
REGULAR MEETING OF THE VICTOR ZONING BOARD, DECEMBER 7, 2009

NOTE: Per Robert Freeman Esq., NYS DOS director of Committee for Open Government, addresses of individuals listed in these minutes have been removed. Complete minutes are available in the Town Clerk's office during regular business hours.

A regular meeting of the Town of Victor Zoning Board of Appeals was held on December 7, 2009 at 7:30 p.m. at the Victor Town Hall, 85 East Main Street, Victor, New York, with the following members present:

Jean Krym, Chair; Mathew Nearpass; William Moore; Nancy Rencis; Michael Reinhardt; Jim Stathopoulos; Scott Harter (late arrival)

ABSENT: None

OTHERS: Sean McAdoo, Sr. Building Inspector; Mark DiFelice; John Palomaki; David Dillon; Stewart Pedersen; John Accorso, Town Board Liaison

PAST MINUTES:

On motion of Jim Stathopoulos, seconded by William Moore:

RESOLVED, that the minutes of the meeting held on November 16, 3009 BE APPROVED WITH CORRECTIONS.

Adopted Ayes 6, Nays 0.

DECISION:

RADIOSHACK – SIGN 160 Cobblestone Court Appl. No. 21-Z-09

Mr. Dave Dillon, Art Part Signs, appeared before the Board.

Mr. Dillon stated that RadioShack was still requesting the same size sign. He distributed additional photos.

Mrs. Krym asked if Mr. Dillon heard if RadioShack was entitled to have their name on the directory sign. Mr. Dillon indicated that the directory sign is full. There were two photos showing the pylon which is full and there as also another photo where they took the two mock up prints and stapled them to the fascia of the building to show a comparison. He also provided a video driving north and south on Route 96 showing the sign on the building along with two panoramic views. Mr. Dillon stated that panoramic shows how the requested size fits with what is currently on the building for signage.

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Mr. Dillon queued the video for the Board's review. Mr. Dillon stated that you could see the sign from all four lanes on Route 96.

Mr. Dillon re-measured the Clix sign that is currently there. It measures approximately 46" x 7' 6" is the RadioShack sign is proposed to be 28.75 square feet. He wasn't sure if it was an older sign that was grandfathered to an older code. Mrs. Krym indicated that it may have slipped by because Clix was not granted a variance. Mr. Reinhardt asked how the square footage is calculated. A rectangle is drawn around it. That's what Mr. Dillon did for his calculations. The proposed sign is 37.98 square feet.

Mrs. Krym – Bill, I'd like to start with you with any questions or comments you may have.

Mr. Moore – I don't have any questions, but while what he wants is a little bit bigger, I don't see any real difference in the sign from the picture. The proposed variance versus what we allow is not a whole lot different, to me. So, at this point, I wouldn't be for granting the variance.

Mrs. Krym – Thank you. Mathew?

Mr. Nearpass – I would agree with Bill. I appreciate everything you've done to get us to today. I can't remember a single case where we have had this much information to really decide on but looking at the two, I really don't see that much of a difference and I think the best picture you have is the one that Jean has in front of her that really shows that comparison.

The other factors that I may have been a little more lenient on is if we really would have had some variances elsewhere in that development but obviously there are none. I don't think it's the right thing to do to set a precedent just because of that. The other signs, as I look at it, on the top row, they all seem like they are similar letter size. Some names may be longer, some names may be shorter but for all general purposes, I believe that this sign to code still meets the bill.

Mrs. Krym – Michael, would you like to go next?

Mr. Reinhardt – You gave us a percentage number of the Clix sign. What as that again?

Mr. Dillon – The Clix sign is 46" high by 7' 6" wide which is 28.75 square feet.

Mr. Reinhardt – I agree with my colleagues. I think I don't see any big difference in it. I think asking for that size of a variance just doesn't make any sense to me.

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Mr. Dillon – This one is compliant and this one is what we are asking for.

Mrs. Krym – I'd like to just comment that although we really appreciate your video, I don't know if it would ever be the intent of the engineers and planners and the boards to ever have anyone really try to read...I know we all go looking for different businesses but we really are supposed to look at signs. It is unfortunate that you can't be on that directory; however, you could be on the directory if the landlord wanted you to be because there's a lot of white space there and it could be tightened up. It could be changed in such a manner that you could be up there.

Mr. Dillon – It's possible. It would take a major re-engineering.

Mrs. Krym – Aren't they just slats that get put in?

Mr. Dillon – That one is routed aluminum faces backed up with Plexiglas. It's a significant change to adjust the size of all those slats.

Mr. Reinhardt – Jean, sorry to interrupt. I had one more question.

Mrs. Krym – I'm sorry, Michael.

Mr. Reinhardt – Any information on RadioShack changing their logo or their name? I've seen advertised that they are going to shift from RadioShack to "The Shack". If that's the case, then, if we were to grant a variance for a sign of the size of RadioShack and then all of a sudden RadioShack changes their name to "The Shack", now the words "The Shack" becomes much larger than what you need.

Mr. Dillon – I guess if that were to happen, we would have to submit for a sign permit and it would come to this Board again and we would have to say why we needed a bigger one and we wouldn't have the argument that this is the name and it's got a lot of letters.

Mr. Reinhardt – I would disagree with that. My understanding is once you grant a variance at that proportion and size, it runs with the property. It runs with the owner. I think we would be inviting a problem if the variance is granted of 10%, 20%, 30%, it's going to keep running with it.

Mr. Dillon – That seems very unusual to me.

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Mr. McAdoo – The variance stays and as long as you have a sign that size, it would stay with it.

Mr. Dillon – Okay.

(Mr. Harter arrived at this point in the meeting (7:50 p.m.).)

Mrs. Krym – Michael, did you have anything else?

Mr. Reinhardt – No, thank you.

Mrs. Krym – Nancy?

Mrs. Rencis – I am sharing the same concern with the rest of the Board. In particular, when we are dealing with signs and we look at the size of the sign and we look at the percentage of the variance being granted, I think we would set quite a precedent for that particular piece of property overall for future tenants, as well.

Mrs. Krym – Jim?

Mr. Stathopoulos – I agree with what the rest of the Board is saying in that we are setting a precedent that I don't think we should be setting but visually I don't see a big problem driving down there. When I look at the photos, I have to agree with the applicant, in some respects, it looks to be in character of what is there. Again, I share the same feeling that setting a precedent is not the proper thing to do. I'm sort of at an impasse. I don't know what to say.

Mrs. Krym – Mr. Dillon?

Mr. Dillon – Can I ask a question. The variance would be for that particular chunk of building, not for the whole building?

Mrs. Krym – It would be just for your store.

Mr. Dillon – In that case, I would like to say that if somebody else does come along, they are going to be faced with the same issue of having a short frontage. So, that portion is going to be a very small frontage and they are going to want to come to you at that point and if Bob's Grill moves in there, he's going to say I want to put this sign and it's going to be too big because he is limited by that frontage.

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Mr. Moore – We're really not talking about Bob's Grill.

Mr. Dillon – I understand.

Mr. Moore – Or who is coming on in the future. We are talking about your application tonight.

Mr. Dillon – Correct. And my point is just that to be concern with what happens when the variances passes on was raised, if we grant it, now we are worried that there's always that variance for the next store.

Mr. Moore – We grant you what the code allows. That space is what the code allows. If Bob's Grill wants a variance, it would be granted if it was reasonable.

Mr. Dillon – My point was just that if you are afraid that if the next thing that comes along, if RadioShack moves, it will be too big or whatever, if this sign is in proper character for the building and it needs a variance because the frontage is small, then whoever moves in there is going to have to have a little bit bigger sign to be in character with the building because the frontage would still be small.

Mr. Nearpass – Not necessarily. Again, we are really talking about your case but we don't know what the name is or what the logo is going into the future. Certainly, if we grant the variance, even other current vendors on the property might come back and say we want a 55%+ increase in our signage.

Mr. Dillon – To which the answer could be you are not limited by a narrow frontage so you are not going to get it.

Mr. Moore – It is a frontage concern and I don't think that's an issue.

Mrs. Krym – I wanted to say, as of our last hearing, what part we had of it, I was opposed to granting the variance. But after seeing the visuals, I am in favor of granting this variance because it is visible from Route 96 and without the opportunity to display the RadioShack sign logo on the large monument sign, they are going to have trouble having people find them. We want our merchants to be successful without being garish. I think that the letters on the mock up are in very good proportion to the rest of the shopping center. I am in favor of it.

Scott, do you have any comments?

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Mr. Harter – You are not allowed to put a sign on the monument, is that correct?

Mr. Dillon – The monument is full and it is definitely full with much more important tenants than RadioShack.

Mr. Harter – But if it were not full, would they be allowed?

Mrs. Krym – I don't think you are entitled to it.

Mr. Dillon – I was given a definitive “no” when I called to find out.

Mr. Moore – And it would have to be approved by the landlord.

Mr. Harter – I guess what I'm trying to get at is the owner who is leasing this building to them is not reserving a slot for them. But, Sean, legally, if there were a space available on that monument, would they be able to hang a sign there according to our code?

Mr. McAdoo – The code would allow them to, yes. Whether or not they choose to is up to the landlord and the tenant.

Mr. Harter – So, given that that possibility doesn't exist because of the landlord, I guess I would be in favor of approving the sign dimensions as proposed by the applicant with the understanding that if an opportunity arises on that monument, either they make the sign smaller or they are not allowed to hang on it. It seems to me if I'm in the applicant's seat, I've got another option here but it's being thwarted by the landlord. But still, I'm a business person and I want some recognition for my business and if the monument isn't available for whatever reason, then I guess I lean towards Jean's interpretation which is I think he should be allowed something reasonable. I also think it is somewhat unique that the building frontage is so narrow which is dictating the size of the square footage. You don't have a lot of buildings that are like that so “Shack” is appropriate for that size of a building. I also look at the photo simulation here and I can't say from looking at one versus another that I feel that anything is being environmentally harmed by the larger version.

If I had to propose it, I would propose then that they not be allowed to not hang a sign on the monument should a vacancy arise, as an off-setting condition.

Mrs. Krym – It's not terribly important to our discussion but Sean, I think Clix is in violation of our code if you figure out that perimeter.

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Mr. McAdoo – It is.

Mrs. Krym – But they are moving around the corner.

Mr. Reinhardt – If Clix is out of compliance and since it is there, I would lean towards allowing a variance to the same proportion and to the square footage that the Clix is on the condition that that is in fact true, that it's 28.75'. If Clix can do it, why can't RadioShack? But to ask for the 37.98 square feet....

Mr. Nearpass – But Clix wasn't allowed to do. Clix just didn't get caught.

Mr. McAdoo – They have a certificate of completion.

Mr. Moore – I agree. Clix just got up there.

Mrs. Krym – We decide each case on its own merit. But I still...when I'm driving on Route 96 and I'm looking for a business, it is very important to keep my eyes on the road and all of us feel that way but it would make it a little bit easier to see the larger letters as was demonstrated in the video and again, if it didn't look correct in the mock-up, I would not ever be in favor of it. But it is so in proportion. It doesn't trouble me. I don't think no one would ever know that a variance was granted because it is in the correct proportion. Would anyone like to make any further comments?

Mr. Moore – If they don't know whether there is going to be a variance or not, then why don't we stick with the town code. If it's not going to be that much different, then stick with the town code and not give it a variance, at this point.

Mrs. Krym – It's a subtle change.

Mr. Moore – My comment is that I prefer to stay with the Town code.

Mr. Harter – What is the square footage of your proposed versus what is there now with Clix?

Mr. Dillon – Clix is 28.75 and we want 37.98.

Mr. Nearpass – It's about 55% over what is allowed.

Mr. Harter – Is Clix in compliance?

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Mr. McAdoo – No.

Mr. Dillon – We're allowed 21 square feet which is what this size would get us to 21 square feet.

Mr. Stathopoulos – Where they are being penalized is their store front is a lot narrower. They are allowed 1 square foot per linear foot of frontage.

Mr. Moore – I don't think they are penalized. I think that's what they are allowed.

Mr. Stathopoulos – Well, maybe penalized isn't the right word. In comparison to what the other store fronts are there.

Mr. Moore – But they moved into that space.

Mr. Harter – But that's the reason they are here, too, because maybe our Town code is reasonable to a point and maybe with a narrow piece of leased property like this, maybe it falls short.

Mr. Reinhardt – That's an excellent point but I think the remedy is not to grant a variance to 50% plus. The remedy is to go back and ask the people who draft the code and say this isn't working, re-draft the code. We shouldn't be creating the code here.

Mr. Harter – That's true. I agree with that.

Mr. Dillon – I've seen codes with a two or more step process where it's tied to the linear frontage and they also include a maximum letter height or a maximum overall sign height for a plaza like this so the letters can only get so high. So, even if you have a huge frontage, and you are allowed a larger sign, you still have to keep the letters small and all of the letters can't...it keeps everything proportional is one of the ways. That's not something to decide here. That's for the Town code people.

Mrs. Krym – It is an interesting concept.

Mrs. Krym read a draft resolution.

DECISION:

On motion of Jean Krym, seconded by Scott Harter:

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WHEREAS, the Secretary received an application on November 2, 2009 requesting an area variance to allow construction of a sign to allow a 37.98 square foot sign whereas 21 square feet is allowed; and,

WHEREAS, said application was referred by the Code Enforcement Officer of the Town of Victor on the basis that no sign shall exceed one square foot for each foot of building frontage; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on November 16, 2009 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

WHEREAS, a Public Hearing was held on November 16, 2009 at which time no one spoke against the application and no one spoke in favor of the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact:

1. An undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance. The lettering is similar in proportion to what is existing on the building. The linear frontage of the area to be leased by RadioShack is narrow creating proportionately a small square footage area allowable for the proposed sign. It is so small, it warrants the variance.
2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. The visual photographs, banner and computer simulation demonstrates that the proposed sign is in proportion to the existing signage on the building. It would make it more visible from Route 96 for identification of the business.
3. The requested area variance is substantial. The sign would be approximately 50% greater in square footage area.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed sign will be in proportion with the existing signage on the building.

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5. The alleged difficulty is not self-created by virtue of the application. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

NOW, THEREFORE BE IT RESOLVED that the application of Art Parts Signs, ATTN: David Dillon, 100 Lincoln Parkway, East Rochester, New York, for an area variance to the Town of Victor Zoning Ordinance to allow a 37.98 square foot sign for RadioShack at Cobblestone Court BE APPROVED; and, be it further

RESOLVED that the following conditions are imposed to minimize any adverse impact such variance may have on the neighborhood or community:

1. That the applicant forfeits the opportunity to hang a sign on the existing monument sign should the opportunity arise.

The resolution was put to a vote with the following results:

Jean Krym	“Aye”
Michael Reinhardt	“Nay”
Nancy Rencis	“Nay”
Jim Stathopoulos	“Aye”
Scott Harter	“Aye”
Mathew Nearpass	“Nay”
William Moore	“Nay”

The motion failed to carry.

PUBLIC HEARING:

The Secretary read the Legal Notice as it appeared in The Daily Messenger on November 30, 2009.

PEDERSEN, STEWART

7395 Modock Road

Appl. No. 22-Z-09

Mr. Stewart Pedersen appeared before the Board.

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Mrs. Krym – Mr. Pedersen, I went out today to look at your property and it was wide open and you have quite a workshop set up there. I'm not sure what you are doing but we'd like to hear from you.

Mr. Pedersen – I was going to try and fix up the existing house but it is in such bad shape that it's not a good idea.

Mrs. Krym – How old is the house?

Mr. Pedersen – I think it's 1885. The floors aren't good, the electrical is not good.

Mr. Krym – Is there a basement?

Mr. Pedersen – It's stone but it's been very neglected. It's got an old cistern in it that's in bad shape. I can tackle most projects but it wouldn't be advantageous financially...you are going to spend the same amount of money and still end up with the same kind of problem, if you will.

Mrs. Krym – Mr. Pedersen, did you get a building permit for the changes to the structures that you did make on that property?

Mr. Pedersen - No but there was a building permit for the second structure, the three car garage. The Code Enforcement Officer informed me that I needed those two weeks ago so I was going to roll everything into one.

Mrs. Krym – Have you built in our Town before?

Mr. Pedersen – Yes.

Mrs. Krym – And did you get building permits at those times?

Mr. Pedersen – Absolutely.

Mrs. Krym – Why did you think that you didn't need one this time?

Mr. Pedersen – I thought because I didn't increase any size, that I was just refurbishing what was there but I guess...

Mrs. Krym – They are new structures, aren't they?

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Mr. Pedersen – The buildings are but nothing has changed in size or area.

Mrs. Krym – Anything new requires a permit in our town.

Mr. Pedersen – I understand that now. I'll take care of all that.

Mrs. Krym – Are you going to demolish this house or are you going to burn it?

Mr. Pedersen – I talked to the Fire Department and it is too close to the other structures so it will just be demolished. It is safest that way. It's not that big of a home where you can take care of it in five or six hours.

Mrs. Krym – Will you tell us what you'd like to do after you demolish the existing structure from 1885?

Mr. Pedersen – I was going to put the new house up on the hill, tucked away in the woods, which is nice. I guess because the existing house is too close to the setback anyway. It is 13.5' too close so everything is kind of tight right there.

Mrs. Krym – Were you going to come in for a variance if you were going to restore that house to bring it into compliance?

Mr. Pedersen – I was going to get a permit, I don't know about a variance.

Mrs. Krym – Well, it is too close to the road.

Mr. Pedersen – I didn't know it was 40' and when I started to do all this investigation, I found out it was 40'. I didn't know how it would work with the existing house. That's why we are at this stage now.

Mrs. Krym – You can copy a footprint sometimes if you do it within a certain amount of time if you wish to maintain that same footprint. Now that you've built the other structures, you have no choice but to put the primary structure behind the new structures.

Mr. Pedersen – I could put a smaller house but that's now what I want to do.

Mrs. Krym – Are you building this on spec or are you building it for a client?

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Mr. Pedersen – It is for myself. I need all this storage and I need it like immediately.

Mrs. Krym – Are you going to be running a business out of that?

Mr. Pedersen – No.

Mrs. Krym – Mr. Moore?

Mr. Moore – No comments at this point.

Mrs. Krym – Mathew?

Mr. Nearpass – A couple of quick questions. I'm assuming the order of the project is you would demolish the house first and then build the house in back second?

Mr. Pedersen – I could do that. Whatever the preference is. It doesn't...it probably would because any extra dirt that we get from the excavation would fill in that hole.

Mr. Nearpass – Why do you want the house further back? Is it just to be...you are saying, within code or why not just demolish the house and put something up there and come to us asking for a variance there?

Mr. Pedersen – There's just no enough room for the house. The old septic system is off to the one side so I'll end up getting rid of that, of course.

Mrs. Krym – You have public water, don't you? Do you have sewer there? Are you going to use this septic system that's on here?

Mr. Pedersen – That will be brand new.

Mrs. Krym – So, if you built your new house, you could just move it back and a little bit to your left property line, maybe? Or would you not be able to...your existing garage would be in the way. You might have to take that down. Scott?

Mr. Harter – I don't have any questions.

Mrs. Krym – Michael?

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Mr. Reinhardt – Anywhere else you can push your proposed house to be in compliance with the code on your property?

Mr. Pedersen – It's unfortunate that it is only one acre so...

Mr. Reinhardt – That's the only place you can put the proposed house?

Mr. Pedersen – Because we have to have a new septic system.

Mr. Reinhardt – So, if I understand you right, and the map that you handed out today, if it was in the general area where C and D but not quite where H is, because you need a 50% expansion area for the septic system, why can't you put it between C & D and tighter to the existing barn and existing garage to be in compliance with the current code?

Mr. Pedersen – Again, you will eliminate all the trees that are there.

Mr. Reinhardt – It looks like you've got a proposed driveway right there.

Mr. Pedersen approached Mr. Reinhardt. Mr. Reinhardt asked the applicant several questions referring to the plan Mr. Pedersen had submitted.

Mr. Reinhardt – What I'm trying to distinguish is the desire to have his house tucked into the woods and the ability to utilize your property and put the proposed house someplace on your property and still be in compliance with the code. I'm just trying to get a clear answer. Either you can or you can't or it's just not possible...

Mr. Pedersen – I can't.

Mr. Reinhardt – You can't do it?

Mr. Pedersen – Not without ruining the accessibility to these two and you start taking away nature here.

Mr. Reinhardt – I drew a large rectangle and I cut into the tree.

Mr. Pedersen – It's 52' so it's going to take away this tree, this tree and....

Mr. Reinhardt – How much room do you need to get into the existing barn and garage?

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Mr. Pedersen – I should have at least to that dash line on there. There are garage doors on this side and garage doors on this side.

Mr. Reinhardt - So, then you move the house a little more to the north and a little more to the west. I'm not convinced that you can't put the proposed house where you want it someplace on that acre and still be in compliance with the code, yet still be far enough from the road. Were those structures there already?

Mr. Pedersen – They were there. I took down the wooden structures and just re-built them.

Mr. Reinhardt – On the site of the existing barn and the garage?

Mr. Pedersen – Right.

Mrs. Rencis – He kept the existing footprint.

Mrs. Krym – Sean, would you like to comment? Would you like to make any clarification on this structure. I didn't get to go into the new ones to see that they were re-built or if they were totally new.

Mr. McAdoo – They are what they are. They are still the same footprint. I haven't been in them either so I can't comment on that. As far as the other items, I don't have much to say right now. A lot of it is based on engineering. There's really no code issues from what is shown except for the setback issue.

Mr. Reinhardt – Could you comment or agree or disagree with putting the proposed house someplace on that property and still be in compliance with the code or is where he has it located pretty much his only option?

Mr. McAdoo – The only option I could see would be moving it straight forward about 60 feet or so which would take out the two spruces, the ash and the two pines and move the expansion area which could be a problem because he doesn't have a lot of space where the perk hole tests were taken to squeeze in an expansion area. There could be some re-engineering. I'm not sure if that's enough to push it around. The only other place that it could be is if he slide it straight forward. The drawback is he would have a hillside above him which could cause some complications with the construction process. Outside of that, it's a personal preference at that point. It's a one acre lot so you have to make it fit the best you can.

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Mr. Moore – I apologize. I have not seen the site but how much grade is there between what would be from the expansion area to the proposed house?

Mr. McAdoo – It looks about 8' to 10'.

Mr. Moore – In what distance?

Mr. McAdoo – Maybe 60'.

Mr. Harter – So there's a 12% slope.

Mr. Nearpass – Have you considered bringing the new home at least forward with the existing barn so you wouldn't have two structures forward of your home. You'd potentially have one?

Mrs. Krym – But then he does destroy these pines which I did see today. They are probably the nicest trees on the property. Not that I'm speaking in favor of it, just for clarification. Mr. Pedersen, your proposed home structure, is that one story or two stories?

Mr. Pedersen – One story.

Mrs. Krym – Jim, did you comment?

Mr. Stathopoulos – No, I haven't. Following along with what Mike is saying, I think you could tinker with the location of this house and still try and get in compliance with the code or maybe get closer to compliance with the code, looking at the map and looking at the contours and everything else. Perhaps you can even slide it over to the west, like Mike was saying to try and avoid those trees and still have access to your barns and everything else. I think you can do that if you tinker with the site plan a little bit.

Mr. Pedersen – I've had it for a year and believe me, I've done multiple....I didn't want to go through this procedure but I've laid it out every possible way.

Mr. Reinhardt – This is another possibility. Have you thought about attaching the proposed house to the existing garage? If you go in a southerly direction and you attach somehow your proposed house to the existing garage, and incorporate the existing garage, then I think you would be in compliance with the code, wouldn't you?

Mr. McAdoo – Yes, you would be, at that point.

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Mr. Pedersen – Then I would have to get a variance for the lot or setback.

Mr. Reinhardt – I don't know because I don't see the dimensions. That's the idea, is it possible to try and stay within code within reason.

Mr. Moore – Do we know if there is no sewer on Modock?

Mr. Pedersen – There is no sewer here. Otherwise I would put it right here and hook it in.

Mrs. Rencis – I'd like to make a comment. I did not have an opportunity to visit the site but I did go out and look at the satellite images of the properties and there are other properties nearby with other similar situations where you have ancillary structures in front of the house. The positioning of this on the lot is actually somewhat in keeping with some of the other neighboring properties.

Mrs. Krym opened the public hearing.

Mr. Mark DiFelice, 91 Victor Heights Parkway, Victor, New York – My name is Mark DiFelice and we own the property adjacent to Mr. Pedersen as well as we have under contract the Warder's property that surrounds his property. Our plans are to develop the area around his home which encompasses our property and Mr. Warder's property. Mr. Pedersen has done a...he cleaned up the property quite a bit from what it was and I compliment him. Our only concern or our main concern is having three separate structures on a one acre parcel whereas zoning is confined to 2 acre zoning per lot. We would prefer having the house connected to one of the structures. I really don't mind if one of the garages are more forward than the house but we would prefer having two structures, versus three separate structures there.

If down the road when we go ahead and develop the surrounding properties, there would be a possibility of homeowners wanting to duplicate that, I don't know, I'm just speculating. Secondly, if you look at the plan, if you go to the east 20', my thought was attaching the new home to the newer two car garage and that was the ideal situation. Then you just have two structures on there.

We are, right now, investigating bringing sewer down to Modock Road which will open up the whole southern corridor to development and right now we have engineers checking that out to see if it is possible. We would be happy to work with Mr. Pedersen and if we are able to get sewer there, give you an easement to hook up to the sewer. We would be happy to work with him throughout. When we have our concept drawings for our development, I'd like to meet with

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you so you know what we are doing so we are communicating because you are our neighbor and we want to make you happy.

But, again, our main concern is having two structures versus three separate structures primarily because it is one acre versus the 2 acre zoning that you are in. But besides that, I don't have any problem with the accessory garage being forward of the residence that will be constructed. I have here a couple of pictures if you haven't seen the site. He's got the nicer garage, the nicer barn and the older home.

Mr. Harter – What is your time table on the sewer?

Mr. DiFelice – The engineers are doing due diligence right now, taking elevations and shooting the whole area between 251 and Modock Road. We would probably bring sewer down from 251 through property which we own to Mr. Warders property. The time table...we are hoping to make the connection probably by spring time. Sooner the better. It's a big project so we're trying to get the engineers to get us the information as quickly as possible. We are under contract and we have a time constraint on that contract. Hopefully by April we will have a definitive answer on the possibility of having sewer down there. We don't know for sure. We think we can do it but the engineers will be the ones who determine that for sure.

Mr. Harter – Mr. Pedersen, what is your time table? Are you planning on building right away?

Mr. Pedersen – I'm actually 2 months behind.

Mr. Harter – So, we don't have time tables that match up.

Mr. McAdoo – If I may, the code that was referred to a few minutes ago was 211.27.3 which is the overlay district. The 2 acre lot consideration is not relevant in this case. The property legally pre-exists. The overlay district effects new properties so that is not a consideration that is relevant to the Board. Second, the number of accessory structures on a property is not limited by our code. There is a maximum coverage area but you could have, theoretically, 5 accessory structures. There is no limitation on it. It may be an eyesore but there is no code against it. Although the points made are valid, they are not relevant to this particular case.

Mrs. Krym – Nancy, did you want to say anything else?

Mrs. Rencis – No. That was my only comment.

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Mr. Nearpass – The size of the garage, it is a two story garage. Is it a loft apartment or is it just storage?

Mr. Pedersen – Storage.

Mr. Nearpass – So, a two story garage with storage above it and then you are going to build a one story house.

Mr. Pedersen – It would match elevation wise with the roof lines.

Mr. Nearpass – You would match the roof line?

Mr. Pedersen – Yes. The house may be a fraction higher.

Mr. Stathopoulos – Where you are proposing to put the house now, your roof line would match?

Mr. Pedersen – The two sheds are parallel now and then the house would be parallel with that. It's all going to be continuous. The roof line of the house will probably be a little bit higher than the garage.

Mr. DiFelice – I really don't mind about the structures being further in front of the primary residence. It's just with the development of \$300,000 homes that are going to go around this property, we would feel more comfortable having two separate structures versus three separate structures. But I understand Mr. Pedersen's concern of preserving the trees to keep his trees on his property. I can't recall the exactly where the trees are located relative to the black and white print that I have.

Mrs. Krym closed the public hearing.

TIME: 8:40 p.m..

Mrs. Krym – The fact that you are building a one story structure keeps it less visible from the neighboring property because the grade continues up. I didn't walk all the way up but it kind of steep. If it didn't, we might even suggest a berm or something. Perhaps that would be your salvation, so to speak, to keep from seeing that property because in the price range that you are offering, your clients might be looking for a lot more privacy. Do you think we have enough information?

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Mr. Nearpass – I think so. I'm not so sure how much more value we are going to add to this by trying to re-design the site plan.

Mrs. Krym – We need to decide on whether we would allow this to be built as his drawings reflect. Would you agree to that?

Mr. Harter – We have a proposal before us and it's this drawing right here and unless he chooses to modify it, then we have to vote on it.

I would like to say relative to our previous application on setting a precedent, we have had numerous applications come through with primary structures behind existing structures like this and most recently the one out on Brace Road. Over the years that I have been on the board, there have been many, many instances like this and I think it's important for the board to keep in mind the reason for this regulation is largely for uniformity of your typical more urban, suburban subdivisions. It doesn't really seem to have much application when you have a more rural setting, such as Modock Road. In a subdivision such as where I live, maybe for some other, yes, it makes sense to have all the houses set approximately the same distance from the street so there is uniformity. Modock Road isn't that way and like Nancy mentioned, there are other homes in the area that emulate what we are seeing here.

So, as a practical matter, I'm inclined to let the gentleman put the house where he wants it because I've seen this happen so many times before and quite honestly, in terms of changing the code, I'm wondering if we shouldn't change our code on this particular regulation as well because we have these that come up from time to time, not super frequently but enough that we put the applicant through what I consider to be a pretty frustrating process to define the location of the proposed house, from what I can tell looking at this drawing, is going to be back further than the existing house, so I see absolutely no environmental impact whatsoever. So, I am in favor of granting the variance.

Mr. Reinhardt – To throw something else on the table and maybe it's the flip side of my colleagues are saying. I would feel more comfortable, as far as trying to figure out whether or not your proposal can be in compliance with the code or if there are other options and whether it is this applicant or any other applicant, I would think it's important...it's not for the Board to figure things out or disapprove them. The applicant really should come forward with an engineer's report or architect's report, something to say here it is, proof in the pudding, I can't do it any other way. I do believe you went to the extent that you are in construction and you know what you are doing and all of your expertise, but it really doesn't go as far as an engineer that

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says, I've looked at that piece of property and this is about the only way that you can skin the cat on that one.

So, I'm guessing through the thing and putting a lot of faith in what you are saying that it can't be done.

Mr. Pedersen – I've been flipping around the house for the last year or so and I really wanted to build it where the existing house is but it's not going to be desirable. To hook it up to that other garage, it might look out of place and there might be a water issue because of the hill.

Mr. Reinhardt – That's my point where an engineer could be very valuable to say it can't be done for reasons a, b, c and d.

Mr. Pedersen – I see your point but I've worked with enough of them and I know what is going to be a problem and what is not going to be a problem.

Mrs. Krym – I'm content with the information the Frasier Engineering did.

Mr. Harter – This is just a plan with a proposed house location and to the extent to which they investigated that, I think they probably showed the house where he wanted it.

Mr. Pedersen – I talked with him at the time and he did a topographical and even he suggested that's probably the best spot it should be and that's how I ended up getting into it and getting the perk tests in that area. I don't have anything in writing but I've consulted quite a few people who are professional.

Mrs. Krym – I'm not sure it is warranted to hold this gentleman up to seek more engineering advice. I like Michael's idea very much but just to keep it simple and not cause him any more delay, I'm content with it.

Mr. Pedersen – It's great if the sewer comes down through, but if it doesn't, then what do I do?

Mr. Harter – That's why I asked the question.

Mr. Pedersen – I don't want to spend \$10,000 on a septic system when there is sewer right at the road.

Mrs. Krym- It very well might be....

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Mr. Pedersen – But we don't know.

Mrs. Krym closed the public hearing.

TIME: 8:40 p.m..

Mr. Harter proposed a draft resolution.

DECISION:

On motion of Scott Harter, seconded Mathew Nearpass:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on November 19, 2009 requesting an area variance to allow an accessory structure to be forward of the front line of the primary building; and,

WHEREAS, said application was referred by Sean McAdoo, Senior Building Inspector, of the Town of Victor on the basis that no accessory structure shall be forward of the front line of the primary building; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on November 30, 2009 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

WHEREAS, a Public Hearing was held on December 7, 2009 at which time one person spoke about the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings of fact:

1. An undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance. An adjoining property owner spoke and their concerns were taken into consideration. There are other accessory structures in front of the primary structure in the nearby area.

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2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. Moving the proposed house closer to be in conformance with the existing garage building line would limit the available area where the new septic system has been designed. Topographically the location of the proposed house is located in a reasonable area related to the wastewater system and site drainage.
3. The requested area variance is not substantial when compared with the other alternatives that were discussed.
4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The proposed house location will save several evergreen trees on the property.
5. The alleged difficulty is self-created by the desire of the applicant to construct the structure. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

NOW, THEREFORE BE IT RESOLVED that the application of Stewart Pedersen, 7144 Dryer Road, Victor, New York, for an area variance to the Town of Victor Zoning Ordinance to allow an accessory structure to be placed forward of the primary building at 7395 Modock Road, BE APPROVED; and be it

FURTHER RESOLVED that the following conditions are imposed to minimize any adverse impact such variance may have on the neighborhood or community:

1. That any exterior lighting on the proposed house or on the existing structures be dark sky compliant.
2. That any existing structures be brought up to code and that the proper permits be obtained from the Town of Victor Building Department.
3. That the demolition of the existing structure obtain a demolition permit.

A roll call vote was taken with the following results:

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Jean Krym	"Aye"
Scott Harter	"Aye"
Mathew Nearpass	"Aye"
William Moore	"Aye"
Michael Reinhardt	"Aye"
Nancy Rencis	"Aye"
Jim Stathopoulos	"Aye"

Adopted Ayes 7, Nays 0.

DISCUSSION:

MEETING DATES – 2010

The meeting date schedule was distributed for 2010.

CHAIRMAN RECOMMENDATION FOR 2010

The Zoning Board recommended Mathew Nearpass serve as Chairman of the Zoning Board of Appeals for the year 2010. This will be sent to the Town Board for formal appointment.

Nancy Rencis agreed to be Vice-Chair for 2010.

EASTVIEW MALL PEAK PARKING PLAN

Mr. Harter asked if the peak parking plan has been implemented at Eastview Mall by Wilmorite. Mr. McAdoo reported that the first week-end (black Friday week-end), the traffic flowed very well throughout the week-end. The shuttle ran the entire week-end from one hour before the mall opened to one hour after the mall closed. It saw minimal usage the entire time. They had 4 additional Ontario County Sheriff Deputies and two New York State Police Officers from 11:00 a.m. to 7:00 p.m. for traffic control. DOT did make adjustments in the timing of the lights along the Route 96 corridor which seemed to help. Crowds were relatively heavy black Friday week-end but had no incidences. That was the initial report from the first week-end.

Mr. Harter feels that what has been implemented doesn't really address what the Zoning Board of Appeals granted. Mr. Harter requested that the Town (Code Enforcement Officer) communicate back to Wilmorite to see why they are implementing something different from what was granted. He is curious as to what theory they are applying and if the applicant has a

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better plan because of other information the Town is not aware of, the Zoning Board would be willing to listen to it. Mr. McAdoo was willing to reach out to Wilmorite to get the information Mr. Harter was requesting.

Meeting adjourned 9:25 p.m.

Typed by Kimberly Kinsella.