

Town of Halfmoon Zoning Board of Appeals  
Meeting Minutes  
September 8, 2009

Vice-Chairman Tedrow opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:00 p.m. on Tuesday, September 8, 2009 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Rose  
Alternates: Mrs. Smith-Law, Mr. Burdyl  
Planner: Lindsay Zepko  
Secretary: Denise Mikol absent

Members Absent: Chairman Hansen, Ms. Jordan and Mr. Brennan

The minutes from the May 4, 2008 meeting will be tabled until the end of the meeting.

**Upstate Home Builders, 114 Staniak Road**

Andrew Brick with the law firm of Donald Zee P.C. representing Mr. Pellerin aka Upstate Home Builders was present. The application is a request to amend a previously granted area variance, more specifically, a condition that was placed on a previously granted area variance. A few years back our client came in to request a street frontage variance that was granted by the board, one of the conditions was that the house after construction would be 25' away from the side yard property line. When Mr. Pellerin was ready to sell the house a survey revealed that the foundation was placed 24' 4" from the side yard being 8" deficient from the condition placed by the board for the area variance.

The purchaser's attorney required Mr. Pellerin to put money in escrow until the prior approval is amended for the relief of the 8" to the area variance. The request is to amend the condition placed on Mr. Pellerin from 25' to 24' 4" from the site yard.

Mr. Brick commented that when the issue first came up he called and spoke to Mr. Greg Stevens at the Town. Mr. Stevens explained that according to the Town Ordinance the side yard setbacks are 15' on one side of the home and 10' on the other. From the Town's perspective and code enforcement the side yard setbacks have been met.

At the time of the variance request it was the intent of the Board of Appeals to have the house not placed too close to the neighbor's house.

Vice-Chairman Tedrow asked to see the new survey map. Mr. Brick explained the frontage and pointed out the side yard information. Vice-Chairman Tedrow commented that the original application was before the Board because the frontage for the lot itself was substandard. Without the approval of the Zoning Board of Appeals the house would have had to be built up in the wider portion of the lot. Mr. Brick agreed and commented that when reading the minutes from the public hearing the board members do say that it was a better location for the house and that is where the requirement came in for the 25' distance to the adjoining house.

Vice-Chairman Tedrow commented that the task tonight is to see if they have information to set it for a public hearing for the next meeting to further consider this application. The meeting was opened to the Board for their comments:

Mr. Rose commented that the map was made in March of 2007 and was drawn with 24' 4" to the property line. Was there a mistake as to what exactly the variance was for? Mr. Brick commented that the foundation was poured 8" too close to the neighbor's home. If you look at the condition the Board had when the applicant applied for the frontage variance the condition was to keep the new house 25' away from the neighbors house. When the foundation was poured it was at 24' 4" not 25'. Mr. Rose asked when the foundation location was done on the plan? The original application was May 7, 2007 and the house plot was plotted April 30, 2008.

Motion was made by Mr. Rose to set a public hearing for Monday, October 5, 2009 at 7:00 pm for 114 Staniak Road for lands of Mr. Patrick Pellerin aka Upstate Home Builders requesting relief of a previously approved frontage variance requiring the house to be located 25' off the side yard. Seconded by Ms. Smith-Law.

Motion carried.

## **Jerry Newell, 126 Woodin Road**

Vice-Chairman Tedrow commented that the minutes still needed to be reviewed regarding the Newell application dated May 4, 2009. Mr. Newell was denied a building permit to install a carport because it did not meet the required setbacks on his corner lot.

Just as an update, Mr. Newell of 126 Woodin Road proposed a carport on his property on the corner of Woodin Road and Manchester Drive in the Northwood Development.

Mr. Rose commented that the hearing is still open for Mr. Newell's application because technically the application was incomplete and the Board was waiting for more information and requested that the applicant be present at the next meeting.

Motion made by Ms. Smith-Law to make changes to the minutes dated May 4, 2009 regarding the motion seconded by Mr. Burdyl. Motion carried.

Vice-Chairman Tedrow commented that the likelihood of the applicant coming back to the Board is nil because he received his building permit and built the structure.

Vice-Chairman explained that Mr. Hansen mentioned at the time that the ordinance has a provision that if a subdivision has been built with a certain standard setback that it could be accepted.

Mr. Rose commented that in a matter of procedure we were in the middle of a hearing and hadn't decided yet and the building department decided to take action, which was unusual until we released it, or sent it back. To close this out we need to know what standard was used so the Board can close this out properly. We don't know what standard the Board used to base their decision, it should not have come to us in the first place, our decision is that they sent it to us erroneously if that information is indeed a standard and the board should close the case by saying no decision is required because it was not required in the first place.

Vice-Chairman Tedrow commented that it wasn't in the light of the information provided to the town. Mr. Rose commented yes superfluous it already could stand on its own merits. Someone from the building department should come to us and tell us how they came to that conclusion.

The carport is already built. It appears that the homeowner hired a surveyor. The ZBA would like the building department to explain to them how they came to the conclusion that the applicant didn't need a variance and the applicant also needs to withdraw his application from the zoning board so the file can be closed out. Mr. Rose commented about an email that he read regarding Mr. Pearson providing information to the building department for the record and would like to make a request that Mr. Pearson provide that information to this board. Vice Chairman Tedrow commented that he's not sure if it was in his position as Assessor or as a resident of Northwood Development.

Vice Chairman asked Ms. Zepko for any advice to the board.

Mr. Rose commented that because the hearing is closed we should leave the hearing open and wait for the building department to update us on the information.

Mr. Burdyl commented that the issue Mr. Rose is getting to is that we need a formal communication as to what standard they applied to issue the permit.

Mr. Rose commented that the building permit came back after we opened the hearing and said yes you can build your place because there is only a 25' setback. All we are asking is where is it written, where is it stated, where is it documented, that is the standard for that subdivision or that area. The building department originally referred them to the zba because they didn't think it was a standard. Then the zba looked at it, visited the site, and voted to send it back for more information and it subsequently came back that they approved it with an open hearing without a zba approval. If available we would like the code enforcement officer to be at the next meeting so he could answer our questions.

Mr. Rose asked how do you interpret that for Manchester Drive? Vice-Chairman Tedrow commented that in his opinion that if the code enforcement officer uses the existing buildings in this subdivision and looks at this particular lot and looks 300' in each direction and if 25' appears to be the prevailing setback, the setback that was followed when the thing was laid out in the first place then he could use 25' as the setback. Mr. Rose asked so he measured other properties nearby. Vice Chairman Tedrow commented that originally that was what I thought the surveyor expected to do is to establish the boundary and then to determine the setback of the houses especially down Woodin Road. Mr. Burdyl was under the impression that the subdivision was designed that way that 25' was a common factor. Vice-Chairman commented that his house is 25' back from the property line and that was done before there were any regulations of any sort here in town. Mr. Rose again commented that if the building department wants to send a letter on how they made that decision that is what I am looking for and it would be the proper way to close this out.

Vice-Chairman Tedrow commented that we never got to the point to make the application into a hearing so we don't have to table any action. Technically we have an incomplete application before us. The applicant will be asked to withdraw his application.

Motion made by Mr. Rose to adjourn the meeting and Ms. Smith-Law seconded it. Motion carried.

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