

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
September 4, 2012

Chairman Hansen called the meeting to order of the Town of Halfmoon Zoning Board of Appeals at 7:10 p.m. on Tuesday, September 4, 2012 at the Halfmoon Town Hall with the following members present:

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

Motion was made by Mrs. Jordan and seconded by Vice-Chairman Tedrow that the minutes from the August 6, 2012 meeting be approved. Motion carried.

Chairman Hansen explained that the Board set a public hearing at its meeting of August 6, 2012 for DEC Development. Mr. Burdyl will act in the absence of Mr. Brennan tonight.

Chairman commented that the minutes did refer to a public hearing tonight that would have been held on an application for DEC Development. The hearing was canceled because the application had to be amended and resubmitted. We will look at that application later on tonight but it is not a public hearing.

Brendan Murphy, Lots 50A and 50B Werner Road

Chairman Hansen explained that the application is for lots 50A and 50B on Werner Road. The proposal is for 2 vacant lots owned by the same person, the lots are side by side, they are across from a big open field, there is water and sewer on the east side of Werner Road. The lot sizes are 100' x 150' and the applicant is looking for an area variance.

Mr. Greg Meyer, Land Surveyor was present. Mr. Meyer explained that the Murphy's have owned the lots since 1970. In fact, the Murphy's had approximately 10 lots all ranging in the same size that were already built on and these two lots are still vacant. The builder is a green builder and will work around all buffers. The lots are on separate deeds; always have been. The sewer is on the easterly side of Werner Road and the water is on the westerly side of Werner Road.

Mr. Meyer commented that the Board Members were at the site over the weekend. There is an area on the northeast corner of one of the lots that does have cattails, which would indicate water of some sort. It is dry in that area. The prospective builder is a green builder. He is not looking to cut every tree and level everything out. He will selectively clear a tree. We don't want fill in areas that may be valuable as far as drainage. We can work around those. Whether we slide the house to the south or the west further to give a buffer to the northeast corner of the property, we can work around that. That is important to him and the product he puts out to his potential customers. We are looking to take the lots as they are separately described on a deed. The Murphy's have been paying taxes on them for over 40 years as separate deeds. We are trying to utilize the lots as they are now and as they have been on Werner Road today.

Chairman Hansen asked if we ever established when this subdivision began? There is apparently no map that was ever filed for this subdivision?

Mrs. Zepko commented no, it was prior to Zoning and we do not have a map on file with the Town.

Mrs. Jordan commented that she asked the applicant at the last meeting if you could bring the original subdivision map.

Mr. Meyer commented that this was not part of a subdivision. The lots behind it are called Dater Woods that was built around it. I don't know how these lots were created but they were not part of a filed subdivision map that I am aware of or could find in the County Offices.

Chairman Hansen commented that it would appear that they were sold lot by lot starting at some period of time. They were sold off in 100' lots. There was no formal subdivision map.

Mr. Meyer commented that they took the minimum lot sizes as the code required then and made them all the same size.

Chairman Hansen commented that the tax map seems to indicate that they were all either 100' x 150' and that one lot was larger.

Mr. Rose asked for clarification. You mentioned that the lots were per the code at that time. Was there a code at the time?

Mr. Meyer replied no. I was just assessing that may have been the situation. I know that builders try to minimize and make the lot size what it has to be and no bigger. It was strictly a guess.

Mr. Rose commented that your point was that the lots were uniform to the existing lots along Werner Road.

Vice-Chairman Tedrow asked about the size of the houses that would be built here. Can they be built without you seeking further variances for like side yards?

Mr. Meyer commented yes absolutely. I believe the prospective builder has submitted a couple of plot plans that were denied that showed that they were within the building envelope. That is the good thing about the stability on the one lot to maneuver the one house around to keep it further away from that area in the northeast corner as possible. I don't believe that the density is the issue here. If these lots in the worse case scenario had to be merged as according to the code it could be used for a 2-family home. My client doesn't want to make it a 2-family but if we have to, we will.

Chairman Hansen opened the hearing to the public. If anyone from the public wishes to speak please come to the microphone state your name and address for the record.

Mr. Bruce Rischert, 18 Willowbrook Terrace commented that last time we met it was proposed for duplexes and now it is single-family homes.

Chairman Hansen commented no, you may be thinking of another application before us. The duplex lots were over on Stone Quarry Road for DEC Development.

Mrs. Zepko commented these two lots were always going to be single-family homes you are definitely thinking about DEC on Plant Road.

Mr. Rischert asked if they would be rentals or sold as private.

Mr. Meyer commented that the intent is single-family homes and sold as single family not as rentals.

Chairman Hansen asked if anyone else from the audience chose to speak?

Mr. Dwayne Martin of 52 Werner Road commented that my only concern is the drainage. I know that you are saying that you will do everything you can regarding the drainage issues with the neighbors. I don't see how that could happen. There is a drain that runs about 20' off my property that will cut down how many square feet of your 15,000 sq. ft. That is my only issue is drainage.

Mr. Rose asked if he was currently at a 15,000 sq. ft. lot?

Mr. Martin replied yes but I have no drainage. But there is no drainage swale running through my property.

Mr. Rose asked if Mr. Martin was the adjacent neighbor? Mr. Martin replied yes.

Chairman Hansen asked if he was directly behind one of these? Is anyone here directly behind these lots?

Mrs. Zepko commented that the audience could only speak one at a time at the microphone. The meetings are recorded and we need to hear you on the microphone and need your name and address for the record.

Mr. Tim Halpin, 53 Willowbrook Terrace commented that his home was one over from right behind the lot in question. I experience standing water and drainage issues as well and in the spring there is significant water running through there. In order for it to be diminished...I hate to see it get any worse.

Mr. Rose asked if the condition exists today? Can you characterize the issue of the drainage say worse case scenario to what usually occurs? Does your basement flood?

Mr. Halpin commented that his basement does not flood. I have proper things in place so it doesn't flood. I do get standing water outside my home.

Chairman Hansen commented that it looks like 51 Willowbrook Terrace is right behind 52 Werner Road.

Mr. Rose commented that maybe we should identify who the adjoining neighbors are by postal numbers.

Chairman Hansen commented that the reason why he asked is because he was trying to ascertain who is directly behind these lots to get an idea where that water goes when it comes through there.

Mr. Ein Marquis, 3 Cold Springs Drive commented that he has drainage problems. Mr. Marquis's current drainage issues in his backyard come from upstream from all the Werner Road properties. I do have a sump pump. I do get water in my basement because of all the water in my yard. I constantly pump out my basement. I am concerned that by leveling trees and moving earth I will get even more water and I can't handle any water. I believe some of the land is protected wetlands between Werner Road and Cold Springs and Willowbrook Terrace as well as on my property. I believe it's all Army Corp of Engineer wetlands.

Chairman Hansen commented that to his knowledge I don't think any of this was addressed when the applicants came in, correct? Obviously the houses along Werner Road were all subdivided before ACOE and wetlands became an issue. Dater Woods was reviewed and that is why it has the designation. It's all shown on the property maps where the wetlands are. It is most likely that these Werner Road maps were not factored in when they did the ACOE designation for the subdivision of Dater Woods.

Mrs. Zepko commented it is very possible that the wetlands course has changed. There is a good chance that he may have a finger on his property. I personally didn't walk 50A & B Werner Road so I'm not really sure what direction the drainage comes from.

Mr. Marquis commented that when we walk around back there you just keep going up behind properties and the water is just everywhere. I walked all of it and don't want to add to the existing wetlands that I already have. I can't mitigate it, can't fix it and I can't protect it. All I know is that I can't take on any more water.

Mr. Rose asked if Mr. Marquis was an adjoining neighbor?

Mr. Marquis is not an adjoining neighbor. I'm at 3 Cold Springs Drive.

Chairman Hansen commented your not on the corner of Willowbrook Terrace you are actually closer to Werner Road.

Mr. Marquis replied yes I am. I am not directly behind the proposed lots. The drainage comes from further up Werner Road and dumps the water all the way down to me. I have water in my back yard, my front yard and my basement. I have so much water. I can't take on any more water that is my concern.

Chairman Hansen commented that there is sewer and water on Werner Road. These lots would only be built on if there were sewer, correct?

Mrs. Jordan asked if these lots could be made contingent that they be on sewer?

Mr. Moyer commented yes that is the plan. We would definitely market the homes with sewer.

Mrs. Cheryl Fellows, 48 Werner Road commented that she is adjacent to the vacant lots in question. Kevin Murphy built my home more than 20 years ago. The water problem was not too bad. When Dater Woods was built and additional houses across the street were built. The water condition is very bad. I can't dig down 2' anywhere on my property all I find is water. I am on septic. I have a drainage ditch maybe 5-10' off my property line that was there before my house was built. It handles all the water from Werner Road it comes across from two neighbors down across their lawn across my front lawn across my driveway into that ditch. You take that away my house will flood. My garage floods now. After 19 years of the house sitting there with all the extra foundations and double drainage tiles that they put in and all the houses with sump pumps behind us, I can't take anymore. My house heaves every season my garage floor has sunk from the water. If we get a hard rain, I get water. You put two more houses next to me it will flood my entire basement. Something has to be done with the drainage. When Dater Woods was built DEC came through. The drainage ditch that was dug many, many years ago, long before I was born, all along Werner Road remains untouched and they tagged it all so it can't be touched. It handles all the water from Werner Road. There is a culvert about 20' off my neighbor's property line, which is busy too, that takes water from the other side of the road. There is a drainage ditch behind all of our houses. Between Dater Woods and Werner Road and all those lots there is a drainage ditch that has been forever that takes all the water from Werner Road. DEC did tag the two empty lots because it is all swamp back there. I just don't know how two houses with basements are going to help the problem. It is a concern because the bricks are falling off my house, my front porch has heaved because of the water conditions, the whole front of my house has to be redone because of the water damage. My driveway has heaved so bad. My front lawn every spring is all standing water. You don't see because I don't cut the grass because I can't get through it with the lawn mower because of the standing water. This is a very dry year and I still can't dig down 2' without getting water. My neighbor to the right of me at #26, since Dater Woods was built, his basement floods every time it sprinkles outside. I know that the neighbor next to him their driveway is a swimming pool when we have a heavy rain. There is just nowhere for the water to go. My concern is definitely the drainage. I am not looking to stop anyone from doing anything with the lots but when you put in foundations and basements more water will be coming. All of us already have issues and we can't take on any more water. What are you going to do with the water?

Chairman Hansen asked if anyone else wanted to speak?

Mr. Fred Bahr, 29 Willowbrook Terrace asked who the builder would be? Mr. Meyers responded that Mr. Anthony Zaccarelli is the builder for the two homes.

Mr. Zaccarelli commented that the house size would be 1200 – 1400 sq. ft. with a garage.

Mr. Bahr asked if adjoining lot owners were notified of this meeting?

Chairman Hansen commented yes. How did you find out about the meeting, Mr. Bahr? You're not an adjoining landowner.

Mr. Bahr asked Mr. Neville if he was notified.

Chairman Hansen commented that Mr. Neville was on the list to receive one.

Mrs. Jordan commented that the mailings are sent certified return receipt requested.

Chairman Hansen commented yes Mr. Neville was sent notification. It was also published in the Times Union and the Schenectady Gazette newspapers. We sent out 10 certified letters and received 9 back signed by residents. Our process is to notify people that about the property and the ones across the street. If you didn't get a notice you are too far away.

Mr. Neville had no comments regarding the application.

Mr. Joseph Kapenos of 53 Werner Road, directly across from the lots in question. I would like the Town to look into the culvert pipe to make sure it is functioning properly. I don't believe that it is. It's an old metal culvert and it is ribbed. I know because I clean it out in times of heavy water in the spring and in rain. The Town needs to look at it and make sure it's functioning properly; it is a big issue. I have a large lot that is draining there plus the house next door is draining there as well. It can't be blocked. The water has to be moving.

Chairman Hansen commented that the members looked at that culvert the other day and it appears to be one of those new plastic pipe types.

Mr. Kapenos commented that he asked the Town if the pipe could be lowered and they said it could not lowered at that time but maybe addressed in the future.

Chairman Hansen commented that he knows enough about drainage and the Town Highway Dept. is correct about not lowering it any further because the outlet on the other side of the road from you is lower than the road surface but it also appears to be below the ground surface over there so if you lower the culvert it will not do you any good. The water is just going to pool up on the other side of the road. It appears to drain from your side to the other side, right? If you lower it any further the water would not come out the other end any faster than it does right now. The Town Highway Department should become aware of that. It is fairly recent. The pipe is fairly new they used to use galvanized steel or aluminum but the latest is the plastic pipe. The cuts on it look very recent within the last few years or so.

Mr. Rose asked what the process is for someone to make a request like that. This is the ZBA and would probably not be the official channel I would assume. We will note it in the minutes.

Mrs. Zepko commented that the Highway Department maintains and repairs the roads. Generally we would contact Mr. Pingelski to discuss that issue with them.

Mr. David Neville, 47 Willowbrook Terrace asked if this would lower the value of our homes?

Chairman Hansen asked if you had evidence of that? It could be disputed. We could enter it into the record. We don't make an evaluation of the homes.

Mr. Neville commented that it would be pretty clear that people own their own property and take care of it and live in it would take better care of their home than someone that rents the property.

Chairman Hansen commented that no one said anything about renting property. The applicant said he was planning on selling the houses.

Mr. Moyer commented that there would be one house on each parcel.

Mr. Neville commented you plan to squeeze two homes on those two lots?

Chairman Hansen asked how big the lots are in Dater Woods?

Mr. Neville said his neighbor looked into those lots and there was a lot of wetlands and a lot of problems with that property as far as wetlands. That was why he didn't purchase it.

Chairman Hansen commented that the variance request is to use the two lots as they are presently. They were subdivided many years ago. They are proposing and applied to build one house on each lot. Those two applications were denied by the Building Department because of the zoning requirement that says if you have two substandard lots that existed after the Zoning Law was adopted you are suppose to combine the lots if feasible to build rather than to build on separate lots that are substandard by today's code. These lots were originally subdivided we haven't established exactly when. The first Zoning Ordinance was established in May 1969. It is still a key issue to know whether or not those lots were created prior to that. What were the lot requirements back in May 1969.

Mr. Neville asked what would be the size of each home?

Mrs. Jordan commented that what they could do right now without even getting a variance. They could build a duplex right now. They are here to ask for the variance because they would rather a home on each lot.

Chairman Hansen asked if the two lots combined would be sufficient to meet the current standards for a duplex?

Mrs. Zepko commented yes they are.

Mrs. Jordan commented that they could already do that. They are the same size as most of the other lots on Werner Road. That is why they are asking for the variance, the character of the neighborhood will not change.

Mr. Neville asked are they proposing two separate lots or a duplex?

Mrs. Jordan replied they have two separate lots and they are asking to build two homes, one on each lot rather than a duplex on the combined lots.

Mr. Rose commented that they are asking us to approve a variance on two lots. What they build on each lot would be determined by the Building Department at the time of building permit. This Board only rules on the variance of the lot size.

Mrs. Jordan commented no they have not said that it would be a duplex. No, they haven't said that. I am just saying...your questioning the lot size and two houses on it and I am just trying to make clear to you that they are here before us for a variance. I want you to understand that they could, today, apply for a building permit for a duplex and not even come to us. If they wanted to for the record no one has said that. I am telling you what they could do.

Mr. Neville commented that if they build a duplex it would negatively impact the neighbors. If they build 1200 sq. ft. houses it will negatively impact us.

Mr. Chauvin, Town Attorney commented the applicant could build a duplex right now. They don't come before this Board to do that. They have chosen to make an application to this Board because they feel that the sentiment within the community is a preference for single-family homes and for other reasons that are their own as that is at their choice. They are seeking a variance from this Board that would allow them to build two single-family homes that they feel would be more in keeping with the character of the neighborhood. That is their choice; they have a right to make the application before this Board. They don't need to inform anyone in the neighborhood or seek permission from this Board to build a duplex based upon the law, as it exists.

Mrs. Jordan commented that what she was trying to point out is because you are saying that it should be nothing there. We can't tell them that they can't build anything there because they can already build something there. They are trying to build two houses on lots that are just a little too small by today's standards.

Mr. Neville commented that the previous neighbor next to him looked into buying that lot and the wetlands were such an issue that he thought nothing could ever be done with that.

Mr. Rose asked if he had evidence of that?

Mr. Neville commented that the neighbor moved to Kentucky. I could call the guy.

Mr. Rose commented that it would be good if it were a fact rather than just here say.

Mr. Wayne Martin, 52 Werner Road commented that it is our obligation to find out if there are wetlands in the vicinity.

Mr. Rose asked if he had any evidence since he stated there were wetlands, it's all hearsay.

Mr. Chauvin commented that this Board does not have an obligation to conduct a wetland study or do delineation on the parcels.

Mr. Martin commented that at some point the Town is obligated to find out though. If the homes are approved to be built isn't the Town obligated to find out if there are any wetlands.

Mr. Chauvin, Town Attorney commented that he can't give out legal advice but the wetlands concerns are handled at the building stage and not by this Board. This Board is going to conduct their evaluation based on the facts and circumstances presented to them and that the Building Department will evaluate within the legal restrictions that are placed upon them as to whether a house, structure, duplex etc... is buildable on the lot as it exists in whatever form it is brought before the Building Department. They have already denied a building permit for this lot already.

Mr. Martin commented that it is the responsibility of the Town to find out if there are wetlands on these lots.

Mrs. Jordan commented no. We have an area variance that we have to consider. One prong of the test is for us to determine the effects on physical or environmental conditions that this could have.

Mr. Martin asked if there is a storm water plan that needs to be developed? Who determines that? To build these houses would a plan need to be done by DEC? Maybe a study?

Chairman Hansen commented that he does not know the answer to that.

Mrs. Zepko commented that she would like to clarify Mr. Martin's comments. There are tests that have to be met for an area variance by this Board. This Board as part of the test, can request a wetland survey or delineation as we call it, in order to have a better understanding if there are any ACOE wetlands that are held within this property which may or may not, restrict development on the parcels. As far as a Storm Water Pollution Prevention Plan (SWPPP) for a single-family residence, particularly for the size of the lot that we are speaking of now, there is not requirement for that permit to be obtained from the State.

Mr. Martin questioned the lot size that exists now. Are we not obligated to the Code today because there were no Codes or laws back in 1969? Mr. Rose asked about my lot and the size of it.

Mr. Rose asked the question if you were an adjacent neighbor?

Mr. Martin asked if today's rules apply to these lots.

Mrs. Zepko commented yes, that is why we are all here right now. We are trying to establish when these lots were created. Both lots are short 5,000 sq. ft. to meet a buildable lot by today's standards. This is why they are applying for area variances. Our code states that if he only owned one of those lots he could put a house on there without coming here. The lot would be considered pre-existing non-conforming. Pre-existing code states that if it is pre-existing in area and he doesn't own any other properties, he could put a house on there. Given the fact that he owns both parcels and they are adjoining and could be combined to create one lot that would meet area requirements as per our Zoning Code now, that is why he is here seeking an area variance because we would require him, in order to put a house on the lot, to combine both lots into a 30,000 sq. ft. lot that would meet our area requirements. Since he doesn't, he is here for a variance on the fact that he owns both lots and would like to keep both lots separate and build a house on each one.

Mr. Martin asked, so if he only had one lot and it was 15,000 sq. ft. he could build on it.

Mrs. Zepko stated if he only owned the one lot and no adjacent parcels, yes he could, according to way our Code is written. It makes it a conforming buildable lot. I am not telling you what constraints may or may not be on that property.

Chairman Hansen asked is there an exemption from the ACOE wetlands for certain size lots? Is that correct?

Mrs. Zepko replied, no. DEC as far as what triggers the need for a SWPPP, single-family home construction is generally not required. The Town can, under certain circumstances and under a certain number of lots require a sediment control plan during the construction phase. But a full SWPPP generally requires that post construction controls are in place for larger development scale that need to be maintained after construction such as a pond, or underground filtration and things like that.

Chairman Hansen commented let's say that these two lots are in designated ACOE wetlands are they going to be able to build on those lots?

Mrs. Zepko commented that it is possible to build on Army Corp wetlands. Army Corp frequently issues permits; in fact I have several around Town. The Army Corp does in instances give relief to property owners in order to disturb portions and areas of Army Corp delineated wetlands. Yes it is possible to permit a disturbance in an Army Corp wetland area.

Mr. Rose commented I may have lost track of what we were talking about before but the Chairman was talking about zoning not being in place prior to 1969. The lots were built the way they were. So after 1969 there is zoning in place that we, the Board, could consider.

Mr. Martin commented that it doesn't grandfather those two lots into the Ordinance.

Mrs. Zepko commented that it would if he didn't own both of them. That is the clincher here because he does own both. He owns both lots and can make them a conforming lot by joining them. Again, that is why they are here seeking a variance.

Mr. Rose commented I hope that answered your question.

Chairman Hansen asked if there were any other comments from the audience before closing the public hearing?

Mr. Meyer commented that he would prepare a grading plan and an erosion and sediment control plan for the Town to review. I can't promise the neighbors that I am going to make their water issues go away but through my plan I am not going to make it any worse. I have done that in many other Town's and that is a lot of the Town's criteria if you can build, show us how you are going to do it that won't impact what is already there. Our intent is to keep with the way most of the homes are on Werner Road. Build the houses up and slope it to the side and to the rear, whatever the case maybe. I also took an opportunity to go over to Dater Woods. If you take a good look over there they have some unique designs as far as yards go. There is one house that I believe is #59 but their front right corner from the street is basically a detention pond. The pond is a like a bowl shaped area in their front lawn. So we are not trying to clear-cut the land and just say hey we are building houses wherever the water goes it goes. We have consequences to what we are doing. We don't want to make bad neighbors. We can't make the water go away but we certainly don't want to add to it. DEC and ACOE are two different entities when it comes to what restrictions they put on of what you can and cannot do. DEC is much more stringent on what you can do. ACOE has changed over the years. They used to take anything that DEC wouldn't take including puddles. They have been overturned in the past and those types of areas now are considered to be isolated wetlands that they don't have jurisdiction over. Things have changed a little bit. When that subdivision for Dater Woods was done. I don't know the circumstances I am just speculating. It could have been that there were wetlands over there and there was a buffer put on it. But again, I don't know what criteria they were using then and what criteria they are using today. They have changed over the years.

Chairman Hansen commented that if the neighbors have no more questions I would like to either close the public hearing or adjourn to our next meeting if the Board feels that we need to collect more information.

Mrs. Jordan commented that she feels better adjourning it until the next meeting. I would like to find out more about the wetlands and maybe request a wetlands study.

Mrs. Zepko commented that a Jurisdictional Determination by the ACOE could take time. It requires someone from the ACOE to come out and actually delineates boundaries of what they perceive as their wetlands. A wetlands survey could be done probably by someone in your company that delineates whether there are wetlands that exist on the property or not. It would not say whether it is isolated or whether it would be DEC or ACOE. It would strictly be "are there any wetlands on the property" yes or no kind of thing.

Mrs. Jordan commented I think there already are, right? Just from our walk, there were cattails on the property.

Mrs. Zepko commented that it takes several things to determine a wetland. A cattail doesn't necessarily even though it is perceived, as wetland vegetation, doesn't necessarily make it a wetland. They test the soil. It is the combination of vegetation and soil that exists that concurs that an area is actually wetlands.

Mrs. Jordan asked would it show us what part of the property are wetlands? Would it depict the buildable area and the non-buildable area?

Mrs. Zepko commented that if a wetland survey were done it would show you where in fact the wetland exists. That means the vegetation and the soil type that constitutes a wetland does exist on the property. So, there may or may not be wetland on the property. What it comes down to is if it's an isolated wetland, which may not be jurisdictional by the State Federal ACOE. If it were an ACOE wetland then they have jurisdiction over it and they would have to permit any disturbance that would happen within the wetlands. I am almost positive that it is not DEC wetlands that exist on the property.

Mr. Rose commented that is one study that we can request. That would tell what is the impact to the neighborhood regarding that wetland.

Mrs. Zepko commented that they exist on the property.

Mr. Rose commented ok so is it possible that we could have the plans reviewed into evidence tonight for an impact assessment of the drainage from the surveyor so we can understand the impact of his drawings from a point of view of where the water would go if there were two houses built on those properties and understand what the neighborhood impact would be.

Mrs. Zepko commented that what we have right now are obviously is the information that we received from the applicant which is not detailed enough in order to give us the topography or the drainage flow for where the water would run with respect to disturbances on these properties. We can ask for more information from the applicant.

Mr. Rose commented that I think that would be a start is to ask for an impact statement from the drawings. My walk of the area there indicates that there are no street drains and I would like to know where that water would go under certain circumstances and have an opinion rendered from that, which would be appropriate. Based that everyone here has testified that there is an impact to basements currently today. Whether it is caused by those two properties built upon or not built upon is for someone to determine. It sounds to me like it should be given some due diligence.

Mrs. Zepko commented that in quick thought generally what we would do from a Planning Board perspective and from a Planning Department perspective when there are issues regarding a concern for drainage in an area. Not just speaking from these two lots but the adjoining property owners as well and across the street. If the Board would require more detailed plans from Mr. Murphy and his Engineer at this stage it may be something your Board would want to refer to Clough, Harbor & Associates, Town Engineer for review from a Town's standpoint as far as impact on drainage. It certainly is not something you would have to do but it certainly is something you could do.

Mr. Rose commented that he would be ok with that. It is sort of what I was fishing for. The next question is where does it go next?

Chairman Hansen commented that wouldn't it work that the applicant has to file a plan and CHA reviews it?

Mrs. Zepko commented that the applicant would have to supply us with more detailed drawings that the Board would refer to the Town designated Engineer for more technical review. I am not a drainage expert I do stormwater issues but not drainage patterns per say. What we would do is refer those detailed drawings to CHA to see if there were any impacts that they would fear for the development of these two parcels.

Vice-Chairman Tedrow commented that this would be like a grading plan and a drainage scheme and so on.

Chairman Hansen asked how is that going to be paid for by the applicant. Our Board normally doesn't operate like the Planning Board.

Mrs. Zepko commented that an escrow account would be established with the Town.

Chairman Hansen commented for the CHA review.

Mrs. Jordan commented that this Board should adjourn until the requested information comes in so we can look at and make a determination.

Mr. Rose commented were trying to just gather all the facts to be fair to everybody involved. It's not the end all. It would give us some idea of what the impact was. As a Board Member I can't assess the impact other than the testimony from the neighbors saying that their basements are flooding every time it rains. So to give you appropriate review and fairness I think you need to be able to state your case versus the existing case and determine whether there is an impact of building two houses. I think that is really what the odds are here unless I am missing the point. You should be aware as the applicant that the tests for an area variance are substantial and one of them is exactly where we are leading here. We have to give that appropriate attention. Everyone that comes before this Board has the same set of tests; it's uniform and standard by law.

Mr. Rick Ferris, 46 Willowbrook Terrace asked for clarification that we are going through this whole process for a variance but you said earlier that if they should decide to put up a duplex there they will not have to go through this process. What would stop them at this point to say I am not going to go further with the process and I am going to put up a duplex?

Mr. Rose commented that is not for the Board to answer. We understand the question but we don't answer that question.

Chairman Hansen commented that the Building Department can answer that question but we can't.

Mrs. Jordan commented that they might decide to just build one house there not even a duplex. We would not know.

Mr. Kevin Murphy, 171 Anthony Road, I am the brother of the owner of the land. We have been paying taxes for almost 50 years on these two lots. They are two designated lots by the Town there were twelve lots all together. Most of which were already built on these are the last two. We are still paying taxes on them after all these years. If Brandon wanted to build on them can't he build two houses on them grandfathered in after taxes on two individual lots designated for almost 50 years. If he decided to just not sell them and just build on them himself.

Mrs. Zepko commented no, is the answer that they are substandard lots. The reason why he can't do that is because he owns the adjoining parcel. By combining them it creates one conforming lot.

Chairman Hansen commented that the condition that this comes under is as follows:

"Lots of less than required dimensions any lot with an area or a width less than required in the district in which said lot is located maybe used for any purpose permitted in the district provided that all of the regulations prescribed for the district shall be complied with and further provide 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." That is the condition here and the basis for denial is that there is the same owner owns two lots that can be combined that. That is why the building permits were denied. This requirement, as I recall, because I have been involved with the Zoning Board of Appeals since day one and have been involved with the subsequent Zoning Ordinances that the Town has adopted because the Town has amended the Ordinances since 1969. This condition of waiver or exception has been carried over every time they re-did the Ordinance so that people who had a lot that was either created before 1969 or since 1969 that did not meet the prior requirements. That every time we changed the Ordinance if it makes the lot requirement bigger that someone with a legal smaller lot prior to the adoption of that particular Ordinance has this protection that they are not stopped from building.

That lot has to be an entirely separate lot that has no other land next to it even if it has a separate deed that these people can combine with it. So that is the problem here with these two lots. Even though they may precede that 1969 Ordinance. They don't comply with today's Ordinance. They are together or next to each other. Regardless of whether the taxes were being paid on separate lots they could conceivably today be put together to meet the requirements. That is why the Building Permits were denied. That is why you are here tonight is asking for a variance basically from this requirement that I just read because you don't want to combine the two lots together. I think someone said earlier that if you combine these two lots and meet all the other requirements of the Ordinance you wouldn't even need the variance. But you can only build one house.

Mr. Murphy commented that as far as the drainage goes over there. The drainage ditches over there that have not been cleaned out in over 50 years. There is a lot of debris fills it in and they should be cleaned out. If a builder is going to build on those lots the drainage ditches should be cleaned out so the water will drain properly. Wouldn't that help you Cheryl and you too Joey? Then the water would be moving and not standing. There is a ditch running through Werner Road about 150' back that takes all the water from Werner Road and heads south maybe to the river. If that was cleaned out I don't think anyone would have problems.

Chairman Hansen commented that I beg to differ with you. The properties on the other side of Werner Road and the gentlemen you just spoke with he is on the high side of Werner Road but the other folks that live over in the development behind where all that water is going in their direction. As you improve drainage on the high side of Werner Road you are going to carry more water onto the Dater Woods Development. So cleaning out the ditches along Werner Road may help a few of the people on Werner Road and the people across from those properties but they are just going to make the problem worse for these people that live behind it. It is just going to carry more water over there. So the more houses you build along Werner Road and you only have two more lots left that can be built on as far as I can tell. Even those lots will have an impact on the people that live behind them because it is going to create more run off.

Mr. Murphy commented that there is a ditch 150' back off Werner Road that receives the water off Werner Road. Then it went back onto Dater Woods.

Chairman Hansen commented that from being there the other day all the water drains to your lots from across the road and the lots along Werner Road.

Mr. Murphy commented that there is a 4' ditch that carries the water south. It doesn't run very often but in the spring it may run. The ditch is on the back of the Werner Road property on the west side of Werner Road where the ditch is that receives all the water. I use to live there; I had a house there.

Mrs. Fellows, 48 Werner Road commented that from the northern entrance to Dater Woods behind all the lots that were 100' by 150' between our lots in Dater Woods. There is a ditch there and the water is displaced every time they put a foundation in the ground and when Dater Woods was built that also was displaced water. Why did they install double drain tiles why didn't they do sump pumps because there was just so much water run off? Every time you displace where water could go it has less and less places to go. It started to go in my yard, my neighbor's basement and their driveway. You put two more basements in the ground; where is that water going to go? I can't handle any more water. That is the concern. Right now this summer we hardly had any rain and I had 2' of water on my front lawn. I lived there long enough to know. I wait for a drought so I can mow my lawn. You can't mow grass that it wet. It just can't handle the existing water flow. It is just so built up all around it. It is the only place the water can go to now. Like I said, it's mud in the back of the lots it flat out runs all the time. If we get a couple of inches of rain I have it go right over my back lawn. I just don't know where the water can go. I am not trying to turn away someone from doing something but I just don't know where the water is going to go. I can't take on any more water. That is a major concern. The ditch is cleaned out behind my house and as clean as it can be behind my neighbor but it goes into the vacant lots.

They are clean between the lots from my house. I don't know where it goes once the water gets to the end. It used to go into where the last 2 houses of Dater Woods built.

Mrs. Zepko commented that I think the Board is just trying to get a grasp as to where the water flows.

Mr. Murphy commented that when I lived there all of Dater Woods was declared as wetlands. I was a builder and I was going to buy that land at one time. I was told you couldn't buy it because it was declared wetlands. Then Belmonte came in and did something and built houses on it. What happened there? The ACOE must have swapped land with Belmonte, which they normally do. They swapped it for land in Lake George.

Chairman Hansen commented that is not regarding this variance request. At this point, does anyone have further comments?

Mr. Ferris commented that ACOE swapped out land. Because of the wetlands the applicant that applies to ACOE has to designate other areas in order to build on wetlands. They used up some of the space to build homes on it but across from Bruce's house the whole lot is wetlands, across the street is wetlands, behind my house there is wetlands, they just designated certain areas in that development as wetlands. There are wetland lots everywhere in the Dater Woods Subdivision and across the street from my house are also wetlands.

Chairman Hansen commented that the hour is getting late and we have another matter that we need to look at tonight.

Mr. Rose commented that we should hold off on a decision until CHA does a review, as the first step is understanding the impact to these properties. My motion is to adjourn this application to the next meeting of the Zoning Board of Appeals for Monday, October 1, 2012 at 7:00 p.m. awaiting more information regarding the water concerns. Seconded by Mrs. Jordan. Motion was carried.

Chairman Hansen commented that if the applicant wants to pursue this further or have us consider it further we would need more information on drainage plans for that property before a decision could be made.

Mr. Chauvin, Town Attorney commented that he wants to make sure that in fairness to the applicant that we are adjourning this but what are we hoping to accomplish? Is the Board asking the applicant to come back with more detailed drawings that could be submitted to CHA and establish an escrow account for their review and comment or are you asking for more information without going through that process. In fairness it needs to be clarified to everyone here as to what you are looking to do so that we are not just adjourning this to come back and have the same conversation again.

Mr. Rose commented that I would ask for the drawing for CHA.

Mr. Chauvin, Town Attorney commented that you need to be specific as what kind of plan you're looking for.

Mr. Rose commented that he would like to have an impact statement from CHA.

Mr. Chauvin, Town Attorney commented that we could ask the applicant to provide certain additional items and delineate which items they are and they would be submitted to CHA for review. CHA would then render an opinion.

Mr. Rose commented that he would like to follow Mrs. Zepko's words. I would like to see their opinion from the drawings. I will revise my Motion as follows:

Motion is made by Mr. Rose that the Board request that the applicant, Mr. Murphy provide drainage drawings from the surveyor and have CHA review the drainage plans to understand where the water is going to go and how the water will be handled for two more houses on Werner Road without impacting what is already out there. Seconded by Mrs. Jordan. Motion was carried.

Chairman Hansen commented that the motion was been made. We will see you folks at the next regular meeting at 7:00 p.m. on Monday, October 1, 2012. Everyone in the audience is welcome to come to the next meeting or call the Building Department to check to see if they are on the next agenda or on the Town's web site prior to the meeting where the ZBA Agenda's are posted.

DEC Development LLC, Stone Quarry Road

Mr. Dwayne Rabideau was present with a proposal for an area variance on the south side of Stone Quarry Road approximately 236' east of Plank Road in the Town of Halfmoon. The applicant is asking for relief at the building setback line from the required 150' to 121.75'. The required minimum lot size for a 2-family dwelling is 30,000 sq. ft. and the lot has 27,605 sq. ft. This is a R-1 Residential District and the previous owner was Mark Bethel. The proposed application is near the existing twin homes within the Rivercrest Estates PDD and near an existing mobile home park. There is a duplex to the northeast of the lot across from Stone Quarry Road and proposed duplexes south of this parcel.

Chairman Hansen commented that this is a continuation of the last meeting whereby the lot was not as large as the applicant stated it was. Apparently somewhere along the way part of the lot was deduced by an easement. The map on file is dated 2-15-12 and updated on the 22ND of August. It is the correct map filed by Mr. Rabideau.

Vice-Chairman Tedrow commented that I see you have identified some wetlands on the property is this in-house stuff or is it official designation.

Mr. Rabideau commented that he believes that someone else had the ACOE out there and they determined that they were isolated and it makes them non-jurisdictional.

Chairman Hansen asked if the lots have water and sewer? Correct?

Mr. Rabideau commented yes they would.

Chairman Hansen asked the Board if they had any questions?

Vice-Chairman Tedrow made a motion to set a public hearing for Monday October 1, 2012 at 7:00 p.m. Seconded by Mr. Burdyl. Motion was carried.

Chairman Hansen commented that a site visit should be setup for the Saturday morning before the meeting. Which would be September 29, 2012 at 9:30 a.m., is that convenient for everyone else.

Mr. Rose will be out of town. I think we have been here once? I will make an attempt to go out on my own. Should we go back to Werner Road again to look at the water concerns there? The grass is overgrown but we should make an attempt.

Chairman Hansen commented that it's hard to look at that lot; it is so over grown. If you folks want to do that again, it would be fine.

Chairman Hansen asked that the map that we used to send our notification to adjoining landowners be emailed to him. He will attempt to contact some folks about meeting at the site earlier.

Motion made by Mr. Rose to close the meeting and seconded by Mrs. Jordan.
Motion was carried.

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

