

A regular meeting of the Town of Victor Zoning Board of Appeals was held on Monday, April 15, 2019 at 7:00 P.M. at the Victor Town Hall, 85 East Main Street, Victor, New York, with the following members present:

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

ABSENT: Scott Harter

OTHERS: Al Benedict, Town of Victor Code Enforcement Officer; Dave Condon, Town Board Liaison; Glenn Thornton; Lisa Boughton, Secretary

The meeting was opened, the Flag was saluted, and the Pledge of Allegiance was recited.

APPROVAL OF MINUTES: None

1. 7850 ROYAL WOODS - DENSITY – Area Variance 5-Z-19
The applicant would like to subdivide their 17.18 acre property, and build a home on the created lot with access from Benson Road. The property is in the Limited Development District with Density Overlay District A, meaning one house per three acres. The lot is within the Royal View Subdivision which was pre-existing, non-conforming with a heavier density, before the Density Overlay Districts were codified in §211-27.3.

Chairman Reinhardt – We were waiting for the County Planning Board referral. Did you have a chance to review there comments?

Glenn Thornton of Thornton Engineering representing the Christopher's.

Mr. Thornton – I did. There comments were pretty minor. They are looking for the proposal lot is able to meet site distance requirements, which it will be. It is a 40 mph speed limit out there. Where we place the driveway there will be adequate site distance to the north and to the south. Of course, soil and water will be involved in the process and the erosion control and the septic system design. After the last meeting I tried to compile some relevant information which I sent over. Hopefully it was distributed to the Board.

Just on the environmental potential and environmental impacts that might be caused. We had looked at the wetlands, the flood plan, and the archeological sensitive areas. We looked at the soils, the water table and we do not see any issues with development on this parcel.

Chairman Reinhardt – If we just click them off one at a time. Are you comfortable with if the Board grants the variance that is a condition that you are going to meet or exceed the sight distances?

Mr. Thornton – We will. The driveway will meet or exceed the required site distance for a 40 mph.

Chairman Reinhardt – If the area variance is granted that that will be a condition to granting the variance. Second one is involving the Ontario County Water and Conservation District. You are getting them involved?

Mr. Thornton – Yes

Chairman Reinhardt - That is specific to the septic system.

Mr. Thornton - Correct and also for the erosion sediment control measures on this site.

Chairman Reinhardt – For both of those #2 and #3 looking at the recommendations from the County Planning Board you are comfortable with making that a condition as well. You are going to be coordinating your efforts with the Ontario County Soil Water and Conservation District with regard to the septic system and the storm water and erosion control.

Mr. Thornton – Yes

Chairman Reinhardt – The fourth one is respective to the new conservation area should be continuous with the existing conservation area. If I look at the map and what we talked about before that is not happening just yet. Correct?

Mr. Thornton – We haven't changed the map to show that yet. Are the looking for this proposed area to be connected to this area?

Chairman Reinhardt – I don't know entirely what they are thinking but that is my take on it is to make the conservation area continuous. If the existing conservation area is, what I understand, being the yellow is a strip, and they did not tell how much, if it's a 10 foot band or 15 foot band or some type of band so it is obvious that the green shaded area is connected to the yellow shaded area. Can that happen?

Mr. Thornton – That can happen, yes.

Chairman Reinhardt – What would be your proposal on how big of a step would it be to make it continuous so that it is obvious that it is connected.

Mr. Thornton – I think since that area there is going to be part of the 1.5 acres of conservation easement. I think a 10 foot area would provide some connectivity. I am not sure why exactly they had that comment because I am not sure what the benefit is. We can do it and provide a 10 foot area there and maybe just reduce the green area in the corner so we maintain that 1.5 acre 50% conservation easement.

Chairman Reinhardt – I can only assume and rather not guess what other people are doing. Al do you have any thoughts on why here suggesting to make it a continuous area?

Mr. Benedict – generally you would like to a conservation easement areas connected. Sometimes they have walking trails that would allow them to walk thru them. If they were contiguous you could walk from one to the other. In this one I don't believe there is any sort of trail easement across it. I do not believe there is anything in our Code that requires it. It is generally a preference.

Chairman Reinhardt – For all the conservation areas that we have I in the Town would 10 feet, in your opinion, be sufficient enough to connect those two conservation areas.

Al Benedict – The only reason I can think of that you would want them contiguous if there was the ability to have a walking path and 10 feet would be more than adequate.

Mr. Nearpass – One question, so you are saying right now you have to have the green location because you are meeting a particular requirement to have half of it?

Mr. Thornton – Correct, 50%. 1.5 acres and as for creating that 10 foot connectivity that is not a problem. We can do that and it will not take away an area we want to use for development. If we need to provide a 10 foot area along the back property line we are probably only talking about 50-60 feet long. That is absolutely not an issue.

Chairman Reinhardt – Can you change the angle of the triangle so that it does connect and you might not be losing a lot of the space. In some way I think you need to make it.

Mr. Nearpass – Can you go straight across as well.

Chairman Reinhardt – I think if there is some effort to make that connecting and the minimum depth 10 feet and make the angle go straight across. Some way somehow I would like to follow suit with the Ontario County Planning Board on making it continuous. That is at least addresses the County Planning Board concern. Donna any questions?

Ms. Morley –Is that area showing that there is nothing?

Mr. Thornton – It is not located within archeological sensitive area as determined by the Historic Preservation Office. With that being said we wouldn't need to conduct an archeological survey to develop the land.

Mr. Nearpass – My only comment is that last time we had the public hearing it seemed everyone was open and ok with that additional open space. That white swath of land that is northwest corner making that a part of the conservation easement. That is still something that is on the table?

Mr. Thornton – That would be fine. If that is what the Board would like to see. I am sure the owners would have no problems with that.

Chairman Reinhardt – I think I would agree with that as well. It would not minimize the density issue but maybe in the future it would completely eliminate.

Mr. Nearpass – It seemed when the owner and those from the neighborhood were here that put some of them at ease knowing that there is not some other parcel of the land that they will be back in here for.

Chairman Reinhardt – How do we identify that? Northwest portion of the proposed developed area.

Mr. Nearpass – Is it identified with an acreage size?

Mr. Thornton – It isn't. I think it would be most easily described as the remaining acreage with frontage along Benson Road.

Mr. Salsburg – The one lady said her ex-husband was going to write a new letter of approval. We did not get that. If his objections were still standing since there wasn't a letter. Mr. Kaiser letter.

Chairman Reinhardt – Since he did not submit a letter we still have to treat this as he is not in favor of it. We had two people at the meeting last time that were for it.

Mr. Salsburg – I thought his realistic objection was ground water runoff into the pond. The pond is a long ways with a big berm in between it. I could not see that. The rest of it seemed sort of reaching. The driveway is a rising. The property is a bit lower than the road but I see it as a great big piece of property with one house and going on in the future it will still look alone in the woods. Other than that I am all set.

Chairman Reinhardt - Anyone in the public want to speak for or against? You think we are good with it. Check in with Al and if there is anything that you would like to let us know about or if we are missing anything. We have your memo March 26th. Add or discuss. The density Code established in 2000, it is a non-conforming use and is going to need an area variance. It is a unique parcel and it seems that the developer or the builder is helping out the situation to create

more green space. The conditions will be just as what the County Planning Board is asking for working with the County Soil and Water District, making sure the septic system is working properly and the environmental impact. Given the situation of it all it sounds good to me.

Mr. Salsburg – Those are items we discussed at the last meeting.

Chairman Reinhardt – I think it was worthwhile that we created a record and the County Planning Board was sensitive to that looking into it and making sure that whatever goes in this parcel that there is some special circumstances to it and making sure there are no adverse impact to the environment. It seems to be the biggest thing everyone is trying to get their arms around.

Mr. Benedict – I can tell you that the Planning Board will be seeing this also and will be reviewing the same things.

Chairman Reinhardt – We run thru the criteria. First one being an undesirable change would not be produced in the character of the neighborhood. I think this is going to run right across the board. It is a unique parcel. The owners and the builders seem very sensitive and willing to carve out more conservation area and build on what they need.

Second being can it be accomplished by some other method. You are going to build on it. The difficulty with this is where it is and the development. It is a unique situation. I cannot see how can be achieved by some other means of what they are trying to do.

Mr. Nearpass – They could pick another lot somewhere else, they could stay in the home. There other any number of things they could do.

Chairman Reinhardt – Looking at the third it is going to be substantial then. Really there really should not be any more building in that area but given the situation.

Mr. Nearpass – Why would you think it is substantial?

Chairman Reinhardt – For building it in the first place. Isn't the whole issue we are dealing with it is exceeding the density Code. No matter what goes in there it is going to push the density Code even further.

Mr. Nearpass – The density requirement is really on the LDC. They are one to three. They are at three acres. The density Code where they are is okay it is the other property that is getting the variance.

Mr. Benedict – It is more or less variance for the subdivision itself.

Chairman Reinhardt – Because they are in the subdivision area. The reason they need a variance is because there should not be anymore building there because of how the Code reads. Anything that goes on that parcel is going to be substantial. Given the uniqueness of it, the size of it it's a hard argument to make to say nothing should be built there. Any further discussion on third criteria?

Mr. Nearpass – I think the discussion we had with the public also supports it although it is substantial it is something that would be welcomed.

Chairman Reinhardt – Definitely a factor that the neighborhood seems to be in support of it. Fourth the proposed variance will not have an adverse impact on the physical and environmental conditions. One factor being the willingness to increase the conservation area and the connectivity to it also working with the Ontario County Soil and Water Conservation District for the septic systems as well as storm water and erosion issues. Those would be conditions to the variance itself. Anyone else to add to the fourth criteria? Fifth being the alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not preclude the granting of the area variance. As we indicated there were two that spoke for and one letter against. As Fred pointed out, even thou Mr. Kaiser wrote against it doesn't seem to be his issues are significant enough to sway this Board. Conditions being all the four comments that were from the Ontario County Planning Board. Anyone else want to add anything to criteria or conditions before we vote?

Mr. Nearpass – Not sure if that other parcel needs to be a condition or how else to add it.

Chairman Reinhardt – Builder and applicant are willing to extend the conservation area. It is a triangle all shaded in white and borders the Benson Road. The lot instead of being a triangle will be more of a parallelogram. We are going to call this Exhibit B and date it 4/15/19. We are going to do two things on Exhibit B. That triangle we are referring to on Benson Road we are going to identify that as a #1 with a circle in it and then the other area for proposal is the connectivity to it on the southern piece. We will call that #2 that will be at least 10 feet where the green area shaded and on the map here Exhibit B it says propose additional conservation easement. You are going to connect it to the existing conservation easement. Just so we are all on the same page. I am going to show you Exhibit B *refers to Mr. Thornton* if you just would initial it for me to indicate you have reviewed it.

Anything else to add?

Mr. Salsburg – I have a thought on #3 could be further evidence that it is not substantial. I don't think you can see another house from where this one is going to be.

Chairman Reinhardt – The problem I have with whether it is or isn't a substantial again is because the subdivision already is exceeding the density requirement. Any structure you put on that parcel is going to further complicate. I think we will leave that as it is but your point is still well taken that it is a large enough parcel and a good use of property.

RESOLUTION:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on March 18, 2019 from Felix and Rane Christopher requesting to subdivide their property, which is a part of the Royal View Subdivision, with the intention of building one single family home on the new lot that will be created. The area variance is for §211-27.3, the Density Overlay Districts regulation, which indicates a maximum of .33 dwelling units per acre for the Limited Development District. Royal View Subdivision was approved in 1995 while the Overlay Density districts were established in 2000 and Royal View Subdivision has a pre-existing, non-conforming density at this date; and,

WHEREAS, said application was referred by Al Benedict, Code Enforcement Officer of the Town of Victor, on the basis of the variance requested to the Town of Victor Code; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on March 24, 2019 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

WHEREAS, the Ontario County Planning Board assigned the referral as a Class 1 on April 10, 2019, referral no. 78-2019, and returned it to the local board with comments and a recommendation for approval; and,

WHEREAS, Public Hearings were held on April 1, 2019 and April 15, 2019 at which time two residents spoke regarding the application; and, were for and one letter submitted by a resident against.

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act per Sections 617.5(c)(9) and therefore does not require further action; 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 for the existing fence to be allowed cross over lot lines of a proposed subdivision twice:

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: It is a unique parcel and the owners and builders are willing to carve out more conservation area and only build on what they need.

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: Cannot see how it can be achieved by other means other than choosing a different lot or staying in existing home.

3. The requested area variance is substantial.

Justification: It is exceeding the density code for the subdivision. It is welcomed and supported by the neighborhood.

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 willingness to increase the conservation area and the connectivity to it alongside working with the Ontario County Soil and Water Conservation District for septic system, storm water and erosion control.

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

Justification: Two residents spoke regarding the application being two for and one against. The issues against are not significant.

DECISION:

On motion made by Mr. Nearpass, and seconded by Fred Salsburg:

NOW, THEREFORE BE IT RESOLVED that the application of Felix and Rane Christopher of 7850 Royal Woods, Victor, NY requesting an area variance to the Density Overlay regulation to the Royal View Subdivision to subdivide their property and create a new lot, whereas §211-27.3, Overlay District regulations, indicate the permitted density is .33 units per acre, BE APPROVED

AND BE IT FURTHER RESOLVED that the following conditions are imposed:

1. That the proposed lot is able to meet sight distances and access spacing standards for an additional access connection along this segment of roadway in accordance with standards established by the American Association of State Highway and Transportation Officials.
2. Applicant is encouraged to involve the Ontario County Soil and Water Conservation District in the early review process to ensure proper design and placement of any onsite septic system.
3. Applicant is encouraged to involve the Ontario County Soil and Water Conservation District in the early review process to ensure proper design and implantation of storm water and erosion control measures.
4. Any new conservation area should be contiguous with existing conservation area. The triangle area shaded in white and borders Benson Road will be a parallelogram. Please see Exhibit B.

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

Michael Reinhardt	Aye
Mathew Nearpass	Aye
Scott Harter	Absent
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 4 Ayes, 0 opposed

TWO INTERPRETATION REQUESTS FOR THE SAME CODE SECTION 7-Z-19
 The Interpretation Requests are to determine if townhomes are allowed in a Residential-1 zoned district. (§211-19) The regulations/definitions of one and two family dwellings need to be clarified for single and townhouse dwellings per applicant. The requests are in regards to the proposed Piper Meadows subdivision.

Chairman Reinhardt – Interpretation been tabled till May 6th. Counsel is looking into more information. Attorney will be here at next meeting.

Donna Morley made a motion to adjourn the meeting, Matt Nearpass seconded it, and it was unanimously agreed and RESOLVED, that the meeting was adjourned at 7:26 PM.

Lisa Boughton, Secretary