

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
May 6, 2013

Chairman Rose called the meeting to order for the Town of Halfmoon Zoning Board of Appeals at 7:08 p.m. on Monday, May 6, 2013 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Hansen, Mrs. Jordan, Mr. Brennan

Alternates: Mr. Burdyl

Town Attorney: Mr. Chauvin

Town Planner: Ms. Zepko

Town Liaison: Mr. Polak

Town Engineer: Mr. Bianchino

Secretary: Mrs. Mikol – absent

Motion was made by Vice-Chairman Tedrow and seconded by Mrs. Jordan that the minutes from the April 1, 2013 meeting were approved as presented. Motion was carried.

Chairman Rose commented that tonight we will have 3 applicants before us: Jean Shannon of 515 Hudson River Road, Hodorowski Homes, Ridgewood Drive and Brendan Murphy of Werner Road. I'm asking that each person speaking come up to the podium and speak into the microphone. Please state your name and address for the record, thank you.

Jean Shannon, 515 Hudson River Road

Chairman Rose commented that the public hearing will open at 7:05 p.m.

Mr. Ken Wood represented the applicant, Ms. Shannon's son. The proposal is for an area variance to close in a front deck on the front of their home. Apparently the existing deck is too close to the road to be enclosed according to NYS Building Codes. We submitted drawings to the Building Department and were denied a permit and were asked to apply for a variance to enclose the deck. Ms. Shannon received a stop work order to building without a building permit.

Mr. Hansen asked why do you need to cover up the porch/deck?

Mr. Wood replied: the existing deck was being enclosed because we were looking to build a ramp on the front of the house for my step-father and mother and to have it enclosed would better for them to keep it out of the conditions of the weather. Previously the steps would get iced up each winter and it is our hope to have it enclosed that way it would be safer to access the house.

Mr. Wood further commented that the new door for the porch would be coming off the existing driveway. There will be windows on each side and used as a 3-season porch. It's not finished on the interior.

Chairman Rose commented that the drawings that we have are the ones you submitted with the application. It does not show the design of the structure just the layout of the porch.

Vice Chairman Tedrow asked if the ramp would be inside the enclosure?

Mr. Wood responded, yes it would be inside the enclosure. The existing porch as it is will not be made any further than the existing deck that is there now. The deck will be modified to include a ramp inside the current footprint.

Mr. Brennan asked if Mr. Wood had any building plans on how it will be enclosed as far as the building materials or in the absence of that can you try to explain on how the ramp will present itself inside the porch.

Mr. Wood commented, yes I have a few sketches. The ramp will come up on the outside edge along where the windows are there will be a landing on the top and a landing on the bottom. There will also be a stair access for someone who doesn't want to use the ramp.

Mr. Brennan asked if the stairs and ramp would both be enclosed in the porch area and will access to outside through the storm door.

Mr. Wood replied, yes.

Chairman Rose asked if it was safe to surmise that what your building there will not expand the current porch?

Mr. Wood replied, no it does not. It is not going to be larger than the footprint of what you saw at the site visit. If anyone drives by there right now it's wrapped up in weather protection right now. What you see is what the size of the finished product will be roughly.

Chairman Rose asked if notification was given to the neighbors.

Ms. Zepko commented that 4 neighbors were notified by certified mail and the County was also notified and a notice was sent back from them that there is no significant wide impact.

Mr. Brennan asked what the Building Department's regulations are specific to the size of the doorway. I know there is an ADA requirement; will it apply to this application?

Ms. Zepko commented that, yes, the Building Department will have to review it for both ADA standards and standard building codes.

Mrs. Jordan commented that this project was already started. Did you start building without a building permit?

Mr. Wood responded, yes that is correct. There is a guideline in the building code 71-5B which allows alterations within certain conditions without a permit. We were operating under those guidelines. The Building Department came down and issued a stop work order. We stopped work and went to discuss that issue with them. They asked us to submit a permit and because my Mom lives in the Town and plans to live there for a long time, we thought it was best to work things out through the building department as opposed to continuing our work. So that is why we are here requesting a variance, although we felt we met those conditions, we would rather work with the Town.

Ms. Zepko commented that she spoke with Mrs. Shannon about a year ago within the department and you came in requesting the application for the enclosed porch and it was explained to you that you would not meet the requirements of the zoning if you enclosed the porch. We did advise you at that time that you could not cover or enclose the porch without a variance.

Mrs. Jordan commented that they were advised ahead of time that they couldn't enclose the porch without a building permit?

Ms. Zepko commented, yes at the time they were issued the building permit yes they were aware that they could not enclose the deck.

Mrs. Jordan commented that she is bringing it up because it's a concern we seem to be getting a number of cases like that after the fact. We realize it's a hardship for someone to tear something down should we not approve the variance that they are asking for, but at the same time, the wrong message seems to be getting sent out. It seems that the message is build it and then come to us, because we are less likely to deny it.

Someone spoke and it was not on tape.

Mrs. Jordan commented that she totally understood their problem, but the problem that she is talking about is that even though you were advised by the Town when you built the deck, because you could build the deck, that you couldn't go any further than that without coming before the ZBA as you are now. So I question, you why did you start building without doing what you were instructed before hand.

Again, someone spoke and was not on tape.

Mrs. Jordan commented, that you specifically spoke with someone from the Building Department that advised you that if should you ever decide to enclose it you would have to come and get a variance.

Again, someone spoke and was not on tape.

Mrs. Jordan commented, so by waiting how ever many months that the situation would change?

Again, someone spoke and was not on tape.

Mr. Wood commented that he put up the walls and was not aware of the conversation that they had and when I read the code it was my understanding that a variance could be done. I am partially to blame that the walls are up. I was not aware of that conversation and I never had that conversation, but I did find in the building code that alterations were allowed if the work cost less than \$10,000 and if electrical work was not required, a permit was not needed. I misunderstood the code and the walls went up and it was my doing.

Mrs. Jordan commented that it's not a question of you misunderstanding the code. The problem I have is that Ms. Shannon spoke to the building department and was advised as to what she could do and not do and after time passed, went against what she was told.

Chairman Rose asked if Board Members had any other questions? No one responded.

Mr. Brennan asked: it's my understanding that you're not going to use it for any occupancy; it's only to transition into the house?

Mr. Wood commented that there will not be any heating or cooling or electrical other than the existing lights that were on the deck at the time. It will not be insulated or any additional things to make it a living space. If anything additional has to be put in there for occupancy, that would require additional permits for that, such as electrical.

Ms. Zepko commented, yes that is correct.

Chairman Rose asked if the Board had any other questions? Are there any neighbors here that have any questions? No one chose to speak.

Chairman Rose closed the public hearing at 7:25 p.m.

Chairman Rose commented:

"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. Hansen commented that he didn't feel it would be an undesirable change to the neighborhood. What they are proposing to do is strictly of residential nature, so it's not as if its going to impact any of the neighbors. The nearest neighbor in one direction is about 100' away. The other direction is much greater distance than that because these folks own most of the property between them and the next house further south. I would say there would be no detriment affect on nearby properties.

"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 that the applicant has presented the case regarding the layout of the house. It isn't clear that there is another alternative that could be pursued for what he wants to achieve here.

"Whether the requested area variance is substantial."

Chairman Rose commented that based on what he sees here, it does not expand on the footprint of the house, so it's not a substantial impact.

Mr. Brennan commented that he would agree with that. The impact doesn't seem substantial because the footprint doesn't change. This is a minor variance of 7-8'.

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

Mr. Hansen commented that he doesn't see any significant change to the physical or environmental conditions by enclosing this porch. It doesn't seem to affect the site distance on the curb that's in the highway in front of the building. I would say it's not a significant effect.

"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 she noticed in Mr. Wood's explanation that you say this project was not self-created and I understand your reasoning. You are saying that the project is necessary due to decline medical conditions and this something that you need and is not self-created. There are different levels though and different ways you can look at this problem as being self-created. The way I look at it, it won't preclude you from getting this variance, because had you followed the proper procedure, I would not see a problem with any of this. The difficulty that's been self-created is that now you have part of this built. If we were to say no to your variance, you would have to take down what you have built. By not following the procedure and getting a variance first before you build, that is something that is self-created. There is a self-created problem here, but as the test says that self-creation will not in its self deny you from getting your variance.

"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."

Chairman Rose asked if there were further comments from the Board. No one chose to speak.

Motion was made by Mr. Hansen to approve the requested variance for Mrs. Shannon at 515 Hudson River Road to complete the covering of the porch as presented. Seconded by Mr. Brennan. Motion was carried.

Chairman Rose commented that the area variance has been granted. Hopefully you understand our position of building something and then coming in for an approval. Most of us on this Board share that opinion. I hope that the minutes are read by the Building Department after this meeting and understand that the Board doesn't like to post approve a pre-built project. We don't want to put anyone in that financial harm for doing that. That is not the intent of this Board.

Hodorowski Homes, Rolling Hills Subdivision

Chairman Rose commented that this is an area variance request. The public hearing opened at 7:30 p.m. The applicant is proposing to construct a home in the Rolling Hills Phase III Subdivision. The front yard setback is lacking 6.14' at the building setback line and the applicant was denied a building permit. The Board did visit the site and this is a brand new construction site in this development. There is no house currently on the property and it is a corner lot, which means there are two front yards technically. This is causing the issue here.

Mr. Michael Groff was present and he represents Hodorowski Homes. As you said, he is the homebuilder in Phase 2 and 3 of Rolling Hills. It was brought to my attention by Hodorowski Homes that they wanted to build a house on this lot. But because of the two front yards with two 50' setbacks and the lot being very narrow on the Ridgewood Road side, the proposed standard house really won't fit. Just for the record, we are looking for a 6.1' variance and I apologize that the site visit this past Saturday was somehow messed up and no one came. Hopefully you all saw the stake locations as to where the house was going to be located.

Chairman Rose commented that we did walk the property and it was clear to us where the house would be located. It would have been better if you were there, but we did talk to a representative of Hodorowski Homes and did get some general explanation of what is going on there. It is our understanding that the house you are seeking a variance for the sale fell through? Therefore there is no current sale pending on that property.

Mr. Groff commented: yes that is correct. The buyer would not go to contract unless this could be worked out here.

Chairman Rose asked if there was still a reason to pursue a variance for that specific house?

Mr. Groff commented: yes, because that lot will need a variance for any of the Hodorowski home styles. We would limit the variance request to the 6.1' variance request. If it were approved that would be the limit variance we would want.

Chairman Rose commented that if the next purchaser comes in and wants a different house and the layout is different, would that require us to amend the variance request?

Mr. Hansen commented: yes, it would if they change the dimensions or if they were going to move the house or if the house were going to be bigger.

Mr. Chauvin, Town Attorney, commented that any change in the configuration or the footprint of the home that was proposed to be built there, that exceeds the variance that was granted, there is no reason and you don't have a requirement to grant a further variance, theoretically, that you would grant tonight.

Chairman Rose commented: we would try to approve the minimum required variance.

Mr. Chauvin commented: we don't know what would be built there. They are attempting a limit and you have to decide whether you are comfortable with that as a Board on a theoretical basis or whether we want to make sure we know what is going to go there. That is the Board's pleasure.

Mrs. Jordan commented that the problem here is that part of the test is, can what your trying to do, build a house, be achieved by some other means than having this variance and right now because you don't have a specific house or buyer for a specific house to be on that land, you can very well build a house within the ordinance, without a variance at this point.

Mr. Geoff commented that he didn't know how to approach this issue. Most builders have about half a dozen floor plans for various homes that they build. Perhaps one with a two-car garage or a three-car garage, side load, front load, porches and that kind of information. This house that we are proposing here is pretty much their standard home and they built quite a few in this development. I don't think the developer would have any problem sticking to this footprint and have the 6.1' variance. If that is what you would approve, the builder would be happy to hold to that. There isn't much that can go on this lot. It is very narrow. Did I answer your question?

Mr. Hansen commented that I think the question that I understood was, what is to prevent him from saying this to a proposed buyer who isn't going to know what house we are talking about anyway. Theoretically the builder wouldn't propose it to him if they can't meet the standard to begin with. Out of his six basic houses that he sells, is there one of them that would fit this lot without a variance. That is the question Mrs. Jordan is asking.

Mr. Geoff commented, actually no. This is the smallest house with a front load garage. All the other homes are bigger with three-car garages or additional bedrooms and sunrooms. We specifically picked this house because it's the only one that would even be a near fit in these setbacks.

Mrs. Jordan commented: that is what I am getting at. Is there a reason why you still need a variance? You are telling me that the reason is because it's the smallest house that the builder has that could be built on it. It would still need this variance.

Mr. Geoff replied, yes that is correct. Sorry for the confusion.

Vice-Chairman Tedrow commented that what is now an access road to the water tower; I think the application says that there is a possibility that could be town Road for access to lands behind at some point in the future. At this point, is there a gleam in someone's eye for a project back there? Is there anything in the works? Is this to be an access road for sometime as far as you know?

Mr. VanWert, 39 Angle Lane commented that his property is adjacent to this property in question. Yes, we are in negotiations and currently have the entire area surveyed for the possibility for a road going through that land coming from the water tower road.

Mr. Geoff commented that ultimately, at some time, it will be a town road at some point I have no doubt about it.

Chairman Rose asked if anyone else wanted to speak?

Mr. VanWert again commented that he is adjacent to the property and doesn't see any reason why this should not be passed. There is no problem with aesthetics. They are building a wonderful development there. One more house with a small setback variance is not going to change the character of the area.

Chairman Rose closed the public hearing at 7:40 p.m.

"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."

Chairman Rose commented that he doesn't see any impact here it's a brand new development. It appears to be inline with what you are building in this development.

Vice-Chairman Tedrow commented that we could also note that the neighbor on one side, across from the access road, is the water tower and not another residence.

Chairman Rose commented that he has significant point; your neighbor is a water tower, as you know.

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

Mrs. Jordan commented that she would do that one that is why she asked the question. No I don't think it can be achieved by some other method, because as explained, this is the smallest house than can be built on this lot. By choosing their smallest house, they are trying to stay within in the minimum that they can.

Mr. Brennan commented that this is exactly what he heard and it is a clarifying statement to what is written to number 2 where it says this is the standard house for the subdivision. I heard that was the smallest house, which is a subtle, difference, but a difference non-the less.

"Whether the requested area variance is substantial."

Chairman Rose commented that again 6.1' is not a substantial request.

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

Mr. Hansen commented that it would have a significant impact on the physical characteristics. When the Board was there to look at the lot at the site, because of the topography, it would almost be impossible for someone with a naked eye to notice the difference between the 50' and the 43.9', because of the way the land is sloped.

"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. Brennan commented: without seeing a survey map of the entire area, it is difficult to say whether they could have made up that margin through the other properties. Based on the number of parcels that the builder wanted to develop there, and that being butted up against the road, which requires the proper easements, I would say that the variance doesn't fall under negative impacts with number 5. It was not necessarily self-created; it was just something that happened at the end of the development cycle.

Chairman Rose commented that I would have to believe too, Mr. Brennan that when you were measuring out lots like this in a large development, that it's 6' one way or the other is within a reasonable amount to make an error when parsing through properties. I have a hard time believing that they did that on purpose. They could have moved the access road over by about 5', but I don't know how that decision gets made. I am assuming that it's a math error when you're making the plot in a big development like that. That is why I would say that it's not substantial or self-created either.

"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."

Chairman Rose asked if anyone would like to make a motion?

Motion was made by Vice-Chairman Tedrow to approve the request for the front yard variance of 6.1'. Seconded by Mr. Brennan. Motion was carried.

Brendan Murphy, Werner Road Lot A & B – Area Variance

Chairman Rose commented that this is an area variance request. Briefly, the applicant owns two lots on Werner Road since 1971 and both lots have 15,000 sq. ft. of area. The Local Law relating to Zoning for the Town of Halfmoon requires each lot with water and septic requires 20,000 sq. ft. of area. The applicant was denied a building permit from the Building Department and for the record these will be treated as two separate applications. They were referred to Clough, Harbour for their review and comment on the Engineer's Report regarding drainage concerns raised by adjoining residents. Subsequently, there is an Engineers Report made by Paul Male. We have had several site reviews one this previous Saturday May 18th which Mike Bianchino, CHA was present and John Pingelski, Highway Superintendent as well as builder, applicant, Board Members and Engineer. We left the last meeting open, so this is still a public hearing technically. You can come up to the podium and speak.

Mr. David Taylor, 403 Hudson River Road, commented that he has been a Town of Halfmoon resident his whole life and four generations before him. I see some familiar faces on the Zoning Board and some new faces. I am here tonight because I have seen some things happen in the last few years. I am not real happy with them. I have a unique insight to this particular parcel in mind, the one that states that the applicant owns 2-parcels on Werner Road since 1971. My current address is 403 Hudson River Road. The applicant claims that these two parcels he's owned since 1971 and I believe that to be true. I remember when the first house was built on that road. When the first house was built on that road, my Dad lived on that road, and still does for some 48 years. I also lived on that road back 20 years ago at 48 Werner Road, which is adjacent to a home that was built 30 years prior to that owned by Mr. Roy Cheeze, a retired Engineer from GE. So living there for 10 years and seeing everything happen, gives me a unique perspective. The one thing that I want to say that I have seen is Mr. Roy Cheeze has a sump pump that runs continuously. On occasion, he would take time off and go on vacation to visit his sisters and one time when he left and came home, the water table in that area sought its own level because his sump pump stopped working. So he had water in his basement. He didn't have just a couple inches of water the water in his basement could be measured in feet between 2-3' deep. My point being its not just a drainage issue on these parcels in question. It is also a water table issue. That is one of the ways I know. The other way I know is I've been an excavating contractor my whole life. I hooked up several water laterals and sewer laterals right on Werner Road on both sides of the street. I can tell you anywhere you dig more than 24", you have hydraulic soil. The reason being is the water is being held up by the clay that sits on top of the shale and further up the road near Werner's Grist Mill is held up by ledge rock.

Ledge rock is very easy to see if you just go down Route 146, before you hit Route 236, there is a rock cut on both sides. That Ledge rock follows all the way into the new development behind the homes on Werner Road. Water is a problem there everywhere. Again, it's not just the surface drainage issue. That is only one issue and it's a primary issue. The other issue is the hydraulic soil that makes for unsuitable building conditions. I'm not saying that it can't be corrected; certainly anything can be corrected if you want to throw enough money at it. My point is this; because of water conditions of a high water table, they have created two catastrophic situations. 48 Werner Road has been structurally compromised, the building has lost its structural integrity and it no longer exists. The footings have heaved up 2 1/2 - 3" so that the gutters now do not drain out the one end and it gravitates the water, so it fills up with ice and wants to tear off the building. The columns of brick on the building tipped over forward because the footing heaved up and tore the brick right off the building. It is still that way today. You don't have to take my word for it; you can see it for yourself. The blacktop driveway didn't last a year because the ground water heaved. Simple physics. Wet sand penetrates deeper frost than dry sand. The sand there is so wet that if you took a shovel at the driveway at 48 Werner Road and dug into the ground, it will fill up with water. It is that simple. That building was placed right on the water table. Mr. Shees home adjacent to it was placed 2 1/2' below the water table. Now the reason why I say this is catastrophic is because we have two pieces of real estate that have a market value of supposedly over \$500K a piece that can't even be marketed. Why can't it be marketed? Because it can't pass a structural examination. A simple home inspection will fail that. I work with home inspectors all the time I work with engineers. I work with soil testing engineers. I work with hydro geologists. I work with a plethora of professionals. I know exactly what I am talking about. It's not rocket science. It takes 15 minutes to take a walk over and take a look at it. Now I know that there members of this Board that went over there to do a visual inspection of the lot and the surface drainage. I commend you for that. A lot of times that doesn't even happen. But what you can't see with the naked eye is under the surface, which is called the water table. It is pretty common to a lot of contractors, but to linemen its not. When you are trying to build on top of the water table, you have problems. One scenario to rectify that is to bring in compacted soil and bring it up in the lifts and build higher. The higher the building gets, the more negative pitch you have on the slope to the adjacent lots. The soil that was pushed into those lots, which I happened to witness, one truck load at a time from John Lucarelli in 1993 when I put the water main through pushed the dirt right over the top of the wetland vegetation, logs, wood and debris. The engineer can tell you when you put dirt over the top of wood you are asking for trouble. You will always have an unstable situation.

You can't build a building on top of that. At the very least, there has to be some soil observation done on the lots to look at the debris, to look at the hydraulic water table, to look at the wetland vegetation that is being buried and by the way that's not illegal. We are only talking less than an acre. With a minor subdivision, federal wetlands don't care. State lands don't care and the ACOE, if one lot or less, they tie a blind eye. In this case, I stand before you to tell you if any lot was ever unsuitable for building, this is that parcel. My profession is builder excavator.

Chairman Rose commented that there is a neighbor that is not able to be present at tonight's meeting his name is Mr. Duane Martin, I will not read his letter but it will be part of the record. His understanding of what will happen if this is approved and about his conversations with the builder Mr. Vaccarelli of Schuyler Builders it's just his point of view and a statement of fact. The letter is dated April 30, 2013.

Chairman Rose commented that he has a question for the Town Engineer. Mr. Bianchino, as we know the ground is wet there and there appears to be issues with the water that is currently going through the property. I would like to get your assessment of what you saw from the site visit regarding the water and then I do have a few follow-up questions after that.

Mr. Bianchino, Town Engineer commented: When we were out Saturday with the members of the Board we did observe the site and we did walk through the site and we did see the drainage swale that they want to relocate. In looking at the rest of the site and the parcels behind them and the drainage way behind the lots, I did ask the applicant a question regarding wetlands. It does appear to me, based on the initial review, that there are some wetlands on the two parcels. The applicant did indicate that they had some sign off letter from DEC and I had asked about the ACOE because my concern, based on what is there, is that it appears to be ACOE wetlands. I think I had said to the Board that if I could find, and I didn't know if I had the approved subdivision plans, the subdivision for behind these lots, I would look into it. I did find those plans this morning in the office and the plans do include ACOE delineation.

Chairman Rose asked if he was referring to the Werner Road PDD?

Mr. Bianchino commented: yes it is. I am referring to the stamped plans of 1994, I believe. At the time, it did show that the entire swale that runs along the back of the Werner Road PDD parcels was ACOE wetland. But the delineation basically stops at the property line. It doesn't go beyond that. Based upon what we could see in the swale and what we see on the parcel, it would be my, and I am not a wetland expert, experience it would appear that a lot of that site is ACOE certainly the swale would be part of the wetland structure and I would say that the wet area on the other side of Werner Road, where the culvert goes, that area is probably ACOE wetland as well.

Chairman Rose commented: so by that Mr. Bianchino, you mean we have responsibility or jurisdiction?

Mr. Bianchino commented that they would have jurisdictional wetland in that it meets the criteria for ACOE and because this one does eventually drain down to the McDonald's Creek based on the Engineering Report I read from the PDD application. It does appear that that area would have been jurisdictional for ACOE and again at the time it was delineated when the subdivision was approved and constructed with limitations on the wetland disturbance, you can see it if you go through the subdivision. Portions of that area were not built upon. Again, my question to the applicant was should we get a jurisdictional determination from ACOE to make sure in fact that this area is not jurisdictional and that there is not an issue with filling, which again would have to be done obviously to construct even one house on this parcel, would have to be filled in order for it to be built upon. That was my observation based upon what we saw Saturday and what I found in the file with the subdivision plans.

Chairman Rose asked if the Board had any questions with that?

Vice-Chairman Tedrow commented: To be caught up on the Corp of Engineer process, whether or not we approve this being kept as two lots or become one lot as the ordinance provides. If the Corp of Engineers would find most of this area as being wetland, could they actually stop the construction of any houses on this lot?

Mr. Bianchino commented: Again not being a wetland expert, my experience is that for larger projects, they will look at the entirety of the wetland and the disturbance that is associated with it. The fact that this development was done years ago and the fact that this parcel stands on its own, they would probably not pull things together. They may look, however, what is going here and what is going on the east side of Werner Road and make a determination as to whether they feel there is any jurisdiction there.

With a small isolated wetland, typically they would not be involved. They would say it's not their jurisdiction. For a wetland that extends beyond the parcel and goes further and obviously was identified as a ACOE and delineated and protected as such, I would say there is a chance that they could do something there and require some mitigation but I am not sure what. It certainly is something I would caution that we should at least ask the question. I believe the Planning Department has asked that question before of the applicant to get an answer on that. If the question was asked, we could go to ACOE directly, but not being the property owner it would more appropriate for the applicant to make that request and get a response back from the ACOE.

Chairman Rose commented: so that request was made prior to August of 2012 at a Planning Board meeting?

Mrs. Zepko commented: We had discussions with Mr. Vaccarelli whom I was emailing with subsequent to the November meeting when the Board had requested a wetland delineation and they came back and said well DEC says they are not there. That doesn't mean that there are no wetlands on the property and we have not been able to receive that determination from the applicant since that request. Again, that was November 2012 about 6 months ago when we had that discussion.

Chairman Rose commented: that from your professional review of the site, I walked the site and my opinion is that it's going to be very difficult to put two houses back in there without affecting the current water situation there. There is running water on that property coming in from across the street. How would two houses with a lot of mitigation look like engineering wise? Is that one box culvert in the front to redirect the water or is that multiply changes that would have to occur to keep that water from affecting the neighbors and affecting the Werner Road PDD for that matter? Pushing the water back the other way.

Mr. Bianchino commented: The applicant's plan and the Engineer is here to deal with the drainage swale and direct it around instead of going through the center of the parcel. The goal was to intercept the culvert with a structure as it comes out from under Werner Road. The structure would allow another pipe to direct the water north and then pick it up again in another swale that would run along just inside the property line out to the rear. Dealing with just the swale portion of it can be easily diverted around the site. The issue that the site visit raised to me was about the wet conditions, the wetland area itself and the impact we would have on the ground water conditions.

We have some other issues where we have seen some requests for some infill development and it has occurred in some other areas (years ago) and when you fill areas that generally make up a portion of what I will say is the natural basin in which water pools. It's a natural area in which water will tend to go so it doesn't flood, basically the only area in which the water goes that is available because it's a low area surrounded by higher areas. Now when you go and fill that area in, the water has to go somewhere. And that is always the concern. Where does the water go from there? We have had meetings with neighbors recently who indicated that there was a development about 15 years ago that filled in some area that probably was ACOE, but at the time it was before the regulations were strictly enforced and it created some other ground water issues in and around that area. It is a phenomenon that happens; we see the ground water levels change as a result of certain development. Mostly we can try to deal with the issue by road under drains and basement drains and so on. For areas where those houses and the areas not equipped with that, it does create issues. It is definitely a question I would like to have a little more input on.

Chairman Rose commented: I have a question for Mr. Zaccarelli or the properties owner, so in November a request was made to you to get a wetland delineation from the ACOE. Why was that not carried out?

Mr. Vaccarelli commented that I am not opposed to going to ACOE for permitting, I've done it before and it's not an issue. What I would like to see at this point is we are in a zoning scenario and we definitely would have issues with planning and engineering. I think at this point we should address the water issues potentially with my Engineer to vote on it and to proceed subject to Engineering and Planning. This is an area variance and not necessarily drainage and engineering issue.

Chairman Rose commented: I disagree with that because one of the tests is if the proposal has an impact on the environment, so I see it fits in both places both planning and zoning boards. That is why we are asking the question. I respectfully disagree with your opinion.

Vice-Chairman Tedrow commented: that he has a question regarding inter-governmental relations. In this case, does the Town have a responsibility to get an ACOE check-off and is there an inter-governmental agreement with review of wetlands and so on in building and zoning decisions? Or do we just say its up to the property owner to figure that out as to what the Corps interest is?

Mr. Bianchino commented: What Mrs. Zepko said is kind of what I was thinking and that is that in many instances and the way we used to look at things, it was always let the applicant or the buyer beware that we think you may have an ACOE issue and it's up to you to figure that out and we will continue on our review. However, in a case like this, where you are asked to make a determination, in my opinion, are these lots appropriate for two buildings? Then I think it's a valid question and certainly is one in my opinion should be answered.

Mr. Brennan asked: What part of that is a valid question? Should the Town be involved in the ACOE?

Mr. Bianchino commented: Yes, again, based on procedure the way we use to do things years ago, before it was more about we take our action and the ACOE would have their jurisdiction and we don't interact. However, in this case it is an important fact to know for the Zoning Board to make that determination and the Building Department to make the determination of are these buildable lots. Procedurally this doesn't go to the Planning Board. There is no reason for this to go to the Planning Board. It's not a subdivision and theoretically the lots already exist. What the Board is looking at is whether a building permit could be issued on the two existing lots. There is no reason for this to go to the Planning Board. There will be no planning review. Once it leaves the Zoning Board, it's in the hands of the building department.

Mr. Brennan asked: If we were to grant this variance is there any interdependency with how the building department will react to this based on the fact that we went through these four five measures and have approved them positively. For instance, specifically, if it's in our opinion, it's not going to significantly change the characteristics of the neighborhood.

Mr. Chauvin, Town Attorney commented: When you say interdependency, what do you mean?

Mr. Brennan commented: The fact that we have gone through the five measures and find them in a positive light, we approve them based on the results of the five tests. Does that set a precedent that can be carried down the road?

Mr. Chauvin commented: that it would in that the building department would treat this as appropriate buildable lots for 2 structures. You would be setting these as appropriate to be built in the fashion that the applicant has requested. Therefore, the building department would abide by that determination.

Chairman Rose commented: that is his opinion and the opinion of the Town Engineer is a compelling opinion and needs to be exercised so we get more information. It would be of my opinion that we ask the applicant to have a DEC wetland study with an ACOE report.

Mrs. Zepko commented that we have a report from DEC.

Chairman Rose commented: I don't recall reading it other than they sought their approval. It was mentioned that it was approved.

Vice-Chairman Tedrow commented: that DEC just looks at big wetlands and the ACOE looks more granular than DEC.

Chairman Rose commented: that obviously we all walked the property. It has a lot of water issues. It appears to be a very wet area on the property itself and surrounding the property. It's a very loose soil area and so much water that even the neighbor took it upon herself to put her own pipe in her own backyard to drain the water away. There are significant issues in that area that is compounded with what I interpret our Town Engineers opinion to be. I think it needs some greater review it is my opinion.

Mr. Hansen commented: that he would agree with that.

Mr. Brennan commented: I will add to the Chairman's comment that I would have a hard time making a determination without that further information.

Chairman Rose commented: I just want to make it clear. Mr. Bianchino did you say that the swale was already identified as ACOE?

Mr. Bianchino, Town Engineer commented: as part of the original subdivision Werner Road PDD, when that project was originally reviewed, the map does include wetland delineations for the entire parcel. It identified ACOE wetlands for all of the subject parcels of the PDD and they stopped at the property line, but the entire swale area was included in the ACOE at that time.

Chairman Rose commented: that his recommendation would be to keep the hearing open and let the applicant respond by the next meeting or hold the meeting open until the applicant can respond to that. If that is what you so choose, I don't think we will come to a vote tonight without that information.

Mr. Vaccarelli commented: we can start the process; it is a several month process.

Chairman Rose commented: I am assuming that we can keep the hearing open for the length of time required. Could we keep it in a pause mode and keep it open?

Motion was made by Mr. Hansen and seconded by Mrs. Jordan that we keep the hearing open until we get the information we are looking for. Motion was carried.

Motion was made by Mrs. Jordan and seconded by Vice-Chairman Tedrow to adjourn tonight's meeting. Motion was carried.

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