

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
September 3, 2013

Chairman Rose called the meeting to order for the Town of Halfmoon Zoning Board of Appeals at 7:12 p.m. on Tuesday, September 3, 2013 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Hansen, Mrs. Jordan
Alternates: Mr. Burdyl – will be voting tonight
Town Attorney: Mr. Chauvin
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 August 5, 2013 meeting. Motion was carried.

Chairman Rose commented: Welcome everyone to tonight's meeting.

Ronald Clapper, 94 Lower Newtown Road

Chairman Rose commented: The applicant is requesting a variance for 96 Lower Newtown Road. From the agenda, Mr. Clapper is requesting an area and frontage variance under Zoning Chapter 165-A. The applicant is lacking both lot frontage and lot area and received a denial from the Director of Code Enforcement. Just to clear the record, there was an administrative error on your application and was carried forth to the newspaper. The reason for the denial was cited in Section 165-79. I think after we reviewed the information that was incorrect it was actually a different section, it would be 165-32. For administrative reasons I just want make sure it's on the record that it was cited wrong on the application. It does not, in any way, change the application from the Zoning Board our opinion or comments. It was just an error that was made. Does anyone have any questions with that?

Mrs. Jordan commented: You're saying it was a clerical error in the number but the content of what was said about lot area and frontage is still correct.

Chairman Rose commented: Part of what was written in letters and correspondence was carried forward incorrectly. We read it into the record incorrectly last meeting.

Mr. Chauvin commented: There was a clerical error in the original notification. It quoted a portion of the tests that you would apply to the application in order to make a determination as to whether or not you were going to grant the variance and that was simply a ministerial error and has no impact. The applicant is here with an application for a variance. Pursuant to 165-32, certain areas required for the lot does not have adequate area under the current zoning. That is why we are here tonight seeking that area variance to allow the construction of a single-family residence. I have had verbal conversations and clarifications with the Director of Planning who pulled the maps for me. We sat down and looked at the frontage issue. There was, if you go back in history, in the file, a variance granted as to frontage which Mr. Hansen was picking up on at our last meeting. In going back in that history, we pulled all the old files and the original application and the maps from that time. There was a variance granted as to frontage. The only requirement that would need to be met according to that discussion was the issue of area not the issue of frontage based upon that pre-existing variance that would still run with the land. I know we are back tracking and doubling over here but I want to make sure we are all clear as to the lay of the land before we vote this evening.

Mrs. Jordan commented: Are we just looking at the lot area?

Mr. Chauvin commented: You would be looking at lot area. It was clear once we looked at the map itself. The driveway that was an issue and the way it was placed would not have been impacted the frontage issue. It was properly done in the first instance.

Chairman Rose commented: Just so you understand, tonight's application is just for lot area. Just one variance request.

Mr. Chauvin commented: That is all that is necessary to make this a conforming lot according to my discussion with Mr. Harris.

Chairman Rose commented: Can you repeat that?

Mr. Chauvin commented: The previously granted variance would still apply allowing this substandard lot frontage.

Mr. Hansen commented: If that is the case, Mr. Clapper is not asking for a width variance. Does it then comply with 165-32 A-1. That says: "Any lot with an area or a width less than required in the district in which said lot is located may be used for any purpose permitted in the district, provided that all other regulations prescribed for the district shall be complied with, and further provided that said lot was held under separate ownership at the time of the adoption of this chapter and the owner thereof owned no adjoining land that could be combined with said lot to meet the dimension requirements."

Mr. Chauvin commented: He does have a width less than required and an area less than required.

Mr. Hansen commented: Ok, but he is only asking for an area variance, is that correct?

Mr. Chauvin commented: The width has already been granted. He is looking for area.

Chairman Rose commented: To re-state that, if he is at 25,000 sq. ft. and the requirement is 40,000 sq. ft. we are just to rule on the 15,000 sq. ft. delta.

Mr. Chauvin commented: Correct, you're only evaluating the square footage of the lot.

Mr. Hansen commented: The question becomes whether he could annex a portion of his other lot to this lot.

Mr. Chauvin commented: I believe that question has already been answered. It would not be feasible to do that in that you would be creating a sub-standard lot on the other parcel. I believe that's the case but we would have to ask the applicant. That is not an issue that I looked at with Mr. Harris.

Mr. Hansen commented: The other lot is 1.65 acres.

Mr. Chauvin commented: It has a pre-existing easement and driveway that created a natural division that would not make it feasible to do that.

Chairman Rose commented: It looks like 1.653 acres according to the map.

Mr. Hansen commented: Yes, you are right about the area, its 1.653 acres.

Mr. Chauvin commented: A frontage variance was granted and notice was given to the Planning Board from the Zoning Board of Appeals on November 2, 1993. The pre-existing non-conforming use of the lot would allow for Mr. Clapper to seek the area variance as the application indicates. The configuration of the lots as shown on the map demonstrates that he is short at the width. The ingress/egress easement to the southeastern portion of the lot was the triggering event for that previous application because it does swallow up a portion of the space. The area variance request would be solely for the purpose of bringing this into conformance on the area requirement under the law. The frontage requirement has been addressed in the 1993 variance was granted by this Board. He just simply hasn't acted upon that variance since the time it was created. Ms. Murphy has previously rendered an opinion that it is a pre-existing non-conforming use and that would still be in effect because no changes have been made. It is grandfathered such that 165-32 does not apply in that regard and force him to annex a portion of that adjacent lot.

Mr. Hansen commented: So are we saying that in effect, the decision to deny the permit was incorrect?

Mr. Chauvin commented: I don't have the benefit of Ms. Murphy's opinion in front of me. The pre-existing non-conforming would be with regard to the frontage not the area. The area for this lot would still be substandard for purposes of constructing a single-family home at this time. The need of annexation of lands from the adjoining lot would not be required. The lot would still be substandard and therefore not buildable without an area variance at this time. The lot was created and therefore, was sufficient for purposes of the area requirement at the time. It was never built upon.

Chairman Rose commented: The original application was denied using 165-79 and we knew that was a clerical, administrative error. It was sited wrong. We fell back to 165-32 which would be the reason for denial if two variances were needed. What would it be for one of the two?

Mr. Chauvin commented: The reason for denial for the building permit should solely be based upon the lack of sufficient area to create a buildable lot. That is the reason why a permit could not be issued. I think we are still citing the incorrect portion of the Ordinance. It should simply be the lot requirement that lot does not meet the required buildable area.

Chairman Rose commented: But that is not under Section 165-32.

Mr. Chauvin commented: No, it is not.

Mr. Hansen commented: Doesn't the question become whether or not he has additional land that he can annex to this lot.

Mr. Chauvin commented: Ms. Murphy has rendered an opinion that indicates that would not be required because the lots were created before that statute went into effect and therefore it would be grandfathered as a pre-existing non-conforming use in that regard.

Mr. Hansen commented: Then no variance is required, right?

Mr. Chauvin commented: The variance would be required for area.

Chairman Rose commented: I think what I am hearing is that because it is a R-1 Zone with no utilities they are required to have 40,000 sq. ft. so even though he is grandfathered in with the lot width, he still needs a variance for area.

Mr. Chauvin commented: The lot width variance is still in effect. That lot width variance does not go away. The need to annex lands of the adjoining parcel did not exist at the time the lot was created. It does not apply. The Zoning had a lot area requirement at the time the subdivision had created this lot. At the time, the lot was created as a conforming lot of 25,000 sq. ft. That requirement has subsequently changed. The requirement has changed from 25,000 sq. ft. to 40,000 sq. ft. and that brings us here for a request for a variance for the area of the lot.

Mrs. Jordan commented: My question then becomes Article 165-32 Section 1 talks about an area or a width. Don't we come back to that because we are considering the area?

Mr. Hansen commented: Ok so we have eliminated the width, now we are down to the area and it says you can have either area or width. So width is not in consideration, we cross that off. That leaves one thing left, the area. But then it says if it's only one of those things you can go ahead as long as it meets all the other requirements in the district.

Mr. Chauvin commented: I do see what you are saying.

Mr. Hansen commented: First of all, I think that the variance that was granted was not for the lot width, it was for the width of the access road to the rear lot which should have been 20' but we allowed it because he only had a total of frontage around 14.88', that was what the variance was for. Mr. Clapper could meet the 100' frontage requirement that was in effect then for the lot in the front, which made that lot conforming because he then met the width and the area. The access road needed a variance because it was only 14.88' from 20' and that was what we granted.

Mr. Chauvin commented: Correct, that was absolutely done. My understanding is that there was a second variance that is not in that file with regard to the lot width for buildable purposes but I am not seeing it there. That was my understanding of the basis of Ms. Murphy's opinion and that is why I am getting a little tongue tied as I am sitting here because I am not seeing anything to do with eliminating that issue for width. Certainly, the Board can consider that the application was amended. You can consider and address the lot width and lot area issues. Again, I would have to go back to the historical question of whether or not the owner or the applicant at the time the lot was created owned adjoining lands that could be combined and whether he now owns adjoining lands that could be combined in such a fashion so that a boundary line adjustment would have been sufficient to accomplish the purpose of what we are attempting to accomplish by way of an area variance.

Mrs. Jordan commented: I do not feel comfortable moving ahead with this without knowing exactly

Mr. Chauvin commented: The applicant may be able to shed some light on this.

Chairman Rose commented: Why don't we pause and let Mr. Clapper come up to the microphone and explain his application to the Board. Please speak into the microphone so we have it on tape.

Mr. Clapper commented: On the application, are we dealing with the property width or is the square footage the only issue. According to 132 or 131 whatever it is, if the property meets all the other standards it should be granted. It clearly states that, I think. Mr. Chauvin said that and I think Mr. Hansen said that. In all actuality here, you all went and saw the lot. Taking land out of the back parcel will serve no purpose for that building lot whatsoever. You saw how deep it was and how far it goes back. Even if I put 4 laterals for septic back there I don't see where there is a benefit to increasing the lot to a bigger size.

Mr. Chauvin commented: I believe, and I just went back to my notes, pursuant to 165-32A-1, the lot is pre-existing non-conforming for lot width under that section. The fact is that the owner of the property, the applicant, does not own enough adjacent land that would get you to the width requirement. Therefore, 165-32A-1 would not require him to add any adjoining lands. Even if he was forced through that process he would not get there. The area variance is required because if the applicant were to move the rear lot line in the only direction you could move the lot line here to create enough space to meet the requirements, it would then encroach upon the septic system for the pre-existing home and therefore it cannot be moved back. That would fall into the self-created hardship evaluation that you would consider but not a bar from granting the application. Certainly that is the reason why we are not asking to move the property line back to join the additional property owned by the applicant.

Chairman Rose commented: I just want to clarify something; do you have a copy of the map in front of you? We are looking at the map of your property at the back lot of #90 with the house on it. The septic area is shown for #90A, the new house. If you were to move back this way he would not be on top of the septic area. It would be on top of the driveway area according to the map.

Mr. Chauvin commented: It would be over top of a portion of the septic area because this is the property line here and the ingress/egress easement is over here in fact. The line is shown over here (they were discussing locations on the map).

Chairman Rose commented: So you take into consideration that line.

Mr. Chauvin commented: Yes, that is the property line. If you were to move it back, it would have to come straight back off that line which would bring you to a portion of the septic area.

Vice-Chairman Tedrow commented: To make that lot conforming, you have to increase its size by 50% and if you went straight back 50' you would be up against the existing house.

Mr. Chauvin commented: It is the manner in which you have to re-configure it to add the 15,000 sq. ft. It's not that we could just bring that line back short of the septic area they would have to bring considerable square footage off of that back 1.653 lot.

Chairman Rose commented: Basically, my understanding, to re-configure that property would not appease the situation at all because the house is in the way.

Mr. Chauvin commented: It would not be feasible according to the Planning Department and Ms. Murphy's review and my review. The re-configuration of this lot is to accommodate the additional square footage for the proposed lot is not feasible. And again, I apologize I left my lap top at home this evening. I am trying to find my notes from the meeting I had with Mr. Harris on my phone.

Chairman Rose commented: Are there any other questions? How about the public? Does anyone have any questions? No one chose to speak.

Motion was made by Mr. Burdyl and seconded by Mr. Hansen that the public hearing be closed at 7:42 p.m. Motion carried.

Chairman Rose commented: The area variance is the only thing in question for 40,000 sq. ft. of area to 25,000 sq. ft. The variance would be for 15,000 sq. ft. It falls under our powers and duties of Section 165-79 Section 2B to vote as a Board to make a determination on the request. "The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Enforcement Officer, to grant area variances as defined herein."

"In making the 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. Hansen commented: I don't think there will be an undesirable change. It is primarily a single-family neighborhood although I think there are a few duplexes there as well. A single-family home would be consistent with the remaining part of the neighborhood there.

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

Chairman Rose commented: I think we just heard significant testimony that it's not possible or feasible by re-configuring the property.

"Whether the requested area variance is substantial."

Mr. Hansen commented: It is substantial by the new criteria. It doesn't necessarily mean we can't consider it. It is not a deal breaker necessarily.

Vice-Chairman Tedrow commented: Also, I think, we should note that the area is available that apparently the on-site utilities can be laid out with proper separation so the site can function on its own.

Chairman Rose commented: During the site visit we asked whether the public sewer and water were coming down the road anytime soon. My understanding is that it will not occur anytime soon. There is no way to mitigate that factor either. The previous lot is what it was in the beginning.

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

Mrs. Jordan commented: On first glance, I don't think so but, as we are sitting here, I am thinking as to why we have laws like 165-32. My thoughts are when there is no water line or public sewer we have laws like this to make sure that people's wells and septic drainage areas aren't too close to one another. So you are looking for more land and certain lot area requirements to keep the water safe and I am wondering now where the septic drainage area for this proposed house would be located. Do we have information on that to tell us that it is indeed safe?

Chairman Rose commented: The only facts we have, Mrs. Jordan, is the well is proposed to be near the road to the east side of the proposed house and the proposed septic is to the south of the proposed house.

Vice-Chairman Tedrow commented: I understood from our site visit that a perc test has been submitted, is that right?

Mr. Chauvin commented: I can't speak for the applicant. Mr. Clapper can tell you whether or not a perc test has been done and whether it has been submitted.

Mr. Clapper commented: No, it has not been done.

Vice-Chairman Tedrow commented: I misunderstood; I thought that the perc test had been done for the new lot.

Mr. Clapper commented: A perc test was not done. The soil is good it's a sandy loam through there. As far as Mrs. Jordan's question...you have to have a 100' separation from well to septic and the same to the neighbor's as well. My existing home has septic in the front and well in the back of and my neighbor is opposite me and is allowed to do so by the Town. My neighbor out front; their septic goes out toward the back and their well is in the front.

Mr. Chauvin commented: The Building Department will review any plans submitted before issuing a Building Permit and/or C.O. to insure those utilities are in place and in conformance with the necessary requirements.

Mr. Clapper commented: The well and the septic were approved where you see them on the map from the last time I was before the Board. It was already approved by the Town. While on the subject, I would love to see sewer and water go down that road and I think it's about time it did. There are a lot of homes being built down there and 4-5 homes going up right now. We had everyone on Lower Newtown Road at one time or another signing a petition and brought it up to the Town. Mr. Chris Abele spear headed the whole thing and we were still turned down but yet water goes to Hayner Road and is at the bottom of the hill. In between never got it. The church is busy 7 days a week with an awful lot of people in and out of there. Maybe somebody should push for water and sewer down that road.

Chairman Rose commented: Mrs. Jordan, do you have anymore questions about #4? I echo Mrs. Jordan's sentiments about making sure your not encroaching upon your neighbor's property. As long as the Building Department will have a say in it before a C.O. or permit is issued that should be enough of a test.

Mr. Chauvin commented: The Building Department is required to do an inspection and sign off on everything.

Mrs. Jordan commented: No, I do not.

"Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance."

Mr. Hansen commented: I don't think it is self-created in this case because at one time before the Ordinance was changed he met the requirements. He didn't self-create that he met the requirements as they were set forth in 1993 or 1994 when the Zoning Board of Appeals approved it. The Law changed and he had no control over that.

"The Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community."

Chairman Rose commented: Do I have a motion from the floor to approve or disapprove the variance?

Motion was made by Mr. Hansen to approve the area variance and was seconded by Mr. Burdyl to approve the area variance for Mr. Clapper at 96 Lower Newtown Road. Motion was carried.

Chairman Rose commented: Earlier I started the meeting saying we had pointed at the wrong part of the law. I want to retract what I said based on the comments from Mr. Chauvin and the previous minutes of August 5, 2013, I did not have knowledge of that. The application should be just stipulated to say it was an area variance and the details that were put in the paper were an administrative error based on the information on the application. Just in case it comes back up again or a subject of conversation I don't want the minutes to confuse tonight's actions.

Mr. Chauvin commented: It has been corrected and the publication had been corrected as well to the proper section.

Motion was made by Vice-Chairman Tedrow and seconded by Mrs. Jordan to close the meeting. Motion was carried.

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