

A regular meeting of the Town of Victor Zoning Board of Appeals was held on June 15, 2020 at 7:00 p.m. There was no public gathering based on the recommended precautions for limiting exposure to COVID-19. The following members were present virtually via ZOOM and the meeting was live streamed via YouTube:

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

**OTHERS:** Alan Benedict, Code Enforcement Officer; Martin Avila, Code Enforcement Officer; Andrew Spencer, BME Associates; Lucas Cullen, 7758 County Road 42; Scott Shields, 682 County Road 9, Kim Reese, ZBA secretary

PAST MINUTES:

On motion of Matt Nearpass, seconded by Sarah Mitchell:

RESOLVED, that the minutes of the meeting held on June 1, 2020 BE APPROVED.

Adopted Ayes 4, Nays 0. Chairman Reinhardt abstained as he was not at the June 1 meeting.

PUBLIC HEARING:

**UR MEDICINE @ OMNITECH BUSINESS PARK**, 7670 Omnitech Place – Applicant is requesting an area variance to construct a 13.2 sf sign on a parcel currently owned by the State of New York Thruway Authority and within the New York State DOT Route 96 right-of-way, whereas Section 165-4B(5) does not allow a sign within a right-of-way and whereas Section 165-6(D) does not allow a sign to advertise a business not a premises on which the business is located and whereas, Section 165-4B(6) does not allow a sign less than 35 feet from pavement edge on Omnitech Place.

Chairman Reinhardt – Since I wasn't here last week, Matt could you at least take the helm on this one. I have read the minutes. I understand what's happening, but I think since you chaired it last meeting, it probably makes some sense for you to lead the show on that one.

Mr. Nearpass – Sure. There were a few things going on with this one, the fact that it was within right of way. I do believe the applicant showed that they have the right paperwork and approvals in place from New York State was the owner of that right of way, at least to satisfy the board at that time. The other one I believe had to be regarding the distance from the pavement edge and the third was to have a sign on a piece of property that was not owned by the applicant. Maybe we'll let the other board members speak for themselves, but that last one for me especially in that area which is highly congested and we have had other similar requests in the past. It's a sticking point for me having a sign for a business on a parcel of property that is not owned by that business or that particular landlord, so that's just a tough one for me. We did leave it open. We did also ask the applicant to put a temporary sign which they did. I did see those pictures and drove by it myself. And, so maybe I'll start with Fred to see if everyone had a chance to take a look at it and think about this a little more and share your thoughts.

Mr. Salsburg – I too drove by several times and I sort of feel they need a sign. It's a pretty big operation up there, 22,000 square feet and in a real busy section of road. Real busy. And if people were looking for it without any direction at all I think it would be introducing some traffic trouble. You see it at the last second if you looked up the hill so there's a temporary sign out there now that's got the UofR logo and

then there's the permanent location sign that says "sign" there temporarily. I think the permanent sign looks better than the temporary sign because it's further from the road.

Chairman Reinhardt – So, Fred let me ask you this, we walked through the piece about the variance request for the sign being in the right of way and having permission from New York State and DOT, you're okay with that?

Mr. Salsburg – Yeah. The town board didn't find any trouble. I didn't see in the county review where it calls for a super majority, but I'm not sure of that.

Chairman Reinhardt – That's by law. That has to happen that way.

Mr. Nearpass – On this one, Mike, the County did not deny this, like it normally would. I don't think this one requires a super majority.

Mr. Salsburg – I don't think they did either.

Chairman Reinhardt – No opinion on it?

Mr. Nearpass – Yes, I think because of what's going on.

Chairman Reinhardt – Alright. So, then on the sign being less than 35' from the pavement, Fred where are you on that one?

Mr. Salsburg – Well I wish it was back a little further, but it's fine with me. I don't see a problem with that sign location.

Chairman Reinhardt – And, the third part of the application. Well third application being that the sign is not in the applicant's property. Where do you sit on that one?

Mr. Salsburg – Well I don't care. Matt puts a lot more importance on that than I do.

Chairman Reinhardt – Well we can circle back on that in a little bit. Anything else you want to at least let everybody know on where you stand on either of the three applications? Let's just say requests for variances. It's just one application, but three variances.

Mr. Salsburg – I'm pretty comfortable with it.

Chairman Reinhardt – Okay. Sarah, what do you think about this? If you went through the three requests for variances and let me know what you think about each one of them.

Ms. Mitchell – Actually the comments I have from the previous meeting still stand today. I drove by and looked at the temporary sign. I still have concerns with the congestion in that area and I am along the same lines as Matt, as the sign being on property that is not there's. So, I guess I don't really think putting up the temporary sign really changed my opinions at all.

Chairman Reinhardt – So if I understand you correctly, you have concerns for each variance – the sign being in the right of way, even though DOT and New York State . . .

Ms. Mitchell – Well I guess that part of it wouldn't be much of a concern, but the other two parts lead me to say no, so that's where I stand at this point. I mean, DOT said okay, but yet it's so congested in that area I think that it's just too much going on with the Best Western and the mobile homes there and the gas station. It's just too much right there and the fact that the building that people are going to isn't really at that location; it's down the road, so I don't really think any of my opinions changed.

Chairman Reinhardt – Donna, what do you think about all three?

Ms. Morley – I'm still the same I was the other night. I think in this day and age, a high percentage has a phone that can look up google or map quest and find where they're going before they're going. And I went in and out every way. It is so congested there, that sign, if I wasn't thinking about that I was looking for that sign, I would have drove right by it and I also think, too it's adding another thing to the business Wilkins and the business of the motel should distract from them and that's their property out front, so and they have to abide by our rules also. So, I'm a no for all three.

Chairman Reinhardt – So as far as the sign being in the right of way and being blessed by DOT, New York State that part is okay with you. It sounds like the sticking point with you is the sign not being on their property.

Ms. Morley – Yes.

Chairman Reinhardt – Matt, I just want to make sure I got you. I got you in the first couple of pieces, but the sign being less than 35 feet from the pavement, where are you on that piece?

Mr. Nearpass – I do take issue with that a little bit. I think that is probably still within character of the other signs in the neighborhood being within 35 feet, so I'd be okay with that. My opinion on this is that the applicant really brings nothing unique to the table here. There are a dozen more companies, or however many more up there that could have the exact same story that we want to be seen. We want to be able to put a sign down here by the road. I think that being in Omnitech Park is really the destination and that's what they should be communicating to their customers where they are. There are one or two Omnitech Park signs and monument signs and once you get in there, the UofR will also have signage on their building. I agree that it's also just too congested in that area with signage and this would just really add to it. So, I'm not in favor of yet another sign there, where an applicant isn't allowed.

Chairman Reinhardt – I've reviewed the minutes and I appreciate everybody giving me their thoughts again. I drove by, I looked at the sign and I'm in agreement with Matt. I think especially the piece about the sign not being on the applicant's property. We've been down this before. I agree with Matt that it potentially causes problems down the road especially since the variance follows the property it just doesn't sit well with me either.

Matt, I can do the rest of the resolution if you'd like, it's up to you.

Mr. Andrew Spencer – May I interrupt for a moment.

Chairman Reinhardt – Yes, I was going to give everyone an opportunity. Go ahead, Andrew, correct?

Mr. Andrew Spencer – Yes that is correct, my name is Andrew Spencer with BME Associates. We did put the sign up and I did provide some exhibits for you to take a look at as well that shows the UR sign in that location. Again, Michael for your benefit, you were not here two Monday's ago. The reason we're looking for a variance from a set back from the roadway is because of the grading in the area. Because it does drop off toward the RV center. Once you get past that sign, it starts to go down in elevations. So the sign has been placed such that it is near or close to near the same grade as the roadway. From a congestion standpoint if UR Medicine was here first before Wilkins RV or before the hotel or before the gas station would congestion be a concern? I don't think that the sign does any more congestion than what you have here on the site between the gas station and the RV center. That is the congestion in the applicant's mind not the addition of the sign. The sign is being placed there as you travel down Route 96 you get a sense of where it is you are going to turn. I don't disagree with Matt's commentary that

Omnitech Place is something that will be incorporated within the UR Medicine information to its patient's, but UR Medicine provides medical service and medical product, if you will, to residents of this community. And I think it is important that they are noted where they are. That is every other installation that they have across the county, they do signage to allow people to know where their facility is. It is not readily visible from Route 96 as you travel. It is readily visible as soon as you turn into Omnitech Place and you look up the hill and then you see UR Medicine, but the sign is here to try to alert motorists to make this turn. I think it's highly desirable that a sign be placed in this location. As it relates to the ownership of the land, we have approval from the New York State Thruway Authority and the New York State DOT to place a sign here. And, that is typical to any other right of way that is owned by the state and/or the thruway. There are signs within state roads that are not on somebody else's property. They are on the state property. This occupancy permit is in place today and I believe if I'm not mistaken, we can place a sign out in this location with this occupancy permit in hand. That the approval authority is through New York State DOT and through the thruway authority for this. It's not dissimilar than having signs and we went through a far larger project of course, it was the Del Lago casino on the thruway. They were approved for signage within their right of way, the town at that point has nothing further to say about it nor could say anything because it's not their land nor was it their jurisdiction. So there's a little bit of a push and pull here per our understanding and the discussions I have had, this occupancy permit allows UR Medicine to place a sign in this location.

The whole congestion thing I think is interesting, but I think we can find congestion a lot of different places and a single sign here will actually be a benefit not a detriment to people trying to find this facility.

Chairman Reinhardt – I appreciate your comments and thoughts. The issue of congestion is really not paramount. What's paramount here is as I see it and since I've been on the board and on this issue in particular is that the variance is being requested for a spot that's not UofR's property; it's the State's. And, while you do have some paperwork that says that you have permission to do so, just because you have that document does not mean that New York State's granting the permission supersedes the zoning board's authority to grant the variance. This has happened before a few times and the concern that we have especially on 96 is certainly the amount of signage that goes on 96 and also the concern as we understand it that the variance is going to run with the land. And, I think Matt made comments as I read in the minutes, that we certainly hope that the UofR has a long, long stay at that particular place, it doesn't guarantee anything. So, if the UofR were to move along and leave then that's fine, where you're asking to put the sign whoever owns that then could grant that along to somebody else and the zoning board really wouldn't have any control over that.

Mr. Spencer – Yes, but the ownership of that land happens to be the DOT. And, to then put another sign in that location, you'd have to go through another occupancy permit situation. They have final say in whether or not you're going to be able to place a sign on that property or not. So if it runs with the land, understood, but now it's land that's owned by the state of New York. It is not a town right of way; it is the State of New York. And, this occupancy permit actually has stipulations in here. They can revoke this permit at any time. This permit must be renewed on a continual basis as well. There is something that is a fall back and it happens to be the New York State's Thruway Authority, as well as New York State DOT.

Chairman Reinhardt – Again the issue that we've had and we've also read comments from the county planning board especially on the 96 corridor and with signage and the closer you get to Eastview the more the concerning it gets for the town is the overabundance of signs. Everybody wants signs and people will want to make an argument to say well, people won't know where I am, I need to run my business and I

need to have a sign, but we've also had the problem of when we've asked applicants because one of the criteria is is it going to change the character of the neighborhood and is there any other cases that show similar conditions and similar situations. Argument I suppose can be made that if we allow this then another one and someone may say, well look you let this happen, why can't I do it? And the next thing you know we have too many signs up and down 96 and we've lost control of it. So it's a concern that we have. I'm one vote. I don't vote for the whole board, but I think at least I'm on the same page as Matt that when signage goes up on somebody else's property even though there is permission, it does create problems down the road.

I think the question was posed before as far as alternatives. Are there any other thoughts if the variance isn't granted what alternatives are you going to do for signage?

Mr. Spencer – I don't believe there is another alternative because Omnitech Place is a town dedicated road and Route 96 where this sign is being located is within a state right of way. Neither of which are owned by the property owner. There is signage on the building, but that signage is as I stated previously is not highly visible, while travelling on Route 96. There's no other location to be able to put a sign in close proximity to Route 96 without doing this proposal.

Chairman Reinhardt – Marty, is there anybody from the public that wants to speak for or against the application?

Mr. Avila – There are no comments currently.

Chairman Reinhardt – Is there anybody from the public that's present that we have to wait another cycle for their comments?

Mr. Avila – There are three people currently viewing, but having tabled this once we've met our precedent thus far for all the meetings having left it through one cycle of meetings. And, we did not receive any comments in between this and the last zoning board meeting.

Chairman Reinhardt – Alright I'd like to circle around once more to see if anybody has any other thoughts after Mr. Spencer addressed our concerns. Matt, why don't you start the conversation.

Mr. Nearpass – Sure. I still have the same opinion whether the lessor is New York State or some other entity, it's not the same one that's required by code to be able to place a sign there. I'm okay with the other two out of three, but unfortunately I feel this one is a slippery slope. There's nothing unique about the application that is swaying me to allow a sign to go on a parcel of land that is not owned by the building owner or the land lord. Of where it is, I think Omnitech is sufficient destination if you are catering to Victor and the surrounding areas I think it's a relative well-known area and it won't take long for people to know where you are.

Mr. Salsburg – I think the sign is in pretty good taste, it serves a purpose. I feel that if the property owners and all the other people are all in favor of it I don't see a problem with it. I'm going to stay with that thought.

Chairman Reinhardt – Sarah, are your thoughts the same? Anything different after Mr. Spencer spoke?

Ms. Mitchell – No, my thoughts are still all the same.

Ms. Morley – Same, thank you.

Chairman Reinhardt – Okay. Mr. Spencer, anything else you want to add before we present a motion?

Mr. Spencer – No, I guess of course I don't see it the same way as a representative of the applicant. I don't think this would all of a sudden open up flood gates for something of similar ilk. This is a pretty interesting situation. I understand the board's commentary. I understand where the board is coming from, but I have nothing further that I can add to make my case any better, unfortunately.

Chairman Reinhardt – Al, anything else you want to touch on? Something we should know before we bring a motion on this one?

Mr. Benedict – I don't have anything further.

Mr. Spencer – If the board does make a decision today, the applicant does have the ability to do question that decision, if I'm not mistaken. Is that correct? And, Al, I guess I look toward you.

Chairman Reinhardt – Without giving you legal advice the answer is yes.

Mr. Spencer – I'm not looking for legal advice, that's all I was looking for.

Chairman Reinhardt – I think what you're asking for is there a remedy to challenge the zoning board's decision. Yes. If you want to, I would certainly recommend you seek legal counsel on the mechanisms on how to do that. Okay? Good.

Mr. Spencer – Thank you.

Chairman Reinhardt – So Matt, do you want to run through the criteria, should I run the criteria? It really matters not to me.

Mr. Nearpass – You can run through it, if you have it in front of you.

Chairman Reinhardt – Okay, we have a proposed resolution and as far as I know Marty, correct me if I'm wrong, no one has spoken for or against this application?

Mr. Avila – That's correct.

Chairman Reinhardt – Looking at the criteria on whether or not 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.

The resolution will read it would produce an undesirable and detriment to nearby properties created by the granting of the area variance.

Justification being that the applicant doesn't own the property and the board has in the past been very concerned with granting area variances for signage when the applicant doesn't own the property. And, albeit in this case, we all understand that the applicant has permission from New York State Thruway Authority and DOT.

Mr. Spencer – (clarified the agencies) and stated the occupancy permit is from the Thruway Authority.

Chairman Reinhardt – Okay. Does anyone else want to add anything else to the first justification?

Alright second, whether the benefit sought by the applicant can/cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

In this case, he cannot. It appears this is their only option to put a sign at that particular location due to the location of where UofR Medicine and Omnitech is. Anyone want to add anything else to the second criteria?

Third, the requested area variance is substantial.

It's primarily because that again it's in the first justification that the applicant doesn't own the property. Anyone want to add anything else to the third criteria?

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

This is a sign and I didn't hear or see anything about it's going to affect the physical or environmental conditions in the neighborhood.

Anyone want to add anything else to the fourth criteria?

Fifth, 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.

Does anyone want to add anything else to the criteria or anything else to the resolution before we entertain a motion?

The motion being, if I understand the board correctly, the motion will be to deny the requested variance.

Mr. Nearpass – I believe so, correct.

Chairman Reinhardt – Alright, can we have a motion to deny the variances.

Mr. Nearpass – I'll motion.

Ms. Morley – I'll second it.

Chairman Reinhardt – All in favor of denial, say aye. (Ayes) Opposed?

Mr. Salsburg – Opposed.

Chairman Reinhardt – I think that has it. Thank you for your time. Thank you for your time and effort, Mr. Spencer. Good luck to you in the future.

Mr. Spencer – Alright, thank you very much.

## RESOLUTION

UR Medicine@Omnitech Business Park, 7670 Omnitech Place

Sign Area Variance Appl. No. 05-Z-2020

At a regular meeting of the Town of Victor Zoning Board of Appeals held on June 15, 2020 the following resolution was adopted:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on May 18, 2020 from University of Rochester, 7670 Omnitech Place; requesting an area variance to construct a 13.2 sf sign on a parcel currently owned by the State of NY Thruway Authority and within the NYSDOT Route 96 right-of-way, whereas Section 165-4B(5) does not allow a sign within a right-of-way, whereas Section 165-6(D) does not allow the sign to advertise a business not on a premise on which the business is located and, whereas, Section 165-4B(6) does not allow a sign less than 35 feet from pavement edge on Omnitech Place.

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

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on May 29, 2020 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, the Ontario County Planning Board assigned the referral, 91-2020, as a Class 1, AR on June 1, 2020 and returned it to the local board with a final recommendation to make no recommendation to approve or deny application for signs that comply with local regulations; 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, a Public Hearing was held on June 1 and June 15, 2020 at which time no residents spoke for/against the application,

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: The applicant doesn't own the property. The board has been very concerned with granting area variances for signage when the applicant doesn't own the property. It is understand that the applicant has permission from New York State Thruway Authority and New York State Department of Transportation.

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: It appears this is the only option for a sign due to the location of where UR Medicine and Omnitech Business Park.

3. The requested area variance is substantial.

Justification: It is primarily because the applicant doesn't own the property.

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

Justification: This is a sign and nothing was presented showing it will affect the physical or environmental conditions in 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.

On a motion made by Mr. Nearpass and seconded by Ms. Morley:

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of UR Medicine@Omnitech Business Park, 7670 Omnitech Place, requesting an area variance to allow a 13.2 sf sign on a parcel currently owned by the State of NY Thruway Authority and within the NYSDOT Route 96 right-of-way, whereas Section 165-4B(5) does not allow a sign within a right-of-way, whereas Section 165-6(D) does not allow the sign to advertise a business not on a premise on which the business is located and, whereas, Section 165-4B(6) does not allow a sign less than 35 feet from pavement edge on Omnitech Place, BE DENIED.

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

Michael Reinhardt	Aye
Mathew Nearpass	Aye
Sarah Mitchell	Aye
Donna Morley	Aye
Fred Salsburg	Nay
Denied:	4 Ayes, 1 Nay

### **CULLEN GARAGE ADDITION**

06-Z-2020

7758 Co. Rd. 42

Applicant is requesting an area variance to construct an addition onto their existing garage. The addition will be located closer than 15 feet to the side lot line. Code requires a 15 foot side setback and more specifically §211-20C states that accessory structure, such as storage sheds, must observe a 15 foot property line setback on residentially zoned property.

Chairman Reinhardt – Next on board is the Cullen garage addition.

So, Mr. Cullen, you would like to put an addition onto your existing garage? Is that correct?

Mr. Cullen – Yes, that's correct.

Chairman Reinhardt – And, if I understand it, the issue is the variance for the lot line. You're closer than 15 feet and in fact it looks like you're about ten feet from the lot line?

Mr. Cullen – Correct. That's the proposed location.

Chairman Reinhardt – Alright and we'll walk through the criteria for an area variance, but we would like to give you an opportunity to speak and I think you heard what the criteria was – just the general parameters; whether or not it's going to change the character of the neighborhood and whether or not it's substantial. So certainly if you touch on those issues that helps. I understand looking both at your application and at the survey that there's a, I hate to use the word thin, but it looks like it's 16-17 feet of a flag lot that buffers where your proposed garage is going.

Mr. Cullen – That's correct. I believe it's a 16 ½ foot flag pole lot.

Chairman Reinhardt – So, I think the main question I would have for you is, is it possible or why isn't possible to get the garage over five feet to the west, so you would have 15 feet if I've got my compass direction right?

Mr. Cullen – So, the reason we would prefer it be where it is is because the existing garage which will be partially demolished is going to turn into a breezeway. So, that area of that breezeway would be reduced and the back side, the north side of that, what's left of our current garage would get awfully narrow and it may just turn into kind of an odd space. Additionally, the garage doors are going to be facing the road, facing south and the closer we get to the house the closer we'll be driving next to our front door, so that's why the proposed location is preferable to us.

Chairman Reinhardt – Is there a photo of where, I think you said the front door? Do we have anything like that Marty?

Mr. Cullen – Someone was here and took some photos this morning. I'm not sure if it was for this meeting or a different one.

Mr. Avila – I don't see anything in what I have that shows the front door. I will look though. I'll share what I do have.

Mr. Cullen – You can see the sidewalk steps there, the round, those curl around basically to where the photo was taken from and that's the front door.

Chairman Reinhardt – While I'm trying to look at the photo, Matt, do you have any questions?

Mr. Nearpass – Just a couple, so I can tell it looks like today you're kind of changing the direction of how you enter the garage? Is the new garage now going to be a straight shot from the road? Is that what you're doing?

Mr. Cullen – That's correct.

Mr. Nearpass – Okay. I don't even know if it's possible, have you considered buying a portion of that flag lot?

Mr. Cullen – I did consider it. I haven't broached that given everything that is going on. It would be just that much more difficult. My understanding is that that 16 ½ feet can't be improved. It needs to be left as is, so I wouldn't necessarily be opposed to that. My property doesn't border the entire length of that 16 ½ feet, so it would have to be split up between two or three possibly four different people.

Mr. Nearpass – Al's probably going to tell me it has to exist.

Mr. Benedict – Yes, actually you guys as the board I believe granted a variance several years ago to allow that as the road frontage for a lot that's behind it that was split up. I believe it would probably have to stay unless there was another variance that was granted.

Mr. Nearpass – Okay. I think the applicant's request is reasonable. I actually think having the 16' flag lot there as your neighbor for the most part that nothing can really go there again unless it comes in front of this board given its (inaudible). I'm out of questions, but I think I'm okay with it.

Mr. Salsburg – Mr. Cullen, the house on the right (as you face your house) does that neighbor have any problem with what you are doing?

Mr. Cullen – No, he doesn't. He's actually been over and looked at the site with us and thinks that it's the perfect spot for it.

Mr. Salsburg – Well, I'm not surprised because your garage is back so far and so high from that house that it doesn't impinge on it very much. I don't see any problem here with this application. How big is the garage?

Mr. Cullen – 40 x 60

Mr. Salsburg – Wow. You got any extra room in there? No I don't see this as being a problem here, so I'm good. Its vegetation, it's way up off the road, vertically, set back so far. I don't think anybody's going to complain about it.

Ms. Morley – I don't have any questions. I'm fine with it.

Ms. Mitchell – I don't think the request is substantial, so I'm fine with the way it is as well.

Chairman Reinhardt – Mr. Cullen, at least I'm on the same page as it sounds like the board, that generally it's a well thought solution to a problem. The flag lot there creates a buffer and your explanation on why

it really can't go any further to the west makes some sense to me and before we continue do you have anything else you want to add, thoughts, comments?

Mr. Cullen – I don't believe so.

Chairman Reinhardt – I think what we have been doing, we have to because of the public viewing and having the public have an opportunity to comment is to keep this open until the next meeting and at least allow the public an opportunity to make comments. Marty, for now, do we still have some people watching?

Mr. Avila – There's currently four viewers.

Mr. Nearpass – I also believe, Marty correct me if I'm wrong, but at the last meeting did you say we no longer have to wait the five days?

Mr. Avila – No, the town board has still been waiting for public hearings the full five days.

Mr. Nearpass – I thought you made a comment about the planning board or other boards weren't waiting the five days. Okay.

Mr. Avila – No.

Chairman Reinhardt – Mr. Cullen, when's your dig date?

Mr. Cullen – I don't have one at this point.

Chairman Reinhardt – Do you understand, at least because of covid and our procedure is allowing the public the opportunity to speak for or against the application we really can't do that as we're set up. What has to happen is if they want to comment on it, they are going to be given an opportunity to submit their comments within five days, so the next cycle would be the July 6<sup>th</sup> meeting.

We're all set, so, if you have anything you want to add or somebody else has something to add, all we really need to wait for is just the public to make comments. They may have no comments, but we really can't make a decision or bring a motion for this until the next meeting. Do you have any questions about that?

Mr. Cullen – No, that's actually fine. This project has to go before the planning board, I just found out about that last week, so I don't even have the information submitted and the next meeting it would be eligible for is six weeks away, so.

Chairman Reinhardt – Al, anything else we need to know? Before we move on to the next application?

Mr. Benedict – I have nothing further.

Chairman Reinhardt – Okay, great. Then with that we'll leave it open and we will see you July 6 and continue on with this application and hopefully bring a motion that you'll be pleased with.

Mr. Cullen – Very good. Thank you, everybody.

Chairman Reinhardt – Very good. Thanks so much. Have a good night.

**SCOTT SHIELDS, MODIFICATION TO EXISTING AREA VARIANCE FOR POOL  
RELOCATION**

07-Z-2020

682 County Road 9

Applicant is requesting a modification to an existing area variance to relocate a pool, whereas §211-31G(2) states no accessory structure shall be forward of the front line of the primary building. The property is zoned Residential 2 and owned by the applicant.

Chairman Reinhardt – The next application is Scott Shields. You have been listening to the two prior applications?

Mr. Shields – I have, yes.

Chairman Reinhardt – Okay, so you pretty much know the drill. Our process is to ask you some questions and what we're looking for is how the application fits into the criteria on whether or not it's going to change the character of the neighborhood, whether or not it's substantial. This case we've seen it from time to time, but there is an existing variance for a pool to be located in front of the primary residence. Is that right?

Mr. Shields – Correct.

Chairman Reinhardt – And what you'd like to do is move it to a different location and correct me if I'm wrong it's going to be closer to the right of way.

Mr. Shields – Closer to, what do you mean?

Chairman Reinhardt – The existing variance and I think Al brought it to our attention because there's potentially some discrepancy. The existing variance Al is 230' from the right of way, is that right?

Mr. Benedict – It was stated that in the paperwork, but however if you took a measurement of the way it exists today, it doesn't meet that dimension. I think I said in my comments, I didn't know if the right of way of County Road 9 had moved, which I doubt it, or somebody when they provided the information back for that variance gave the incorrect information.

Chairman Reinhardt – Well let's look at it differently then, from where Mr. Shields would like to put the proposed pool where is it in proximity to where the zoning board granted the variance?

Mr. Nearpass – I have the same question.

Mr. Salsburg – I've been wondering that, too.

Chairman Reinhardt – Is it closer to the road, farther from the road, closer to the house?

Mr. Shields – It's much further from the road. So, my understanding is the original variance in 1977 was just below my turn around which is at least another 100' or so closer to the road than what I'm proposing.

Chairman Reinhardt – How do you know this?

Mr. Shields – Because we had discussions. Al and I had discussions about this. I know where the pool was previously. I found some of the wiring to it on my lawn so, it's on the other side of my driveway on the northern side of the property. And, this is on the south side closer to my home.

Mr. Nearpass – So I'm reading the variance here. The pool will be located 230 feet from the road right of way and 17 feet from the north side yard lot line and that the east side of the said pool will be adequately screened by shrubbery under the provisions of the Victor zoning ordinance, article 59(24)C several subparagraphs.

Mr. Shields – That's the original one from 77?

Mr. Nearpass – Correct, July 21, 1977 to Mr. and Mrs. Rudy Kumpf. What I was trying to get my arms around is where is that on the map that you have? If you had to circle on the map where the previous pool was or where this previous location describes, where would that be?

Mr. Shields – (Mr. Shields pointed location out to Mr. Avila). It's right where the land was leveled, that's where the electric was. It came from a pole, literally right across the driveway and it was right in there.

Mr. Nearpass – And, Al you're saying that's not 230 feet from the road right of way.

Mr. Benedict – That's correct.

Mr. Nearpass – So, my next question would be, where would 230 feet from the road right of way be and then 17 feet from the north side lot. Do we know how far the house is from the right of way, we can go by that?

Mr. Shields – It's about 215 I believe.

Mr. Benedict – I think I provided that measurement in my referral, which I don't have with me.

Mr. Nearpass – The house according to the existing variance is 310 feet from the right of way whereas the present measurement is 212. So someone's wrong there, whether its

Mr. Shields – On my survey map, I have 214 feet from the road to the corner front of my house.

Mr. Nearpass – From pavement edge?

Mr. Shields – Yeah, it's literally the edge of the road and it shows. I included one of those documents. At least a part of my survey map, the measurements (are) a little difficult to read, but I have a more clear version in front of me and it says it's 214' which means if you took that same measurement, it basically puts you right on top of my garage from 77.

Mr. Nearpass – And, I do think it's clear to me that in the 77 documentation the numbers may be wrong or skewed, but it is giving the applicant at the time, the approval to be forward of the front line of the house. I think that is what's obvious there. The numbers might be wrong and show that it would be back behind that if you went 230 feet, it would technically be behind your house, correct?

Mr. Shields – The process was a little different back then.

Mr. Nearpass – Maybe. Old math. I'm okay for now with questions.

Mr. Salsburg – No, I think it's the confusion on the original one doesn't carry much weight. He wants to move it in to the fenced in area, up near the house, which makes sense. I have no more questions.

Ms. Morley – (no questions)

Ms. Mitchell – (no questions)

Chairman Reinhardt – Al, to try and maybe settle the confusion, can you say with any kind of certainty whether the proposed placement of the pool is forward of where the old pool was, about the same or further away from the road?

Mr. Benedict – I don't have the paperwork in front of me. I would say it's probably comparable from what I recall. Roughly the same.

Chairman Reinhardt – My concern would be, albeit the prior variance was granted for the pool to be forward of the primary residence, like Matt was indicating, but my concern would be is that I mean, if it's close I think I'm comfortable with that. If it's 50 yards ahead of it, I would be very concerned about that. I'm not seeing that I just want to confirm that with Al that it looks about in the same distance.

Mr. Nearpass – From the drawing Marty just put up, I think the new pool is actually closer to the house.

Mr. Shields – Much closer.

Mr. Salsburg – Further from the road.

Chairman Reinhardt – Okay.

Mr. Shields – And behind seven trees at this point.

Mr. Salsburg – Much further. We granted a variance for that fence a few months ago.

Mr. Shields – That was a year ago, yep.

Chairman Reinhardt – Mr. Shields, anything else you want to let us know? Add to the application?

Mr. Shields – I don't think so it's pretty straight forward, right? We're just trying to stay cool this summer. We don't know what's going to happen with the aquatics facilities, so this was kind of good timing from our part and we kind of jumped on it. You know the intention is as well I did actually as part of the previous variance I did plant arbor vitae in front of the property. The deer got to them, so they are not as large as I'd like them to be right now as far as screening. The expectation is I'm actually planting another row and they will be willow trees going all across that front side, but there are existing a couple more shrubs we put in front of the fence as well as additional trees. So the expectation is that the pool won't be visible from the road either way eventually. As soon as this stuff starts to grow.

Chairman Reinhardt – Do you know of any pictures of the previous pool?

Mr. Shields – I know neighbors that know where it was, but I don't have any. I looked and I don't have any pictures of that. I have Rudy's contact info, if that's necessary. I'm sure he could tell us.

Chairman Reinhardt – No, I don't think so. I'd just be curious if they were available like maybe the board would like to see it. I'm not going to go on a treasure hunt to look for a couple of photographs. Unless there are questions from the board. Anybody else have any other questions?

I'm not hearing anything, so Mr. Shields you know the drill. We're going to have to wait until the next cycle and allow the public to speak for or against. I know that the summer isn't very long here and you probably want to get the project going.

Mr. Shields – I do have a date. For install. What are my options?

Chairman Reinhardt – What's your install date?

Mr. Shields – The 26<sup>th</sup> of June?

Mr. Shields – I put the documentation in the beginning of, I forget what day it was but it was in the middle of May and for whatever reason the codes email bounced back. And, I'm assuming it delayed, I not sure how many sessions it delayed. I was under the impression that because this was a modification to a variance, this wasn't even necessary, so that was on me, but. I also wasn't aware we were going to be

having to wait until July 6 for our final. I thought this was the date. Like I thought this was the decision date, here.

Chairman Reinhardt – Covid is causing everybody a lot of problems (inaudible) as far as procedure goes. That's one piece of it. The other piece is as far as variances go if you want to put a pool in the same spot as it was before, you don't need a variance. The problem is you need a modification to the variance and the conditions it changes it. I think the criteria is going to fall in your favor, but procedurally we have to follow procedure and allow the public an opportunity to speak for or against. I'm hearing at least from Marty that people are watching. I have no idea if they are watching this one or the other application so we just have to follow procedure and that's how it is.

Mr. Shields – Sure. So, do I have any recourse here or do I have to wait for this in order to do the install. I don't know the process.

Chairman Reinhardt – Hopefully you heard the question we had from the other applicant, Mr. Spencer, is there a remedy? Yeah, there's always a remedy in this kind of procedure. Specifically what that remedy is I would suggest you contact an attorney and consult with him or her and let them know what's happening and if they deem it necessary to proceed further through litigation then that's what happens. But for now I don't think there is anything I can help you with.

Mr. Shields – I mean more along the lines of what happens if I go forward with this as far as the install of the pool and then the variance is approved?

Chairman Reinhardt – Well then probably the code enforcement officer, Al, you might get a knock on the door from him and saying well you don't have a variance and probably would be some type of anything from a warning to a citation. Whatever authority that the code enforcement officer has, he'll do. I don't think quite honestly that the code enforcement officer has any authority to handcuff you and drag you off to jail, but there is probably consequences for pressing forward with a project without the proper paperwork.

Mr. Shields – Understood.

Chairman Reinhardt – Again, I would suggest if you are thinking about that, consult with an attorney on what the consequences are. We're kind of treading on some territory of me giving you legal advice on what happens if.

Mr. Shields – I understand, I understand.

Chairman Reinhardt – And I understand that the problem, the dilemma and our weather is good for a short period of time and I imagine you want to get the pool up and being used as much as possible.

Mr. Shields – It's also scheduling. They had like 180 calls over the span of ten days for pool installs so the ability for me to land something in this time frame was very aggressive and I fought for it thinking like I said that this was going to be the date, so. I guess we'll figure out what I'm going to do.

Chairman Reinhardt – I understand. Anything else, questions, comments, concerns?

Mr. Shields – I'm good.

Chairman Reinhardt – Alright then we will see you on July 6 and hopefully give you a resolution that suits your favor.

Mr. Nearpass – I do have one question before he goes. To the applicant, do you know how far from the southern lot line you're going to put the pool?

Mr. Shields – 23 feet.

Mr. Nearpass – Okay. I'm good.

Chairman Reinhardt – Anyone else have any more questions? Okay great. So Mr. Shields we will see you July 6.

Mr. Shields – Thank you.

Chairman Reinhardt – Does anyone else have any more business to be presented before the board? Questions, concerns, comments? Looks like we're all good. I'll entertain a motion to adjourn.

Motion to adjourn Mr. Salsburg, seconded by Ms. Morley. It was unanimously agreed and RESOLVED that the meeting was adjourned at 8:00 PM.