

A regular meeting of the Town of Victor Zoning Board of Appeals was held on Monday, May 20, 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; Donna Morley; Fred Salsburg, Scott Harter

ABSENT: Mathew Nearpass, Vice-Chairman

OTHERS: Alan Knauf, 2 State Street, Rochester; Paul & Cindy English, 6266 Murphy Drive; Sue Davie, 930 High Street; Wayne Minns, 7873 Hidden Oaks; Jeff Morrell, 1501 Pittsford Victor Road, Victor; Charbel & Erin Moussallem, 920 Wills Hill Road; Bill Leier, One Stickley Drive, Manlius, NY; Michael DeNisco, La-Z-Boy Home & Décor; David Schond, 846 High Street; Kelly Gofroth, 7177 Lane Road, Lorraine Atwood, 925 Willis Hill Road; Joseph Picciotti, Harris Beach PLLC; Al Benedict, Town of Victor Code Enforcement Officer; Dave Tantillo, Town Board Liaison; Kim Reese, Secretary

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

APPROVAL OF MINUTES:

On a motion by Ms. Donna Morley, seconded by Mr. Fred Salsburg,

RESOLVED that the minutes of May 6, 2019, be approved as submitted:

Michael Reinhardt	Aye
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Approved: 4 Ayes, 0 Nays

PUBLIC HEARINGS

1. 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 – What I'd like to do is, I know it says La-Z-Boy up there, we're going to put you hold a minute because the other application, the interpretation, I'd like to put you up in front if I could because I think we can at least expedite it a bit. Mr. Knauf, if you would we have your memo and we appreciate the time and effort you put into that. We've spoken to counsel and do you have or have you had an opportunity to review the proposed resolution?

Mr. Knauf – Yes, I have.

Chairman Reinhardt – Ok. Certainly, I can and will read it, but in a nutshell there are a number of issues that you raised, standing issue, statute of limitations issue and then of course the detail of whether or not the variance or if a variance would be created in the R1 District. Globally, if you could or would, it doesn't appear that your client would need one. So, with that what I'd like to do is at least read the proposed resolution into the minutes. Unless you have something else that you would like to add to it.

Mr. Knauf – No, no, just clarify that we believe the clustering allows the units to be attached in the conventional layout would determine the density and then it's up to the planning board if they want to grant clustering they would determine the actual lot sizes and how much open space, etc. and that is really is in the discretion of the planning board.

Chairman Reinhardt – We've also taken into consideration, at the last meeting we had what the public had to say, as well as from Morrell Builders, we have a memo dated April 2 and that was also helpful. So all those things taken into consideration the proposed resolution will read as follows:

RESOLUTION – TWO INTERPRETATION REQUESTS
FOR THE SAME CODE SECTION

DATE: May 20, 2019
Appl. No. 07-Z-19

WHEREAS, interpretation request(s)/appeal(s) from a Town of Victor Code Enforcement Officer ("Code Enforcement Officer") decision that was adopted by the Town of Victor Planning Board ("Planning Board") by resolution were received from Dennis Buchovecky on or about March 14, 2019 (the "3/14/2019 Interpretation/Appeal Request") and from Susan Davie on or about March 18, 2019 (the "3/18/2019 Interpretation/Appeal Request") by the Secretary of the Town of Victor Zoning Board of Appeals ("ZBA") appealing the determination by the Code Enforcement Officer, Al Benedict, that townhouses could be constructed on property located in an R-1 District under the Town of Victor Town Code (the "Town Code") pursuant to S&J Morell Builders Piper Meadows Subdivision sketch plan application received by the Planning Board on or about September 20, 2018 under the Town Code's cluster development regulations (hereinafter the "Piper Meadows Subdivision Application") with such decision adopted by the Planning Board's Resolution dated October 24, 2018 which was duly filed in the Town Clerk's Office whereby the Planning Board determined such application was complete; and

WHEREAS, after reviewing the file and evidence submitted as well as applicable Town Code provisions and other applicable law, and after due deliberation, the ZBA made the following findings:

FINDINGS

1. The Secretary for the ZBA received the 3/14/2019 Interpretation/Appeal Request and the 3/18/2019 Interpretation/Appeal Request, each which appear to concern whether the Town Code authorizes the construction of townhouses on specified lots zoned R-1 in the proposed Piper Meadows Subdivision located at 860 and 870 High Street, Victor, New York 14564 pursuant to a proposed cluster development on such property based on the determination of the Code Enforcement Officer accepting the Piper Meadows Subdivision Application (the "Code Enforcement Officer Determination") with such determination adopted by the Planning Board following public hearing by resolution adopted and then filed on October 24, 2018.

2. The ZBA finds the 3/14/2019 Interpretation/Appeal Request is submitted by a resident who is too distant from the Piper Meadows Subdivision property to have sufficient interest or standing to seek such an interpretation/appeal regarding the Piper Meadows Subdivision Application, but finds no such issue with the 3/18/2019 Interpretation/Appeal Request.

3. Pursuant to the Town of Victor Town Code, including §§ 184-17 (B), 184-18, 184-19(A) and 184-23 (B), the Planning Board is authorized to approve so-called cluster developments which are designed to "encourage flexibility of design of development" (the "Cluster Development Regulations"). Moreover, Town Code §184-23(B) provides that "in the case of a residential plat or plats, the dwelling units permitted may be at the discretion of the Planning Board in detached, semidetached, attached or multi story structures." As a result, the Planning Board has significant discretion under the Cluster Development Regulations to approve among other things, dwelling units as part of such a clustered development, including but not limited to the Planning Board and its representatives having discretion to approve detached, attached or multi story structures for residential plats.

4. Under New York State Town Law §278, municipalities, including the Town of Victor are fully authorized to adopt regulations providing for cluster development and the ZBA finds the Cluster Development Regulations meet the New York State Town Law requirements for such regulations.

5. Under the provisions of the Town Code, including those associated with the Cluster Development Regulations, as well as the definition of "use," and other pertinent definitions and provisions of the Town Code, townhouses as proposed pursuant to the Piper Meadows Subdivision Application are authorized to be constructed and developed on property zoned R-1 as long as same comply with the Cluster Development Regulations and applicable law.

6. Moreover, it should be noted that under applicable provisions of the Town Law, including Town Code §211-8(B) provides that ZBA procedures (including those associated with seeking an interpretation or appeal) be consistent with provisions of New York Town Law applicable thereto, and pursuant to New York State Town Law §267-a (5) (b) appeals of interpretations/determinations by administrative officials/boards must be taken within no more than 60 days.

7. As set forth herein, there is no dispute that the determination made by the Code Enforcement Officer concerning the construction of townhouses pursuant to the Piper Meadows Subdivision plan was adopted by the Planning Board by resolution and filed no later than October 24, 2018 which accepted the Piper Meadows Subdivision Application. The 3/14/19 and 3/18/19 Requests for Interpretation/Appeal were thus filed nearly 3 months after the time by which such interpretations/appeals are required to be filed. The ZBA finds that the failure to file the Interpretation/Appeal Requests referenced herein within a timely manner and approximately 3 months after the time period to file same violates the referenced provisions of New York Town Law (and therefore the Town Code provisions referenced) and that failure to file such requests for several months is also contrary to and in violation of the common law principals of laches and undue delay.

Chairman Reinhardt – We're good, everybody good. Alright.

Mr. Harter – I have a question. Is our charge as a board to take a look at the code and determine whether the code is unclear or misrepresenting things or is our charge as a board to look at what the code enforcement officer did and determine whether he made the right decision?

Chairman Reinhardt – Would you like to comment on that or should we?

Mr. Picciotti – I'm not sure in terms of, I don't believe the interpretation or the request sought an interpretation of the provisions, I think it was specifically applied to this application, to answer your question and the decision that was made.

Mr. Harter – OK, I was just curious because I see all the information here and I tend to agree with the information that is presented, but I guess when we get into these interpretations it seems like we as a board kind of function myopically and look at the code and determine whether it was clear or unclear if it was something someone could extract out of it that was incorrect.

Chairman Reinhardt – I think moving forward if we can address that issue if it comes up again, but I think in this particular issue I think we've vetted it, we've had the public had an opportunity, we've had memos of law, it's been researched. I think we're in good shape with the direction that we're going.

Mr. Harter – Ok, I wasn't sure.

Chairman Reinhardt – Questions are fine. Anyone else have any other questions before we entertain a motion to approve the resolution that's proposed?

Mr. Knauf – Just a point of order the last paragraph then is really the resolution.

Chairman Reinhardt – OK sure, the last paragraph being

NOW, THEREFORE BE IT RESOLVED, that the Town of Victor Zoning Board of Appeals determines the determination of Alan Benedict, Code Enforcement Officer that townhouses may be constructed on property located in an R-1 District under the Town Code pursuant to the S&J Morell Builders Piper Meadows Subdivision sketch plan application received by the Planning Board on or about September 20, 2018 under the Town Code's Cluster Development Regulations with such decision adopted by the Planning Board's Resolution dated October 24, 2018 duly filed in the Town Clerk's Office is hereby UPHELD.

On a motion by Mr. Fred Salsburg, seconded by Ms. Donna Morley:

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

Michael Reinhardt	Aye
Scott Harter	Nay
Donna Morley	Aye
Fred Salsburg	Aye

Approved: 3 Ayes, 1 Nays

2. LA-Z-BOY FURNITURE – AREA VARIANCE SIGN

12-Z-19

40 Eastview Mall Drive

The applicant is requesting an area variance for two signs to be constructed. One on the North elevation and one on the East elevation. The proposed sign on the north elevation will be 141 sf. The linear distance of this space is 124 feet. §165-5B(3) indicates that one sf of signage is allowed per linear foot of frontage on an elevation. The proposed sign on the east elevation is 95 sf which would be code compliant except that the Stickley sign on the east elevation has been indicated that it will remain. An area variance is required as Stickley will no longer have frontage on this elevation.

Mr. Michael DeNisco – I'm here representing MJD Furniture, dba La-Z-Boy Home Furnishes and Décor. I own currently three La-Z-Boy Furniture stores, one in Henrietta, one in Syracuse and one in Albany and I reside in Albany. I've entered into a contract with Stickley Furniture to rent 16,000 sf on the east side of their current building in Eastview Mall. I'm here seeking two

variances, one for a front sign on the north end of the building and one on the east side of the building next to Stickley's sign that's currently there. The front sign is 141 sf. Currently the code says we can have 121 sf. On the east side of the building, the code calls for 130 sf of signage, but currently Stickley's sign is there and part of our agreement is that Stickley's sign would stay there and I would have a sign added. That's why I'm here for a variance. On the sign on the east side a question was the measurements, we had originally 97 the one that's currently. . . Any questions on the front sign before I move on?

Chairman Reinhardt – Alright what I'd like to do is, these are two separate variances and I think there are going to be two separate issues with it, so pick whichever you'd like to talk about first and we'll deal with it.

Mr. DeNisco – Ok, so we'll stick with the one on the north.

Ms. Morley – Is that the front?

Mr. DeNisco – Yes. I didn't have any questions in the paperwork I received back regarding the front. You know, its 24 feet long, 5.75 feet high. It's comes out to 140.5 sf. Again, the code calls for 121. Any questions on that?

Chairman Reinhardt – So, many times what often happens is that when there are requests for larger signs, especially in that neck of the woods, the board I think is sensitive to certainly businesses want to do business and they want to attract customers, but it's the I guess it's that barn doors argument, once you let the animals out of the barn it's hard to get them back in. So, what we often ask is why can't you use 121 sf? Why do you need 141?

Mr. DeNisco – Ok, so part of the thought process is we want our sign to be at least in the same size as Stickley's so that we're so close to each other that our sign isn't extremely smaller or look smaller to the Stickley sign.

Chairman Reinhardt – You're comparing the sign that you'd like on the north side to the sign that's already there on the east side?

Mr. DeNisco – No, no. The sign, if I understand the question was about why I couldn't have 121 sf and I'm asking for 141?

Chairman Reinhardt – You're comparing the sign that you'd like to the sign that Stickley has?

Mr. DeNisco – I'm comparing the sign that's on Stickley's front, on their north end. The one that would be to the right of me. So why I'm asking for 141 is so that they would both be similar in size. So, that La-Z-Boy wouldn't be extremely smaller than Stickley's. Also, to get the 24" letters on the top of the La-Z-Boy and the 13" letters and the Home Furnishings and Décor, La-Z-Boy also has requirements on spacing on the letters that I have to go by as well and to get those size letters it came out to 140.56.

Chairman Reinhardt – Al, do we know how big Stickley sign is on the north side?

Mr. Benedict – I remember looking it up, but I don't remember how big is was.

Chairman Reinhardt - What he's referring to is that there's some balance to it. I don't know if it is 141 or so sf and if that's the case, how do you get that? Did they have a variance for it?

Mr. Benedict – If you want me to leave for a few minutes, I can probably get that information.

Chairman Reinhardt – That would be helpful. We could hold the north side and talk about the east side. Can we do that?

Mr. DeNisco – I can tell you, I believe the Stickley sign is approximately 150 sf from what I understand.

Mr. Benedict – I don't know.

Chairman Reinhardt – I'd rather not we be guessing at it, but if he can look at it. While he's looking that up on the north side, that's chat about the east side a little bit. If I understand it right, Stickley sign is already there and again if I understand it correctly that they have the space that really now belongs to you.

Mr. DeNisco – Correct. You mean the sign space?

Chairman Reinhardt – Right, because they've reconfigured their interior that where that sign is now that really shouldn't be there, it's the sign, the space, you should have. Right? So what I'm thinking about and again, I'm not speaking for the Board, but what I'm thinking about is really before you ask for a variance and maybe not get the answer that you won't like, is that if you talk to Stickley and say you know that space that you have there is by the code, I'm supposed to have it. La-Z-Boy is supposed to have that space, so Stickley you should vacate that space and La-Z-Boy should have it. Is the way that it works, it has to do with the frontage or the unit that you have and if I understand the configuration of the layout that space on the east side should be yours. Unless I'm not getting this right.

Mr. DeNisco – By code you are correct, but part of my agreement with Stickley is that they would be able to keep their sign as well, on that side so that there's some street presence.

Chairman Reinhardt – Alright, so therein lies the problem is when owners start to figure or find ways around what the code is. You can't just start making up your rules along the way, just because two people agree to it. Let's say again and it's a real simple example, if two people say well gee, my house is on this particular street and the speed limit is 25, but you and I can do 50 and that's ok. It's not. At least I would suggest is at least on the east side we can hold this and table it and if you would either bring Stickley back in here or make efforts to say the Zoning Board really isn't comfortable with granting another variance on the east side when really it's the space is yours. Because what happens is when a variance is granted it runs with the land, so if

whether you're there and I hope you're there for years and years and years, but whether you're there or not, Stickley is there or not, as long as that building is there that variance, if there's a variance granted, stays with that land no matter who owns that. Understand, it make some sense?

Mr. DeNisco – No, I do. Understood.

Chairman Reinhardt – So, do you have anything you want to add to that? At least we're just dealing with the east side right now. Until he finds the north side issue.

Mr. DeNisco – I will say, I think that for myself, La-Z-Boy and I believe Stickley is under the same opinion to have some kind of signage facing the road or the street is important as a retailer. To be able to have some street presence and I know La-Z-Boy corporate when they came into town and they viewed the site, great site, but one of their concerns was street presence. They usually only approve stores with street presence, but because it's in the Eastview Mall and that's a great mall and great presence, they agreed to approve the site with a couple contingencies, one being a sign on the side of the building facing the road.

Chairman Reinhardt – I understand the argument of street presence, but I think the board has often times thought well with all our gadgets and gizmos and GPS rarely are people driving along, oh there's Stickley's, let's go to Stickley's, and they pull in. Usually they have a destination in mind whether they plug it into their phone or they know that Stickley is over by Eastview Mall, I know La-Z-Boy is over by Eastview Mall and they know right where it is and Alice or Nancy whatever you want to call her, is telling her you make a left, make a right into the parking lot and you go and you're there. I know this old school street presence is important, but it doesn't hold a ton of weight when it's a "we got to have it because people won't find us". I'm chewing up a little bit of time. Fred, you have any questions, at least on the east side issue?

Mr. Salsburg – Do you know how many sf the east side sign is?

Mr. DeNisco – Ok, so that plan there . . .

Mr. Salsburg – It's a little small, I notice the letters are a couple inches smaller. Oh, so pointed out to me here is says 97 sf.

Mr. DeNisco – Yeah and one of the questions that was asked about the sign in the drawing that I have presented was how many inches would encompass the oval above the Z. And, actually, it would go from 4.4 to 5 feet and the other question that was asked about it was the length wasn't quite reaching over to the trademark which is at 22.5 ft when you include the trademark, which actually bumps it up to 110 sf and I said I that I could go down to 21" letters on the top part of the sign and 11" letters on the bottom part which would bring it back down to 98.7 sf.

Ms. Morley – And how much is the sign they are already using?

Mr. DeNisco – There sign is, I believe theirs is around 90 currently that sign there again, that's why my sign is in the 95-98 range, so it's. . .

Ms. Morley – And is this sign that your showing on this drawing the 21" and 11" letters or is this larger?

Mr. DeNisco – its 22 and 12.

Ms. Morley – Because it really isn't the same size as the Stickley one, to me. It looks (inaudible).

Mr. DeNisco – The La-Z-Boy sign definitely does look bigger, but in actuality it's not. The way this came across from the metropolitan signs, the Stickley didn't look proportionately to the La-Z-Boy, but Stickley is approximately 90 and what I'm proposing is 98, so.

Mr. Benedict – According to the sign application for Stickley the sign is 97 sf.

Mr. DeNisco – 97, ok.

Chairman Reinhardt – On the east side?

Mr. Benedict – Correct.

Chairman Reinhardt – Fred, do you have any more questions?

Mr. Salsburg – No.

Chairman Reinhardt – We're just on the east side now. And, we'll come back to the north in a minute. Scott?

Mr. Harter – I don't have any questions, Mike, but I am of the same opinion as you on the two signs.

Chairman Reinhardt – Ok. Donna?

Ms. Morley – Same thing.

Chairman Reinhardt – Again, we'll do you one at a time, just the eastside. Anyone from the public want to speak for or against the request for the variance for the east side of the building? Ok, so, with that, I'm sensing at least from the board that we all feel the same way in that street presence, certainly it's a thought and we all know where the location of the building. That in and of itself because you will or at least you're entitled to some other signage on a different corner that does have some visibility from the street and in the common area where people drive and are looking for it, I think the board is at least this point, feels they are reluctant to put more signage on a portion of the building when certainly you're entitled to it because your space is on that portion of at least that common wall, correct? But, Stickley doesn't. So Stickley really doesn't

just because they own the building means they get to have the sign there. What I'd offer, a suggestion is that we can hold this until the next meeting and offer you an opportunity to speak with Stickley and say it doesn't look good, I really would prefer then that this is our space, we should have it. Because potentially what I think could happen is that the code enforcement officer may take a visit and Stickley's signage doesn't belong there anymore, so it's that easy way or hard way, right? Stickley down the road shouldn't have that signage on that side of the building. OK, would you like to do that, at least have an opportunity to talk to Stickley instead of creating more work for everybody?

Mr. DeNisco – Sure, I will do that. I will talk, ok.

Chairman Reinhardt – Let's give that a try and see what happens. Ok, so we're going to hold on the east signage. Our next meeting is June 3. Is that enough time to for you to chat with Stickley and tell them at least where the zoning board is. I know you probably love to come back and forth, don't you from Albany back here?

Mr. DeNisco – Well, I come back here because I have a store here so to make the drive. I get some work done in Henrietta.

Chairman Reinhardt – Ok, we're going to pencil you in for June 3 and see if you have a chance to have a talk to Stickley. Now the north side, let's go back to the north. Al, do you have any information for us?

Mr. Benedict – The Stickley sign on the north face is 148 sf and just for reference the building is 300 ft in length.

Chairman Reinhardt – The Stickley sign is 148?

Mr. Benedict – Correct.

Mr. Harter – And, the building length is 300?

Chairman Reinhardt – What can they have?

Mr. Harter – 152?

Mr. Benedict – La-Z-Boy is 124, so Stickley would be allowed 176?

Mr. Harter – You've got 300 linear feet of building, so your allowed 300 sf of signage and so, if you've got a 148 already accounted for, then you've got 152 leftover right? And he's asking for 141. 141 is less than 152. Right?

Mr. Benedict – However he has stated he only has 124 ft of linear frontage, so he's essentially limited or that store is limited to 124 of linear frontage.

Mr. Harter – Oh I'm sorry, I thought it was continuous. So, he's got 124 linear feet, so he's allowed 124 sf.

Mr. Benedict – Correct.

Mr. Harter – And, so the other sign is just using that for some sort of comparison then?

Mr. Benedict – Correct.

Chairman Reinhardt – So Stickley did not need a variance then for their 141 sf sign?

Mr. Benedict – Correct.

Chairman Reinhardt – And it has to do with the amount of space they occupy inside.

Mr. Benedict – Correct.

Chairman Reinhardt – The amount of space La-Z-Boy has, the max they can have per the code is 124 sf.

Mr. Benedict – Correct.

Chairman Reinhardt – And you are looking for 141?

Mr. DeNisco – Correct.

Chairman Reinhardt – And your, I wouldn't say argument, but your position is that you can't get it down to 124? And, that's I think where we were at, because I think what you were looking for is some size that is comparable to . . . So, you see the dilemma, it really doesn't have to do with the size of the sign and balance. In apparent fairness to it, the code has the requirements, how much space that you occupy inside.

Mr. DeNisco – Understood.

Chairman Reinhardt – Do you have any other positions or things you want to let us know about on why you think you should have the 141 sf sign?

Mr. DeNisco – Again my position is in order for me to have the size of the letters I want, also have it approved by La-Z-Boy these size letters come in at 141, if I go down in letter size then I'm going to be going smaller. So, my position is that the way La-Z-Boy approved it this is how they approved it for me.

Ms. Morley – Is this the only size that La-Z-Boy approves?

Mr. DeNisco – No, but the next size down would bring it down significantly under 120 sf. It would be lowered to the next set of letters down and it would be 120 I believe.

Chairman Reinhardt – What do you mean that these letters are already made?

Mr. DeNisco – No, but if I go down to the next size which would be, right now I'm at 24" for the top, if I go down to I believe it's the next size that La-Z-Boy approves is 22" on the front, so the square footage would go down.

Mr. Salsburg – It would be the same as the east side.

Mr. DeNisco – Yes. And my concern is then I look out of proportion to the Stickley sign.

Chairman Reinhardt – I understand that the push and pull of corporate enterprise is if you ask them look I only get a 23" letter, they won't do that? When you say the next size down, it almost sounds like these letters are already made, you pull them out of a box and that's the only one you're going to get.

Mr. DeNisco – In their options that they give us, you know, the next size on the front that they gave me is 22, you know that I would go to. Again 22 brings it down, it makes the sign smaller, smaller area and I feel again it would look disproportionate to Stickley's. Could I take the letters that I have now and talk to them and see if we can squish them a little more together? I could possibly do that.

Chairman Reinhardt – So, I guess then what often times the board asks is - If the board says no here, you're not going to get a variance, you still moving into that spot? And using the letters that allow you, using the 124 sf?

Mr. DeNisco – Well I can tell you if the front and the side aren't, if I don't get a sign appropriately on the side as well as the front, La-Z-Boy may say no to it to me.

Chairman Reinhardt – The way that I see it you're probably going to get two spaces.

Mr. DeNisco – Yeah, and I understand what you're saying. I'm just trying to make you understand I go through a process with La-Z-Boy corporate, too and this is what they approved. You know, and, in their approval letter, this size sign, this is how it was approved to me.

Chairman Reinhardt – Fred, do you have any questions?

Mr. Salsburg – If the top letters were dropped an inch, could you live with that? If you could sell it to La-Z-Boy?

Mr. DeNisco – Me, personally, yeah, I could live with it.

Mr. Salsburg – I don't think you can tell from an inch.

Mr. DeNisco – Yeah, right. See I have, if I may, I have other issues with the front of the building with the Planning Board that I have to work with La-Z-Boy on as well. So, I was there last week with the Planning Board and the color didn't work, the front didn't work so, I'm trying

to rework a lot of things with La-Z-Boy, on top of just the sign. I'm sure if it was just the sign, I could call them and say I need to shrink this just a little bit and we'd probably be alright, but I'm going in and I'm changing the color, I'm changing the coping, I'm changing their tower. So, and I'm coming back to the Planning Board on the 29th with our changes for that.

Chairman Reinhardt – Anything else, Fred?

Mr. Salsburg – In the narrow view, that's your job.

Mr. DeNisco – Oh, I know. And, I'm happy to do it, that's why I'm here. I'll do what it takes.

Mr. Salsburg – I'm done.

Chairman Reinhardt – What do you think, Scott?

Mr. Harter – I think if you're coming back for the east side you can come back with the north side as well and we'll see you next time and maybe you can see a version that's a little smaller than this that can be worked out. That comes closer to that number.

Chairman Reinhardt – Anything else? Anyone from the public want to speak for or against the application for the north side?

Lorraine Atwood – 925 Willis Hill Road, Victor, been here since 1961. Code is code. La-Z-Boy needs to understand code is code.

Chairman Reinhardt – Ok, thank you. So, I think there's some possibilities out there and again if the board votes today on the north side, you're probably not going to like the answer, but sometimes we've had applications come in and the sign is one piece and it's a bit difficult then to get the sign even smaller because then you have to redo the entire sign, but Fred's point I think is if you take the letters and even if you move them in an inch or push them down an inch it could buy you some space and you're still getting your street presence and you're still getting two signs. I think sooner or later, Stickley is going to have to come to the table and understand on the east side that sign doesn't belong to them, that's really your space and to get the main entrance, because the north side is really the main entrance? That's really the sign that's the jewel, the one that you want and I don't think you're that far off and to maybe get it down so it's not so substantial what you're looking at. You're asking for another 20 odd feet. We're asking if you could to see what you could do with La-Z-Boy on the north side, see how much further you could get it or how close can you get it to 124 we'd appreciate that. And talking to Stickley on the east side I think you would do yourself a favor. Alright can we do that? Any questions?

Mr. DeNisco – I'm good. Thank you. I appreciate your time. Thank you.

Chairman Reinhardt – Thanks so much for your time. Good, very good. See you in the next couple weeks.

3. ZWEERS SHED & FENCE – AREA VARIANCE

13-Z-19

7272 Gillis Road

The applicant is requesting an area variance for a shed that is located closer than 15 feet to the side lot line and for a fence that extends beyond the front line of the house. Code requires a 15 foot side setback and more specifically §211-20C states that accessory structures, such as storage sheds, must observe a 15 foot property line setback on residentially zoned property.

Mr. Paul Zweers – I live at 7272 Gillis Road for the last 10 years.

Chairman Reinhardt – There are two variances we need to talk about and the fence variance is really in two parts. One part has to do with the fence is forward of the principle structure and the other part of the variance is that the finished side needs to face the neighbor. The other variance that you're looking for is accessory structure needs to be 15 ft in front of the setback and I think it's the side setback that we are dealing with. Which one do you want to talk about first?

Mr. Zweers – The fence.

Chairman Reinhardt – Alright, let's talk about fences. So, I've had an opportunity to review your application and I think it's detailed and I certainly appreciate that. So, what I'm trying to get my arms around is the problem you have on the east and the west side. So, on the east side, no let's do the west side first. It sounds like the primary reason of what you're looking for on the fence is on the west side of the property because leaves are blowing all over the place and on your property.

Mr. Zweers – Yes, that's correct.

Chairman Reinhardt – But you also talk about basketball courts and pools and things and your neighbor and that's really in their backyard, is that right?

Mr. Zweers – Yes.

Chairman Reinhardt – So really as far as the fence being further in front of the principle residence which really is the west side, right? The fence on the east side in not in front of the principle residence the only portion we're dealing with is the fence that's on the west side. So, your argument that the need for your fence to be further in front of your principle residence is because the pool, the basketball, the soccer that's all in the backyard so those are irrelevant facts. It really doesn't hold much weight in my mind. Unless I'm missing something.

Mr. Zweers – You're not missing something. I'm putting two arguments for placing the fence. One was for privacy, that's where the pool comes in and that's where the ball court, actually the ball court is up front. That was reason one and the second reason is probably the strongest reason having lived there for 10 years the consistent overflow of leaves from the west to the east

which I have tried to stem with a two foot fence which is allowed, but that didn't help and so ultimately I put a six foot up.

Chairman Reinhardt – The fence that's on the west side and then proceeding south on your property which would be to your neighbor's back yard with the pool and all that, your privacy issues, you can have that it's not an issue. So, it's the pool or the privacy that you're looking for and in respect to your privacy, your neighbor's privacy with that pool it doesn't hold any weight in my mind. When I see the position that you have the need for that fence that's forward of that principle residence has to do with the leaves that are blowing usually from the west from your neighbor's property on to yours. You're trying to find a way to stop it, or slow it down. But are there any privacy issues from the section of the fence that's starting at your home and forward to the street. Do you have any privacy issues there?

Mr. Zweers – No, sir, I don't.

Chairman Reinhardt – We're dealing with the west side of the property. Is there anything else that we should be thinking about why you need that fence there forward of your home?

Mr. Zweers – Other than what the main reason is the overflow that continues to overflow and also the geography of let's say the house. The house to the west is also positioned higher and the house to the north is positioned higher so the besides the wind, everything flows down. And, hence therefore the fence was my only option kind of to stop it.

Chairman Reinhardt – Ok, let's ask some questions. Let's deal with the fence on the west side and the portion of the fence then that's forward of the principle residence.

Ms. Morley – A couple questions for you. Is the good side of the fence facing you? Or is the good side of your fence facing your neighbor?

Chairman Reinhardt – Let's hold that, we'll deal with the position of the fence forward and back. We're only dealing with the section of the fence that. We'll get to that one in a minute. What I'd like to do is separate them. So dealing on one issue, the portion of the fence that is forward of the principle structure. The other things we need to talk about is which way the fence is facing. That would be both on the east and west side and then we're also going to talk about the shed. The only portion of the variance that I would like to talk about is his request for a variance that is the west section of the fence from his home to the street. Do you have any questions about that?

Ms. Morley – My question to you is, at the end of that fence, how far is it from your fence end to the end of that road? Your driveway goes out onto Gillis.

Mr. Zweers – Yes.

Ms. Morley – From what I looked at from when I drove by?

Mr. Zweers – Actually if you look at the second picture to the right, you see the tree line on the left? And further to the left is actually the road, but on the right hand side you can see the beginning of the fence, so there's approximately 2 fence panels away from the road, so that's at least 16-20 feet away from the actually beginning of the gutter of the road. So, it doesn't go all the way to the road if that's your question.

Ms. Morley – So when you are backing out onto the road, they are backing all the way down, they can't see that way until they get to the end of that 20 feet?

Mr. Zweers – Yeah, because if you would look that way you'd see the tree line that actually consistently runs to his property that direction as well. So the fence is to the right of the tree line, so if he was to back out of his road, he has already passed the tree line and already passed my fence so the fence does not obscure his visibility of the road.

Chairman Reinhardt – Scott, you have any questions?

Mr. Harter – So, we're talking about the fence that's ahead of the primary structure, just that component.

Chairman Reinhardt – Right, just that component for now. And then we'll circle back to which way the fence faces.

Mr. Harter – And the basis for installing that fence was because of leaves that are blowing and that's the purpose of that fence?

Mr. Zweers – I've been living at that property for 10 years and I've been cleaning the leaves for the last 10 years. On average I remove 80-100 obstruction bags of leaves. I have them cleaned in the winter, it costs me \$400-\$600, but then two weeks later I can see the entire premises has filled up again. And, it went over and over to the point where I decided to first just place a two foot fence, you saw the picture of that in my letter. What happens the leaves ramp up, fill up two feet to the fence and act like a ramp, and then just continues to blow over and continues to fill so ultimately I placed a six foot fence and since then that has stopped not only for myself but also for the neighbors across from the road. You have a letter in your documents from the neighbor across from me that not only approve how it looks, but also confirm that since I place the fence they have less leaves coming into their property as well.

Mr. Harter – So, your neighbor on the other side of the fence is experiencing less leaf disturbance.

Mr. Zweers – That's correct.

Mr. Harter – Ok, I guess those are my questions on that aspect of things.

Chairman Reinhardt – So, let's hold the rest of them. Fred, do you have any questions just on the portion of the fence.

Mr. Salsburg – Was the two foot high fence in the same place? Did it go 16 feet from the road?

Mr. Zweers – Yes, that's correct.

Mr. Salsburg – It's removed now.

Mr. Zweers – That's removed and replaced by the six foot fence, that's correct.

Mr. Salsburg – I don't have any more questions. It doesn't seem like it's much of an impact from the street.

Ms. Morley – Your neighbor looks out of their front door and they look towards your house so all they see is in their front yard is your fence going all the way down to their road, right?

Mr. Zweers – No ma'am. You have a picture in your file and you can see that his house is actually higher than my house. The fundament of his house is the same height as the bottom roofline of my house. That means that the fence which between our property is actually downwards from his house, so if he looks over he can still see my house. He doesn't look let's say frontal towards the fence because the fence is below his property so he sees it partially.

Ms. Morley – Thank you.

Chairman Reinhardt – Al, does applicants or residents do they need a variance for a snow fence?

Mr. Benedict – No.

Chairman Reinhardt – And they can have it proceeding in front of their home.

Mr. Benedict – Sure.

Chairman Reinhardt – Snow fences are usually four feet? Five feet?

Mr. Benedict – About four feet to five feet, yes. They have a temporary nature.

Chairman Reinhardt – I think if I got it right Donna, you were asking what's the distance of the fence from the front of the house . . .

Ms. Morley – No, I was asking from the front of the road right here, so when they are backing out their driveway I wanted to know how much was here, because when you're backing and you have this fence all the way here.

Chairman Reinhardt – Right, so how much fence do you have from the front of your home that it proceeds to the road? You follow my question? How much fence, what's the length of that fence?

Mr. Zweers – It's eight feet. And, so there are about nine panels to my counting so, it would be 72 feet from the front of my house towards the road. And between the end of the fence and the road there's another 16 feet.

Chairman Reinhardt – So, you're looking for a variance of 70 feet of fence from the front portion of your home and as it extends out to the road.

Mr. Salsburg – More like 50. 50 feet.

Chairman Reinhardt – That's what I'm trying to get at. Do we have a number, Al? How much does he need? The variance he's looking for?

Mr. Benedict – I don't know at the moment. I did not measure that.

Chairman Reinhardt – Because if the board is inclined to grant the variance they are going to need a number on how much.

Mr. Zweers – If you give me a second, I can count the poles because every pole is a fence.

Chairman Reinhardt – Ok, while you're counting, Al might look it up over there. The way that I see it it's from the portion of the garage that is closest to the right of way, 77.6 feet. But you don't have that much, it's something less.

Mr. Benedict – It shows there's 16 feet back from the front, from the right away-line. So, he's looking for approximately 60 feet forward.

Chairman Reinhardt – That's 60 feet forward? OK. That sound right or you are in disagreement?

Mr. Zweers – I think it's 10 panels so it would be 80 feet, but we can measure it, if need be.

Chairman Reinhardt – So, it looks like it's between 60 and 80 feet of fence that you're forward of your principle. All right, just on that portion of the variance, does anyone want to speak for or against the portion of the variance that the applicant is looking for is between 60 and 80 feet of fence on the west side of the property. Alright, hearing nothing. Anybody else want to add anything about that or discuss, before we at least move on to the next one. What I'd like to do is discuss all the issues and then come back and if we can bundle the variances together then fine, if we have to separate them then that's what we'll do.

Mr. Harter – I just have one more question on the leaf aspect of things. If the fence prohibits the leaves from entering your property where do the leaves go?

Mr. Zweers – You can actually see that on one of the pictures, they are still at his side. They just line up against the fence.

Mr. Harter – And, the neighbors are ok with that? Does it affect the neighbors or does it affect you or? Who's affected by the new location?

Mr. Zweers – It's the neighbor's leaves that are still on his property.

Mr. Harter – OK, they are ok with that?

Mr. Zweers – I guess we all have our own duty to . . .

Mr. Salsburg – It seems like the neighbor's house being higher, makes this fence look smaller to me, in my mind.

Mr. Harter – Is one of the two neighbors who signed a statement here are one of those your direct adjoining neighbor?

Mr. Zweers – One of them is south of my property, so whatever comes into my property it blows over the street into his front yard, that's the Carmel family and he signed in his letter, he confirmed that since the fence has been up he has less leaves in his front property as a result that. Because the leaves now stay on the property to the west where most of the trees are. You can see by the google map that I enclose, he has a large amount of leaf trees on his property.

Mr. Harter – And, those people are ok with the fence.

Mr. Zweers – Yes, I went up to my neighbor before I placed the fence and to let him know and he was ok with placement of the fence. He is still is ok with the placement of the fence.

Chairman Reinhardt – That's the neighbor to the west?

Mr. Zweers – That's the neighbor to the west.

Chairman Reinhardt – Do you have anything in writing that says he's ok with that?

Mr. Zweers – I requested one from him as well and he has not come back to me. I've only seen him once in three weeks. He works in Geneva so he's not very often at the property. I did request a letter from him as well.

Chairman Reinhardt – Alright, what is the board's feeling on, really it's the neighbor to the west that impacts the variance the most.

Mr. Salsburg – That's the same one that's furnishing the leaves.

Chairman Reinhardt – Well he's not furnishing the leaves, ok. Should we wait and ask him to get a letter, is it going to make any difference if that neighbor is ok with that section of the fence proceeding some 60-80 feet beyond the principle residence? Fred, does it matter one way or the other?

Mr. Salsburg – I don't think so.

Chairman Reinhardt – Scott, you want to see it or not?

Mr. Harter – We advertised the meeting, I presume that individual was notified about the meeting tonight. They are not here. The applicant appears to have notified his neighbors by virtue of the other two statements that have come in. So, I tend to take the applicant at his word that he did contact the neighbor and if the neighbors not here to object then I think in my mind the neighborhood has been well contacted. That's the driving force behind our decision on this aspect of the variance request.

Chairman Reinhardt – I appreciate your thoughts on it, but I take more of an opinion that if they're not here it's not for, it's not against, it's neutral. You can't put any weight on, just because he said that that's happened, that's just a cup of here-say. To me it's important that what do we have in front of us, what body of proof can we look to to either grant or deny the variance. Those are my thoughts. You can certainly have yours.

Mr. Harter – I think that that's an additional conservative way of looking at it. Again, I don't disagree with you in that respect. When I look at this application I think it's all driven by the neighborhood. I mean the neighbors know the impact of this better than we do. I mean we can look at it from photographs and everything and we've certainly done so but I think in my opinion if the neighborhood is ok with it then I think we can vote in favor of it by the same token if they are not in favor of it, then I think then it influences my vote the other way. I don't think it would be wrong to ask them to provide some information in that regard.

Chairman Reinhardt – Well I asked about the west portion of the fence and no one seemed to want to say anything for or against it. So, let's hold that thought now let's talk about the position of the fence, the direction as far as the code says the good portion of the fence, or the better portion of the fence should face your neighbors and you have it just the opposite, right. Do you want to talk about that Donna? Any questions about that?

Ms. Morley – No, I have a problem with it, so.

Chairman Reinhardt – Ok, anything else you want to add to that. Scott, thoughts on the direction of the fence.

Mr. Harter – Well I'm curious as why it is the way that it is. That's all, is there a reason why it's oriented that way.

Mr. Zweers – To me it looked far better, the property is open to the street as you can see, so when you drive by and you look at the property, that's what you see, so I read it as in line with your regulation that you want the character of the neighborhood maintained. This is how it looks it's a well maintained property, it looks good and that's why I put it up that way. I was never aware there was a good side or a bad side of the fence, or finished or unfinished, so I positioned

it this way because it's open to the road and it is more pleasing that way. That was the argument or the reason for doing it that way.

Ms. Morley – Did you not get a permit to put this fence up?

Mr. Zweers – That's correct, ma'am.

Ms. Morley – So you just assumed these rules. You said the character of your neighborhood, so I mean in this day and age everybody seems to know that there's all kinds of rules and regulations that you must follow in a permit. So you just decided that the fence should go that way, is that what you're saying?

Mr. Zweers – I decided that it looked better for the property that way. Yes, ma'am.

Mr. Harter – I suppose if the fence were allowed and you didn't want to remove the panels and turn them 180 degrees, you could put a duplicate fence on the other side, with the good side facing out. Then everybody would have good fence on their property, a good view of a fence on their property.

Chairman Reinhardt – That's one way to solve it.

Mr. Harter – I'm just thinking of a solution here.

Chairman Reinhardt – Ok, Fred, you have any questions on the position of the fence?

Mr. Salsburg – It's standard to put the good side towards the neighbors.

Chairman Reinhardt – That's what the code requires.

Mr. Salsburg – And if you don't like it from that side, put some boards on your side.

Chairman Reinhardt – Anyone from the public want to speak for or against the position of the fence? Alright, so,

Mr. Zweers – Shed.

Chairman Reinhardt – Pardon me?

Mr. Zweers – Sir, the next point.

Chairman Reinhardt – The shed. The shed, you understand what it means, it needs to be 15 feet from the side setback. You have nearly an acre of property and your position is it needs to go there, because that's the best place for it. There's nowhere else it can go.

Mr. Zweers – Unless you put it in the middle of the lawn. You cannot place it in front of the house, correct? It has to be behind.

Chairman Reinhardt – Right. And, I understand you don't want to put it in the swale. That's going to cause a problem.

Mr. Zweers – And then so if you forward the line so you go backwards from the house into the garden and again the property runs up to the back and so the boundary on the west side and the boundary on the north side go upwards and therefore are under an angle and so the only flat piece is indeed the back lawn that also holds the swale and so it would be right in the middle. The other place where you could put it would be on the left hand side that runs south to north in parallel to the west boundary. I initially had wanted to put it further to the back but realized that in order to get the tractor into the shed that would have to go against the ramp or against the hill and then up a ramp into the shed. And that is not possible because if your mowing device is underneath your tractor and you need a low angle to actually get in. So, I actually tried it with blocks of concrete and to see what angle I could achieve and so this was the only place, I wanted to push it as far back as I could and this is the furthest I could go until the angle changes that steep and the lawnmower won't drive into the shed anymore. And that results that the left end of the shed is close to the property line. In my opinion I have tried to move it as far back as I could but the angles on the property won't allow for it.

Chairman Reinhardt – Do you know what topo maps are? Our engineer over here from time to time looks at topo maps and it's very helpful to see the lay of the land and to understand an applicant's argument to say well it can't go here because there's either septic or there's a swale and the topo maps often times help this board understand that particular position that this is really one or two spots it can go. We don't have that here and from my position I find it hard to believe that with the amount of acreage you have that that's where it's really the only spot it can go and that it sounds like to me it's more aesthetics than where it can go. That there were other spaces that it can go on your property you just don't like it to be there because of how it looks.

Mr. Zweers – I disagree with that. I wanted it to be further to the back as possible on the left hand side.

Chairman Reinhardt – Well I can see that. There's a photograph that's a side shot I think it's the west side of your property that you can see not only the swale, but the land then goes up and you really can't put it at least there. Well that explains some of the western portion.

Mr. Zweers – I think maybe Al could – he has visited the property and seen the angles. Without a topographic map, maybe Al would be willing to comment on the situation as he has seen it.

Chairman Reinhardt – Are there other spaces that that shed can go and still be in compliant with the code?

Mr. Benedict – In walking his property, I would say he's probably selected the best place without having to do some significant grading to provide a flat spot for it.

Chairman Reinhardt – Ok. Alright, that’s helpful. That’s very helpful. Alright. Anyone have any other questions on the shed.

Mr. Salsburg – Have you reviewed the location of the shed so close to the neighbor’s property with that neighbor? With the west neighbor?

Mr. Zweers – No, I had thought that because it’s below his, again because his vision is higher up. You can see in one of the pictures it’s actually the top of the shed is almost as high as his fundament, so no I have not specifically talked to that because it’s behind the fence and its lower than his property.

Mr. Harter – I have a question. The photograph of the shed that I’m looking at appears that it’s on a pressure treated wood frame, doesn’t look like it’s attached to a concrete slab or anything like that so it would appear to be movable, is that correct?

Mr. Zweers – It is not connected. It is sitting on blocks of concrete.

Mr. Harter – So, it could be relocated if necessary, correct?

Mr. Zweers – It’s physically possible to move it, I guess with a forklift or something.

Mr. Harter – Ok.

Chairman Reinhardt – The dimensions of the shed is what?

Mr. Zweers – 8’ x 12’.

Chairman Reinhardt – No intentions on making it larger or. . . OK.

Mr. Zweers – No.

Chairman Reinhardt – Any other questions about the shed and where it’s located? Anyone from the public want to speak for or against the shed application. I’m getting a sense that the shed is an easier variance to understand and especially with Al’s comments that he’s walked it and from what you’re telling us and what Al’s telling us you probably have picked the best spot. I think you’ve heard before the understanding that variance runs with the land, so whether you’re there or a new owner or what have you. Whoever owns that property is going to be permitted to have a shed at that location. I think having a fence there has at least in that portion has a plus for you because does to some degree shield it from other neighbors. It’s not out there in no man’s land if you know what I mean. So that, is there any other comments or questions?

Mr. Harter – I guess a comment I have related to that is that if we are going to ask him to ask his neighbor to issue a statement relative to the fence, perhaps we should have him include something in that statement relative to the shed?

Chairman Reinhardt – Fred, what do you think about that?

Mr. Salsburg – That's what I was just going to say, too.

Chairman Reinhardt – Ok, Donna you like that? OK. So let's group all these together. The board would like it if you contact your neighbor to the west and one question is, is he ok with the shed being less than, right on the line? You'd be looking for, Al, do we have a number of what he's looking for? The variance? I know he's too close, but is he 0, is it 1? How close are you to the lot line, do you know? Are you 1 foot, 2 foot?

Mr. Zweers – The closest corner is about ½ feet and the furthest corner is 3 feet. The fence actually angles away where the shed is. So the left corner you can see is ½ feet from the fence and the left far corner is about 3 feet from the fence.

Chairman Reinhardt – Your fence is right on the lot line? What I'm trying to gather is here, the shed is not on the lot line. For the Board to grant a variance they have to determine how much of a variance that you need. You need more than, no structure can be 15 feet or closer to a side setback then we don't know where your shed is and if you need 14 feet of a variance which would mean your shed can be one foot to the lot line. Make sense?

Mr. Zweers – Yes. That makes sense.

Chairman Reinhardt – So, what we're asking is where is that shed now? If we grant it to say you get 14 feet that means your shed can be no closer than one foot to the lot line.

Mr. Zweers – That's correct. That's what I would apply for. 14 feet.

Chairman Reinhardt – So, let's do this, you're going to chat with your neighbor to the west, ask him for something in writing that says he's either for or against your request for a variance to have that shed one foot to the lot line. OK? And the other question you're going to ask him is if he's for or against your request for a variance to have the fence that proceeds beyond your principle residence 60 to 80 feet. So, what I'd like you to do if you could also is give us a measurement on how far that is from, how should we do that Al, what he's asking for, should he do it or, want to go out and take a measurement? I think I'd like to have at least Al do it because the point of reference is going to be important if you take the wrong corner of the garage you're going to get a false read. The way that I see the survey map it's not the point that's furthest west of your garage it would be the point that's closest to the driveway. Right, this southern, not it would be the northern corner, north corner of that garage is where you would take the measurement. So, where the survey as I see it is 77.6 feet well what I don't know is if you draw a perpendicular line over how much fence is that? So, that's the number we need to know is how much we're asking for. So, if we do grant the variance it's specific to how much you're asking. Alright and are we going to hold the position of the fence as far away or toward the neighbor or towards him, do it all at once or should we do that portion of the variance now?

Mr. Salsburg – I think the good side of the fence has got to go to the neighbor without any further discussion. If you can't live with that then he's got to get a fence with two good sides on it.

Chairman Reinhardt – Scott?

Mr. Harter – I think that one's kind of, it's more cut and dry, yes.

Chairman Reinhardt – Donna? You agree?

Ms. Morley – Yes.

Mr. Zweers – Is that true for both sides? I realize we didn't speak about the east side, you saw the pictures of the east side it is not visible from the road and again the homeowner of the east and northern property declared that he is happy with the way it is situated.

Chairman Reinhardt – It's not just about one neighbor it's the character of the neighborhood and right now with what I'm hearing from the Board is that the way that the fence stands both on the east and west sides both lengths of it, it needs to be per code the good side faces to the neighbor so you have a couple of options, you either can take those pieces out and flip them around or make a good side for your neighbors, so now you have two good sides, good side for you and good side for them. Is that accurate, is that what I'm hearing from the Board?

Mr. Harter – Yep.

Mr. Salsburg – At least from this end.

Chairman Reinhardt – Alright, so with that on that portion of the variance, let's walk through the justifications then. This would just be on the request for a variance on the position, the way that the fence is facing.

RESOLUTION – 7272 Gillis Road – Fence

DATE: 5-20-19

WHEREAS, no formal application was submitted from Paul Zweers regarding the facing of the finished side of fence, Code Enforcement Officer, Martin Avila, reviewed the applicant's application for a shed and fence area variance and noted in his comments dated May 14, 2019, that Town of Victor Code §211-41(I) states fences shall be constructed so the finished side faces toward the adjacent property.

WHEREAS, a Public Hearing was held on May 20, 2019 and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act 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:

1. An undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: Code §211-41(I) states fences shall be constructed so the finished side faces toward the adjacent property.

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

Justification: Applicant can put another side on the fence, so both applicant and neighbor have the finished side of fence facing them.

3. The requested area variance is substantial.

Justification: It extends both to the east and west side.

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

Justification: Won't cause detriment to either applicant's property or adjacent neighbor's property or the neighborhood.

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: Applicant put the fence up without checking with Code Enforcement Officer.

On a motion by Mr. Harter, seconded by Ms. Morley:

DECISION:

NOW, THEREFORE BE IT RESOLVED that Paul Zweers request to have the finished side of his fence facing his property, whereas Code §211-41(I) states fences shall be constructed so the finished side faces toward the adjacent property, BE DENIED.

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

Michael Reinhardt	Aye
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Approved: 4 Ayes, 0 Nays

Chairman Reinhardt – The other two portions of your variance, you're going to check with your neighbor and get back to us. You may have heard we meet June 3, if you need more time, let us know and we'll take care of those sections.

Mr. Zweers – So, is this automatically going to the 3rd or do I need to reschedule?

Chairman Reinhardt – That's up to you, if you need more time. I know applicants like to keep their projects moving so we can pencil you in on June 3 but if you give Kim a call and say I haven't got to him yet, can we put her off to the next one, we can do that, but let's not push it any further than . . .

Mr. Zweers – No, I don't want to.

Chairman Reinhardt – Let's get it taken care of in the meetings we have in June. That's going to be June 3 or June 17.

Mr. Zweers – Let's go for June 3.

Chairman Reinhardt – Ok, questions? Thank you very much. See you on the 3rd.

4. MOUSSALLEM STORAGE SHED – AREA VARIANCE 11-Z-19
920 Willis Hill Road

The applicant is requesting approval of an area variance for placement of a storage shed forward of the front line of the primary structure, whereas §211-31G(2) states no accessory structure shall be forward of the primary building.

Charbel & Erin Moussallem, 920 Willis Hill Road, Victor.

Mr. Moussallem – I'm here today to request a variance for a shed to be placed on what's considered in front of the main structure of the house. Looking at our property and the location, I tried my best to pick a first shed, that's still considered a shed, but cosmetically it's more acceptable looking to be placed in the location I picked. It's toward the end of my driveway, away facing the house garage. I don't know if you do have the picture of the shed.

Chairman Reinhardt – I'm a little confused, are you moving the shed or do you want to put a new one in?

Mr. Moussallem – No, I'm putting a new one. However little known to me and I'm not sure all of it is my lack of knowledge in purchasing the property there was prior old sheds on the property when we purchased it. It's on the survey and everything so apparently those have no

permit. Which I didn't know about it. So those, I had no intention of doing anything with them when I first made the application. I was asked to include them and I appreciate that, including them in this form of meeting to get even a variance for them. Whichever one you want to pick first I'll go ahead.

Chairman Reinhardt – Is that right, he needs a variance for both the old shed and the new one he wants to construct.

Mr. Benedict – Correct.

Chairman Reinhardt – So, I have a survey map and there's one, it says shed on it, is that the old one or the one where you want to put it?

Mr. Moussallem – So these are the old one, one here, that's not mine it already was in the house, that's the old structure. I can refer to, there's a shed in the east that was present. That's in front of the house. I guess it was placed for storage wood I'm informed. It's still there and I utilize it to put some wood.

Chairman Reinhardt – The shed that's on the east portion of your property that was there and then there's one in the north.

Mr. Moussallem – Way back at the on my west side of my property.

Chairman Reinhardt – That's the northwest portion of your property. And you need variances for the one that's further, that's in front of your home?

Mr. Moussallem – For both of those, the preexisting structures, they never had a permit.

Ms. Moussallem – We would never have known without going through this process that that was something that needed to be obtained. We purchased the house in good faith.

Mr. Moussallem – And then Al, I'm not sure if you came into our property Al or . . .

Mr. Benedict – I don't think I came there, I've been there before, but visiting it.

Mr. Moussallem – Yeah, whoever did the visit marked them as they have no permit. And, it's as you can see I have the original survey that's my attorney when we purchase. Just went to the closing and it's already on the survey map.

Chairman Reinhardt – So why does he need a variance on the one that's to the north?

Mr. Benedict – I think he just needs a permit for the one that's in the back corner.

Mr. Moussallem - The previous owner I guess didn't have a permit.

Chairman Reinhardt – So, we're not here for the permit, we're here for the variance, the shed that's forward of your home.

Mr. Moussallem – Correct.

Mr. Benedict – According to the review from Marty, there's the one shed that's forward of the front line of the house, that's existing that also needs a variance and there's also a third shed that's in the back of the lot that only requires a permit. It's a separate issue away from this board.

Chairman Reinhardt – So we don't have to deal with the shed that's in the north portion. That's a permit issue, that's not before the board tonight.

Mr. Benedict – It's actually on the south portion, but yes.

Chairman Reinhardt – I got my maps switched.

Mr. Moussallem – Southwest.

Mr. Benedict – Yes, southwest corner.

Ms. Morley – So, that just needs a permit.

Mr. Harter – Yes.

Chairman Reinhardt – There's a photograph of a garage and now I don't know why that's there.

Mr. Moussallem – You're referring to this?

Chairman Reinhardt – Becker Motors – why is that here?

Mr. Moussallem – That is what I'm here for. That's our shed that I made an application for. That is going in front of my house. You see my house, it has a garage with the structure of my building. And that's the driveway, at the end of my driveway looking toward the east of the garage, there's about 100 maybe 75 feet of lawn, grass. I picked that shed so it does look like a garage, because appropriately fits the cosmetic of the house.

Chairman Reinhardt – Ok, do me a favor on this survey map, what I put up in the upper right hand corner is Exhibit A and I've circled the existing shed that you need a variance for, right? What I'd like to know is where the other garage, the new one, where it's going to go.

Mr. Salsburg – Mike, do you have a copy of this format of a drawing, its hand written on it.

Chairman Reinhardt – Ok and you made a box, just put your initials in the middle of it.

Mr. Salsburg – Well there's a blueprint with it sketched in in pencil on my copy.

Chairman Reinhardt – Got it. Ok, now it makes a lot of sense to me. So, on your blue print where you have it sketched in, #2 is where you want this two car garage.

Mr. Moussallem – Shed.

Chairman Reinhardt – What are the dimensions of the shed?

Mr. Moussallem – 24' x 32', total 768'.

Mr. Salsburg – That's a pretty good size shed.

Mr. Moussallem – Well you see, you should visit my garage and my basement. I need to get back my garage and you know, we moved to the house 2 1/2 years ago and we've done so much.

Chairman Reinhardt – Fred, what questions do you have for him on the variances? Whichever one you want to talk about just be specific about the existing shed or the new shed that he wants to construct.

Mr. Salsburg – Is the existing shed old enough to be grandfathered somehow?

Mr. Benedict – I don't know at this point. Probably have to go back to 1959, I don't know if the records go back that far.

Mr. Moussallem – If I may add, to be included in your decisions, too the old shed that requires a variance is about 200 feet+ from the road and the area between the shed and the road is a conservation land.

Audience – (inaudible)

Chairman Reinhardt – Hold on, let him finish and then we'll get to you.

Mr. Moussallem – So from the shed to the road, with my own measurement is about 150'+. And the property there is a pond, it's a wetland and there's trees so it's really quite far from the road. There's enough distance, that's the one that preexisted.

Mr. Salsburg – What size would you guess the preexisting shed is?

Mr. Moussallem – It's about 8 x 10 tops.

Mr. Salsburg – More normal shed.

Mr. Moussallem – Yes, it was I guess as a wood storage. Fire wood.

Chairman Reinhardt – We have to figure out which way the house is facing in order to determine whether or not the structure is forward of the house.

Mrs. Moussallem – Thank you for bringing that up.

Chairman Reinhardt – So the front door, isn't it, you go by the front door?

Mr. Benedict – No. The front line of the house, it's the closest point to the road that being the road that you derive access from. So Willis Hill being to the east, eastside of the house would be the front line.

Mr. Salsburg – That makes it quite a bit from the road.

Chairman Reinhardt – So if you go due east, there's at least one parcel between this lot and the road?

Mr. Benedict – Correct.

Chairman Reinhardt – Any idea how far that is from the garage to the road as the crow flies?

Mr. Benedict – Don't have that.

Mr. Moussallem – Well from the blueprint, that is included, it's about 150-160 feet from the road and plus because it does not include the road from the blueprint here and from that point to the road is about 150.

Chairman Reinhardt – Does that sound about right, Al? 160 plus or minus 10 feet?

Mr. Benedict – I'd say so, yeah.

Chairman Reinhardt – Sound about right, Scott?

Mr. Harter – And looking at the drawing it looks about right. I guess I have a question on the status of that existing shed that we're talking about, is that to remain then?

Mr. Moussallem – I'd like to keep it, if I may, otherwise I'd have to incur a cost. I use it to store wood in it.

Mr. Harter – So, you'd like to keep that shed where it is even though it wasn't permitted. And also proposing to put in the shed that looks like a garage?

Mr. Moussallem – Yes.

Mr. Harter – And both of which are then according to Al's interpretation ahead or in front of the primary structure, right?

Mr. Moussallem – Correct.

Chairman Reinhardt – Fred? Questions?

Mr. Salsburg – No, I don't have a question.

Chairman Reinhardt – Donna, any questions?

Ms. Morley – I'm trying to figure out where they are saying the front of the house is. Oh, the front line.

Chairman Reinhardt – Can you move it? Is it possible to move that shed someplace?

Mr. Moussallem – From looking at it, the bottom is wood, so I assume you can have.

Chairman Reinhardt – Ok, so it's possible. I'm just want to know if it's possible. To be in compliant with the code, it doesn't appear to be so large that you can't hire somebody to move it so that it's compliant with the code. Ok so we're going to give that a possibility.

Ms. Morley – I was just trying to figure out the front, how they came up with this line whether, I see no road from where I was estimating.

Chairman Reinhardt – Alright, so if I understand the code and Al correct me if I'm wrong whether he puts the proposed new garage on the eastside of the driveway or on the south side of the driveway he's still going to be in front of the principle residence.

Mr. Benedict – That's correct.

Chairman Reinhardt – He will have to put that garage either on the south or the west where that's not where the driveway is.

Mr. Benedict – Correct.

Chairman Reinhardt – There's functionality. Let's ask it this way, what do you want to use the new shed for?

Mr. Moussallem – My lawnmower, my atv, small trailer that hooks up to the atv to move topsoil, empty my garage and if I may, just so I can park this.

Chairman Reinhardt – What's that, what are you pointing to?

Mr. Moussallem – My cars, they are in the driveway. I want to utilize my garage.

Chairman Reinhardt – What's in your garage now?

Ms. Moussallem – Lawnmower, atv.

Mr. Moussallem – We moved from Geneva, everything. I'd like to know what's in it.

Ms. Moussallem – The goal is to utilize it for the equipment that we want to use to maintain the land and to provide upkeep for the land and not have to store that in our garage, so we can place our cars in the garage. And rather than have all the equipment laying across our lawn, so whenever someone drives by they would see that also.

Chairman Reinhardt – Can you see your house from the road? As far as vegetation and what not?

Mr. Moussallem – A lot of friends come in and they drive by, they miss us. In the fall, winter, we live in upstate.

Chairman Reinhardt – Anyone from the public want to speak for or against? Come on up. If you have questions, you certainly can ask the board, but the questions go to the board. We won't allow the questions to be asked to the applicant. If we find them worthy enough we'll ask the applicant, ok? Good.

Lorraine Atwood – To straighten things out, that triangle between where they want to put the new shed and the road belongs to me. I believe it's about 120 feet from the edge of Willis Hill Road to the corner pipe. If the pipe is still there. I have not walked down to see that corner stake.

Chairman Reinhardt – Let's get on the same page, which triangle you're talking about? Just show it on the survey map.

Mr. Salsburg – Is it the corner that's got angles in the print.

Ms. Atwood – It says Atwood, 927 Willis Hill Road. Right here. And this should be about 120 feet.

Chairman Reinhardt – The section that you're looking at says John and Lorraine Atwood.

Ms. Atwood – Right, John is my late husband.

Chairman Reinhardt – Go right to the podium so we can have it recorded. So, what is that triangle as you call it? What does it have to do with where the existing shed is and where the proposed shed is going?

Ms. Atwood – I'm wondering how close to my neighbor's east property line, how close is that existing shed to the line?

Mr. Harter – About 50 feet. The way I read this map.

Ms. Atwood – Because I've not been down there.

Mr. Harter – According to this map if this map is accurate, about 50 feet.

Mr. Salsburg – Well over 50 feet.

Ms. Atwood – OK.

Mr. Harter – So, we don't have a side setback issue according to this map, if this map is accurate. Is that how you see it Al?

Ms. Atwood – What are the dimensions of the new shed?

Mr. Benedict – I agree with Scott.

Chairman Reinhardt – One question at a time, the new shed is 24 x 32.

Ms. Atwood – Ok. Will the trailer that we see parked outside now be stored inside?

Chairman Reinhardt – That is not an issue before the board.

Ms. Atwood – Ok.

Chairman Reinhardt – That's either for the code enforcement officer or if there's a homeowner, but it's not an issue right now, at least not for this board.

Ms. Atwood – Ok. And to comment on the existing sheds, why should they be penalized for variance application for what the previous owner did?

Chairman Reinhardt – The problem comes as we sit here today we don't have it's been there 6 months, 6 years, or 60 years, so we have to assume that it needs a variance. That if long as that provision of the code has been enacted, provided for at least for the section of it being forward of the principle property, you need a variance.

Ms. Atwood – Why wasn't the former owner who put that up called out for it then?

Chairman Reinhardt – I don't have an answer for you today.

Ms. Atwood – Because he put that up back in the 80s.

Mr. Harter – That could very well be.

Ms. Atwood – Well I know I've been out there fifty some years.

Chairman Reinhardt – The way that the code is written is once the date of the particular section says this shall be the rule for this case here we know the sheds or structures forward of the principle structure that the code enforcement officer can't be expected to at the moment something happens is go out there and figure everything out. In other words, just because something exists just doesn't mean its ok.

Ms. Atwood – Oh, I know that.

Chairman Reinhardt – So if whether it be by a sale or some chance that a neighbor says code enforcement officer Al, could you take a look at that or Al just drives by and says this doesn't look right and he checks it out and he sends a letter.

Ms. Atwood – Well they purchased the property with those sheds already there. They should be grandfathered in.

Chairman Reinhardt – That's not how it works. The issue then if I understand your concern, but as a suggestion a new property owner should go to his/her attorney and ask just a question that you're asking. We're getting hit with a code violation, attorney we paid you money to look into this, title insurance, etc. how did this fall through the cracks? There's the people that you should be asking. It's the people who represent you and go back to the sellers and say how did this slip through. It's not for this board to pass judgement, well how did that pass muster.

Ms. Atwood – Well what do the assessors look at then?

Chairman Reinhardt – The assessor? The assessor looks at the fair market value of the property.

Ms. Atwood – And the outbuildings. They do mine.

Chairman Reinhardt – They do everybody's, but they are not looking at whether or not the home is in compliant with the particular section of the code. I know by firsthand experience when I sold my last home I was proactive and called the code enforcement officer and said I want to make sure my house is up to snuff and sure enough he said no, you have a couple of things here that you need to take care of before you sell it and he clicked them off and I went and took care of them, so that when I sold my home, I knew my home was up to snuff and everything went smooth. That's how I did it.

Ms. Atwood – Yeah, but a lot of people don't think of that.

Chairman Reinhardt – There we go, there's the problem. It doesn't mean that just because there's a sale doesn't necessarily mean that the home is code compliant. It comes down to who's representing you and whether or not the sellers attorney, the buyer's attorney has dotted all the i's, crossed all the t's. If there's title insurance, if there's a mortgage. Sometimes a few pieces fall through the cracks. And it could have been with the shed, that's what happened. I don't have a crystal ball, it's the best answer I can give you.

Mr. Harter – Can I ask a question of you? Given that you're the neighbor to the east, then I presume? And these structures that we're talking about would seem to impact you perhaps more so than anyone because I see the property is surrounded by conservation areas.

Ms. Atwood – What do you mean by conservation areas?

Mr. Harter – It says conservation area on the map that I see here

Ms. Atwood – That would be to the south and west.

Mr. Salsburg – And east.

Mr. Harter – South and east of this particular site.

Ms. Atwood – Can I see that?

Mr. Harter – Sure. It says conservation area there.

Ms. Atwood – Well that's to the south.

Mr. Harter – That's to the south.

Ms. Atwood – This is east.

Mr. Harter – Yes.

Ms. Atwood – I remember this conservation area when turner put in his subdivision.

Mr. Harter – And let's see, where the other conservation area? Right there over on this side, the south of your property. Is that correct?

Ms. Atwood – Yes, but this is not my property, my property is a rectangle, the road cuts through at an angle. And, this now belongs to I believe Mike Turner bought that from Carol Anderson three or four years ago and that was put in conservation and he applied to build a house up here somewhere.

Mr. Harter – Ok, so my question to you is because you seem to be the person who is closest to the action, shall we say, do you have any particular objection to what the applicant is requesting terms of keeping that structure where it is and in terms of creating another structure or building another structure at that location right there.

Ms. Atwood – No, I have no problem with that.

Mr. Harter – Ok thank you.

Chairman Reinhardt – Anyone else from the public want to speak for or against? Any questions? Scott, Fred, anyone, any more questions? Ok take a straw vote here, on the existing shed.

Mr. Salsburg – Approve it.

Mr. Harter – I think its ok I see no reason to object to it. I also see given that this property is surrounded by so much open space, conservation area whatever, it must be especially at this time of the year with everything sprouting it must be well shielded so I don't see an impact to anyone with what you're doing back here.

Mr. Morley – I'm in agreeance with what they're are saying.

Chairman Reinhardt – Let's go now in reverse, the proposed shed, the 24 x 32, wait let me ask a couple of questions before that. Electricity in there?

Mr. Moussallem – No.

Chairman Reinhardt – In the new shed?

Mr. Moussallem – If I just need to run a cable across the driveway just for light, I'm not planning.

Chairman Reinhardt – Yes or no. Because if you start putting electricity in there it adds a different variable to it. This would just be dry storage, no electricity. There's not an electric garage door opener, you're going to open it up manually. And you're storing equipment in there, your long mowers, toys, cards, etc.

Mr. Moussallem – And boxes.

Chairman Reinhardt – Ok, so I'm fine with that. You ok with the new storage shed, the size, this being 24 x 32, Scott?

Mr. Harter – I think there's little impact based on everything that I've heard.

Mr. Salsburg – Easy approval.

Chairman Reinhardt – Since both variances are in close proximity and have the same issues, I'd like to walk through the justifications using the same justifications if the board is ok with that.

RESOLUTION

920 Willis Hill Road – Storage Shed
Area Variance

DATE: 5-20-19
Appl. No. 11-Z-19

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on May 1, 2019 from Charbel Moussallem requesting approval of an area variance for placement of two storage sheds (the 8' x 10' existing shed and the proposed new 24' x 32' shed) forward of the front line of the primary structure, whereas §211-31G(2) states no accessory structure shall be forward of the primary building; and,

WHEREAS, said application was referred by Martin Avila, 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 May 12, 2019 and whereby all property owners within 500 feet of the application were notified by U. S. Mail; and,

WHEREAS, a Public Hearing was held on May 20, 2019 at which time one resident spoke for the application,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act 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:

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: The 8 x 10' shed has been there more than two years, but the age of the shed is undetermined. And, the existing shed location is at least 150+ feet from the roadway as measured from the principle property. The property is well vegetated and there are conservation areas to the east and to the south.

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: The existing shed location is at least 150 + feet from the roadway as measured from the principle property. And, the new shed, to comply with the code would be counter-productive and dysfunctional to the location of the driveway.

3. The requested area variance is not substantial.

Justification: Largely due to the distance from the road and it is well buffered.

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

Justification: No drainage issues, well buffered, conservation area is guarding it, and due to the layout of the land it seems the best placement.

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

Justification: When property was purchased, there was not a permit for the existing shed.

With regard to the proposed 24' x 32' shed, 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.

On a motion by Scott Harter, seconded by Donna Morley:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of Charbel Moussallem requesting approval of an area variance for placement of two storage sheds (the 8' x 10' existing shed and the proposed new 24' x 32' shed) forward of the front line of the primary structure, whereas §211-31G(2) states no accessory structure shall be forward of the primary building, BE APPROVED.

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

Michael Reinhardt	Aye
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Approved: 4 Ayes, 0 Nays

Ms. Atwater – You didn't ask about animals. Years ago we built a barn and we had to agree there weren't going to be any animals.

Chairman Reinhardt – I'm really not sure how that's relevant to the issue, but I'll ask it anyway. Is there any animals in there?

Mr. Moussallem – No.

Chairman Reinhardt – Ok, fine. Thank you very much for your patience.

Mr. & Mrs. Moussallem – Thank you for your time.

ENGLISH DECK/PORCH – AREA VARIANCE

14-Z-19

6266 Murphy Drive

The applicant is requesting removal of a handicap ramp and proposes replacing it with a 6' x 12' open porch/deck. §138-6(A) states there shall be 20 feet from the road right-of-way, but no less than 25 feet from the edge of the road pavement. On a corner lot, there shall only be one front setback, which shall be measured from the driveway side of the manufactured home unit.

Paul & Cindy English, 6266 Murphy Drive.

Chairman Reinhardt – The idea here is you have purchased a home and there was wheelchair ramp and you want to take it out. And you want to put a porch in the front, 6 x 12? Covered, open? What's it look like?

Mr. English – Just a regular deck.

Chairman Reinhardt – Is there going to be any kind of roof overhang over that?

Mr. English – No.

Chairman Reinhardt - I think I have at least a general idea of what you're looking at. Donna, do you have any questions? Scott?

Ms. Morley – No, I don't.

Mr. Harter – I'm perusing the information here, I'll yield to Fred.

Mr. Salsburg – I've looked it over and it's going to reduce the extension toward the road by a couple feet from where it is now. And, it lessens it and I don't think it's any wider in the width of what's there now. It seems like it's going to be simpler appearance when it's done, so I'm in favor of this.

Chairman Reinhardt – So, that existing ramp that's there now, it extends the deck area.

Mr. Salsburg – 8 feet.

Chairman Reinhardt – And you're looking for 6 feet, so it's actually going to be something less than what it is now.

Mr. Salsburg – And it is the front of the house because it faces the street.

Mr. English – The porch that's attached to the ramp that comes out 8 feet and I thought if I went 6 feet and I go 12 feet that would give me enough room for a couple chairs and a small table.

Mr. Salsburg – I had a deck about that same size and it was alright.

Chairman Reinhardt – Ok, and part of your justification is that the back of the house is on the west side, so as you heard as we're looking through variances we explore alternatives. What else is out there, is it feasible to do something else? Often times we ask questions and it boils down to needs and wants. Hopefully wouldn't argue with me that when that wheelchair ramp when it was constructed that's a need. They needed that there. What you're looking for is a want. You certainly need stairs to get into your home, but to have a deck in the front of your home is what you're asking for, something you'd like, you want it, you don't need it. Looking at the west, is it possible to construct that same size deck on the back at all, on the west side? I understand the heat issue, but let's just talk about the possibility of doing it.

Mr. English – There's a concrete slab that's up against the back of the garage and I don't know if you could extend that out, but unless you put a roof over the garage, on the back part to make it less hot, I guess.

Chairman Reinhardt – I've seen them, where there's decks and people cover them even though it's on the west side, umbrellas and shade and blinds and all kinds of creative things that can be done. Now, you shake your head you don't want to do that. Tell me why.

Mrs. English – Well just the way it sits so west and plus we're up on that knoll that sun just beats right in there. And I don't think the way the wind comes up there that it would hold, I really don't.

Chairman Reinhardt – There are other alternatives, trees give great shade. Great for the environment. Have you ever thought about planting some trees or some buffers to create some shade and maybe something to deflect the wind over there? Is there any thought about that or is there something in your HOA that says you can't have trees in the back yard.

Mr. English – I don't know. We would have to, because of being Gypsum Mills there's a lot that we can't do. Whether its trees, I'm not sure.

Chairman Reinhardt – I see some vegetation in some of your neighbors. I don't necessarily see trees. Just two or three probably to the south there's some arbor vitae or some type of trees there. The other concern I have going to the front is that there's, the front of those homes runs parallel to the road and I don't see very many decks or covered decks that extend and get too close to the road. I know it's a tight community, but if you start creating situations where there are decks then you have visual problems and getting too close to the right of way.

Mr. English – Those people are lucky that got porches already that came with those units and all they had to do was attach stairs to it. We weren't that fortunate.

Chairman Reinhardt – Have you explored the cost differential from what it's going to cost to do your project if the board approves to have the porch in the front as opposed to if you put the porch in the back? Is there any difference, is it about the same? Take the heat issue from the west out of the equation, I'm just looking at it financially. Is there any difference?

Mr. English – I did not look into it.

Chairman Reinhardt – Ok. Is there anything else you want to touch on before we circle back and ask some other questions?

Mrs. English – No, other than almost every home has, a lot of them, good size porches. And it will add to the aesthetic part of our home I think because the wheelchair ramp, although needed for those folks we don't need, it doesn't make the home aesthetically pleasing as the other home that have porches on. Because we plan on putting railings on it. It's not just going to be an open deck. So, I think it will improve the look of the neighborhood.

Chairman Reinhardt – I took a drive by there, I saw one at least on your street within 4-5 homes that would be to the east. But that porch that I saw the front line of the homes were all pretty much the same, they were all parallel to the road. The porches weren't jutting out. Scott, did you have a chance to take a look, any questions?

Mr. Harter – I have a question of Al. Al, was there a variance granted for the wheelchair ramp, when it was constructed?

Mr. Benedict – I don't believe so.

Mr. Harter – So, that's just there, unpermitted condition, I guess?

Mr. Benedict – I believe it might have. I didn't confirm that but I have a feeling it was.

Mr. Harter – So my question for the applicant is that could you construct something that is compliant? Could you should construct your steps if you're going to take the wheelchair ramp out, could you still access that without perhaps a porch extending out toward the street? And still achieve part of your goal?

Mr. English – I'm sorry I don't . . .

Mr. Harter – Let me ask you this – you don't want to retain the wheelchair ramp, is that correct? And you want to modify it so that you create a porch?

Mr. English – Yes, I would like to rip that whole thing right out and have something that's newer. Right now, the wood structure is a gray and the lattice is coming apart and some of the PVC is getting in kind of bad shape. So, it doesn't look good as it stands right now. I think one of the 4x4 poles is starting to bend and it's not . . .

Chairman Reinhardt – Al, no matter what they do if it's one foot, two foot, six feet they need a variance?

Mr. Benedict – Correct. The dwelling unit is place pretty much right at the setback line.

Chairman Reinhardt – OK.

Mr. Harter – And once again what we see there right now the wheelchair ramp is not permitted.

Mr. Benedict – I don't believe it is.

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

Chairman Reinhardt – Fred?

Mr. Salsburg – The bedrooms are probably in the back so putting a deck on the back side of the house wouldn't be nearly as attractive an option as where the front door is. I don't really have any questions.

Chairman Reinhardt – Donna?

Ms. Morley – I don't have any questions.

Chairman Reinhardt – Anyone from the public want to speak for or against? That's the advantage with going last.

Mr. Salsburg – They've all gone home.

Mr. English – Either way that porch is coming down.

Chairman Reinhardt – And, I think looking at it and I really appreciate all the photographs the work you've done and I imagine as you were sitting here listening it sometimes happens that applicants come in and they expect us to pull out a crystal ball – we don't know exactly what they are talking about, but I think you provide aeriels and different angles to give us a pretty good idea what you're up against. I think to Scott's point looking at the photographs you could create some steps to the front door, but that's not necessarily what you're asking for. You want a deck that you can sit on.

Mr. English – The porch that's attached to the unit is not very big it's only 4 feet wide and 9.5 feet long. It's not big at all.

Chairman Reinhardt – I think when we ask the code enforcement officers whether or not that was code compliant or if there was a variance it comes down to much like the prior applicant just because it's there doesn't mean it's ok. It still needs to comply with the code. My concern I have it because it's such a tight neighborhood, and whether it's a 6 foot wide, 8 foot wide, 4 foot wide, it's still getting further and closer to the right of way and to the road. There's just not a lot

of room to work with and believe me that I understand what you're asking for, it's your home and you'd like to enjoy it and not get baked by the sun every day, but sometimes I wish it was. . . I'm still giving it some thought. Donna what do you think? Are you for, against this and let us know why you're thinking that way.

Ms. Morley – I'm ok with it, because I wouldn't want the deck on the back there either because the bedrooms are back there.

Chairman Reinhardt – Walk through the justifications, is it going to change the character of the neighborhood, is it substantial, use those?

Ms. Morley - Even though they didn't get a variance for this, right? I don't think it's going to change the character much because there's already something there that we're looking at. And the one picture that he is showing us, you really couldn't put two lawn chairs on there to sit together.

Mrs. English – We did try.

Mr. English – It looked pretty silly.

Ms. Morley – I don't have a problem with it.

Chairman Reinhardt – What do you think Scott, you for or against it and using the criteria, why?

Mr. Harter – Well I think I'm not in favor of it and the reason is historically when we've had variances come in for this residential development some of us may remember the one with a lot of back and forth with roof designs and all sorts of things. It's just a very tight neighborhood and the setback from the road is bare bones minimal and the aerial photograph that they submitted is a really good representation of the neighborhood out there and this isn't a standard item and if it does exist it probably hasn't been permitted and probably doesn't have a variance. So, I would like to give these people what they want, but by the same token, it seems especially in this residential development in doing so I think there may be a precedent that would be set with other people wanting the same thing because of the similarities of so many of these structures. That's why I was asking the question of number 1 was it permitted and number 2 if it wasn't permitted is there a way to modify it and still stay within the house footprint with whatever the improvement might be. Once again, I would like to give these people what they want, but I feel compelled to vote no.

Chairman Reinhardt – Is there a home owners association there? I think he said there was, yes? You don't know? There's not?

Mr. Benedict – Gypsum Mills owns the property that they all set on and everything you do requires permission from Gypsum Mills.

Chairman Reinhardt – Do you have permission from Gypsum mills to do this?

Mr. English – We started here first.

Chairman Reinhardt – Ok. That might help. I think Scott's point is well taken that I believe when we went down this road before there was something in writing that we had that Gypsum Mills says we've looked at the proposed plan and we're ok with it. It doesn't mean you're going to get it, but I think it helps from knowing the owner has to say. If the Board wants are you willing to get something in writing not only from Gypsum Mills, but from your neighbors if they say no, we don't want this in here or they say yes, I don't know.

Mr. English – Well we can do that because we've already talked to the neighbors and getting something in writing from them won't be a problem.

Chairman Reinhardt – Right and as well as from Gypsum Mills and whoever the management is, show them the proposed drawings, your idea. Do you think that would make any difference to you, Scott? Or is it still ...

Mr. Harter – I don't think it would bring me any closer, I guess I come back to is there any alternative that can comply with the dimensional constraints that you give you what you want and not require a variance.

Chairman Reinhardt – It sounds like once they go in the front, once they are into the east side of the property, whether it's a foot. I know you can't have a porch with a foot, I'm some way being facetious, but the point is anything on the east side of that home you're going to need a variance and it sounds like you'd rather not put it on the west.

Mr. Harter – And you can't put it on the north because that interferes with the garage.

Mr. English – There's no room.

Mrs. English – To the neighbors

Mr. Harter – Can't go two story.

Mrs. English – No. And we didn't go with the roof because we want to keep it simple. We didn't want to make a big hassle out of construction, you know engineering and everything.

Mr. Harter – My recollection with the home owners people where is they say yeah, everything is fine that was the reaction we got last time on one of these.

Mrs. English – We did go to management there before we started this process even and she said it wasn't a problem but I'm sure we can get it in writing.

Mr. English – But we didn't give them the plan. They didn't see what we gave you.

Chairman Reinhardt – And even if the neighbor said it was alright, management said it was alright, but if we explored a four foot deck width deck – would that be too small? What we're

looking for is because anytime that the board grants a variance, what we look at is granting the minimum variance. We understand they want something, but it doesn't mean it's necessarily going to get denied. We explore well I understand you're asking for six, but would four. Just like we were with the signs, we explore some ideas, could you deal with something less? Doesn't mean you have to do it, we're just exploring four feet or three feet, where's that cut off that that's just not going to work.

Mr. English – That's why I shrunk it down to six. Because the porch that's on there now is eight feet out, so I thought well if I bring it down to six it would give you enough room because once you put your chairs on there.

Chairman Reinhardt – Alright, so six foot width is your minimum.

Mr. English – Yes.

Chairman Reinhardt – Fred, what do you think do we ask the applicants to. . .

Mr. Salsburg – Well it appears the house to the south has something sticking out and also 6295 seems to have something sticking out.

Mr. English – That house to the south, those are steps coming off of his porch.

Mrs. English – And also his porch juts out.

Mr. Salsburg – Same thing, sticking out front.

Chairman Reinhardt – Any of you take a ride down on those streets, you find they are very uniform and they run perpendicular to the road.

Mr. Salsburg – Oh, I've been down that street many times, it's a very popular street with the ambulance and the fire department.

Mr. Harter – So, what we're looking at is 6268 we're looking at steps, those people to your south with the white car? Those are steps?

Mrs. English – Yes.

Mr. Salsburg – And, in the lower left hand corner 6295 you can't really tell what it is but it goes almost all the way across. I'm pretty sure there's a number of other places that have porches out from even though I can say one. There's no precedent aspect to this I don't think. Because there are porches.

Chairman Reinhardt – Are you willing to do a little homework on this? If you would talk to your neighbors and get something in writing. There's no minimum, the more you get the better it's going to be. And you talk to management and if management says ok, and if you go around your neighborhood not just on your street but that whole development if you can find some examples

of what you're asking for to show that it's not going to change the character of the neighborhood I think that's going to help this board understand what you're asking for is a reasonable request for a variance. Would you be willing to do that?

Mr. English – Yes, sure.

Chairman Reinhardt – Our next meeting is the third. Is that enough time or you need more time? We could pencil you in and if you need more time, the next would be the 17th, but what we don't like is this to perpetuate, not into the fall. We're not doing that so if we can get you on either the 3rd or the 17th?

Mr. & Mrs. English – The 3rd.

Chairman Reinhardt – the 3rd, let's do the 3rd. Alright, questions for us? Great. Very good. Thanks much. We'll see you on the 3rd.

Mr. English – Ok, have a good night.

Chairman Reinhardt – You, too. Ok, anything else we need to discuss?

Mr. Harter – I just wanted to mention some observations I had to Al. In my travels around the town I've notice that we've got some neon lights in the restaurant 650 that advertise certain kinds of beer that you can get there. I think neon signs for open are now allowed from our last conversations, I think you told me once upon a time you can do a neon sign open sign, but anything else was not allowed if I remember right. Is my memory reasonably correct?

Mr. Benedict – Yes.

Mr. Harter – Then I saw some excavation work taking place up on top of Fishers Ridge. Is there something going in up there or are they just playing around? By that trailer that advertises the sporting store that coming in that hasn't come in yet.

Mr. Benedict – I'm not aware of anything going on up there.

Mr. Harter – There's earth being moved up there.

Mr. Benedict – I'll check on it.

Mr. Harter – And, school bus on 444 at the Apple Farm with the sign advertising for school bus drivers is that been permitted?

Mr. Benedict – No.

Mr. Salsburg – Every school district has one of those.

Mr. Benedict – I've seen it numerous places.

Mr. Harter – We're just going to have to site them.

Mr. Salsburg – Well you're just operating on all cylinders tonight, aren't you?

It was unanimously agreed and RESOLVED that the meeting was adjourned at 9:15 PM on a motion by Ms. Morley, second by Mr. Harter.