

Town of Halfmoon Zoning Board of Appeals
Meeting Minutes
April 1, 2013

Chairman Rose called the meeting to order for the Town of Halfmoon Zoning Board of Appeals at 7:08 p.m. on Monday, April 1, 2013 at the Halfmoon Town Hall with the following members present:

Members: Vice-Chairman Tedrow, Mr. Hansen, Mrs. Jordan

Member Absent: Mr. Brennan

Alternates: Mr. Burdyl, Mrs. Smith-Law

Town Attorney: Mr. Chauvin

Town Planner: Mr. Harris

Secretary: Mrs. Mikol

Motion was made by Mrs. Jordan and seconded by Mr. Burdyl that the minutes from the March 4, 2013 meeting were approved as presented. Motion was carried.

Mr. Burdyl will be voting tonight for Mr. Brennan.

Chairman Rose asked that anyone wishing to speak tonight to please come up to the microphone and speak clearly your name and address for the record. The meeting is being recorded so our Secretary Mrs. Mikol would appreciate that!

Old Business:

Brendan Murphy, Lot A and B Werner Road

Chairman Rose commented that we started this meeting in August and held a public hearing September 4, 2012, that meeting was adjourned waiting for information from Mike B. at Clough, Harbour & Associates regarding the Engineer's Report last revised February 23, 2013 by Mr. Paul Male, P.E. from Saratoga Springs. There was an internal e-mail exchange and that will also be part of the record. The Town Engineer concurred with the findings of the applicant's engineer about the on going drainage issues in that area. The Board Members have had a chance to review the report. Since the public hearing is still open are there, any neighbors here that would like to speak? The applicant can come up and give us a cursory summary update for the folks here in attendance.

Mr. Greg Meyer, Surveyor for Mr. Zaccarelli, who is the perspective purchaser/builder/home builder of this parcel and I am here on behalf of the Murphy's, who currently own the parcels. Mr. Murphy has owned the parcels since the early 1970's and developed most of the homes along Werner Road that surround this property. For whatever reason, these two lots were left over and both are on deed as individual parcels. Basically, Mr. Murphy is looking to sell them as individual parcels. Somewhere along the line, the Town's Code has changed and the lots are no longer up to the current code. I believe it's because they are adjoining parcels. If the parcels were owned by separate people or if there was a buffer between them, I don't believe we would be here if I remember correctly. We are here tonight to utilize parcels as they were developed back in the 1970's to be used as single-family homes. They are keeping within the harmony of the neighborhood. They are all the same size lots. I think one of the issues here is drainage, which we heard at the public hearing last time. We did some due diligence, as I think one or two of the members suggested and as a group the Board agreed that we should probably do some type of grading plan and engineering report, which we have gone ahead and done. Based upon Mr. Male's Engineering Report and the rest of the mapping he has done, in his opinion, this can be done without adversely affecting the surrounding properties by adding a structure and a small piece of pipe and diverting a drainage channel as it exists now to the sideline. With that being said, I think we are at a point where I hope the Board would act favorably on our part.

Chairman Rose commented that as a point of record, the area variance is being proposed because of the lot area. The area is 15,000 sq. ft. and the Zoning Ordinance states it should be 20,000 sq. ft. per lot with both utilities. Does anyone else have any questions?

Mr. Dwayne Martin, 52 Werner Road, commented that he lives right next to this parcel. We were talking about diverting the water. Is that what you were saying? Diverting the water to the side of the property? A drainage swale, are you pushing the water toward my house and then back? I have a major problem with that. There are mosquitos, bugs and standing water. This just makes it that much worse. You have to put it right next to my property? I have a problem with that and I want it noted. I am not sure what the engineer said, but as a neighbor I don't accept that.

Chairman Rose commented that with regard to the Engineer's Report, is this report available for the residents is it available for their review?

Secretary Mikol commented that the Engineer's Report is available by F.O.I.L through the Town Clerk's Office.

Chairman Rose commented to Mr. Martin that he could request a copy of the report from the Town.

Mr. Burdyl commented that maybe the applicant could provide a summary of the report so the neighbors here could see and hear about what the impact would be without waiting?

Chairman Rose asked if the Engineer is here tonight that prepared the report? He is not present.

Vice-Chairman Tedrow asked if you have a map showing the Engineering changes? That would be good if it could be displayed for everyone to see.

Chairman Rose commented that you might want to bring that closer to everyone, so the folks could see that. We are trying to record what you're saying, so for the record, please use the microphone. Thank you.

Mr. Zaccarelli, Schuyler Builders, commented that the drainage pipe will go on a slight angle and would eliminate some of the ponding that is going on. The existing culvert pipe shown by the road is where they plan to put an addition lateral to catch the drainage swale and catch the back drainage as well. It is going to create less of a problem than what is currently going on with the ponding up in front.

Mr. Burdyl asked Mr. Martin exactly where his house is located in relation to these two lots? Can you show us on a plan?

Chairman Rose commented that today these two properties are undeveloped and are overgrown with weeds, trees and scrub brush.

Mr. Zaccarelli commented that at one point the side of the one lot has been filled in, but the other side is very wet along the side where the water drains from across the road.

Mrs. Smith-Law asked if the left side of the lot has fill?

Mr. Zaccarelli commented that the front part of the lot is what's filled in.

Chairman Rose asked where the 12" pipe is going to be located?

Mr. Zaccarelli commented that the 12" pipe is located right near the existing culvert. The pipe is at an angle shedding over a driveway and the existing swale is raised and then there is a drainage pipe 18" that is already in there and the swale is going back and is already designed previously to catch it. There is a pipe at the corner and there is a Town installed drainage pipe going at an angle catching the swale already and the grade is already there.

Chairman Rose asked if the swale would be on the existing property or the neighbor's property?

Mr. Zaccarelli commented that the swale would be on the existing property.

Chairman Rose commented: then it's on Mr. Martin's property?

Mr. Zaccarelli replied, yes.

Chairman Rose asked what the issue is, in your opinion, with the current pipe in the back.

Mr. Zaccarelli commented that there is so much debris blocking it. They are not getting proper drainage. It's draining, but its not draining properly. There is a ripple of water that is going back. The topography is below this other area so the water will find its own way. It's not draining properly and its being dammed somewhat because of the debris of trees that have fallen there and has not be maintained in years. Once the area gets cleaned up, it will mitigate all of the wetness and end the on-going standing water.

Chairman Rose asked if it was part of this to rectify why the pipe isn't draining properly in the back and clear that pipe?

Mr. Zaccarelli commented that the entire area is full of debris from grass clippings and leaves from all the neighbors.

Chairman Rose asked that as part of the mediation of cleaning up the lots, would you also be cleaning up the pipes?

Mr. Zaccarelli commented, yes.

Vice-Chairman Tedrow commented: I think he is talking about the drainage in the development behind these lots.

Mr. Martin commented that there is an 18" corrugated pipe that is buried. It's located and Town Engineer is aware of it, it's definitely there. CT. Male identified the pipe as well.

Mrs. Jordan asked where the road is in relation to that pipe. I think on our site visit we saw a pipe. I am wondering, on our site visit, didn't we see that, we saw that big 18" corrugated pipe?

Vice-Chairman Tedrow commented, yes we did see it. Chairman Rose commented that he did not see the pipe; he did the site visit alone.

Vice-Chairman Tedrow commented that your map shows that the diverted water would flow 12' from Mr. Martin's lot. What are you doing to keep the water that far away? Is it going to be a ditch because there is no pipe there?

Mr. Zaccarelli commented that there is a natural ditch right there now. It will drain to the ditch.

Mr. Martin commented that it drains, but not properly because of debris. The ditch is not next to my property. It is about centerline through the house they want to build. That swale is not next to my property. It's in about a 1/3 of the way. Why would you put a swale where there is already a swale?

Mr. Zaccarelli commented that the whole area is a swale.

Mr. Martin commented that the pipe location is not near the road. It's between the properties and behind the houses. There is a development in the back, Dater Woods. These houses are on Werner Road, so the swale is between the development and the houses back there and the houses that are on Werner Road. It was a natural drain that ran the whole road.

Mr. Hansen commented, isn't the proposal to move the connection between the existing pipe across the road and that swale? Isn't that what they wrote in the Engineer's Report?

Mr. Zaccarelli replied, yes.

Mr. Martin commented that the swale next to his property is a new swale.

Mr. Hansen asked are they going to clean it out?

Mr. Zaccarelli commented: yes, it will be cleaned. It's at an angle. The area of the property line is now filled with debris and it's draining back into the back section of one of the lots. When building a new home there, will there be some fill and there is going to be a natural swale in that area and mitigate the wetness, so to speak.

Mr. Burdyl asked what the grade would be? Is it going to be away from his house or is the grade going to be flat?

Mr. Zaccarelli commented that he has a swale on his property already, correct? It swales down anyway and it comes at a pretty rough angle and the same thing will happen here, it will actually send all the water to a narrower channel which will eliminate mosquitoes and the wet area and divert everything back into the same channel.

Mr. Martin commented that he has seen promises before with the same exact deal and the property has been flooded.

Mr. Zaccarelli commented that there is no other way around it. This is just like the subdivision behind it. There are natural swales catching all the water throughout that whole subdivision.

Mr. Martin commented that isn't a swale next to my property right now. I just don't want any of you to have that impression. There is not. It goes through the center of the property, farther in from the edge of the property. So when Mr. Zaccarelli says it's the same swale, it's not.

Mr. Martin commented that the drainage from across the street goes straight back through the property for drainage. It does not come toward my property and drain into that yard or even the back swale.

Mr. Hansen commented that it was his understanding from reading the Engineer's Report that they submitted that they were going to direct that toward your lot, but then it would go down between the lots with this new drainage swale and essentially moving that existing drainage swale from the middle of that one lot to between the two lots.

Mr. Martin commented that he wants it noted that they are proposing to move it. It's not an existing swale.

Mr. Greg Meyer commented that he would like to add one more thing. The swale Mr. Martin is talking about does go as he directed, but there is a natural swale, not the same swale, but he does have a swale there because his house sits up and it comes down to the property line. So, technically even though they are not the same swales, he does have a swale there. I just wanted to add that.

Chairman Rose commented that when it rains and the water runs off the proposed house, is that water going to clear through the drain or is it going to lie on the property before it drains?

Mr. Meyer asked: where are we talking about? In the proposed houses?

Chairman Rose commented: yes, on the corner between Mr. Miller's property and the drainpipe.

Mr. Meyer commented that the way the Engineer has designed it at a certain grade, where on over land through swale he has a percentage and I think in his report he also mentions that .7% elevation or percentage along the back and part of that has been impeded by whatever, falling leaves, grass clippings whatever the case may be. That is part of the problem, because once you have a drainage ditch that gets dammed up, its natural that there will be flooding there.

Chairman Rose commented that the improved lot considered today as a non-improved lot the approved lot with the house on it with landscaping and grading, will the water runoff into that swale down in the drainage or will it stand still after a rain storm?

Mr. Burdyl explained that the improved lot the grade will be away from this gentlemen's house the slope be away or will it be flat?

Mr. Meyer commented that the two new houses would do what every other house does on Werner Road. They sit up and they slope down to the sidelines. That is what they do. Then they drain from front to rear.

Mr. Burdyl commented, but your not going to grade into this gentlemen's house. Your going to grade away from his boundary, correct?

Mr. Meyer commented: no, because the two new houses are going to be built up so their natural runoff is going down to the side lines. That is what the Engineer has done. He has provided that swale on site to keep it from going over onto his property.

Mr. Burdyl asked: the idea is that the grade is supposed to be away from this gentlemen's property, correct? The slope of it?

Mr. Meyer commented: no, because that is the natural lower common lot line is the natural low area, so his house is built up this house is built up here is the property line and from where both houses are built up it will come down to a swale which is more or less at the common property line.

Mrs. Smith-Law asked: would the swale run down between Mr. Martin's house and the new house?

Mr. Meyer commented that our intent is to have our runoff taking care of our swale on our property. We are not looking to distribute more runoff on this gentlemen's property.

Mrs. Smith-Law asked, will there be two swales?

Mr. Meyer commented: technically there possibly could be, unless the neighbor wants to get together and then make it one common swale along the property line that would make sense. I just don't know what the feelings are about that. It is the intent per the Engineer's report to make a swale along our property line and drain from Werner Road back to the existing drainage ditch that was developed for the subdivision in the rear of the properties.

Mrs. Smith-Law commented that nobody would be really responsible to keep it free of debris in between those two swales.

Mr. Meyer commented: technically, no. I think there is a provision in the Engineer's Report that calls for a utility easement, but that is only where that structure is and where the pipe comes out. Where the hard materials are eliminated, then I think it's the homeowner's responsibility to keep it clean.

Mr. Hansen asked Mr. Chauvin, let's say a subdivision like the one behind it there, does the Town have any jurisdiction over the drainage swale in those subdivisions where they are running along the back property line and that sort of thing? Let's say there are ditches along the road they discharge into a swale between two houses and go to another swale behind them. Does the Town have any control or jurisdiction over those drainage courses in there?

Mr. Chauvin commented: not necessarily. It is the house structure at the time it was done. Some of those areas have been dedicated to the Town whether it falls within that right-of-way that is preserved to the Town etc. this configuration and the drainage area along the back of that development and the back of these proposed lots where they would meet, I would have to look at it, but I would doubt that the Town would take jurisdiction over that. If it's not along a public right-of-way, there is no reason to believe that the Town would have control in that instance. It would be the adjoining property owners who would. Again, I don't know how that easement was structured. If there is an easement for access was it granted during a dedication process to the Town or not. We would have to look at the subdivision regulations to determine that.

Mr. Harris asked if an easement is shown along the property line?

Mr. Meyer stated that it was not in the site plan. It's just in the plan the Engineer did. I don't believe it is shown as being a recorded easement. I don't know and I'm not 100% sure of that without actually seeing the subdivision.

Mr. Burdyl asked the applicant's opinion, if you have about 150' of frontage on Werner Road, is it technically feasible to put a drainage pipe down the center of that swale so that you would have better control of the water there. Perhaps a perforated pipe? I'm just asking your opinion and I understand that you are not an Engineer.

Mr. Zaccarelli commented: that his opinion would be when it comes to drainage and the mitigation of drainage for specific homes, is to have a deed restriction for maintaining either a pit or a dry well scenario or swales and having a legal document running with the deed upon sales and acknowledgement to the self proposed buyers.

Mr. Burdyl commented that what you are suggesting is that the person you would sell the new house to would be responsible for that swale, is that would you are suggesting?

Mr. Zaccarelli commented the swale and or the dry well. We are taking somewhat of an Engineering issue that should go to Planning technically or the Building Departments in most Municipalities and they would have jurisdiction on the dry well and or any type of restrictions on the deed regarding drainage. As far as the pipe scenario, that would make sense, but actually this was done by an Engineer and the Town Engineer concurred with him on this whole scenario. It really mitigates the whole issue in my opinion. Mr. Meyer put a lot of effort into it. The easy scenario is just to put some deed restrictions on the properties with acknowledgements upon sales. We are seeing that all over for municipalities now.

Chairman Rose commented that he wants to make a comment on the report. One of the features in the Engineers Report was that the cooperation of the neighbor would benefit both parties. What have you done to seek the cooperation of the neighbor, Mr. Meyer?

Mr. Meyer commented that we are available and this scenario is actually more beneficial than what exists. So on my part, I have not reached out, but I'm available to discuss it and alleviate any issues.

Chairman Rose commented that I am sitting here listening and I am hearing some conflicts. Is the swale in the middle of the proposed house or is it on the side of the property that you initially indicated. I just think that maybe that you should talk about it with the neighbor and make sure you can work it out between yourselves. It leaves the Board in a quandary on what is what without having to back out to the site again.

Mr. Burdyl commented that our confidence level is very low and that this is going to be maintained in the future. My question is directed toward giving us a higher level of confidence and maybe a different solution to that drainage issue. That is where I was heading.

At this time, a conversation took place that was not on microphone.

Mr. Burdyl commented that if there is an agreement between the applicant and the neighboring landowner and if that solves the problem for those two people I think we should encourage that. I agree with your other assessment regarding deed restrictions in general.

Mr. Chauvin commented that we could encourage it but it is not something that we as a Board could mandate.

Mr. Burdyl commented: I agree thanks.

Mrs. Jordan commented that we should request our Town Engineer to come to our next meeting and questions could be answered definitively.

Mr. Burdyl agreed.

Chairman Rose commented: I agree too but I still have questions. I am not quite sure if we were asking Mr. Zaccarelli his opinion, we know he is neither a Town Engineer nor a Water Engineer. As far as the basis goes, it was just your opinion, and we respect your opinion, but I would like to get a more definitive opinion.

Vice-Chairman Tedrow commented, how about another site visit and have the Town Engineer there at the site as well.

Chairman Rose commented, I think that would be appropriate.

Mrs. Jordan commented, I am just wondering if the public might want to hear what the Town Engineer has to say.

Chairman Rose commented that was one reason why I brought that up. One of the features of the report was that with the cooperation of the neighbor, if they work together, they could create a swale that met both party's needs. I think that is one of the cruxes of the matter and I have not seen that yet. It should be on the table here going forward and the applicants and the neighbor's best interest that would be the spirit of the Engineer's Report. It's just my opinion.

Mr. Hansen commented that he doesn't have a copy of the Clough, Harbour review indicating that they were generally in favor of the report that was submitted to him. That is the way I read it.

Chairman Rose commented that I did add it to the record and I did e-mail exchange between Mike Bianchino and Paul Male regarding the Engineer's report. I heard a different version of the story between the applicant and the neighbor. Which is what was described in the report where the swale actually is and where it sits. That is my only confusion right now. I can't visualize it in my head from my site visit. The property was overgrown with weeds, congested property because its not developed. It was hard to tell.

Mr. Hansen commented that the Engineer for the applicant indicated that they were going to take certain steps, in their opinion, to remedy the situation. The Engineer did some calculations and determined in his opinion that the flows are not going to be excessive and then Mr. Bianchino reviewed the report and essentially gave his blessing to it. Maybe I'm not seeing it like everyone else, but that's what I read. Basically we went back to the applicant and told him come up with a drainage plan. Our Town Engineer reviewed the drainage plan. I believe he accepted the drainage plan, is that not correct?

Mr. Burdyl commented, yes that is my understanding.

Mr. Hansen commented that we don't have here or are authorized to make judgments on the plan it's up to the Town Engineer to decide whether or not these plans are acceptable. If we don't feel comfortable with his suggestion we could ask him to come in explain it further to us as to whether or not he is specifically in favor of it or not in favor of the plan that they submitted. That is basically what it seems to boil down to whether or not we want to accept the applicants plan for the drainage plan. Is that correct?

Mr. Burdyl commented that he is having a confidence level with the plan here and I also feel that the applicant has made no attempt to work with things out with the neighbor. I also agree with Chairman Rose's suggestion that the process has to happen here at some point. I see a conflict of what we saw at our site visit verses what the Engineer's have come up with here.

Chairman Rose asked that his point is in the e-mail reference in the record there is a comment by Mr. Paul Male that says; we do not anticipate any significant grading to be done on either lot. Then Mr. Bianchino replies back saying obviously we have to confirm that the grading of the swale is done. So until that is confirmed that is where my head is.

Vice-Chairman Tedrow commented that some of the cooperation referred to is with the neighbors behind the lots where the receiving swale behind the lots has to be cleared and there has to be cooperation there because that swale is on other private properties.

Mr. Hansen commented that on March 20th, this is from Mr. Bianchino, CHA to Mr. Male "We have looked at the revised maps submitted to support the attached report. It appears to show as proposed however, we have one comment, and the proposed drainage easement along the north property line should be extended diagonally to include the new culvert being proposed from the catch basin. Based on this it would appear to be ok to place back on the

Zoning Board of Appeals Agenda for consideration.” So the question is, did they do that or not? Did they do what Mr. Bianchino suggested?

Chairman Rose commented that would be a question for Mr. Zaccarelli.

Mr. Zaccarelli commented what is your question?

Mr. Hansen commented that Mr. Bianchino who works for the Town of Halfmoon, he is our Town Engineer in his March 20th memo to your Engineer, Mr. Male he states “ We have looked at the revised maps submitted to support the attached report. It appears to show what is proposed we have one comment. The proposed drainage easement along the north property line should be extended diagonally to include the new culvert proposed from the new catch basin. Based on this, it would appear that to be ok to place back on the ZBA Agenda for consideration.” So that is where we are tonight.

Mr. Burdyl asked Mr. Zaccarelli to point out on the map where the new culvert and catch basin are located on the plan.

Mr. Hansen commented that the new catch basin is at the end of the culvert that comes across the road from the other side of the road, do you remember seeing that while we were out there? Right now it just dumps the water onto the lot and through the swale that is shown on the map with a dotted line. This map is dated October 30, 2012, which actually was several months before Mr. Bianchino's memo is written. Unless they made changes to this map and didn't indicate the map changes on it. It seems to reflect what they are talking about because he is talking about a diagonal culvert pipe going from the catch basin at the edge of the road under the driveway for one of the new houses, and then will go to a new swale, or perhaps to an existing swale between Mr. Martin's property and the northern most lot of the two lots. They are basically using a different swale, not the one that goes through the middle of that lot but the one that goes through the north side of that lot and adjacent to Mr. Martin's property.

Chairman Rose commented that was his exact point when I looked at the map and saw the dotted line on the map that dotted line does go through the proposed new house. Mr. Miller has indicated that the one going through the middle of the property is where the swale exists today. That is a source of confusion because you never indicated the entire width was the swale. I didn't pick that up.

Mr. Burdyl commented that the dotted line goes right through the new proposed house on the north side. Please show the Board where the old swale is on the map and where the new one will be going.

Mr. Zaccarelli explained that the whole area is actually the channel and it catches the rear of the lot as well. The proposed via the Engineer Report brings it over via the piping.

Mr. Burdyl commented that the idea of that catch basin is to slow the water down so it can then go into the culvert.

Mr. Zaccarelli agreed. It will then catch the water from across the road and bring it over via the pipe and into the new swale that is proposed on the new proposed property line.

Chairman Rose commented so there is a new proposed swale? I think you need to explain that to Mr. Martin a little more clearly. He needs to understand what is being proposed.

Mr. Zaccarelli explained the process to the neighbor, Mr. Martin.

Mr. Martin suggested that they all get together at the property the Applicant's Engineer could be there, the Members could be there, I could be there. Talk about it on site instead of through drawings.

Mrs. Smith-Law commented that she is asking the same question again just for clarification. I get where you are making the new swale and I do still not understand how this gentlemen has a swale and your going to make a new swale and they are going to run side by side so to speak.

Mr. Zaccarelli commented that the topography of his property we would have to shoot the elevation but it drops. His lawn drops at a pretty good angle and at a water level at that point.

Mr. Burdyl commented so your property is higher in elevation than his, is that correct from what you just said?

Mr. Zaccarelli commented that the front is probably about the same elevation but the back drops off.

Mrs. Smith-Law commented that toward the back your swale is higher than his.

Mr. Zaccarelli commented that there is an existing channel and it is at the elevation of what it should be to drain. It's draining naturally back into the back channel. But it's not draining properly because it's filled with debris and stumps.

Mrs. Smith-Law commented that I do understand that. I just want to understand that there will be 2 swales running side by side at different elevations.

Mr. Zaccarelli commented probably not. Ideally because of the topography of his lot drops and the assumption is that it drops right at the telephone pole onto Mr. Murphy's property so that swale, and the drainage culvert will be brought over to Mr. Murphy's property and so the channel will be brought onto the Murphy's property. Having 2 swales side by side just defeats the purpose. We are actually bringing the water onto this lot.

Mrs. Smith-Law commented that is what I am trying to understand so really there will be one swale for both properties.

Chairman Rose asked if there were any other questions or comments?

Mrs. Jordan commented that she would like to clarify what was just said. The swale will in fact be on Mr. Murphy's property now and he is accepting water from Mr. Martin's property in the new swale.

Mr. Zaccarelli replied yes.

Mr. Martin commented that the drainage from his property goes toward Mr. Murphy's in the back just like the rest of the houses on that street. I am not sure but I am thinking it's a right-of-way back there of some sort where all the water drains from all of these houses. I'm not sure of that or if anyone actually owns that or is obligated to maintain it. But all of the houses on this road drain to the back and the design of my property since the day it was built is that it drains to the back to the swale, the right side kind of runs between the property just a little bit. The property across the street drains over to this side of the street so your not just handling this water you handling their water too from the big field.

Mr. Zaccarelli commented that is why the report comes in and that is why this structure is actually a manhole to hold it.

Chairman Rose commented that one of the Engineer's comments was that the 20' easement would be granted to the Town of Halfmoon to the rear of Lot B, which would be the Murphy lot. What is the benefit to the Town or the applicant of that easement?

Mr. Harris, Director of Planning commented that the benefit would be that if there is any issues the Town has a right to go in there and maintain the problems. There is a utility easement in the report proposed by Mr. Male, the Town would then have a right to go in and correct any problems that would occur down the road.

Chairman Rose commented that does that include cleaning out debris?

Mr. Harris commented that he did not speak to the Highway Superintendent, Mr. Pingelski or parties responsible for actually doing that so we would have to confirm that the Town is willing to take such an easement as is being proposed.

Chairman Rose commented that it's a proposal and has not been accepted.

Mr. Harris commented that he would have to confirm that off hand I really don't know.

Chairman Rose apologized to Mr. Martin for calling him Mr. Miller. In the record if you see Mr. Miller I am really referring to Mr. Martin.

Mr. Burdyl commented that this additional information has been very helpful but I am leaning toward going back to Mrs. Jordan's original suggestion that we go out there and take another look at this and invite our Engineer and our Highway Superintendent.

Chairman Rose commented that the public hearing is still open but we can put that up for consideration. Do the members want to close the public hearing first?

Mr. Hansen commented that if we close the public hearing it starts the time limit for approval or disapproval.

Chairman Rose commented do we want to propose to adjourn this meeting for another month until another site visit is done so the 60-day clock does not start running on the applicant. Is there a motion on the floor for another site visit?

Mrs. Jordan made a motion to have another site visit and seconded by Mr. Burdyl. Motion was carried.

Chairman Rose commented that the public hearing is still open the neighbors and the applicants can still speak at the next meeting and the Board will schedule a site visit between now and the next meeting which would be May 6, 2012.

Mr. Hansen would like to invite the Highway Department Superintendent on board as well to meet at the site.

Mr. Zaccarelli would like to have a deed restriction easement in the property, we are seeing it all over Colonie and Albany and southern Townships.

Mr. Chauvin commented that the Town would not impose a deed restriction I don't know where the authority is coming from. They don't have the authority to do that in this context within this particular forum. The easement language that you are proposing would run with the land so it would not have to be deed restriction easement. You can create an easement that runs with the land and would not be controlled by a deed. We would need to see any proposed language to review before the Town could determine whether or not they are willing to accept that. Your Engineer has proposed that 20' easement which I am sure the Town will consider which is done all the time in the correct circumstances but we would have to see the proposed language and the Town Highway Superintendent would have to be consulted as to whether it would be something they would be willing and able to maintain. Deed restriction would be imposed against the property owners not the Town. If you want to impose that obligation to property owners that is something that you could certainly do but it would not be in any way shape or form be controlled by or required by the Town.

Mr. Zaccarelli commented, understood.

Mr. Burdyl commented that he would like to have the applicant's Engineer present at the site meeting. Then we can run through all of this.

Chairman Rose commented that we should pick a time and date now to give you enough time to contact the Engineer. The Saturday before the next meeting will be May 4, 2013 to meet at the site along with Mr. Bianchino, CHA, Town Highway Superintendent Mr. Pingelski, Zoning Board Members, Mr. Zaccarelli and his Engineer or representative. Mrs. Mikol, Secretary will make those arrangements with Town representatives. Time frame will be 10:00am.

This application will be adjourned until the next meeting of May 6, 2013 of the Board of Appeals.

Jean Shannon, 515 Hudson River Road

Ms. Shannon is present with her son Mr. Ken Wood of 215 Yorkshire Road, Rochester, and Mr. Wood is here to represent his Mom with regard to an area variance for an enclosed porch without meeting the 50' required setback under Section 165-32E of the Town Code. Ms. Shannon received a stop work order and a denial for a building permit.

Mr. Wood explained that they are looking for an area variance to provide an enclosed structure to cover a ramp which we are building on the front of a deck and enclose it to protect it from the weather. Under new business it says that we received a stop work order. There was an existing deck and existing porch half the porch was covered with an existing roof already. The house underneath the current code is too close to the road. The house currently sits 40' off the edge of the road and it should be a 50' setback. Not only is the house already an issue, the existing porch is also an issue and then we had a permit to extend the deck which they did. It received final approval by the building department.

The Code reads once you enclose a structure you have to meet the minimum setbacks in that district.

Mr. Burdyl asked if Halfmoon came and inspected.

Mr. Wood states yes they did. We proceeded in enclosing the porch by putting up walls, windows and would like to put a roof on it. That is the information we recently submitted for a permit. We were working without a permit. We felt that under the building code of 715 Section 2 where no permit was required that we met the requirements at the time that we were doing the work. When the members of the Building Department came down put a stop work order on the project, we stopped work and tried to work it out the best we could with the Building Department. We submitted an application, it was denied and we were told we needed a permit. So now we are here to finalize our construction.

Chairman Rose commented that we wouldn't consider a special permit but we would consider the area variance.

Mr. Wood commented I call it a special permit because I have been reading more and more of the Town Code and the house is in the Industrial Zone Neighborhood and one of the codes there says that any alterations in a LIC zone neighborhood requires a special permit verses a variance. I don't know the difference we were instructed that it is a residential use. I think we are a pre-existing non-conforming use.

Chairman Rose commented you are applying for an area variance and not a special permit. We just need to be clear what we are attempting to do.

Mr. Chauvin commented that we are talking about a pre-existing non-conforming use and I would have to look and see what the classification would be. Based upon the Building Department's review they referred them here for an area variance not to apply for a special use permit. They are in the right place and they need to make application for an area variance. What would the setback difference be?

Mr. Wood replied 28' to the road. In a residential neighborhood the setback is 50' the new setback would be 28'. As I mentioned we are enclosing the deck. We are not building out the deck any further we are enclosing the deck. We are not encroaching or enlarging or any of those other aspects were just enclosing what is there. It will be a 3-season room no heat and no electrical just the lights and existing outlets that are in the existing porch now. The ramp will be placed on the front of it for wheel chair accessibility.

Mr. Hansen asked if the ramp is going to be outside the existing porch.

Mr. Wood commented yes it will be outside the existing porch but will be inside the enclosed area. We are not extending any further then where the walls are on the deck now the ramp will be behind those walls so the ramp will be protected from the weather.

Mr. Hansen commented that photos and drawings are in the file. I did see them.

Mr. Wood commented that house does sit back on the curve of the road as well and we did look down to the neighbor's property and in our opinion there is not a line of sight issue in any direction. The neighbor to the south is 300' away and to the north is about 70' away. There is not a line of sight issue in the existing driveway or in the neighbor's driveway either.

Chairman Rose asked if the Board had any further questions?

Motion was made by Mr. Hansen and seconded by Mrs. Jordan to set a public hearing for Monday, May 6, 2013 at 7:00 p.m. Motion was carried.

Chairman Rose commented that we would have a site visit on May 4, 2013 at approximately 9:30am.

Mr. Wood commented that he wrapped the addition in tarps to protect it from the weather so you can see where I wrapped the walls already do you need to get into the inside.

Chairman Rose commented no, just a site visit. If you can lie out the stacks where the ramp will be located.

Mr. Wood commented that the outside is what it will be; the ramp will be on the inside of the structure.

Hodorowski Homes, 20 Ridgewood Drive

Chairman Rose commented that we have an application before us for an area variance to construct a new home in Phase III development. The front yard setback is lacking 6.1' at the building setback line. The applicant was denied a building permit from the Building Department.

Mr. Mike Graff, Land Surveyor from Averill Park, I am representing Hodorowski Homes. It is a corner lot, we have two front yards and the lot is narrow and our building envelope is very limited. The house has not been sold yet, it's still owned by Hodorowski Homes. All of the lots front on Ridgewood Drive and are all owned by Hodorowski Homes except the property behind the home, which is owned by VanWert, which is on Cary Road. The access road that was left to develop his property or other properties and sometime in the future, not sure when or will ever happen, right now the road only services the Town of Halfmoon Water Tank that is on the property. It could be a Town Road at some point and needs to be treated as such and would still be a corner lot.

Mr. Burdyl asked if the current access road services the Halfmoon Water Tank site?

Mr. Graff replied, that is correct. It is cleared, there are utilities in there but it hasn't been paved and probably won't be until some point in the future. That would be a subject of another Planning Board hearing. The house we are proposing on this lot is a small standard model that they have been using in this development.

Vice-Chairman Tedrow asked if Lot 16 is developed right now? The lot to the south?

Mr. Graff replied there is a foundation going in as we speak. It's under contract.

Vice-Chairman Tedrow asked if the lot line between the two lots be moved to the south 6'? Then you would have compliance without a variance.

Mr. Graff commented that since I am the surveyor for the site, I can tell you that the lots up here all have minimum setbacks and lot widths that conform to the zoning. We really couldn't move that lot line now.

Vice-Chairman Tedrow commented that it is always mystifying to me seeing a brand new subdivision with no homes on it and yet a variance is needed to put a house on a new lot. I am wondering why that happened.

Mr. Graff commented that he could speak from professional expertise. A lot of times we do subdivisions for developers that are not going to actually build houses they look into developing the land and sell the product as is. Then someone like Charlew, Marini, Belmonte or Hodorowski buys it and they want to put houses on lots that have already been approved. Sometimes they fit sometimes they don't. We don't know that unless we are working for a developer right away and we can say well these are product houses and these have to work on the lots. That doesn't happen all of the time.

Chairman Rose commented that you're saying that the house can't be moved back 6'?

Mr. Graff commented it would have to go back a lot further than that to clear the 50' setback. It's a corner lot. He has 2 front yards.

Mrs. Jordan commented I am sorry I must have missed that, is it a spec house or is it one that someone purchased?

Mr. Graff commented that there is someone else interested in that lot and wants to build that house on that lot. Either way, to build on this lot it will need a variance of some kind whether its 6.1' or 5.5' or whatever. It's a corner lot and it's difficult to put the type of house on this parcel.

Chairman Rose asked if anyone wanted to make a motion to set a public hearing?

Motion was made by Vice-Chairman Tedrow and seconded by Mr. Hansen to set a public hearing for 20 Ridgewood Drive for Monday, May 6, 2013 at 7:00 p.m. Motion was carried.

Chairman Rose commented that a site visit would take place on Saturday, May 4, 2013 at 9:00am. Mr. Graff will make arrangements to have someone meet them at the site, as he will be out of town.

Mr. Hansen asked if the house has been staked out?

Mr. Graff commented that we applied for the building permit, we were denied we had a process we had to follow. The lot has been cleared and nothing has been staked out yet.

Mr. Burdyl asked if your client could have someone there in lieu of you that would be acceptable.

Mr. Graff replied: yes.

Chairman Rose commented that would of course be acceptable to the Board. We will be meeting at 9:00am at the site. Please have your office contact our secretary, Mrs. Mikol at the Office if you should wish to postpone your public hearing.

Vice-Chairman asked does the Werner Road project have to have public notices sent out to them again?

Mr. Chauvin replied: They have already been notified. It is up to the neighbors to look for the agenda on the bulletin board, on the Town's web site and make phone calls to the Town. The Town is not required to send out notices again.

Chairman Rose commented that the minutes will be posted to the web site once the Board has approved them.

Mrs. Jordan made a motion to adjourn the meeting and was seconded by Mr. Hansen. Motion was carried.

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

