

**A regular meeting of the Village of Victor Zoning Board of Appeals (ZBA) was held on Wednesday, February 20, 2019 at the Village Hall, 60 East Main Street.**

**MEMBERS PRESENT:** Chairperson Sean Sanderson  
Vice Chairperson Brian Pancoast  
Member David Chalupa  
Member Brendon Crossing  
Zoning Clerk Roseanne Turner-Adams

**MEMBERS ABSENT:** Member Tim Stone

**OTHERS PRESENT:** Don Ras, Lynn Ras

The ZBA meeting was called to order by Chairperson Sean Sanderson at 7:00 pm.

Salute to the Flag

Mr. Sanderson stated that the application for 9 Clover Lane was withdrawn by the applicant, therefore no continuation of the November 7, 2018 meeting was necessary.

**Resolution #01-19ZBA**

**Acceptance of Minutes**

On a motion made by Brendon Crossing, seconded by David Chalupa, the following resolution was ADOPTED 3 AYES 0 NAYS 1 ABSTAIN (Brian Pancoast was absent Nov. 7, 2018)

**Resolved** to accept the minutes dated November 7, 2018.

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**18 West Parkway/Donald Ras  
Area Variance-Subdivision of Land**

Chairperson Sanderson read the legal notice into the record:

A public hearing will be held before the Village of Victor Zoning Board of Appeals on Wednesday, February 20, 2019, at 7:00 p.m., in the Village Hall, 60 East Main Street, Victor, New York, to consider:

1.) The application of Donald Ras, 18 West Parkway, for an area variance to the Village of Victor Zoning Code to divide the property into two lots. A single family home now sits on a single parcel of 30,231 square feet. Subdividing the parcel would now create two substandard parcels. If you reference Section 170-10 of the Village code you will find that the minimum measurements (C) required per lot is 16,500 square feet. The proposal is to make Lot 1, 15,200 square ft. and Lot 2, 15,020 square ft.

Sean Sanderson, Chairperson  
Village of Victor Zoning Board of Appeals

Chairperson Sanderson then read the letter of referral from Codes and Development

into the record:

To: The Village of Victor Zoning Board  
From: Doug Scarson, Code Enforcement Officer

Re: 18 West Parkway

An application has been reviewed by my office for an area variance at the above address. A single family home now sits on a single parcel of 30,231 square feet that the applicant wants to divide into two lots. Subdividing the parcel would now create two substandard parcels. If you reference Section 170-10 of the Village code you will find that the minimum measurements (C) required per lot is 16,500 square feet. The proposal is to make Lot 1, 15,200 square ft. and Lot 2, 15,020 square ft. Also additionally if two substandard parcels are created a setback issue will also be present at the rear southeast corner of the existing home. 6.9 feet exists and 15 feet is required per code.

The existing fence that bridges Lot 1 & 2 should be removed before any conveyance of the parcels. Also the shed on Lot 1 was placed illegally on the property and is not in code due to insufficient setbacks. These above items can be addressed at the time of any development by our office. It is my feeling that the character of the neighborhood would not be adversely affected due to the parcel sizes. However it is unfortunate that the setback issue of the existing home exists.

If you have any further questions please contact my office at any time at 585-924-3311. Thank you.

Mr. Ras stated that he believes that the setback is on the East corner of the house and asked if he is correct by saying that. Mr. Pancoast agreed. Mr. Chalupa asked how old the house is. Mr. Ras stated that the house was built in 1958 and that his proposal did not cause the setback issue. Mr. Ras explained that the setback, fence & shed issues were already there. Mr. Ras stated that he is not opposed to getting rid of the sheds.

Chairperson Sanderson then read the field inspection report addressed to the Village Board from Codes and Development into the record:

Location: 18 West Parkway  
Subdivision of Land  
Date: 12/14/18  
Contact: Village Board  
Inspector: Douglas Scarson, CEO

Observations:

1. Home rear side setback on Lot 2 is pre-existing non-conforming.
2. The shed on Lot 2 was illegally placed on the property prior to the very most recent purchase.
3. The shed on Lot 1 was illegally placed on the parcel and also does not meet setback requirements.
4. The fence erected on Lot 1 should be removed or opened up at some point so that the potential owner of Lot 1 may maintain his property on the other side of the fence.
5. The subdivision of this property will create two substandard lots that per R1 regulations require at least 16,500 sq. ft. per lot. Refer to section 170-10 of the Village Code.

If you have any questions about the above Action items, please call the Code Office at 585-924-3311.

Mr. Ras stated that he obtained some of the original Quail Ridge subdivision maps from the County which show that the property was originally two separate lots. Mr. Ras showed the Zoning Board members what he found. Mr. Pancoast stated that paperwork

must exist that shows the combining of the two lots. Mr. Ras stated that he could not find any paperwork showing the combining of the lots. Mr. Chalupa stated that he does not think that it would affect the Zoning Board decision since the rules are different now anyway. Mr. Pancoast stated that if the lots weren't legally combined they don't have to be legally separated. Mr. Pancoast also stated that on the Zoning map it is shown as one parcel.

*Zoning Board reviewed and discussed the old subdivision maps.*

Mr. Ras stated that Code Enforcement Officer Scarson said that subdividing the property would not make the neighborhood look that much different because the lots across the street are much smaller than the proposed lot.

Mr. Crossing stated that he thinks that what Mr. Ras has presented is great information but is not sure how it impacts the Zoning Board's decision today. However, the adjacent non-conforming lot sizes do impact his decision. Mr. Pancoast stated that he thinks that the fact that they were originally two separate lots guides his decision as well.

Mr. Sanderson asked Mr. Ras how long he has owned the property. Mr. Ras stated that he has owned it for a little over a year. Mr. Sanderson asked Mr. Ras if he lives there. Mr. Ras stated that he rents the property to family. Mr. Crossing asked Mr. Ras what his intent is for subdividing the property. Mr. Ras stated that he would like to build a new house on the property and sell it. Mr. Ras stated that he wants the proposed house to look nice and that he takes care of all of the property maintenance now.

Mr. Crossing asked Mr. Sanderson if the Zoning Board has to address the Southeast corner of the house since it was raised as an issue by Code Enforcement. Mr. Sanderson stated that it was raised as an issue but then goes on to contradict that by saying it is pre-existing non-conforming so the Zoning Board does not need to address it.

*Discussion about what the Zoning Board does need to address*

Mr. Sanderson stated that what the Zoning Board has to address tonight is the size of the substandard lots and that Code Enforcement will deal issues such as the sheds, fence & setback requirements.

*Mr. Sanderson opened the public hearing*

0 persons spoke in favor of the application and 0 persons spoke against the application;

*Mr. Sanderson closed the public hearing*

Mr. Pancoast asked who makes the final decision on whether Mr. Ras can subdivide the property. Mr. Sanderson stated that the Village Board would make the final decision. Mr. Pancoast asked if the Zoning Board is advising the Village Board. Mr. Sanderson

stated that the property cannot be subdivided without an area variance. Mr. Pancoast stated that the Village Board will make the final decision.

Mr. Pancoast stated that he feels that this process seems to be backwards because until that lot is subdivided there is no violation. Mr. Chalupa stated that the Village cannot approve less than code therefore the Zoning Board has to approve it first. Mr. Sanderson agreed that the Village Board cannot vary from the code. Mr. Pancoast disagreed.

*Discussion amongst applicant and Zoning Board about who makes the final decision about subdividing the property*

Mr. Sanderson stated that once the Zoning Board has made a decision about the variance it will be handed over to the Mayor, Village Board & Code Enforcement to see what the next step will be for the applicant.

*Discussion about whether the property was legally combined*

*Address file was reviewed but nothing was found*

Mr. Ras stated that he has paperwork showing that the original owner purchased two lots but doesn't have anything showing that the lots were legally combined. Mr. Chalupa stated that whenever a property is sold a survey is done and the latest survey shows it as one lot. Mr. Ras stated that he presented the original lot layout to show that the impact of separating his property wouldn't be as much because there are several small lots in the subdivision.

*Applicant and Zoning Board reviewed and discussed the maps that the Applicant brought*

Mr. Sanderson stated that all are in agreement that the older lots on West Parkway and all of East Parkway are pre-existing non-conforming.

*The ZBA then went through the Area Variance Criteria balancing test and after much discussion came to a board consensus on each:*

- Whether the benefit can be achieved by other means feasible NO
- Will the variance create an undesirable change in the neighborhood NO
- That the request is substantial NO
- Whether the request will have adverse physical or environmental effects NO
- That the alleged hardship was self-created YES

Mr. Pancoast suggested tabling the proposal to investigate whether the property was ever legally combined. Mr. Crossing stated that the Zoning Board was presented with a

survey showing that the property was combined at some point and that the applicant shouldn't be asked to prove that. Mr. Pancoast stated that the Village Board had to have combined that property and there must be something on file. Mr. Sanderson stated that the Zoning Board must focus on the most recent survey which shows the property as one lot and base their ruling on one lot being divided into two.

Mr. Pancoast stated that the Village Board are Legislators, so the fact that if they were to approve subdividing the lot in violation of existing code, it would rewrite the code for that property and then would not need an area variance. Mr. Ras asked who decided that he needs an area variance. Mr. Pancoast stated that Code Enforcement Officer Scarson did. Mr. Chalupa stated that they do need an area variance. Mr. Sanderson stated that he would like to make a motion tonight but knowing that there is no close timeline that if people feel strongly that the case needs more clarification that he is not opposed to tabling it. Mr. Pancoast stated that he would prefer to table it because there is currently no violation and is unsure of how to word the motion. Mr. Crossing stated that the applicant applied for a subdivision and were denied by the Code Enforcement Officer and came to the ZBA to get a waiver for that and if approved would go to the Village Board for ultimate approval. Mr. Pancoast stated that Code Enforcement Officer Scarson should not have made that decision and it should have been made by the Village Board. Mr. Crossing gave the example of a similar case, Ferris Terrace in which there were a number of issues that the ZBA had to approve before the Planning Board could consider the motion for approval of that project.

Mr. Pancoast stated that if someone would like to figure out how to word a motion, he would be glad to vote yes.

Mr. Sanderson asked for a motion:

*Discussion amongst Zoning Board members of wording of the variance and whether it should be two area variances or one.*

**Resolution #02-19ZBA**  
**18 West Parkway/Donald Ras**  
**Area Variance-Subdivision of Land**

On a motion made by Brian Pancoast, seconded by Brendon Crossing, the following resolution was APPROVED 4 AYES 0 NAYS

To grant two area variances to the Village of Victor Zoning Code 170-10 at 18 West Parkway allowing two non-conforming lots as referenced in the survey (Exhibit A) where Lot 1 would be 15,200 sq. ft. and Lot 2 would be 15,020 square feet where 16,500 sq. ft. is required.

**WHEREAS**, an application was received by Roseanne Turner-Adams, Zoning Clerk, for the Zoning Board of Appeals, from Donald & Lynn Ras; on January 17, 2019, requesting an area variance to subdivide their property into two separate lots at 18 West Parkway.

**WHEREAS**, said application was denied by the Code Enforcement Officer for the Village of Victor on the basis of Section 170-10 and,

**WHEREAS**, a Public Hearing was duly called for and was published in "The Daily Messenger" on January 30, 2019; and,

**WHEREAS**, all adjacent property owners were timely notified of the hearing and the purpose of the hearing by mail; and,

**WHEREAS**, a Public Hearing was held on February 20, 2019 at which time all those who desired to be heard were heard and 0 persons spoke in favor of the application and 0 persons spoke against the application; and,

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

- The lots across the street are also non-conforming
- The lot was originally two separate lots

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

That an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by the granting of this variance.

That the requested variance is not substantial.

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

That the requested variance will not alter the essential character of the neighborhood.

That the alleged difficulty was self-created.

**NOW, THEREFORE BE IT RESOLVED** that the application of Donald & Lynn Ras to grant two area variances to the Village of Victor Zoning Code 170-10 at 18 West Parkway allowing two non-conforming lots as referenced in the survey (Exhibit A) where Lot 1 would be 15,200 sq. ft. and Lot 2 would be 15,020 square feet where 16,500 sq. ft. is required. **Be Approved.**

**Be It Further Resolved:**

- That the applicant obtains the proper building permit(s) from the Building Department.

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**ADJOURNMENT**

Meeting was adjourned on motion at 8:42 pm.

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Roseanne Turner-Adams, Minutes Clerk