all unequivocal but apparently the Vice-Chairman disagrees.

Vice-Chairman Tedrow commented: Well I stated that number four is clearly is self-created, the hardship is self-created.

Mr. Taylor commented: I don't see that the change to the landscape happening to market trends that we have no control over, but you have to vote I don't.

Chairman Rose commented: I could read through the variances if that is wants to do.

Vice-Chairman Tedrow commented: Does my motion die?

Chairman Rose commented: Let's hold your motion until we go through the tests. I think we should follow the process. Hold your thoughts until the end.

Chairman Rose commented: Under 165-79 Powers and Duties of the Board of Appeals for a Use Variance.

"The Board of Appeals, on appeal from the decision or determination of the Enforcement Officer, shall have the power to grant use variances, as defined herein."

"No such use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate the following to the Board of Appeals:"

"That for each and every permitted use under the zoning regulations for the particular district where the property is located, the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence"

Mr. Hansen commented: There has been some evidence when you put together the list of proposed rentals but I don't know if that would be considered competent financial evidence or not.

Mr. Taylor asked if he could weigh in on that statement.

Chairman Rose commented: No, this is for the Board to discuss.

Vice-Chairman Tedrow commented: In fact, for a mass majority of the lot we are talking about an M-1 return is apparently being realized.

Chairman Rose commented: My interpretation of this and based on the information that was presented to us I think the applicant did a good job explaining to the Board what return he is getting on its entire property and that is why they asked us to put a variance in place to use a certain portion of the property to do something different that generates a revenue to pay the taxes. My interpretation of my visit is that it is just storage and things are just laying there and it's not being used for manufacturing I would consider that to be an overflow condition. It looks like that stuff could be picked up and moved to the back of the building and restacked on shelving. I think it was just conveniently placed there just because it was not being used. I didn't see any real evidence that there was a business use for the stuff being piled there. I think they meet

the test for number 1 personally. I don't think they are getting a reasonable return on the entire property. Are there any other comments?

Mr. Burdyl commented: I agree and they probably meet the test however, I don't like the format in which it was presented to the Board. I think there should have had a spread sheet of the full financial analysis from the owner of the building. I tend to agree with the Chairman's analysis.

"That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood."

Mr. Hansen commented: I don't see any difference between this property and the other ones in the neighborhood. What is going to happen if somebody else in another building comes in and asks for something similar for another use that the Planning Board doesn't approve? Are they going to be any different? Are we going to handle them differently?

Vice-Chairman Tedrow commented: That is a whole other issue of setting a president.

Mr. Hansen commented: Technically you approve this one and they will come back it's inevitable. I think there is a vacant building in front called the old Solar Cooler Manufacturing Building it looks like its shut down.

Mr. Taylor commented: I think that business is in full operation. I would be on that building to lease it out if that were the case. When Momentive Performance Material was doing their Haz-Mat place next door they got their cooler panels from Advance Cooler.

Chairman Rose commented: I think number 2, in my opinion also relates back to having many businesses in that area. They vary in nature and I think the applicant proposed evidence that there is many types of businesses going on in the area under that zoning.

Mr. Hansen commented: Are all the uses permitted uses? Are they renting wrecked cars?

Chairman Rose commented: It's a spans the gamut of what is occurring here actually I am trying to be nice about it. There is a Rent A Wreck Facility there with cars in the parking lot and then you have a nice building around the corner. I don't think they are going to change any portion of that glass business it will be internal to that building. It will not have a substantial impact to that district neighborhood. Most people wouldn't even know what was going on there unless there was sign that pointed to it.

"That the requested use variance, if granted, will not alter the essential character of the neighborhood; and"

Chairman Rose commented: I think I just answered that question.

Mr. Hansen commented: I would agree with that. It will not change the character of the neighborhood.

"That the alleged hardship has not been self-created."

Vice-Chairman Tedrow commented: That is the one I think the hardship is due to the result of the business decision not the zoning and therefore this test has failed.

Chairman Rose commented: I do agree with you on one point that it is self-created but I think using the interpretation of the Board they have expressed a case that they are trying to make a profit for that business there and the testimony that we heard tonight was that since 2009 they have tried to find a tenant or to make that business more viable itself.

Vice-Chairman Tedrow commented: Any business in Town that has some vacant space that they haven't been able to lease can come to us and we will fine tune their zoning to find a use that they can lease. Is that what you are suggesting here?

Chairman Rose commented: Is that a question or just a comment?

Vice-Chairman Tedrow commented: It's a comment.

Chairman Rose commented: So anybody can come to the Town and ask for anything they want, right? That is my opinion. I take in the facts of the case and I do respect what path you are down at what you are looking at issue that it has created here and they way it was presented to us tonight. I also think that the applicant has tried to do something and has spent a significant amount of time trying to find a use for that building to bring in more revenue. I think it's a factor I don't think it will sways your contention that the hardship was self-created but I think there is some mitigating factors to that.

"The Board of Appeals in the granting of use variances shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the

character of the neighborhood and the health, safety and welfare of the community.”

Vice-Chairman Tedrow commented: There is a motion on the table.

Chairman Roses commented: Let’s read back the motion to make sure we are all clear on that.

Vice-Chairman Tedrow commented: That he makes a motion that we deny the application for the variance on the basis that the alleged hardship has been self-created and secondly that it is proposed to apply to part of a lot which would be an unenforceable situation for the Town.

No one made a second to the motion and that motion dies.

Mr. Hansen commented: I will make a motion to approve the application for a use variance but I would like to see something in writing from the applicant that they are willing to accept whatever future consequences come with this decision or would Mr. Taylor representing the applicant be willing to state on record his suffice for that. He would be claiming that the applicant has no objection to this however he is not the owner of the property.

Chairman Rose commented: I think if you were to do that I would like something in writing I think that the reliance upon the owner of the property is paramount to the agent representing the property.

Mr. Taylor commented: As far as getting a statement in writing I think that yes if were to get a decision based on a statement letter formatted within a certain amount of time that would not be problem. That is a fair request.

Mr. Hansen commented: I think to nail it down if we propose to approve it I think we really need to nail down for the applicant and he would have to be told what the implications of this approval would be if he was granted the approval and he needs to understand what this approval would be if he were granted this variance. Not just take the seven year lease. He has to know what will happen in seven years because something is going to happen. They may not want to renew the lease and they may find a better location somewhere else for a better price, who knows. What is the applicant going to do then? Does he know, and if he knows and he is informed we know that he is informed I am good with that.

Mr. Taylor commented: I personally think that makes sense. Nobody in seven could say he said she said it’s all there in writing.

Chairman Rose commented: I think we should review your thought, Mr. Hansen when we do an official approval. We ask the Town Attorney to prepare to prepare a letter and include it and have the business property owner sign it contingent on that letter. It would make it official. I think in the past, things have come back to the Board when we would say we thought something happened and we heard something happened we wish something happened it's too much grey area for us sometimes. Mr. Hansen, would you amend your motion to include an official letter from the Town Attorney?

Mr. Hansen commented: Do we want that before we make the motion and approve it or do you want to make the motion contingent upon and they don't get the letter or abide by it then the approval fails is that your contention then it would fail.

Chairman Rose commented: The approval would only be good if it were signed and agreed upon through the Town Attorney and the Property Owner.

Mr. Hansen commented: The Town Attorney would have to send a letter to the property owner for his acceptance of the terms.

Mr. Hansen commented: I would move that we approve it contingent upon the Town Attorney sending a letter to the applicant advising him/her of the conditions and understanding of what the implications and the acceptance of the same conditions and understanding.

Chairman Rose commented: You would be establishing a flow down from the owner of the property to the applicant essentially. The applicant is different than the property owner.

Mr. Hansen commented: I am thinking that the applicant is the owner of the property. It is, the applicant is the owner of the property he is the designated representative.

Mr. Taylor commented: The way you are looking at it I think it's up to you but we would want the owner of the property to accepting the application and the letter.

Mr. Hansen commented: The owner would have to accept it. Mr. Taylor you are authorized to come here and talk for him but you don't own the property. There is nothing wrong with that but seven years from now you may not be here.

Chairman Rose commented: That is what I am hearing is that Mr. Hansen wants the approval to run with that lot that would become part of the record and it gets filed and anyone that deals with that situation again has to understand that is the zoning for that portion of the property or that use.

Mrs. Curto commented: Can that use revert back to M-1?

Mr. Hansen commented: It only applies to a portion of the building they have not applied to use the whole building.

Mr. Burdyl commented: That was the Vice-Chairman's question whether we can do a partial lot or not.

Chairman Rose commented: We are making an interpretation to split that lot to allow this use within that lot which is already M-1 but because it wasn't specifically called out as a use we are saying that we are going to allow this side to be A and the other side to be B and that is the Vice-Chairman's issue that we can't have a change of use later on it has to come back to some Board for another variance even if it's back to M-1. So your question Mrs. Curto is would it revert back to M-1, my opinion is that it's still an M-1 use there is no revert back. It's the use within the M-1 for that 6,000 SF.

Vice-Chairman Tedrow commented: With a use variance aren't you discarding all the uses you said you can't make a return on? That is the justification.

Chairman Rose commented: I think that what I am saying is that the 6,000 SF were saying would be used as Cross Fit if someone were to come back and the building is M-1 we are not changing M-1 in that building the lot is M-1 and it stays M-1.

Mr. Burdyl commented: Right, we are changing the subset a portion of it.

Chairman Rose commented: Yes, that is what I think we are doing.

Vice-Chairman Tedrow commented: You're saying that you are just adding another use to that one part of the building.

Chairman Rose commented: Yes essentially that is what we are doing.

Vice-Chairman Tedrow commented: It is my understanding that a use variance that you are changing the zoning you are discarding the M-1 and replacing it with a Fitness Facility C-1 and it runs with the lot. If you want to go back to M-1 you would have to go back for a reverse use variance and go through the same steps again in the future.

Chairman Rose commented: I will take that under advisement for the Attorney.

Vice-Chairman Tedrow commented: That is my impression.

Mr. Hansen commented: Is that correct? Do we need to clarify that before we make any motions?

Chairman Rose commented: I am not trying to rush the process. If there is a bigger decision than that I am ok with that.

Mr. Hansen commented: I think that is where the other things need to be made clear to the applicant. That could be a big problem for the applicant if that is true.

Vice-Chairman Tedrow commented: It's a disclaimer I am not a Lawyer.

Mr. Taylor commented: There has to have been variances for shopping centers in the past and not changing the zoning of anything. It's just for an allowable use within item #16. That is it and it's all I am looking for. If you come in here and want a variance for just one store you don't change the entire shopping center you can't kick them out and say you can't make windows anymore. It's only on a portion of the building. The variance is to allow that particular use your not changing the zoning.

Vice-Chairman Tedrow commented: No, you segregated that part of the building to stay M-1 if I understand what you're doing.

Chairman Rose commented: The whole property is M-1 today one side of the building would be carved out to have a separate use that wasn't previously defined or permitted in an M-1. The other part of the building would remain M-1 Glass Company which is a permitted use. I am thinking that we are only carving out a specific portion like if it were a restaurant or something else or a similar use making the analogy that it's like substantially like something else. That

might be permitted in there. We are trying to determine whether that 6,000 SF is carved as Cross Fit.

If it changed down the road and if the applicant came back and left and I want to do something different then they would have to come back and seek another variance and Mr. Hansen's motion, I believe, puts us in the situation that we are putting them on notice that it doesn't change they are taking a risk that it will stay as a Cross Fit Facility in front of another Board. There is no reverting back without another approval process. Mrs. Curto asked if it reverts back to M-1 I am not quite sure I understand the implications of that. That is my problem does it ever change. Are we moving it away from an M-1 is that what you are saying Vice-Chairman Tedrow?

Vice-Chairman Tedrow commented: Right. I am saying it won't be an M-1 anymore. It's "X" whatever you changed it to. I think we are passed that it would be a portion of the lot.

Chairman Rose commented: So you would call it the island within the building would be a special use variance.

Mr. Taylor commented: If there is a way to do that but I was under the understanding that sounds like a zone change all I need is a variance to use a portion of the building. We are not looking for a zone change we will take it if that's what we get.

Chairman Rose commented: I think we should do if the Board goes with it is to get an opinion from the Town Attorney on this. We should table it until we know for sure. I think I would be making a mistake by drawing this Board to a conclusion tonight. We all have opinions on this but how we get there though is the question. We really need to table this for the next meeting.

Mr. Hansen commented: I am withdrawing my motion. We will leave the meeting open and table it to the July 7, 2014 meeting.

Chairman Rose commented: If we don't there will be defects in our approval if we don't and we will bounding the applicant to something that he may be doing under duress because he is looking for an approval tonight from us and I think we are twisting things around too much. I think we need to clear the path toward what this means and what it doesn't mean for the Town and for the applicant. That would be the best practice. I apologize that we can't get there but I think all of us agrees on this Board here that this should not have come here. It puts us in a weird situation but that doesn't preclude me from saying

that we will do something because we are trying to force something in place. We will ask the Town to take swift action on this whether the Town Board or Planning Board to rule on it very quickly.

Motion made by Mr. Hansen to adjourn this public hearing and open it at our next meeting of Monday, July 7, 2014 pending receipt of advise from our Town Attorney regarding implications of granting a variance as requested by the applicant. Vice-Chairman Tedrow made a second. Motion was carried.

New Business:

Chairman Rose commented: I just want to thank you all for your patience and understanding. This is the longest Zoning Board Meeting we have had since I have been a member. Sometimes it's very simple up here and sometimes it's very difficult so I do appreciate your patience.

Chairman Rose commented: This is a new application and not a public hearing. The applicant will come up to the podium and describe his request and the Board will determine if a site visit is required and if the application is complete we will schedule it for a public hearing.

Jimmy Vasilakos/Effie's Boutique, 1 Birchwood Drive – 278.4-2-1

The applicant is Mr. Jimmy Vasilakos, 1 Birchwood Drive is requesting an area variance to construct a 1,934 SF retail facility which is an allowable use in a C-1 Commercial District. Pursuant to Section 165, Attachment 1, Schedule A the minimum lot size of 25,000 SF is required and the lot has 16,965 SF, 8,035 SF less than required. Pursuant to Section 165-32C and Section 165, Attachment 1, Schedule A, the minimum lot frontage for this proposal is 150' and the lot has 100' of frontage, 50' less than required. Pursuant to Section 165-32F and Section 165, Attachment 1, Schedule A, lots that abut a residential district are required to have a side yard setback of 100' or 50' with opaque fencing or evergreen plantings. The side yard to the south has a 25' setback, 75' or 25' less, respectively, than required. Pursuant to Section 165-35A, parking spaces are required to be 10' x 20', with Planning Board discretion to allow 9' x 20' spaces for employees parking. The site plan presented has parking spaces with dimensions of 9' x 20' for all parking spaces. The applicant received a denial from the Planning Board.

My name is David Hopper, I am here tonight representing Mr. Vasilakos for a variance request for 1 Birchwood Drive. The proposal is for the corner of Grooms Road and Birchwood Drive formally a residential lot in a C-1 District. There is an existing garage on the property and the home was removed. The applicant is proposing a single story retail women's boutique. This parcel is zoned C-1 Commercial and is an allowable use under the current Town zoning.

Mr. Hopper commented: The problem that we ran into with the Planning Board was that there were seven items that they addressed four of which I was able to make adjustments to the design to accommodate the deficiencies the Planning Board so noted. Specifically the lot size requires 25,000 SF and the physical area of this lot is only 16,965 SF and therefore we cannot increase the lot size. Another issue is the frontage which the requirement is 150' and we have 100' on Birchwood Drive, so we cannot comply with that either. The rear lot setback requirement of 25' I was able to shift the building by 10' and it is now compliant. In terms of parking spaces my interpretation was that we needed one parking space for every 200 SF of building and we have an 1822 SF building. If my math is correct that would be 10 spaces being required and we are proposing 11 spaces. However, the Planning Board did indicate that they wanted 12 parking spaces and I did not get a reason for that. I made an adjustment to the parking space size and increased it to 9' x 20' and we are compliant there as well. There is a service isle along the east side of the lot that I have adjusted from 16' to be compliant with the 22' requirement. The transition yard requirement under the Zoning requires a setback of 100' from any adjacent residential property or 50' with an opaque fence or evergreen plantings. With that regard we are hoping and I do believe that there has been discussions with the neighbor about providing a planting screen. However, if you look at the site plan you can see that the edge of pavement does approach the property line which would limit our ability to plant anything there. The suggestion might be with the cooperation of the neighbor to put shrubs on her property and I believe she is here tonight and that is our proposal at this point. So the lot size and frontage are the only items of concern at this point.

Chairman Rose commented: I am reading through the Planning Board's denial and there were seven items that were present as reasons for denials and I think you said you have remedied a few of these already, four of them.

Mr. Hopper commented: Yes four of them. The original drawing showed the left side of the building.

Chairman Rose commented: Pursuant to 165 the rear yard setback is 25' and the site plan includes a 15' rear yard setback, 10' less than required.

Mr. Hopper commented: That has been changed to 25' to bring it into compliance. Item D we just talked about with the planting. Items E, F, and G have all been addressed.

Chairman Rose commented: Items E, F, and G are parking spaces, parking space size and an isle width.

Mr. Hopper commented: Yes, all of those items we are now in compliance with at this point.

Chairman Rose commented: The transition yard regarding plantings on the neighbor's property.

Mr. Hopper commented: Correct. I believe she has requested no fence that is why we are suggesting plantings.

Chairman Rose commented: What is across the street from Birchwood Drive?

Mr. Vasilakos commented: The Halfmoon Diner and Sorrentino's Deli.

Chairman Rose commented: Was that a blue house at one time?

Mr. Vasilakos commented: Yes, it's gone from there.

Chairman Rose commented: I recall the property as being a heavily treed property at one time and crazy over grown bushes.

Mr. Hopper commented: Yes, there are still peach trees and the lot backs up to the Sunoco Gas Station which is right on the corner. There are still a few trees along that side and when the house was removed I believed some of the trees closer to the house were removed as well. The lot is quite open at this point.

Chairman Rose commented: So, the Planning Board has not gone through a site plan review on this? Did they just deny it based on the application? Have they discussed the traffic or anything like that?

Mr. Hopper commented: We didn't talk about traffic. We found these stumbling blocks and they sent us to you.

Chairman Rose commented: Are there any questions from the Board?

Mr. Hansen commented: You have re-submitted this plan to the Planning Board, is that correct?

Mr. Hopper commented: We submitted the revised plan to this Board, no the Planning Board has not seen it. We revised it because the previous plan was denied. We can't submit a plan that would be compliant with the current zoning. We would end up here because of the lot size and frontage.

Mr. Hansen commented: I could be wrong, but to make the denial official you have to go back to the Planning Board for another denial. There are other issues here that they may still issues with like the width of the parking spaces that is a discretion on their part because the minimum standards are 10' x 20' but they can approve 9' x 20' discretionary.

Mr. Hopper commented: Yes, and they did indicate that they would approve 9' x 20' in this situation but of course you would want to confirm that with them.

Mr. Hansen commented: Why can't they go back to the Planning Board and get a revised review and come back to us with a different denial from the Planning Board because now he has changed the plan from what they saw. The document that they disapproved no longer applies to the plan he is showing us.

Vice-Chairman Tedrow commented: If we don't grant the variances then this would be mute. If we do grant the variances they have to go back to the Planning Board anyway for site plan review.

Mr. Hansen commented: Yes, that is correct.

Chairman Rose commented: Yes, I think that what you are saying is that this could go through our process and then go back to the Planning Board and they may deny it and say there are other issues. The Zoning approval doesn't necessarily equate to the fact that the Planning Board will say you're good to go. They may come back and find other issues. That is what I am worried about with this approval and when I read through it might not be thorough enough for what issues may exist there from a site plan review. The Planning Board hasn't done a site plan review yet.

Mr. Hansen commented: They have not seen this site plan that is my point. They may be issues regardless of what the neighbors may feel. Maybe the Planning Board wants a fence there.

Mr. Hopper commented: The Planning Board may want a fence there instead of plantings?

Mr. Hansen commented: They might.

Chairman Rose commented: We are not sure what they would ask for that is the point. We don't want to make it circular for you. They may come back and say you will need another variance. They may come back and say you have other issues. I think they took a look at your plan and said these are the issues on this plan but they haven't taken you through the process where they say this is how we are going to approve the whole thing. We can take you through the process here if you want and send it back to the Planning Board but the Board should be advised of these changes and you should be advised if there are other hurdles to cross. I am not sure if there are any or not I would assume based on my experience that you may have some.

Mr. Hopper commented: We will end up back here looking for a lot size and frontage variance.

Mr. Vasilakos, 444 Grooms Road, commented: I talked to Mr. Harris and they clearly went to the site after the meeting and had mentioned 4-5 things at the meeting and then there were a couple more and when he talked to me after the meeting he said make another plan it has to go to the Zoning Board for variances so out of the seven things we corrected four of them and the other ones are the ones we really can't correct because of the size of the lot which we will need a variance on.

Chairman Rose commented: Secretary Mikol since the site plan he submitted tonight is different than the one denied should they re-submit it in parallel in what we are doing here?

Secretary Mikol commented: Yes, the Planning Board needs to review comment and deny this new proposal for this Board to make a decision on.

Mr. Hansen commented: Yes, they should look at it and they should deny the revised map and send it back to us. We should not take the applicant's word just because he comes in and says well so and so.

Mr. Vasilakos commented: So even though they look at this and they deny it because of those three things that they already denied we still have to come back.

Mr. Hansen commented: Yes, you have to come back here based on this new map. It will be a revised application and a revised denial from the Planning Board.

Chairman Rose commented: The process that we look at is if the application is complete, this is in flight and is not approved. If the information isn't complete we have trouble ruling on it because we are trying to make the final determination of the interpretation. It looks like it's a grey area but to us it's not a grey area it's how the process works. We are trying to get you there faster than slower.

Mr. Hansen commented: I would like to postpone this until the Planning Board see's the changes that were made as a result of their denial meeting. If we decide to hold the hearing on it we recommend postponing it until we get the revised review from the Planning Board.

Chairman Rose commented: We could go do the site visit and then wait for the review from the Planning Board to come back in flight. There will be another meeting of the Planning Board before the next Zoning Board meeting which is likely.

Mr. Hansen commented: Can you go to the Planning Office with the revised plans and get on their next agenda so they can make a comment before the next Zoning Board Meeting? If not he can get on for the second meeting and still come back to us.

Chairman Rose commented: We just want them to see the next site plan so that we are looking at a completed application and move forward.

Mr. Vasilakos commented: We will have to submit 10 copies to the Planning Board and show them the changes that we made as result of their denial. If they look at it and say well you still have problems with this and deny it we still need to come back here.

Mr. Hansen commented: Yes, they will have to say that because you still have to come back here.

Mr. Vasilakos commented: You want the Planning Board to see the revised plan before the next meeting.

Chairman Rose commented: We can move forward and make a motion to make a site visit in anticipation of your getting another denial from the Planning Board. Then during the hearing we can be looking at the final site plan. The defect here is that these are not final. He has two shots at getting it in front of the Planning Board.

Motion made by Vice-Chairman Tedrow to set a public hearing for the July 7, 2014 meeting at 7:00 p.m. based on a denial on the new site plan from the Planning Board, seconded by Mr. Hansen. Motion was carried.

Chairman Rose commented: The Board will be making a site visit on Saturday, June 7, 2014 at 9:00 a.m. If you could mark the property with the building location the entrance and the parking area that would be most helpful just to give an idea to the Board on what the site would look like.

Mr. Hansen made a motion to adjourn the meeting at 10:45 p.m. and seconded by Vice-Chairman Tedrow, motion was carried.

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

