

Zoning Board of Appeals
Meeting Minutes
September 4, 2007

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:00 p.m. on Tuesday, September 4, 2007 at the Halfmoon Senior Center with the following members present:

Members: Chairman Hansen, Vice-Chairman Tedrow, Mrs. Jordan
Alternates: Mr. Burdyl, Mrs. Smith-Law
Planner: Lindsay Zepko

Mr. Scott Brennan and Mr. Raymond Rose were absent. Mr. Jeff Burdyl and Mrs. Lois Smith-Law filled their vacancies. Chairman Hansen asked if the Board reviewed the August 6, 2007 Zoning Board of Appeals minutes. Mrs. Jordan approved the minutes with a second made by Mrs. Smith-Law. Motion carried.

Kenneth and Rachel DeCerce, 21 Birchwood Drive – Area Variance

Mr. DeCerce was present with his Contractor Mr. James Rydell and his Architect Mr. Eric Rutland with a proposal to remove the existing garage and replace it with a 2-car garage with a room over it. The lot is a corner lot; the addition would not meet the setback requirements for front yard setback requirements on Birchwood Drive. The applicant is seeking an area variance. The existing garage will be removed and a new garage will be built.

Mrs. Jordan asked if there was a plan showing adjacent homes and distance as it relates to the addition.

Mr. DeCerce commented that a formal survey showing the addition was submitted to the Board.

Chairman asked if the Board had any other questions, no one chose to speak; the Chairman opened the hearing to the public.

Mr. Mike Sidoti, 22 Birchwood Drive had the following comments:
He opposes the variance for many reasons. The owners of the property do not live at the house therefore how could they be suffering any hardships. Several years ago they widened the driveway allowing 2 vehicles to park side by side and they could get 4 vehicles on the driveway and one in the garage. There are 33 houses on Birchwood Drive 27 of them have either a one car or no car garage, there is no hardship having only a one car garage and that its unique to the neighborhood it is just an inconvenience. According to the Town's Zoning Law's a variance cannot be issued due to an inconvenience. Under variance 1B # 3 all houses on Birchwood Drive are 40' from the pavement and 51' from the center of the road all houses are symmetrical on their lots the variance request would allow 21 Birchwood Drive to be 19' feet from the pavement and 30' from the center of the road this would allow them to be 21' closer to the pavement than all the other houses in the neighborhood. Also, the house would look lopsided on the lot. Mr. Sidoti recommended using other means to achieve the goal of the homeowner by added a dormer to the roof or by doing the addition on the other side of the house, which would not interfere with other properties. The variance request would put a 30' high wall 10' away from his property. There would no longer be a view from kitchen, living room and deck with a loss of sunshine and natural light. The view would also block the view for the school bus and the intersection. After checking with realtors Mr. Sidoti was told that his house would retail less by \$15 to \$20,000.00. Mr. Sidoti purchased his home because of the neighborhood and the distance between houses. Mr. Sidoti had letters from neighbors and also a petition signed by 27 neighbors that own and live in their homes that were against the variance request. Photos were shown as a view from Sidoti's house with the addition. A letter was read from 23 Birchwood Drive requesting that the variance be denied. Another letter was read from 15 Birchwood Drive requesting that the variance be denied. Chairman Hansen asked Mr. Sidoti if he had a letter from the realtor, he replied not with him but he would supply a copy to the Board. Chairman asked if anyone else would like to speak?

Denise Fury, 22 Birchwood Drive commented on the same things as Mr. Sidoti including the views looking out their windows and seeing an addition instead of the trees.

Mary Michon, 17 Birchwood built their home 47 years ago additions were done through the years including a bedroom over the garage and she asked if there was any other reason you would like to add onto the home.

Mr. DeCerce commented that he wanted to continue to enhance the house and make a bedroom for his grandson over the garage. Mr. Ridell commented that the room above the garage would be 28' wide and its not because it's for a little kid that is just the size above the garage.

Mary Michon asked what else would be in the house, it's a residential zone there will be no businesses there. There are other ways to add onto to the house.

Denise Fury commented that they could build on the other side of the house there is access through the gate, they have opened the gate many times to have access to their yard, why can't they put the garage on that side of the house with the room above it.

Mr. Sidoti commented that rumors have it that Bonnie DeCerce wants to put a catering business in the house.

Jacklyn Gibbs, 9 Birchwood Drive commented that if someone wants to make a change to their property they have to notify the neighbors. Why not put the garage addition on the other side of the house.

Chairman Hansen commented that according to the plan presented one corner of the house is 25' from the edge of right-of-way the front corner of the existing garage is 29.7' from the right-of-way line. The right-of-way line is typically 25' from the centerline of the pavement. The existing setback of the garage is 29.7'.

Don Bassett, 33 Park Plaza is confused what this is all about. If the zoning says they can't build it the way they want to its not up to us to tell them how to build its up the homeowner to come up with a plan that meets zoning. Doesn't the house have 3 bedrooms?

Mr. DeCerce replied yes, one room is used for a computer room; one is the master bedroom and one for a child.

Chairman Hansen commented that we cannot determine why they want an addition as long as it's a permitted use in the district so its not fair to ask who will use the room that is way beyond what they are required to defend. The law allows you to request a variance; you're not necessarily entitled to one, if the addition you are requesting to put encroaches on the front or side yard. One corner of this addition will encroach on that 25' front yard by 6'.

Denise Fury, 22 Birchwood Drive if the variance is granted it will take away our view of the intersection and create a hardship on them, we encourage them to build a dormer over their garage.

Rachel DeCerce commented that older people in the neighborhood would want to have a 2-car garage.

Chairman Hansen commented that the request for an addition is the subject we should be discussing it's the impact of the addition to the neighborhood and the next-door neighbors are going to be impacted.

Dave DeCerce 21 Birchwood Drive commented that this neighbor made a comment that he would be looking at a 30' wall out his window obstructing the view of the school bus which is fairly visible through their window and looking at the photos in front of you please look at the fence which is what we see everyday which is only less that ½" shorter from what NYS calls a spite fence.

Mr. Sidoti commented that the fence is irrelevant and that his fence meets NYS Unified Codes and a variance is not required to put up a fence.

Mr. DeCerce commented that the only structure going here will be that of residential and whatever hear say people say it's not always true nothing there will be of commercial use. We were not thinking of anything malicious in this. The only thing I ever wanted to do was make it better make it nicer and do not believe the value of anyone's property will be lessened. If anything it would more valuable by putting more value onto this house. Mr. DeCerce thanked everyone for listening and coming here for whatever decision the Board chooses to make.

A neighbor commented that before a catering business could be done in the home, the residents would have to apply for a use variance.

Ms. Jordan commented that in order to run a catering business from ones home they would have to come before this board for a use variance changing it from residential to commercial.

Mr. Sidoti commented that people put businesses in their homes all the time without coming to the Town.

Ms. Jordan commented that it's your prerogative whether you report it or not. The intent in this instance is not to use the addition for catering. The DeCerce's are here to get legal approval for an addition.

Cindy Mormile, she works with the contractor and use to do real estate and she has to agree with Ken in that it is a small development that is very attractive and everybody likes it but as everything turns over and from my personal and real estate experience younger people moving in and older people are now either moving to Florida, passing away or whatever it may be people are adding onto their homes making it bigger and to see change happening to these houses is not a bad thing it's what the younger people can afford so they add on.

Mr. Sidoti asked how many of those people needed a variance; he added with all due respect you don't live next door to the house that is proposing to put up a 30' wall.

Cindy Hormell commented she didn't know. A variance is an option for a change.

Ms. Jordan commented that this is so hostile this is my first experience with this. A Gentleman spoke from the back of the room. If this were allowed, wouldn't this set a precedent because if someone else wants to do the same thing now he could do it too?

Chairman Hansen commented that the laws are still the same all variance requests are treated on an individual basis. It depends on the conditions. We have not made a decision on this yet.

Ms. Jordan commented that there is a test each person goes through and needs to answer each question on the test. Some of it is factual and some of it is subjective. To get to an answer we can't just decide, we have to follow the test for each and every property we look at. It's not just on our whim to see how you feel and how we feel, you are part of the test, and the public, and what the neighbors have to say about changing the character of neighborhood. What everyone here has said is one part of the test.

Ms. Smith-Law commented it's not about an opinion.

An audience member directed a question to the contractor what reason is it that you can't set the garage back 2-3' and add on that way?

Contractor replied, the stairs going into the room above the garage is about 3 ½'. To get the depth and maintain the 22' span needed for the stairs you would have to exit the house.

Another Woman said I just think they did a tremendous job on the progress made on the house thus far and understand totally how frustrating it is for both people on that side to have a constant conflict going on all the time and my question again would be why can't you just set the garage back to meet the variance. I think part of the problem with the neighborhood is that 1 Birchwood Drive that the Diner bought was supposed to be a one-family single dwelling residential and tried to put a lawyer in there and tried a whole gamut of things. It was a landscaping business with bulldozers and the neighborhood was shocked. It's only 33 little houses that have been here for 40 years everyone knows everybody. Everyone gets along. It's a nice little community.

Eric Rutland commented that we have to maintain the 10' side yard and the width of the garage goes from the back wall of the existing garage to the 10' setback.

Ms. Smith-Law commented that maybe this would need to be tabled to the next meeting so that the applicant can explore the needs of the growing family with the existing property.

Eric Rutland commented that the main consideration for the addition was a second floor. You have these tiny bedrooms in a ranch and you still need access to the upstairs area with a staircase. Looking for other options this is our best option right there.

The existing garage has to go, replace it with a new garage in the same place, leave the same access, make the home livable during construction rather than tearing roofs and ceilings and gutting the kitchen. You're accomplishing what you need to have with the garage and the family won't be displaced. It's the logical end of the house rather than the other end of the house building hallways to accommodate proper access. When all things came to play the 2-car garage needs was all taken into consideration.

Mr. Tedrow asked what the height was to the peak and the eaves for the addition.

Eric Rutland replied was an estimate of 26' to the peak and to the eaves 19-20' in height.

Chairman Hansen asked if they could provide the Board some photographs with a more accurate representation on what the building will look like on the lot to the Sidoti property. The real issue here is the impact on the Sidoti's. Are the senses that the neighborhood doesn't want this building added on? Mike Sidoti commented we have 27 signatures. Mr. Sidoti talked to all the neighbors they don't want the neighborhood to change. They don't want the variance and I showed them all the photos and they don't want the hardship on us.

Ms. Smith-Law commented did the neighbors not want any change or just this particular structure. I am hearing different things from different people.

Chairman Hansen said let's keep something in mind. The rear corner of the proposed structure will be within the normal requirement of the Town Law and quite frankly if it wasn't was for the 6' variance in the front they could do it as high as the Law allows, they are going the maximum for a 2-story addition. You can't ask them to meet requirements that no one else in the Town has to meet. If you go into all these developments with the new houses most are a maximum of 25' apart and 2 ½-3 stories high. The Board has to sort this out and break it down to what the actual impact is, the impact seems to be only on these people (referring to the adjacent neighbors) not the people on the other end of Birchwood Drive. How could this impact those people living down in the back of the development?

Residents asked what if they come in and they want a variance.

Chairman Hansen commented that we would have to look what the layouts are of the other homes in the area and whether this house is unique because of the way that it is situated on the lot. He asked the applicant to look at all possible alternatives as well as show some accurate renderings of the proposal. The applicant stated yes. Mr. Rutland stated that there might be a need for some further surveying to provide this. Mr. DeCerce stated that he could provide rough renderings that would show the addition and how it meets the setbacks and the view from the neighbors.

The Board received a petition with 27 names on it opposing the variance request for 21 Birchwood Drive.

Mrs. Smith-Law made a motion to table this item for the applicant to supply additional information. Mrs. Jordan seconded. All-aye. Motion carried.

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

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