

A regular meeting of the Village of Victor Zoning Board of Appeals (ZBA) was held on Wednesday, June 17, 2020 via Zoom app.

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

OTHERS PRESENT: Pam Hogenes, Michael Crowley, Mike Fink

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

Salute to the Flag

Resolution #03-20ZBA
Acceptance of Minutes

On a motion made by Brian Pancoast, seconded by David Chalupa, the following resolution was ADOPTED 5 AYES 0 NAYS

Resolved to accept the minutes dated January 15, 2020.

212 East Main St./Mike Fink
Area Variance Fence

Chairperson Sanderson read the legal notice into the record:

"A public hearing will be held before the Village of Victor Zoning Board of Appeals remotely via the Zoom app and can be viewed on the Village YouTube channel on Wednesday, June 17, 2020, at 7:00 p.m. to consider:

1.) The application of 212 East Main St./Mike Fink, for an area variance to the Village of Victor Zoning Code to allow the construction of a fence over 6 ft. tall in order to keep deer out of his garden. The applicant proposes building a 7.5' tall wooden fence in a Hampton style diamond pattern on the lower back half of his lot. A variance of 1.5 feet is needed to comply with the 6' high fence code.

At this time, the general public cannot be present in person at the public hearings, but can comment via the Village of Victor YouTube Channel which can be found at villageofvictor.org under Village of Victor Virtual Meetings on YouTube.

Other ways to comment are via email @ ptclerk@villageofvictor.org or via US Mail to 60 East Main Street, Victor, NY 14564. Comments can also be submitted in our mailbox located at Village Hall.

If you have any questions, please call (585)924-3311.

Sean Sanderson, Chairperson
Village of Victor Zoning Board of Appeals"

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

into the record:

"The Planning and Building Department has received an application for an Area Variance. The property is located at, 212 East Main Street. The applicant is proposing to construct a garden fence around their vegetable garden in the rear portion of their parcel. The parcel is located in the R-1 One Family Residential zoning district. I have reviewed the plans and have the following comments:

I. The applicant is proposing to install a 7.5 foot tall fence whereas § 170-36.C, allows a maximum height of 6 feet.

Respectfully submitted,
Martin Avila, NYS-CEO, CFM
Code Enforcement Officer
Code References

§ 170-36 Fences and hedges.

Regulations regarding fences and/or hedges (not applicable to farm boundary lines) shall be as follows:

C. No fence shall be over six feet in height from grade and shall not be built nearer to the street than the front line of the principal building."

Dr. Mike Fink stated that he lives on East Main Street and his back yard is a narrow long lot and that when he moved in there was a 4'-5' tall chain link garden fence and he planted a garden and the deer made their presence known. Dr. Fink stated that this year with some time off work he would like to construct a garden fence that would keep the deer out and in his research he found out that a fence must be over 7' tall to assure that deer will not jump over the fence. Dr. Fink explained that there are woods behind the property and that deer are seen on a daily basis. Dr. Fink stated that the diamond pattern fence (Exhibit A) is what he will be following for the fence at 7.5' to ensure that the deer will not jump the fence. Dr. Fink stated that as far as specifications, the garden is 200' back from the road, 120' back from the rear part of the residence and 1' back from the property line. Dr. Fink stated that the fence is not viewable from the residence or any other nearby residence. Dr. Fink stated that the fence would be completely constructed of wood as the requirement is that no metal is used such as wire mesh. Dr. Fink stated that he found a clear mesh to use for the walls to keep the fence aesthetically pleasing and to add value to the property. Dr. Fink stated that he hopes to have a deer free garden. Mr. Pancoast asked if the mesh he plans to use is plastic. Dr. Fink explained that it is technically bird netting and is a clear synthetic mesh material. Mr. Sanderson stated that he stopped at the residence today and for lack of a better description it is plastic netting.

Mr. Sanderson stated that Dr. Fink proposes to build the fence 7.5' high and the code allows for 6'. Mr. Sanderson stated that he snapped a couple photos while he was at the residence and shared them with the Zoning Board members. Mr. Sanderson stated that he wanted to illustrate that you cannot see the fence from Main Street as it is tucked back behind the house and some plantings.

Mr. Sanderson asked Dr. Fink for the exact dimensions and location of the garden. Dr. Fink stated that the garden is roughly 20' x 30'. Mr. Sanderson stated that the site plan (Exhibit B) shows the garden in the Southeast corner of the property.

Dr. Fink stated that the garden is located 200' back from the road, 120' back from the rear part of the home.

Mr. Sanderson stated that if this variance gets granted he is comfortable with where the garden is currently located but he doesn't want to allow a 7.5' fence any other place on the property.

Dr. Fink stated that he sent an email with the following specifications;

1. The fence must be at least 200ft from any road.
2. The fence must be 120ft from the nearest home. The fence must not be visible from neighboring houses
3. The fence must be located in the rear aspect of the lot.
4. The property opposite the fence/behind the fence must be wooded and without a residence on the land.
5. The fence must be completely constructed of wood.
6. The fence must maintain a well-kept and aesthetically pleasing visual presentation.

Mr. Sanderson stated that we just have to locate where the garden is and list specifications. Mr. Crossing asked how a motion can be granted without an understanding of how far the fence is off the back property line as it is not clear from the survey. Mr. Pancoast asked if it matters if it is pre-existing and on his property. Mr. Crossing asked Mr. Pancoast how he knows for sure that it is on his property. Mr. Pancoast stated that he is not sure that the fence is on Dr. Fink's property. Mr. Sanderson stated that it is up to Code Enforcement who cannot approve a fence on someone else's property and the Zoning Board cannot let him do that.

Mr. Sanderson stated that he wants to avoid the next owner being able to build a 7.5' high fence all the way around the entire back yard.

Mr. Stone asked if the resolution could state "in accordance to regulations" because the variance is not for setback, the variance is for height. Mr. Stone explained that we are looking for language so that the Zoning Board is approving 20' x 30' in a specific area on the lot line which is in accordance with current code regulations. Mr. Chalupa stated that the specific area needs to be defined. Mr. Sanderson stated that it is not accurate as it is depicted on the site plan (Exhibit B) so the site plan cannot be referred to in the resolution.

Conversation between Dr. Fink and Zoning Board to determine approximate location of the garden

Mr. Stone stated that the approval is based on the fence being constructed on his property in accordance with current code regulations. Mr. Stone explained that if Dr.

Fink wants to put the fence on his property line, it is allowed. Mr. Stone stated that he would have to get a permit for the fence and if it is determined that he is encroaching, it will be resolved.

More discussion about how far the fence would be off the lot lines.

Mr. Sanderson stated that it has been determined that Dr. Fink would like to build a 20' w x 30' l, 7.5' high garden fence 1' off the South East lot line no closer than 80' from the rear lot line and no closer than 200' from the front lot line. Mr. Sanderson explained that the garden is limited to being this size if the variance is granted and asked Dr. Fink if he thinks he will want a larger garden in the future. Dr. Fink stated that he has no plan to change the size of the garden.

Mr. Sanderson asked Mr. Crowley how a special use permit applies to this case instead of an area variance. Mr. Crowley stated that he doesn't think it is a variance because he doesn't think it is a fence and that the Code Enforcement Officer has come across something that he has never seen before. Mr. Crowley explained that the code meaning for a fence is to separate two things and this is a rectangular enclosure. Mr. Sanderson stated that he is not sold that it isn't a fence and asked how a special use permit would be different than granting an area variance. Mr. Crowley explained that a special use permit always has a time attached to it and the owner would have to come and get it renewed. Mr. Crowley stated that it is a protection for his garden and is aesthetically pleasing but the next owner's fence might not look as nice. Mr. Sanderson stated that restrictions can be applied to the variance so that the exact fence is allowed and cannot be changed.

More discussion about how far the fence would be off the lot lines.

Mr. Crowley asked where there are restrictions on what the fence can and cannot be constructed of. Mr. Chalupa stated, in the code. Mr. Pancoast referenced code 170-36. Mr. Crowley stated that 170-36 tells you that you can't use chicken wire, barbed wire or other farm type wires but a solid fence can be built. Mr. Chalupa stated that you need to be able to see through it. Mr. Sanderson stated that the Zoning Board needs to be specific as to what the fence is allowed to be constructed of. Mr. Crowley stated that he thinks that the Zoning Board only has the power to determine the height of the fence, not materials used. Mr. Stone stated that the Zoning Board can grant a variance for the materials and the mesh sounds like it meets the code definition which brings us back to the one and only variance Mr. Fink is seeking which is the height.

Mr. Crowley stated that if 7.5' is allowed it can be built out of any material. Mr. Sanderson stated that conditions can be put on the variance. Mr. Crowley stated that he doesn't think the Zoning Board has the power to adjust the material. Mr. Chalupa stated that the material does not need to be adjusted because it cannot be barbed wire or chicken wire and it has to be see-through. Mr. Pancoast asked if that only applies to

fences that are on the lot line because a chicken coop can be made out of chicken wire. Mr. Stone explained that it has to be on farm land and is a different code. Mr. Crowley stated that the application is for the height of the fence and whatever height variance you grant goes with that property forever. Mr. Stone explained that the height has to include where he is putting it.

Discussion as to approximate location of the garden

Mr. Sanderson opened the public hearing

Ms. Turner read the letter from Sarah Mack of 245 East Main Street into the record:

Letter dated June 4, 2020 "We received the notice about Mike Fink's fence variance request. I just wanted to say as another homeowner on East Main Street we understand his request and hope it will be approved. We also hope it keeps his garden protected!"

Mr. Sanderson closed the public hearing

0 persons spoke in favor of the application and 0 persons spoke against the application; 1 letter in favor of the application was received.

Mr. Sanderson then went through the balancing test with the Zoning Board members

1. CAN THE BENEFIT SOUGHT BY THE APPLICANT BE ACHIEVED BY OTHER FEASIBLE MEANS?

No- Unanimous

2. WILL GRANTING OF THE VARIANCE PRODUCE AN UNDESIREABLE CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES?

No- Unanimous

3. IS THE REQUESTED VARIANCE SUBSTANTIAL?

No- Unanimous

4. WILL THE VARIANCE HAVE ANY ADVERSE PHYSICAL OR ENVIRONMENTAL EFFECTS ON THE NEIGHBORHOOD OR DISTRICT?

No-unanimous

5. WAS THE ALLEGED DIFFICULTY SELF-CREATED?

Yes-unanimous

Discussion as to wording of the resolution

Resolution #04-20ZBA

**212 East Main St./Mike Fink
Area Variance Fence**

On a motion made by Brian Pancoast, seconded by Brendon Crossing, the following resolution was **APPROVED** 5 AYES 0 NAYS

To grant an area variance to the Village of Victor Zoning Code to allow the construction of a 20' h x 30' l x 7.5' high fence at 212 East Main Street. The fence must be constructed of wood in a Hampton style diamond pattern (as illustrated in exhibit A) on the South East lot line no closer than 80' from the rear lot line and no closer than 200' from the front lot line. The applicant should obtain a building permit within 60 days from today's date.

WHEREAS, an application was received by Roseanne Turner-Adams, Zoning Clerk, for the Zoning Board of Appeals, from Mike Fink; on May 14, 2020, requesting an area variance to allow the installation of a fence 7.5 feet high where 6 feet is required by code.

WHEREAS, said application was denied by the Code Enforcement Officer for the Village of Victor on the basis of Section 170-36 and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on June 3, 2020; and,

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

WHEREAS, a Public Hearing was held on June 17, 2020 at which time all those who desired to be heard were heard and 0 persons spoke in favor of the application and 0 persons spoke against the application, 1 letter in favor of the application was received; and,

WHEREAS, after viewing the premises and after reviewing the file and after due deliberation, the Village of Victor Zoning Board of Appeals made the following findings of fact:

- That the benefit sought by the applicant cannot be achieved by some other method, feasible for the applicant to pursue, other than an area variance.
- That an undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by the granting of this variance.
- That the requested variance is not substantial.

- That the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
- That the alleged difficulty was self-created.

NOW, THEREFORE BE IT RESOLVED that the application of Mike Fink to allow the construction of a 20' wide x 30' long x 7.5' high fence at 212 East Main Street. The fence must be constructed of wood in a Hampton style diamond pattern (as illustrated in exhibit A) on the South East lot line no closer than 80' from the rear lot line and no closer than 200' from the front lot line. The applicant should obtain a building permit within 60 days from today's date **Be Approved.**

ADJOURNMENT

Meeting was adjourned on motion at 8:00 pm.

Roseanne Turner-Adams, Minutes Clerk