

Town of Halfmoon Zoning Board of Appeals
Meeting - Monday January 5, 2015
7:00 p.m.

Chairman Rose called the Monday, January 5, 2015 Town of Halfmoon Zoning Board of Appeals Meeting to order at 7:06 p.m. with the following members present:

Members: Vice-Chairman Tedrow, Mr. Hansen, Mr. Burdyl, Mr. Brennan
Alternate Member: Deborah Curto – absent
Secretary – Mrs. Mikol was absent
Town Attorney: Ms. Kathy Drobny
Planning Department: Paul Marlow
Councilmen: Mr. Hotaling

Chairman Rose commented: Happy New Year to everyone, we will start by taking care of our housekeeping items.

Motion was made by Mr. Brennan and seconded by Mr. Tedrow that the 2015 meeting schedule be approved as presented. Motion carried.

Motion was made by Mr. Burdyl and second by Mr. Hansen that we appoint Mr. Tedrow to act as Vice-Chairman of the Board for 2015. Motion carried.

Motion was made by Mr. Burdyl and seconded by Vice-Chairman Tedrow to appoint Mr. Rose as Chairman to the Zoning Board of Appeals for 2015 and in his ability not to chair, a secretary shall preside – Chairman Rose abstained. Motion carried.

Motion made by Mr. Hansen and seconded by Mr. Burdyl to appoint Mrs. Mikol as Secretary for 2015. She shall conduct all official correspondence, compile the required records, maintain and keep in order the necessary files and indexes, supervise the clerical work of the Board under Roberts Rules of Procedures under Section 267 Article 16 of the Town Law and conduct their duties, rights, powers and functions of the Board. Motion carried.

Motion made by Mr. Burdyl and seconded by Mr. Brennan that the Board of Appeals follows Section 267, Article 16 under the Town Law to conduct their duties, rights, powers, and functions of the Board. Motion carried.

Motion made by Mr. Hansen and seconded by Mr. Burdyl to approve the November 3, 2014 Zoning Board Minutes. Motion carried.

Motion made by Mr. Burdyl and seconded by Mr. Hansen to amend the minutes of December 1, 2014 to include Vice-Chairman Tedrow as being present at the meeting. Motion carried.

Chairman Rose commented: We have one item on the agenda tonight which is a public hearing.

OLD BUSINESS:
PUBLIC HEARING:

Joseph Backowski – 4 Mann Blvd. 222.13-1-41

Chairman Rose stated Mr. Backowski received a letter from Code Enforcement on October 10, 2014 and was issued a stop work order on October 8, 2014 for construction of a garage without a building permit. He applied for a building permit on October 27, 2014 and received a denial. Pursuant to General Code for the Town of Halfmoon, Article VII Section 165-34, accessory buildings; height and location of residential accessory buildings may be erected within rear and side yards in accordance with the following requirement: rear or side yard five feet from side or rear property line, Section 2 side yard, street side of corner lot same as for principal building not closer to principal building than 10 feet.

Chairman Rose commented: Mr. Backowski is requesting an area variance to finish construction of a 24' x 24' garage in the front of his primary structure. Construction of this building is not within Town Code.

Mr. Van Guilder, Land Surveyor commented: I am representing Mr. Backowski and he is applying for an area variance for his garage to be placed in front of his primary structure. In reviewing the definition in the Town's Zoning Ordinance the rear yard is established by the projection of rear line of house and from side yard to side yard. The garage is located ahead of the house. It does set back 106.3' from the right-of-way. A normal building set back line is 50' according to the zoning. The existing house is 141' from the ROW, which is substantial from the road. This is a unique circumstance; behind the house is a wooded area so the building is screened. There was no clearing done to construct the garage. This outlines the reasoning of why the garage was placed where he put it. Are there any questions from the Board?

Mr. Burdyl commented: What is the rationale for the garage being in front of the house rather than in the rear where the utility shed is located.

Mr. Van Guilder commented: Mr. Backowski plans on keeping the garage and would have had to dismantle or move it. With the driveway configuration and large set back from the road, he felt this would work better for him. The garage doors face away from the road; they are not exposed to the road.

Mr. Brennan commented: I noticed in the report from our Zoning Board Secretary that there was a stop work order placed on the garage. Can you explain that?

Mr. Van Guilder commented: Mr. Backowski can explain that better than I can.

Mr. Joe Backowski, 4 Mann Blvd. commented: I am aware of the procedure to get the project underway and I admit to jumping the gun. I work for an area builder and started construction before the plans were complete. I am embarrassed that I didn't apply for the permit first. I know I didn't follow the normal procedure and I do regret doing that.

Chairman Rose commented: Mr. Backowski did as he was asked and applied for a variance. The building is not out of character or an eyesore.

Chairman Rose asked if there were any other questions from the Board or the public. No one replied so the Chairman closed the public hearing.

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

Mr. Hansen commented: he does not see any detriment to the area. Was there any correspondence from neighbors stating they had a problem with the garage?

Chairman Rose checked the file. Notices were sent out to the neighbors at 3, 5, and 6 Mann Blvd, and 380 Farm to Market Rd. Letters were received on behalf of the applicant stating there were no concerns with the location of the garage. Received letter from Steve and Mary Ciurczak of 6 Mann Blvd., Roy Topka of 380 Farm to Market Rd., Jean Decker of 5 Mann Blvd., and Darren and Megan Vian of 3 Mann Blvd. that they had no objection with the location of the garage at 4 Mann Blvd.

"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. Tedrow commented: it depends on the meaning of feasible. The only alternative is if the variance was not granted, the garage was removed, and was built in the proper place. That's not a feasible alternative, it's an extreme alternative.

Chairman Rose commented: I agree that if the applicant had followed the process, he would have been advised to build behind the house, or come before the Board and ask for a variance. Based on his statement, field visit and placing the garage in the front of the house rather than the back with the topography and tree line.

"Whether the requested area variance is substantial."

Mr. Tedrow commented: We are not dealing with distance, so it is not substantial.

Chairman Rose commented: I was thinking more of an impact to the neighbors. Far from road, natural drainage ditch that goes behind his property and substantial distance from neighbors. It's 24' from the house, the only substantial point.

Mr. Brennan commented: It's more than 24' from the front of the house and I believe it is substantial. It's in front of the house by a remarkable amount. If you take the 24' which is what the garage measurement is and subtract the 40', it's a substantial amount, not a casual 5'.

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

Mr. Burdyl commented: In reviewing the plan and the way the garages buffering was placed it does not appear to have a substantial impact on the neighborhood.

"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. Tedrow commented it was self-created.

Chairman Rose agrees.

Mr. Brennan commented: I also agree, the applicant had the knowledge of knowing the regulations and clearly created this situation in spite of what the zoning regulations are.

Chairman Rose commented: Is the Board ready to vote on this request?

Motion was made by Mr. Hansen to approve the variance request, it was not a pleasant way that this happened but the neighbors apparently did not object; there is not a lot of impact, seconded by Mr. Burdyl. Chairman asked for a roll call vote:

Chairman Rose – aye

Mr. Hansen – aye

Mr. Burdyl – aye

Vice-Chairman Tedrow – aye

Mr. Brennan – nay

Motion was carried.

Chairman Rose commented: Mr. Backowski you will have to apply for a building permit with the Building Department for your garage. Having no other business on the agenda tonight I will ask for a motion to close the meeting.

Motion was made by Mr. Hansen and seconded by Mr. Burdyl to close the meeting of the Zoning Board of Appeals. Motion was carried.

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