

Town of Halfmoon Zoning Board of Appeals  
Meeting Minutes  
October 1, 2012

Chairman Hansen called the meeting to order of the Town of Halfmoon Zoning Board of Appeals at 7:10 p.m. on Monday, October 1, 2012 at the Halfmoon Town Hall with the following members present:

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

Motion was made by Mrs. Jordan and seconded by Vice-Chairman Tedrow that the minutes from the September 4, 2012 meeting be approved. Motion carried.

Mr. Burdyl and Mrs. Smith-Law will both be voting tonight for absent Board Members.

Chairman Hansen commented that Secretary Mikol was notified this afternoon from Mr. Brendon Murphy regarding the lots 50A & 50B Werner Road. Apparently they are not proceeding forward at this time. At this time, there is no official letter in writing saying anything further. They will not be present tonight.

**DEC Development, Stone Quarry Road – Area Variance**

Chairman Hansen commented that the request is to build a duplex on the south side of Stone Quarry Road. 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 reduced by a lot line adjustment. The map on file is dated 2-15-12 and updated on the 22<sup>ND</sup> of August. It is the correct map filed by Mr. Rabideau.

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.

Mr. Rabideau commented that he is representing DEC Development LLC for the two requested area variances. At this time, I wish to discuss with the Board the five-prong test showing that this proposal should be acceptable by the Board.

“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. Rabideau commented that there should not be any undesirable changes to the character of the neighborhood. The neighboring property to the east is existing twin homes. Directly across on the northerly side of Stone Quarry Road there is an existing mobile home. Just to the northeast there is an existing duplex and on the other side on Plank Road there are three proposed duplexes. On the west side of Plank Road that is an existing commercial zone. This is in that transition zone from commercial to single-family residence.

“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. Rabideau commented that he could build a single-family home on this lot.

“Whether the requested area variance is substantial.”

Mr. Rabideau commented that he is asking for an area variance for frontage at the building setback line from 150' to 121.75'. It is a 28.25' shortfall, which is approximately 19%. We are also requesting a variance for the minimum lot area from 30,000 sq. ft. to 27,605'. It is a 2,395' shortfall that is 8% difference. Its relative what is considered substantial or not. We feel that it really isn't substantial. That is for the Board to decide. This is one of the largest lots in the area. We are not packing a duplex on a small lot.

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

Mr. Rabideau commented that he feels it will not have an adverse effect. The proposed lot is larger than the adjacent twin home lots in the Rivercrest Development. We are leaving a 20' buffer along the east line that abuts to the Rivercrest Development. The general build out in the neighborhood is multi-family. Another factor would be that the future traffic patterns in the neighborhood will change and will intensify once the proposed traffic light at Route 9 with Stone Quarry is operational. It will help with the traffic backup on Route 236 and Guideboard Road.

“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. Rabideau commented that the proposed duplex is an allowed use in the zone and it is similar to most of the homes in the immediate area.

Chairman Hansen commented that he has a letter from Mr. Michael Davey of 18 Stone Quarry Road. (The letter is attached to the minutes.) Mr. Davey is not at all happy with the variance request. It’s approved for a single-family residence and the applicant wants to build a duplex across the street from his house. It is swampland and there is too much concern by everyone regarding drainage issues. Mr. Davey asked that this Board not approve the proposed area variance.

Mrs. Joan Shultis, 3 Brigantine Drive commented that she is Mr. Davey’s neighbor. I have lived here for 16 years and for 16 years there have been water issues and I am concerned. The neighbor adjoining me is also concerned and she wanted to buy the property so no one would build on it.

Mrs. Jordan asked if Mrs. Shultis lived in Rivercrest? Are you are behind the property or caddie-corner? And, do you live in a duplex?

Mrs. Shultis commented that she lived in Rivercrest and lived right next to the parcel. Yes, I live in a duplex.

Mr. Burdyl asked Mrs. Shultis what water problems she is having? Is it going into your basement?

Mrs. Shultis replied that she has no water problems in her basement. It is very wet outside. Since I moved there all this water kept coming by as a little creek. All the water was supposed to empty down to a pool. Well, people eventually cleaned it out.

Mr. Burdyl asked Mrs. Shultis what she was cleaning out: was there a ditch there? Was there a creek there?

Mrs. Shultis replied no it’s just very wet; the ground is so saturated that trees fall down. There is an older man that helps me a lot. He couldn’t believe that all these big trees fall down in there. It is that wet.

Mrs. Smith-Law commented that she use to live in Rivercrest at 9 Brigantine I use to be her neighbor. There is a swale that runs behind all the townhouses. It never drained right to begin with. I actually hand dug a trench that would keep it clean. When we moved out people stopped keeping it cleaned out. You can see where trees have drowned and fallen over. I actually planted trees in my backyard and they drowned. There was just too much water. The water issues were never addressed by Brigantine; he was the builder of Rivercrest. The lot we are talking about was literally a swamp when I lived there.

Ms. Susan Devito of 16 Stone Quarry Road commented that she lives next door to Mr. Davey he sent in a letter addressing his concerns. He called and asked me if I was going to the meeting because he couldn't make it here. Has the property been purchased?

Mr. Rabideau replied yes, my client purchased the property in question.

Mrs. Devito asked if the property was purchased to build a new home?

Mr. Rabideau replied yes, it was purchased to build on.

Mrs. Devito commented that if you bought the property for a 2-family house why would you buy it if you knew the lot was not big enough for a 2-family.

Mr. Rabideau commented that is why we are here requesting a variance. There are mitigating factors.

Mrs. Devito commented that her point is that you purchased a property with the thought that you were going to win this battle over building a two-family home there. This doesn't make sense to me; you purchased a property that you knew was not big enough for what you were looking to do?

Mr. Rabideau commented that it's his client's right to do so.

Mrs. Devito commented well it's everyone else's right to say no.

Mr. Rabideau commented yes that is correct.

Mrs. Devito commented that you have swamp on one side of the parcel there is also a pond that is 3' wide with standing water that never goes away. If you were to dig a foundation what will happen to the pond? You could destroy it and then you would be destroying wetlands, which is wrong. You could make it worse and make it worse for all of us. I had to have my basement dug out all the way around my home and put in a sump pump because of the water. Do you have a sewer or septic going in?

Mr. Rabideau commented yes we are tying into the sewer system.

Mrs. Devito asked where are you hooking into the sewer?

Mr. Rabideau commented that he would be running a line up Plank Road.

Mrs. Devito commented you couldn't get to Plank Road without going through the pond.

Mr. Rabideau commented that he would have public water and sewer coming on Plank Road. He will tie in and cross lots to the back of the property. We will be tying in on Captain's Blvd.

Mrs. Devito asked how long of a line are you going to have to dig to go all the way across and all the way down and there is a house next to that pond.

Mr. Rabideau commented that they could do a directional drill to the force main and tie into the gravity where the house is down to Captain's Blvd.

Mrs. Devito commented that anybody that is along Plank Road or Stone Quarry Road would still not have access to the sewer.

Mr. Rabideau commented that the people on Plank Road have access.

Mrs. Devito commented that it would be very expensive.

Mr. Rabideau commented that it is whatever the fees are to the County Sewer District.

Mrs. Devito commented that you still have the water problem. It will still not resolve the water problem. Are you building a basement?

Mr. Rabideau commented that he believes so but is not really sure.

Mrs. Devito asked then why would he buy the property when you know there is a water issue.

Mr. Rabideau commented that it was going to originally be for a single family but the economy for single-family in this area is just not there. He has to do something.

Mrs. Devito commented bingo! A single-family home is not an issue for anyone. So why would he buy the property knowing the fact that a duplex wouldn't fit on it. If it doesn't work for single-family then sell it. You have folks that do not want this. There is so much traffic on Stone Quarry Road. They put up a 4-sided stop sign. We had to have the police come and sit in peoples' driveways to keep people from going through the stop signs. That is not your fault. You put in a duplex that is double the people on each side and double the traffic. It's more people coming in, more people going out, people moving in and people moving out. Will this be rented or is someone buying?

Mr. Rabideau replied renting.

Mrs. Devito commented that we all bought our homes and they have a reason to worry about the water. The folks that rent are not going to care. They are not going care about the neighborhood, they are just there to rent.

Mr. Rabideau commented that the man that is building this is going to be the landlord so he has a vested interest in making this work.

Mrs. Devito commented that a landlord doesn't care as long as he gets his money from the rent.

Mr. Rabideau commented he would have a vested interest.

Mrs. Devito commented I don't believe it.

Mr. Rabideau commented that the issue that has come up here is the drainage issue because there is a high water table. There is a pond there and it's a well-contained pond. Wetlands have been flagged out there. They are isolated so they are not jurisdictional. The water issue has been around for a longtime. Currently the water goes toward a corner of the property and then going toward Captain's Blvd. The lot will be graded to stay away from the wetlands issue. We plan to have a 24' buffer that we can't do anything with anyway. Drainage will be moved away from Rivercrest and have a natural flow.

Mrs. Devito commented that she doesn't understand how you can force water to do something it does not want to do?

Mr. Rabideau commented that it has to go this way because that is the direction of the wetlands. The wetlands are the lowest point. This is a pre-existing condition.

Mrs. Devito commented that the water comes across the road to her basement. We are not doing anything with that.

Mr. Rabideau commented that we would drain everything so it stays away from Rivercrest. You have a pre-existing condition and we are not going to make it worse. The Town requirements will make sure that we do not make it worse.

Chairman Hansen asked where do you live Mrs. Devito?

Mrs. Devito replied I am on the corner of Stone Quarry and Plank Road. Mr. Davey is right next door to me in a single-family home.

Mrs. Jordan asked who lives directly across the street?

Mrs. Devito commented that Mr. Davey lives directly across the street.

Mr. Burdyl asked Mrs. Devito to show the Board where her lot is located.

Vice-Chairman Tedrow asked if we had a map of the entire area so we can see where everything is.

Chairman Hansen commented that these houses in Rivercrest are, for the most part, owner occupied.

Mrs. Smith-Law commented that yes they were. Most of the neighbors are still there from when I moved in.

Chairman Hansen commented that each side of that house/duplex is separately owned. They are considered to be townhouses not duplexes.

Mrs. Smith-Law commented that if you look at all the properties that are really close to each other on Brigantine I lived in the grey house the one with the really long backyard. The entire backyard is wet. I don't know if any of it is designated wetlands or not but it always has been wet.

Mrs. Devito asked if anyone ever looked into it being a designated wetland? There are geese and ducks that live back there and they come back every year.

Mrs. Smith-Law commented that back when this builder built Rivercrest there were a lot of issues over the water. It is what it is. It was never dealt with.

Mr. Marquis of 3 Cold Springs Drive asked if a water study through DEC or ACOE had been done out there?

Mr. Rabideau commented yes. It has been verified as isolated so that means it's non-jurisdictional by the ACOE and they are not DEC wetlands. Technically that type of wetlands can be filled in. It was recommended to leave them as is. That is why the owner will do a directional bore under them to get the sewer done.

Vice-Chairman Tedrow commented that Rivercrest was built before the Corps of Engineers got active in defining wetlands. In the case of Rivercrest there was not an identified issue.

Mr. Rabideau commented that Rivercrest would not have been built today with all the water issues going on in there.

Mrs. Devito commented that hopefully neither would this proposal. Water goes the easiest route it can travel. What he just said was that he was going to leave it like that. He said he would not touch it. They are going to put in a sewer line all the way down and all the way across which is quite a distance to put a sewer line in for his duplex. If he says he is going to leave it the way it is then he should not be allowed to dig a trench for the sewer.

Mr. Rabideau commented that it is one of the problems with developments in general. It is like a catch-22. You have the same problem over in Cold Springs Drive with the Murphy thing. They dug a ditch 20-30 years ago, never maintained it. The ACOE comes in, technically it's ACOE wetlands, and they can't dig that ditch anymore. Obviously the water issue is in two different places but it's the same issue. It's an attempt to fix the problem, or leave it in its natural state. We have two opposing issues here and it seems to be that most Town's say to leave the wetlands as is as a natural buffer. I don't know if digging a trench or doing whatever would alleviate the pre-existing condition that is out there. We are not going to make it worse. It is going to be grated and we are tying into public water and sewer. If it were on a private system it would actually be adding water to the water table. This way anything going into the house goes out of the house and is not being pushed as far as adding water to the water table. It is the best situation that we could have out there. We are not making it worse.

Mrs. Devito commented that you are taking up a lot of land, pavement and driveway and basement that the water sits on now if you divert, that water will still be there. It will have less land for the water to be on. Where is the water going to go now? It's going to go in different directions and affect other people. The only trench I have ever seen is the one around my basement because of all the water I get. When we all have water issues going on where is the landlord? He is going to be home collecting rent and won't care about what happens to anyone else. As long as the landlord has the duplex that he wants, rents it out, collects rent, and ties into the sewer that no one else has, and sits home and collects the rent.

Mr. Rabideau commented that whether it's a single-family home or a duplex the lot will be graded so the water flows to the corner, which is what it does now. It is a pre-existing condition we didn't create it but we will deal with it. We will deal with the water concerns and the grading of the lot will be critical. The Board was out Saturday to take a look at the site. The area was cleared. The area that is cleared will be graded so that the water does not become an issue across Stone Quarry Road especially in Rivercrest Estates. Naturally it will go in the same direction it goes now.

Chairman Hansen commented that we seem to be covering the same ground over and over again. Is there another person that has something new to say regarding this application?

Mrs. Devito commented that she is just trying to make her point. He bought the property for a single-family home. It fits a single-family home. You all make the Zoning Laws for a purpose. If they were made for a reason they should be held in that standard for a reason. To come and buy a piece of property with the intention of having a single-family home on it and all of a sudden they want a duplex to rent it, now they need the Town to change the rules.

Mrs. Jordan commented that no one is changing the law. This is the Zoning Board of Appeals he is asking for a variance from the law. The law is not being changed.

Mrs. Devito commented that the area is being changed. Is the variance not written in a book somewhere of what should be the proper thing?

Mrs. Jordan commented that the creation of the Zoning Board of Appeals is just for cases exactly like this. That is why we are all here. We all understand your concern I have detailed notes on everything you said.

Mrs. Devito commented where are you coming up with them being required to have 30,000 sq. ft. of area? Where is this listed?

Vice-Chairman Tedrow commented that it's in the Town's Ordinance. However the appeals process is also in the Ordinance and there are specific tests that we have to apply in considering the application before we can say yeah or nay on the application.

Mrs. Jordan commented that we have five tests that we are required to go through. When we decide we have gone through all five criteria, we decide how this request fits. We are taking into account the things that you are saying, our visit at the site, the maps, and we take all of that into consideration.

Mrs. Devito asked if the Board Members were at the site.

Vice-Chairman Tedrow commented yes most of us.

Chairman Hansen commented that a group of us went on Saturday. One person already knew the situation because she lived in Rivercrest.

Mrs. Devito commented that I don't understand how someone can buy a piece of property with the single fact that it's for a single-family home and it would have been fine. Don't stir the dust.

Mr. Chauvin, Town Attorney commented that the Board should close the public hearing before entertaining comments from the Board.

Mrs. Smith-Law made a motion to close the public hearing. Seconded by Mrs. Jordan. Motion was carried.

Mrs. Jordan commented how much difference does it make whether its single-family or a duplex in this whole drainage issue and problem? In whether it creates a problem or how you're solving a problem by grading the property and connecting to the sewage.

Mr. Rabideau commented that between a single-family home and a duplex of this size, the duplex will be a little bit bigger. The same issues you have with drainage for a single-family you also have with a duplex. A duplex is a bigger house. You need to drain the water away from the building and the driveway and it has to go somewhere. Obviously it can't go toward Stone Quarry Road. The issues with Rivercrest are obviously that it is wet there, so looking at what we have there with the wetlands in the southwest corner, which automatically says that it's the lowest point. It makes sense just to grade the lot so that the water heads off into that direction because if you go back around 150' it really starts dropping off. That is where the water goes normally. It makes sense that all the drainage on this lot or the runoff from the impervious surfaces would go that way anyway. The MS4 Officer would not be happy if we dumped the water onto someone else's property. The development is setup now so that you don't create additional water from a building whether it's a house or driveway and does not negatively impact your neighbor. You have to properly drain it either down the property line or to its most natural low spot, which in this case are the wetlands that we show on the map.

Mrs. Jordan commented that in hearing Mrs. Devito speak it seems to me that one of her concerns was because your taking a larger amount of the soil because of a duplex as opposed to a single-family home. Your leaving less land for the water to settle in, is that correct?

Mr. Rabideau commented that you have two things here. You have high ground water there and it seeks its own level whether you are putting in a house or a duplex it is whatever level the pond is that is the ground level in the entire area. It could just maintain a level even if it's across the road, our lot, neighboring lots and such. The other component is the surface runoff that is generated by the impervious surface like roofs, driveways things of that nature. You have the same thing with a house or duplex and that has to be addressed as surface runoff. The only way you can address that is to direct it toward a natural low spot which in this case is the wetlands in the back. The pond obviously is there. The height of the water is the height of the ground water in that area. By digging a foundation it really doesn't make a difference per say. The biggest issue is the surface runoff and that can be addressed.

Mrs. Smith-Law commented how big is the driveway for a duplex compared to a single-family?

Mr. Rabideau commented that he would say realistically it would be one and a half times more impervious surface than a single family home.

Mrs. Smith-Law commented that in thinking about that the driveway isn't going to drain back to the wetlands it's going to drain to the pond where part of the pond is on your client's property. How can you keep the pond from rising?

Mr. Rabideau commented that the amount of runoff in that driveway would not have an impact on the pond because that really is driven by ground water in the whole area. The amount of runoff from the driveway is nominal because ground water is the big picture.

Mrs. Smith-Law commented that the pond is pretty full all summer even with no rain.

Mr. Rabideau commented yes, that is correct. That is why we understand it is a high ground water level there; it's a pre-existing condition, whether it was made worse by Rivercrest or some other factor of development in the area. That is a pre-existing condition and we understand that and we are proposing to grade the lot and will not make it worse.

Mrs. Smith-Law commented that this may be a Planning Board issue but how you are going to move the water off that driveway and not in that pond.

Mr. Rabideau commented that it will drain off the driveway and it will go off both sides and some will go down Stone Quarry because it will be sloped from the garage down to the road. It was be normal like anyone else's driveway. Some will go down Stone Quarry and some it will go the normal path. It will be disbursed onto the lawn area and onto Stone Quarry.

Mrs. Smith-Law commented that there is nowhere for that water to be absorbed on either side of the front of that house.

Mr. Rabideau commented that is why we need to pay very close attention to proper grading and directional grading of the water to the back of the house as much as possible. You were on site Saturday and you did see that he had an area cleared out. He is not going in there to cut trees to grade the water back its already cut so he has the ability to address this surface drain off issue and not to make existing conditions in the area any worse than then are. If anything, we will make it better and we certainly won't make it any worse.

Vice-Chairman Tedrow asked Mr. Chauvin if this application would be subject to the revision of the Zoning Law where duplex would be subject to a special use permit by the Planning Board?

Mr. Chauvin, Town Attorney replied that the application pre-exists the change to the law and would pre-date that so that the provisions of the law that existed prior to the most recent revision would be the controlling provisions for this application.

Vice-Chairman Tedrow commented then the Planning Board would not see this application. If there is to be any review in an approval process I think it has to happen with us and in that regard I think we need something on paper; a plan of just how you're going to handle this drainage. Similar to what we required for the Murphy application last week. It is not, as you said, your burden to improve the situation, but it is your burden to not make it worse. I think we need some engineering evidence or something on paper that could be reviewed by the appropriate people to insure that would happen with your plan.

Mrs. Smith-Law commented that she would like to second that request because having been impacted by the water in that area I can't comfortably make a decision without understanding the environmental impact.

Mr. Rabideau commented that request is agreed upon.

Chairman Hansen asked how did this lot get created in the first place? How did this come about?

Mr. Rabideau commented that in 2005 or 2008 a three-lot subdivision was created and then we had this issue before the Board. The applicant came in with a lot line adjustment, which was approved at the Planning Board level. To adjust the lot lines around but because of issues with the lending institution the proposed adjusting of the line did not work between the parties involved. We had two maps the lot line adjustment map and the original map which was the issue here so we came back and the lots you see now are from the original subdivision back in 2008 or so.

Chairman Hansen asked what was the original property? Was there an existing house? Where are the other two lots down on Plank Road where did they come from? Was the Planning Board involved in any of that? Was this all one property at one time?

Chairman Hansen commented so on these three lots there will be 3 duplexes referring to the map, on Plank Road. Did these all have Planning Board approval? Did the Planning Board look at the drainage scheme for this area at all?

Mr. Williams, Director of Planning Department commented that he does not remember at the time. I do know that they represented a drainage pattern and the wetlands were represented on the map so yes we did take a look at it.

Chairman Hansen asked Mr. Williams if there was a study ever done?

Mr. Williams, Director Planning replied no he doesn't remember that but I don't think there was.

Chairman Hansen commented that you could see from being there the other day that it's all sloping down toward a stream down there that goes under Route 9. My question more specifically is when you start building on these properties and you start moving dirt around and building houses on them it seems to me you need to take more into consideration than just dividing the lots up into specific sizes. You need to look into the drainage a little more carefully especially in an area like that.

Mr. Williams, Director of Planning commented that the stormwater was referred to Clough Harbor & Associates because the disturbance was more than an acre. So a stormwater report was done on it at one point on the two lots and its surroundings.

Chairman Hansen commented that the three lots on Plank Road are below grade they are down hill from the other two lots. It would seem to me that we should have considered what was coming in off of the other two lots. The public hearing is closed at this time and there is only discussion at this time from the Board and the applicant.

Motion made by Mrs. Smith-Law to request that the applicant give us a drainage plan for this site and also to take into consideration that we have these other three duplexes that are also going to be draining in this area.

Mr. Rabideau commented that those have already been addressed through the Planning process. That is what you are all referring to.

Motion made by Mrs. Smith-Law to request that the applicant submit to the Town a drainage plan for this site with respect to a plan of just how your going to handle this drainage. I think we need some engineering evidence or something on paper that could be reviewed by the Town's Engineer to insure the Town and the neighbors that water issues will be addressed and not worsened. Seconded by Mrs. Jordan. Motion was carried.

Chairman Hansen commented that once we receive your plan it will be referred to Clough, Harbour & Associates and an escrow account will need to be set up for their review process. Mr. Williams, Director of Planning will be setting that up for us.

Motion made by Mrs. Smith-Law to adjourn the meeting and seconded by Mrs. Jordan. Motion was carried.

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