

Town of Halfmoon Zoning Board of Appeals  
Meeting Minutes  
April 2, 2012

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:00 p.m. on Monday, April 2, 2012 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mrs. Jordan,  
Alternates: Mrs. Smith-Law and Mr. Burdyl  
Town Board Liaison: Paul Hotaling  
Town Attorney: Mrs. Murphy  
Town Planner: Mrs. Zepko  
Secretary: Mrs. Mikol

Chairman Hansen commented that Mrs. Smith-Law and Mr. Burdyl, alternates, would be voting tonight in the absence of Mr. Brennan and Mr. Rose.

Motion was made by Mrs. Jordan and seconded by Mr. Burdyl that the minutes from the March 5, 2012 meeting be approved. Motion carried

**Mr. Martin, 14 Bentgrass Drive**

Chairman Hansen commented that the public hearing was held at the last meeting of Monday, March 5, 2012 where there was a tie vote. The Board tabled action to tonight's meeting.

Motion was made by Mrs. Smith-Law and was seconded by Mrs. Jordan that we remove this item from the table from the last meeting. Motion was carried.

Chairman commented that the applicants could now make comments if they wish to.

Mrs. Martin introduced her neighbor, Jack Gort, 16 Bentgrass Drive; he will be looking at the new garage.

Mr. Gort commented that he lives on the driveway side of the Martin's. Mr. Gort stated that he has no reservation whatsoever of their garage, the way they have it planned. It will not affect Mr. Gort at all; it's on the bedroom side of the house. There are 2 bedrooms and a bathroom at that end of the house and the windows and shades are closed any way. We still have adequate distance between their garage and his house. He has no issue at all with their plans to build the garage.

Mr. Burdyl asked Mr. Gort if the garage were set up in the alternative plan, which means further back on the lot and westerly side of the lot. Would that impact your home at all?

Mr. Gort replied, yes it would. To put the garage in the back where there is no variance required would be very detrimental to my view of the south end of our property. We would not see anything past that garage. It would be sitting off our deck and the view from our kitchen window. I would much rather see it where they want it than the other location.

Chairman Hansen asked if there were any other questions?

Mrs. Jordan commented that there is another alternative not spoken about as of yet today. Asking for less of a variance without having the pedestrian door in the front is another. I know you spoke about the alternative behind your house, well, that certainly would be very different.

Mrs. Martin commented that we reviewed other options about downsizing by 5' and the pedestrian door. The only way we could do it is to put it behind the garage. If we put it on the side of the garage, toward the front, we probably wouldn't need stairs but the pedestrian door would open into the garage bay. There wouldn't be the 3' to open up the door so that would go right into a vehicle. If we put the pedestrian door towards the back of the garage we would then need stairs because of the grade because it goes down so far and would be encroaching again which again goes into the variance. The other option would be to walk around the back of the house.

Mrs. Smith-Law commented that a variance would not be needed for stairs.

Mrs. Jordan commented that the other question she has is in reading the minutes and my notes one of the reasons you stated that you needed a larger garage was not just because of your vehicles but it was stated that Mr. Martin was a mechanic and would like to work on a car at home as well. Whose car would you be working on?

Mr. Martin commented that its not so much as cars, its his own motor cycles. I have three of my own that I work on.

Mrs. Jordan commented that you're not working on other people's vehicles?

Mr. Martin stated no, it's not a business out of there.

Mr. Burdyl asked do you plan on doing any commercial mechanical work?

Mr. Martin commented no.

Mrs. Martin commented that is what he does during the day so when he comes home it's the last thing in the world that he wants to do.

Vice-Chairman Tedrow commented that for the record it is shown on the plan that you do have access to your backyard under this proposal on the other side of your house. There is 14.4 feet, which is available in case you need to get vehicles into your backyard.

Chairman Hansen asked if we should reiterate the testimony that was given at the last meeting? It was pretty well summarized in the minutes that we have. Are there any other items that were not covered adequately at the last meeting?

Mr. Hotaling, 18 Camber Court, commented that he has the same model house as the Martin's and to put the garage entry door on the side you are looking at 49-50' across to go into the house. If something were to happen in the house you would have to go 50' out of the laundry room door.

Mrs. Jordan commented that there are other entrances to the house. There are other ways out of the house. That is not consequential.

Mr. Hotaling commented that if you were in the garage you would still have to go 50' to go out one way or another.

Chairman Hansen commented that what you are saying is that there is a hallway that goes into the garage now.

Mr. Hotaling commented that you would have to go out through the existing garage, which is about 22' and then another 28' to get out of the side of the house.

Mrs. Jordan commented that maybe a door should be built at another place in the existing garage if that is a concern.

Mrs. Smith-Law commented that the garage door opens.

Mrs. Martin commented if there is power. We would have a garage door opener. Quite honestly I don't think I could figure out how to get it open, if the power were out.

Mrs. Jordan commented that she would have the same problem. You would have to make a mad dash out the door.

Mr. Hotaling commented that the garage doors are 16' wide and pretty heavy.

Mrs. Smith-Law commented that she lost power in her house and had to open the garage door. Unless it's a wood door, and most builders use the fiberglass ones, you pull the ripcord and open the door.

Chairman Hansen asked if anyone else had any questions.

Motion was made by Vice-Chairman Tedrow to close the public hearing at 7:20 p.m. Seconded by Mrs. Smith-Law. Motion was carried.

Chairman Hansen commented that we would now deliberate the five (5) questions regarding the issuance of area variances that are found on page 165-67.

"In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:"

"Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance."

Mr. Burdyl commented that it would be an over-all positive impact on the neighborhood. They have done a nice job with the design and I believe it would enhance the building in the neighborhood in general.

Mrs. Jordan commented that she would like to comment on it as well. I think the architecture is nice and you're trying to blend it in with the building;

however, I do think that it's just too big and goes too far over. I think that in the future your neighbor may not always choose to live there. It may be a problem when he goes to sell his house someday. No one will want to buy it because they have this giant garage 5 ½' away from the property line and then the house is only 20-25' away. I don't think that it is an improvement as you say. It is very nice but I think it has to be scaled back to the appropriate line.

Mr. Burdyl commented that I also drove around the immediate neighborhood and I found 3 other houses that had over sized garages. Again, I don't think it's an over-all detriment to the neighborhood nor to the market value of the neighbor's future value of their homes.

Mrs. Jordan commented did those houses require a variance?

Mr. Burdyl commented that the lots appeared to be lots large enough to carry the garages but the garages were definitely oversized.

Mrs. Jordan commented that it does make a difference. The larger lot makes all the difference. We have these ordinances set in place to prevent over cramming and over crowding.

Mr. Burdyl commented that we also have this Board to provide oversight on those ordinances.

Mrs. Jordan commented that you have to have a good enough reason, though. When there are alternatives I don't think there is a good enough reason.

Mr. Burdyl stated that he disagrees.

Mrs. Smith-Law commented that she had an opportunity to go out on Saturday and the new garage was staked out and so was the other alternative. I think putting the garage in the back is a horrible idea. It would block your neighbors view; it won't be a good thing for anybody. I do like the idea of where you are proposing the garage but I have to agree there are other ways to accomplish most of what you need. The neighborhood has some lots that are closer together than others. They all have a reasonable amount of space. Actually some of those lots are pretty big. I love your design I just think that there is an alternative to the extra 5'. Again, if you go to sell the house in 5 years and there is another house on top of you that could be a detriment to you, even though you don't mind it right now. I would hate to see the garage in the back. The architecture is quite beautiful, but I do think there is another way around it.

Mrs. Jordan commented that I not only speak of the detriment to the immediate neighbor but also in setting precedence here. Then we have to do it for everybody just because it's better, or the people like it better. We can't do things just because we like you or because that is what you want. We have laws to follow.

Chairman Hansen commented that we are doing what the law allows us to do by considering this application and by going through these tests and making this evaluation. We have the latitude to either approve or disapprove this. I don't think we can say that the law absolutely prohibits it. The law sets specific guidelines that the Building Department can use in their own discretion. If it meets everything literally as it's laid out in the Zoning Ordinance they could just issue a building permit. If what they are proposing to do doesn't literally meet the building code then they have the right to appeal that and come to us. We then have to use our judgment based on the five tests to determine whether or not the request is unreasonable.

Mrs. Jordan commented correct. That is why we should keep going through the tests. I think we have different views on the first test itself.

Vice-Chairman Tedrow commented that he would like to add another comment on the first test. If we do deny the application because they are free to then do what they want, we may force the alternative of the garage in back. That would be a detriment to the neighborhood and the nearby properties. So by disapproving we may in fact create an unwanted effect.

Chairman Hansen commented that the other thing to consider is that even though this addition will be 5' closer, if they met the 10' side yard the size of the garage, the bulk of it wouldn't change at all. They are still proposing to have the same roof pitch, and the same length from the front to the back. Everything will still be the same except it will be 5' closer to the property line. It will not decrease the bulk of the building at all.

Mrs. Jordan commented that she understands that.

Chairman Hansen commented that he presumes that the neighbor is fully aware of whatever affect it might have on his personal property. One of the things it talks about is the detriment to the neighborhood and neighboring properties. We have a neighbor here that says that it's fine with him. What more can we do? We sent out a half dozen or more public hearing notices to the other people in the neighborhood and they never even came in.

Mrs. Jordan commented why don't we go through the other tests.

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

Vice-Chairman Tedrow commented, yes they can. The garage can be placed in the back.

Mrs. Smith-Law commented that they could also make the garage fit the property appropriately so they won't need a variance.

Mrs. Jordan commented she doesn't believe that the homeowner wants to put the garage down in the back either.

Chairman Hansen commented that I think there are reasons for that; they brought that up in the last meeting and we discussed that. It would be quite a bit more expensive to do that. They could do it but at some point there is a limit on how much money you want to spend on a garage.

Mrs. Jordan commented that there is another alternative which would be to make the garage fit within the property.

Chairman Hansen commented that they also stated reasons why that alternative wasn't feasible either.

"Whether the requested area variance is substantial."

Mrs. Jordan commented that it is substantial. It is half the distance of what is allowed ten feet down to five feet.

Mrs. Smith-Law commented that they are also shy of it on the other side, which is not their fault, clearly but it makes the over-all width of the property not within specifications on any size.

Mr. Burdyl commented that part of that discrepancy there is how the original developer laid out the lots and where the original house was placed on the lot. So yes, there is a discrepancy there but I am not sure it's all 100% self-created by the applicant.

Mrs. Smith-Law commented that she didn't say that. I was very clear that the developer was responsible for that. I want to state for the record, that the overall width of the building, if we grant this, it is substantial.

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

Vice-Chairman Tedrow commented that the Board has discussed this pretty well under the first test.

"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."

Mrs. Jordan commented that it was definitely self-created because it is something that is being asked for that doesn't necessarily have to be.

Mrs. Smith-Law commented that there are other alternatives.

Mr. Burdyl commented that the other alternatives are more detrimental to the neighborhood appearance and environment than the present alternative that we are deciding upon.

Mrs. Jordan commented that another alternative is not to do it at all.

Mr. Burdyl commented that is a restriction of personal freedom. If somebody provides a reasonable plan in a reasonable manner and is attempting to follow all the rules but has one issue with the rules I think that is not unreasonable thing to ask.

Mrs. Smith-Law commented that the building could be accomplished by putting the entrance door somewhere else. The discussion is about the safety it's not about appearance. This would still be a gorgeous garage and I think your house would look great. I am just concerned that if we say to you folks for 5' then the next person will be 6' and the next person would be 7'. I really hope that no matter what way we decide to go you put the garage where you are planning but just put it inside the limits. I understand all of your issues but there is an alternative that is still pretty and still functional.

Mr. Burdyl commented that he disagrees that in future cases we would have to grant everything to everybody. It all depends on the merits of the particular case. As Mrs. Jordan commented certain cases do set a precedent but we have oversight capability and we have the ability to follow or not follow precedence and in this case we are trying to determine, in one sense, architecture and appearance and where the door should go.

Mrs. Smith-Law commented that I never said where the door should go at all. As a matter of fact, when there was a discussion about the door on Saturday you guys had the discussion, not me, I was completely silent. I am just saying that if we make the garage the size that fits on the property there is no reason to be here. There are alternatives. Yes there is another way and yes it would be cheaper.



Chairman Hansen commented that just to remind the Board I remember discussing it at the last meeting why they wanted the door in the front was that they use that as their primary entrance to the front of the house. It is the service entrance but it is the entrance that they use. If they parked their car in the driveway instead of walking around to the front door or if they put the garage door on the other side of the garage they would have to walk around the other side of the garage walk through the garage and then into the house. By putting it there in the front people can see it. It is a matter of convenience in building this garage. If that wasn't the only way on the other side of the house, to get into their house, I don't think they would be asking for it. They could cut down the size of the garage but it's because of the way the house was designed with that side door coming out. The only way they could put this garage on and still have you come into that house in that corner is to put the service door on the front of the garage. The only practical way. I know we covered that in the last meeting.

"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."

"Imposition of conditions: The Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restriction as are directly related to and incidental to the proposed use of the property. Such is imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community."

Chairman Hansen commented that he would ask this question, is this going to have any impact on the neighborhood or community. I just don't see it myself. The only person that is going to be affected by it is the next-door neighbor. We already heard from him and what his opinions are.

Mrs. Jordan commented that it has an impact on the community and it would be very hard for me to sit up here ever again and deny someone a variance when there is an alternative way to do something. That is one of the basic cruxes of the tests and it would be very hard for me to sit up here and ever tell anyone that they can't have something if we were to pass this when there are alternatives.

Mrs. Smith-Law commented that she is in complete agreement with Mrs. Jordan.

Vice Chairman Tedrow commented that this is not the first side yard variance that we ever created. We have done this before. Do we feel bound by any precedence we set by cases that we have heard before? I don't think so.

Mrs. Jordan commented that they have been different than this one. There was no alternative for them. That is the thing we always go for, is there an alternative. In other cases that we have granted before there has been no other alternative.

Mrs. Smith-Law commented that she has to agree that since I have been on the Board for so many years it has been the tilting point if there is an alternative or not.

Chairman Hansen commented that he has been on this Board since 1969 for 43 years. We granted variances and we denied variances, but I would have to say in every case there is always an alternative. There is the no-build alternative; there is the cut down the size alternative. It all boils down to how much would it cost and does it make the project feasible or not feasible. What we are hearing in this one is it sort of makes it not feasible. That is the way I see it. We're not bound because we grant a variance here that we have to grant every variance down the line. We do deny them occasionally. The reason that area variances are allowed in the ordinances is, if everybody had to literally meet every requirement of the ordinance in some cases that would unduly restrict the use of the property. It is to protect the landowner from being absolutely restricted from doing what they want on their property. There is a safety valve which is the area variance and that is why we have 5 people here to make the judgment as to whether it is reasonable or not.

Mrs. Jordan commented, exactly but it's not the only thing that it's flunking in this test. It has also failed substantial. All of this is subjective.

Chairman Hansen commented that we don't have any guidelines for substantial.

Mr. Burdyl commented exactly; Mrs. Jordan it's truly subjective. It's your subjective judgment against my subjective judgment against Mrs. Smith-Law and against Vice-Chairman Tedrow. It's totally subjective.

Mrs. Jordan commented all of this is to be subjective but you are setting precedence and the overall impression of the town and what we are trying to do here is not to cram things in.

Mr. Burdyl commented that the subdivision should not have been approved in the first place because the lots are too small. This was created by the subdivider and under the direction of another Board and not this applicant. This applicant did not create this situation.

Mrs. Jordan commented that the lot is too tight but let's not make it about that there are other alternatives. Don't say it's not created by this applicant; it is. If they want to have a building 5' from the property line, then of course it's created by the applicant.

Mr. Burdyl commented that the developer created the particular variance problem when he created the subdivision.

Mrs. Murphy, Town Attorney, commented that the Planning Board approved the subdivision. That it is a legal and proper subdivision and people chose to buy a lot that was an approved size. That is not the issue here. The issue is whether or not you feel the variance is appropriate or not appropriate.

Mr. Burdyl commented thank you to Mrs. Murphy, but I was just addressing Mrs. Jordan's use of the word cramming and I feel that it's an unfair adjective in this case.

Mrs. Zepko commented that for the record when the subdivision was approved, it was approved according to the Town Code and with setbacks that were required.

Mr. Burdyl commented yes, thank you.

Chairman Hansen commented that he doesn't see a need to debate with each other any further on this. We could probably take a vote now. It will be decided one way or the other. I think at this point we should have a motion to close the discussion.

Motion made by Mrs. Smith-Law to close the public hearing and seconded by Mrs. Jordan. Motion was carried.

Motion was made by Mr. Burdyl to approve the application as it was presented to the Board. Seconded by Vice-Chairman Tedrow. Motion was carried. Mrs. Smith-Law and Mrs. Jordan voted nay.

Chairman Hansen commented that he hopes that the discussion here tonight doesn't affect our future with Board relationships. It is conceivable that any given application we could have a difference of opinion. So be it. That is why Boards have five people on them.

Motion made by Mrs. Smith-Law to adjourn the meeting and seconded by Vice-Chairman Tedrow. Motion carried.

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