

**Town of Halfmoon Zoning Board of Appeals**  
**Meeting – Monday June 4, 2018**  
**7:00 PM**

Chairman Curto called the meeting to order at 7:00 PM on June 4, 2018 at the Halfmoon Town Hall with the following members present:

Members- Chairman Curto, and Mr. Koval, Mr. Griggs, Mrs. Paluocci  
Alternate Member - Mr. Micelli  
Planner - Mr. Marlow  
Town Attorney – Cathy Drobny

*Motion made by Mr. Micelli and seconded Mr. Koval by that the minutes with changes of April 2, 2018 be approved as presented. Motion was carried*

**New Businesses:**

**Lands of Hayes & Tenace (Brady Trust), 298A Grooms Road - Minor Subdivision**

Mr. Duane Rabideau of Gilbert VanGuilders Land Surveyors presented the application. The applicant is seeking approval to perform a subdivision of the existing 3.37 ac lot at 298A Grooms Road. The lot (Lot 1) contains a duplex home. The applicant is proposing to subdivide Lot 1 to create a second lot (Lot 2) for the purpose of constructing a single family home on Lot 2. If approved, Lot 1 will be reduced from 3.37 ac to 1.76 ac, and Lot 2 will be 1.61 ac. Both lots will be flag lots. Town Code allows the creation of flag lots if the minimum width of at the right-of-way is no less than 20 ft. Lot 1 is already a flag lot with a width of approx. 29 ft. The proposed subdivision would reduce Lot 1 width from the existing 29 ft. down to 14.50 ft. and Lot 2 will be 14.49 ft. In addition to the proposed flag lot widths, the lot as it sits has an existing duplex on site that does not meet today's front yard setback requirements and a shed that would be considered in the front yard of the home. They are before the Board seeking variances related to the minimum flag lot frontage, accessory structures located in the front yard and front yard setbacks on the existing duplex.

Mr. Griggs asked where the access from the street to the Hayes property was; Mr. Rabideau noted on the plan to point of access to the site.

Mr. Rabideau stated that the applicant currently lives in the duplex but due to the applicant's wife's need to have an ADA compliant home, they are seeking to construct a new home.

Mr. Micelli asked when the shed was constructed; Mr. Rabideau noted it was constructed a long time ago and is pre-existing.

A site visit will occur on 6/23 at 9am

A Public Hearing will be held on July 2, 2018.

**GJA&S, LLC- 33 Deer Run Hollow- Area Variance**

Mr. Duane Rabideau of Gilbert VanGuilders Land Surveyors presented the application. The applicant is before the Board seeking approval for an area variance as it relates to the construction of the proposed pool house at their existing home at 33 Deer Run Hollow. The applicant seeks to construct a new pool house that will be approximately 1,334 SF in size, their current home is approximately 4,452 SF (3,410 SF first floor & 1,042 SF garage) and with the proposed pool house there will be a total of 5,786 SF of

building coverage on the lot. The lot as it stands is 23,075 SF Town Code states that the maximum building coverage shall not exceed 20% (4,615 SF) of the lot size. Due to the size of the existing home and pool house the applicant is unable to meet the 20% requirement and was denied by the Building Department. The application is before the Board seeking a variance to exceed the allowable 20% building coverage on site.

Mr. Rabideau noted that the reason for the pool house was due to a medical condition where they need access to a pool year around for physical therapy.

Mr. Griggs asked if there would be any other facilities in the structure; Mr. Rabideau said there would not be, just things relative to the pool.

Mr. Micelli asked if the large space was required for the physical therapy; Mr. Rabideau stated that they will be installing a salt pool rather than a traditional chlorine pool.

Mr. Griggs asked what the height of the building was; Mr. Rabideau stated that he did not know for sure but if he had to estimate he would believe it to be around 20-feet tall, he noted he would provide clarification for this later. He noted that this would buffer the neighbors from the view of the back of the home.

Mr. Micelli asked if the pool house would be used year around; Mr. Rabideau indicated that it would be used year around.

A site visit will occur on 6/23 at 9:30am

A Public Hearing will be held on July 2, 2018.

### **Old Business:**

#### **Beeche Garage, 65 Smith Road- Area Variance & Use Variance**

Mr. Robert Jarvis and Greg Beeche presented the application. The applicant is before the Board seeking several variances as it relates to the proposed accessory structure they wish to construct at 65 Smith Road. The applicant submitted a building permit to the Town for a proposed garage with second story apartment, upon reviewing the application, the permit was denied by the building department as it did not meet several area requirements and proposed a second residential dwelling unit on a lot. They are before the Board as it relates to the accessory structure location in the front yard, the height of the accessory structure and the construction of a second dwelling unit on a singular parcel.

Chairman Curto noted that she had found no tax record of a two-family home in that area; Mr. Jarvis commented that it might be considered an in-law apartment.

Chairman Curto noted that the petition in support of the project does not mention anything about a second dwelling unit; Mr. Beeche indicated that the second unit was on the plans but does not recall if it was discussed with anyone.

Mr. Jarvis stated that neighbors in the area received letters and had the appropriate chance to object to the application.

A Site visit occurred on May 5, 2018 at 10:15am

Pursuant to Article XIV Section 165-79 the following resolution was made:

- 1) Mr. Koval commented: No reason to believe there can be no reasonable return, not having the structure won't affect the value;
- 2) Chairman Curto commented: No other properties in the area have a second dwelling unit; Mr. Micelli noted that he felt it was a self-created hardship as there was other options available to avoid a variance;
- 3) Mr. Koval commented: It won't alter the area that much, according to Mr. Beeche there is another home with a second interior dwelling;
- 4) Mrs. Paloucci commented Yes it is self-created, as it is proposed it requires more than one variance; Mr. Koval noted that there were other ways to accomplish what they'd like that would meet current code.

*Mr. Koval made a motion to deny the Use Variance, seconded by Ms. Paloucci Motion was carried.*

Pursuant to Article XIV Section 165-79 the following resolution was made:

- 1) Mr. Griggs commented: No, there are several flag lots in that area, it would fit nicely in the area, it would not detract from the appearance of the area;
- 2) Mr. Koval commented: As an accessory structure only, it is a reasonable place to be;
- 3) Chairman Curto commented: Yes it is substantial, it is a change of use on the site; Mr. Griggs stated that the height variance was minor in nature but that the location was substantial; Mr. Koval commented that it is not uncharacteristic as many homes in that area are close to the road;
- 4) Mr. Micelli commented No, there is no environmental impact on the area;
- 5) Mr. Koval commented: No, there are restrictions due to the topography of the land.

*Mr. Griggs made a motion to approve the Area Variance as they apply to the accessory structure only, seconded by Mr. Micelli Motion was carried.*

Mr. Marlow clarified that the approval is just for an accessory structure and that the second dwelling-unit was not included in the approval.

Mr. Jarvis requested clarification on the definition of a one-family dwelling unit vs. a two-family dwelling unit. Chairman Curto noted Section 165-5 of the Town Code, and read aloud the definition of a "dwelling unit".

Mr. Koval noted that per Town Council, only one single-family dwelling is permitted on site; Mrs. Drobny noted that you can have a second dwelling unit but they need to be within the same structure.

Mr. Koval stated you can have a one family dwelling or a multi-family dwelling but not two single-family dwellings. Mrs. Drobny concurred that you cannot have two single-family dwelling units on one lot.

Mr. Jarvis asked where in the Town Code it states you cannot have two single-family dwelling units; Mrs. Drobny noted the definition of a dwelling unit in Section 165-5 of the Town Code and Section 165-9, permitted uses within the A-R Agricultural-Residential zoning district, states that a one-family dwelling is a permitted use.

Mr. Jarvis read the definition of a “one-family dwelling” unit. Mr. Micelli noted that they will be metering a second dwelling on site. Mr. Koval noted that regardless of whether or not they were metering a second unit, there would be two structures which mean two separate one-family dwelling units which are not permitted.

Mr. Jarvis noted that the Code does not specifically prohibit two separate dwellings. He continued to site the definition of a two-family dwelling and clarifying that there are no buildings proposed that would contain two dwelling units in them; that there is one building with one unit and a second building with a dwelling unit.

Mr. Koval stated that the Town Code allows for one single family dwelling. Mr. Marlow stated that section 165-9(a)(2) allows for one-family dwelling unit in the singular tense.

Mr. Jarvis requested clarification from the Board that the living space above the garage is indeed a dwelling unit even though the people who would be staying there are not really a family unit as is required for a dwelling unit. Second, the Town Code only allows a single-dwelling unit on the property. Mrs. Drobny clarified that you can have a two-family dwelling under Code, one building containing two units; but not one building with a dwelling unit and a second building with a dwelling unit. By having the accessory building with living space it becomes two separate dwelling units on one lot.

Mr. Marlow clarified that a two-family dwelling requires a Special Use Permit through the Planning Board. He noted that in the A-R Agricultural-Residential zone you can have a two-family dwelling by way of a Special Use Permit or a single-family home by way of right.

Mr. Jarvis noted that there was mention that this was self-created because you could attach the garage to the home and you wouldn't've created the need for the variance and requested clarification on the matter. Mr. Marlow explained that the Town has provisions to allow in-law apartments, but there is certain criteria you must meet to be considered an in-law apartment, and that he believed that based off those facts that is why the Board felt it was self-created but differed to the Board for reasoning.

Mr. Koval explained that it was his opinion, if the garage was attached it could be considered an in-law apartment or a multi-family dwelling because it is all within one physical footprint of the building. Mr. Micelli stated that he agreed with Mr. Koval's point that there are other options plausible where a variance wouldn't be required.

Mr. Jarvis asked if they attached the garage to the home would they then avoid the definition of a two-family dwelling. Mr. Koval stated that in that case they would actually meet the definition of a two-family dwelling as there would be two-dwellings in one building.

Mrs. Drobny stated that if they attached it they can get a Special Use Permit for a two-family building or follow the regulations in the Town Code and consider it an in-law apartment.

Mr. Marlow advised the applicant to talk to the Building Department to determine the exact requirements to be considered an in-law apartment if that was an option they wished to seek.

Mr. Jarvis asked for clarification on the difference between an in-law apartment and a duplex; Mr. Marlow stated that a duplex has different Building Code regulations than an in-law apartment.

*Mr. Koval made a motion to adjourn the meeting, seconded by Mrs Paloucci. Motion was carried.*

These are summary minutes and are not word for word at the request of the Zoning Board of Appeals.  
A copy of the recorded tape is available by F.O.I.L. through the Town Clerk.

Meeting adjourned at 8:02 PM.

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