

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
January 6, 2014

Chairman Rose called the meeting to order for the Town of Halfmoon Zoning Board of Appeals at 7:03 p.m. on Monday, January 6, 2014 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Hansen, Mr. Brennan, Mr. Burdyl
Town Attorney: Mr. Chauvin
Town Liaison: Mr. Polak
Town Engineer: Mr. Bianchino, Clough Harbour & Assoc.
Storm Water Management Officer: Ms. Zepko
Secretary: Mrs. Mikol

A motion was made by Mr. Hansen and seconded by Vice-Chairman Tedrow to approve the minutes from the December 2, 2013 meeting. Motion was carried.

Chairman Rose welcomed everyone to the first meeting of year; we have some housekeeping to take care of:

- Motion was made by Vice-Chairman Tedrow and seconded by Mr. Hansen to adopt the 2014 Zoning Board Schedule. Motion was carried.
- Motion was made by Mr. Hansen and seconded by Mr. Brennan to appoint Mr. Tedrow as our Vice-Chairman for the year. Motion was carried.
- Motion was made by Mr. Hansen and seconded by Mr. Brennan to appoint Mrs. Mikol as our secretary for the year. Motion was carried.
- Motion was made by Mr. Brennan and seconded by Mr. Burdyl acknowledging the application fee increases by the Town Board for \$125.00 for residential applications and \$200.00 for commercial applications, previously fee was \$77.00 for each. Motion was carried.
- Motion was made by Mr. Hansen and seconded by Mr. Burdyl that we all wish Mrs. Jordan good luck in her new position as a Town Board Member. Chairman Rose commented that Mrs. Jordan is no longer on the Board of Appeals we are going to wish her well. She will be sorely missed, she has been a great asset to her community and to the Town, she is a vote of diversity on the Board from her experiences and brought a great perspective, we will definitely miss her and we know she will do a great job on the Town Board. Motion was carried.

- Motion was made by Mr. Hansen and seconded by Mr. Burdyl that the Board of Appeals follow 267 Article 16 of the Town Law to conduct their duties, right, powers and functions as a Board. Motion was carried.

Chairman Rose commented: that the public hearing is still open and would appreciate it that if anyone wishes to speak to please come up to the microphone and state your name and address for the record.

Brendan Murphy, Lot 50A and 50B Werner Road is requesting an area variance. Mr. Murphy has owned the lots since 1971. Each existing lot has an area of 15,000 sq. ft. The Local Law relating to Zoning of the Town of Halfmoon requires a minimum lot area of 20,000 sq. ft. The applicant was denied a building permit from the Building Department. (Each lot will be reviewed as two-separate applications) At the last meeting the applicant was required to apply for a jurisdictional wetland determination from ACOE.

Mr. Paul Male was present, he is representing Mr. Vaccarielli. It involves two lots on Werner Road both owned by Mr. Murphy for over 30 years. Part of the original subdivision that occurred many years ago is the two lots that were never built on. They are both 100' x 150' 15,000 sq. ft. each. There is nothing unique about these parcels. There is some brush on them, concrete debris, grass clippings, drainage issues with an existing wet water corridor that is on the side of one of the lots. Our proposal is to go back and install a catch basin and re-direct the flow to stay on the property, and re-direct it to the rear of the property to an existing water course that was developed for the subdivision to the rear of this property. We talked to NYS DEC as far as the wetland goes, it was not jurisdictional as far as they were concerned. We then went back and forth with some engineering things with the Town. The last thing that came up was determining wetlands with the ACOE. We did submit a package to them on June 10, 2013, and one of things that came out of that review was the need to have SHPO review the plan as well. (NY State Historic Preservation Office) We submitted the plan to them on September 2013, and then to ACOE again in September 2013. On October 11, 2013 we received a no effect letter from SHPO and a permit from ACOE on October 15, 2013, and a revised Engineer's Report on October 30, 2013, which addressed a number of the drainage issues. I went back and forth with Mr. Bianchino, CHA on some drainage issues. I believe we addressed everything he was looking for. The biggest issue was how we are going to construct these homes as far as basements or no basements. There will be no basement. They will both have sewer and water. We will retain the storm water on site permitting impervious surfaces and that is essentially and that's where we are at right now with this project.

Vice-Chairman Tedrow commented: The SHPO acronym that is NY State Historic Preservation Office?

Mr. Male replied: Yes. Apparently if you comply with the ACOE that is an automatic requirement that they have so we had to submit to them too. They did sign off on it.

Mr. Burdyl commented: Did ACOE give you an approval or were there some issues?

Mr. Male replied: No there were no issues.

Chairman Rose commented: That was one of the questions we had during the site visit was the maintenance of the storm drain. I know you were going to have that conversation with our Town Engineer regarding that. I hadn't seen any further correspondence on that.

Mr. Chauvin commented: Chairman Rose my recollection, and the minutes will reflect that, is there was a conversation about the application putting deed restriction language along with a maintenance agreement in place which would be reviewed by the Town Attorney's Office and ultimately be a condition of approval that that language meet with the approval of the Town Attorney's Office. The maintenance agreement has been submitted and we proposed the deed restriction language that would need to be included for these parcel which has not been submitted. With a couple of minor changes the maintenance agreement that has been provided by Mr. Vaccarielli is largely satisfactory. That would avoid any dedication or ownership or maintenance responsibility on the part of the Town. That was one of the things we have discussed with the Town Highway Superintendent along with this Board. The Town Board would not be interested in taking ownership of any of the storm water management areas on this site.

Chairman Rose commented: Just to clarify, Mr. Chauvin, you are in conversation with the applicant. Do you think you can reach an agreement with them?

Mr. Chauvin commented: Yes, I have, and there is a couple of minor changes that we will need to make but it will also have to be read in conjunction with the deed restriction language which I have not received so there is no point in changing one until I have seen the other. Again, you can make your decision if it were the Board's pleasure. I am not advocating one direction or the other. If it's the Board's pleasure to approve this then certainly you can do it with the condition that the language be reviewed and approved by the Town Attorney you don't have to have that language for you to make a decision one way or the

other that is something that I can handle with the applicant directly or the applicant's council.

Mr. Burdyl commented: From what you have seen so far each individual homeowner will be required to do the maintenance of the catch basin?

Mr. Chauvin commented: The catch basin would only be on one lot. The maintenance itself would be tied to the lot that the storm water management area is on.

Mr. Burdyl commented: That is one of the two lots.

Vice-Chairman Tedrow asked Mr. Bianchino, Town Engineer, has all the engineering questions been answered about the Town's interest for Lot A and Lot B Werner Road.

Mr. Bianchino responded: Yes, based on last submission from Mr. Male, that was made and we responded to the comments that were made previously by not only our office but the Board as well. We did get a response back from Mr. Male, in the beginning of December we did review that information along with the calculations and the plot plans that were shown. All of our comments are satisfied at this point.

Chairman Rose commented: Mr. Male, have you submitted the proposed sized houses you are planning to build on the two lots?

Mr. Male commented: I think in the response that we had, it was submitted to Mr. Bianchino to review. We had the largest house that would basically fit on the lot with a couple feet on each side just to give us flexibility. That's with the impervious areas and the largest size house. It may not be that size but until we know who will purchase the lots we are not going to have the actual house configuration.

Chairman Rose commented: That would be determined at the next step of the phase hypothetically speaking everything is reviewed before moving forward.

Mr. Male commented: The one lot that has the drainage on it is going to be smaller than the other one because we have the easement set aside for that. I think the size houses we are looking at, to answer your question, is approximately what is already there so it should be comparable perhaps a raised ranch and essentially keeping with the character of the neighborhood.

Mr. Brennan commented: How do these lots compare to the ones that are there adjacent to these two parcels?

Mr. Male commented: They are identical.

Mr. Brennan commented: So they are 15,000 sq. ft. as well?

Mr. Male replied: Yes. The subdivision was created back in the early 1970's they were all 100' of frontage and 150' deep with 15,000 sq. ft. of area. They were all comparable lots.

Chairman Rose commented: I have noticed from the conversations we were going from basements to no basements with slabs. If the houses were to be proposed with basements would there be issues of water?

Mr. Male commented: I think the reason we went to the slabs is because of the existing ground conditions out there. I don't think there was ever the intent to put basements in.

Chairman Rose commented: Yes, I am aware of that but would basements have been an issue?

Mr. Male commented: Yes, probably. With the comments we have gotten from the neighbors I would assume that would be the case.

Chairman Rose commented: The slab is the best alternative. Do the Board Members have any other questions? I don't have any more questions therefore; we will proceed to the next step. Anyone from the public have any comments?

Mr. Dwayne Martin, 52 Werner Road commented: I live right next door to this property; I am just asking the Board to enforce what you have in place. There is no crazy circumstance for them to be able to build 2 houses on this property. Its one owner on both pieces of property, there is no large piece of financial loss by doing one house versus two houses. These folks have had these lots for years as we already said and the laws have changed since they had the property as we all know. I am just asking that you enforce what is in place as a member of this community.

Chairman Rose commented: Thank you, Mr. Martin for your comments.

Mr. Brennan commented: Do we have an updated map of the property? Do we have anything that shows a larger area of the neighborhood?

Mr. Male presented a map to the Board.

Mr. Brennan commented: You mentioned a right-of-way for the drainage, can you show me where that would be located? It's not shown on the plan.

Mr. Male commented: Lot A will be just a standard lot and Lot B will be the lot with the catch basin and the easement on it for the 10' swale.

Mr. Burdyl commented: Will the driveway remain the same? Will the catch basin be underground to that driveway?

Mr. Male commented: One driveway will be shifted to allow the swale to run along the side of it.

Mr. Martin, 52 Werner Road commented: I know we went over something earlier maybe last year or earlier this year about where the swale was going to be has that changed? Has the drainage swale location changed the drainage swale, I know you are talking about the catch basin and from the catch basin it was going to go to a swale that would go to the rear of the property and it was going to be 10' off the property line, has that changed? This plan doesn't show the swale that was discussed previously.

Mr. Male commented: This is the proper location of the swale shown on the map. This is where we proposed it the location has not changed. The catch basin location was shown to the members and a new ditch along the property line.

Mr. Burdyl commented: Is that right at the property line?

Mr. Male commented: No, it's about 10' away.

Chairman Rose commented: Just to summarize what I have been hearing, the swale will go on Lot B and re-configured to be closer to the property line running off the drainage ditch as we explained during the site visit.

Mr. Male commented: Yes.

Mr. Brennan commented: Please walk me through the position of the swale again in relation to where a proposed house would be and in relation to the property line. I am trying to get an idea of where the house is going to be located and where the swale will be located.

Mr. Male commented: Let me show you on this map.

Mr. Brennan commented: You said the swale dimensions would be 20'?

Mr. Male commented: The swale would be a proposed 20' easement 10' from the property line to the center line and 10' from the center line to the side easement.

Mr. Burdyl commented: So what is the width of the swale?

Mr. Male commented: The actual width of the swale would be 2'-3'.

Mr. Burdyl commented: Under heavier rain conditions what would be the effective width of the water course be?

Mr. Male commented: It might be about 4'-5' perhaps.

Mr. Burdyl commented: You can add the 4'-5' water course under torrential rains in that 21' area.

Mr. Male commented: Right now there is a water course that takes water so we are not increasing the flow at all.

Mr. Martin commented: There is also a water course in another direction out front along the road.

Mr. Male commented: We can't interrupt that flow.

Mr. Burdyl commented: The feeder area will have a slope that will pick up the water run off from the road? Is that what you are saying?

Mr. Male commented: Yes.

Mr. Burdyl commented: What is the approximate water course width of the current area? I understand that would be some kind of estimate.

Mr. Male commented: I don't want to give you any width because the water course is in the rear of these properties, if you looked on the drawing, the folks in the rear lots have put debris, branches, grass clippings, leaves, etc...and have created a situation that doesn't allow the opportunity for the water to flow very well. That is the problem. If the people did not fill this up the way they did this would probably flow very well. The reason why I am hedging not to answer your question is because there is no specific channel it just kind of backs up.

Mr. Burdyl commented: So it will basically back up into this rear because you are not going to do anything here in the rear of the lot, correct?

Mr. Male commented: This is not our property.

Mr. Burdyl commented: That is the way it's going to be now.

Mr. Male commented: There is a drainage pipe that was installed by the homeowner; I believe it's about an 18" pipe and it probably should have been placed deeper than he did it but again I don't think they did it with any engineering plan.

Mr. Burdyl commented: That is the relief of this lot now, is there any relief on the other lot?

Mr. Male commented: We don't need it.

Mr. Burdyl commented: I know that Mr. Martin at 52 Werner Road has no water issues and he has stated that. The neighbor on the other side of these proposed lots, Mrs. Fellows of 48 Werner Road had commented that she has water issues.

Mr. Male commented: We are not going to change anything; there will be a swale between all the lots as typically there are between all lots.

Mr. Burdyl commented: So you will be installing a swale here on the second lot?

Mr. Male commented: It will be graded just a minor grade to pick up any water that's coming off the site.

Mr. Burdyl commented: Will you then grass it in?

Mr. Male commented: Yes.

Mr. Brennan commented: Just to clarify, when you say there are no changes to the lot the only change is that you're building a house on it.

Mr. Male commented: Correct. All the impervious surfaces will be picked up with a small infiltration area to pick up the additional water from the impervious surfaces.

Mr. Martin of 52 Werner Road commented: I know that there is a drainage issue on this property and I think you have all seen it when you did your site visit.

Mr. Burdyl commented: Yes, that was the brick house, correct?

Mr. Martin commented: No, the brick house is mine. It's the other house to the left when you're looking at it. That has major drainage issues over there.

Mr. Male commented: The drainage issues that are there now have to do with the existing right-of-way, at the existing Werner Road. It has nothing to do with these two lots. It's because of the way the road is graded and the way they graded their driveways.

Chairman Rose commented: Is it a fair question to ask that with two additional homes on the neighboring lots would it re-direct the water in such a way that it would create more water issues for the neighbors or less?

Mr. Male commented: The plan that I submitted shows putting in small little areas to pick up the storm water which is what DEC is pushing us to try to collect it on-site. There are no designated wetlands as far as DEC is concerned but what CHA asked us to do is to look at trying to take any impervious surfaces we have. So we took the driveway, we took the house, garage and maximized the total impervious area and sized those two to accommodate what water comes off in those areas.

Mr. Burdyl commented: So what is your solution again.

Mr. Male commented: We will have depressions on the lot that will take water. The depressions are about a foot deep. They will be on the corners of the house.

Mr. Male commented: These locations are not exact. The depressions will be along the driveway, at the corners of the house, behind the house, etc. It will pick up the roof drainage and gutters and direct it to the depressions. It would just be a depression in your yard. It's like a rain guard without the rocks and will be a mowed grass area, same concept.

Mr. Burdyl commented: They are not going to drain anywhere it will allow the water to soak in.

Mr. Male commented: Correct, they are all on-site the water will not run in any direction.

Mr. Burdyl commented: Is that the idea too?

Mr. Male commented: This is just an approximate wetland area in the back of the lots. When the ACOE was out there they designated a small area behind the lots, we are not touching that or changing that area.

Mr. Burdyl commented: So that is a designated wetland area.

Mr. Male commented: The ACOE came back and said that what we are proposing to do is fine; they did not make any comments on that.

Mr. Male commented: We are just trying to allow the construction of two homes which are comparable to the lots that are in the neighborhood when this was subdivided. These are the two lots that were left over otherwise there would already be homes on these lots now.

Chairman Rose commented: Mr. Martin's property after a day of so much rain and snow how much water is the swale now? Is it coming up close to your property between the two lots? It looks re-configured in these pictures. Does water currently move over toward your property from that? The land was kind of mushy when we did the site visit down in the corner of your lot.

Mr. Martin commented: I can't see the swale, I don't have any water. There is no water on my property, not ever.

Chairman Rose commented: The proposed change which will move the water closer to Mr. Martin's lot.

Mr. Male commented: The existing lot is as it stands now. His lot is at a higher elevation and we will maintain the difference in elevation.

Chairman Rose commented: Is there is a reasonable expectation that you have engineered here? Will Mr. Martin have a similar experience after construction?

Mr. Male commented: No, it should be the same with no difference.

Chairman Rose commented: Are there any further questions? This is an area variance request for Mr. Brendan Murphy's Lots A and Lot B Werner Road. I will close the public hearing seeing that there are no further comments by the Board or the public.

Mr. Chauvin commented: We are officially closing the public hearing after several meetings. I just want to confirm that you are in fact closing the public hearing. I just want to make sure we are clear.

Chairman Rose commented: Yes, Lots A and B Werner Road, the applicant owns 2 parcels and there is 15,000 sq. ft. of area on each lot and the zoning currently requires 20,000 sq. ft. of area. There are two separate applications, two separate motions. The postal numbers are 50A and 50B Werner Road.

The first resolution will be regarding 50A Werner Road.

"The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Enforcement Officer, to grant area variances as defined herein."

"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."

Vice-Chairman Tedrow commented: This really has two points to it, the first point is will an undesirable change be produced in the character of the neighborhood, the lot area is the same size, sounds like the houses are comparable so I don't think there will be a change in the character of the neighborhood except it will have two more houses. The question of detriment to nearby properties is what we have been spending most of our time on. Will the drainage situation on adjacent properties be made worse by the proposed development, I think that after all the studies that have been done and reviews I believe our Engineering Consultant is advising that the drainage will not be worse in terms of impact on the adjoining properties. On both of those elements of this first test I would say there will not be an undesirable change or a detriment to nearby properties from the information we have received.

Mr. Burdyl commented: I agree and have seen the engineering information here and the insurances from the developers and the owner. I am highly skeptical that the lots will not have a detrimental impact as a result of the modifications; that is my concern.

Vice-Chairman Tedrow commented: Can you describe the negative impact?

Mr. Burdyl commented: I do not think under heavy rain conditions that the swale solutions will be adequate. I believe there will be flooding and excessive run off. Again, that is my belief I do not have an engineering survey behind me but that is my belief.

Chairman Rose commented: I kind of share your comment that you are worried about the water there. The question I asked the engineer, does the applicant or the neighbors have a reasonable expectation of no detriment to their property based on what is there today and what will be there tomorrow. I have to rely on them to tell us from a professional point-of-view that that would be the case and I think we are here representing the Town of Halfmoon and the neighbors. I have to rely on the judgment of the engineers on that piece of land and I do worry about the water there. That water runs from the field across the street and there is probably no way to predict what water will run-off from across the road. I do think they have some fail safes and that is what I have been driving at from my comments. That the catch basin be maintained and not be neglected so there is at least a chance for that to go. The Town Attorney is looking at the maintenance agreement and I think we have covered that basis. I do respect your opinion obviously.

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

Mr. Hansen commented: I think the only options there are is either to build one house there or two, there is nothing in between.

"Whether the requested area variance is substantial."

Mr. Hansen commented that it is substantial in respect to the current ordinance which requires 20,000 sq. ft. but it's not substantial when you compare it to the other lots on the street. In fact, I think from the original subdivision map that is in our file as I recall from looking at it all of those lots were 100' by 150' in the original subdivision, is that correct? There is nothing unique about these lots individually they both are the same size as all the other lots in the immediate vicinity in both directions on Werner Road.

Mr. Brennan commented: I agree with your comments with a slight exception when we are talking about substantial change we are talking about a deviation from 20,000 sq. ft. to 15,000 sq. ft. twice not just on one single lot, it's two lots. It would be two, with two applications in front of us right now. I think the characteristic comment probably boats well toward the 15,000 sq. ft. the neighbors lots are also the same size. The characteristics is the same. As far as the substantial change I am going to comment that I do think it is substantial when you are looking at both of the lots.

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

Mr. Hansen commented: I don't believe that we heard any testimony quantifying the difference in run-off between the lots as they exist today and the lots as they would exist with houses on each one. I didn't hear that study unless I missed it. Was there any quantification in the flows?

Mr. Male commented: Chairman Rose may I answer that? Chairman Rose replied the public hearing is closed but I will allow you to answer that question.

Mr. Male commented: In the initial Engineer's Report we did a pre-in-post drainage condition even before we looked at any of the impervious surfaces. It was just the general determination of what the increase would be in relatively minor actual cubic feet per second. As far as percentage goes, it was so small it was probably a higher percentage. When we came to picking up the run-off from the impervious areas we addressed that at 100%. It was reviewed by Clough, Harbour and Associates.

Mr. Bianchino commented: The plan by Mr. Malo shows the on-site storage areas for that additional run-off at those volumes.

Chairman Rose commented: From a physical point-of-view, with the water today on those lots it's hard to walk through the property to determine what a house would look like or do there. I would think that with the driveway, the roofing, and the gutters moving the water to certain spots on the property should elevate any major concerns of the water running in one direction or another. There is a substantial impact here because the water is already there. It's coming not just from the house but all directions around the house. It's water lying behind the houses, water coming from across the street, it's moving and channeling through that area from two sites. It is a very active water site. I think there is a significant impact from a physical perspective on that property. The idea of building houses wouldn't even improve or decrease the situation is really what I am after. I think that what I have heard in testimony is that it wouldn't increase the amount of issues of water issues to the neighbor's, I think that has been said hear a couple of times. So it's substantial but what they are doing won't increase it anymore or any greater amount. Is that true Mr. Bianchino; is that a good conclusion that I could come to?

Mr. Bianchino, CHA commented: Yes, I think that is a good conclusion and I think that the additional run-off as a result of the impervious areas introduced to this site would be handled on-site. The impact of relocating the stream to the northerly edge of the parcel from a quantity stand point it doesn't really change the quantity it just moves the location.

"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. Hansen commented: I would say it was not self-created. The original subdivision and whatever the requirements were in the Town Ordinance at that time is what was followed. I don't remember if this was pre-zoning in the Town depending on the exact year of the original subdivision. Is that marked on one of the maps? Does it refer to a subdivision map date?

Mr. Burdyl commented: It says August 8, 1994, would that be correct?

Vice-Chairman Tedrow commented: That would be for Dater Woods PDD behind this strip of houses.

Chairman Rose commented: The two maps I have here for lots A and B have current dates on them, going back to the application it says the lots were acquired by the applicant on September 17, 1971.

Mr. Male commented: He did not speak into the microphone.

Chairman Rose commented: Mr. Hansen, your point was the fact that it was not a self-created hardship because there was a subdivision prior to zoning in the Town, is that accurate?

Mr. Hansen commented: No, that is not accurate, because the original zoning for the Town of Halfmoon began in May 1969 and that is when the first ordinance was adopted. I think there may have been subdivision regulations prior to that. Not by much maybe by a year or so. Without a zoning ordinance there probably wasn't a minimum lot requirement unless it was in the subdivision regulations, I'm not sure about that.

Chairman Rose commented: Looking at the lots each of the other lots in the neighborhood are all 15,000 sq. ft. of area, right?

Mr. Hansen replied: Yes, in the immediate vicinity, yes.

Chairman Rose commented: Are there any other points to be made on any of these tests? No one responded.

Vice-Chairman Tedrow made a motion to approve the requested area variance for 50A Werner Road contingent that the deed restrictions and maintenance agreement language be acceptable to the Town Attorney.

Mr. Chauvin commented: I would just ask the Board to please, if you're going to vote independently on each lot that you make the motion for 50B Werner Road in the same fashion so that it would also be contingent upon the receipt and approval of all necessary language, if it were to be approved, in addition to the maps that we have are not updated with the current proposed positioning of the swale drainage etc... culvert. They don't show the culvert out to the right-of-way so we would need that updated map and the map would need to contain a note indicating that the storm water management areas on the property would be owned and maintained by the property owner and are not be dedicated to or maintained by the Town and are subject to the deed restriction and maintenance agreement language as is the swale. The map will need to be reviewed by Clough, Harbour and Associates to make sure it's in accordance with their Engineering comments and reflects the most up-to-date independent drawings that we have gotten. We have received multiple independent drawings we just don't have one combined map, we will need that to be stamped if it is ultimately approved by this Board.

Vice-Chairman Tedrow commented: So we do need the language on Lot 50A even though it doesn't have the swale on it but it has the on-site storage area so you want to have this applied for anyway.

Mr. Chauvin replied: Yes.

Mr. Hansen commented: I will make a second to the motion for 50A Werner Road. Motion was carried.

"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."

The SECOND resolution will be regarding 50B Werner Road.

"The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Enforcement Officer, to grant area variances as defined herein."

"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."

Vice-Chairman Tedrow commented: This really has two points to it, the first point is will an undesirable change be produced in the character of the neighborhood, the lot area is the same size, sounds like the houses are comparable so I don't think there will be a change in the character of the neighborhood except it will have two more houses. The question of detriment to nearby properties is what we have been spending most of our time on. Will the drainage situation on adjacent properties be made worse by the proposed development, I think that after all the studies that have been done and reviews I believe our Engineering Consultant is advising that the drainage will not be worse in terms of impact on the adjoining properties. On both of those elements of this first test I would say there will not be an undesirable change or a detriment to nearby properties from the information we have received.

Mr. Burdyl commented: I agree and have seen the engineering information here and the insurances from the developers and the owner. I am highly skeptical that the lots will not have a detrimental impact as a result of the modifications; that is my concern.

Vice-Chairman Tedrow commented: Can you describe the negative impact?

Mr. Burdyl commented: I do not think under heavy rain conditions that the swale solutions will be adequate. I believe there will be flooding and excessive run off. Again, that is my belief I do not have an engineering survey behind me but that is my belief.

Chairman Rose commented: I kind of share your comment that you are worried about the water there. The question I asked the engineer, does the applicant or the neighbors have a reasonable expectation of no detriment to their property based on what is there today and what will be there tomorrow. I have to rely on them to tell us from a professional point-of-view that that would be the case and I think we are here representing the Town of Halfmoon and the neighbors. I have to rely on the judgment of the engineers on that piece of land and I do worry about the water there. That water runs from the field across the street and there is probably no way to predict what water will run-off from across the road. I do think they have some fail safes and that is what I have been driving at from my comments. That the catch basin be maintained and not be neglected so there is at least a chance for that to go. The Town Attorney is looking at the maintenance agreement and I think we have covered that basis. I do respect your opinion obviously.

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

Mr. Hansen commented: I think the only options there are is either to build one house there or two, there is nothing in between.

"Whether the requested area variance is substantial."

Mr. Hansen commented that it is substantial in respect to the current ordinance which requires 20,000 sq. ft. but it's not substantial when you compare it to the other lots on the street. In fact, I think from the original subdivision map that is in our file as I recall from looking at it all of those lots were 100' by 150' in the original subdivision, is that correct? There is nothing unique about these lots individually they both are the same size as all the other lots in the immediate vicinity in both directions on Werner Road.

Mr. Brennan commented: I agree with your comments with a slight exception when we are talking about substantial change we are talking about a deviation from 20,000 sq. ft. to 15,000 sq. ft. twice not just on one single lot, it's two lots. It would be two, with two applications in front of us right now. I think the characteristic comment probably boats well toward the 15,000 sq. ft. the neighbors lots are also the same size. The characteristics is the same. As far as the substantial change I am going to comment that I do think it is substantial when you are looking at both of the lots.

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

Mr. Hansen commented: I don't believe that we heard any testimony quantifying the difference in run-off between the lots as they exist today and the lots as they would exist with houses on each one. I didn't hear that study unless I missed it. Was there any quantification in the flows?

Mr. Male commented: Chairman Rose may I answer that? Chairman Rose replied the public hearing is closed but I will allow you to answer that question.

Mr. Male commented: In the initial Engineer's Report we did a pre-in-post drainage condition even before we looked at any of the impervious surfaces. It was just the general determination of what the increase would be in relatively minor actual cubic feet per second. As far as percentage goes, it was so small it was probably a higher percentage. When we came to picking up the run-off from the impervious areas we addressed that at 100%. It was reviewed by Clough, Harbour and Associates.

Mr. Bianchino commented: The plan by Mr. Malo shows the on-site storage areas for that additional run-off at those volumes.

Chairman Rose commented: From a physical point-of-view, with the water today on those lots it's hard to walk through the property to determine what a house would look like or do there. I would think that with the driveway, the roofing, and the gutters moving the water to certain spots on the property should elevate any major concerns of the water running in one direction or another. There is a substantial impact here because the water is already there. It's coming not just from the house but all directions around the house. It's water lying behind the houses, water coming from across the street, it's moving and channeling through that area from two sites. It is a very active water site. I think there is a significant impact from a physical perspective on that property. The idea of building houses wouldn't even improve or decrease the situation is really what I am after. I think that what I have heard in testimony is that it wouldn't increase the amount of issues of water issues to the neighbor's, I think that has been said hear a couple of times. So it's substantial but what they are doing won't increase it anymore or any greater amount. Is that true Mr. Bianchino; is that a good conclusion that I could come to?

Mr. Bianchino, CHA commented: Yes, I think that is a good conclusion and I think that the additional run-off as a result of the impervious areas introduced to this site would be handled on-site. The impact of relocating the stream to the northerly edge of the parcel from a quantity stand point it doesn't really change the quantity it just moves the location.

"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. Hansen commented: I would say it was not self-created. The original subdivision and whatever the requirements were in the Town Ordinance at that time is what was followed. I don't remember if this was pre-zoning in the Town depending on the exact year of the original subdivision. Is that marked on one of the maps? Does it refer to a subdivision map date?

Mr. Burdyl commented: It says August 8, 1994, would that be correct?

Vice-Chairman Tedrow commented: That would be for Dater Woods PDD behind this strip of houses.

Chairman Rose commented: The two maps I have here for lots A and B have current dates on them, going back to the application it says the lots were acquired by the applicant on September 17, 1971.

Mr. Male commented: He did not speak into the microphone.

Chairman Rose commented: Mr. Hansen, your point was the fact that it was not a self-created hardship because there was a subdivision prior to zoning in the Town, is that accurate?

Mr. Hansen commented: No, that is not accurate, because the original zoning for the Town of Halfmoon began in May 1969 and that is when the first ordinance was adopted. I think there may have been subdivision regulations prior to that. Not by much maybe by a year or so. Without a zoning ordinance there probably wasn't a minimum lot requirement unless it was in the subdivision regulations, I'm not sure about that.

Chairman Rose commented: Looking at the lots each of the other lots in the neighborhood are all 15,000 sq. ft. of area, right?

Mr. Hansen replied: Yes, in the immediate vicinity, yes.

Chairman Rose commented: Are there any other points to be made on any of these tests? No one responded.

Vice-Chairman Tedrow made a motion to approve the requested area variance for 50B Werner Road contingent that the deed restrictions and maintenance agreement language be acceptable to the Town Attorney.

Mr. Chauvin commented: I would just ask the Board to please, if you're going to vote independently on each lot that you make the motion for 50B Werner Road in the same fashion so that it would also be contingent upon the receipt and approval of all necessary language, if it were to be approved, in addition to the maps that we have are not updated with the current proposed positioning of the swale drainage etc... culvert. They don't show the culvert out to the right-of-way so we would need that updated map and the map would need to contain a note indicating that the storm water management areas on the property would be owned and maintained by the property owner and are not be dedicated to or maintained by the Town and are subject to the deed restriction and maintenance agreement language as is the swale. The map will need to be reviewed by Clough, Harbour and Associates to make sure it's in accordance with their Engineering comments and reflects the most up-to-date independent drawings that we have gotten. We have gotten multiple independent drawings we just don't have one combined map, we will need that to be stamped if it is ultimately approved by this Board.

Vice-Chairman Tedrow commented: So we do need the language on Lot 50B even though it doesn't have the swale on it but it has the on-site storage area so you want to have this applied for anyway.

Mr. Chauvin replied: Yes.

Mr. Hansen commented: I will make a second to the motion for 50B Werner Road.

Secretary Mikol asked for a Role Call:

Chairman Rose – Aye

Vice-Chairman Tedrow – Aye

Mr. Hansen – Aye

Mr. Brennan – Aye

Mr. Burdyl – Nay

Motion was carried.

"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."

Mr. Chauvin commented: A copy will be provided to the Board for their files regarding all languages and contingencies for this area variance. I am sure it will take some time going back and forth with the language and the final map will also be submitted to the Town for the file.

Motion was made by Mr. Hansen and seconded by Vice-Chairman Tedrow that the meeting be closed. Motion was carried.

The meeting was adjourned at 8:00 p.m.
Respectively submitted by Denise Mikol, Secretary
Town of Halfmoon Zoning Board of Appeals