

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
March 5, 2012

Chairman Hansen opened the meeting of the Town of Halfmoon Zoning Board of Appeals at 7:04 p.m. on Monday, March 5, 2012 at the Halfmoon Town Hall with the following members present:

Members: Mrs. Jordan,
Members absent: Vice-Chairman Tedrow, Mr. Rose, Mr. Brennan
Alternates: Mrs. Smith-Law and Mr. Burdyl
Town Board Liaison: Paul Hotaling
Town Attorney: Mr. Chauvin
Town Planner: Mrs. Zepko
Secretary: Mrs. Mikol - absent

Chairman Hansen commented that Mrs. Smith-Law and Mr. Burdyl, alternates, would be voting tonight in the absence of Vice-Chairman Tedrow, Mr. Brennan and Mr. Rose.

Motion was made by Mrs. Jordan and seconded by Mr. Burdyl that the minutes from the February 6, 2012 meeting be approved. Motion carried.

Mr. Simmons, 139 Meyer Road

Chairman Hansen commented that the applicant, Mr. Simmons is requesting a front yard setback variance at 139 Meyer Road for a building he is purchasing and will convert into an office for a financial advisory business. He wants to put a covered porch and a handi-cap ramp in the front of the building that would encroach on the setback as it stands now.

The public hearing opened at 7:05 p.m. The notice was not read.

Mr. Simmons of 139 Meyer Road, stated the following: The property is under contract and for sale in the amount of \$220,000, conditioned upon governmental approval to make the use for professional offices. He has a site sketch of the existing structure and the proposed addition. The handi-cap ramp is not safe and was inspected so it needs to be safe and meet the code. The ramp will be 2' wider than what it is now.

Mrs. Jordan commented that the variance you are asking for is an area variance because the handi-cap ramp will encroach 5' beyond what is allowed into the front yard setback area.

Mr. Simmons commented that the encroachment is 2' the setback is 50' and we will be at 48'.

Mrs. Jordan commented that your application states 45'.

Mr. Simmons commented that maybe the number changed after the surveyor came as his map showed 48'.

Chairman Hansen commented that his map showed 45'.

Mr. Simmons agreed with the 45'.

Mrs. Jordan commented that part of the test that we have to do is to make sure there is no alternate way that you can build this roof over the handi-cap ramp without encroaching.

Mr. Simmons explained not if they want a roof over the handi-cap ramp that is correct. It could be built without a roof but it would not be a safe thing to do.

Motion was made by Mrs. Smith-Law to close the public hearing at 7:08 p.m. Seconded by Mrs. Jordan. Motion was carried.

Chairman Hansen read the tests for an area variance: "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. Burdyl commented that overall it has been a positive impact on the neighborhood and they are making a ramp wider and they are covering it. I think it would a safer situation at present.

"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 we discussed that the only alternative would be to not have a roof over the ramp. The roof is a nice addition.

"Whether the requested area variance is substantial."

Mrs. Jordan commented that I don't think it's substantial especially if you look at how the other buildings are in the neighborhood. Some are only 10' away from the road. When we went on the site visit this property was perhaps one of the furthest away from the road. It is not substantial.

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

Mrs. Smith-Law commented that it is actually an improvement on the characteristics of the building and hopefully it will encourage folks around them to take a look at their façade and make some improvements.

"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. Burdyl commented that it is necessarily self-created as part of the renovation project. Overall the renovation project would appear to have a positive impact on the local environment.

Mrs. Jordan commented not only on the local environment but that it will aid handicapped people that they will be able to access the building.

Chairman Hansen commented that after considering those tests we need someone to make a motion to either approve or disapprove the variance.

Motion made by Mrs. Jordan to approve the area variance and was seconded by Mrs. Smith-Law. Motion was carried.

Mr. Martin, 14 Bentgrass Drive

Chairman Hansen commented that the application is for a 2-car garage addition onto their existing home.

Mr. Bold commented that Mr. Martin wants to add a 2-stall garage attached to the existing structure. In order to get the width of the doors and be able to have the two bays it drove them past the normal 10' side setback to about 5 ½ feet. Hence, they are asking for a 5' side yard setback to construct the garage.

Mrs. Zepko commented that we asked for the stamped survey showing the setback at about 5'6" away.

Chairman Hansen asked where the survey map was? Yes it was in file.

Mr. Bold commented that it appears that the surveyor that they went to kept the original date on the title block of when the house was built. The plan was updated to show the distances for the new proposed garage.

Chairman Hansen commented that basically it looks as if the garage will come out about a foot or two from the edge of the existing pavement. That is what it shows here on the map.

Mr. Bold commented that it would be inside of the existing pavement.

Chairman Hansen commented that we didn't hear back from any of your neighbors.

Mrs. Jordan asked if everyone was notified from the public for the public hearing because no one came out.

Chairman Hansen commented that the certified mail receipts were all in the file. To the right of the house is 16' to the property line. Everyone was notified, Mrs. Mikol, Secretary sent out about 7 notifications to adjoining landowners.

Chairman Hansen asked if anyone else had any questions.

Mrs. Jordan asked why couldn't you scale it down and not have it so far over? You only have 5 ½ feet to the next yard with this addition.

Mr. Bold commented that it was really a matter of having the 2 full size doors for full size vehicles.

Mr. Martin commented that to be able to access the garage to have a front access pedestrian door that required 3' additional space in the front of the garage, which kind of pushed the garage over. We wanted the front access as apposed to a side door and having to travel through one garage and enter into the house that way.

Mrs. Martin commented that the other entrance to the garage would be coming out with the new addition and it would cover up the man door.

Mr. Martin commented that we would have to travel through two garages to get into the entry door inside the house. The overall distance and the safety portion of traveling through 2 garages in order to get to the side door is a concern of Mr. Martin's.

Mr. Burdyl asked that he be a little clearer by showing it on the diagram to the Board.

Mrs. Smith-Law asked if there were 2 individual garage doors or one big one?

Mr. Burdyl commented that the side door entrance to the garage would be facing your neighbor's house.

Mr. Martin commented that when the structure is built the entrance would be built inside the structure between the doors as opposed to the end of the 2 stalls. The travel would be less.

Chairman Hansen commented that the existing door goes through the side of the existing garage is that what you are saying? There is no hallway there correct?

Mrs. Jordan asked is there anywhere else on your property that you can build this garage and make this work.

Mr. Martin commented no. The way the lot tapers off so much toward the rear of the house that to build it off set of the 10' off the property line it would send all the drains directly into the garage. I have no area in the front.

Mrs. Jordan commented that when we were at your property it drops off in the backyard and goes down hill.

Mr. Martin commented that the run off would drop down as well into the new structure.

Mrs. Smith-Law commented that we showed the driveway going in. Is there already a garage there with a side entry?

Mr. Martin commented yes there is.

Mrs. Smith-Law commented that it would become a 3-car garage. Is there any way of having the one car door instead of 2 garage doors? The big separation in the middle would cut it down a few feet as well.

Mr. Bold commented that it certainly could be done except you couldn't fit two size vehicles in with one 16' door. People do it but you're pulling your mirrors in and then you can barely get out of the vehicle. A full size car and a pick-up truck is too tight.

Mrs. Jordan commented that your neighbors are not here so it leads me to believe that they are ok with this.

Mr. Martin commented that we have a real good relationship with our neighbors and they don't have a problem with it at all. The home next door is about 20 – 25' from the property line and if we should grant this variance the garage would be approximately 5'6" to the property line. Mr. Martin is a mechanic and would like to work on a car at home as well.

Chairman Hansen asked what is behind the garage wall now? Does it line up the back wall of the new garage with the back wall of the existing house? So there is no other step in the foundation and then you run into roof issues. Right now you are extending the roof of the existing house to the new garage.

Mrs. Smith-Law asked if there was something above the garage?

Mr. Bold commented that if the trusses work out right you could throw some totes up there or something. Not a room or anything.

Motion made by Mrs. Smith-Law to close the public hearing at 7:29 p.m.
Seconded by Mr. Burdyl. Motion was carried.

Chairman Hansen 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 the following:"

"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. Burdyl commented that it seems that they designed their addition to conform to the architect style in their neighborhood and they are maximizing the appropriate use of the space.

"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. Smith-Law commented that if the pedestrian man door was removed, it could be achieved without potentially needing a variance if the door were relocated to the side of the garage. I know it's inconvenient and it's not exactly what you are looking for. A garage could be achieved without a variance without the door in the front.

Mrs. Jordan commented that she agrees with that. I am just wondering if it could be re-worked a little bit.

Mr. Burdyl commented that the gentlemen brought up that from an emergency point-of-view if something happened in the house you wouldn't want to be running around 2 vehicles parked there and possible some atv's. I think the door being placed to the main house provides a safety benefit rather than traverse and the entire garage. I know my garage is not as tidy as it could be at all times but I think that is a significant factor. No I know it's not the only egress from the home. I was saying it for a safety point of view.

Mrs. Smith-Law commented that to have to go through the garage is common in a lot of houses. The majority of the houses have the same issue in the area. It is a nice thing but we have to be realistic about granting a variance when it can be achieved in other ways.

Mr. Burdyl commented how significant to the over-all variance is the door placement? Is this an issue on a scale of 1-10 is it an 8 or is basically a 3?

Mrs. Smith-Law commented that a door is what 36" and framing on either side? How much space does the door in the front of the garage take up?

Mrs. Jordan commented sometimes we all want things, but we do have a test to go through which is our law that we follow and we have the Town Law as far as setbacks. When we hear or suspect there is another way of achieving a goal we really have to explore that avenue. We can't just grant it because it's easier for you and it's nice and better for you that way. We have to abide by our laws and tests here.

Mr. Martin commented that if this were a detached structure from his house that side yard request wouldn't be a question, correct? The variance would not be needed, is that correct.

Chairman Hansen commented let me check on that.

Mrs. Zepko commented that you would need to be 10' from your home and no closer than 5' to the property line. Once your attached you need to meet the setback of either 15' on one side or 10' on the other side of your property.

Chairman Hansen asked if there were any other comments on that test?

"Whether the requested area variance is substantial."

Chairman Hansen commented that one of the options that they rejected because of an impracticality could have been to put the garage back further on the property bring in a lot of fill and put up a retaining wall.

Mrs. Jordan stated it would have to be a smaller structure because it would have to be 10' away from the house. It wouldn't be the same scale. Esthetically what they are proposing to do is more desirable than the alternative.

Mr. Burdyl commented yes, because you would also have a huge foundation poured there too because the property drops away?

Chairman Hansen commented that the garage would have to be sitting up out of the ground another 4-5'. Right now the driveway is even or a foot or two below the level of the existing house. It would be sitting on the ground or just be level with it. There are some practical considerations there like the part of not having to walk behind a vehicle to get through there; makes a lot of sense if you can do it. The single door aspect doesn't really work well with 2 vehicles. Even with small vehicles it's a hassle.

Chairman Hansen asked if we addressed the last one?
"Whether the requested area variance is substantial."

Chairman Hansen commented that basically, the way the regulations are written, it's 5'6" versus 10'. In terms of percentages it's substantial.

Chairman Hansen commented that this is a Planned Development District and I don't know if it applies to PDD.

Mrs. Zepko commented that this is a straight subdivision.

Chairman Hansen commented that his zoning map shows it as a P.D.D.

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

Mr. Burdyl commented that overall with the discrepancies we have discussed it conforms to the neighborhood and does not have a negative impact.

"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. Smith-Law commented that it is self-created because the structure can be built within the required setbacks that the Town has set-forth with some modifications.

Motion was made by Mr. Burdyl to approve the variance request for a 2-stall garage as requested. Seconded by Chairman Hansen.

Opposed by Mrs. Smith-Law and Mrs. Jordan.

Chairman Hansen commented that since there is no neighborhood opposition to the variance request and aesthetically you can't argue that if you take the door out it would make it less aesthetic but it just seems its an unnecessary requirement to impose, he thinks.

Mrs. Smith-Law commented that she voted the way she did because it is a pure convenience, and I understand that because I walk around my cars. I have a singlewide 16' door and one big car and one not so big car and shelves and I need to walk behind my car to get into my house or go out the side door. I am concerned that if we do this for one just because it's of personal interest that we set a precedent. I think it's beautiful and I get it but I really am favoring following the tests that we have to go through and it doesn't pass muster for me.

Mr. Burdyl commented to Mrs. Smith-Law that he doesn't feel this is a material issue to the granting of the variance. If there were some other consideration of the garage where it didn't impact the neighbors. If we had neighbors here that were upset about it and if it were a complete architectural departure from the rest of the neighborhood I would agree with you. I think the significance of this issue is not that high. It is an issue but not that high. We have in the past, with other applications, had greater issues than this that, in the end, did not result in denial. I feel it should be approved.

Mrs. Smith-Law commented that she respects that.

Mrs. Jordan commented that I'm following Mrs. Smith-Law's line of thinking; setting a precedent just because someone wants something and it is not falling within our tests or the Town Ordinance. What makes this property and this project so special to allow it and not someone else's when we tell other people that there is another way and to come back with another plan.

Mr. Burdyl commented because it's not material. It doesn't rise to materiality on a scale of 1-10 it's not an 8 or higher. It is a 5 or less.

Mrs. Jordan asked material to whom?

Mr. Burdyl commented material to the overall plan of the structure. You are talking about a placement of the door. Your not talking about a roof line, your not talking about a difference a difference in architectural style, your not talking about drainage issues.

Mrs. Jordan commented that I am trying to keep it further apart from the property next door that is where the variance is needed. It is a very large structure to be just 5' to the property line.

Mr. Burdyl commented that the structure next door is of the similar size, shape and architectural style. So you're not demeaning the neighborhood. You're not producing a "sore thumb" in the neighborhood. It is consistent with the neighborhood. The swimming pool down the way with all the fences sticks out more than this garage will.

Chairman Hansen commented that if there is no consensus here, unless someone wants to bring it up for another vote, we are at a tie. It's not approved by default.

Mr. Chauvin, Town Attorney made a comment however it was not on the microphone.

Chairman Hansen asked Mr. Chauvin if the application could be tabled until the next meeting when there were more Board Members present.

Mr. Chauvin, Town Attorney advised Chairman Hansen that yes it could be tabled for the next meeting until additional Board Members are present and then vote for a decision.

Motion made by Mrs. Smith-Law to table the action to April 2, 2012 and seconded by Mr. Burdyl. Motion was carried.

Chairman Hansen commented that the applicant could in the meantime maybe come up with another method to achieve their goal for the garage.

Motion was made by Mrs. Jordan and seconded by Mrs. Smith-Law to close the meeting at 8:00 p.m. Motion carried.

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