

Zoning Board Minutes - January 5, 2004

Those present at the January 5, 2004 meeting were:

George Hansen – Chairman
Allan Tedrow – Vice Chairman
Richard Drake
John Ouimet
Raymond Rose

Also present: Lyn Murphy, Deputy Town Attorney
Rich Berkowitz, Planning Board Liaison
Jeff Williams, Zoning Board Coordinator

Mr. Hansen explained to the ZBA members that the review and decision on the November '03 and December '03 ZBA meeting minutes will occur at the end of this meeting.

Susan Cafariella, Beach Road

Mr. Hansen explained that this item has been discussed at the two prior ZBA meetings. The applicant is seeking two area variances for a pre-existing, non-conforming residential parcel located on Beach Road in the Town of Halfmoon. The area variances are asking relief to the existing 16,000 SF lot area whereas, 30,000 SF is required and a variance on the lot width of 100 ft. whereas 150 ft. is required.

The applicant has submitted additional information of an engineered septic design and a copy of the deed to the subject parcel. The Town of Halfmoon Building Department reviewed the design of the septic system and has stated the design is acceptable. Mr. Hansen cautioned the applicant that the septic design was reviewed by the Building Department and that it was acceptable but was not approved. The approval would come after a much more thorough review by the Building Department. Mr. Hansen read the deed to the property and stated the lot was created in 1953 and the deed description read the front lot line was configured to the "center of the road". The lot would be 100 ft by 200 ft if measured from the "center of the road" but now with the Right of Way (ROW) associated with Beach Road the lot has an area of 16,000 SF.

Mr. Hansen recognized two gentlemen in the audience with interests to this item and asked if they would like to speak. Mr. Ron Singley, 129 Beach Road asked the applicant what was being proposed for the parcel. Mr. Grennon who was sitting with the applicant stated he wished to build a single-family residential unit to be used for him. Mr. Dave Allen, 133 Beach Road, stated that neighboring residents have the right to speak against a project that will affect their neighborhood. Mr. Hansen explained neighbors are allowed to speak at a public forum but the neighbors do not have a "veto" power. The ZBA will look at the positive and/or negative impacts to the surrounding area and make a decision based on those findings. Mr. Singley stated he felt that 16,000 SF lot is too small to develop especially when the requirement is 30,000 SF. Mr. Hansen stated that the subject parcel was created before zoning took effect in the Town and that there were no criteria for lot size at that time. Mr. Allen asked the ZBA with regards to the ROW and setback requirements, would there be enough area to place a house. Mr. Hansen explained that by the present standards as described in the Town of Halfmoon Zoning Laws the lot would be sub-standard for the required lot area, but as stated earlier the lot is a pre-existing, non-conforming lot. The submitted site plan shows the substandard lot with the proposed house location. The proposed house is located within the confines of the setbacks requirement of the present standards. Mr. Hansen continued that the surrounding area has quite a few substandard lots and due to the fact that the parcel was created before zoning laws, the owner of the property has a right to use the property accordingly. Mr. Allen asked what was the size of the proposed residential dwelling. Mr. Grennon responded ~1620 SF and would be a ranch-style. Mr. Allen stated he feels the applicant is in front of the board to seek a variance so that there can be a capital gain on the subject parcel. Mr. Hansen closed the Public Hearing at 7:57 PM. Mr. Ouimet asked the applicant on the length of time she owned the subject parcel. Mrs. Cafariella stated about 4-years since her aunt passed away. Mr. Ouimet asked the applicant if she attempted to sell the parcel. Mr. Allen stated he tried to buy the parcel but the parcel did not appear to be a building lot. Mr. Hansen asked the ZBA for a recommendation on the requested variances. Mr. Tedrow stated that the applicant has submitted enough information to make a decision on the requested variance. Mr. Tedrow continued that the requested variance will not affect the character of the surrounding neighborhood, the public health and safety issue has been answered by the applicant submitting an acceptable septic design plan and that the lot was created prior to zoning laws and feels

the variance requested should be approved.

Motion made by Mr. Tedrow and seconded by Mr. Drake to approve the requested area variances associated with the subject parcel contingent on the septic design being approved by the Town of Halfmoon Building Department. It was unanimously approved.

Chairman Hansen – aye

Mr. Tedrow – aye

Mr. Drake – aye

Mr. Ouimet – aye

Mr. Rose – aye

Motion carried.

Belmonte Builders, 32 Moreland Drive

Mr. Jeremy Fernet, Belmonte Builders, was present to request relief for the required front-yard setback line for an existing residential dwelling located at 32 Moreland Drive of the Kingsbrook Estates development in the Town of Halfmoon. Mr. Hansen opened the Public Hearing at 8:02 PM. Mr. Hansen asked the applicant how the front-yard encroachment happened. Mr. Ferret explained that a change occurred in the field whereas the footprint of the house was “flipped flopped” from the original location. The field change was due to the perspective buyer wanted to re-locate the driveway on the opposite side of the parcel due to steep slopes. Mr. Belmonte, the applicant, stated the lot in question has a very difficult grade where the original driveway was proposed. Mr. Ferret continued that when the contractor changed the house location, the attached garage portion of the house inadvertently encroached upon the required 50 ft front yard setback line by 2.5 ft. Mr. Hansen asked if anyone from the audience wished to speak. No one responded. Mr. Hansen closed the Public Hearing at 8:08 PM.

Motion made by Mr. Rose and seconded by Mr. Tedrow to approve the variance request of the front-yard setback due to the original location of the driveway being placed on a steep slope and that the “new” location of the driveway will be safer for the residents to traverse and was unanimously approved.

Chairman Hansen – aye

Mr. Tedrow – aye

Mr. Drake – aye

Mr. Ouimet – aye

Mr. Rose – aye

Motion carried.

Ed Dalston, 116 Route 236

Mr. Hansen explained to the ZBA members that with this item there would be no decision made on this night and that the ZBA is not committing themselves to any decision until a formal application is made. Mr. Ed Dalston asked to approach the ZBA to discuss his desire of creating a residential unit from a pre-existing, non-conforming building located at 116 Route 236 in the Town of Halfmoon. The property in question has an existing residential home with a “new”-detached garage and a pre-existing, non-conforming building, which was once used as a paint store. The applicant is proposing to re-configure the existing “paint store” building into a residential unit. There are two options for the applicant in order to develop the “paint store” building into a residential dwelling. One, the applicant would subdivide the lot so that the existing residential unit and the “paint store” building would be on separate lots. Due to the existing lot size and width, an area variance would be needed to approve the subdivision. Additionally, the subdivision would create an “erratic” lot line due to the location of the existing structures on the parcel. The other option is to request a use variance from the ZBA to allow two primary residential units to be situated on the same parcel. The applicant asked the ZBA which option would the Town prefer, if any.

Mr. Tedrow asked the applicant if the conversion of the “paint store” building would be residential. Mr. Dalston stated yes and it would be rental property. Mrs. Murphy stated to the applicant that the “paint store” building would not be able to be used commercially due to the parcel being designated as a residential zone. Mr. Dalston continued if the Board granted two residential dwellings on a single lot that it would be rental property on one deed. Therefore, it would not be able to be sold unless a subdivision would occur.

Mr. Hansen suggested that the idea of creating a lot with sub-standard area and width along with a lot line that

is so skewed that it seems undesirable and that it would appear to be in the best interest for the Town and the applicant to seek a use variance of allowing two residential units on one parcel. Mr. Ouimet stated that he would not want to set a precedent of "opening up the gates" for others to seek the same type of use variance. Mr. Tedrow stated he was leaning toward the subdivision option and not create a policy of allowing two residences on one parcel. Mr. Rose asked Mr. Tedrow if he feels there are other similar situations in the Town and whether or not those people would approach the ZBA for the same request. Mr. Tedrow stated some people might want to put an "in-law" apartment on the same parcel or for other reasons. Mr. Tedrow continued that if the ZBA is to look at this parcel with regards to allowing two residential units on one parcel, the ZBA's reasoning must be made clear that this is a unique situation. Mr. Drake stated that the unique situation is that the "paint store" building exists along with the residential dwelling. Mr. Rose agreed that there would not be an approval for a new building but a re-configuration of an existing building located on a lot with an existing residential dwelling, which would constitute as a unique situation. Mr. Hansen explained that the subject parcel is self-regulating because if the lot was subdivided in to two parcels and because the location of the existing structures, it would create a disjointed lot line with substandard lot widths. Mr. Tedrow asked the applicant if he has tried to buy additional adjoining land. Mr. Dalston explained that the adjacent lot is very small and it would not be feasible to buy a portion of the lot. Mr. Hansen asked what was the consensus of the Board. Mr. Ouimet stated he feels the single lot would be the direction to take as long as it is stated as being a unique situation. Mrs. Murphy offered to do some research on the two residential units on one parcel issue. Mr. Hansen stated that from the two alternatives it appears that the two residential dwellings on one parcel seem to be in the best interest of the Town. Mr. Hansen stated that the ZBA is not giving a pre-approval to the concept and would look at the situation once a formal application is made. Mr. Hansen suggested to the applicant that a survey of the property with all existing structures represented be submitted at the time application is submitted. The applicant thanked the Board for its time.

Mr. Hansen asked Mrs. Murphy to explain to the ZBA the benefits of resolutions and the criteria the ZBA uses to grant or disapprove application items. Mrs. Murphy stated when the ZBA passes a resolution; she uses form resolutions, which need to have the specific information on why the application was approved or disapproved. These specific criteria of reasons for approval/disapproval do not need to be stated at the time of approval by the Board but the resolution will contain the specific information used by the ZBA during their review of the application and on how the ZBA made such a decision. Mrs. Murphy stated that Mr. Williams will be taking summary notes for the minutes and must include the information on the reasoning of the Board's decision. The oral motion, seconded and vote will constitute an approval decision and the resolution will contain the specific information on the basis of that decision.

Mr. Hansen stated the next task is for the ZBA to review and comment on the November '03 and the December '03 ZBA minutes. The Board reviewed the two past minutes, made corrections directed to Mr. Hansen and made the following motions:

Mr. Ouimet made a motion to approve the November 2003 ZBA minutes as amended. Mr. Drake seconded. Motion carried unanimously.

Mr. Ouimet made a motion to approve the December 2003 ZBA minutes as amended. Mr. Drake seconded. Motion carried unanimously.

Motion made by Mr. Ouimet to adjourn from the January 5, 2004 ZBA meeting at 10:19 PM. Seconded by Mr. Drake. Motion carried unanimously.

Mr. Stiles, resident in the Town of Halfmoon, asked the ZBA about the change of secretarial duties for the ZBA regarding Mr. Williams taking the place of Mrs. Mikol. Mr. Stiles stated that according to Article XIV of the Town's zoning laws it states that the ZBA will appoint a secretary. Mr. Stiles asked whether or not if the Town Board or the ZBA appoints the secretary. Mr. Stiles stated he did not recall any such appointment made at the Town Board's organizational meeting. Mr. Hansen stated that he would look into the situation and that the ZBA cannot make such an appointment because the motion to adjourn has already taken place.

Respectfully Submitted, Jeffrey R. Williams, ZBA Coordinator