

Town of Halfmoon Zoning Board of Appeals  
Meeting Minutes  
March 1, 2010

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:13 p.m. on Monday, March 1, 2010 at the Halfmoon Town Hall with the following members present:

Members: Mrs. Jordan and Mr. Rose  
Alternates: Mr. Burdyl- will be voting tonight  
Town Attorney: Lyn Murphy  
Planner: Mrs. Zepko  
Secretary: Mrs. Mikol

Motion was made by Mr. Rose and seconded by Mrs. Jordan that the minutes from the January 4, 2010 meeting be approved. Motion was carried.

Estate of John F. Leyerle, Use Variance, Parcel # 268.-1-22.11, Hudson River Road

Chairman Hansen commented that from the application and the review of the submitted site plan, it was hard to determine what was going on as far the existing lots and what is being done with them . Other than the existing homes what was the subdivision that was done in 2007?

Mr. Flanders was present representing the applicant. Mr. Flanders commented that the original M-1 parcel was approximately 49 acres and in 2007 when John Leyerle was alive he subdivided 2 of the larger parcels. Now, there is 29.5- acres left. The balance of the land is being subdivided into 2 residential lots consisting of 8.842 and 12.194 acres respectively, and also adding more land to existing lots #950 and #966 Hudson River Road. This area is across from Lock 2.

The Department of Environmental Conservation (DEC) and Army Corp of Engineers (ACOE) wetlands were shown on the plan.

There was much discussion at the counter between the Board Members and Mr. Flanders regarding what is being done with the land and the proposal before the Board As well as review of the submitted plat. (These discussions could not be heard on tape.)

Chairman Hansen asked Attorney, Mrs. Murphy, when the much larger parcel was subdivided in 2006 it was all non-conforming residential because there were 2 houses on this huge lot. In 2008 they subdivided 2 lots putting each house on their own lot. The entire lot was non-conforming residential at that time when the new subdivision was created.

Mrs. Murphy commented every time they add a house or expand a boundary it is an expansion of a pre-existing non-conforming use so if they just get a use variance for the lot based on the fact that it's not developmental as an M-1 due to wetland constraints and it's in conformance with the surrounding uses then the residential use is allowable and they would not have repeatedly come before the Board. As it exists now under M-1 use, every time they make a change they will have to come twice for a public hearing once for the special use permit for an expansion of a non-conforming use and once for the actual subdivision depending on what they are doing and how they want to do it. The thought process was to change the use of the entire parcel one time, and then they can apply to the Planning Board without having to worry about all these variance hearings.

Chairman Hansen said, let me understand what you are saying, if this proposal was approved as a non-conforming use, subdivided as a non-conforming use, or even if they just came in to subdivide it to build a house, they would have to apply for a variance.

Mrs. Murphy commented that the subdivision is one action and adding a house is an expansion on that action. Like adding a porch to an existing house in a non-residential zone, you can't do it because it's an expansion of that use. This lot has so many wetlands on it, it's not usable for the use it's zoned, which is M-1. This makes this lot a unique circumstance. It's easier for the applicant and economy of the governmental administration, to do one use variance and everything will be conforming for that variance.

Mr. Rose commented that it's two actions under the non-conforming use pursuant to Article 12, Section 165-65 of the Code of the Town of Halfmoon counterproductive to this because Article 166 nullifies it.

Mrs. Murphy commented that they would have to extend it every time they make a lot line adjustment or added a house or an extension or enlargement took place. The code has a provision created to allow for residential in a non-residential zone with a special use permit granted by the Planning Board, but they would have to do the special use permit as well. The lot line adjustment is an expansion of pre-existing non-conforming use because you are not allowed to adjust the lot lines as you would with a special use permit for the residential use in an a non-residential zone. They would have to hold several different hearings to accomplish what they wanted to do or they could change the use on that one lot by meeting the 4 criteria for this variance.

Mr. Rose asked if they would need a use variance on the other 2 lots that will be made larger?

Mrs. Murphy commented that the Board would do the whole parcel, then you would not have to piece meal everything.

Mr. Flanders asked if you wanted to do a lot line adjustment with a neighbor that already has houses and is already pre-existing non-conforming and they didn't propose to build anything would they still need a variance?

Mrs. Murphy commented the vacant parcel isn't pre-existing non-conforming there is nothing on it so its M-1. You loose your pre-existing non-conforming when you subdivide off land. It reverts back to the original zoning. Once you do the subdivision and cease the use of the parcel for the non-conforming use, the non-conforming use expires so that is what is causing the problem in essence.

Mr. Rose commented that it's not a non-conforming use now. Mrs. Murphy commented that the vacant parcel is not. Mr. Rose commented that the Board was thinking that it was. Mrs. Murphy stated that it was expired.

Chairman Hansen stated what is going to happen here is that the applicant is asking for a variance for the property outside these existing uses. We are not giving a variance to the pre-existing non-conforming uses that are included in the lot line adjustments. These other properties are all under their own ownerships so we are not giving them a variance because they haven't applied for a variance.

Mrs. Murphy commented that the entire parcel is going for a use variance. All the applicant is asking for is a use variance so those proposed new residences are permitted and the Planning Board will do the rest of it.

Chairman Hansen commented that his point is that the existing home owners lots will still be existing non-conforming uses and they will have to come into the ZBA every time they want to do something.

Mrs. Murphy commented that she didn't think so because all the property surrounding them is going to be zoned residential so if you are expanding a residence into a residential area you are in compliance.

Chairman Hansen commented that these lots because they have not applied for a variance are going to be little islands of non-conforming uses within a variance granted for residential use around them.

Mrs. Murphy commented that she thought the entire parcel including those lots were here before the Board and didn't know these little pieces were being taken out but the method to the madness still works because if everything around it is zoned residential they are expanding into residential use so they are conforming.

Chairman Hansen said that his point is that within their existing lots if they wanted to build a garage or put an addition on, that would be an expansion of a pre-existing, non-conforming use. It seems like the only way this could be cleaned up is to rezone all the parcels residential.

Chairman Hansen said that the whole parcel should be rezoned. Mrs. Murphy stated that you can't spot zone but you can do a use variance based on the difficulties due to the topography. Chairman Hansen further commented that they would all have to become parties of the application. Mrs. Murphy agreed.

Mr. Rose commented otherwise you would create a situation where two existing lots would have to come in and ask for a use variance or an extension of a pre-existing, non-conforming use. Mrs. Murphy replied, correct. It depends on what they want to do. We are trying to streamline.

Mr. Flanders commented that if the neighbors want to build or expand on their property they would have to apply for their own variance, why create a hardship on my client? Why involve other people who don't intend to do anything right now?

Chairman Hansen commented that we could act on their application but it will not do anything for those existing parcels.

Mr. Flanders commented that all he is trying to do is to convey to them some land to resolve boundary line issues, subdivide a piece of land they don't need, and realize a small profit from it from 2 boundary line changes.

Mr. Rose asked, do you think those people would react negatively to being rezoned to R-1 in a variance action? Mr. Flanders commented that these people were not spoken to about that.

Mr. Rose commented that these people will be notified of the hearing and hypothetically they could ask the question during the hearing of why am I not classified residential as well. I think that we do need to make it clear to them that they are not.

Mr. Rose commented that in spirit of what we are trying to do, we are trying to correct the entire area and we are not correcting the entire area. I think Mr. Flanders is asking us to correct the entire parcel including these two existing lots with residential homes and you are not doing that. I see that you are requesting to extend boundary lines.

Mr. Burdyl asked if this could be made into a P.D.D. for the use on the two new lots? Mrs. Murphy commented that the only problem you will have is if you make it into a P.D.D. there is a public benefit that they would have to come up with. Mr. Burdyl commented that the public benefit could be the preservation of the existing wetlands. Mrs. Murphy commented that it would be a much more complicated process. They meet the requirements for the use variance and this would be the simplest route to take.

Mr. Rose asked if it were out of character for us to notify them that there is a request for a variance on this property and recommend that they make the same request at the same time? Mrs. Murphy commented that you could do that if you are at the public hearing and wish to be heard, it just isn't necessary from a legal standpoint. If they want to add a garage it's a pre-existing non-conforming but it is my understanding that they just want to adjust the lot lines and that will make them more conforming because the size will then be in conformance with what our residential lot size is supposed to be therefore, they would not have to do anything as long as they are moving into residential territory which is what this use variance is permitting them to do.

Chairman Hansen commented that I know this would be an odd scenario but what could happen here if say that the Derico lot and the other lot maybe non-conforming for area for an M-1 zone someone could come along and want to put

in a Stewarts because it's a permissible use in an M-1 zone because they are not being rezoned the non-conforming use. They are a non-conforming use because they are a residence but if someone wanted to come in with a fist full of money and say we want to put in a body shop, they could sell it next to other lots that are zoned residential. The minimum lot size in an M-1 is not that large if you have no utilities its 60,000 and 150' of frontage. I am just thinking out loud that people maybe eluded in thinking that there will never be an M-1 use near them but there certainly could be.

Chairman Hansen asked Mr. Flanders if you could document that this land has been up for sale and has been offered at market prices? Chairman Hansen said that Mr. Flanders should be prepared to argue the point of why this should be rezoned. It could be speculated that no one wants it as it's been on the market for 5 years without sale.

Chairman Hansen commented that the applicant came to the Town for a permit to build a house and was denied and that is why they are before the ZBA.

Mrs. Murphy commented that through the use variance criteria you could do it for the parcel that isn't yet developed because there isn't enough upland area to develop as a M-1. That is unique to your big parcel, it's not a Town-wide application. There is already residential existing in the area and you did not create the hardship you didn't create the wetlands. So you meet the criteria for the use variance, which is what makes this parcel unique.

Mr. Rose asked how you could call the area residential when everything in the area is an M-1 use. Mrs. Murphy commented that the zone is M-1 but the use in the area is residential.

Chairman Hansen commented that you could also argue that if you didn't subdivide this parcel there is enough land in the area to use as a permitted M-1 use.

Mrs. Murphy commented that because of the wetland problem you could not develop the land. It is my understanding after my conversation with the Planning Staff that because of the restrictions you can't build on the wetlands.

Chairman Hansen asked Mr. Flanders to bring in his ACOE plans to the public hearing.

Mrs. Murphy commented that they are here for the use variance. It will take care of the majority of the problems, however they still have to go before the Planning Board to finish the subdivision process.

Chairman Hansen asked the Board if they had enough information to set a public hearing for the request.

Motion was made by Mrs. Jordan and seconded by Mr. Burdyl to set a public hearing for Monday, April 5, 2010 at 7:00 p.m. Motion carried.

Motion was made by Mr. Rose and seconded by Mrs. Jordan to close the meeting at 8:10 p.m.

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