

A regular meeting of the Town of Victor Zoning Board of Appeals was held on February 1, 2021 at 7:00 p.m. There was no public gathering based on the recommended precautions for limiting exposure to COVID-19. The following members were present virtually via ZOOM and the meeting was live streamed via YouTube:

PRESENT: Michael Reinhardt, Chairman; Mathew Nearpass, Vice-Chairman; Donna Morley; Fred Salsburg; Sarah Mitchell

OTHERS: Al Benedict, Town of Victor code enforcement; Drew Cusimano, Victor Town Board; Suzy Mandrino, Town of Victor; Kim Reese, ZBA secretary

Chairman Reinhardt called the February 1 Zoning Board of Appeals meeting to order at 7:00pm.

PLEDGE OF ALLEGIANCE

PAST MINUTES:

On motion of Donna Morley, seconded by Fred Salsburg:

RESOLVED, that the minutes of the meeting held on January 19, 2021 BE APPROVED.

Adopted: Ayes 5, Nays 0

PUBLIC HEARING:

William Erwin – 03-Z-2021

6401 Erica Trail

Applicant is requesting an area variance to construct a fence across the north and south lot lines and connect to existing fences on adjacent properties. The fence extends over the property lines by as much as 4 feet. §211-47(G) of the Town of Victor code indicates a fence shall not be closer than 1” to a property line. §211-41C indicates that a fence shall be situated entirely on the fence owner’s property. The property is in the Planned Development District and owned by the applicant.

Chairman Reinhardt – Alright we have three applications; William Erwin, Brett Jones and Laci Paluck and Patrick and Sarah Canzano. That is the continuation from last meeting. So, just a quick review for those that haven’t been here before. The zoning board of appeals will hear the application, get the applicant an opportunity to make the presentation. At that point the board presumably will ask some questions, we’ll circle back to the applicant to see if there’s anything that they’d like to touch on or add anything further. During the course of the presentation what we do ask is especially since we are on a zoom meeting is to wait for the questions to be asked and we’ll wait for the responses to be given so we’re not talking over each other and we can create a good record. If there’s any time or an event that exhibits are being used, please do the best that you can to use compass directions or points that we all can refer to and say, well if you see over here and over there it’s going to make it difficult to create a record. Certainly if there are any questions along the way feel free to ask.

So, we’ll start with the William Erwin application. I know I saw him here someplace. There you are! You’re in the middle, you’re in the center square for me.

Okay, so your application is a fence on the north and south lot lines. You are the fence application, right?

Mr. Erwin – Correct. Yes.

Chairman Reinhardt – Okay. From what I gather that your neighbor to the north, this would be 6399 has an existing fence and your neighbor to the south that would be 6403 has an existing fence. And what you're proposing here is your fence to then be connected to the neighbor to the north and the neighbor to the south. Is that right?

Mr. Erwin – Correct. Yes.

Chairman Reinhardt – So, I don't want to step on your toes, so if you'd like to make your presentation and then we'll circle around and ask you some questions about it.

Mr. Erwin – Sure. Obviously our intent as you stated was to fence in our back yard. We're trying to do this at the same time while maintaining the aesthetics of the property in the neighborhood because the two houses to the north and the one to the south all have fences. And the two to the north already connect their fences, so we're doing this, obviously we want to keep our pets and our kids safe and on our property. We have a 5 and a 3 year old and two small dogs so we're just really trying to find a way to keep them in and also so that it looks nice because we wouldn't be able to get the desired outcome without attaching to the fences from the corner of our house to theirs because it's be leaving like a one foot gap on the one side and on the other side a three foot gap that tapers to one foot. I think it was three and a half feet maybe somewhere in that range.

Ultimately, that's really all we're looking to do. It's going to require us to cross over the property lines however we're looking to put the final post on ours and then just have it extend over and just connect with just mere bolts to theirs, so it could be taken down if needed. Pretty straight forward. Like I said the other properties in the neighborhood are currently connected and by keeping this pattern would make the neighborhood look nicer. I see it as a small variance. Obviously I've never done one of these before so I don't really know, but it seems like a pretty small ask. That small gap is going to be really unpleasing to the eye. It's also going to be impractical for my neighbor to be able to maintain a one foot gap in between the two fences if we had to box in the entire back yard. And, that's going to collect leaves, garbage, debris. Weeds are going to grow in there. That's really what we're asking for. Any questions?

Chairman Reinhardt – So let me at least try and get some clarification on this, so we're all on the same page. You are proposing to construct two sections of fence, both running north and south. One's going to be at or about where your house is, the back end of your house and then further to the east you'd like another section of fence that again is going to run north and south that will propose or at least you're proposing to connect to your neighbor's fence as well. So far, so good?

Mr. Erwin – Correct, yes.

Chairman Reinhardt – I'm presuming here, but I just want to make sure I understand it. On the northwest corner, this would be the fence line that's from your house to 6399, alright? How far over the lot line do you need that to connect? What I'm looking for is all four corners, how far do you have to go over the lot line on each of your neighbors?

Mr. Erwin – So, yes, the largest one is about four feet, based off of what the contractor could see from the survey. And, then that same side in the back is about two feet and then.

Chairman Reinhardt – I'm sorry, two feet?

Mr. Erwin – Yep. So it tapers back to the corner of the property lines. And, then the other side is anywhere between 18 inches and two feet on the front and the back.

Chairman Reinhardt – Alright, so if we just for argument’s sake round it just to get a general idea. Two feet on the southwest corner, two feet on the southeast corner, correct?

Mr. Erwin – Correct, yep.

Chairman Reinhardt – And, about two feet on the northeast corner and about four feet on the northwest corner.

Mr. Erwin – Correct, yes.

Chairman Reinhardt – Before we get into the weeds too much on it and so that we’re clear. There is a principle that must be followed that when variances are granted they run with the land. So that means any variance that’s granted on your property will run on your property. But even though it sounds like you have a small ask, what you are proposing is a variance to be granted on somebody else’s property and that’s going to be I think the big rub on how do you make that happen? So arguably we’ve had fence applications before that go all the way to the lot line and there’s arguments for and against it and sometimes those are granted. A zero variance that it goes all the way to the lot line. That potentially and that arguably can be done, but to encroach a variance on to somebody else’s property is going to be difficult to justify in granting it. So, even though there’s some discussion about well my neighbors say it’s okay to do that. In theory then they would need a variance to go from their fence to your fence for a zero variance on both sides of your fence. So this has to be I think a combination of a variance for you. A variance for your neighbor at 6399 and a variance for 6403. Not that’s how I see it. I’d like to hear what the rest of the board has to say, but those are my concerns about granting a variance onto somebody else’s property. Okay? So Matt, do you have any thoughts on this?

Mr. Nearpass – Yes, I had the exact same I guess thought process. Because this is probably the first time I’ve see this come up in my fifteen years on the board. I was going to ask Al, Al, is there some other way that homeowners have been working with you to do something similar on the code enforcement side? It has to have come up before.

Mr. Benedict – The one I can think of they actually put a post. It was like a farm that was carving out an acre and the fence post went through the property so they actually broke the fence and put a post at one inch on each side of the property line and then reconnected a fence from there. So essentially that fence did not cross the lot line, it actually ended one inch from (the lot line).

Mr. Nearpass – So it had a one inch gap?

Mr. Benedict – Yes, two inches.

Mr. Nearpass – The code allows up to one inch.

Mr. Benedict – One inch on each side, yes.

Mr. Nearpass – That’s the main challenge I see. There’s really I think three different properties that need variances on this. It’s probably just more of my opinion I think going two to four feet over the lot line just kind of opens itself up. Maybe not necessarily now, but down the road when homeowners change and people try to sell houses and get surveys. I think it may open Pandora’s Box down the road for you. I’m not sure how relevant that is for the discussion here, but I think it is something to think about.

Mr. Erwin – We’re not putting any permanent fixtures on our property, does that matter? They can all be taken down.

Mr. Nearpass – Well anything can be taken down. I think at the end of the day, if it's a post that goes in the ground, it would be a structure.

Mr. Erwin – There's not going to be a post on their land.

Chairman Reinhardt – All the reason for the request for the variance is the fence is crossing the lot line? Or let me rephrase that, it's within the one foot permissible zone for the fence.

Mr. Benedict – The fence is allowed to go up to within one inch of the lot line. There's another section of the code that also says the fence shall not go on another person's property. Just to add in if you had a chance to read my referral, I did consult with the town attorney if the variance were granted it should have an agreement between the neighbors and that should get filed in Ontario County.

Chairman Reinhardt – I understood that piece of it, but what concerns me is and I don't mean to fight attorneys is the variance is going to create and encroach on to the neighbor's property. And I understand the piece about if you will on the north end of the applicant's property that arguably the applicant is going to be using two to four feet of the neighbor's property uncontested, if you will. So that's I think an entirely different problem that if those neighbors agree to say, hey you can use two feet of my property, okay that's one thing. But I don't know how this board can grant the variance that encroaches onto somebody else's property. And I think we've held a pretty bright line especially going into right of ways. This is even beyond a right of way. This is somebody else's property. And, I just don't think this board can grant a variance on to somebody else's property.

Mr. Nearpass – I agree. My recommendation would be to take a look at it, talk to the homeowners and if nobody wants to move fences, then my opinion is the property line would change. Change the property lines. Move the property line to outside the zoning board. I agree with Mike, I think there's probably a better way to do it than variances.

Chairman Reinhardt – Maybe there is a way. If the fence post on the applicant's property is within one inch of his property line and then the neighbor would need a variance to connect his fence to the post and all the way around and continuing around that way.

Mr. Nearpass – But either way to your point, he's still going to encircle, he's going to claim two by four feet, you know four feet on one end and two by one end is going to be on his side of the fence.

Chairman Reinhardt – He doesn't need a variance for that.

Mr. Nearpass – I know. What you just said is that...

Chairman Reinhardt – The sections of the fence that are at issue are on the northwest, northeast, southwest and southeast corners of his property. It's not running east and west. Because the sections of the fence that need the variance are at the corners of where his proposed fence is. The northwest, northeast, southeast, southwest corners.

Mr. Nearpass – But the one east and west is going to be the neighbor's property on his side of the fence.

Chairman Reinhardt – Correct. If he puts a post on his property one inch from his property on those corners then he doesn't need a variance, but if he wants that fence enclosure he's going to need cooperation from his neighbors at 6399 to get a variance connecting their fence to his fence and so would 6403.

Mr. Nearpass – Well nobody needs a variance if they stay an inch from the property line. Right, that's what Al's strategy was. If everyone stays an inch from their property line nobody needs a variance.

Chairman Reinhardt – I think what he's trying to do is not have to put a fence east and west and leave that small gap in between his neighbors. He's only looking at two sections of fence. By putting a post in he's going to have to spend more money and run two more sections.

Mr. Nearpass – Yeah, I'm not saying he needs to run two more sections of fence, but if he puts those posts in and let's just say one inch from each of the corners of his property line on one end he's going to have a two foot gap between where he puts his post and the neighbor's fence going perpendicular to the one he just put in. The other one is going to be four. The neighbor can then extend their side up to one inch of his post and yeah, to Al's point you're going to have a technically a two inch gap in between it and that would be a code compliant solution.

Chairman Reinhardt – Right. Donna?

Mr. Nearpass – He's still going to have that whole two by four foot section of property that now he can claim that's on his side of the fence because the fence isn't moving.

Chairman Reinhardt – Right, okay. Donna, you got a question?

Ms. Morley – Yeah, he said all the neighbors have fences like this? What did they do, Al?

Mr. Benedict – At 6403 they don't have a fence permit, therefore it didn't come in for a variance. But they may be visiting you shortly.

Ms. Morley – Okay. So there's only three fences in that development?

Mr. Benedict – I didn't go through the whole development looking. I was aware that there's one at 6403 connecting to 6405 I believe.

Chairman Reinhardt – I'm looking at an aerial, there's a few fences in that neighborhood, but I'm not seeing any fences that are proposed to be connected like the applicant wants.

Ms. Morley – Okay, that's what I was wondering.

Mr. Benedict – 6403 and 6405 are connected.

Ms. Morley – But 6403 does not have a variance to be connected for a fence, right?

Mr. Benedict – Correct.

Ms. Morley – Okay. Thank you.

Chairman Reinhardt – Fred, do you have any questions?

Mr. Salsburg – I wondered how the fence could cross and I think Al's got a solution. Is there any factor by granting this that we're implying permission for the applicant to use the property on the other side of the line?

Chairman Reinhardt – I think that's an apples and oranges problem. Even if the fence wasn't there and

the applicant or the neighbors had some agreement that they could use each other's property across that imaginary line, they're still using the property. The problem I think at hand is granting a variance on property that is not the applicant's. I think there are occasions it does happen that neighbors agree to either share or use the property and they file some type of agreement with the county saying this is how we want it and we're okay with it and press forward. But I think we're going to get into to a boondoggle if we start granting variances on other people's property.

Mr. Nearpass – I agree. I think at the end of the day the code allows them to go up to one inch, so the only thing we can really do is give him another inch and allow him to go right up to his property line. I don't know how we allow him to go over it.

Chairman Reinhardt – I agree with that.

Mr. Salsburg – If he stayed an inch away he doesn't need a variance.

Ms. Morley – Exactly.

Chairman Reinhardt – Right.

Mr. Salsburg – That's a pretty simple way to do it.

Chairman Reinhardt – Sarah, do you have any questions?

Ms. Mitchell – No questions. I just agree with the point that you've already made, Mike about not sure how the zoning board is able to grant a variance for a fence on someone else's property other than the applicant. So that is a huge ask and the way the application is presented as it is, I would not be in favor of it.

Chairman Reinhardt – Mr. Erwin, anything you want to add? You've got some options here. If you think you have some other solutions we can discuss it now. If you want we can table it and come back for the next meeting or we can make a decision. But legally I just don't know how we can do this. I get it, it's a simple sounding ask. It's sounds logical as far as the economic piece of it and looks wise, aesthetics, but sometimes law just doesn't always work that way and following the code, that's how the code is written. You can't just rewrite the code or rewrite the law and allow a variance to be encroaching on other peoples' property.

So, what would you like to do? We can give you more time, if you need it. We can decide on it today if you'd like. You could withdraw it. There are some consequences to both. If we decide, it means you can't apply for a variance for some time. If you withdraw it you could circle back. I don't want to start giving you legal advice on how to handle it. But there are consequences from having a decision today and it being negative which it sounds like this board is inclined to do. Withdrawing it is going to have other consequences and if you need to seek legal advice you can do that.

Mr. Erwin – So, I'm sorry I guess I'm a little confused as to what consequences in regards to?

Chairman Reinhardt – Consequences meaning that again the board really should not be giving you legal advice as far as the consequences. Well what happens if the board decides on a variance and it's denied as opposed to if you just decide to withdraw it, your ability to make another application as opposed to and we have before the applicant says gee I'd like a little more time to think about this, can we come back the next meeting because I think I've got some other ideas or more information before I decide one way or the other, so I don't create a bigger problem for myself then what it already looks like it is.

Mr. Erwin – Ultimately it seems like there's really only one solution and that would be having us run our fence up to the code and then potentially having the neighbors do the same thing on their side, so I mean I guess that's probably the only route we can go at this point.

Chairman Reinhardt – Right, so if you can arguably, no one would need any variances if you put your fence post on all your corners within one inch of your property line. And your neighbors to the north and south do the exact same thing and extend the fence up to where their posts are. That would leave two posts that may be a bit unsightly but you have one inch between those two posts and you get what you want. A little more yard, less expense to putting in fence around all four corners, as opposed to just two.

I think if you talk it over with your neighbors I think you should be able to solve a problem of what you're trying to do without the need for variances. And, without having to put in fence to the north and south of you.

Mr. Erwin – That makes sense.

Chairman Reinhardt – So do you want us to make a decision, do you want to withdraw it, do you want to think about it? What would you like to do?

Mr. Erwin – I guess at this point then it seems like it probably makes the most sense to just withdraw the variance request I think, right? I know you said you can't give legal advice, but that seems to make the most sense. If we're not asking for a variance any more.

Chairman Reinhardt – Right, it's probably going to give you some more options, but I think that way and I think you've heard the board, I think give you some guidance if you will. You can do what you will, do what you want, but you should be able to solve the problem without variances.

Mr. Erwin – Okay, so I'll just withdraw that.

Chairman Reinhardt – Okay, Kim does he need to make a formal letter to the zoning board to withdraw it?

Ms. Reese – I was going to say no, but do you know Al?

Mr. Benedict – Probably just send you an email or a letter either one as long as it's in writing.

Chairman Reinhardt – Okay can you do that Mr. Erwin?

Mr. Erwin – I've been communicating with Kim through email so that's not a problem.

Chairman Reinhardt – Okay very good. Then we're going to consider that withdrawn. Any other questions?

Mr. Erwin – No, I don't believe so.

Chairman Reinhardt – Okay good. Thanks so much for your time. Appreciate it.

Mr. Erwin – Thank you.

Brett Jones and Laci Paluck – 04-Z-2021

Applicants are requesting an area variance to construct a house on 6485 Break of Day 18.5 feet from the Right of Way line of Break of Day Road. The front yard setback per Town of Victor code Schedule II Area and Height Requirements is 40 feet. The property is zoned Residential 2 and owned by the applicant.

Chairman Reinhardt – Okay, next Brent Jones and Laci Paluck for looks like a new build for 6485 Break of Day? Looking for 18.5 feet from the right of way from the road when the code requires 40 feet. Who's making the presentation?

Mr. LaRue – Good evening, Al LaRue, McMahan LaRue Associates.

Chairman Reinhardt – Hello Al.

Mr. LaRue – Hello. We've been out for about a year and the biggest hurdle that we've had to get over was the perc tests for a septic system. The owners were told that, and they bought the property based on the fact that there was some preliminary perc tests. But we found no evidence of it. And, when we were out, we dug about 40 holes believe it or not to try to get a percolation rates acceptable and we did find two holes that were acceptable and witnessed by the town engineer. He mentioned to us that while we were out there that he did have another appointment to witness some perc tests, but the surveyor didn't show up so there were no official perc tests for that. We looked all over the place, found two and then we designed a system that went to New York State Health. They denied it, the location of it because the twenty foot taper went a little bit into the, and it was just a taper into the gravel path and there were some steeper slopes along that side that they took exception with. So we applied for a variance for separation distances and excessive slope and that sort of thing and they were denied. So it left us with only one solution, we put the septic system where it needs to go. We've done a topographic survey and a property boundary survey and we have twenty feet from the house to the septic system. That leaves us with 18 and ½ feet. 18.6 roughly from the right of way line. Probably another, if you go to the edge of pavement, you're probably looking at about another 15 feet. So from visually, the road we're about maybe 30 feet off the road, but unless we can get. You know there's two movable objects, one is the 40 foot front setback and the other is the state health and I think this hardship is pretty real. It's a small lot, certainly a beautiful lot, in that there is definitely a home for this site would be terrific. The trail runs right behind it. We have the trees that you see there that are outlined in red, the house is going to be pretty well buffered from the neighbor to the east. It's not a heavily travelled road. It's not a county road. It's a town road. I think it could be quite quaint but that's what caused us to ask for a variance which is really our only solution at this point to developing the lot. If this fails, essentially this is an undevelopable lot and that's not a good result. My fifty six years, I've never seen anything quite like this. I've never had perc tests fail. This came as close as I've ever had. When you dig 40 holes, wow, there's underlying problems in the soil, so that's a raised fill, a raised system, they are going to pump to it. All in all the location is phenomenal. No question about it. And, with that, Brett's here, Laci's here. They'd be glad to talk more about it. I can answer any questions you might have.

Chairman Reinhardt – Sarah, do you have any questions?

Ms. Mitchell – I don't right now.

Chairman Reinhardt – Donna?

Ms. Morley – Nope.

Chairman Reinhardt – Fred?

Mr. Salsburg – Well all the houses on the relatively short road have a greater set back. The one at the corner of East Victor and Break of Day, it's an older house, full of additions. The last addition might be somewhere in this range, but the rest of the street is all set back.

Mr. LaRue – We don't disagree.

Mr. Salsburg – As I tried to picture the house, it wasn't consistent with the rest of the neighborhood, to put it that way. I wondered if it was a septic system that was causing the problem.

Mr. LaRue – It is.

Mr. Salsburg – I don't really have any questions other than it just seems like there'd be a way for the septic system to get put in. But, it's not an easy question is it?

Mr. LaRue – We've been doing months of back and forth with the state health and we've examined every possibility. We're not new. This is not our first day of doing this and it's just I've never seen anything quite like it. It's a perfect storm if you will.

Chairman Reinhardt – Matt, do you have any questions?

Mr. Nearpass – Yes, let's see. So are all of those homes on septic?

Mr. Salsburg – Yes. There's no sewer on that road, I don't think.

Mr. LaRue – Sewer would have solved the problem completely. No question about that.

Mr. Salsburg – There's water.

Mr. Nearpass – Where do they park? You're not going to drive over the septic, obviously. Where's the proposed?

Mr. LaRue – There's a driveway shown on the plan, comes right off of Break of Day Road.

I think it's right behind the proposed house.

Mr. Nearpass – Let me just switch files here that I'm looking at. Gotcha.

The other one was, how far is that field from the Auburn Trail, approximately?

Mr. LaRue – About 10 feet. The corner of that. Now the septic has to be parallel with the contours, so the corner of that septic system is just down off the bank which is what the health department had the complaint about steep slope. There's a bank off the trail, so we had to move the septic down so that it was off the trail and so it's still only about 10 feet away. It's a small little slope, but still it was greater than what the health department would allow. And, they won't give us a waiver.

Mr. Nearpass – And, there is no anything you're impacting regarding the trail?

Mr. LaRue – No, it won't impact the trail at all.

Mr. Salsburg – Could the trail be moved back to the rear of the lot as part of this work?

Mr. Nearpass – I was just trying to make sure there wasn't an easement for the trail.

Mr. LaRue – It's on an easement right now.

Mr. Nearpass – So, you're not encroaching on an easement?

Mr. LaRue – No we're not encroaching on it. The trails in an easement right now.

Mr. Salsburg – I have a suggestion. Would it be worth putting in some stakes that are 3, 4 feet high at the corners of the house? So the board could connect it to the rest of the road?

Mr. LaRue – Yeah, we could do that. That's easy.

Chairman Reinhardt – You done Matt?

Mr. Nearpass – I think I'm okay for now.

Chairman Reinhardt – Alright. So the house that's to the east. Do you know where there septic system is?

Mr. LaRue – I do not.

Chairman Reinhardt – I think part of what Fred and some of us have a curiosity, well how come some of these houses then can be in compliance with the code, have a septic system and arguably, especially the house to the east that looks about the same size and they are able to have a septic system and have a house that complies with the code, but your client can't.

Mr. LaRue – Well that lot itself is 1.7 acres versus ours which is quite a lot smaller, so they could have their septic to the east more. Even on the east side of the lot and still have enough room for their house and what not and it could be preexisting. I don't know when that house was built.

Chairman Reinhardt – So let's go back to the perc test that you said 40 were done?

Mr. LaRue – We dug 40 holes. We found two that were acceptable.

Chairman Reinhardt – And, then you communicated that to the Department of Health?

Mr. LaRue – Yes, we have. The town engineer witnessed the perc tests.

Chairman Reinhardt – Is there any verification of you submitting the proposal to the Department of Health and it being denied?

Mr. LaRue – Yes we do.

Chairman Reinhardt – Is it in the application?

Mr. LaRue – Yes.

Chairman Reinhardt – Alright, then I must have skimmed over that.

Mr. LaRue – We have a denial from the state health.

Mr. Salsburg – I didn't see it in the application either.

Mr. LaRue – We submitted it on 9/21/20 and it was denied.

Chairman Reinhardt – No, I'm sorry. Let me rephrase the question. Was the denial from the Department of Health submitted to the Town of Victor Zoning Board of Appeals in this application?

Mr. LaRue – I don't know if it was or not.

Chairman Reinhardt – Alright, I think that's an important piece for us to take a look at and right now all that we have is and I know you've been in the business for a long time but when we grant or deny variances what we like to do is to create a solid record on why it is we're either granting or denying. Do you have that available?

Mr. LaRue – Yes, we do.

Chairman Reinhardt – So we may have to table this until the next meeting because I would like to see that on your efforts on communicating with Department of Health and it being denied and the efforts that you have put forth digging 40 holes and it only being two holes that were if you will acceptable. Because I think that's what's going to plug in especially for the criteria, about other alternatives or feasible methods here.

Mr. LaRue – Right. Additionally what we'll do is we'll stake four corners of the house so you get a visual where the house would be. We can do that too. So when is the next meeting? So I have a schedule.

Ms. Reese – It's March 1<sup>st</sup>. Mike, this has to wait anyway because it went to the county because of its proximity to the town owned land, that trail. So, it would be tabled. Their meeting is the 10<sup>th</sup> of this month and our next meeting is the 1<sup>st</sup> of March.

Chairman Reinhardt – Great. Mr. LaRue, how much further from the right of way could that house get, without encroaching into the septic systems?

Mr. LaRue – Right now they need to be twenty feet apart. They are exactly 20 feet apart right now.

Chairman Reinhardt – The placement in your professional opinion for the septic system and the proximity of the placement to the house is as close as it's going to get? There are really no other alternatives on septic system.

Mr. LaRue – No other alternatives.

Chairman Reinhardt – Okay. As a reminder. I think you do know this looking at the codes, should this board grant the variance and it sounds like there is a garage is going to be built in the future, it can't be forward of the house. Your clients know that?

Mr. LaRue – We know that.

Chairman Reinhardt – Alright and as far as Fred's thought, on moving the trail, I don't think that could ever happen. Al, is that the town's trail?

Mr. Benedict – The town has an easement for it. I think I suggested that back when this went before the

planning board originally and I don't think there's any response or entertained a discussion at all.

Chairman Reinhardt – I think that's a bunch of legal fees to try and change the right of way, change the path. I think the better look at this is see what the county planning board has to say and I think if we can get some verification from the department of health that there's no other place for the septic system to go, but for where Mr. LaRue has proposed it to be. I think that's going to help us out quite a bit.

Mr. LaRue – Kim, I'll send the information off to you?

Ms. Reese – Yes, that sounds good.

Chairman Reinhardt – Does anyone else, Sarah, Donna, Fred, Matt, any other questions?

(No)

Mr. LaRue anything for us?

Mr. LaRue – No, I'm all set. Going to the county that seems to be a non-issue anymore. I was concerned about it before because it seemed like a local matter, but if county owned land, town owned land has to go, it has to go.

Chairman Reinhardt – Correct. Al, anything else you want to add to this?

Mr. Benedict – I don't have anything, no.

Chairman Reinhardt – Ok.

Mr. Brett Loomis – Can I add something as the builder?

Chairman Reinhardt – Sure.

Mr. Brett Loomis – I do know the lot next door to it, which would be on the west side was just purchased, if you are facing the lot. I believe that was just bought last month. Or to the east. Has anyone applied for any kind of permit on that? I'm just curious to see what they are going to have to do with the trail and their system, because that's about the same size lot.

Mr. Benedict – Are you talking about the house immediately to the east that's existing?

Mr. Loomis – No, the lot that was for sale would be on the west side if you were facing the house.

Mr. Benedict – Okay. I don't believe that's been sold as of yet. It's gone through the planning board. At this point in time it's just for exchange of property.

Mr. Loomis – Because basically I've been with them for the past two years with this going on, we've jumped through every hoop up here. And, I understand it's got to go through the county, but basically at this point if this doesn't work this lot there is just a parking lot. The town should buy it from them.

Mr. Benedict – Going back to the lot to the west, it's also part of a potentially future endeavor if the golf course were to go under for a subdivision which case they would probably run sewer down that road, down Break of Day to join into that. But that doesn't help you at this point.

Mr. Loomis – No, because there is a 12” main that runs down through there, but that comes from the mall, so we can’t tie into that.

Chairman Reinhardt – Any other questions?

Mr. Loomis – That was basically my biggest thing. They’ve just been on the go for this for two years and we’re just trying to get down to the point do we stay there or do we just jump ship to another town? Unfortunately.

Chairman Reinhardt – Well, I think we need a few more pieces to the puzzle here and see what we can do with it.

Mr. LaRue – The location is phenomenal. I keep saying it, I’ve never seen such a nice location that’s been so difficult.

Chairman Reinhardt – Okay, I think we’re all set for now, so we will take a look at this on March 1<sup>st</sup>.

Mr. LaRue – March 1<sup>st</sup> you got it. Thank you.

Patrick and Sarah Canzano – 02-Z-2021  
23 Rothbury

*Carried Over From January 19*

The applicants are requesting to build a house behind an existing barn at 1086 Strong Road. §211-31G(2) states no accessory structure shall be forward of the primary building. Property is zoned Residential 2 and owned by Ott Irrevocable Survivors Trust.

Chairman Reinhardt – Okay, Patrick and Sarah, thanks for being patient.

Mrs. Canzano – Hi everyone. Okay so we took all your recommendations and your advice and consideration and we were able to fine tune our proposal a little bit and include a few more details in our application which if it’s okay with you I will share them with you now.

Chairman Reinhardt – Go right ahead.

Mrs. Canzano – So we specified our proposal a little more to give us actual footage on the property. So we are proposing that the front line of a future main residence be allowed to be built at least one foot behind the front line of the existing barn. According to my measurements the existing barn is 100 feet from the road. I know Al provided a really old survey or it might have been like a building permit for the barn and it said 120 feet. I didn’t get 120 feet, but I’m also not a surveyor so, we’ll take that with a grain of salt. Between 100 and 120 feet is where the barn sits from the road.

So, we’re asking that the future house just be built at least one foot behind the front there. I want to also consider the following factors, the main residence behind the accessory structure would not produce an undesirable change in the neighborhood. We kind of talked a lot about this last time. There is an existing barn in front of the house at 1200 Strong Road, which is south of this property and there’s also at 8032 Taylor Road there was a more recent structure, a detached garage built in front of a home there which went through this Zoning Board.

In addition, several neighbors voiced their opinion on last time’s call. I won’t list all their names here, but there were three that were in support of our building going behind the barn.

We kind of looked more closely at some things, some other methods to show that the benefit sought cannot be easily achieved otherwise. And one of the things we did a lot of research on which you also asked us to do was what would be the cost of the effort to move the barn. We did not have someone come over and quote and do this because we don't the land and in our opinion that would be a waste of our resources. And money. But I did do some research on-line and found that because of its size the barn is 40' by 43' and 18' high at its peak. You couldn't move it obviously without disassembling it and rebuilding. The other issue is that it has a concrete slab, so that would have to be demolition and then rebuilt in the new location at a cost, for that size at approximately \$10,000. So in our opinion that's not reasonable.

And because it's in such good shape aside from needing a little paint work on the outside and some clean up, it's a good barn, so. The other option obviously would be to build the house next to or in front of the barn. It would still be able to sit back that 40 feet from the road but in our opinion that just not a good use of the resources since we have eight and ½ acres and the point for us is to be in a more rural setting where the house is set back further on the property.

In our opinion, the variance request is not substantial. It does not affect other neighbors. It does not go into another neighbor's yard or go anywhere near their property line and also the actual footage that we are requesting, if the house was built right at code, it would have to be 40 feet off the road line. The barn is 100 feet off the road line and we are asking for just 1 foot behind that. So we're asking for at least a 61 foot difference and on an 8.5 acre lot we don't think that's substantial.

I believe we had feedback from the Conservation Board showing that their, I think it was in this meeting, it could have been the subdivision meeting though. There were no concerns in regards to the environment.

And then, we are asking for a variance request based on an existing structure, it was not self-created issue, except that we eventually want to build a house.

So, I feel like we covered everything you guys asked for last time, but we are ready for more questions.

Chairman Reinhardt – We are not going to keep you all night.

Mrs. Canzano – There's not a whole lot else to do nowadays, so.

Chairman Reinhardt – I appreciate you doing your homework. Nice job.

Mrs. Canzano – Thanks.

Chairman Reinhardt – I want to at least touch on the Heckel variance on Taylor Road. I took a look at the aerial and reviewed the variance itself. I think that one is apples and oranges. It had to do with the position of the house and the garage itself. If you look at the aerial and you look at the survey it's almost at like a 45 degree angle from the road.

Ms. Canzano – I drove past it the other day.

Chairman Reinhardt – Just by circumstance, if you will, how the house was built in the first place where the driveway is and then the garage being next to it, created that illusion if you will that it's closer to the road. Well in fact it is. And, it's a hundred and fifty feet off the road so that helps. It doesn't mean it hurts your cause at least, it's different. I think it's very telling and I agree with you, trying to move that barn is going to be extremely costly if not impossible to do it. I suppose if you really, really wanted to do

it people have done things like that before then you have at it, but you know it doesn't sound very practical to do it.

I also took a look at the site plan review planning board minutes and it seemed to be their biggest concern was not really your lot, but lot 2 and the site distance.

Mrs. Canzano – The driveway.

Chairman Reinhardt – Right, right. I don't think you're going to have the problem. And, let me ask you this are you going to keep the driveway for where the barn is currently? Or are you going to make a new driveway for the house?

Mrs. Canzano – So right now where that dirt driveway is it actually it doesn't have a good sight line. I know that it's existing and so it had to have been approved. I mean a business ran out of there, I would assume it was approved. So, it's definitely a possibility. Ideally I think in our minds, we'd like to drive in that driveway and go left into the barn and then a little up further to the house and the garage. Kind of using them interchangeably. But technically the driveway could be put up the road further away from the hill, so south on the property line. I guess if we really needed it. I don't know a couple feet. It's existing so we just sort of been working off of that.

Chairman Reinhardt – And, I think once you decide and presuming that you get the variance and you purchase the property and all those good things and you go through the fine tune of where this is where we'd like to put the house and I think planning board is probably going to weigh in closer on, yeah you can put the driveway there, no you're creating a problem. So I think looking at this especially with having the house behind the barn and is what you really want to do and I think going through the criteria some people think that it's an all or nothing type where you have to have all those criteria, it's not it's a balancing. So as we go through it I don't want you to feel like you're alarmed when all of sudden you say, why are you saying that we're losing on that one. It's not fatal to your case. It's a balancing, some factors are more important to the board than others, so as we're going through that I don't want you to be too alarmed by what it sounds like. Okay? But overall I think I'm encouraged with your homework and what I saw with the planning board, but before we continue, I think Matt do you have any thoughts or questions about this?

Mrs. Canzano – We'll definitely be getting a perc test before we purchase the land. Just throwing that out there.

Chairman Reinhardt – Donna, do you have a question? You have your finger up.

Ms. Morley – I do. Did we get any other correspondence from anybody, for pro or con for this on the road?

Ms. Reese – I haven't seen anything, no.

Ms. Morley – Okay, thank you.

Chairman Reinhardt – Matt?

Mr. Nearpass – Just on the numbers, so you said you wanted the variance to be one, a minimum of one foot (Mrs. Canzano – behind the front line of the barn) behind (Mrs. Canzano – so it kind of gives us a minimum, but it kind of gives us leeway if we were to be further back, it would be further back.

How far back to you think you're really going to go? I'm okay with . . .

Mrs. Canzano – No, I understand what you're asking. I think the and maybe AI could probably answer this question, I have the numbers somewhere, but there is a distance back in which you require a sprinkler system? If you're so far back and certain thing has to be in your driveway. I think it's like

Mr. Benedict – I think it's 250 or something like that.

Mrs. Canzano – 250 feet? So it wouldn't be more than that. Is our plan.

Mr. Nearpass – What's our number? Is the variance for the maximum or for the minimum? Mike?

Chairman Reinhardt – I think what we're looking at is

Mr. Nearpass – A variance not to exceed 250 feet or is it a variance that just allows the house to be one foot or more

Chairman Reinhardt – I think we ought to look at it if the applicant decides at one point, well gee we want to put the house even with the barn, even if it's 40 feet, 100 feet away from the barn, but it's no further if you will, behind the barn. I think now that they have so much room and the site plan I think was up in the air to such a degree. I didn't really know what the concerns were from the planning board.

Mr. Canzano – In that scenario, in our mind, that would be within code then that we wouldn't need a variance. If it was in line with the front of that barn, we're not violating anything. That's why we're asking for the home structure to be one foot behind the front of the existing barn.

Mrs. Canzano – At least.

Mr. Canzano – Because that requires us to have the variance. Knowing that most likely we're going to put it much farther back than that.

Chairman Reinhardt – Right.

Mrs. Canzano – Were you saying from the subdivision application there was a question?

Chairman Reinhardt – It sounds like there's two questions in there. Even if you have a variance that allows you to build the house behind the barn doesn't necessarily mean though that you have to do it. By you offering, saying we will put the house at least one foot behind the barn, it puts a condition to the variance that you may or may not want.

Mrs. Canzano – In my proposal it says that the front line of a future main residence be allowed to be built, it doesn't say will be built. So, I don't know if that language or if the language in the approval would need to be tweaked.

Mr. Nearpass – I think it's more of along the lines of that the variance will allow the barn to be up to, let's say, 200 feet in front of where you place the house. You know you're not going to move the barn and then you kind of do the math, right? That you're allowed to then put the house 200 feet behind it all the way up to where it's allowed to by code, in line with it or not. I think if we flip it around and say the variance is to allow the barn X number of feet forward of the front line of your house. You just got to make sure that the number you give us, whether it's 200 or 250 you're not going to exceed it.

Mr. and Mrs. Canzano – Right.

Chairman Reinhardt – I think that's right. I agree.

Mr. Nearpass – If you go with 250 because you don't want to have the sprinkler system and all that. Totally agree. I would make it 250 for purposes of our discussion. If the rest of the board is okay with the number.

Chairman Reinhardt – That's going to give you more latitude than to decide really where you want to put the house on all that land.

Mrs. Canzano – So what if we said, my only concern with that and just based on the people who went prior to us, is say we say 250 but because, now obviously we're going to have a perc test done before we purchase the land because it hasn't been required thus far in the subdivision process. What if for some reason the septic needs to go smack dab where we want the house and we actually have to do a sprinkler system because we want to back instead of in front of it, then does this limit us from doing that?

Mr. Nearpass – I think in that case you then have to be back in front of us with more data that shows hey we didn't ask for enough.

Chairman Reinhardt – I can't believe that you won't be able to find a spot for your septic system.

Mrs. Canzano – I can't either, but just to cover my bases.

Chairman Reinhardt – Your proposed piece of property is a bit larger than the last application.

Mrs. Canzano – That's true.

Mr. Canzano – I guess that's why our thought process is if we say that a house can be build one foot behind the front of that, we could take it we could put the house 101 feet off the road or we can put it 600 feet off the road.

Mrs. Canzano – And, it would still have to meet code, obviously in the site development application in the building process.

Mr. Canzano – That's house we were thinking about it, that as long as we had a variance to at least build a structure that is behind the front line of the barn we can accomplish what it is that we're looking for.

Chairman Reinhardt – Okay, alright.

Mr. Canzano – Are we looking at it wrong? I know you mentioned the other way. But now that gives us much more flexibility than trying to figure out something that we don't know yet, due to variables that we haven't identified.

Mr. Nearpass – It may. We normally don't think it terms of minimums. We mostly think in terms of maximums. Maybe that's why, but I'm not against it. If we think it makes more sense in this case.

Mrs. Canzano – In my head, the maximum, we could only go so far as all the other codes would allow us when you're doing a site development and building plan, so we couldn't without another variance go so far that we're on the other end of our property.

Chairman Reinhardt – Al, not to put you on the spot, but I'm gonna. Do you see any problems with a condition presuming that the variance is granted for the house to be at least one foot behind the existing barn?

Mr. Benedict – I don't see any problem with that, it's just sounds funny.

Chairman Reinhardt – It does sound funny.

Mrs. Canzano – It definitely does. I rewrote that sentence like 17 times. I was like this does not sound right.

Mr. Benedict – It just seems to me if the board's inclined you would grant the variance for the house to be behind the barn and then in your findings that the applicant has indicated that they would like to build it at least one foot and probably no more than 250 or 300 feet to support your decision. But that's just my opinion.

Mr. Nearpass – Do we need a number?

Mr. Benedict – I don't think so.

Mr. Nearpass – Can we give the applicant the ability to build their home wherever they want as long as they are obeying all the other codes.

Chairman Reinhardt – Yeah, I think so. I think that's the way to do it and not make it a condition, but make it a factor as far as the criteria that we're looking at and plug it in that way so at least it's in the record on how it is we came about making the decision.

Mr. Benedict – I think if you put it in the criteria and say 250 feet and for some they reason they find that they need to go back 350 I think you could still make a case to bring it back to you to decide whether that needs to be considered or not.

Chairman Reinhardt – Let's hold on to that thought a second. Fred, questions, concerns?

Mr. Salsburg – I don't have any concerns. There's several barns on that road that are in front of the house. One of them very much like this, an old barn. (Inaudible) With a modern house behind it. Much more appropriate or applicable than the Heckel property is. Whatever you guys decide, I'm going to vote for it.

Chairman Reinhardt – Sarah questions?

Ms. Mitchell – No I just want to thank the applicant for going back and answering all the questions that we had from a couple weeks ago. So I think that helps make the decision (inaudible).

Mrs. Canzano – Thank you.

Chairman Reinhardt – Donna, questions?

Ms. Morley – No, nothing. Thank you.

Chairman Reinhardt – Great. Anything else you want to add, Sarah?

Mrs. Canzano and Ms. Mitchell – Nope.

Mr. Canzano – There's a couple.

Chairman Reinhardt – Well I'd ask Patrick, but you don't say much.

Mr. Canzano – We led off with this last time that she's going to take care of this.

Mr. Salsburg – I do have one thought on the barn. It looks very commercial or industrial now and I think the approval should require that the walls get painted some kind of an earthy, forestry type color, maybe a tree put on each corner to make it look more residential.

Mr. and Mrs. Canzano – Done! We'll take care of that for sure.

Chairman Reinhardt – So that being said, let's run through the criteria and see if we can get Patrick on his way.

First criteria, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

I think it will not, with the thought that as we heard that there are in rural area that there are some barns forward of homes and also reviewing the town planning board minutes the focus seemed to have been on the site distance concerns for lot number 2 and not this proposed lot number 3. Also, looking at it looks like a zoning board of appeals survey map, I can't quite see what the date is on it, but it looks like from the center of Strong Road to the front of the barn is about 120 feet. The applicant says that she measured it to be about a 100. So with that with the house potentially being behind the barn and especially the property being the size that it is there doesn't seem to be any concerns. Also the septic concerns about allowing flexibility.

Would anyone else like to add anything else on the first criteria?

Alright, second whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

In this case, because there is 100-120 feet from the road to the barn potentially a house could be forward of the barn, however given the size of the property it seems to be that the applicant should be permitted to put their house and use their property as they would like.

Would anyone else like to add anything to the second criteria?

Third, whether the requested area variance is substantial.

It is arguably substantial simply because given the size of the property and with at least 100 feet from the road to the barn that in theory, the house could be put there. I know they don't want it there, but because of that simple fact, it is substantial.

Would anyone else like to add to the third criteria or make any comments to that?

Fourth, being whether the proposed variance will create an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

I think it is not, due to the size of the property and also the rural area and that there are again other barns that it doesn't appear that we've heard any evidence whatsoever that this proposed plan and this proposed variance will have any adverse effects on the physical or environmental conditions of the neighborhood or district.

Would anyone else like to add anything else on the fourth criteria?

Whether the alleged difficulty is self-created is the fifth criteria. The consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

Arguably it is self-created. I would like to circle back though that there was some discussion I want to be able to put it into, let's put it into the first criteria. That the proposed location of the home will be at least one foot behind the barn and no more than 250 feet. It doesn't necessarily mean that they are restricted to that area, but there was discussion on where they would like to put the proposed home.

Anyone else like to add anything to the criteria that we went over or any proposed conditions to the proposed variance?

Alright, hearing none, I'd like to entertain a motion for the granting of this variance.

Mr. Salsburg – I'll make the motion.

Chairman Reinhardt – Fred, thank you Fred. I need a second.

Ms. Morley – I'll second it.

Chairman Reinhardt – Thank you, Donna. All in favor. (Aye) Any opposition? None. Congratulations. Good luck to you. Don't think you have to paint the barn, like Fred said you had to. Paint it however you'd like.

Mr. Canzano – Can I ask a quick question about the variance, though?

Chairman Reinhardt – I'd be careful now.

Mr. Canzano – No, we talked about this last time. We're not the owners of the property right now and you mentioned that it carries with the land. If for some reason this fell apart, the variance would not go through, is that right?

Chairman Reinhardt – Well I think the way that I understood it, you had permission to at least present it.

Mr. Canzano – We had permission in the purchase agreement to do this.

Chairman Reinhardt – Right, so I can't imagine how it would go sideways on you.

Mr. Canzano – Right. Fair enough. The variance is it, coming to us or?

Mrs. Canzano – Is it tied to the land or us?

Chairman Reinhardt – The way that variances are recorded, there's going to be a resolution that Kim puts together, I sign them and then the town will have that on file so the world know no matter who owns that property that this variance runs with lot number

Mr. Canzano – Lot number 3 of this minor subdivision.

Chairman Reinhardt – Correct.

Mr. Canzano – Fair enough. Okay perfect.

Mrs. Canzano – Thank you so much. Nice to meet all of you.

Mr. Benedict – I just want to advise the applicants that there is a time limit on variances at this point. You would have one year to act upon it. I understand you might have a longer time frame, but if you get near that point and you need to come back to the board to explain why you haven't been able to act upon it and they can at that point extend it.

Chairman Reinhardt – Thanks Al, good point.

Mrs. Canzano – Thank you everyone.

Chairman Reinhardt – Have a good night. Anyone else have anything else for the board tonight?  
Hearing none, a motion to adjourn.

On a motion by Ms. Morley and seconded by Mr. Nearpass, it was unanimously decided to adjourn the meeting at 8:25pm.