

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
March 3, 2014

Chairman Rose called the meeting to order for the Town of Halfmoon Zoning Board of Appeals at 7:10 p.m. on Monday, March 3, 2014 at the Halfmoon Town Hall with the following members present:

Members: Mr. Hansen, Mr. Burdyl
Vice-Chairman Tedrow and Mr. Brennan - absent
Town Attorney: Mr. Chauvin
Town Liaison: Mr. Polak
Secretary: Mrs. Mikol - absent

A motion was made by Mr. Hansen and seconded by Mr. Burdyl to approve the minutes from the March 3, 2014 meeting. Motion was carried.

Chairman Rose commented that we have one item on tonight's agenda for an area and frontage variance public hearing for Michael Holohan of 81 Woodin Road. Mr. Holohan owns the vacant lot next to his house and would like to sell the lot to a builder to construct a single-family home.

Mr. Michael Holohan, 81 Woodin Road – 278.19-2-34

Chairman Rose commented: The lot has 146.17' of frontage and 17,608 sq. ft. of area. Under the requirements of the Town of Halfmoon General Code Article 165, Attachment 1, Schedule A, the applicant is required to have 150' of frontage and 30,000 sq. ft. of area in an R-1 Residential District. The applicant received a denial for a building permit from the Director of Code Enforcement. We now ask the applicant to come up and present the facts and details regarding his request for the variance. We will then open the hearing to the public and have them speak if they should have any concerns or comments. We will need your name and address for the record.

Mr. Holohan commented: I am Michael Holohan and I live at 81 Woodin Road, I am the property owner. I was here last month and I am here again today for the frontage and area variance to construct a 3 bedroom 2 bathroom house on my vacant land.

Mr. Burdyl commented: Can you repeat again what it is you're asking for?

Mr. Holohan commented: The frontage variance is from 146.17' to 150' and the area is from 17,608 sq. ft. to 30,000 sq. ft. to construct a 3-bedroom home 2 bathroom home.

Mr. Burdyl asked: What is the approximate size of the home?

Mr. Holohan commented: The approximate size of the home would be 1850 sq. ft. It would be a two level colonial house.

Chairman Rose commented: When you presented this proposal to the Board at the last agenda meeting we asked you about the septic system. Your comments back to us where that you didn't do a perc test.

Mr. Holohan commented: We will not be able to do a perc test until the ground is thawed. The information given to me tonight also would leave me to believe that the current placement of the septic on the map is not going to be sufficient because there is another septic abutting it on the next property behind it. The septic location shown on the map will have to be moved.

Chairman Rose commented: Would that be the property of Paul and Lois Kelly?

Mr. Holohan commented: Yes, that is correct. I didn't have that information so I did not provide that information to the builder when he put the plan together.

Mr. Burdyl commented: Can you show us on the map where you think it will now be located?

Mr. Holohan commented: It would have to be moved to the other side of the house. Again, that would be based on the builder and his Engineer. The Engineer for the builder would obviously do the perc test and determine the placement of the septic and that it not be within 100 feet of any well or any other septic. That would have to be contingent on any Engineer's report.

Mr. Burdyl commented: What additional information did you obtain today that you came to this conclusion?

Mr. Holohan commented: I was given the information when I first walked in to tonight's meeting by a property owner that his septic is right there in the backyard. I was not aware of that prior to this meeting.

Chairman Rose commented: One other question that we had from the agenda meeting was regarding the deed structure. Where you able to satisfy our questions regarding the property?

Mr. Holohan commented: Yes, they are two separate pieces of property.

Chairman Rose commented: How did you verify that?

Mr. Holohan commented: Through the Town and through my attorney.

Chairman Rose commented: Do we have that on file?

Mr. Chauvin commented: Yes, through the Assessor's Office.

Chairman Rose commented: I want to ask that question one other way. Are there two tax bills under two separate lots?

Mr. Holohan commented: Yes, two separate bills for two separate lots. I have a bill for the single family home and another one for the vacant lot.

Chairman Rose commented: The deed structure records prior to the variance, it's the way it is laid out today. It was created as a separate lot for the variance request?

Mr. Holohan commented: Yes, that is correct.

Chairman Rose commented: One of the things we talked about with the Engineer's Report, as a Board Member there is a reliance upon professional opinion about different things before approvals are made and I used the word reliance with specificity because we don't know whether it would work or not. We are just a Board so I know you asked us about doing something contingent. My feeling is that until I saw an Engineer's Report I wouldn't want to give a contingency for some kind of an approval because we rely on the data from the Engineer report. I don't want to back track, I know you had asked that so I just want to cover that so you know that there is reliance upon the Engineering Report; especially now that there is a change in information of the drawing. I think it would be important for us to note that the reliance to me is an important factor on any kind of decision we make and that I make going forward. It is part of the vote here.

Mr. Holohan commented: My thought on that was that the specific request to this Board and regarding the size of the lot and the frontage of the lot. I understand with regards to the septic, obviously being an issue, if the septic doesn't work well then we have no where to go and that's why I felt the contingency was appropriate based on the fact that it allows me to move forward with the builder. He then gets an Engineer who does his Engineer Report and if the Engineer's report comes back and says this piece of property for whatever reason can't sustain a septic system on this piece of property well then there is

nothing else to do and the sale of the land will not go through, and at that time it would never go through. No one is going to buy a piece of property that they can do nothing with.

Chairman Rose commented: Members of the audience had trouble hearing what you were saying. Could you please summarize what you had just said again?

Mr. Holohan commented: The Engineer's Report without or prior to my coming here last month was my understanding, in front of this Board I was asking for an area and frontage variance. My suggestion was that the approval be based on a contingency of the building permit not be issued until the Engineer's Report showing that the parcel has a viable septic system location. If that contingency is not met this builder could not get a building permit therefore, can't build a house and would negate the sale of the property, we can't close until that is met. Again, without being able to obtain that the land would never be able to be sold because no one will buy a piece of property that they can do nothing with, unless one of the neighbors wanted extra yard. That was my thought process on the contingency of an Engineer's Report.

Chairman Rose commented: One of the requirements to get an area variance is to prove a hardship. Your hardship is that you are trying to sell your property.

Mr. Holohan commented: Well yes, I am trying to sell the property and can't do so because it is not; as it stands right now it is not a buildable lot under the current code.

Chairman Rose commented: Yes, and by definition it can be interpreted that it's a self-created hardship. It's not something we grant an area variance on specifically it is one of the tests that we have. Like I said before, we look at a lot of different cases here and we specifically rely on professional opinions before rendering a decision vs. back tracking and finding out there is a defect in something else, we would like to have the whole picture from the 360. I am not sure how the other Board Members feel.

Mr. Chauvin commented: One thing that we refer to tonight in fairness to the applicant is that it would appear that the drawing that the Board has been supplied with is going to change by necessity of the information that the applicant received this evening. Absent of knowledge of exactly what that change would do to the configuration of a lot and any potential home thereon this Board would be making a decision in a vacuum in that regard not even getting to the Engineer's Report relate to a perc test. I would suggest, at the very least, you probably want to review what if any change, and I am not saying there will be, certainly there would be a change in that drawing of the positioning of that septic system but I don't know if that would necessitate the

moving of the house which would then create a setback issue which would create a request for a further variance from.... I am not quite sure where that would lead you. You may be making a decision in the vacuum that would ultimately require action by this Board. It might be best if we at least had a more up-to-date drawing which reflected the necessity of the change that we learned of this evening.

Chairman Rose commented: That is exactly what I was trying to convey is that without a 360 view of what that change would look like in an Engineer's Report we would be operating in a vacuum.

Mr. Hansen commented: We also don't have a location of the well and septic system on the existing adjoining homes either, they too should be on the map.

Mr. Holohan commented: On the existing home it's on the right which sits on Breski Lane.

Mr. Hansen commented: It's not shown on the plan. I think you sketched it in on one of them but it's not part of the official plan that was submitted here.

Mr. Holohan commented: I was not aware that my septic system should be put on that plot.

Mr. Hansen commented: It may affect the over-all location of the other septic systems as well.

Mr. Holohan commented: Yes, but mine is on the opposite side of the property, it's on Breski Lane. There would be a house in between.

Mr. Burdyl commented: Could you please show us on the map roughly where the location is?

Mr. Holohan commented: Yes. It is behind the house to the right. My house is a 4-bedroom 2-bathroom house of equal size to what is being built next door. It has an operating septic system that is within code and is a smaller piece of property than the vacant one I am here about tonight. The plot being sold is actually less than 1/2 an acre and my lot is smaller than that. There is a suggestion being made that a berm be put up in the back of the property to handle water issues with the property which I agree with. It would be in the best interest of not only a potential water issue but the separation of the property.

Mr. Burdyl commented: To your knowledge, is there standing water there now when there is a heavy rain?

Mr. Holohan commented: There is standing water on my property now. When you face my house the water is in the front looking to the right by the fire hydrant. It is present right now. On the proposed new lot I was given information tonight that there is. In my own experience of the property, no I have never seen standing water on that side of the property. My sump pump last spring and after a very wet winter the pump was going regularly.

Mr. Hansen commented: We should wait until the Engineer's Report with the location of the septic system is shown on the plan.

Mr. Chauvin commented: It would certainly be the Board's discretion as to whether they want to wait for the perc test and the Engineer's Report relative to the functionality of the septic system there. I would suggest at the very least that you want and I would say that we would need an updated drawing with the actual intended location of the house and the septic system now that the applicant has received new information. The two are separate and you can treat them as separate issues. It's up to you of how much of that information that you want at least but, we need an official up to date rendering that we can put in this Board's file to say, "this is what we reviewed and this is what is suppose to be built and that is why we granted or denied the application".

Mr. Holohan commented: It would have to be changed at this point. The information that I gave to the builder couldn't have been done.

Mr. Chauvin commented: For them to have done their job properly they need the up-to-date drawing. I think the reason why you are receiving the question of, "where is your septic system?" is because they don't want to run into the same situation and that is why they are looking for it to be shown. As long as we understand where it is based on your representation, your testimony is fine but on the other drawing as they revise it we need to see where it would be proposed at this point.

Mr. Holohan commented: If it makes for a stronger case I would be more than happy to have the builder have the Engineer contacted. Again, that would have to be a delay of a couple of months now because of the weather. The plans would have to be re-drawn with where the septic is going to be located, have an Engineer go out, do the test and make sure the property owners around the home are satisfied of where the septic would be and was it done properly.

Mr. Chauvin commented: I am hearing that there maybe a delay but you might see a more thorough review as a result.

Chairman Rose commented: The Board could discuss it and have the meeting adjourned for more information. I would like the neighbors to speak tonight while they are here. We could then proceed down that path and have the neighbor's testimony on the record. Then the meeting could be adjourned and pick it back up again on a later date after the map has been updated.

Mr. Chauvin commented: The Chairman is indicating that it would probably be the Board's inclination to ask the applicant to come back another night with more information about the placement of his proposed septic system with an Engineer's Report indicating that it would function properly and at least a new map showing where it will be. If you intended to speak tonight about the project you may do that tonight or at the next meeting.

Chairman Rose commented: Please come to the podium announce your name and address for the record.

Paul Kelly, 3 Breski Lane commented: I have lived there since 1964. At one time I had to put 150 loads of fill in my backyard because all the water around the area came into my backyard, I had water in my yard up to my ankles in August. I had to level the fill off and I still get drainage from Janis's house. He pumps water from his basement and sends it right to my property. Two years ago I filled in again to make it a little higher because his sump pump was seeping onto my land. My leach fields for my septic are on that side of my house. I am worried about my leach fields. The house I don't care about but I mentioned that if they build a berm on their land high enough to keep whatever water that is coming over to my land to stay on their land. I don't want their water. With a new house and the driveway it will create more of a problem for me. That water is not going to soak into the ground it is going to come over to my side. His land right from the road to the edge of my property slants right toward my house. Four to five weeks ago when we had a frost and the snow melted and ponded with 6-7" of water right on the property line which came from the vacant land. My property is flat and the water doesn't run off anywhere. His land points right to me from his house and the vacant land it all comes right to me. Why should I take on someone else's water?

Mr. Burdyl commented: Sir, can you show us on the map where you observe the water flow?

Mr. Kelly, 3 Breski Lane commented: Right onto my land the water crosses the property line right to my land. His sump pump is directed right toward my house and my leach fields. The vacant lot is on an angle right toward my land. The water goes maybe 20' over onto my land and on the neighbor's land too as it comes down. I get mostly all the water because everything slants that way from Woodin Road down.

Mr. Burdyl commented: Do you have a sump pump in your house?

Mr. Kelly commented: I pump everyday 10 months out of the year. Right now I am pumping every 10 minutes down Breski Lane.

Chairman Rose commented: Mr. Kelly have you ever observed standing water on your property and in their property? Is that the issue? Before Mr. Holohan said he has never observed any standing water.

Mr. Kelly commented: The water will build up on the property line because of the berm and it will finally push over onto to my property. In the summer time you can see that everything slants my way from Woodin Road right down to the property line. The main thing is that I worry about my septic system and my leach fields.

Melissa Kelly, 3 Breski Lane commented: The water travels past our pool and goes to Bill Lecuyer's land at 5 Breski Lane. Bill Lecuyer's pumps the water with his stationery pump and pumps the water to the front of his house. The land that is vacant where they are talking about building a house and putting in a septic tank was owned by Bill Janis, his garden was there. The water was always murky and muddy. Two years ago, he couldn't use his garden. He would come over to tell us that he can't grow tomatoes, I can't have my garden. It was a swamp.

Mr. Burdyl commented: Where your house is located on the map, your actual residence is water draining directly to your house or your backyard?

Ms. Kelly commented: Yes, all the water comes to my property across my pool then goes to Mr. Lecuyer's land. Mr. Lecuyer's has a pump, in fact Paul Kelly gave him the pump, he put it in the ground and it's always running. The water doesn't come up to the house. The water is all around the pool area and when we have a lot of rain he pumps just like we do.

Mr. Burdyl commented: Thank you.

Ms. Kelly commented that the vacant lot is a mess all the time, lots of murky standing water.

Kathleen Kowsky, 132 Dunsbach Road commented: My property abuts the front of his yard because I own all through the backyards of many of these homes. Mr. Holohan how long have you owned the home, has it been a year? So, you haven't been there for one year yet. My family has been in this area for over 100 years now. I have owned my property for over 50 years now and I do know a little bit about the area. Where Mr. Holohan lives I use to play there as a kid, where he is proposing to build my neighbor would never farm there because it was swamp land. I use to play in the strawberry fields which was the Reinhart's Property and Travis's Property and that should give you an idea of the marsh land of that area to begin with. As people bought property, and why your lot is so weird is because people bought small lots to begin with just for their house. Mr. Janis wanted more land for his kids and therefore he bought the adjacent lot before someone else did. The laden question has a big problem. It's below grade off the road and that might not sound like anything but part of my property is 133 Dunsbach which abuts Cambridge Drive which was expanded out from Northwood Development about 10 years ago. They raised the road and now my father's house is below grade and because of the water he can't flush his toilets. The water comes off Cambridge Drive into his backyard covers his leach field and then he can't flush the toilet. That is a big problem.

Mr. Burdyl commented: Ms. Kowsky can you show us roughly in relation to the map where your property is located.

Mrs. Kowsky commented: My property is directly across the road and I have a direct inlet into my property behind the houses. My house is actually on Dunsbach Road but it comes behind and all the way around, I have about 15 acres.

Mr. Burdyl commented: The property where you said you played when you were a kid that would be the lands of Holohan.

Mrs. Kowsky commented: I did play there in the 50's I do have a little idea about it. The northwest corner of the proposed lot is under water right now. Last spring he said he didn't have much of a problem we only had 26 inches of snow last year. We are already past 67 inches of snow so you will definitely see a lot more water there this year. Bigger problems is the sloping of the property from Breski Lane trying to keep the water out of their basements has created a trough and that trough goes from Woodin Road going back straight past his property past the Kelly's past the Lecuyer's past the McMinn's right toward Timberwick. The water goes back so it floods all those backyards.

Mr. Burdyl commented: So the water is going along Breski Lane?

Mrs. Kowsky commented: The water is traveling behind and parallel to Breski Lane. If you look at the property line of his with lands of Reinhart and Mary Larue, that property line is low trench there right now and Mr. Hickok when he built that house for Larue made a higher berm there so it stops there and then the water follows back and parallels Breski Lane all the way back behind every house going down Breski Lane right to the end right into Timberwick. There is a great big swamp behind Timberwick and most of the people there are always pumping their cellars because of the water. So I am just giving you information. This movement of water toward Timberwick does do a lot more damage toward the McMinn house on Breski Lane. If we have any big rain storms that fills up and it looks like the Mohawk River filling backwards. There is no place to go anymore because of the development of Timberwick it just pools there. If anyone knows Woodin Road in front of Mrs. Corey's house they have re-done it three times now because the water pools there too and farther down the road. Somebody didn't look forward and they did a little lot here and a little lot there and they created puddle pools of water and one of them is right on Woodin Road near the corner of Pineview Lane and the other one is going back toward Timberwick. There is a lot more going on than what he thinks now. The perc test, heaven help you if you do it when we first go into the spring. One more thing, I think his realtor did him a disservice telling him he could sell the lot. It's a big headache.

Chairman Rose commented: Mr. Holohan, do you have any more questions before we adjourn the meeting? Is that your desire for us to adjourn it?

Mr. Holohan commented: I too am 36 years old and grew up on a property I don't want to make it seem that just because I bought the property less than one year ago that I don't know the property, I do. I have a family and that is why I bought the property. Timberwick is close to 1/4 mile away up the street. As noted in the prior meeting which these folks don't know, the house is being built on a slab not a full basement. So there will be no pumping from the house because it will be on a slab. I do agree with the journey I think this spring will be the perfect measure as to how swampy this property is. I walked it last year and the year before I have walked it for many years. There are times that it does get mucky. Everyone's property gets mucky. I think this spring will be a beautiful time to see it at its worst because it has been a pretty horrible winter. If we can adjourn for a couple of months to allow an engineer to get in there and do everything he or she has to do I would then love to come back before the Board showing that it's a very viable to build on that property.

Chairman Rose commented: We can adjourn the hearing and there will be no time line for you to come back. I just ask that you be diligent in scheduling the things you need to do to move forward.

Mr. Holohan commented: I would like to think it could be done in April.

Chairman Rose commented: Please contact my secretary, Denise at the office to be placed on the agenda.

Mr. Hansen commented: We should probably adjourn the meeting.

Chairman Rose commented: Does someone make a motion to adjourn the meeting? The hearing will still be open for the neighbors and allow them more time to come back and speak again at the next meeting when this does occur. I don't know whether they will publish it in the newspaper when the hearings will pick up again. You will need to pay attention to that. Please be diligent about checking on the agenda to see when it's back on.

Mr. Chauvin commented: Mr. Chairman, it will be posted on the Town's web site prior to the next meeting. You can contact the secretary and she will let you know.

Chairman Rose commented: We have a zoning board meeting on the first Monday of every month. You can call prior to the meeting to see what is on the agenda. Reach out to Denise Mikol, our secretary at the town. It will only take you a few minutes to do that. That is the procedure and should be fairly easy to do. You can look at your calendar and note it down to make sure you follow up. Mr. Holohan will let the Town know that he is ready to come back before the Board and he will be put on the agenda and it will be posted at the Town Hall and on the Town's web site.

Motion was made by Mr. Hansen and seconded by Mr. Burdyl that the Board adjourn this item until the applicant is ready to proceed again with his variance request. Motion carried.

Motion made by Mr. Hansen and seconded by Mr. Burdyl that the meeting be closed. Motion was carried.

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

