
REGULAR MEETING OF THE VICTOR ZONING BOARD, DECEMBER 6, 2010

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 6, 2010 at 7:30 p.m. at the Victor Town Hall, 85 East Main Street, Victor, New York, with the following members present:

Mathew Nearpass, Chairman; Nancy Rencis; William Moore; Michael Reinhardt; Scott Harter; Jean Krym (late arrival 7:40 p.m.)

ABSENT: Jim Stathopoulos

OTHERS: Alan Benedict, Code Enforcement Officer; David Hou, Town Attorney; James H. Johnson; Norma Polizzi; Sarah Johnson; Steve Sanna; Marge Elder, Conservation Board Representative; James Boglioli; David Carrier

PAST MINUTES:

On motion of Scott Harter, seconded by Mathew Nearpass:

RESOLVED, that the minutes of the meeting held on November 15, 2010 BE APPROVED WITH CORRECTIONS.

Adopted Ayes 5, Nays 0.

On motion of Mathew Nearpass, seconded by Scott Harter:

RESOLVED, that the minutes of the meeting held on November 1, 2010 BE APPROVED.

Adopted Ayes 4, Nays 0, Abstentions 1 (Michael Reinhardt)

BUILDING PERMITS:

Van Scott Builders, Inc., repair front and back porch foundations, 7248 Hertfordshire Way

Van Scott Builders, Inc., renovations to add a bathroom, 600 High Street

Naked Pizza, tent permit, 202 High Point Drive

Jim Biltucci Contracting, demolition of a single family dwelling, 6924 Valentown Rd (2nd permit)

Janice Butera, installation of an egress window, 1004 Sutherland Way

Devin Bardun, installation of a fireplace insert, 467 High Street

Lono LLC, installation of a generator, 8045 County Road 41

Andris Rencis Remodeling, installation of a fence with pillars, 6800 Gillis Road

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Andrew Karlson, basement renovations, 239 Haywood Glen
Chauncy Young, construction of a shed, 660 Old Dutch Road
Andrew Streb, basement renovations, 977 Kensington Court
Decks Unlimited, construction of a deck, 240 Haywood Glen
Lakeshore Fire Protection, installation of a hood and fire suppression system, 658 Eastview Mall
New Era Cultural Experience, temporary kiosk, 439 Eastview Mall
Terry Bistrovich, tear off and re-shingle roof, 6763 Spring Creek Drive
Bowering Homes, Inc., construction of a single family dwelling, 918 Strong Road
Bowering Homes, Inc., installation of a sign, 900 Strong Road
Weaver Construction, construction of a deck, 7935 Shire Lane
Benderson Development Co, LLC, renovations for Bed Bath & Beyond, 20 Square Drive
Computerized Inventory Concepts Inc., roof over, 7588 County Road 42
Landmark Builders LLC, construction of a single family dwelling, 82 Barchan Dune Rise
Umi Japanese Steakhouse, operating permit, 150 Cobblestone Court Drive
Gypsum Mills Community Center, operating permit, 6390 Plastermill Road
Serenity House of Victor, Inc., temporary kiosk, Eastview Mall
Tomax Homes Inc., construction of a garage and a porch, 6802 Valentown Road
Gypsum Mills Estates, installation of a manufactured home, 6360 Murphy Drive
Brian Ferguson, installation of a sign for Valley Field Farm, 6360 Gillis Road
Lisa's Hallmark, temporary space in front of store, 763 Eastview Mall
Cinnamon Roasted Almonds Co., temporary kiosk, Eastview Mall
Steve Parks, installation of a fireplace, 6798 Colyer Crossing
Bowering Homes, Inc., construction of a single family dwelling, 7963 Bramwell Park
Kevin Lynch, compliance inspection of the basement renovations, 1198 Meadow Sweet Lane

EASTVIEW MALL – LIGHTING

Mr. Harter asked about the progress on the lights at Eastview Mall. Mr. Benedict stated that he did speak with Mike Kauffman who is the Manager of Eastview Mall. Mr. Benedict reported that Wilmorite had a budget for safety and security items which the light was one of those items. The money has already been spent that they were going to use to purchase the light so the light will not be purchased. If they do decide to install it in the future, or would like to install it in the future, they would need to come back to the Town.

Mr. Nearpass stated that he thought it was more than just one light. Mr. Harter just reiterated that because Wilmorite is not proceeding with the light they brought before the Zoning Board for approval, therefore they do not have to bring their existing lighting into compliance. Mr. Benedict stated that their lights are in compliance until they change them. Mr. Harter believed as part of the resolution that the Zoning Board adopted, Wilmorite indicated that they would retrofit

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their lights and make them dark sky compliant. Mr. Benedict stated that Wilmorite made the statement that they were dark sky compliant. Mr. Harter believed that as part of the variance that was granted, the existing lights were to be brought into dark sky compliance. So, if they are not proceeding with installing the light that kicked the whole process off, Mr. Harter supposed they could avoid making the existing lights dark sky compliant.

Mr. Hou thought that everybody would benefit from taking a look back at the resolution. His recollection was simply a statement by Wilmorite that the existing lights were dark sky compliant. Nevertheless, Mr. Hou thought that if they were not moving forward with the installation of the additional light pole, then he thought they were fine.

Mr. Harter's recollection was that they way the resolution was worded, that the Code Enforcement Officer was to confirm that the lights were dark sky compliant. Mr. Hou stated that was correct and that was his understanding. Mr. Harter believed that initially it seemed like they were and then a couple of meetings ago, it was confirmed by Alan Benedict that they were not actually compliant. Mr. Harter looked to Mr. Hou and asked if the Town still has some leverage on Wilmorite to bring their existing lights into compliance. Mr. Hou thought if they are not going to install the additional light, the Town cannot ask them to do anything else.

Mr. Nearpass asked that the resolution be researched and if Wilmorite is not moving forward, then a letter should be sent advising Wilmorite that the variance has been rescinded.

OTHER DISCUSSION:

Solar Light Panels

Ms. Rencis had a question for Mr. Benedict. She has been researching in the Town code regulations for solar panels. She wondered if solar panel regulations have ever been researched. Mr. Benedict stated that he was not aware of anything in the existing Town code regarding solar panels. It is unregulated at this point. Mr. Benedict stated it would be regulated with a building permit. She feels that this may be something that the Town may start to see more of.

Pool Fencing

Mr. Nearpass asked if above ground pools are still to have fencing around them. Mr. Benedict stated that if the above ground pool is less than 48" high from grade, they are required to have a fence with the exception of blow-up pools in that they do not meet the requirements for being a rigid sided pool, in which case, they still need a fence around them.

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Trailer by Bernardo's Pizza – School Street & Rawson Road (Village)

Mr. Moore asked about the trailer in Bernardo's parking lot with a sign on it. He assumed it was a sign for the company that is located in that building.

Mr. Benedict stated that he had sent them a letter a while ago. They were basically refusing to move the trailer or remove the sign. Others in the Codes & Development Department are working on issues in that plaza, as well, and they were going to take that as just another violation and work on it. Mr. Nearpass asked if this is in the Town or Village. Mr. Benedict indicated that it is in the Village.

DECISION:

VINCENT & SUZANNE CHANG

8050 Barony Woods

Appl. No. 32-Z-10

Mr. James Johnson, AIA, appeared before the Board. Also present was Sarah Johnson and Norma Polizzi, Esq.

Mr. Nearpass asked the Board to take a few minutes to review the letter dated December 2, 2010 from David Hou, the Town's Attorney. Ms. Polizzi asked if it would be possible for them to review it. Mr. Hou stated that it is an attorney/client privilege communication. Mr. Hou stated that he would be happy to discuss with Ms. Polizzi later. Mr. Hou stated that his correspondence is not part of the record. It is a memorandum written at the ZBA's request on the legal issues.

Mr. Nearpass – Does anyone have questions for Mr. Hou regarding his memo? Obviously the intent here is to look for a decision as to whether it had to go down the non-conforming use part or whether it was just a standard area variance. It is very clear here that going the area variance route makes legal sense here based on the fact that it didn't go into a non-conforming use because we didn't change legislation or change the code at all. Just because the buffer had moved doesn't trigger that. It is very clear. I think he stated the facts very well and it is a very well written document explaining the issue and ultimately a decisive recommendation.

Does anyone have any questions or comments?

Mr. Harter – Mr. Hou's letter basically says we can process this as an area variance. Is that right?

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Mr. Hou – That is our conclusion. You should follow with your standard procedures, as you are all well familiar with in analyzing this case as an area variance. I saw no reason to depart from your standard operating procedure.

Mr. Nearpass – We have the applicant here. Does anyone have any further questions for the applicant?

Mr. Harter – What is the Board's feeling on the area variance? Does the Board feel comfortable granting it? I wasn't part of the last meeting so I guess....

Mr. Nearpass – You were probably part of the first meeting.

Mr. Harter – Yes.

Mr. Nearpass – I see Marge here, as well. We can go around the room. As long as it fell under the area variance category, with the Conservation Board on our side, I felt pretty confident that this would be okay to move forward given that we would put the necessary justification in there to make sure this was a special case or a very unique case so it couldn't be used in other situations that weren't this exact same situation here. I feel comfortable with that. We can go around the table again. Bill?

Mr. Moore – I felt very comfortable with the Town Attorney's comments and I think it is an area variance.

Mrs. Krym – I returned to the property to take a look at it. I realize that they are very limited in what they can do as far as the terrain, the drop off in the back. I was very troubled by where we were going with it because we were sort of prohibited to do anything under what we thought the circumstances were we were working under. I felt that, as such, it was a taking of their property to not be able to use their land. So, I'm really delighted. This is very scholarly. Thank you very much to our Attorney, David Hou. It gives us a way to go forward with this project and I am in favor of it.

Mr. Nearpass – Michael?

Mr. Reinhardt – Honestly I'm torn with it. The language of the statute and what the intent of those now wetlands are to be and now trying to mesh that in with an area variance, I find it to be a close call. I'm going through the standards; I'm weighing through the process. As nice as it sounds, protection of the wetlands, I think, are at the forefront. There's not a lot of it left. There are not a lot of green spaces left. The intent of the legislature seem to me, in my mind, is to

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protect some these lands. (Inaudible) keep in mind 8050 Barony Woods when you wrote that statute. Did you have that in mind because it seems to be a collision course between the statute and what they want to do with the land?

I don't, I guess this is where; at least, my education comes in as far as "taking". I have a different mindset of what "taking" means. I don't think it's a taking. They can use the land so I guess what I'd like to have is a little more discussion on where we are with the five criteria, the five elements of weighing through this whole process of whether or not we are going to grant this area variance.

Mr. Nearpass – Okay.

Mr. Harter – Can I just ask a question of the applicant?

Mr. Nearpass – Sure.

Mr. Harter – How many, did I read it correctly, we are impacting 300 square feet of the wetland? Is that correct?

Ms. Polizzi – Of the buffer.

Mr. Harter – Of the buffer. Okay.

Mr. Nearpass – Nancy, any questions?

Mrs. Rencis – I think this is the first time we have run into a situation where the wetland buffer has been redelineated after the structure has already been built. It would have been helpful if there had been some way to address what happens to these particularly privately owned properties when there is a redelineation of the wetland buffer. Given the size certainly of the proposed addition, and really the very few and literally no other alternatives, in this particular case, I would support it.

Mr. Nearpass – I would at least take a moment then, on Mike's recommendation, and just talk amongst ourselves about the five criteria that we are all comfortable with the justification.

I think the first one regarding an undesirable change not having a negative impact on the character of the neighborhood; I think that one is relatively straight forward.

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Mr. Reinhardt – If I could...when you say the impact is going to be 300 square feet, that's the finished product. Is that right?

Ms. Polizzi – Yes.

Mr. Reinhardt – But my background in construction and building, 300 square feet of a structure just doesn't fall out of the sky. There needs to be equipment around...there's going to be impact on those lands, those buffer lands beyond 300 square feet. How are you going to get the 300 square foot structure...?

Mr. Nearpass – So, Mike, to me, and maybe I'm wrong here, but I think number one is to the finished product. Maybe what you are talking about is the adverse impact to the physical or environmental conditions but I look at number one and I see from the finished product when they are done with the structure.

Mr. Reinhardt – I don't know because we are dealing with the buffer land. This isn't just any piece of property.

Ms. Polizzi – Remember, again, DEC will be overseeing that part of the project because we are getting the permit that allows us to do work within the buffer zone. So, DEC will be on site during the construction period to ensure the buffer is protected, according to the permit conditions.

Mr. Johnson – We are showing the limit of construction work.

Mr. Nearpass – Number one is talking about...any maybe it is just me again, it is talking about the character of the neighborhood.

Mr. Reinhardt – Are they going to put it back to where it was before?

Mr. Harter – We are talking 300 square foot, as you indicated, falling from the sky landing right within that footprint.

Mr. Nearpass – I believe what they showed before had landscaping around it. The finished product, as I see, is in character with the neighborhood. I see what you are saying but I was thinking maybe that was more under #4.

Mr. Harter – But in terms of disturbance, if I understand what Mike is kind of getting at, and maybe this is a question for the applicant, are there unique plant species or something up there

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are going to be adversely impacted by a loader running over them? I assume it is probably lawn or something.

Mr. Nearpass – But that is an environmental change. That's #4. I'm specifically talking about #1. The characteristic of the neighborhood.

Mr. Hou – I think all of your discussion is fair game for discussion. If you are asking whether or not the construction in progress towards the final build is something that you can take into consideration, I think that whether you classify it under the first one or the last one or the fourth one, I think it is worthy for discussion but I think that you should keep in mind that you are talking about the ultimate project.

Mr. Nearpass – I would think halfway through any construction project, it's not going to be in character with the neighborhood. You've got a backhoe sitting in your front yard for a week or there's a hole dug, that is not the final product and it's not in character of the neighborhood but the finished product would be. I think it should be addressed; my point is that #4 is probably the right place.

Number two, the benefit sought by the applicant can or cannot be achieved by some method feasible for the applicant to pursue other than the area variance. Again, I talked about that in the last three meetings. The only way that they could get what they are asking for here is through the area variance.

Mr. Harter – I think also the existing house is in a fixed position so they don't have the versatility of a new build like one of our other similar applications had. I guess I would look at that.

Ms. Polizzi – We also moved the addition to the other side of the house from the original plans so as to minimize the disruption to the buffer zone. That was taken into consideration when the plans were redone. As you say, the house is fixed and we are kind of limited to where we can put this.

Mr. Harter – Does the permit application that they have from DEC or anyone for that matter, does it speak to restoration of the area that is disturbed?

Ms. Polizzi – Yes.

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Mr. Nearpass – They are putting in a retention pond, if I recall...

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Ms. Polizzi – There's a pond and we've already discussed what vegetation will be placed there. In fact, Mrs. Chang is looking into some additional plant life that is conducive to the area and so the idea is to build a beautiful garden when it is finished.

Mrs. Elder – Can I ask a question related to that?

Mr. Nearpass – Yes.

Mrs. Elder – Does that also deal with compaction of the earth which happens when the construction vehicles drive on it? Compacted earth has more runoff to it.

Mr. Hou – Can we note who is speaking for the record?

Mr. Nearpass – Come up here and speak into the mic.

Mrs. Elder – Marge Elder, Conservation Board. To follow up on this question, I just was curious about whether compaction of the earth in the area where the construction vehicles will be driving is also being addressed?

Mr. Reinhardt – That's my point from before. What is the impact of the construction equipment all over the front of that?

Mr. Nearpass – Will the DEC take that into consideration as they are there watching?

Ms. Polizzi – There is going to be a barrier so that there won't be any runoff down into the wetland area and there are various containment areas within the plans.

Mr. Reinhardt – What kind of construction equipment is going to be utilized?

Ms. Polizzi – I would have to defer to the architect on that.

Mr. Reinhardt – How heavy are they? Conceivably I don't think it is possible unless you drop a 300 square foot structure from the sky that there's going to be anything but a negative impact. The construction equipment is heavy. It is going to compact the earth. There is no way you are going to put it back to way you had it before.

Mr. Johnson – James Johnson, Architect. If you are going to say that, there isn't a house that you can build that you can't put a machine around it. It is also sandy with traces of clay. That

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doesn't really compact to well. Heavier materials will compact. Where we are doing all the work is just in a meadow out there. That opened area.

Mr. Reinhardt – On your first point, no other house is being constructed on a wetland buffer. This is a very unique situation. Yes there is construction equipment that goes trampling all over the property but that isn't the issue on...

Mr. Johnson – It would be a light backhoe. The basement is not big. Again, it is 700 square feet, the basement itself. I just can't imagine that there would be any long time complication from our construction.

Mr. Moore – If it is put back.

Mrs. Rencis – How close to the structure or how much room will there be for the barrier that the DEC is going to set up on the property?

Mr. Johnson – On that plan there, the pond is here and this is our construction here. That is our guardrail fence that we can't go beyond. So, this is the toe of the slope in here. This is the big meadow out in here. It is a playground and no construction will go on out there. But, to answer your question, it is about 10' to 15' from the barrier to the top of the hill.

Mrs. Rencis – Obviously there will be no encroachment beyond that barrier at all.

Mr. Nearpass – I think maybe the more fundamental question is, are we okay with doing anything in a wetland and in the past, it has been no. In front of us, though, we've had the Conservation Board speaking for, the first time in my couple of years here, this particular project and the DEC application approval with them being on site. I'm not sure whether there would be a better case ever. Unless we, as a Board, decide that there truly is never going to be a single thing permanently built in a wetland area no matter how unique the circumstances.

Mr. Harter – I read through your meeting minutes pretty closely before tonight's meeting and I noticed that there was a comment from Sean McAdoo which I thought was a good comment indicating that we take each application on face value as it comes before us with all the particulars associated with it. I think that should be our position. So, I guess I was concerned also with the same history. I've observed the same history as you. Similar applications have failed and what makes this one different? I guess that's up to us to decide.

But I would also offer and I don't know, is this project subject to site plan approval? Are you going before the Planning Board?

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Mr. Johnson – Yes.

Mr. Harter – If it is going before the Planning Board and if this is a question that Mike raised as to the disturbance around the area, I guess I would recommend that the Planning Board impose an erosion and sedimentation control plan that basically addresses the area disturbed and that it conform with all the latest criteria that the DEC has for Phase II Stormwater control. I think that is a mitigation measure that we can absorb here on the Zoning Board level so that it gives us the confidence, perhaps, to grant the variance.

If I were in the applicant's shoes, that's what I would do. That way they are bound to something that obligates them to have a certain inspection process and I might even recommend that someone from the Town go out and visit periodically, because I rarely see any DEC people coming out to projects this small, just to also verify that these items are being taken care of. Then I think if there is any question from the neighborhood character, we can say that we as the Zoning Board imposed that particular condition.

Mr. Moore – And that's how you would describe it, too.

Mr. Nearpass – That's why I'll ask Scott to take the reading of it if it moves forward. Let's move on to #3. Whether the area variance is substantial or not.

Mr. Harter – You can take 300 square feet versus the size of the wetland and you would come up with a pretty small percentage.

Mr. Reinhardt – Any encroachment into the wetlands is substantial. You can make an argument each way.

Mr. Harter – I think the adverse impact on the physical or environmental, I think we bring in the Conservation Board's satisfaction with the revised layout. I think that's yield to them as wetland experts, perhaps, in this regard. I think also if we put the condition on of the erosion sedimentation control plan protecting the wetland down slope of the disturbed area, I think we've got our bases covered.

Mike, I agree with your points, too. You can look at it either way. I absolutely agree with what you are saying.

Mr. Reinhardt – If I could ask a question of you. Do you know of any other parcels that exist like this one that we are looking at, specifically that the home was constructed and that some

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time afterwards, do to legislation, it is now deemed to be either wetlands or in a wetland buffer. Is this like the only house in the Town like this and it is extremely unique, one of a kind.

Mr. Benedict – It is the only one that I'm aware of, at this point, without having to go through maps and try to decipher it.

Mr. Reinhardt – So, it's possible, I suppose, that due to the legislation and re-drawing of where these wetlands are, where the buffer lands, some other homes may have been impacted by it and we just don't know about them yet because they haven't asked for variances.

Mr. Nearpass – Those lines are relatively dynamic. Do they update them every year, every five years, every ten years? Do they normally move that much? Which, if you look at #5, you could also make an argument whether this is self created or not. It is a chicken and the egg....

Mr. Reinhardt – I'm trying to figure out how many times we are going to be wrestling with this issue. At the Village level there was a few issues that it came around again and again and again until the code was revamped sufficient enough that it knocked out that issue.

Mr. Nearpass – A similar one was Cane Bogojevski. You could probably find one or two similar, not exactly the same, situations. That's one that is close.

How would this one be different? The way I see it, he did not have support of the Conservation Board, from my recollection on that one.

Mr. Harter – The stream came after the fact on that one?

Mr. Nearpass – Yes. It wasn't deemed a stream back in 1980 or 1985 when they first built it and he wanted to add to it. That's my memory of it.

Mr. Reinhardt – There isn't anything, correct me if I'm wrong, that can stop an applicant, should this be granted as a variance, there isn't anything that can stop an applicant in the future to say I want another one. I want another 200 square feet or whatever the case may be. Maybe to put it a different way, I don't think this Board can carve out language in an approval to say that's all you get, no more. They can keep coming back.

Mr. Hou – They could, sure. Theoretically, any applicant can do that.

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Mr. Harter – But theoretically, each time they came back would become hopefully more difficult. It depends on who is on the Board and whether we have the same Conservation Board. It's not a perfect world. That being said, we have to do something with this application.

Mr. Nearpass – So we can certainly limit, I would think you could have a condition that it does not exceed the 300' square feet. Is there a condition you could impose on this one that this is the last time we are going to do it or...?

Mr. Hou – No, that's just what Mike is saying.

Mr. Nearpass – I'm just saying for the next board to refer to the previous resolution to say the intent of the first resolution was that this be the only one.

Mr. Reinhardt – In case you haven't figured it out, I've got some serious reservations.

Mr. Nearpass – Number 5 – self created or not?

Mr. Harter – I don't think it is because the wetland has expanded.

Mr. Reinhardt – Encroaching into the buffer, it most certainly is self created.

Mr. Nearpass – But it wasn't a buffer before. The buffer grew.

Mr. Harter – Remember these are all criteria that we have to weigh but ultimately our vote is our vote.

Mrs. Krym – That moisture could retreat also. That happens all the time.

Mr. Reinhardt – That's not how it is. As of today this is what we have and these are the facts we have.

Mr. Harter read the draft resolution.

DECISION:

On motion of Scott Harter, seconded by Nancy Rencis:

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WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on September 2, 2010 requesting an area variance to allow an addition to an existing home to be constructed within 100' of a DEC wetland boundary; and,

WHEREAS, said application was referred by Alan Benedict, Code Enforcement Officer of the Town of Victor, on the basis that no construction or impervious surface is allowed within 100' of a wetland per Section 211-30 A; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on September 26, 2010 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 October 4, 2010 at which time no one spoke against the application; and,

WHEREAS, the application was referred to the Ontario County Planning Board for their review; and,

WHEREAS, on November 10, 2010, the Ontario County Planning Board referred the application back to the Zoning Board as a Class 1 with comments; and,

WHEREAS, New York State Department of Environmental Conservation issued a Permit dated October 15, 2010 to construct a 700 square foot addition and rain garden to an existing residential home located within the New York State Freshwater Wetland PR-17; 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. No one spoke against the application. The Town of Victor Conservation Board did not feel that there would a detriment to any of the nearby properties in their evaluation of the application. There will be a condition imposed by the Board regarding erosion and sedimentation control as part of the project that will mitigate any detriment to nearby properties during construction phase of the project.
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 existing house is in a fixed position. The options for the addition are limited because of the fixed location of the

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existing house. The applicant has shown good faith in modifying the location of the proposed addition away from the steep slope area originally proposed. The Conservation Board favored the relocation of the proposed addition away from the steep slope area.

3. The requested area variance is not substantial. It represents 400 square feet of disturbance to the wetland buffer upon total completion of the project with all vegetation replaced intact.

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Town of Victor Conservation Board supports the project as proposed. An erosion and sedimentation control plan to contain any disturbance associated with the construction will be imposed.

5. The alleged difficulty is not self-created. 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 Vincent & Suzanne Chang, 8050 Barony Woods, Pittsford, New York, for an area variance to the Town of Victor Zoning Code to allow an addition to the existing home to be constructed within 100' of a DEC wetland boundary 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 in concert with the Planning Board review for site plan approval, that an erosion and sedimentation control plan be provided to address the disturbed area and that also periodic Town inspections occur to confirm its conformity.

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

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

Adopted Ayes 5, Nays 1 (Michael Reinhardt)

REGULAR MEETING OF THE VICTOR ZONING BOARD, DECEMBER 6, 2010

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Mrs. Elder – Mr. Chairman, I had just one other comment. Jean, you used the word taking and I agree with Mike. I've been doing a lot of reading on that just because of all the environmental overlay districts and so on and the arguments that have been going on in the Town concerning whether just any kind of environmental code is a taking. It is a very specific word. I'm not a lawyer. It has very specific meanings and I think it is a mistake to use that term. I just wanted to say it is a mistake to use that term because it depends on a very specific legal definition and also interpretation of that law.

Mr. Hou – There shouldn't be any further discussion on this. If you have any comments to make to the Board members, you can do that in private. Obviously the public hearing aspect of this has been closed.

PUBLIC HEARINGS:

The Secretary read the Legal Notice as it appeared in The Daily Messenger on November 29, 2010.

CARRIER, DAVID & LAURI – HORSE BARN 307 Benson Road Appl. No. 40-Z-10

Mr. David Carrier appeared before the Board.

Dr. Carrier – I am the owner of the property.

Mr. Nearpass – Please tell us a little bit about the project.

Mrs. Krym – Mr. Chairman, I have to reveal that I do know Dr. Carrier, I know his parents, I know his wife and from our last training class we were told that we have to disclose that.

Mr. Nearpass – Are you abstaining from the application?

Mrs. Krym – No, I'd like to participate.

Dr. Carrier – We plan on building a horse barn with two to three stalls and attached to it would be a pasture.

Mr. Harter – Is this variance one because the accessory structure is ahead of the primary structure?

Mr. Nearpass – Yes.

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Mr. Benedict – Also it would include the fence, as well.

Mr. Harter – So they need a variance relative to the fence?

Mr. Benedict – It needs a variance for the fence also which is forward of the front line of the house.

Mr. Nearpass – Bill, do you have any questions or comments?

Mr. Moore – Looking at the grades, I'm just wondering whether this building doesn't have to be in front of the house. I guess that's my question.

Dr. Carrier – Here is the house. The driveway comes off of Benson Road and comes up here. One question I had was where the front of the house is. But, certainly, as you drive down Benson Road, this appears to be the front of the house. So, the options are to go from here back. If this is the front, our options are to go here and back. This is all a hill and actually the hill kind of levels off here and then it drops back. So, then you go back into woods. So, this isn't really reasonable horse terrain. The only option without taking down a forest would be in this area and again, it is flat in here but our septic system is right there. We do have just behind the house on the back side of the driveway; there is a detached garage, which really we would not want to convert into a horse barn. I think our options are limited, other than putting it on a slope which it is very sandy soil and I think it would be disruptive there.

Mr. Harter – So, the proposed location is in a relatively level area?

Dr. Carrier – Yes, as far as that place, it is one of the most level places, yes.

Mr. Harter – And you are maintaining 100' from the side property line because that is a minimum distance stabling livestock?

Dr. Carrier – Yes.

Mr. Nearpass – So, regarding the fence, as well, where is the mention of where you want to put the fence? Is that within the....

Dr. Carrier – It's not on the plans. It may be in the attached photographs. There is a Google aerial photo with the red outline. That's the pasture.

Mr. Moore – How big is the fence? How tall?

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Dr. Carrier – It will be about 4' tall by 3 strands of electric grade.

Mr. Harter – And the only reason you need a variance is because it's higher than 2'? Is that correct?

Mr. Nearpass – And because it is forward of the front of the house.

Mr. Reinhardt – It fits the definition of a fence, but yet am I correct in understanding the purpose of the code is for visual obstructions and things? Or maybe you can enlighten us on it. What is the primary purpose of the code not to have a fence in the front?

Mr. Benedict – I guess the feeling was that it is acceptable to have a decorative fence which is the description of 2' and below forward of the front line of the house. I guess the objective was to keep a fence similar to an accessory structure that is something visually perhaps unacceptable to keep it back behind the front line of the house. I would compare it to an accessory structure for the same reasoning that you would want to keep that back behind the primary structure.

Mr. Moore – I think the code says 4' max?

Mr. Nearpass – If it's more than 2' you need a permit?

Mr. Benedict – You are allowed to go up to 6'.

Mr. Harter – We have some dimensions shown relative to the proposed barn which meet the minimum. Are there any minimum dimensions that we need for this fence? Should be require a minimum dimension for this fence?

Mr. Nearpass – For setback or something we can....

Mr. Harter – If it is, as Mike says, a visual, and I think it is, and we have an understanding of what it is going to look like, which I'm not sure I have, then maybe we could have some ideas whether it is appropriate to put it right at the right-of-way or....

Mr. Nearpass – Is it a visual as far as aesthetically pleasing or is it a visual as far as distance from the road or from the property line or both?

Mr. Harter – Yes.

Mr. Reinhardt – It's going to be both, sure.

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Mrs. Krym – There are other examples of that type of fencing for horses in Fishers. Right on Fisher Road there is an identical fence.

Dr. Carrier – It's similar.

Mr. Nearpass – We also had a similar fence case on Gillis?

Mr. Harter – Yes, on Gillis Road. But it wasn't for horses, it was decorative.

Mrs. Krym – This horse fence on Fisher Road is moved all the time. Would you be moving this?

Dr. Carrier – Ideally we don't move it but, things come up that you gotta...I don't know that we'd move it, really. But things break and trees come up and so....

Mrs. Krym – The one on Fisher Road seems to be moved from there to the woods and back again every few weeks.

Dr. Carrier – No, we wouldn't be doing that.

Mr. Nearpass – This is more permanent. Is it going to have footers?

Dr. Carrier – Probably the corners may have concrete footers but the majority would not.

Mr. Nearpass – It has the electric braid on the top of it as well, right?

Dr. Carrier – There would be three strings of it.

Mr. Harter – Where the proposed barn is shown, maybe we could impose a minimum setback as part of granting the variance.

Mr. Nearpass – That's what I was trying to get at but we're also saying we need to see the actual fence to....

Mr. Harter – Like a catalog cut or a photograph of it or something like that.

Mr. Nearpass – So, do we feel both are needed?

Mr. Moore – I don't need to see it.

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Mrs. Krym – I don't know if that's reasonable. They are all over.

Mr. Nearpass – I agree but that's what I was going towards earlier and then we said no, it might need to be both. But we don't normally get into the architecture of something. Whether it's in the character of the neighborhood, sure. If you ask me, I'm okay with providing guidelines for the setbacks and the height because they talk about it being 48" high, wood or metal posts being spaced approximately 25' apart connected by 4 lines of electric grade fence.

Mr. Harter – So, if you can visualize that and in terms of appearance, is that something that we care about positionally? In other words, should we say it should be "x" amount of feet back from the right-of-way or "x" amount of feet away from the side property lines? Or don't we care?

Mr. Reinhardt – I think we do.

Mr. Nearpass – I think so.

Mr. Reinhardt – We do care how close it gets to lot lines and right-of-ways and easements.

Mr. Harter – Off the top of my head, I would say let's put a restriction there of 50' from the right-of-way and say 10' from the side property lines – that would be the closest that fence could be constructed to those lines. Anywhere in between or internal to that is fine.

Mr. Benedict – You are aware that the fence crosses a lot line; however the applicant owns both of those lots.

Mr. Harter – He owns both lots?

Mr. Benedict – Yes.

Mrs. Rencis – See where the fence is drawn on the aerial map.

Mr. Harter – Okay.

Mrs. Rencis – It is going to be, I mean, you can't conform it to a distance from....

Mr. Harter – Well, we could accept that out. In other words, we could put those dimensions that we just spoke about with the exception of the common property line between the two lines.

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Mr. Nearpass – Do you know about, based on what you were planning, do you know about how far from the road or the property line you would be?

Dr. Carrier – It is probably, from the edge of the road, is that what you were thinking?

Mr. Nearpass – Do we go from the property line?

Mr. Harter – Well, the right-of-way is the boundary line at the road. That's usually where we take our distances from. That's where the 100' is measured from. We would just stick with the same reference line. It also, when I'm looking at this as an engineer, it begs to me the question why is the driveway in the Benson Road right-of-way?

Dr. Carrier – Same thing, it's on the side of a hill and that was 11, 12, 13 years ago that....

Mr. Harter – It might be something you want to take care of with the Town.

Dr. Carrier – I can't remember the details.

Mr. Harter- That's unusual. Technically, the Town owns your driveway there.

Mr. Reinhardt – Al, is there anything in the code that prevents the applicant from reversing the idea and putting the proposed barn where the vacant lot is and then put the fence...completely turn the idea around or would they still need a variance?

Mr. Benedict – You would then have an accessory structure on a lot without a primary structure.

Mr. Nearpass – There is also water and electric going to the barn?

Mr. Benedict – So, yes, he would need another variance or a different one.

Mr. Moore – Was that a question to the applicant, Matt?

Mr. Nearpass – I think I saw it on the map. So, there is electric and water going to the barn.

Dr. Carrier – Yes.

Mr. Nearpass – Is there anyone here who wishes to speak for or against the application? Hearing no one, Mr. Nearpass closed the public hearing.

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Mr. Moore – Will there be lighting?

Dr. Carrier – Yes. There will be interior lighting, obviously and probably a couple of spots on the outside that would just be one when someone is out there. They wouldn't be on all night.

Mr. Reinhardt – It is my understanding you are looking at two structures, then? A barn and a paddock?

Dr. Carrier – The paddock is the inner pasture right adjacent to the barn. If you look on the drawing, there is a small box adjacent to the barn. That would be the paddock.

Mr. Reinhardt – Is that a structure?

Dr. Carrier – No, it is a fenced in area.

Mr. Reinhardt – Okay.

Mr. Nearpass – So, the fence isn't just the exterior of that rectangle. It is also the inner rectangle and the one that cuts right down the middle of it?

Dr. Carrier – Yes. So, there will be two main pastures and then one adjacent to the barn itself.

Mr. Nearpass – I like the path Scott was going down earlier with defining the dimensions of the fence.

Mrs. Rencis – If you look at the 100' minimum for the barn and then see where they have it fenced, it looks to be somewhere around 30'. It think it's more than half.

Mr. Nearpass – It's tough to say.

Mr. Reinhardt – If I understand, you are going to keep the fence 100' away from the road?

Mr. Nearpass – The barn. We were talking about the fence being 100' away from the road.

Mr. Reinhardt – Right.

Mr. Nearpass – I'm sorry, 50'. The barn is 100' but we were talking about the fence being 50'.

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Mr. Reinhardt – I'm trying to compare the proposed red diagram on the map to what I see on the surveyor's map and there's a 100' minimum where the proposed barn is. It seems to be the corner, the closest corner is, in theory, about 100' away and then when I look at the proposed drawing in red, that there's a line that is parallel and my question being is that red line going to be the fence which is, at minimum, 100' away from the road?

Mr. Nearpass – That's 50' away from the road. The barn is 100' away from the road.

Mr. Reinhardt – I'm lost then.

Mr. Nearpass – The barn is 100' away from the road.

Mr. Moore – Where did the 50' come from?

Mr. Nearpass – Scott threw that out.

Mr. Harter – The reason I came up with 50' is I took a look at the width of the road and I looked at the width between the one side of the road and the first red line and it looks to be about 50'.

Mr. Reinhardt – Why can't you push that fence 100' away and keep it in line of where that proposed barn is and reconfigure how the paddock is to be, where those pasture fences are going to be, why do you need it 50' to the road?

Mr. Nearpass – You can ask the applicant. I don't want to architect the amount of space he feels he needs for the horses. Who am I to say whether it should be 100' less or not.

Dr. Carrier – I think that's the issue. You need a certain amount of acreage per horse and actually the best grazing area is near the road. Now, there is, probably the way I have it laid out now in my mind, it is 30' from the road. But if you make it 100', now we've lost quite a bit of pasture so then we have to go somewhere else. There's a wet area and we could go further up but one of our intentions is to minimize what we do to the surrounding land. So, by imposing even a 50' or even 100', now we've got to extend pasture somewhere else as opposed to closer to the road.

Mr. Harter – You've also showed us some photographs here, some colored photographs, and you have the barn shown there but you don't have fencing shown but I think it is helpful to look at it.

Mr. Nearpass – I think at the time, did you not know you needed the variance for the fence?

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Dr. Carrier – I think that's probably true.

Mr. Harter – I don't know the neighborhood that well and I haven't driven by the site to know whether if you put a fence at 30' or if you put a fence at 50' or if you put a fence at 100', what the aesthetic impacts are.

Mrs. Krym – I'd like to comment. Not because I know Dr. Carrier but I'd like to comment because I do know the area. I've been there 40 years. Presently on Fisher Road there is a horse farm that I'm not sure if it encompasses as much land as Dr. Carrier has. I don't want to get into that. But the fencing for those horses and I think there may be 5 or 6 of them is almost up to the road. It is just maybe 10' or 15' from the road. There's nothing in our code that addresses that, is there?

Mr. Benedict – It can only go up as far as the right-of-way. That fence may be pre-existing.

Mrs. Krym – This is extremely agricultural on Benson Road, if that has anything to do with the character of the neighborhood. It is agricultural. There were veal calves being raised there.

Mr. Nearpass – So, you are saying that it wouldn't be in character if it was further back from road, then. It would be in character closer to the road.

Mrs. Krym – Right. Similar to Mendon, not that I want to emulate what Mendon is doing necessarily but if you think about it, in Pittsford, out Stone Road, the horse graze right up to the edge of the road practically.

Mr. Harter – I guess that's the question I have. What is the character of the neighborhood? We did that on Gillis Road, remember? That was our criteria on Gillis Road.

Mrs. Krym – It is very rural.

Mr. Nearpass – And at that time, that applicant brought pictures of everyone's fence. I think it was to either show the distance from the road or that their fence was going to be in character of the neighborhood.

Mrs. Krym – May I just say this is less developed than Gillis Road. It is extremely agricultural. It is rural in character. It could change. I think that there may be a proposal coming up for some of the land that the Strong's owned but they are for very large homes and large lots. It's not going to be a 100 unit subdivision. So, again, not because I know this family but I know the land and I'm familiar with the terrain. It is very, very steep. The layout and the location of the barn,

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the paddock and the fencing makes sense to me. I'm in favor of having it close to the road rather than pushing it up the hill.

Mr. Reinhardt – Question for our Attorney, if I could. Are there any liability issues that the Town is exposed to by granting a variance? Hypothetical – by granting a variance and saying sure the fence can be 50' or 30' or "x" amount of feet close to the road and God forbid, there is a motor vehicle accident, the homeowner then is sued and then the homeowner says, well, wait a minute, the Zoning Board said I could put it there. Your assessment on a municipal liability by the Zoning Board granting a variance.

Mr. Hou – I think there are several issues involved in that. If we are simply looking at the granting of a variance without any setback requirements, while I think generally speaking, you are probably not looking at if there is no code provision that requires setbacks that we are talking about, in this particular case, and we simply grant the variance and the homeowner is left to place the fence where they wish to place it, and we have no other local laws governing that, then there's certainly minimal risk of liability.

Mr. Nearpass – Would it be easier to just refer to this and say as proposed by the applicant and not necessarily put those limitations on it? Jean makes a good point that if you think about it, most agricultural areas or rural areas, the fences do go almost right up to the road and if we don't have something that prohibits it going one way or another...

Mr. Reinhardt – You can put limits on it not to encroach into the right-of-way or into easements. I don't think there are any easements out there.

Dr. Carrier – No.

Mr. Reinhardt – So, really the issue is the right-of-way.

Mr. Nearpass – Sure. We could state the obvious.

Mrs. Krym – I would agree.

Mr. Nearpass – We can state that.

Mrs. Krym – But up to this point in time, I've never known of any horse fencing to be regulated by the Town. Am I correct, Mr. Benedict?

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Mr. Benedict – Up until the present when the code went in, had this been in an agricultural district, it would be different.

Mr. Nearpass – Well, fencing in general.

Mrs. Krym – And this is soft. It isn't a hard wooden fence as you see on some horse farms. It's soft. It's just strung way out. What are the segments? They are quite long.

Dr. Carrier – 20' to 30'. It is actually different from what you are familiar with. There are some that are about a 1" tape. This is actual cord. It's probably a 1/4" diameter.

Mrs. Krym – What color is it?

Dr. Carrier – It's white.

Mr. Nearpass – Do you have to worry about snowmobiler's at all?

Dr. Carrier – Other than myself and my kids...yeah, that's certainly a concern.

Mr. Harter – Back to the legal aspect of things, if we were to approve the variance for the fence, are we better off from a liability standpoint not specifying a distance? Is that what I'm hearing?

Mr. Nearpass – I think if we just approve the fence and we're not specifying...do we even need to specify what it is made out of?

Mr. Hou – Well, no. I think that's the implication that I'm making. I think nearly for all of you it's difficult without a site plan or something of measurement for where the proposed fence but for your purposes, it is probably not necessary to determine the variance issue specifically.

Mr. Nearpass – The applicant will be in front of the Planning Board tomorrow for site plan approval. Will they get into what the fence looks like?

Ms. Templar – No. It's just the fact that it is over 1,000 square feet.

Dr. Carrier – We do have another meeting next week with the Planning Board but I think the square footage is, I think, less than 1,000 square feet. It is written as 30' x 40' but that included about a 12' overhang over 30' so if you take that off, I think it was less than 1,000 square feet.

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Mr. Harter – Not to beat a dead horse, no pun intended, but is the fencing, then, maybe more in the purview of the Planning Board as to what it looks like and where it goes?

Mr. Nearpass – I think if there's an opinion, that's where it comes up.

Mr. Hou – It's probably not before them so they are not going to take a look at it. We don't have any....

Mr. Harter – It seems to be an aesthetic issue. That would seem to be...

Mr. Moore – It's not like it's a big stockade fence.

Mr. Nearpass – To me it would be in characteristic of the neighborhood. It's rural. It's a fence. Are we okay with it being forward for the front line of the primary structure with the barn based on this particular circumstance? I think it is as simple as that.

Mr. Harter read a draft resolution.

DECISION:

On motion of Scott Harter, seconded by Jean Krym:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on November 10, 2010 requesting an area variance to allow an accessory structure to be forward of the front line of the primary building and also to allow a fence that is higher than 2' to be constructed forward of the front line of the primary building; and,

WHEREAS, said application was referred by Alan Benedict, Code Enforcement Officer, of the Town of Victor on the basis that no accessory structure or fence greater than 2' 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 29, 2010 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 6, 2010 at which time no one spoke against the application; and,

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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.

Justification: No one spoke against the application. This is a rural setting with the house placed back off of Benson Road in a non-uniform position with a steep slope behind it. The proposed barn is aesthetically and architecturally in keeping with the character of the neighborhood.

2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Justification: Although the applicant does own the adjoining property, because it is a vacant parcel, in putting the barn on that parcel, it would trigger the need for an area variance since code does not allow an accessory structure to be located on a parcel without a primary structure. The applicant also indicated that the proposed barn location still allows a reasonable distance to be connected to electric and water utilities.

3. The requested area variance is substantial.

Justification: It is within 100' of the front right-of-way and the side property line and the principle structure is approximately 300' to 400' back.

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Justification: The applicant has selected an area that is relatively level. It fits the property in location. It will not require excavation or tree removal.

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 David & Lauri Carrier, 307 Benson Road, Victor, New York, for an area variance to the Town of Victor Zoning Ordinance

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to allow an accessory structure and fence greater than 2' to be placed forward of the primary building 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 exterior lighting proposed on the barn comply with the Town Illumination Code.

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

Mathew Nearpass	"Aye"
Jean Krym	"Aye"
Scott Harter	"Aye"
Michael Reinhardt	"Aye"
William Moore	"Aye"

Adopted Ayes 5, Nays 0.

BED BATH & BEYOND – SIGNAGE 20 Square Drive Appl. No. 42-Z-10

Mr. James Boglioli, Esq., Benderson Development Company, appeared before the Board.

Mr. Boglioli – My name is James Boglioli. I'm an Attorney with Benderson Development, 570 Delaware Avenue, Buffalo, New York. We are here today with respect to our Bed Bath and Beyond sign. I just want to walk through the application with the Board and the criteria. I did submit a letter supporting the application and going through the criteria. I'm not going to read that letter. It does have a number of exhibits.

Bed Bath and Beyond is proposing to infill the vacant Circuit City tenancy at Eastgate Square. That has been vacant for a while, as the Board may know. Bed Bath and Beyond is proposing a 348 square foot sign, 171 square feet is permitted so the variance is 177 square feet. The lettering of the Bed Bath and Beyond sign complies with the code. That is 169 square feet. The variance is generated because the black background is being included in the sign area.

On November 16th we presented this to the Planning Board and it was approved at that time by the Planning Board, based on their criteria.

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We understand the Town Zoning Board has to apply the Town Law under Section 267-b(3) which requires the Board to weigh the benefits of the application against the health, safety and detriment to the community. In this case we believe there's a great benefit to the application. Bed Bath and Beyond has indicated that they won't go into the building without their trademark signage. We don't believe there will be any health, safety or detriment to the community. I want to walk through that under the five criteria.

I understand the Board has to apply the five criteria and the first is whether an undesirable change in the area character would occur. In this case we believe the answer is no for two reasons. The first, this is a reduction from the prior Circuit City building mounted sign if the criteria were to apply to that sign today. Exhibit A in your package shows the Circuit City sign at 514 square feet of signage. That includes the lettering which is 321 square feet, the overall background which would calculate at 493 square feet under the current code and the Verizon sign which is 21 square feet. Overall, the Bed Bath and Beyond sign reduces that by 166 square feet. So, we are proposing a smaller sign than what previously existed on the building.

The larger Circuit City sign was in character with the area because it was part of the area. A smaller sign would not be out of character with the area. In addition, the sign is in character with the other signs along NYS Route 96's commercial corridor. I did attach some exhibits to that. That's exhibit D. I do have some photos of those signs. That is our Bed Bath and Beyond sign in the middle. The other signs include the K-Mart at Cobblestone Court and the Dick's as well as LL Bean, which the Building Department did not determine that the background was included in that sign criteria but if it did, those signs exceed 1,400 square feet. As you can see, the sign is in character with what exists in the area.

Additionally, it is in compliance with the K-Mart variance that was granted. That was a 50% variance granted in 1998. We are asking for a 51% variance for the Bed Bath and Beyond sign.

The next criteria is whether the sought after benefit can be achieved without the variance. In this case, the answer is no. The sought after benefit is having the Bed Bath and Beyond trademark signage which is the white letter with the black background. There is no way to construct that sign without a variance. We already brought the sign in 166 square feet over what was here. Even if nipped the black down some more, we would still need a variance. It would only reduce the scope of the variance minimally. If we were to halve the size of the sign, and try and make this whole square comply, the sign would not be as visible from the road. In addition, it would be out of character with the other two signs on the building which are about the same size of this sign as far as the lettering goes.

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Whether the requested variance is substantial. It is our position that it is not for three reasons. First, it is a reduction by 166 square feet over what previously existed on the building which makes it less substantial than what previously existed there. Second, it is consistent with the 50% variance granted to K-Mart. At that time, the Zoning Board determined that 50% variance was not substantial. Third, even if it is substantial on paper and you might say 177 square feet is substantial on paper, there is a long line of case law with variances that exceed 60% to 70% where the court said that even if it is substantial on paper, you have to look at whether there's harm to the community. I would argue that granting this sign would not result in any harm to the community based upon the area that it is located in.

The next criteria is whether the variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood. I would argue no. This is not an environmentally sensitive property. It is a fully developed commercial center in a fully developed commercial area. Again, it is smaller than the sign that previously existed.

Finally, whether the hardship is self created. I would argue it's not because Circuit City terminated their lease as part of the vacancy. If Circuit City didn't go bankrupt, we'd still have them there. We wouldn't be here before the board. There would be a larger sign there. They went bankrupt and we were faced with a vacancy and Bed Bath and Beyond is requiring this sign. Even if the Board determines it is self created, that alone should not justify a denial. Again, there is no harm to the community in granting the sign.

I'd be happy to answer any questions.

Mr. Nearpass – What is the square footage of just the lettering without the background?

Mr. Boglioli – 169 square feet.

Mr. Harter – It is 169 square feet without the background?

Mr. Boglioli – That's correct.

Mr. Harter – What are you technically allowed?

Mr. Boglioli – 171 square feet.

Mr. Nearpass – The question I have for Al, the determination that the background itself is a part of the sign, obviously its part of the new code but if you could just educate the board a little bit on why we are using that backdrop.

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Mr. Benedict – I'll read it straight from the code. It's in the definition of sign area. Chapter 165-2, page 165:3. The last sentence states that any additional form not integral to the building architecture will be considered as part of the sign.

Mr. Nearpass – So, in the case of LL Bean, for example, the backdrop to LL Bean is the actual building itself?

Mr. Benedict – Correct. That's my opinion, yes.

Mr. Nearpass – In this case, it is a complete separate structure?

Mr. Boglioli – No, it's tiles mounted to the building. We originally believed or our architects believed it was architectural because the way this building was designed was for Circuit City which provided an architectural element of a big area for a different color. That's how this building was designed. All we did was change and reduce the size of that color. We were surprised when we needed a variance based on both LL Bean, which is, if you look at the sign, very similar to what we are proposing here and Best Buy, which is a recent sign that didn't need a variance which has a big blue background for its yellow sign. So, our initial belief was that was part of the architectural part of the building. It is a carve out in the building for a different color. It was never the same color as the building. But that was the Building Department's determination. So, we are here for a variance.

Mr. Nearpass – Seems like it is a rather gray area.

Mr. Harter – So, it seems to me if I'm an applicant and I'm looking for a variance on a sign like this, if I really wanted to, I could somehow adjust the architecture on my building to incorporate it in and make it integral to the sign. If you really wanted to get creative.

Mr. Nearpass – Or just like another establishment, you could paint it onto your building. I think over and over again, the Code Enforcement office continues to say that is not a sign per the code.

Mr. Harter – That's kind of how I'm looking at it.

Mr. Nearpass – Again, if it's – even in the case of the Best Buy sign, to me it looks like it is part – the blue is just the building painted blue with Best Buy in front of it. In this case, I don't see it as too different unless there's another backing or board. I'm just trying to figure out what's....

Mr. Harter – I'd like to hear from my sign guy sitting next to me who is always big on signs.

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Mr. Moore – First of all, the sign is smaller than what was there before. To me, that's a plus.

Mr. Nearpass – What you are calling the sign though is not what Al is calling a sign. That's what I'm trying to get to the bottom of. The lettering is smaller, you're right.

Mr. Moore – I know. I really didn't think about the background.

Mr. Boglioli – The background is smaller too.

Mr. Nearpass – But what has changed is the code.

Mr. Boglioli – What has changed is the code, yes. The background that was there which was red was larger than the background that is now black.

Mr. Reinhardt – Is the background going to be lit?

Mr. Boglioli – No. Just the lettering.

Mr. Nearpass – Wouldn't even the old background even be considered part of the sign too because you must have done something to it to make it not part of...what did you do with the old background?

Mr. Boglioli – It was just painted.

Mrs. Krym – You mentioned tile before.

Mr. Boglioli – This is black porcelain tile.

Mrs. Krym – Right now?

Mr. Boglioli – That is being proposed for the wall.

Mrs. Krym – It's not there?

Mr. Boglioli – No, it's not there.

Mrs. Krym – When it is installed, it will be part of the wall?

Mr. Boglioli – It will be mounted to the wall.

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Mrs. Krym – It's not the sign? The letters are put up in front of the tile?

Mr. Boglioli – That's correct.

Mrs. Krym – So the tile is sort of part of the wall?

Mr. Boglioli – That's correct. That was our initial argument.

Mrs. Krym – I don't know.

Mr. Harter – We have like a chicken and an egg situation and it's all relative to the new code then maybe this discussion is leading to something needs to take place in terms of a code revision, I think.

Mrs. Rencis – Or clarification.

Mr. Reinhardt – Can I ask you where you are looking at again because I'm not finding it.

Mr. Nearpass – Section 165-3 where it says sign area at the top, second paragraph, last sentence of that sign area. Any additional form not integral to the buildings architecture will be considered as part of the sign.

Mr. Reinhardt – Read it as a whole up above. Supporting structures will not be considered part of the sign surface unless lit by their own specific external light source. How is that part of the sign? If the letters themselves are lit and that backdrop isn't, I think an argument can be made that only the letters are part of the sign. You take the letters off, it's not a sign. If there's a square or rectangle or whatever shape it is, and no letters, that's a sign (TAPE CHANGED AT THIS POINT)

(Due to technical difficulties, the remainder of the meeting was not recorded.)

Mr. Benedict's interpretation is that the background is part of the sign. The other two signs that Mr. Boglioli talked about did not have a contrasting background.

Mr. Harter believed the background was not part of the sign and therefore, did not need a variance.

Mr. Hou indicated that per the Code Enforcement Officer, the sign, as submitted is not in compliance with the code.

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Mr. Harter suggested making it a condition of the approval that the applicant not be able to change the background. Mr. Boglioli indicated that he was okay with that condition.

Mrs. Krym felt the black background was part of the building.

Mr. Benedict stated that the tile has been added to the building. It wasn't originally part of the building.

Comments from Ontario County Planning Board had not yet been received so the Board would not be able to make a decision on the application at this meeting.

The Board took a 15 minute recess in order for the applicant and the Code Enforcement Officer to discuss the black tile background. After the 15 recess, the applicant adjourned his application until the next meeting.

BRISTOL'S GARDEN CENTER

7454 State Route 96

Appl. No. 41-Z-10

Mr. Steve Sanna, Bristol's Garden Center, appeared before the Board.

Mr. Sanna stated that he was applying for an outdoor wood burning furnace due to the fact of the increasing costs of heating the existing greenhouses. Currently the applicant is using natural gas to heat the greenhouses.

Mr. Sanna reviewed the information and cost savings by switching to an outdoor wood burning furnace.

The applicant would run the lines underground from the outdoor wood burning furnace to the greenhouses. The actual furnace is approximately 5' x 6'.

Mr. Nearpass questioned why these units are not allowed in a commercial or industrial district. Mr. Benedict's thought was that the first units that came out produced a lot of smoke. The units now are more efficient and have less smoke associated with them. They require clean fuel to burn. This unit will heat three greenhouses.

Because this is a use variance request, the applicant needs to meet all four of the criteria in order for the Zoning Board to grant the variance. The application is at the Ontario County Planning Board for their review.

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Mrs. Rencis asked if there were any residences nearby. The closest residence would be on Rowley Road.

Mr. Nearpass opened the public hearing. No one appeared.

Mr. Harter thought this application should be an area variance. Mr. Hou indicated that it would not be an area variance as it pertains to the use. Under the use variance criteria, the applicant has to demonstrate that he cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. The applicant should show what the savings is. Mr. Sanna explained how much he would be saving per year. He has tropical plans in the green houses that need to be protected. A request was made for more detail about the greenhouses and what is in them.

Mr. Sanna indicated that currently the greenhouses are heated from the top. The wood burning furnace would enable him to heat from the ground up which would be more efficient.

The application will be left opened until after the Ontario County Planning Board comments are received.

EXECUTIVE SESSION:

A motion was made and seconded to enter into executive session to discuss personnel at 10:20 p.m.

A motion was made and seconded to reconvene the meeting at 10:23 p.m..

On motion of Mathew Nearpass, seconded by Jean Krym,

WHEREAS, the Town of Victor Zoning Board of Appeals made the following findings of fact:

1. That Michael Reinhardt has completed 4 training hours meeting the annual requirement.
2. That Michael Reinhardt has attended 80% of all regularly scheduled meetings.
3. That Michael Reinhardt has been adequately prepared for meetings, including reading of all necessary materials.
4. That Michael Reinhardt's participation in meetings, his professionalism and respect dealing with other board members and the public has met the requirement.

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NOW, THEREFORE, BE IT RESOLVED, that the Town of Victor Zoning Board of Appeals acknowledges that Michael Reinhardt has meet all the required standards for re-appointment and that the Board recommends to the Town Board that Mr. Reinhardt be re-appointed for an additional five year term; and, be it further

RESOLVED, that the Zoning Board of Appeals recommends Mathew Nearpass for Chairman for 2011 and Nancy Rencis for Vice Chairman for 2011.

Adopted Ayes 5, Nays 0.

Meeting adjourned 10:24 p.m.

Catherine Templar, Acting Secretary

Typed by Kimberly Kinsella